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**2017**  
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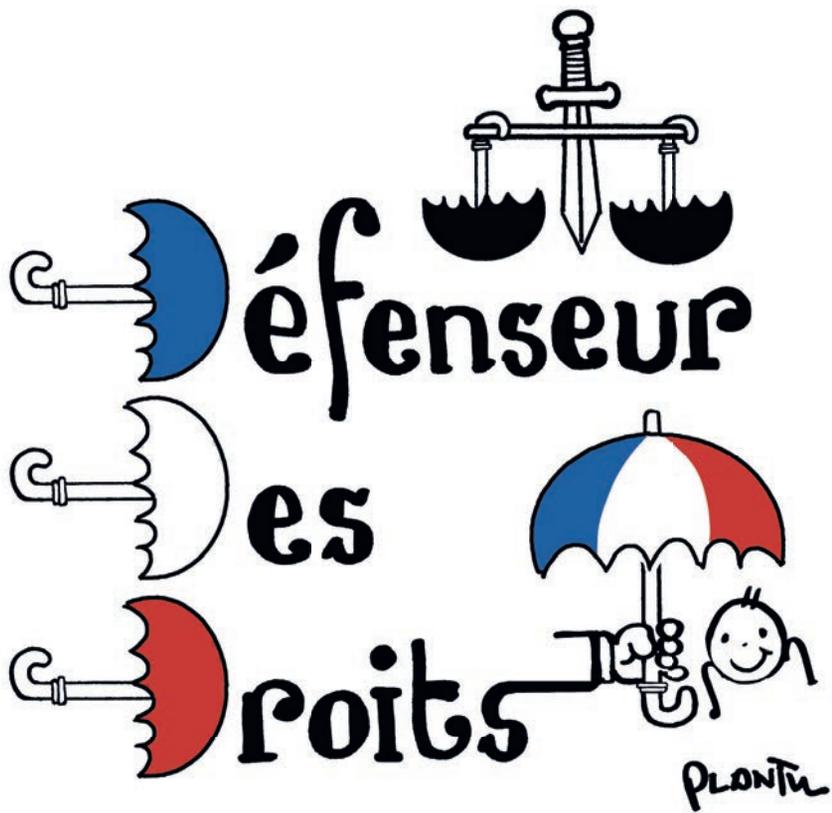
# Annual Activity Report

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Operation "Place aux Droits!" in the city of Toulouse, October 2017

**All are equal before the law**

**Défenseur des droits**  
— RÉPUBLIQUE FRANÇAISE —



# Editorial

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## Never look the other way

**T**his Activity Report, lengthy though it may be, only provides a partial view of work carried out in 2017 by all those who, in their various stations, helped meet the ongoing needs of rights and freedoms.

The Defender of Rights received new missions, its activity continues to increase significantly, it frequently takes positions and presents proposals to public decision-makers, and makes its voice heard ever more clearly.

Recourse to the Defender of Rights, although hardly indicative of the full scale of existing deficiencies and discriminations, is nonetheless a clear symptom of the collective evils that millions of people living in France are subjected to, those who have the feeling that the Republic, its public services; its laws and its rights do not benefit everyone in equal measure.

The Defender of Rights is therefore called upon to ensure that rights are complied with, in order to protect all those whom rhetoric on identity, reduced State services and strained power relations tend to “leave by the wayside”.

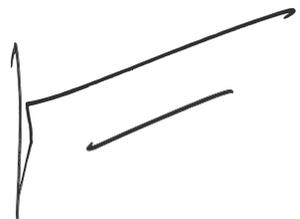
Such is the experience we often have of French society. Nonetheless, even though our response is effective up to a point, it remains tenuous and variable.

How many among us no longer receive consideration, or have been bereft of any sense of the equal dignity of all individuals? Our country prefers distinction to integration, opposition to inclusion; The call for universality continues to issue from public platforms but the reality of current policies compromises it a little more with every passing day.

By endeavouring to see that all citizens’ rights and fundamental freedoms are unconditionally respected, the Defender of Rights has high ambitions that might well seem laughable in these turbulent times: paying attention to humane conditions, and recommending to managers, decision-makers and judges that they tread lightly, and that they never look the other way.

In my eyes, our rights are the cement of a common humanity ever under construction.

**Jacques TOUBON**  
Defender of Rights



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promoter of the principle  
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# The Defender of Rights in figures

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**Over 140,000 requests for intervention or advice**

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**93,371**

**Complaint** file.



**51,069**

Calls to the institution's  
**call centres.**



**17**

Ex-officio referrals.



**7.8%**

increase in complaints over 2017,  
**making 17.3%** over the last two years.

## **Permanent contacts with the public and civil society**

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**836**

**Reception points**  
across the territory.



**3**

**Advisory boards** composed of  
**22 qualified individuals**,  
which met 17 times.



**8**

Permanent **committees for  
dialogue** with civil society,  
which met 12 times.



**1,128,469**

Visitors to the website in 2017 (+7% between 2016 and 2017).



**39,638**

Subscribers on **Twitter**  
(+ 43%).



**11,940**

Subscribers on **Facebook**  
(+ 36%).



**1,200**

Subscribers on **LinkedIn**  
(+ 214%).

## Acknowledged expertise



**88,464**

**Files**



Almost

**78%**

of **amicable settlements**  
having positive outcome



**14**

**Opinions**

at the request of Parliament.



**137**

Submissions of observations  
to courts; in **76%** of cases,  
court decisions  
confirmed  
the institution's observations.



**138**

**Recommendations  
and 48 proposals for reform**  
addressed to the public  
authorities.



**146**

**Hearings of witnesses**

**696**



**Recommendations and decisions**

(recommendations of general and individual scope, legal observations, proposals for reform, opinions to Public Prosecutors' Offices, referrals by Public Prosecutors' Offices, civil transactions, ex-officio referrals of serious situations, etc.).

## A team at the service of rights and freedoms



Almost

**250**

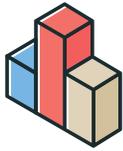
**Employees at the head office**



Almost

**475**

**Delegates** present  
at **836 reception points**  
across the territory



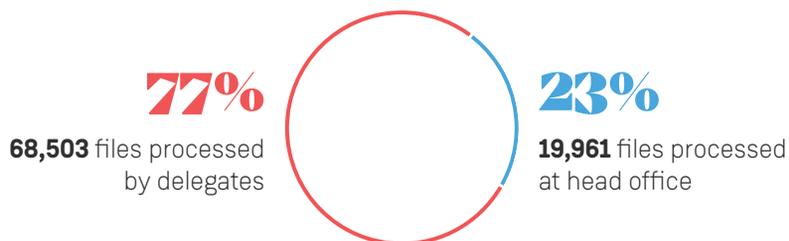
### Referrals in 2017: head office and delegates

	2016	2017	Evolution	AAR 2010
Relations with public services	45,113	50,560	12.1%	38,091
Defence of the rights of the child	2,611	2,959	13.3%	1,250
Fight against discrimination	5,203	5,405	3.9%	3,055
Security ethics	1,225	1,228	0.2%	185
Orientation and protection of whistleblowers		71		
Access to rights	35,504	35,545	0.1%	

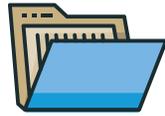
It should be kept in mind that sums presented are not equal to total numbers of complaints received, mainly due to multiqualified submissions.



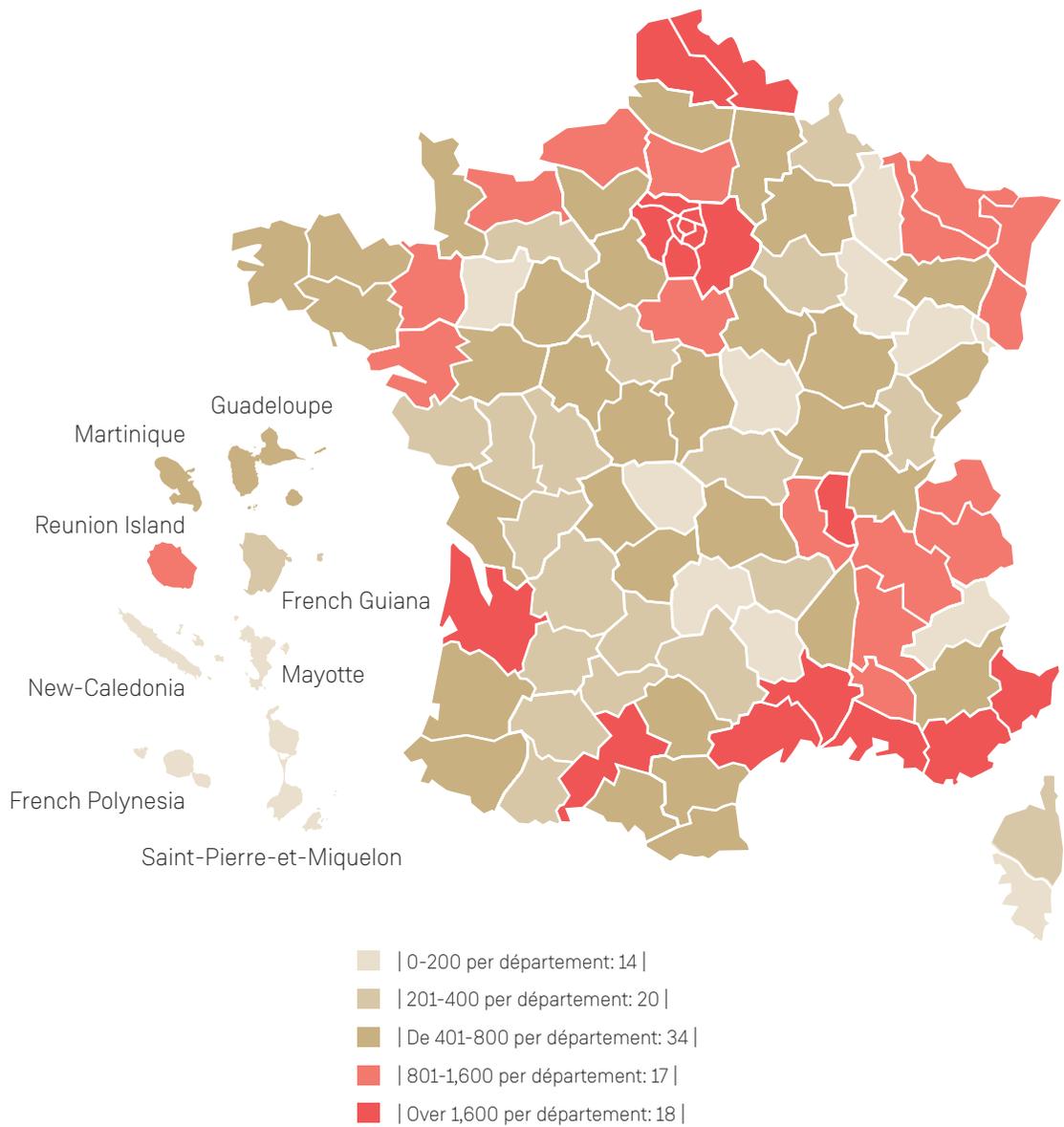
### Breakdown between head office and delegates



Evolution compared with 2016 — Delegates' activity: + 6% | Head office activity: + 12%



**Breakdown of submissions received by the Defender of Rights over the course of 2017**



# 5 fields of competence

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## **Defending the rights of public service users**

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The Defender of Rights intervenes in order to re-establish access to rights and freedoms on the part of individuals who have come up against problems while carrying out procedures required by a **State administration** (ministry, prefecture, local education office, regional health agency, consular chamber, etc.), **local authority** (town hall, public intermunicipal cooperation institution (EPCI), General council, regional council, etc.), **private body responsible for a public service mission** (family allowance fund, primary health insurance fund, Pôle Emploi, national pension insurance fund, etc.) **or any public services** (public establishments, healthcare facilities, energy and water suppliers, public transport managements, etc.).

## **Defence and promotion of the higher interest and rights of the child**

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The Defender of Rights intervenes when a complainant – or the minor victim him/herself – informs it of facts

evidencing that a child has been deprived of his/her rights or that his/her interest has been ignored (access to education, the school canteen or healthcare, subjection to violence, etc.).

## **Combating discrimination and promoting equality**

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The Defender of Rights intervenes when a complainant has been treated differently for one of the reasons prohibited by law (origin, disability, sex, age, sexual orientation, etc.) in one of the fields covered by law, such as public or private employment, career advancement, housing, access to a good or a service, etc.

## **Compliance with ethics on the part of individuals engaged in security activities**

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The Defender of Rights intervenes when a complainant informs it that he/she has been the victim of or witness to unethical behaviour on the part of an individual engaged in a security activity (police officer, gendarme, prison staff,

private security officer, etc.), such as disproportionate use of force, inappropriate gestures or remarks, insults, threats, overfamiliarity, abusive body search, identity check carried out under abnormal conditions, problems with lodging a complaint, disputable restraint measure or deprivation of freedom (interrogation, police search, restraint, police custody, detention, etc.).

## **Orientation and protection of whistleblowers**

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The Organic Law of 9 December 2016 bearing on the Defender of Rights' competence as regards orientation and protection of whistleblowers tasks it with "directing to the competent authorities any individual reporting an infringement in the conditions set by law, and for ensuring respect for such individual's rights and freedoms". The Law of 9 December 2016 bearing on transparency, the fight against corruption and the modernisation of economic life specifies the conditions under which the Defender of Rights carries out this mission.

**As an independent authority, the Defender of Rights' missions are enshrined in Article 71-1 of the Constitution:**

*"The Defender of Rights ensures respect for rights and freedoms by central and local government, public establishments and by any organisation providing a public service, or over which the organic law gives it jurisdiction.*

*Subject to the conditions established by the organic law, any person who considers himself prejudiced by the action of a public body or an organisation mentioned in the first paragraph may apply to the Defender. It can act on its own motion."*

# Protection of rights

## Who can refer to the Defender of Rights?

Anybody who considers that their rights have been infringed can refer to it directly, via one of its 475 delegates active across French soil in a total of over 800 offices, via the internet by using the form provided, or by post-free mail. The Institute can also be contacted by telephone for any information required.

Referrals can also be indirect, i.e. relayed to it by associations, parliamentarians or minors' families.

Finally, the Defender of Rights can act on its own motion, with no prior complaint having been made, when particularly serious facts coming within its field of competence are brought to its attention.

## How does the Defender of Rights act?

**1.** The Defender of Rights prioritises **amicable settlement** as a means of solving the problems referred to it. It may make use of mediation, equitable settlement or transaction to this effect.

**2.** In cases where no amicable settlement can be reached, it may make individual or general **recommendations** in order to solve a problem, or request implementation of measures or changes in the practices called into question.

The Defender of Rights' recommendations must be **followed up**. If no remedial action is taken by the accused party, it may exercise a **power**

**of injunction**; and, if no response is forthcoming, **make** its recommendation **public** by reporting the refusal to comply.

**3.** If legal proceedings have been instigated, the Defender of Rights may present **observations before the courts concerned**. These latter may also refer cases to the Defender of Rights for an opinion. It makes observations before a court in order to ensure that the law is enforced, present its vision of the case in question and contribute to the development of jurisprudence.

It may recommend that **sanctions** be taken against an officer or professional guilty of misconduct, or against any private individual or legal entity whose activity is subject to administrative authorisation or approval.

It is also duty-bound to **inform the Public Prosecutor** of any facts brought to its attention that may constitute a criminal offence or misdemeanour, and must **request his authorisation to investigate** before intervening when a complaint has already been referred to it. Lastly, it may intervene before European courts in cases where litigation has been taken to such level.

### **What are the Defender of Rights powers?**

Possessing wide **investigative powers** and with sworn officers among its staff, the Defender of Rights may request communication of any and all information that may be of use in examining and settling a dispute. The Defender of Rights may also summon the accused party to a **hearing** or carry out **checks onsite**.

It can refer to a Judge in Chambers in order to obtain the communication of any information it might require. **Any attempts to hamper** the Defender of Rights' investigations may lead to formal notice and criminal penalties (a year's imprisonment and a €15,000 fine). Arguments of professional secrecy may not serve as grounds for withholding information.



## **Before European courts**

With a view to ensuring that France complies with its international commitments, the Defender of Rights regularly intervenes before European courts in the context of a third-party intervention process, on matters falling within its field of competence.

In 2017, the Defender of Rights intervened before the European Court of Human Rights in cases to do with reception of and provision of care to unaccompanied minors, pursuant to the law on intelligence services of 24 July 2015, the effectiveness of domestic remedies enabling an end to be put to undignified detention in prisons,

compliance of transfers of asylum seekers pursuant to the Dublin III Regulation, and the discriminatory nature of refusal of access to medically assisted procreation for a female same-sex couple who wanted to have children.

2017 was marked by the Defender of Rights' first third-party intervention before the Court of Justice of the European Union (CJEU), in the context of a Council of State preliminary ruling procedure (Decision 2017-326). Questions raised concerned the territorial scope (national, European or global) of the right to delisting implicitly enshrined by the Court of Justice in its

ruling against Google Spain delivered on 13 May 2014, and its effectiveness with regard to Directive 95/46/EC and the Charter of Fundamental Rights of the European Union (CFREU), both of which guarantee the right to protection of personal data. The right to delisting enables individuals, under certain conditions, to request a search engine to delete certain search results relating to their family names and forenames. It does not involve deletion of information. The Court's decision will be determining with regard to protection of personal data on the Internet.

# Promotion of rights

Alongside its action on protection of rights, the Defender of Rights also implements a policy **promoting equality and access to rights**. In this context, it tries to advance **the evolution of practices** through training actions, production of tools and publication of theme-based reports.

It also issues opinions on all draft legislative and regulatory texts falling within its field of competence, with a view to ensuring that the law evolves towards ever greater equity.

Through the studies it carries out or commissions, the Defender of Rights contributes to measurement of the scale and mechanisms of discrimination and inequalities.

## Opinions to Parliament and proposals on reform

Despite the reserve period inherent in the running of Presidential and parliamentary elections held in spring 2017, the Defender of Rights continued sustained activity with regard to recommendations and proposals on reform.

In compliance with the provisions of Article 32 of the Organic Law of 29 March 2011, the Defender of Rights may act on the drafting of a text when application of one or more legal or regulatory provisions it contains may lead to an unfair or discriminatory situation, or infringement of the rights of the child or of the rules governing security ethics.

On the same basis, it may also be consulted on any bill or proposed law falling within its field of competence,

as the opinions it delivers to Parliament help nourish parliamentary debate.

Hence, in 2017, the Defender of Rights was heard on 18 occasions by the National Assembly and the Senate, and published 14 opinions to Parliament. 138 recommendations were brought to the public authorities' attention, many of them bearing on public safety ([Opinion n° 17-01](#)), reinforcing internal security and the fight against terrorism ([Opinions n° 17-05](#) and [n° 17-07](#)), the rights of intersex individuals ([Opinion n° 17-04](#)), unaccompanied foreign minors ([Opinions n° 17-03](#) and [n° 17-10](#)), immigration, asylum and integration ([Opinion n° 17-09](#)) or reinforcement of social dialogue resulting from

the debate on enabling the government to act through ordinances ([Opinion n° 17-06](#)).

The Defender of Rights also addressed 48 proposals on reform to the government, several of them resulting from examination of complaints it had received.

# — I — An institution open to all, and in direct contact with society

The Defender of Rights is an open institution with a ready ear, tasked with providing anyone who refers to it with a response designed to re-establish trust and respect for rights in a legal and administrative environment that is often difficult to access and all too complex.

The term ‘Defender of Rights’ refers both to the Institution and its Director. Jacques Toubon has held this post since 17 July 2014.

## 1. An institution dedicated to respect for rights

### **A. The delegates: Human reception across the national territory and support in asserting your rights**

Article 37 of the Organic Law bearing on the Defender of Rights enables it to “appoint, across the national territory, delegates, placed under its authority, who may, within their geographical areas, examine complaints and participate in settlement of problems reported as well as in actions [of information and communication carried out by the Institution] (...) it appoints one or more delegates for each penal institution.”

With 475 delegates at the end of 2017, the Defender of Rights stands out from comparable institutions in other countries in that it is the only one whose territorial representation is provided

by a network of volunteers, regarded as public servants, whose density enables close contact with the public in Metropolitan and Overseas France as well as with French citizens abroad.

#### **1. Proximity**

Départemental delegates provide a free local service dedicated to reception of anybody having problems with asserting their rights, in particular those who, due to situations of isolation, precarity or distance from public services, are especially vulnerable.

In November 2015, in order to ensure local presence, in particular in rural areas and various neighbourhoods on the peripheries of the Republic's metropolises, which are faced with increasing downsizing of public services, a partnership agreement was concluded with the General Commission for Territorial

Equality (CGET), enabling the Defender of Rights' network to open offices in 2017 in two pilot départements, in Haute-Savoie and Lozère; it works out of 62 Maisons des services au public (MSAPs - Public Service Centres) across French soil.

## MSAPs and the Defender of Rights' territorial network

Since 2013, 1150 MSAPs have been deployed across France.

Such centres bring together a range of operators (including Family Benefit Fund (CAF), Pôle Emploi and Pension Fund) under one roof, in order to accompany users in ordering their everyday lives.

By receiving users and providing them with information and guidance on carrying out administrative procedures, along with accompaniment in use and mastery of online services, they offer an alternative solution adapted to individuals

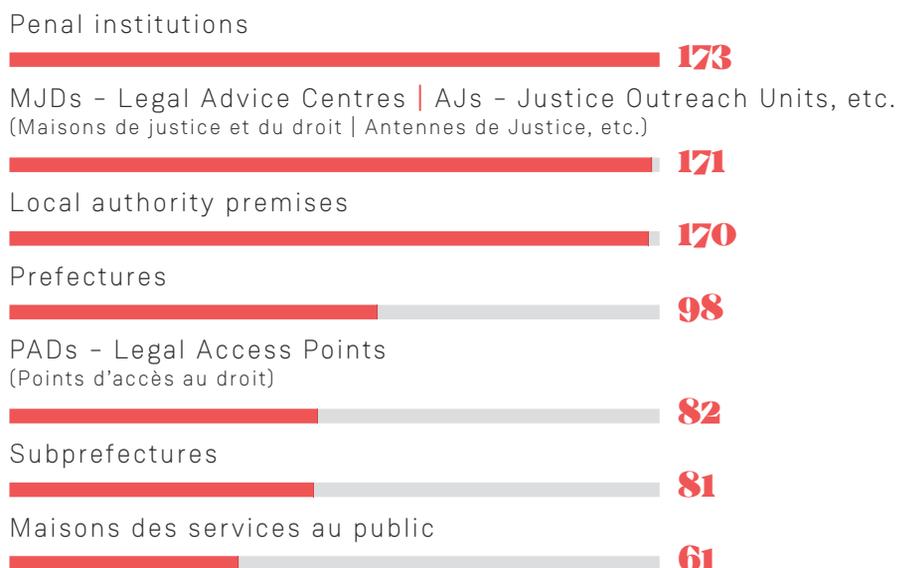
who may encounter problems in accessing their rights, connected in particular with dematerialisation of procedures, and so contribute to better access to public services on the part of one and all.

Delegates' presence in penal institutions has been stepped up considerably over the last two years. There are now 149 delegates intervening in all such facilities, including the six institutions for minors. A Defender of Rights leaflet entitled "Faire valoir vos droits durant la détention" (Assert your Rights while You're in Prison),

95,000 copies of which are printed every year, is now distributed to all new inmates upon their arrival at the prison.

In order to best accomplish the goal of access to rights for all, most delegates now work out of several different reception centres (836 in all).

## Distribution of delegates according to different types of reception structures in 2017



## 2. A ready ear

Before they even know whether a request falls with the Director of Rights' field of competence, delegates listen to what complainants have to say, providing a service that is much appreciated by a public that is often disorientated by the complexity of the procedures they have to cope with.

It is through this fundamental mission, along with provision of guidance and assistance in carrying out procedures, that the Defender of Rights' contribution to improvement of access to rights is given concrete expression.

## 3. Legal expertise

In addition to provision of information and guidance (32,305 submissions in 2017), delegates try to find amicable ways of settling the individual problems referred to them and covering a whole range of complicated fields (38,413 submissions in 2017), mainly in the realm of public services, the social field above all.

### Local processing of requests received by delegates in 2017

<b>Complaints</b>	<b>38,413</b>	<b>54%</b>
Relations with public services	37,016	92.7%
Fight against discrimination	1,685	4.2%
Defence of the rights of the child	1,025	2.6%
Security ethics	214	0.5%
<b>Information</b>	<b>32,305</b>	<b>46%</b>
Relations with public services	21,005	65,0%
Fight against discrimination	1,029	3,2%
Defence of the rights of the child	774	2,4%
Security ethics	162	0,5%
Other requests	9,335	28,9%
<b>Total of referrals processed locally</b>	<b>70,718</b>	<b>100%</b>

The presentation takes account of the fact that the figure is not the same as the total number of complaints received, mainly due to multiqualified submissions.

Territorial presence must meet growing needs. It has been stepped up considerably over the last three years (102 more delegates, including 10 in Overseas France), providing the Institution with an effective network based on complementarity between the competences of generalist delegates and those of experts at the head office.

The diversity of interlocutors and situations processed also justifies delegates implementing adapted approaches.

In the first place, they include relations with the social public services that complainants call into question and which delegates have to make contact with most often.



Claude Geoffrion, Defender of Rights delegate

These include Family Benefit Funds (CAFs), Primary Health Insurance Funds (CPAMs), Pôle Emploi, Pension Insurance and Health at Work Funds (CARSATs), the Social Security Scheme for Self-Employed Workers (RSI) and Organisations for Payment of Social Security and Family Benefit contributions (URSSAFs). The network of delegates benefits from dedicated interlocutors within these bodies, including mediators, conciliators and quality managers. They meet regularly and form relationships of trust with such correspondents. In a good many cases, their proximity enables obtainment of rapid, reasoned and often positive responses.

Secondly, disputes between users and prefectures are on the increase. They mostly bear on questions relating to dematerialisation of procedures for requesting such documents as identity cards, passports, registration certificates and driving licenses, as well as to reception by services, in particular with regard to foreigners' rights. The Defender of Rights' delegates regret that, in some départements, the most urbanised ones in particular, services do not always or only belatedly or imperfectly respond to the frequent requests made to them.

As regards dematerialisation, and despite a partnership agreement signed with the Ministry of the Interior on 27 September 2017, delegates continue to observe numerous problems arising along with probable marginalisation of the most vulnerable individuals affected by the "digital divide".

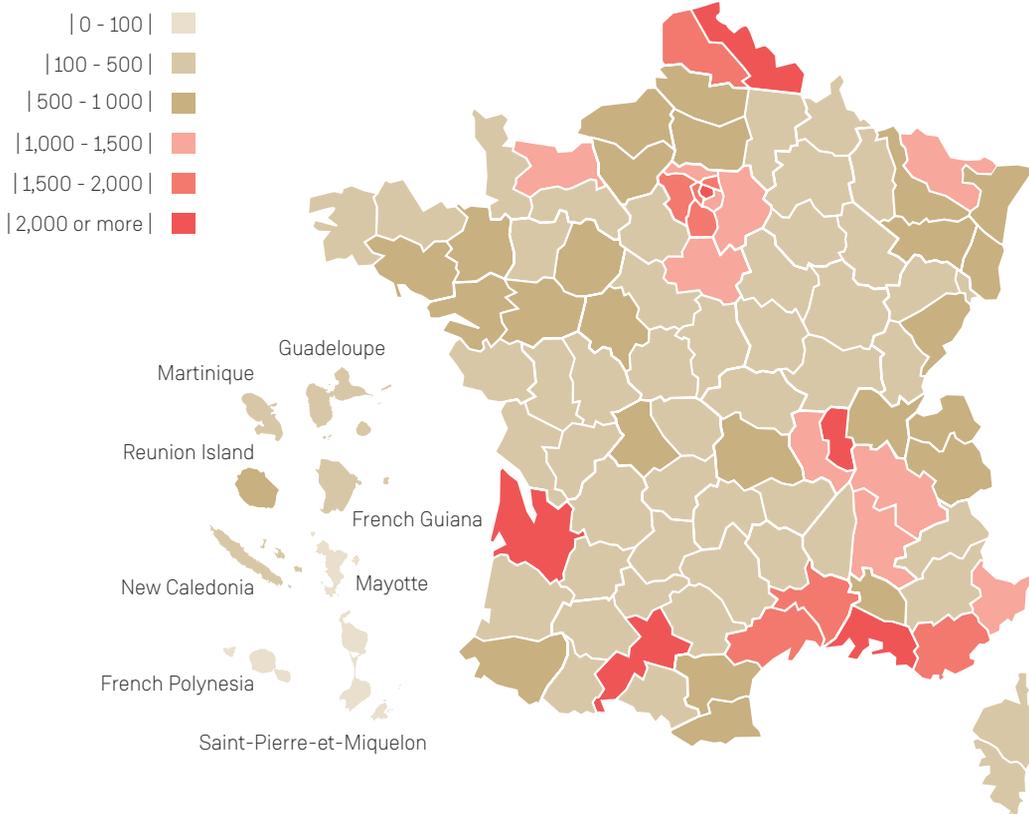
The Defender of Rights' network of delegates is therefore at the heart of far-reaching changes in users' relations with administrations.

As regards the public justice system, delegates deal with numbers of complaints calling the operation of legal services into question (e.g. corrections to material errors on civil status). Delegates regret that correspondents appointed pursuant to recent collaboration agreements delay replying to them, when they are not altogether ignorant of the liaison role entrusted to them by Public Prosecutors' Offices.

Lastly, relations with local authorities and public intermunicipal cooperation institutions require major educational efforts on the delegates' part. As regards large and medium-sized cities, delegates were usually able to find interlocutors among elected officials, their offices, or Director-Generals of services. The most highly contrasting situations are to be found in intermunicipalities, where service managers sometimes send delegates responses that do no more than confirm users' viewpoints without making any new analyses of the situations concerned. In this regard, the situation in small rural municipalities is the greatest cause for concern: Either due their not knowing about the Institution or confusion between notions of decentralisation and independence, some mayors refuse to reply to Defender of Rights delegates' requests.

## Number of requests\* addressed to delegates by département in 2017

\* Complaints and information



### 4. The territorial network

In order to carry out their missions to best effect, Defender of Rights delegates are largely autonomous. Nonetheless, they are by no means isolated, as they work within a structured network. They are in permanent contact with each other and receive numerous requests from public and private bodies alike, and together, these exchanges with peers and external partners give their function a partnerial dimension.

As the three portraits below illustrate, it is because a Defender of Rights delegate's mission



is not restricted to mediation alone that the men and women involved are so committed to their work, which includes upholding causes dear to them and actively promoting rights.

## Total number of promotional and public-awareness actions carried out by delegates in 2017

Actions promoting rights		
Relations with public services	362	20.83%
Promotion of children's rights	339	19.51%
Prevention of discrimination	270	15.54%
Public-awareness actions on the part of the Defender of Rights	767	44.13%
<b>Total des actions</b>	<b>1,738</b>	<b>100%</b>

### 5. Portraits of three of the Defender of Rights' delegates

#### Mr Pierre Maurice,

Retired senior executive -  
Renault automobile

"I became a Mediator of the Republic delegate in Yvelines in 2005, at the Chanteloup-Les-Vignes Legal Access Point and Poissy's Prison; then, naturally enough, I became a Defender of Rights delegate in 2011, at Poissy's Legal Access Point as well as its prison.

**"... staying in contact with citizens' everyday lives."**

I wanted to be of use to society, help people, especially the most disadvantaged, confronted with administrative complexities, and stay active. Receiving and listening to complainants, dealing with their requests, and sometimes being their final resort, sorting out often complicated cases - it's rewarding and also enables you to stay in contact with citizens' everyday lives. And there's one main principle I never fail to apply - to always see every case through. A user's thanks, a complainant's smile once their dispute has been settled - that's my best reward. It's a commitment that's kept me happy for the last 13 years."

#### Ms Fatima Djediden,

Managerial employee - DIRECCTE  
(Regional Directorate for Enterprises,  
Competition Policy, Consumer Affairs,  
Labour and Employment)

**"...my office is above all a place for listening and defusing conflicts..."**

"I've been working as a volunteer since 2009, committed to acting in line with the values of our institution, which puts protection of rights and freedoms and promotion of equality first and foremost. In addition to the duties as a delegate, my office is above all a place for listening and defusing conflicts for complainants who end up getting lost in the labyrinths of administrative arcana and dematerialisation of procedures.

I have offices at the Cambrai Town Hall and Douai's remand centre, and now also intervene at the Nord Prefecture and at Saint-André and Lille-Sud Town Halls. Receiving the public, networking with the département's other delegates, consulting the head office for technical support, and acting as a special interlocutor with institutional mediators - they're what I really enjoy about my work."

**Mr Bernard Luminet,**  
Retired Regional Mediator -  
Pôle Emploi

**“...in this age of IT and digital technology, [...] so many of our fellow citizens get "lost" when trying to complete administrative procedures”**

“After two years of activity, I realised that, in this age of IT and digital technology, so many of our fellow citizens get "lost" when trying to complete administrative procedures. I saw that, to start

with, people only wanted to be listened to and be given an opportunity to explain themselves to a physical person. And for individuals who encounter problems, it's unfortunately becoming more and more difficult to obtain appointments with the bodies where such problems originate. This largely goes to explain how misunderstandings, disputes and conflicts arise. As the delegate in Lodève (Hérault), I'm in a position to receive, listen to, guide, advise and, if possible, try to find amicable solutions to the various problems raised. As I'm neither a judge nor a lawyer, just a simple intermediary and facilitator, my mission becomes increasingly important because anyone who contacts a delegate is no longer abandoned, and can see that the Defender of Rights is there for them and well able to meet most of their expectations.”

## “ Place aux droits ! Your rights. Your questions. Our answers.” »

In October 2017, the Defender of Rights organised an innovative “access to rights” operation targeting the inhabitants of Toulouse.

41 lawyers and missions officers from the Defender of Rights' territorial and central services met with the city's inhabitants over two days with the aim of answering all the questions they might raise.

The “urban counters” set up in the city centre enabled some 1,200 people to ask questions about their situations, make submissions following disputes with administrations, or simply obtain useful information on their rights.



A series of conferences were held alongside the event:

- a morning devoted to children's rights;
- a roundtable on discrimination due to race and gender;
- a meeting with actors in the realm of security;
- a conference presenting the Institution.

The event enabled the Defender of Rights to meet with local community, institutional and economic actors with a view to discussing any concerns

they might have that fell within the Institution's field of competence.

Lastly, it took part in a training course for local civil servants on the fight against discriminations in public services.

Through this “outdoor” operation, which is set to be repeated in Lille in June 2018, the Defender of Rights enabled people to be heard, exercise their rights and know them better, and be guided in the direction of the right interlocutors.



The "urban counter" set up in Toulouse city centre, October 2017

## B. Reception and guidance at the Institution's central departments

The "Admissibilité, Orientation et Accès au Droit" (ROAD – Admissibility, Orientation and Access to Rights) Department coordinates all requests arriving at the Institution's head office. It hosts the Defender of Rights call centre and is responsible for reception and initial processing of complaints sent to the head office by post and via Internet.

It is tasked with informing the public on the Defender of Rights' fields of competence, orientating individuals towards the most appropriate bodies when necessary, and carrying out qualification and initial analysis of all complaints.

### 1. The call centre: a ready ear and guidance on hand

**09 69 39 00 00**, the Defender of Rights call centre number, is the first way of making direct contact with the Defender of Rights. Open Monday to Friday from 8 a.m. to 8 p.m., its main job is to listen to people, understand their problems; explain the various ways of referring to the Institution, indicate the procedure that would seem most appropriate, and help them compile a submission.

**Around 45,000 phone calls were received in 2017.** Half of them concerned administrative appeals and individuals who had already referred their cases to the Institution. The other half came from people who wanted to present their problems and find out about possibilities and ways of intervention by the Defender of Rights and its network of delegates.

Numbers of calls from the public greatly increased during the public-awareness radio campaign broadcast in October and November 2017. Whether directly or indirectly, the campaign reached people who had no knowledge of this recourse or of the wide variety of fields falling within the Defender of Rights competence.

People mostly raise the problems they have in their relations with public services, in particular with regard to social protection and motoring issues (fines, vehicle registration documents and driving licenses), as well as questions of discrimination and infringements of children's rights.

With less space being given over to human reception, the call centre meets a real need: responding to the problems of individuals who feel powerless and disorientated in the face of inaccessible procedures and structures, whose workings they do not understand.

## 2. Examination of admissibility of complaints and preparation of cases

### Key figures

EAround 30,000 letters and 15,000 Internet referral forms were received at the Institution's head office in 2017, including 22,000 new

complaints, an increase of 7% compared with 2016 and 26% compared with 2015.

Responding to the increase in contacts, devoting enough time to in-depth examination of requests, and rapidly identifying the most serious and urgent situations are all daily challenges.

### Referrals to the head office in 2017

	2014	2015	2016	2017
Relations with public services	10,593 (58%)	11,439 (60%)	13,243 (58%)	14,688 (59.1%)
The fight against discrimination	3,280 (18%)	3,204 (17%)	3,595 (16%)	3,758 (15.1%)
Children's rights	1,661 (9%)	1,464 (8%)	1,644 (7%)	1,848 (7.4%)
Security ethics	789 (4%)	790 (4%)	1,106 (5%)	1,057 (4.2%)
Protection and orientation of whistleblowers				71 (0.3%)
Access to rights	1,868 (11%)	2,047 (11%)	3,065 (14%)	3,450 (13.9%)
<b>Total</b>	<b>14,798</b>	<b>15,956</b>	<b>19,015</b>	<b>22,653</b>

The presentation takes account of the fact that the figure is not the same as the total number of complaints received, mainly due to multiqualified submissions.

### Assessment and preparation of submissions

On average, the Institution receives around a hundred submissions a day. They are examined the following morning in order to determine how they should best be followed up.

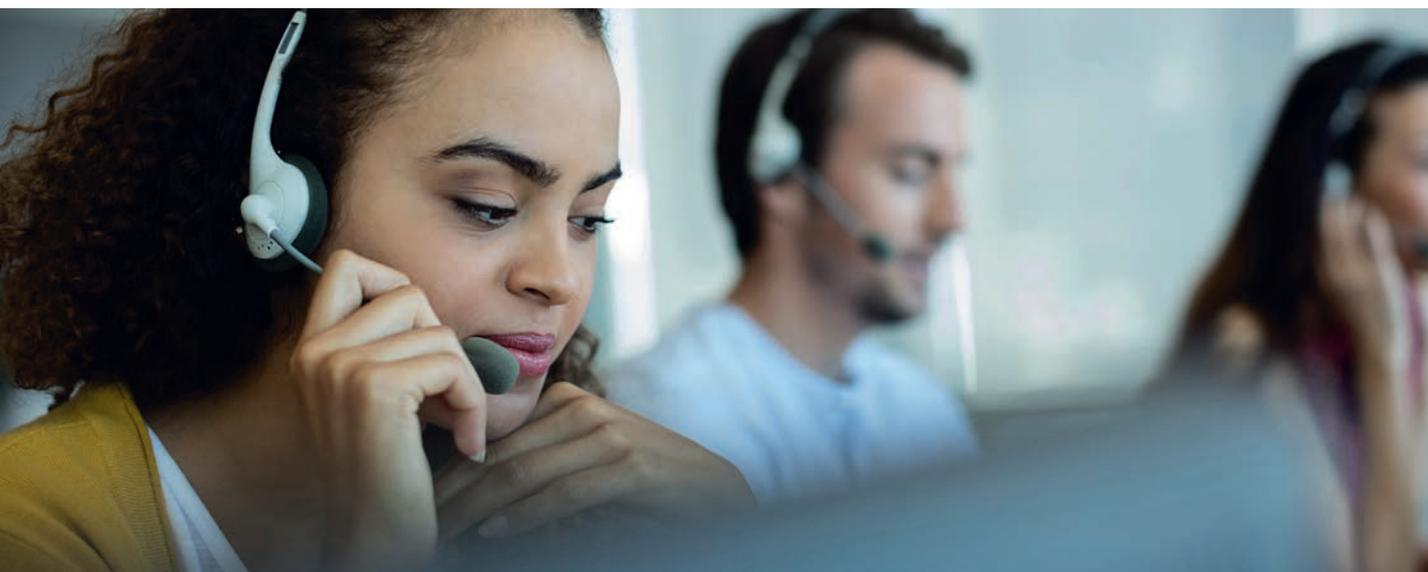
20% of complaints sent to the Defender of Rights do not fall within its field of competence, cases of job-related disputes that have nothing to do with discrimination, for example, or purely private disputes that have nothing to do with children's rights. Complainants concerned are systematically directed to the bodies competent to provide them with responses (dedicated mediators or conciliators, legal advice centres (MJDs), associations, etc.).

A reply is systematically sent to them nonetheless. This approach to access to rights

meets a major expectation. Although it is not formally included in the missions specifically entrusted by law to the Defender of Rights, it is nonetheless central to action on the part of all its reception services.

As regards complaints falling within the Institution's field of competences, many users have difficulty identifying information and assembling the documents required to complete their submissions.

Complainants often initially send in a simple account of the problems they have encountered. Unable to master administrative codes and mechanisms, many complainants do not know how to assert their rights and come up against systems ever more deaf to their entreaties and unable to provide advice as they become increasingly digitised. Major support and "preparation" work is therefore



required: explaining which documents should be communicated, determining if preliminary steps have been taken and if so with whom, obtaining copies of related documents, etc.

In an administrated society, only real attentiveness and direct contact enable the less self-reliant complainants' needs to be met, whether it is a matter of asserting their rights or redressing a lack of explanation that leads to misunderstanding and a feeling that the disputed decision was an arbitrary one.

### **Observation of problems arising in application of the law**

The Admissibility Department is well placed to observe the appearance of new problems; whether connected with the defects of a local body or with national issues.

Hence, in 2017, the many referrals received enabled identification of structural problems in a local pension retirement fund responsible for pensions of Spanish residents with seasonal jobs in France, which resulted in a general recommendation to the National Retirement Fund.

Similarly, in September 2017, increasing numbers of complaints showed that, in a number of départements, in Île de France in particular, transfer of Prefectures' competences to the Agence nationale des titres sécurisés (ANTS - National Agency for Secure Identity Documents) meant earlier-than-expected closing of counters with a mass of unprocessed

files and a whole range of problems both as regards IT and human resources. Premature disengagement at local level combined with the national system's relative unpreparedness led to a serious break in the service's continuity, which even now continues to have consequences for its users. The Defender of Rights sought to contribute to speeding up resolution of individual situations in liaison with the authorities concerned.

Lastly, before summer 2017, implementation of the scheme providing for mandatory identification of company vehicle drivers with regard to traffic violations led to a whole string of complaints from craftspeople, the liberal professions and one-person businesses. Receiving speeding tickets in their companies' names, they were reprimanded for having paid the fine when they should have firstly admitted to being the driver responsible, and then paid a second fine, this time in their own name as a physical person... In the course of exchanges with the administration concerned, it turned out that, if the obligation of admission was so unclear with regard to initial speeding tickets, it was because autoentrepreneur status had not been taken into account when the scheme was developed. Here again, it was not long before the progressive increase in numbers of complaints to the head office and delegates alerted the Defender of Rights' departments, which contacted the authorities concerned in order to see that the necessary administrative adjustments were made.



## One institution, a range of missions, and diverse audiences

In 2017, the “Press/ Communication” Department implemented a strategy aimed at extending public awareness of the Institution to all citizens, especially the most vulnerable, while staying focused on communication to the media designed to improve understanding of the Defender of Rights’ missions and actions. Hence, in 2017, a total of 54 press releases

were disseminated to all newspapers, 6 press conferences were held and numerous articles and interviews were published in the national and specialised press alike. Among other things, the Defender of Rights’ observations on the antiterrorism bill are well worth remembering, as is what the Institution had to say about the watering down of

effective rights in France and its denunciation of inhumane living conditions in Calais. Special work was carried out with the regional daily press, including setup of a partnership with Ouest-France. The Institution’s interventions and increasingly wide dissemination on social networks bear witness to its vitality and the growing media interest it arouses.

## A campaign fostering the “Defender of Rights” reflex

Broadcast on Metropolitan and Overseas French radio stations from 16 October to 6 November, and disseminated on social networks over the same period, the Defender of Rights’ 2017 communication campaign aimed to show the Institution’s uniqueness while showcasing the plurality of its missions and encouraging assertion of their rights and recourse to the law on the part of disadvantaged citizens

all too often excluded and deprived of their rights.

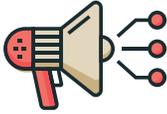
Designed in the form of 4 radio spots and 4 animated videos, the 2017 campaign’s messages helped audiences identify with real-life problems that the Defender of Rights deals with. Over the 3 weeks they were broadcast, the spots and videos reached more than 82 million contacts, over 40% being members of the most disadvantaged social

categories, 50% of them women, and over 80% people over the age of 25.

Numbers of calls from the public to the call centre doubled over the course of the campaign. They mainly concerned requests for information on the Defender of Rights’ competences and ways of referral. Such calls were an expression of the “Defender of Rights” reflex that the campaign sought to foster.

## Key figures on communication

### The Radio campaign



**130**

Local **radio stations** and branches and **4** national stations



**82**

**MILLION-STRONG** audience: **69** million on the radio and **13** million on social networks



**A TWOFOLD INCREASE** in calls to the institution's call centre

**2**

(an average of 1 call every 2 minutes)

### Communication in 2017



**33**

**New information** and awareness-raising **materials** developed



**179,661**

**Communication tools** disseminated



**89,993**

**Leaflets disseminated**

### “Place aux Droits” in Toulouse



**2**

**Days**



**41**

**Staff mobilised**



**1,200**

**People met**

## 2. An institution attentive to society

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### A. Expertise developed through partnerships

#### 1. The Defender of Rights' boards

##### Defence and promotion of children's rights

The Defender of Rights chairs the Board that assists him in exercising his powers with regard to defence and promotion of the rights of the child (Article 11 of the Organic Law bearing on the Defender of Rights). **Ms Geneviève Avenard**, Children's Ombudsperson, Deputy to the Defender of Rights, is Vice-Chair of the Board for Defence and Promotion of the Rights of the Child.

The Board is composed of six members: Dominique Attias, Vice-President of the Paris Bar, Christian Charruault, President of the Honorary Chamber of the Court of Cassation, Eric Legros, psychoanalyst and former child protection association director, Anne-Marie Leroyer, Professor at the Sorbonne Law School and specialist in individual and family law, Jean-Pierre Rosenczveig, Honorary Magistrate at Bobigny Children's Court, and Françoise Simon, former Director for Childhood and the Family at Seine-Saint-Denis Départemental Council.

The Board met four times in 2017, and, among other things, was consulted on various projects to do with school life: action on bullying in a State lycée ([2017-76](#)), disciplinary procedure at a private school ([2017-210](#)), allegations of violence in a nursery school ([2017-198](#)), and refusal to enrol children living in a social hostel ([2017-091](#)). The Board also gave its opinion on a situation of negligence on the part of various administrations that had not considered the

interest of the child as primordial in the face of a situation in which four children were victims of parental mistreatment ([2017-338](#)), as well as on the age beyond which minors are regarded as being mature enough in their digital practices to dispense with parental consent, in order to respond to a CNIL (National Commission for Computing and Freedom) consultation.

##### Combating discrimination and promoting equality

The Defender of Rights chairs the Board that assists him in the exercise of his powers with regard to combating discrimination.

**Patrick Gohet**, Deputy to the Defender of Rights, is Vice-Chair of the Board for the Fight against Discrimination and Promotion of Equality.

The Board is composed of eight members: Rachid Arhab, journalist, Gwénaële Calvès, Professor of Public Law at Cergy-Pontoise University and specialist in non-discrimination law, Yves Doutriaux, State Councillor, Dominique Guirimand, Honorary Counsellor at the Court of Cassation, Françoise Laroudie, Secretary General of Arche en France, Pap Ndiaye, historian and researcher, Françoise Vergès, researcher, and Mansour Zoberi, Director of Diversity and Solidarity, Casino Group.

The Board met five times in 2017. Apart from the exchanges and discussions that took place, it was consulted on a range of submissions bearing on disability, including two draft general recommendations: [2017-001](#) on accessibility of software and digital tools, and [2017-257](#) on

improvement of statistical knowledge of the situations and needs of the disabled.

The Board also discussed a number of decisions on discrimination in public and private employment ([2017-122](#) and [2017-283](#)), and ([2017-098](#), [2017-148](#), [2017-151](#), and [2017-138](#)) respectively, and on refusal of services based on place of residence (e.g. [2017-035](#)). Lastly, the first draft of the decision implementing criteria for economic vulnerability was submitted to the Board ([2017-305](#)).

### Ensuring observance of security ethics

The Defender of Rights chairs the Board that assists him in exercising his powers with regard to security ethics. **Ms Claudine Angeli-Troccaz**, Deputy to the Defender of Rights, is Vice-Chair of the Board for the Ethics of Security.

The Board is composed of eight members: Nicole Borvo Cohen-Séat, Honorary Senator, Nathalie Duhamel, former Secretary General of the CNDS, Jean-Charles Froment, Professor of Public Law and Director of the Grenoble IEP, Sabrina Goldman, lawyer at the Paris Bar, Jean-Pierre Hoss, Honorary State Councillor, Sarah Massoud, Investigating Judge at the Créteil High Court, Cécile Petit, Honorary First Advocate-General at the Court of Cassation, and Valérie Sagant, Magistrate and Assistant Director of the National School for the Judiciary.

The Board was consulted five times in 2017, and, among other things, was called upon to pronounce on restraint techniques employed by the national police: use of a grenade and tear gas by a police officer during a demonstration ([2017-126](#), [2017-057](#) ; [2017-221](#)), and the circumstances in which an individual was questioned after being arrested for drunk and disorderly conduct and locked in a “drying-out” cell ([2017-057](#)). The Board also delivered an opinion on recurring problems regarding imprisonment, as well as on prison staff’s failure to intervene in a remand centre’s yard ([2017-22](#)) and on violence suffered by inmates at the hands of prison officers ([2017-063](#), [2017-050](#)). Lastly, it had occasion to give its advice on a number of measures for deportation of illegal aliens. ([2017-174](#), [2017-58](#)).

In addition to the separate meetings held by each Board, the Defender of Rights also held a joint meeting of all three Boards on 29 September 2017, with a view to discussing the various questions raised by the Defender of Rights 5th organic mission, which consists of orientating and protecting whistleblowers, and giving thought to implementation of the criterion of special economic vulnerability.

## 2. Joint committees

The Defender of Rights organises regular active dialogue with actors in civil society, associations and representatives of the professional world, in the form of “joint” and “liaison” committees acting as bodies for collaboration and reflection.

Joint committees concern individuals who encounter difficulties in accessing their rights, and are therefore composed exclusively of associations.

There are currently 6 in all:

- the Committee of Associations Representing the Disabled;
- the LGBTI Joint Committee;
- the Committee on Child Protection;
- the Committee on Gender Equality;
- the Joint Committee on Health;
- the Committee on Origins, set up in 2017.

In contrast, Liaison Committees bring together actors potentially concerned with infringements of rights, and are therefore composed of representatives of the professional world. There are two such Committees:

- the Committee for Liaison with Employment Intermediaries;
- the Committee for Liaison with Actors in Private Housing.

These Committees provide a mechanism for reciprocal dialogue and exchange of information with associations and professionals; they act as vectors for feedback from actors in the field and dissemination of all the Defender of Rights’ decisions, tools and actions. In particular, they help raise awareness among civil society with regard to the risks of infringement of rights and the Defender of Rights’ competences.

The also foster co-construction and dissemination of practical and educational tools that take account of the public's needs and professional realities alike.

Hence, members of the "Health" Joint Committee contribute to the Institution's work on refusal of healthcare, while members of the "Private Housing" Liaison Committee were involved in development of tools for the "Louer sans Discriminer" (*Rent without Discrimination*) campaign for shared analysis of risks of discrimination and responses to implement in order to prevent them.

### **3. International networks**

#### **The Association des Ombudsmans de la Méditerranée (AOM – Association of Mediterranean Ombudspersons)**

The Defender of Rights is Secretary General of the **AOM**.

In 2017, as in previous years, the AOM focused its action on protection and promotion of migrants' rights. Two visits to Macedonia – to the Tabanovce migrant transit centre, on the northern border with Serbia, and to the Vizbegovo asylum-seeker reception centre on the outskirts of Skopje – resulted in recommendations to the Macedonian authorities, the NGOs concerned, and United Nations agencies. Similar visits were made in Italy (the Ponte Galeria Identification and Expulsion Centre in Rome and the Trapani-Milo Hotspot in Sicily), following which it was recommended that the period of stay in hotspots be shortened for vulnerable individuals, unaccompanied minors and human-trafficking victims, so that they could be taken in rapidly by specialised reception centres, and that force and prolonged detention not be employed in the event of refusal to be fingerprinted. Lastly, a meeting was held in Casablanca on "*Security force ethics and migrants' rights during their migratory journeys*".

In collaboration with the Association des Ombudsmans et Médiateurs de la Francophonie (AOMF – Association of Ombudspersons and Mediators of the Francophonie), the AOM drew up a 2017-2018 action plan designed to strengthen and defend the European and international normative framework protecting the rights of migrant children.

#### **The Association des Ombudsmans et Médiateurs de la Francophonie (AOMF)**

The Defender of Rights is also **Secretary General of the Association des Ombudsmans et Médiateurs de la Francophonie (AOMF – Association of Ombudspersons and Mediators of the Francophonie)**.

The AOMF, which brings together some fifty francophone mediation institutions, promotes the roles played by ombudspersons and mediators on behalf of citizens as a means of increasing their confidence in their dealings with public services, in order to foster setup of new mediation institutions in French-speaking countries and reinforce the capacities of existing institutions.

The AOMF implements an action plan every year. In 2017, it focused on accompanying member institutions, organising training sessions and study visits, and sharing of best practices. As a result, the Defender of Rights received delegations from Morocco and Albania.

The action plan's second focus was on strengthening such institutions within their respective States. A seminar on mediators' ethics was held in Rabat. The AOMF also encouraged contact between its members and parliamentarians. Following signature of a Memorandum of Cooperation with the Assemblée parlementaire de la Francophonie (APF – Parliamentary Assembly of La Francophonie), the two associations held their first common conference on the subject of: "*Parliamentarians and Mediators, actors in good governance*".

Lastly, the AOMF stepped up its action in favour of children's rights by organising a study visit to Brussels on protection of migrant children, and by developing a teacher's guide containing educational activities on children's rights intended for young French-speakers.

#### **The European Network of Ombudspersons for Children (ENOC)**

ENOC is a European association bringing together some forty institutions working to defend children's rights; its chosen mission is to promote and protect the rights of the child

enshrined in the International Convention on the Rights of the Child (ICRC). On 21 September 2017, on the occasion of the network's 21st annual conference, Geneviève Avenard, Children's Ombudsperson and Deputy to the Defender of Rights, was elected President of ENOC.

Each year, the network sets a theme for its work on reflection and sharing of best practices. Every year, in the context of the "Parlons jeunes!" (Let's Talk Young) project, it consults with young people from volunteer countries with a view to clarifying its analyses and recommendations and developing the effectiveness of children's right to participate provided for in the ICRC.

Its work in 2017 focused on emotional life and sex education. In France, a group made up of a dozen teenagers met at the Institution to hold workshops with professionals in the field of HIV/AIDS and STD prevention, took part in a debate with SOS Homophobie, in simulation workshops run by the Planning Familial (Family Planning) association, and in several theatre-forum sessions facilitated by the "Entrées de Jeu" company, on themes including seduction, jealousy, the "first time", contraception, homophobia, identity and reputation.

Following their work, the young citizens involved came up with proposals on sex education in schools, recommending better training of teaching staff and speakers, effective application of Article L. 312-16 of the Education Code, whose provisions include at least 3 sex-education sessions a year, and adaptation of teaching aids and approaches to pupils' ages. They also recommended broadcast of televised sex-education campaigns and awareness-raising among parents with regard to the issues concerned. A European seminar was then held in Paris in June 2017, with representatives of each group that had taken part in the "Parlons Jeunes!" project in the various countries involved. The seminar enabled identification of numerous points of convergence, in spite of often very different national contexts. They were recapped in the ENOC network's annual resolution, which was adopted during the meeting held in Helsinki in September 2017.

ENOC also remains focused on protection of migrant minors, via its specialised workgroup.

It adopted a new Declaration on the "safeguard and protection of migrant children: the challenge of social integration" during an ad hoc meeting held in Athens on 13 November 2017.

### **Equinet**

Equinet is the European network of national organisations combating discrimination and promoting equality, active across the European Union pursuant to European Directives establishing the European legal framework for countering discrimination. Equinet is both an institutional network and a platform for developing expertise, providing a whole range of opportunities for sharing and development along with a structured environment for work on the many issues involved in combating discrimination. In 2017, Equinet above all stood out for its work on the defence and promotion of LGBTI rights, intersectionality, discrimination based on religion and the "glass ceiling", and its contribution to original work on shared support to communication strategies with regard to equality.

Since the network's creation, the Defender of Rights, and the Haute Autorité de lutte contre les discriminations et pour l'égalité (HALDE - Equal Opportunities and Anti-Discrimination Commission) before it, have been committed to supporting its development. They have been represented on its Board of Directors since 2009. On the occasion of the network's 10th birthday, the Defender of Rights' Secretary General emphasised the importance of its work on European issues involved in the defence of fundamental rights and countering discrimination, and of its provision of active support to national organisations.

### **The IPCAN network: Independent Police Complaints Authorities' Network**

In 2017, the Defender of Rights made study visits to four European Union member States, Belgium, Germany, the United Kingdom and Spain, in order to meet with his counterparts as well as national security services, judges, researchers and civil society organisations on the question of reconciling fundamental rights with the fight against terrorism, and of national doctrines on policing.

## IPCAN Independent Police Complaints Authorities's Network

On 14 and 15 September 2017, in collaboration with the Council of Europe, the Defender of Rights organised the 3rd IPCAN (*Independent Police Complaints Authorities' Network*) conference, on "*Respect for fundamental rights and freedoms in the context of the strengthening of the fight against terrorism*".

At the end of the conference and with the support of the Council of Europe's Commissioner for Human Rights, Nils Muiznieks, the Strasbourg Declaration, based on the relevant international and European standards, was signed by 16 network members. It calls upon the Council of Europe, the European Union and the OSCE

(Organisation for Security and Cooperation in Europe) to mobilise their member bodies and give concerted thought to national mechanisms for external monitoring of security forces.

The conference's exchanges were filmed and are available on the network's website [ipcan.org](http://ipcan.org).

## B. An overall approach to defence of rights

Drawing on the hundreds of thousands of complaints it has processed since 2011 and the wide-ranging expertise of its legal experts, and, in all circumstances, pursuing the aim of real equality and effective access to rights, the Defender of Rights now ranks high among the Republic's institutions that contribute to improving the law and making social relationships more equitable.

### 1. The Defender of Rights' deputies

The Defender of Rights' deputies are in permanent contact with all operators active in their fields of competence, standing alongside Jacques Toubon to embody the Institution and maintain its links with civil society. Here are their own testimonies on the Defender of Rights' activity in 2017.

#### Defending the rights of public service users

Mr. Bernard DREYFUS, General Delegate to Public Services Mediation

During the delegates' convention held in November 2016, I ended my presentation by mentioning two important forthcoming "dossiers". Firstly of all, our continued efforts to make public services aware of the existence of a digital divide. And secondly, implementation of the New-Generation Prefecture Plan in 2017.

#### The digital divide

We were among the first over the past few years to appraise the situation, in particular by drawing a distinction between digital divide and usage divide.

First of all, the survey on local missions showed that 80% of young people owned a smartphone but only 60% of them had an email box. Then, following implementation of the Prime d'Activité (Work Bonus), transfer of workloads to Family Benefit Fund reception staff demonstrated that it is not just generational or disability problems that account for refusal to use digital technology.

At a time when dematerialisation of public services is becoming the norm – and leading to significant improvement and simplification for most people – we should not forget:

Bernard Dreyfus, General Delegate to the Defender of Rights



- access problems both with regard to mobile phones (“grey” and “white” zones) and fast and ultra-fast Internet;
- usage difficulties and problems connected with the cost of subscriptions and materials.

On this subject, a major survey on users’ relations with public services, published by the Defender of Rights in March 2017, corroborates the idea that problems encountered go well beyond the 16% of individuals with no internet access, as almost 40% of respondents stated that they felt “uncomfortable” when following up administrative files.

As a result, the Defender of Rights’ recommendation that some of the savings made by digitisation be set aside to fund support for users is beginning to strike a chord – as is evidenced by candidates’ submissions for the “Soyons Clairs” (Let’s Be Clear) Prize for clear, simple language in the public services, awarded by the Conseil d’orientation de l’édition publique et de l’information administrative (COEPIA – Council for Public Publishing and Administrative Information) in partnership with the Defender of Rights – and to gain a footing in practices implemented as well as those that too often rely on community proactiveness or young people involved in Civic Service.

For “sensitive” sectors of the public, public services, social services in particular, should draw greater inspiration from the Ordinance of 4 October 2017, which, in the financial sector at least, provides for a return to hard copies.

### **The New-Generation Prefecture Plan**

Announced in June 2015, the plan aims to provide leeway for job cuts through all-

out dematerialisation of procedures and concentrate workforces on missions deemed to be priorities. But such total dematerialisation has two effects.

Firstly, it necessitates 100% perfect digital tracking; which is far from present reality, as we have just experienced an enormous “bug” that led to a store of almost 100,000 ID documents being “blocked”, with, for example, a number of people being unable to get a

job as they could not produce a driving licence or registration certificate.

Secondly, as, for one reason or another, many of our fellow citizens have no Internet readily to hand, it was planned to set up computer terminal points in prefectures and subprefectures, to be facilitated by... Civic Service volunteers.

Although we have serious doubts about the sustainability of a solution based solely on Civic Service volunteers, we cannot but laud the agreement signed in late September 2017 with the Ministry of the Interior, on greater collaboration in monitoring the situation in question, as well as those on reception of foreigners and motoring fines.

As a result, the Defender of Rights’ departments now participate in three workgroups involved in setup of a ministerial body for dialogue with users.

All such monitoring is only made possible by the work carried out by all Defender of Rights teams, in particular at the call centre, and, even more so, thanks to the “feedback” communicated by our delegates in the field, to whom I should like to extend my sincerest thanks.

In addition to these situations, I would like to emphasise the almost daily work that goes into maintaining special ties with a whole range of mediation bodies.

Such is the case, for example, with the relationship of trust that has been formed with my colleagues from the Club des médiateurs de services au public (CMSP – Public Service Mediators’ Club), and in particular all those who, in whatever capacity, are involved in public service missions.

The numerous regular work meetings that take place enable us to “advance” the most problematic individual cases along with a good many reform proposals. Although the reforms in question may be legislative or regulatory in kind, they usually concern changes in practices. Such work in liaison with mediators continues to better my understanding of the conditions under which I take part in work carried out by the Commission d'évaluation et de contrôle de la médiation de consommation (CECMC – Consumer Mediation Assessment and Control Commission) set up two years ago pursuant to the European Directive of 21 May 2013 bearing on extrajudicial settlement of consumption disputes, transposed into French law by the Ordinance of 20 August 2015.

### **The Children's Ombudsperson**

Ms Geneviève AVENARD, Children's Ombudsperson deputy to the Defender of Rights

What stands out in 2017 as concerns the mission of defence and promotion of the rights and higher interest of children, incumbent upon me alongside the Defender of Rights?

First of all, even though this particular mission is very much the Institution's “Tom Thumb” as far as quantity is concerned, we have nonetheless seen a further increase in complaints this year, leading to complex investigations involving repeated onsite visits and a stepping-up of collaboration between departments, an ongoing rise in observations before courts, the highest among them in particular, a great many decisions for general application, and hearings before and opinions delivered to Parliament.

2017 will be remembered as the year in which an innovative and highly ambitious scheme was launched to monitor the French State's implementation of the concluding observations of the UN Committee on the Rights of the Child, published in February 2016 following France's 5th periodic examination, with an initial assessment enabling measurement of the effectiveness of such implementation, which was presented in the annual report on children's rights, entitled “*Children's Rights in 2017 – According to the International Convention on the Rights of the Child*”.

It not only acts as an ideal observatory of the increasing power of mediation, it also enables better knowledge of economic life, by major activity sector in particular.

It is of considerable interest to follow the various branches' differences in choices between clustering (hardly more than a single mediator as regards insurance and electronic communications) and dispersion as regards banking! Better knowledge of the various systems in play also enables us to better orientate complaints reaching us that do not fall with our field of competence.

However, to end with, I'd like to take advantage of this “platform” to share my fears that an upcoming “fashion” effect may come to trivialise mediation, with possible “industrialisation” of procedures where data processing replaces human contact.

But 2017 was also characterised by a real “explosion” in numbers of requests for participation in colloquiums, conferences and study days, either directly by institutional and community actors or following proposals from our delegates, wishing, as the case may be, to develop promotion of the Defender of Rights through children's rights, or initiate or dynamise partnerships with local actors concerned by questions affecting children<sup>1</sup>. I take this as a sign that progress has been made in terms of knowledge of the Defender of Rights and its missions bearing on children's rights. I have observed that the question of children's fundamental rights has been raised more often, and with major expectations that the Institution's expertise will be able to clarify matters.

However, it is sadly still the case that public and private institutions alike and professionals in contact with children continue to be largely ignorant of the ICRC, whether with regard to its purposes, its crosscutting principles, its meaning, or the scope of its various provisions.

Ignorance of the Convention has been directly responsible for an overall lack of appropriation of the fundamental rights enshrined in it as well as for their not being taken into account in the practices of the various actors concerned. In

<sup>1</sup> A total of over 7,000 professionals across French soil have been made aware of its existence, informed of its content and even received training in this context.

Geneviève Avenard, Défenseuse des enfants, adjointe du Défenseur des droits



addition, the principle of the higher interest of the child is still poorly understood and is often misinterpreted or even contested, when it is not cited for utilitarian or ideological purposes... In the final balance, it is not implemented nearly often enough whereas it should act as a guide to all parties concerned, including decision-makers.

I should therefore like to take this opportunity to stress that children's rights are neither anecdotal nor optional, and that, although they concern children, they are by no means "minor": Tom Thumb perhaps, but a person in his own right! Remember also that children's rights and fundamental needs are interdependent, and that the concept of the higher interest of the child, as defined by the UN Committee on the Rights of the Child<sup>2</sup>, and which should absolutely be assessed on a case-to-case basis, seeks to "ensure and guarantee full and effective assertion of all rights recognised in the Convention, as well as children's overall physical,

mental, moral, spiritual, psychological and social development", along with their "wellbeing", i.e. the fulfilling of their material, physical, educational and social needs, and their need for affection and security.

The question we have to ask ourselves is therefore why, less than two years from the thirtieth anniversary of the Convention's adoption by the United Nations, it remains little known, understood, applied or complied with.

With the hindsight provided by three years as Children's Ombudsperson and Deputy to the Defender of Rights, I now believe that the problem is much more than simple absence or inadequacy of focus on children's rights in vocational training programmes.

At bottom, it is a question of if and how, culturally and structurally, we are ready to regard our children as individuals in their own right, in a reciprocity of rights and duties, and a dual dimension of protection and emancipation; if and how we are ready to develop our organisational and operational rationales, our policies and decisions, and, in particular, our financial priorities, towards real consideration of the higher interest of the child, concretely assessed and analysed.

Let's provide Tom Thumb with seven-league boots!

## Combating discrimination and promoting equality

Mr Patrick Gohet, Deputy to the Defender of Rights responsible for the fight against discrimination and promotion of equality

Now that I'm halfway through my mandate, I believe it may be both useful and opportune, on the basis of the legacy bestowed by the Institution's founders and in the context of the Defender of Rights' orientations and initiatives, to provide my testimony, in particular with regard to the fight against discrimination and the promotion of equality.

In days gone by, one of the key principles of social public policies was the fight against exclusion. This was largely a matter of identifying groups

of citizens who had become vulnerable, even excluded, due to poverty, old age, illness, disability, and so on, and implementing special policies designed to reduce their exclusion by providing them with the aid required for their reintegration. These days, it's also a matter of re-asserting the rights of citizens who have been deprived of them, owing among other things to their personal characteristics, situation or environment. The approach via discrimination now complements that via exclusion. The change was largely due

<sup>2</sup> General Observation by the Committee no.14-2013.

Patrick Gohet, adjoint du Défenseur des droits



to developments in the law at European level. It resulted in the creation of the HALDE, followed by that of the Defender of Rights.

Among other things, the Defender of Rights' Deputy, Vice-Chair of the Board for the Fight against Discrimination and Promotion of Equality, stands in for the Defender of Rights when he is unavailable, assists him during Joint Committee meetings, represents the Institution in such bodies as the Commission Nationale Consultative des Gens du Voyage (CNCGV – National Consultative Committee on Travellers), promotes it in the eyes of local authorities, associations, institutions, etc., and monitors initiatives taken by the public authorities and civil society. This being so, in 2017 I headed the Defender of Rights team participating in the work carried out by the Conseil Economique, Social et Environnemental (CESE – Economic, Social and Environmental Council) on trade union discrimination – work that resulted in unanimous adoption of an opinion on the part of the groups composing the CESE.

Over the course of 2017, these various activities took the form of 98 actions representing the Defender of Rights (participation in colloquiums, hearings by parliamentary committees, ceremonies, etc.), 290 interviews at the head office (associations, institutions, experts, etc.), 55 onsite interventions in Paris and the provinces, 17 media interviews (radio, television and the written press) and over 200 meetings.

As Director of the Union Nationale des Associations de Parents et Amis de Personnes Handicapées Mentales (UNAPEI – National Union Of Associations Of Parents And Friends Of Persons with Intellectual Disabilities), I contributed to expression of the expectations and

need of the disabled, families, professionals, etc.

As Interministerial Delegate to the Disabled, I took part in shaping the response provided by the Law of 2005, numerous implementing texts, and the International Convention on the Rights of Persons with Disabilities (CRPD). As Inspector-General of Social Affairs, I monitored implementation of the scheme, and as Delegate to the Defender of Rights, I now work to ensure respect for

the rights of our fellow citizens, the disabled in particular. My long experience in the disability sector has enabled me to understand the process by which a form of discrimination is constructed, the mistreatment that accompanies it and which it generates, and the response required to counter it. This is a fully-rounded approach to one of the main criteria for discrimination prohibited by law.

In 2017, for the first time in many years, disability ranked first in complaints received by the Defender of Rights in the field of discrimination, ahead of origin, age, or state of health... Up until then, it had always come second. Although most such complaints concerned employment, they also included access to services, schooling and healthcare. The situation is all the more onerous for the Defender of Rights in that it is tasked with monitoring implementation of the International Convention on the Rights of Disabled Persons (ICRDP) ratified by France. In this respect, a year after organisation of a colloquium on the Convention's effects on our national law and dissemination of a study on employment of disabled women, it took a framework decision on the need to have coherent overall statistics available on disabled people's situations, and disseminated a guide on the "reasonable accommodation" concept and system.

Territorial inequalities and "forced march" digitisation of numerous procedures increase risks and feelings of being discriminated against. The Defender of Rights' delegates are on hand to bear witness to the fact and provide responses to it. Working in the field, they act as an observatory of the realities experienced by our fellow citizens.

## Security ethics

Ms Claudine Angeli-Troccaz, Deputy to the Defender of Rights, responsible for security ethics

Claudine Angeli-Troccaz, deputy to the Defender of Rights

With regard to security ethics, two subjects in particular stand out in last year's activities. First of all, perpetuation of the scheme making local delegates responsible for dealing with certain cases to do with security ethics, and, secondly, the work undertaken on management of law enforcement in the context of demonstrations, which led to the drafting of a report in December 2017.



### Handling of certain disputes concerning security ethics by Defender of Rights local delegates

After an 18-month experimentation period, the scheme enabling local delegates to look for amicable solutions in dealing with referrals involving the security forces, bearing on refusals to register complaints and inappropriate remarks, was deemed to be successful by all concerned – delegates, security force representatives and complainants alike.

It was therefore decided to continue the scheme and increase the number of delegates responsible for handling these types of submissions as from 1 April 2017. Hence, on 1 September 2017, the Defender of Rights authorised 20 delegates distributed across 8 départements, including one in Overseas France, to deal with certain referrals relating to security ethics by means of amicable settlement, in addition to their traditional powers.

This new mission entrusted to Defender of Rights delegates enables provision of “local” responses to complainants, which, by taking individual situations and environments into account, are better understood and more immediately relevant.

Local processing also helps reduce formalism in exchanges with the Defender of Rights, as

much for complainants as for the professionals concerned.

In addition, and for the first time, the scheme enables processing of referrals to Defender of Rights bearing on security ethics by means of amicable settlement. Such recourse to mediation in dealing with disputes between citizens and security forces is part of an educational, conciliatory approach and encourages less contentious ways of settling disputes.

### Law enforcement management in the context of demonstrations, in the light of rules of conduct

In spring 2017, following a referral by the President of the National Assembly, the Defender of Rights was assigned a mission that I headed, the task being to compile a study of law enforcement management in the context of demonstrations in France, including information enabling comparison with other countries.

The work in question followed on from a period of tensions and incidents between security forces and demonstrators, many of which occurred during demonstrations against the “labour law” in spring 2016, and in the context of the terrorist threat and implementation of the state of emergency, from November 2015 to November 2017, which led to prioritisation of security issues, sometimes at the price of jeopardising public freedoms.

The mission started with hearings of over forty professionals with expertise in the field of law enforcement, including representatives of the national police and gendarmerie, a cross-section of professional associations, researchers and various institutional and operational authorities.

Following this phase, a detailed report was drawn up in December 2017 and transmitted to the President of the National Assembly. It provides an assessment of law enforcement resources and methods and makes several recommendations aiming to make management of public order less confrontational and restore the democratic exercise of the freedom to demonstrate.

In substance, the study shows that law enforcement management – which seeks to enable exercise of public freedoms within the limits of the rule of law – is, as far as its doctrine goes, a structured and professional system.

However, its implementation gives rise to ongoing tensions and criticisms on the part of demonstrators and security forces alike, and, in particular, to a feeling of that violence is inevitably associated with law enforcement operations.

In view of this observation, the Defender of Rights' report suggests that training and

oversight of units taking part in law enforcement operations be improved, that thought be given to use of “intermediate force” weapons in this context and that “LBD 40x46” defence-ball launchers should no longer be issued for law enforcement operations, as their technical characteristics and conditions of use are unsuited to law enforcement.

In addition, although it cannot be denied that security requirements connected with the excesses observed during demonstrations call for a repressive response, law enforcement priorities should be accorded to preventive actions that do not fly in the face of the freedom to demonstrate, including limiting recourse to such constrictive measures as identity checks and “kettling”, whose legal justifications are hardly satisfactory and in some cases non-existent.

Lastly, in order to meet the growing need for clarity and transparency with regard to institutions, we should draw inspiration from strategies implemented in a number of European countries and step up dialogue and educational action in law enforcement operations and so bring about more relaxed management of public order, an essential condition to re-establishment of goodwill between the police and the general population.

## **2. Training actions and partnerships**

The Defender of Rights is regularly called upon to share its expertise and experience at national and international congresses, colloquiums, conferences and seminars, in particular in the context of formalised partnerships.

In addition to its institutionalised partnerships, the Institution's departments also respond to one-off requests from various types of organisations (administrative, community, private and trade union alike), for which they carry out tailor-made operations on specific themes (access to rights; health and disability; homosexuality and discrimination, etc.)

They have contributed to the training of a range of actors involved in assisting people experiencing difficulty in accessing their rights, including managers of associations in Strasbourg, social workers in Île-de-France, and telephone counsellors on 3919, the

national helpline for women who have suffered violence, their entourages and professionals concerned. Such training helps improve orientation of the sectors of the public in question and access to their rights.

The Institution's departments also run awareness-raising and training sessions among professionals alongside dissemination of the Institution's publications and guides, encouraging their appropriation and supporting changes in actors' practices. Hence, presentations in 2017 of the 2916 report on employment of disabled women raised associations' and institutions' awareness on the intersectional approach to discrimination.

## Thesis Prize

On 30 November 2017, for the 3rd year running, Jacques Toubon awarded the Defender of Rights Thesis Prize.

Created in 2014, with a value of €10,000, it is intended to encourage and develop academic research, in whatever aspect of human or social sciences, likely to improve knowledge in the Institution's fields of

competence. The jury is made up of lawyers, sociologists, an economist and a political scientist.

In 2017, by unanimous decision of the jury, the Prize was awarded to two ex-aequo winners for their doctoral theses on

· *“Gender and power relationships in the judiciary. Survey on institutional*

*treatment of adolescent deviance by the criminal and civil justice system in contemporary France ”, a sociological thesis defended by Arthur Vuattoux, University Paris 13, Sorbonne Paris Cité;*

· *“The opposability of rights and freedoms ”, public law thesis defended by Cédric Roulhac, University Paris X Nanterre.*

### Training programmes

The Defender of Rights facilitates training actions designed to spread knowledge of its competences (legal standards, missions, powers, intervention methods, etc.) and accompany developments in the professional practices of

actors concerned across French soil, whether discrimination advisor networks, central and local government departments, public and private companies, law and justice professionals, or training bodies for public and private security officers, in the context of initial, ongoing and ad-hoc training programmes alike.

### Defender of Rights' training activity in 2017

Types of participants trained	Number of training sessions
<b>Security force actors</b> (trainee police officers, national police cadets, national police commissioners and trainers, national gendarmerie officers, municipal police officers, and SNCF security officers)	32 training sessions
<b>Actors in education</b> (actors involved in the “Educadroit” project, National Education management staff, and law clinics)	21 training sessions
<b>Law and justice professionals</b> (National Bar Council (CNB), National School for the Judiciary (ENM), and directors of court administration services)	14 training sessions and presentations
<b>Actors in child protection</b> (départemental council officials, senators, etc.)	13 presentations and training sessions
<b>Other training sessions and presentations</b> (local authority officials, members of trade union organisations, etc.)	16 training sessions and presentations

The Defender of Rights' commitment to countering discrimination shaped the design of a training module on police/population relations, which it delivers to all trainee police officers. One of its major focuses is discrimination, in

particular through the carrying out of identity checks. Hence, in 2017, the Defender of Rights' departments addressed the 2,836 trainee police officers and "Cadets of the Republic" in the 244th, 245th and 246th year groups.

## Training of SNCF security officers on discrimination and security ethics

Since February 2017, following signature of a partnership agreement with the SNCF's Université de la Sûreté<sup>3</sup>, the D\*efender of Rights has been involved in initial training of SNCF security officers covered by the internal security code, delivering two training sessions a month.

The sessions aim to educate trainee security officers in:

- detection of discrimination and the mechanisms that produce it;
- understanding the ways in which the Defender of Rights acts to combat discrimination and ensure compliance with ethics among SNCF internal security service officers, based on analysis of professional practices.

At 31 December 2017, 213 trainee officers had completed such training.

In addition, two training sessions were held for supervisors and managers of initial training programmes for SNCF security officers, and trainers at the Université de la Sécurité.

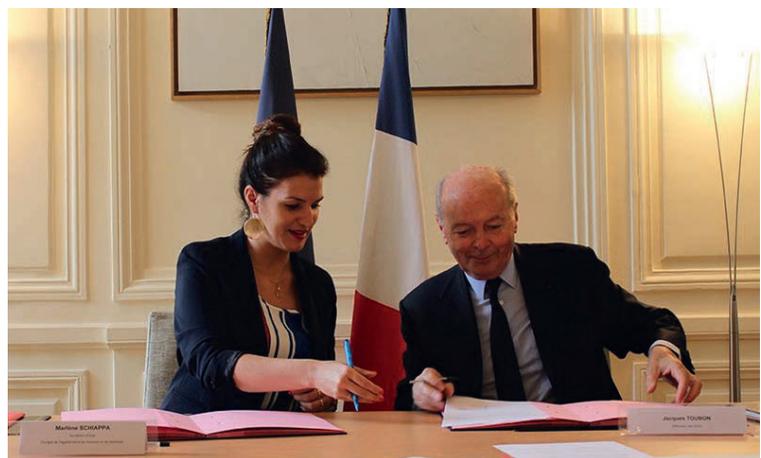
### Institutional partnerships

PWith a view to encouraging synergies between actors, the Defender of Rights implements a partnerial policy that may be formalised through agreements (50 agreements in all, including five signed in 2017).

2017 was also marked by the Defender of Rights' conclusion of two new partnerships with a view to reinforcing young people's and children's education on rights and the law (see Educadroit, page 79).

The Defender of Rights signed further protocols with Public Prosecutors' offices (Grenoble, Lyon, Montpellier and Chambéry) in order to step up cooperation with courts and facilitate circulation of information.

Conventions were also signed with the Conseil supérieur de l'égalité professionnelle entre les femmes et les hommes (CSEP - Higher Council for Professional Gender Equality) and the Secretary of State for Gender Equality, with a view to carrying out more intensive work on equal pay and prevention and defence



Signature of the partnership with Marlène Schiappa, Secretary of State for Gender Equality, July 2017

<sup>3</sup> An internal body of the SNCF responsible for training the rail transporter's officers on all security matters.

of the rights of victims of sexism and sexual harassment.

Lastly, the agreement signed with the Ministry of the Interior's General Secretariat in the context of the New Generation Prefecture Plan,

which, among other things, seeks to combat the digital divide, and the roadmap signed with the Fédération des Acteurs de la Solidarité (FAS - Federation of Solidarity Actors) adds to the ways in which action can be taken in support of access to rights throughout the national territory.

### General partnership agreements signed by the Defender of Rights in 2017

	Partner body
3/22/2017	Higher Council for Professional Gender Equality
5/17/2017	The SNCF's Internal Security Service (SUGE)
6/23/2017	Federation of Solidarity Actors (FAS)
7/27/2017	Secretary of State for Gender Equality
9/27/2017	Minister of the Interior's General Secretariat

### 3. Production of promotional tools des droits

The studies and reports that the Defender of Rights produces enable the authorities concerned to be questioned and awareness raised among actors on the basis of documented observations.

#### Guides

The Defender of Rights publishes guides containing methodological pointers for adoption of best practices. It draws on its departments' expertise, thought on the part of ad-hoc workgroups composed of specialists in their fields, and hearings.

#### **“Acting against discrimination based on sexual orientation and gender identity in employment”**

All published studies show that lesbian, gay, bisexual, transgender and intersex (LGBTI) people are still all too often the subjects of

discrimination at all stages of their professional lives, psychological harassment in the workplace in particular. Nonetheless, sexual orientation and gender identity remain discrimination criteria too seldom taken into account by actors in the field of employment in their equality policies.

This being so, the Defender of Rights published the guide on [“Acting against discrimination based on sexual orientation and gender identity in employment”](#), with a view to mobilising and assisting human resources departments and management staff.

Organised into four theme-based sections, the guide highlights LGBT-phobias, shows the interest of and need to include sexual orientation and gender identity criteria in policies designed to counter discrimination, and provides practical guidance on how to do so. Each section includes real-life stories, taken from referrals addressed to the Defender of Rights and cases brought before the courts, and outlines organisations' best practices.

### **Reasonable Accommodation**

According to the International Convention on the Rights of Disabled Persons (ICRDP), *“discrimination based on disability includes all forms of discrimination, including denial of reasonable accommodation”*.

On 13 December 2017, the Convention’s anniversary, the Defender of Rights published a guide on the obligation of reasonable accommodation with regard to disabled workers, entitled [“Employment of disabled people and reasonable accommodation”](#).

Since 2005, all employers, private and public alike and whatever the size of their workforce, have had an obligation of “reasonable accommodation” with regard to disabled workers. This means that, depending on needs in any given concrete situation, all employers are legally obliged to take appropriate measures enabling disabled workers to access or keep a job for which they are qualified, carry it out and/or advance in it, or to ensure that they receive training adapted to their needs. An employer’s refusal to take such measures constitutes an act of discrimination, unless he/she can demonstrate that, in his/her case, they constitute a disproportionate burden.

However, most employers and, more generally, actors in professional integration of the disabled are unaware of this obligation, and it is therefore little complied with.

Observing that no frame of reference exists for implementation of this obligation, and with a great deal of relevant experience to its credit, the Defender of Rights therefore decided to draft this guide in order to assist employers in their decision-making.

It aims to explain the “reasonable accommodation” obligation’s content, constraints and limits, how it interacts with existing legislation on employment, and possible consequences if it is not complied with.

Illustrated by examples from jurisprudence and situations handled by the Defender of Rights, it also aims to act as a practical tool for the use of all actors involved in the employment of disabled workers (see Chapter IV, 3. *“Taking Account of Disability: a culture of lateness”*).

### **Acting against discrimination and harassment in the territorial civil service**

By publishing the guide on “Acting against discrimination and harassment in the territorial civil service”, the Defender of Rights seeks to raise awareness among elected officials, human resources departments, managers and, more generally, members of the territorial civil service on the fight against discrimination and discriminatory harassment, and on promotion of equality.

Drawing on the legal framework and jurisprudence, the guide is organised around 9 helpsheets based on Defender of Rights’ decisions and examples of best practices deployed by various local authorities that have contributed to its development.

### **Renting without Discrimination**

The “Renting without Discrimination” campaign, undertaken in 2016 with the publication of a guide intended for property owners, continued in 2017 with publication of two tools intended for real-estate professionals: the guide [“Renting without discrimination, a manual for professionalisation of practices”](#) complemented by a practical helpsheet [“Renting without discrimination in 8 steps”](#) and an updated version of the leaflet designed to inform the general public of their rights and the support it can count on from the Defender in order to have them respected in the event of discrimination when looking for accommodation to rent.

The Defender of Rights is also called upon to contribute to development of tools created by external bodies. It participated in the drafting of the SOS Homophobie association’s guide and the Women’s Rights Service’s (SDF) helpsheets on sexual harassment in the civil service, two support documents set to be published in 2018.



#### 4. An observatory function

Designated as a mechanism for independent monitoring of implementation of UN Conventions on the Rights of the Child (ICRC) and the rights of Disabled Persons (ICRDP), ratified by France in 1990 and 2010 respectively, the Defender of Rights ensures that these texts and recommendations drawn up by UN bodies are actively implemented by the public authorities across French soil.

##### **The mechanism for protection, promotion and monitoring of the ICRDP**

As an independent body, the Defender of Rights is tasked with protection, promotion and monitoring of application of the ICRDP.

The Defender of Rights coordinates a **Monitoring Committee** in which civil society is fully involved – the disabled in particular, represented by the Conseil national consultatif des personnes handicapées (CNCPH – National Consultative Council of Disabled People), and the Conseil français des personnes handicapées pour les questions européennes (CFHE – French Council of Disabled People for European Affairs). The Commission nationale consultative des droits de l’homme (CNCDH – National Consultative Commission on Human Rights), along with the Secretary-General of the Comité interministériel du handicap (CIH – Interministerial Committee for

Disability) as an observer, also take part in the Committee’s work.

The Monitoring Committee met twice in 2017: on 23 March and 13 December. Its meetings provided an opportunity to take another look at its members’ actions in monitoring implementation of the ICRDP, ranging from requests for further development of texts to active promotion of rights.

**Its mission of protection** consists of providing independent support to the disabled, informing them of and defending their rights. In this respect, the Defender of Rights is working towards integrating the ICRDP as a legal standard in its own right in dealing with the complaints it receives, and developing interpretation of the law in the light of the principles enshrined in the ICRDP. Many of the Defender of Rights’ decisions in 2017 were adopted on the basis of the Convention.

**Its mission of promotion** consists of raising awareness among the disabled and all actors concerned (public and para-public bodies, associations, decision-makers, elected officials, lawyers, judges, employers, etc.) with regard to the rights guaranteed by the ICRDP, the Convention’s legal scope, its effects on public policies, etc. In December 2017, in this context, the Defender of Rights published a guide on the obligation of “reasonable accommodation” provided for by the ICRDP, entitled: “Employment of disabled people and reasonable accommodation”.

### **Launch of the ICRC monitoring system in 2017**

After taking part in France's examination before the UN Committee on the Rights of the Child in 2015 and 2016, the Defender of Rights and his Deputy, the Children's Ombudsperson, Geneviève Avenard, set up an [operational independent mechanism](#) for monitoring France's implementation of the ICRC and recommendations made by the Committee in February 2016. The mechanism is designed to encourage the public authorities to appropriate these recommendations as well as to promote their inclusion in the drafting and concrete implementation of public policies.

Launched in spring 2017 and presented to the Defender of Rights' Board for Defence and Promotion of the Rights of the Child, the mechanism operates at three levels:

- a legal, documentation and operational watch mobilising all the Institution's departments and local delegates;

- regular dialogue with representatives of civil society, via its Joint Committees, and with the institutions involved in the periodic examination of France. An initial series of theme-based workshops focused on civil rights and education, violence against children, and disability and health;
- involving children in monitoring the Convention, in compliance with the recommendations made by the Committee on the Rights of the Child. One of the aims here is to reach out to the most vulnerable young people, who are often the furthest removed from consultation and participation mechanisms (young people in medicosocial institutions, young people under the wing of Judicial Youth Protection service (PJJ), young people in care in the child protection system, etc.) in order to involve them in assessment of respect and effectiveness of their rights.

## **3. A new competence: Guiding and protecting whistleblowers**

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Since enactment of the Law of 9 December 2016, which created a general system for protecting whistleblowers, the Defender of Rights has been responsible for directing to the competent authorities any individual reporting an infringement in the conditions set by law, and for ensuring respect for such individual's rights and freedoms.

Article 6 of the Law defines a whistleblower as a natural person who reveals or reports, in disinterested fashion and in good faith, a crime or offence, a manifest serious violation of the law, or a serious threat or prejudice to the general interest, of which he or she has personal knowledge.

The Law provides for the system coming into full effect full on 1 January 2018, the date by which legal entities under public and private law with more than 50 employees or agents, State administrations, regions, départements, and municipalities with over 10,000 inhabitants should have set up their internal reporting mechanisms.

2017 was therefore a year of transition, during the course of which the Defender of Rights developed the conditions for carrying out its mission of orientating whistleblowers and protecting them against any reprisals they might suffer (dismissal, disciplinary action, etc.).

## The Defender of Rights' role with regard to protection of whistleblowers

It is not the Institution's job to assess how well-founded a report is, nor is it responsible for carrying out whatever steps are required to put a stop to the actions in question that present a serious threat to the general interest.

It must, however, assess whether or not the facts reported match

the definition of the alert and if the conditions under which the report was made comply with the criteria set by law.

It must also determine whether any alleged reprisals against the individual referring to it are the consequence of the whistleblowing and therefore justify their protection

– for example, a person who has been subjected to disciplinary action following his reporting of a flaw in his department's IT system that makes it possible to consult a wide range of sensitive data.

Its mission of orientation is a real innovation as there are so many possible reasons for a whistleblower to take action (infraction, crime, activity that seriously threatens the general interest in all fields: health, environment, economy, etc.) and individuals likely to blow the whistle on wrongdoings come under a whole range of distinct legal regimes (private-sector employees, civil servants, public officials, casual employees, users, etc.).

This new competence is therefore exercised in a complex legal context, made all the more so by uncertainties in interpretation of and loopholes in the law. The Law of 9 December 2016 did not unify applicable legal regimes and consequently special whistleblowing mechanisms continue to exist alongside the general whistleblowing mechanism, in particular in the fields of banking, insurance and intelligence, whose interaction is not provided for by the legal texts concerned.

What makes the Law of 9 December 2016 so special is that the regime it provides for is based on the principle of self-reporting without any authority being responsible for assigning the status of whistleblower.

**It is an individual's capacity to appropriate and comply with the applicable rules that ultimately enables him/her to take advantage**

**of the whistleblower protection regime, in particular in the event of his/her criminal liability being called into question.**

As it is tasked with advising whistleblowers at every stage of their actions, the Defender of Rights must be in a position to help them avoid erring in their compliance with the procedure provided for by law.

In view of the serious consequences that any misunderstanding of legal requirements might have on the protection of a whistleblower, it soon became clear to the Defender of Rights that simplification and clarification of the legislation concerned was essential if whistleblowers were to be kept safe.

It drew the government's attention on several occasions to the need to modify existing legislation in order to ensure greater clarity of regimes applicable to the wide range of whistleblowing contexts.

### **The guide on orientation and protection of whistleblowers**

This purely educational [guide](#) proposes ways of protecting whistleblowers' interests.

It sets out to explain the rules applicable to whistleblowing to readers who are not legal experts, and define a *modus operandi* ensuring that whistleblowers run as few risks as possible.

In order to best carry out its mission of orientating whistleblowers, the Defender of Rights made an inventory of procedures implemented by public and private bodies subject to the [Decree of 19 April 2017](#).

Although France is currently fully in line with European and international standards, this is only a first step in bringing about collective

awareness of the need to encourage public-spiritedness through development of ethical whistleblowing. In a [report published on 10 October 2017](#), the European Parliament recommended that a common regulatory framework be drawn up. In order to remain exemplary, the legislature must continue its efforts, starting by making the legal texts concerned clearer and more operational.

## 4. An observatory function

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In 2016, the Defender of Rights carried out a statistical telephone survey entitled “Access to Rights”, among a random sample of 5,117 individuals between 18 and 79 years old living in Metropolitan France. The sample was representative of the French population in terms of age, sex, professional categories and levels of qualification.

Developed with the help of the National Institute for Demographic Research (INED) and ODENORE<sup>4</sup> (PACTE CNRS) Scientific Councils, the “Access to rights” survey aimed to make the general population more aware of the types of situations falling within the Defender of Rights’ four fields of competence: discrimination, children’s rights, security ethics, and relations between public services and their users.

By collecting accurate information on people’s social and demographic profiles, the survey enabled better characterisation of the social groups concerned by these various situations.

For each of the Institution’s fields of intervention, it got participants to state how much they knew about possible means of recourse and whether they thought the types of violations of rights in question were frequent in French society.

Before questioning them on their own experiences, they were also asked if they had ever actually witnessed such situations. Finally, for each individual experience reported, it collected information on recourse (if any) to legal

solutions in the face of the situations they had to deal with.

Several works based on initial exploitation of survey data were published by the Defender of Rights<sup>5</sup> in 2017:

- 1) Survey on Access to Rights. [Volume 1](#). Police/ Population Relations: the case of identity checks, January 2017.
- 2) Survey on Access to Rights. [Volume 2](#). Users’ Relations with the Public Services: The risk of non-take-up, March 2017.
- 3) 10th Barometer of Perception of Discrimination at Work, Studies & Results, March 2017 ([Volume 3](#)).
- 4) Survey on Access to Rights. [Volume 4](#). Place and Defence of the Rights of the Child in France, May 2017.
- 5) Survey on Access to Rights. [Volume 5](#). Discrimination in Access to Housing, December 2017.  
Matched with data provided by the Defender of Rights’ Observatory of Rights, which analyses the typology of complaints received with regard to complainants’ profiles, results help identify sectors of the public that need targeting in order to foster effective recourse to the law.

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<sup>4</sup> Observatoire des non-recours aux droits et services Observatory of NTU of Rights and Services).

<sup>5</sup> The main results of these various publications are presented in the corresponding chapters of the Activity Report.

With a view to making best use of statistical studies produced and research carried out by the Defender of Rights, and stepping up dialogue between the Institution and researchers, the “Access to Rights” survey’s

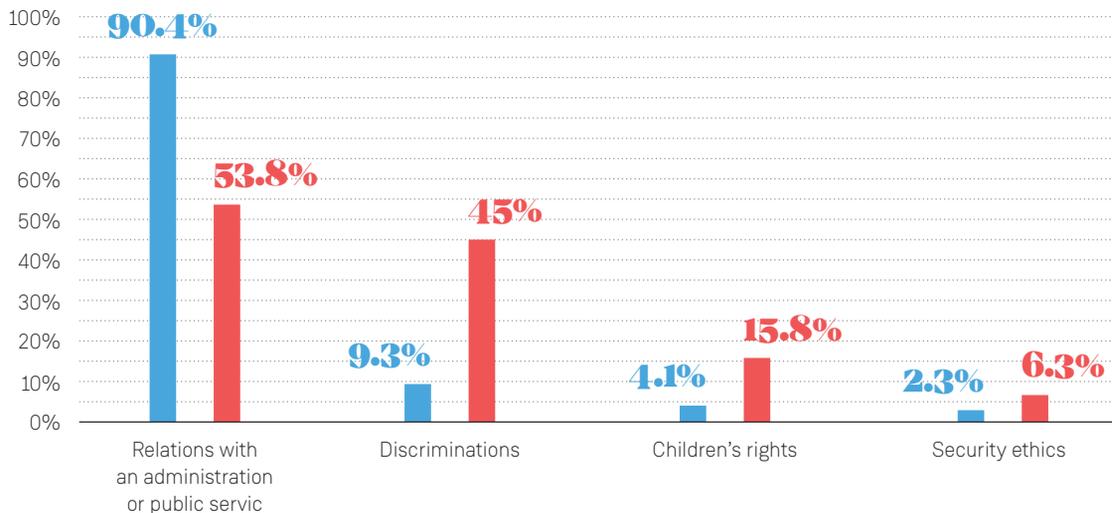
data will be made available to the scientific community and the survey itself will be the subject of a collective work bringing together multidisciplinary teams of researcher over the course of 2018.

## The Defender of Rights’ Observatory

The Institution’s data in view of the Survey’s results

### — Graph 1 —

By Defender of Rights’ field of competence, comparison of the Defender of Rights’ activity (referrals online and via delegates) with the proportion of the population of 18-79 y/o that declares itself concerned.



■ Proportion of the Defender of Rights activity mobilised by field of competence.

■ Proportion of the population of 18-79 y/o living in France declaring for the past five years.

1) Blue bars in the histogram / 2) Red bars in the histogram.

Sources : 1) Complaint submissions prepared by Defender of Rights’ delegates and referral forms sent to the Defender of Rights’ head office (n=52,442) in 2017; 2) “Access to Rights” Survey, Defender of Rights, 2016 (n=5,117).

Field : 1) Complaints sent direct to the Defender of Rights’ head office or via its delegates in 2017. 2) 18-79 y/o Metropolitan France residents.

Interpretation : 90.3% of complaints sent to the Defender of Rights in 2017 fall within the “Relations with an administration or public service” competence. Over the course of the last five years, 53.8% of 18-79 y/o living in Metropolitan France stated that they had “rarely, sometimes, often or very often” experienced difficulties in solving a problem with an administration or public service.

Note : The sum of percentages represented by blue and orange bars respectively is above 100% because:

- 1) in complaints sent to the Defender of Rights, the same file may be registered as falling within more than one field of competence; and
- 2) in the “Access to Rights” survey, individuals replied in succession to questions on the four fields concerned, so the same person might reply positively to several of the questions put to him/her.

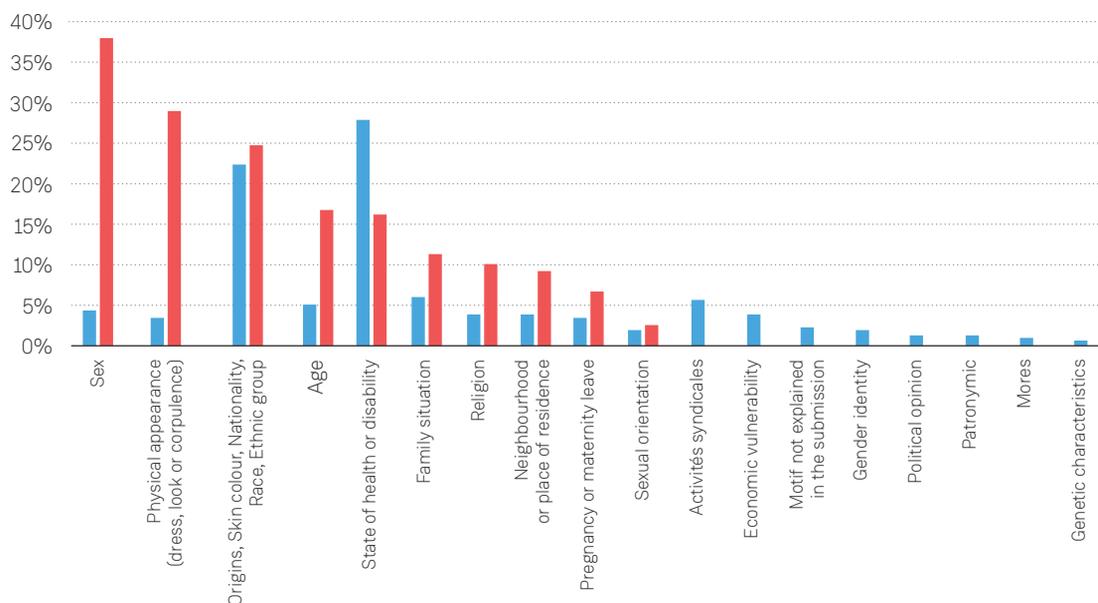
For complainants who referred to the Defender of Rights in 2017, as for 18-79 y/o residents in Metropolitan France, the field in which their rights most frequently came under attack was that of relations with an administration or public service, followed by discrimination, children’s rights and, finally, security ethics.

Despite this analogy, the proportion of the “relations with an administration or public service” field of competence is much lower in

the “Access to Rights” survey than in complaints sent to the Defender of Rights. Although, in complaints sent to the Defender of Rights in 2017, problems experienced in relations with an administration or public service are 9.7 times more frequent than discrimination (90.3% as against 9.3% of complainants), they are only 1.2 times more frequent among 18-79 y/o living in Metropolitan France (53.8% as against 45.0% of this population sector) in the survey’s data.

— **Graph 2** —

Comparison of motives for discrimination in complaints received by the Defender of Rights in 2017 with motives stated by 18-79 y/o living in Metropolitan France.



■ In % of Defender of Rights files including one of these motives for discrimination (n=4,287).

■ In (weighted) % of people declaring at least one of these motives for discrimination (n=2,400) among 18-79 y/o living in Metropolitan France\*.

1) Blue bars in the histogram / 2) Red bars in the histogram.

Sources : 1) Complaint submissions prepared by Defender of Rights’ delegates or sent direct to the Defender of Rights’ head office (n=52,442) in 2017; 2) “Access to Rights” Survey, Defender of Rights, 2016 (n=5,117).

Field : 1) Complaints sent direct to the Defender of Rights’ head office or via its delegates in 2017; Motives for discrimination falling within the submission’s first field of competence. 2) Mainland France residents aged 18-79.

Interpretation : 3.9% of submissions received by the Defender of Rights in 2017 that provided information on the motive for discrimination associated with the complaint concerned situations connected with pregnancy or maternity leave; Over the course of the last five years, 6.3% of 18-79 y/o living in Metropolitan France and reporting at least one act of discrimination connected with the motives for discrimination listed in the “Access to Rights” survey (red bars), stated that such act of discrimination were motivated by situations of pregnancy or maternity leave.

\* The sum is greater than 100% because, in the “Access to Rights” survey unlike Defender of Rights files, several motives for discrimination experienced may be mentioned by one and the same person.



This graph shows the differences between motives for discrimination mentioned by complainants in submissions made to the Defender of Rights in 2017 and those highlighted by “Access to Rights” survey.

There are more people concerned for each of the motives for discrimination provided in the “Access to Rights” survey, than in complaints addressed to the Defender of Rights. This is partly due to the fact that individuals reporting acts of discrimination could ascribe them to more than one motive, and there are fewer motives provided in the “Access to Rights” questionnaire than there are in the data collected by the Defender of Rights.

However, as regards sex, age, physical appearance and religion criteria, their share in motives for discrimination as stated in the “Access to Rights” survey is far higher than in the Defender of Rights’ statistics on “discrimination” complaints. Only acts of discrimination based on disability or state of health are proportionally more frequent in referrals than in the survey, which reflects more widespread recourse to legal action against these motives. As regards the “origin” criterion for discrimination, its frequency in complaints received is roughly the same as in the survey.

These initial factors of comparison show that, depending on discrimination criteria, there are marked contrasts between the ways the population as a whole perceives the legitimacy of asserting its rights.

# — II — Guaranteeing access to public services and effectiveness of rights

As was the case in previous years, 2017 was marked by growing complexity in administrative procedures, and increasing distance between administrations and their users, largely due to ongoing dematerialisation of administrative processes. Although there can be no doubt that digitisation leads to greater overall efficiency in public services, the Defender of Rights' role in this context is to make sure that France maintains the highest possible standards with regard to equal and effective access to rights, for everyone everywhere.

## Typology of violations of rights



**81.2%**

violations are connected with relations with users, including "Failure to listen or take arguments into consideration": 39.8% and "Absence of response": 14.5%



**17.5%**

violations are due to regulations, including "Errors of fact or law": 4% and "Failure to carry out an administrative or court decision": 0.5%

## Types of complaints



**40.9%**

Social protection  
and social security



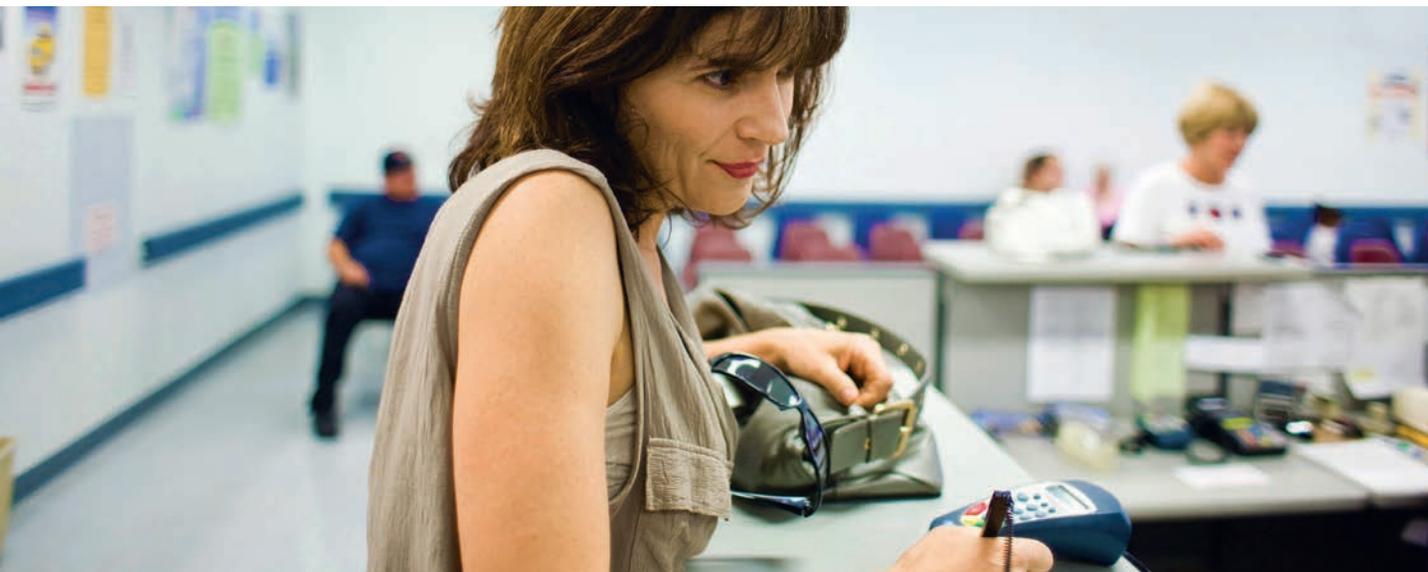
**8.8%**

Fines  
and road traffic



**8.4%**

Work  
and unemployment



## “Access to Rights – Public Services” survey

The “Access to Rights” survey’s “Relations with public services” section focuses on people who encounter problems in carrying out administrative procedures or in solving problems with administrations or public services.

While one in five people state that they experience difficulties in carrying out current administrative procedures, young people between 18 and 24 years old prove to have proportionally more difficulties than other age brackets (37% as against an average of 21%), which is of particular concern given the consequences such difficulties may have on their road to socio-professional integration.

Dematerialisation of access to public services also creates obstacles for other sectors of the public. People with no internet access (27%) and those who say they are ill at ease with digital technology

(33%) encounter more problems than other people in carrying out required procedures: 27% of people with no internet access and 33% for people who have access but are ill at ease on the internet (as against an average of 20%).

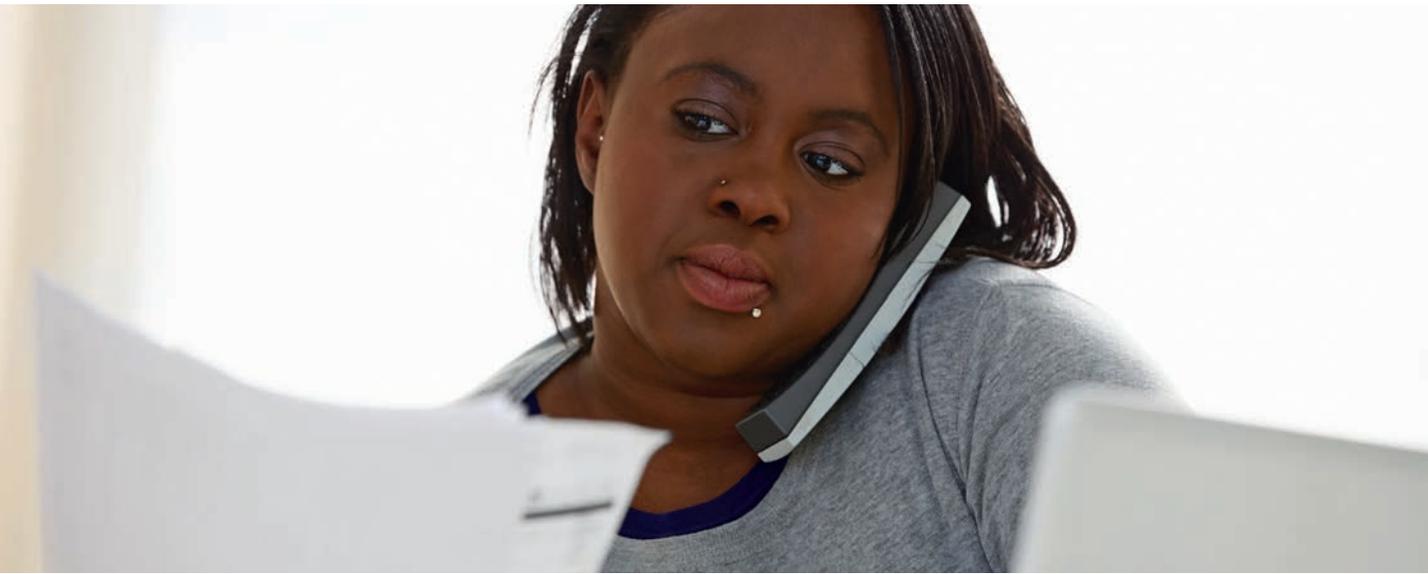
Although most people seem to be aware of their right to appeal against a decision deemed to be contestable (80% of those questioned know that an unfavourable decision on the part of a public service or administration can be disputed), such knowledge is unequally distributed from one social group to another. Hence, one in three people (31%) who experience difficulties in carrying out administrative procedures do not know that they have the right to appeal, as against 17% of people who do not have such problems. Sectors of the public who are ignorant of their right to appeal once

again include young people (26% as against an average of 20%), farmers (37%), isolated individuals in situations of precarity (27%) and those with little or no internet access (27% and 25% respectively).

Another worrying result highlighted by the survey, more than half of respondents (54%) reported difficulties in solving a problem with an administration or public service (including 12%, “often” or “very often”).

The situations most frequently reported by individuals stating they have difficulties in solving problems with administrations or public services are repeated requests for supporting documents (38%) and difficulty contacting someone (38%). One in three people also mentioned lack of information.

Such difficulties have inevitable consequences on access to rights: 12% of people



who encountered them say they abandoned the procedure underway with public services.

Here again, individuals in the most precarious situations and those who are uncomfortable

with the internet or have no access to it report a higher rate of abandonment.

Although some social groups benefit more than others from public services, which helps

clarify their overrepresentation, these results highlight situations in which difficulties encountered in accessing services may have a major impact on their everyday lives.

### Types of difficulties encountered in solving a problem with a public service or administration (%)



**Field:** Individuals stating that they encountered difficulties in solving a problem with a public service or administration over the last five years (n=2,893)

Raw totals - Weighted percentages - Several possible responses

**NB:** Percentages cannot be added up as respondents may have given several responses.

# 1. Deteriorating reception in public services in the age of dematerialisation

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Day-to-day relations between users and public services have changed considerably over recent years due to the pressure of ever more restrictive budgetary and regulatory restraints. The development of digital technology has helped further reshape such relations, so much so that it sometimes gives the impression of having been “forced marched” into existence. The spread of dematerialised services at the expense of user reception services, along with implementation of mechanisms which, due to their complexity and the increase in numbers of interlocutors involved, do much to dissuade users from asserting their rights, make people in situations of precarity, who are heavily

dependent on national solidarity, the first victims of the trend.

As a result, trust, an essential factor in relations between users and the administration, has been eroding for many years now. Non-take-up of rights, i.e. the fact of an individual not benefiting from rights or services he/she is entitled to, either through waiver or incapacity, is one of the most revealing symptoms of such erosion.

The Defender of Rights’ interventions are above all based on mediation, the provision of a platform for dialogue essential if rights are to be asserted and confidence in public action restored.

## A. Growing difficulties in carrying out administrative procedures: the example of the New Generation Prefectures Plan

In the context of its first opinion to Parliament in 2018 ([Opinion no.2018-01](#)) bearing on the Bill “For a State Serving a Society of Trust”, the Defender of Rights emphasised the negative impact that dematerialisation of public services has on users’ access to rights.

Taking account of the national strategy on orientation of public action (appended to the Bill), which aims at “dematerialisation of all administrative procedures, apart from initial delivery of an identity document, by 2022”, and following on from two previous opinions ([no.16-01](#) of 6 January 2016 and [no.16-09](#) of 7 April 2016), the Defender of Rights reasserted the need to include a clause in the law ensuring protection of vulnerable users, making it

mandatory to provide an alternative to digital service in implementation of any procedure for dematerialising a public service.

The **New Generation Prefectures Plan** (PPNG) provided for progressive implementation of tele-procedures and setup of Centres d’Expertise et de Ressources des Titres (CERTs – Document Expertise and Resource Centres) responsible for more rapid processing of requests and combating fraud more effectively. Computer terminals for the public’s use were set up in Prefecture and Subprefecture reception areas to help users carry out procedures successfully.

Launched in June 2015, the plan soon demonstrated the pitfalls inevitable in any process of accelerated general dematerialisation,

as described by the General Delegate to Public Services Mediation, Bernard Dreyfus (see page 32).

As a result, the Defender of Rights received large numbers of complaints highlighting the inadequacies of the dematerialisation as implemented under the PPNG, and the

difficulties arising in its context: computer failures impeding finalisation of requests, overlong waiting periods for delivery of driving licences, difficulties in contacting State services or obtaining correction of errors made by complainants, difficulties in accessing digital points, etc.

## **B. The increasing role of mediation in the context of dematerialisation of procedures**

By drawing on its network of delegates across French soil, the Defender of Rights helps inform, orientate and support private individuals carrying out administrative procedures. In parallel, it intervenes with administrations concerned with a view to ensuring amicable settlement of difficulties brought to its attention and encouraging rapid handling of contentious individual situations.

Such mediation work has led to settlement of situations that sometimes seem Kafkaesque.

Such was the case with one complainant, who, after spending €250 on purchasing a dematerialised revenue stamp on the Office Français de l'immigration et de l'intégration (OFII – French Office for Immigration and Integration) website in order to obtain a residence permit for his wife as spouse to a French citizen by following the procedure provided for on the site, was refused the dematerialised stamp and had to purchase a second one at the tax office. It took him several months to obtain a refund for the first stamp, following a whole series of requests and final intervention on the part of the Defender of Rights ([RA 2017-194](#)).

In a similar case, the Defender of Rights intervened on behalf of a company that was obliged to pay a 10% increase penalising late submission of a value-added tax (VAT) declaration, although his accountant had been unable to log on to the tax authority's website to make the declaration and payment within the legally required deadlines. Even though the necessary steps had been taken the day after the deadline date, the tax authority demanded an increase to the tune of over €5000, which the Defender of Rights was finally able to get cancelled. ([RA-2017-192](#)).

Apart from individual situations, the Defender of Rights was referred to on the subject of a Régime social des indépendants (RSI – Social Security Scheme for Self-employed Workers) fund's refusal to make Accompagnement au Départ à la Retraite (ADR – Retirement Aid) allocations to one of its affiliated funds, while the information provided on the website lacked clarity and might lead self-employed workers to believe, mistakenly, that they were eligible for such aid.

The Defender of Rights recommended to the Fund's National Directorate that it modify the information it provided, in particular on the website, so ensuring greater clarity of information delivered to users. ([Decision no. 2017-261](#)).

**Problems in access to information, coordination and poor operation of the computerised services introduced only serve to emphasise the need to keep physical reception areas up and running across the national territory, and ensure, every time another procedure is dematerialised, that an alternative – whether paper, telephone or human – is always provided alongside it. Maintenance of several different ways of accessing public services might well be financed by the savings generated by their dematerialisation.**

Continued existence of “white and grey zones” also hamper some people's access to rights, in rural areas, for example, and above all individuals living in situations of precarity, for whom transport difficulties only go to accentuate the problem. Limited internet access in such areas jeopardises any form of universal service, as the Defender of Rights has emphasised on many occasions, for example in its [Decision no.2017-083](#) concerning the département of Lozère. In this Decision, after

criticising acts of discrimination based on place of residence, prohibited pursuant to the Law of 27 May 2008, the Defender of Rights reasserted that the principles of territorial equality and the Republic's territorial continuity are essential guarantees of uniform application of fundamental rights and equal access to rights, in particular for people in temporary or long-lasting situations of vulnerability for whatever reason. In this respect, difficulties in accessing the universal telecommunications service are likely to impede access to internet along with the many rights it now gives access to (such as Revenu de Solidarité Active (RSA - Earned Income Supplement) requests, registration at

Pôle Emploi or delivery of vehicle registration documents).

In view of this analysis, and without underestimating the technical problems connected with these areas' geographical constraints, the Defender of Rights recommended to the company concerned by the Decision that it take the measures required for study and implementation of operations guaranteeing rapid and sustainable provision of a universal telecommunications service for all users concerned, and carry out maintenance and repair operations on networks in the geographical sector in question.

## 2. Respect for rights in everyday life

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For many public service users, human reception remains their preferred way of accessing their rights, insofar as it provides a context essential for dialogue and exchange of information. When such reception no longer exists or has deteriorated in quality, amicable settlement of disputes implemented by the Defender of Rights, as a neutral and impartial third party, would seem to be the final way of asserting one's rights.

### A. Re- establishing dialogue

A number of submissions handled this year show that referral to the Defender of Rights is increasingly seen as an effective remedy in cases where a simple exchange with an administration should ideally have been enough to settle the dispute in question.

There are a good many examples illustrating this observation, including cases of administrations willing to enter into dialogue, such as the tax authority. The Defender of Rights intervened on

behalf of a disabled complainant who received a demand for payment of real-estate tax on a property that did not belong to her, located in a municipality she did not live in, without ever



managing to get a response from the Personal Tax Department.

The Institution's investigation established that the complainant had the same family name and first name and was born in the same month and year and in the same country as the person actually concerned with the disputed tax payment; only their exact dates of birth and married names set them apart ([RA-2017-193](#)).

In a similar case, the Defender of Rights was referred to regarding the situation of a passenger who received a notice of contravention for not having a valid travel ticket even though, on the date and at the time of the disputed journey and sanction, she was present at her workplace. Although she lodged a complaint to the public transport company's competent department, alleging identity theft and disputing the contravention, only the Defender of Rights' intervention finally led to the dispute being settled. ([15-014336](#)).

## B. Reducing processing times

This problem often arises with regard to requests for acquisition of French nationality by decision of the public authorities, submitted pursuant to the provisions of Articles 21-14-1 ff. of the Civil Code, and for which abnormally long examination periods, apart from being a failure in public service, may also be seen as a violation of the rights of the administration's users, the right to respect of their privacy in particular, as guaranteed by the provisions of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Following a request from the Defender of Rights, the Ministry of the Interior replied that it had enlisted the help of the police services concerned to set up a mechanism to speed up examination of applications submitted. The Defender of Rights took note of the mechanism implemented and recommended to the Minister of the Interior and his decentralised departments that they ensure full compliance with deadlines provided for in the regulations ([Decision 2017-266](#)). It took a similar decision, addressed to the Office français de protection des réfugiés

et apatrides (OFPRA – French Office for the Protection of Refugees and Stateless Persons), with regard to the time taken to process requests for delivery of civil status records ([Decision 2017-265](#)).

With regard to the public justice service, a case was referred to the Defender of Rights for which a judicial inquiry had been ongoing since 2012. Recalling the provisions of Articles 175 ff. of the Criminal Procedure Code, according to which *“In all cases, the length of the investigation must not exceed a reasonable length of time”*, it intervened with the investigating judge, resulting in the defendant being granted a hearing and the procedure being communicated to the Public Prosecutor ([RA-2017-137](#)). In another file relating to a case of *“human trafficking for the purpose of labour exploitation”*, the Defender of Rights' intervention was followed by a reminder from the Public Prosecutor's Office to investigating officers of their duty to proceed as quickly as possible in this type of infraction so that *“useful investigations are carried out expeditiously”* ([RA-2017-085](#)).

## C. Improving reception

Disputes connected with refusal to register complaints at police stations and gendarmerie brigade headquarters were once again all too frequent this year, accounting for around 15% of complaints received by the Defender of Rights with regard to its mission to ensure observance of security ethics. Recurring problems arise in this area:

- The front-desk officer interprets the complainant's grievances erroneously,

deeming that the alleged facts come under civil law whereas they are actually criminal in nature, or, in the event of doubt, does not take the necessary steps to inform an officer of the judicial police or the Public Prosecutor's office.

- The complaint is not registered due to lack of territorial jurisdiction, even though any complaint may be registered at any police station or brigade, with no special rules on

where the victim lives or where the infraction was perpetrated.

- Service constraints are cited as a reason for refusal to register a complaint on the spot and postponing its registration to a later date.
- Registration by completing the online pre-complaint form does not necessarily result in any later appointment being made to lodge the complaint concerned.
- Lastly, refusal to register a complaint may be due to a user's incomprehension or objection.

In order to settle or prevent such disputes, the Defender of Rights takes action on the individual

situations referred to it, and raises awareness among police officers and gendarmes via the training programmes it delivers to members of the security forces.

In 2015, the Defender of Rights also developed a special mechanism for rapid and amicable local handling of such complaints, by appointing "advisors" from among its territorial delegates, focusing on these types of problems. In view of the positive results obtained for complainants and security forces alike following this initiative, the mechanism was progressively introduced across French soil.

## D. Avoiding breaches of the law

The Defender of Rights intervened on behalf of complainants who found themselves in situation of major difficulty, even precarity, following breaches of the law that were not of their doing. Through amicable settlement of such individual situations, the Defender of Rights may, if necessary, suggest that the public service in question improve its procedures.

The Defender of Rights has consequently had first-hand experience of the difficulties encountered by **disabled senior citizens** who, due to lack of facilities and places in France, are directed to medicosocial centres in Belgium. Under its supervisory powers, a pension organisation can require production of a "certificate of existence" to be completed by the competent authority in the country of residence. While awaiting such proof that the applicant is still alive, the organisation sometimes suspends payment of the retirement pension and, if applicable, the allocation de solidarité aux personnes âgées (ASPA – Solidarity Allowance for Elderly People). As his name did not appear in local registers, a complainant had all his pensions suspended and was declared liable for an undue payment of almost 9000 euros. While obliging such elderly citizens to move aboard appears to have become an acceptable practice, it would seem that its possible administrative



and financial consequences had not been fully thought through.

The Defender of Rights stressed the need to specify that residence conditions were presumed to have been met in cases of elderly people who had to be placed in Belgian institutions, and for production of the certificate of existence to be facilitated for individuals placed in facilities aboard. A Ministerial Direction ([no. D-2017-025411](#)) of 8 November 2017 to this effect was sent to all retirement funds. ([RA-2017-195](#)).

A similar problem arose with regard to **accompaniment of disabled children in normal home environments and institutions**.

Due either to a lack of competent professionals, in particular for speech therapy sessions, or to available practitioners' heavy workloads, it sometimes happens that institutions are

unable to take responsibility for all the care required to accompany such children. In order to avoid any falling off in their treatment or overlong waiting periods, families are directed to private practitioners. They must then ask for reimbursement by their health insurance fund. Yet some funds refuse such complementary reimbursement on the grounds that the costs involved are the centres' responsibility as they are funded for such eventualities. The Defender of Rights drew the attention of the Ministry concerned to the fact that the lack of any system providing for reimbursement of complementary expenses was likely to hamper such children's access to care; the Ministry undertook to resolve the situation.

Lastly, the Defender of Rights was informed of difficulties encountered in obtaining

**the allocation de retour à l'emploi (ARE – Back-to-Work Allowance)** following contractual termination in the case of a worker who had been employed in a European Union country. It considered that equating contractual termination with resignation, and so excluding periods of employment completed in another European country from calculation of benefits paid to workers concerned, constituted a violation of workers' freedom of movement as provided for in Article 45 of the Treaty of the European Union. The Defender of Rights consequently recommended to Pôle Emploi that it take account of periods of employment in Belgium, recalculate the right to the ARE; and pay the complainant the sums she should have received ([Decision 2017-003](#)).

## **E. Fostering prison inmates' right to effective appeal**

Pursuant to the competences that the Organic Law conferred upon it with regard to rights of public service users and oversight of security ethics, the Defender of Rights ensures that prison inmates are placed in conditions enabling them to assert their rights to the full. In the context of disciplinary procedures in particular, it makes sure that a balance obtains between parties in the dispute. This is why it presented its observations before the European Court of Human Rights in the case of *RI et al. v. France* ([Decision no. 2017-118](#)) bearing on the effectiveness of internal appeal procedures available to inmates to put an end to conditions of imprisonment contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

It also pronounced on prison inmates' access to video recordings in the context of disciplinary procedures. Although it was pleased to see adoption of the Decree of 24 October 2016 enabling prison inmates to ask to view prison video-protection data in order to defend themselves in the context of disciplinary procedures, the Defender of Rights nonetheless wanted once again to highlight the question – it had already been raised in an earlier decision ([2014-118](#)) and is yet to be resolved – of the

legal time limit for preservation of prison video-protection data.

Set at a maximum of one month by Ministerial Order, in practice it varies from one facility to another. In this regard, it recommended ([Decision no.2017-117](#)) that, when the acts of which a prison inmate is accused are the subject of an incident report, the time limit for data preservation should be extended to six months as from commission of the acts in question, for all detention and correctional facilities. It also recommended that prison governors and their deputies pay special attention to the reason given for refusal to allow inmates access to video-protection data, that ways of appealing against a refusal be determined as soon as possible, that a text be adopted specifying the formalism of transcription of video-protection data provided for in the Criminal Procedure Code, that viewing of videos during a disciplinary hearing should be made possible, and that prison inmates should be formally informed of their right to access such data if they so wished.

### 3.

## Increased vigilance with regard to the most vulnerable individuals' rights

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### A dedicated division

Since 2011, the evolution of complaints handled by the Defender of Rights' "Health" division has shown a significant decrease in referrals connected with safety of care (15% in 2017 as against 55% in 2011), in parallel with a sharp increase in complaints connected with patients' rights, (65% in 2017 as against 30% in 2011) and abuse (20% in 2017 as against 15% in 2011).

In order to take full account of such evolutions in its activity

and consolidate the Institution's role in protection of the most vulnerable people in the realm of health and medicosocial care, the Defender of Rights' "Health" division became the "Patients' Rights and Dependence" division during the last quarter of 2017.

The "Patients' Rights and Dependence" division now ensures that assertion of their individual rights and freedoms is guaranteed to all patients hospitalised in a health

facility or accommodated in a medicosocial institution. It assesses complaints brought to its knowledge in the light of patients' fundamental rights, reinforced by the Law of 26 January 2016 bearing on modernisation of our health system, including the right to be informed on one's state of health, of consent to proposed treatment and of protection against violation of medical secrecy. It also ensures compliance with the provisions of the "Claeys-Leonetti" Law

of 2 February 2016, which provides end-of-life patients with new rights. It also acts as a facilitator in relations between health facilities and users, in the event of limitation of visiting rights, for example, an arbitrary decision on the part of the facility's management, or non-existence of a mediation body.

In the face of difficulties that users may encounter when confronted with a failure in the public health service, in

particular in equal access to care (medical deserts, breaks in continuity of treatment, etc.) or in the organisation and coordination of their treatment, the "Patients' Rights and Dependence" division helps them take full advantage of their rights. It also intervenes with regard to prison inmates' access to healthcare.

Lastly, the Defender of Rights combats discrimination both in access to care (refusal of care) and in treatment of

patients and persons suffering from loss of autonomy, and oversees full application of the Law of 28 December 2015 on adapting society for an ageing population, which guarantees the individual rights of elderly people accommodated in medicosocial facilities, by combating situations of abuse constituting outrages upon personal dignity and violations of privacy.

## A. Patients' rights and dependence

2017 was marked by **an increase in complaints against failures in care at medicosocial facilities**. Failures in care – including no treatment for pain, unchanged or too rarely changed dressings, lack of communication, no help given with walking or getting up, and abandonment of vulnerable individuals – are regularly cited, and may well put occupants in danger and accelerate loss of autonomy in the elderly. In most cases, the Defender of Rights is faced with events to which there are no eye-witnesses and require crosschecking of information with a range of actors (health authorities, health insurers, professional orders, etc.). Going beyond individual situations, its intervention at regional health agency level enables it to monitor corrective and preventive actions on the quality of treatment of residents and governance of facilities ([RA-2017-055](#)).

The Defender of Rights observed a marked increase in complaints against the quality of treatment and prices charged by physicians working at *Etablissements d'Hébergement pour Personnes Âgées Dépendantes* (EHPADs – care centres for dependent senior citizens). ([Decision no. 2015-078](#)). In June 2017, following its intervention with the Order of Physicians, the Order's Disciplinary Chamber sentenced a physician to temporary prohibition of the practice of medicine for a period of six months, including four months suspended, as a punishment for the prices he charged and poor quality of treatment contrary to regulatory

provisions bearing on medical ethics.

The Defender of Rights also observed that discriminatory practices continue in the field of healthcare and may be expressed by refusal of care, which takes a variety of forms: Refusal by a professional to treat a *Couverture Maladie Universelle Complémentaire* (CMU-C – Complementary Universal Health Insurance) or *Aide médicale de l'Etat* (AME – State Medical Aid) recipient ([Decision 2017-136](#)), refusal to receive elderly patients or those suffering from loss of autonomy, refusal to treat HIV-positive individuals, etc. Doctors involved in such cases may be general practitioners or specialists, practising in Sector 2 (in which higher fees can be charged) or in Sector 1. Discriminatory refusal of care may sometimes be rather more indirect: a health professional agrees to accept a patient but imposes a specific time slot or refuses to grant any special treatment conditions applicable to his/her case, such as statutory pricing or third-party payment. Consequences for users discriminated against range from feelings of humiliation to actual foregoing of treatment.

## Medical and dental practices, between differentiation and discrimination

In March 2017, the Defender of Rights published the results of a study funded in partnership with the Universal Health Insurance Fund, on “*Medical and dental practices, between differentiation and discrimination. An analysis of physicians’ and dentists’ discourse*”, drafted under the supervision of Caroline Desprès and Pierre Lombrail from University Paris XII’s LEPS Laboratory. The study

aimed to collect physicians’ and dental surgeons’ viewpoints on treating patients in situations of precarity, in particular those eligible for such social benefits as the CMU-C, Aide au Paiement d’une Complémentaire Santé (ACS – Assistance with Payment of Complementary Insurance) or AME. It shows that the health professionals mainly see the “CMU” patient category as consisting of

poor patients (even though they by no means constitute a homogeneous group), who attribute negative attitudes and behaviour patterns to them. Such stereotyping helps foster differentiation in treatment that may well result in discrimination, refusal of care in particular, and calls for awareness-raising among health professionals.

As regards prison inmates’ health, the Defender of Rights has observed that **the question of their effective access to routine care is still in the air**. Hence, referred to by an inmate complaining of lack of prosthetic dental care at a remand centre, the Defender of Rights intervened with the Regional Health Agency and obtained the required access to care at a remand centre in a neighbouring département ([RA-2017-023](#)). In addition, the shortage of mental health professionals in many prisons means that few medical appointments are made, and that those that do take place are often perfunctory and confined to a single prescription of medicines. Lastly, night and weekend out-of-hours care is not always available in most penal institutions. Such access to emergency care is at the discretion of the prison warden, raising the question of respect for medical secrecy, and is almost always followed by medical evacuation to hospital emergency departments.

The Defender of Rights also regrets that **mediation mechanisms in healthcare and medicosocial facilities remain little used and largely ineffective** when mediation has become an essential step in settling disputes between healthcare institutions and their patients.

It noted the dismay felt by families when parents or loved ones encounter problems in getting institutions they were in conflict with to listen to what they had to say. Some among them also said they suspected institution mediators of being subject to conflicts of interest. Whenever it proves necessary, the Defender of Rights encourages such steps to be taken, and if dialogue seems to have broken down once and for all, mobilises all parties concerned in order to initiate mediation procedures based on participants’ responsibility and autonomy ([RA-2017-022](#)).

Lastly, a number of new themes made their appearance in 2017, **connected with the complexity of information systems as well as with technological innovations**. As one example, the Defender of Rights was referred to regarding problems occurring during registration in the registre national des refus de dons d’organes (national register of refusals of organ donations) hosted on the Biomedicine Agency’s website.

The Agency undertook to improve the computer application for registration in the register and delivery of the required certificate, with the latter

to include the remark “refusal for all organs and tissues” ([RA-2017-094/RA-2017-095](#)).

Similarly, the Defender of Rights was made aware of the technical and legal difficulties arising following the deaths of a number of patients fitted with micro-pacemakers, whose families were faced with crematoriums’ refusal

to cremate their deceased members’ bodies. Although individual situations were finally resolved locally, a basic reform would seem necessary in order to adapt existing regulations to such major medical innovations ([Decision 2017-238](#)).

## **B. Rights of the most vulnerable individuals**

The effects produced by the deterioration of reception in the public services are sometimes aggravated by development of a rationale of suspicion with regard to certain categories of users.

This results in implementation of complex anti-fraud mechanisms all too likely to lead to excesses that violate users’ rights and which may end in non-take-up of rights by pointing the finger at potential beneficiaries, who, so as not to leave themselves open to suspicion of trickery or abuse, decide not to ask for the aid they might have a rightful claim to.

### **1. Countering social benefit fraud: A rationale of suspicion**

The [report on combating social benefit fraud](#), published by the Defender of Rights in September 2017, highlighted the difficulties encountered by a great many users with regard to the error-prone declarative procedure for access to social benefits, and an ever more elaborate mechanism for countering fraud, generating suspicion of massive fraud on the part of recipients.

The Defender of Rights made a number of recommendations on the basis of these observations, including modification of the provisions of Article L. 114-17 of the Social Security Code to make intent to commit fraud a constituent part of fraud itself. This proposal for reform was reiterated in its [opinion to Parliament no.18-01](#) bearing on the Bill “*For a State Serving a Society of Trust*”.

It also stressed that the rationale of suspicion should not lead the bodies concerned to ignore the fundamental rules of rights of defence or violate personal dignity, recommending

on the latter point that a maximum period of suspension of payment of benefits be introduced with regard to recipients suspected of fraud, in the event of an investigation being carried out.

### **2. Change of situation is often a source of problems for users**

An error in a declarative procedure may have highly prejudicial consequences on individual rights. Such was the case with a complainant, a political refugee, who, after spending nine months in hospital, was forced to sell her house in order to pay for hospitalisation costs of over 100,000 euros, as she had been refused access to health insurance due to a simple error in the spelling of her name when she first arrived in France in 1951. The Defender of Rights reminded the Caisse primaire d’assurance maladie (CPAM – Primary Health Insurance Fund) that it was responsible for checking coherence of information on the complainant’s civil status and sending a request for modification to the Caisse nationale d’assurance vieillesse (CNAV – National Old-Age Pension Fund). The Institution’s intervention led to the complainant’s retroactive affiliation and reimbursement of the sums paid out ([Decision 2017-370](#)).

### **3. A restrictive interpretation of rules of law: the case of refusal to grant daily maternity allowances to freelance journalists**

The Defender of Rights presented observations before the Paris Court of Social Security Affairs (TASS), the Paris Court of Appeal and the Court of Cassation in order to uphold the rights of insured parties in the face of restrictive interpretations of legislation on daily maternity allowances for freelance journalists.

Following rejection by the Court of First Instance and the Court of Appeal, the Court of Cassation, in a ruling delivered on 9 November 2017, upheld the Defender of Rights' position, deeming that an unemployment recipient's return to part-time activity combined with continued payment of replacement income does not deprive the

insured party of his/her rights when income resulting from such activity is not enough to provide access to health, maternity, disability or life insurance services.

## 4. Foreigners having to deal with public services

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The situation with regard to foreign users, non-EU nationals in particular, is nothing less than a digest of difficulties in accessing public services and rights. The rationale of suspicion that lies behind so many practices, front-desk practices in particular, adds to restrictive interpretations of applicable legislation, which itself results from restrictive texts, and increase the effects of inhospitality in public services that are often swamped. This observation concerns reception of migrants, a subject on which the Defender of Rights delivered three opinions to Parliament in 2017, (Opinions [17-09](#), [17-12](#) and [17-14](#)) as well as the way foreigners are treated in France.

### A. Reception of foreigners in France

The Defender of Rights pronounced several times on conditions for reception of foreigners arriving in France, whether they were requesting delivery or renewal of a residence document, had entered illegally, or were subject to expulsion proceedings.

Each time, it reasserted the fact that none of these situations could justify any violation of their fundamental rights.

**As regards foreigners requesting residence permits**, a number of recurring difficulties drew the Defender of Rights' attention:

- First of all, reception conditions in prefectures are often unworthy of a country such as France, despite the efforts made to put an end to the situation via the rationalisation measures that have been implemented. A case that might seem to caricature the situation but was real enough. After over a year, five visits to the prefecture and delivery of a series of receipts, a Chinese national who hoped to obtain a duplicate of her residence permit (which she

had lost while on holiday) referred the matter to the Defender of Rights, who had to intervene with the Prefect on two occasions before she finally obtained the duplicate she had requested ([RA-2017-143](#)).

In order to prevent such situations and reduce waiting periods, the Defender of Rights, in its [opinion no.17-09](#) on the 2018 Finance Bill, stressed the need to increase resources allocated to guichets uniques d'accueil des demandeurs d'asile (GUDAs – single windows for the reception of asylum seekers), and a Circular from the Minister of the Interior was adopted to reduce waiting periods for registration of asylum request at single windows<sup>6</sup>.

- For foreigners requesting a document outside France, **the policy on delivery of visas to Syrian applicants**, whose requests are regularly refused despite the situation their country is in, poses a special problem. The Defender of Rights was referred to with regard to systematic refusal to issue "asylum" visas to the seven members of a Syrian family which,

<sup>6</sup> NOR: INTV1800126N of 12 January 2018.

after fleeing Syria following an attack on its village by members of Daesh in 2013, took refuge in Istanbul. The family said that it had been harassed in Turkey because it belonged to the Yezidi community. The Defender of Rights wrote to the Ministry of the Interior asking for a sympathetic re-examination of the requests concerned. Its intervention met with success, with the Ministry sending the Istanbul consular post instructions to issue the asylum visas requested.

Despite this favourable decision, the family involved came up against a lack of due diligence on the part of the consular authorities, resulting in the visas still remaining undelivered two months later. The Defender of Rights' departments reported the situation to the Sub-Directorate for Visas, which intervened with the consular post involved. The family was immediately summoned to the consulate and the visas were delivered less than two weeks later ([RA 2017-010](#)).

**With regard to illegal aliens**, the Defender of Rights is still very much concerned about living conditions among exiles in **Calais** following evacuation of the camp's north zone. After an onsite visit by its services in June 2017, the Defender of Rights, in a [Decision no. 2017-206](#), reiterated the recommendations made in its report of 6 October 2015 and its [Decision no. 2016-113](#) of 20 April 2016.

Referred to with regard to an order prohibiting abusive occupation of several locations, issued by the Mayor of the town on 6 March 2017 in order to evict illegal aliens, the Defender of Rights deemed that the order was not actually intended to ensure maintenance of public order but rather to prohibit humanitarian distribution of food to the migrants. It presented its observations before the Administrative Court's Judge in Chambers, emphasising that the measure seemed contrary to several supra-legislative norms including the Constitution, the principle of human dignity, and the European Convention on Human Rights, and that it constituted an act of discrimination based on nationality and the particular vulnerability of persons, prohibited by Articles 1 and 2 (3°) of the Law of 27 May 2008 ([Decision 2017-119](#)). On 22 March 2017, Lille Administrative court suspended execution of the disputed order.

In addition, when asked for an opinion by the Council of State, which had to pronounce on the Ordinance of 26 June 2017 by which Lille Administrative Court, ruling in chambers, ordered the Prefect to take various measures designed to improve living conditions among exiles in and around Calais, the Defender of Rights presented its observations before the High Court ([Decision 2017-227](#)) reiterating the recommendations made in its Decision no.2017-2016. In an Order of 31 July 2017, the Council of State confirmed the injunctions delivered by the Administrative Court, deeming that, in this case, the public authorities' shortcomings revealed the existence of inhuman and degrading treatment prohibited by Article 3 of the European Convention on Human Rights.

The Defender of Rights also pronounced on a number of cases regarding **interventions on the part of the security forces around humanitarian premises providing assistance to migrants**, likely to prevent reception of vulnerable individuals by dissuading them from entering, at the risk of depriving them of assistance essential to preservation of their fundamental rights. One of the cases bore on the checking of an individual's right of residence on humanitarian premises he was visiting in order to benefit from access to healthcare ([Decision 2017-054](#)). In another case, police officers had used teargas on individuals gathered at the entrance to an association aiding asylum seekers ([Decision 2017-171](#)). The Defender of Rights also observed that no legal text had provided for methods of checking on foreigners in humanitarian aid centres since abrogation of the Circular of 29 November 2009 by the Circular of 18 January 2013 implementing the Law of 31 December 2012. It therefore recommended to the Ministers of the Interior and of Justice that they take the necessary steps to disseminate a new Circular among Public Prosecutors' offices and police and gendarmerie authorities as soon as possible. Lastly, it recommended that disciplinary action be taken in one of the two cases.

As regards **foreigners subject to expulsion procedures**, after onsite investigation and verification, the Defender of Rights considered that the opening of **the annex to Bobigny's High Court in the Roissy Charles de Gaulle airport zone on 26 October 2017** was contrary to the right to a fair trial.

After recommending a stay to the opening of the annex ([Decision 2017-2011](#)) and following a second experimental hearing on 18 October 2017, during which improvements were observed with regard to signage facilitating the public's access and increasing public knowledge of discussions underway, it still deemed that the conditions for opening the annex still posed problems in view of requirements of impartiality, public knowledge of discussions, and respect of the rights of defence.

Furthermore, prior to the opening of the annex, provision of care to unaccompanied minors had not resulted in implementation of a suitable mechanism on the part of the competent services enabling individualised assessment of their situations.

In 2017, the Defender of Rights also dealt with a number of cases to do with deportation of illegal aliens by air. It found that determination to implement the expulsion measure prevailed over respect for the dignity of the person being deported, as regards constraint methods and immobilisation techniques employed. In two cases, the individuals concerned were carried

to the aircraft in horizontal position, their movements hampered either by a personal protection system ([Decision 2017-058](#)) or by handcuffs and Velcro strips affixed to their legs, and, in one case in the presence of their children, who were minors ([Decision 2017-174](#)).

The Defender of Rights also observed use of the so-called "contrôle pavillonnaire" technique, consisting of exerting pressure just behind the deportee's ear in order to control him, and of helmets on individuals in states of extreme agitation. Furthermore, it noted that use of immobilisation equipment had no clear basis in law. It therefore recommended that such techniques be prohibited and stressed that the higher interest of the child should always be taken into account, including in situations where parents were being deported. The Minister of the Interior did not follow up on these recommendations, deeming that the techniques employed and equipment used were intended to protect the individual being deported ([Decision 2017-058](#)).

## B. Treatment of foreigners in France

### 1. Practices outside the legal framework

#### Addition of conditions not provided for by law

On more than one occasion, the Defender of Rights was led to comment on the practice of subjecting certain foreigners to conditions not provided for by law:

- Having received a complaint bearing on a public transport company's decision to exclude recipients of Aide médicale d'Etat (AME – State Medical Aid) from the list of beneficiaries of reduced fares provided for in Article L.1113-1 of the Transport Code, the Defender of Rights deemed that the decision in question, which created a condition not provided for by law, was contrary to the principle of equal access to public services, and presented its observations before the Paris Administrative Court ([Decision 2017-284](#)).

In a ruling of 25 January 2018, the court annulled the disputed decision, deeming

that "the provisions of Article L. 1113-1 of the Transport Code (...) do not set any extra conditions under which obtainment of such reduced fares, as far as foreign nationals are concerned, would be reserved for people in regular situation receiving complementary universal health insurance".

- Receiving a complaint bearing on numerous prefectures' refusal to examine requests for admission or renewal of residence permits from people with no fixed address and only able to provide, as the proof of address required by law, a certificate of address for service from a centre communal d'action sociale (CCAS – Community Centre for Social Action) or an approved body ("administrative domiciliation" service), the Defender of Rights deemed that this practice constituted an act of discrimination based on particular vulnerability resulting from economic situation, whether apparent or known to its perpetrator, as prohibited by the Law of 27 May 2008 ([Decision 2017-305](#)).

### **Illegal requirement of documents**

This year, the Defender of Rights twice had occasion to remind the authorities concerned that no legal or regulatory provision required possession of a valid passport by a residence-permit applicant in order to have his/her request processed, as Article R.313-1 of the Code for Entry and Residence of Foreigners in France and the Right of Asylum (CESEDA) states that the applicant may prove his/her nationality by any means ([RA 2017-033](#) and [RA 2017-050](#)).

### **Refusals of receipts**

Since 29 January 2017, receipts for foreigners who have fallen ill have had to be delivered after the OFII's medical service has informed the prefecture of their medical reports' transmission to the OFII's College of Physicians. Yet initial assessments show overlong waiting periods for examination of medical records on the part of the OFII. In this context, the Defender of Rights received a good many complaints outlining the difficulties encountered by seriously ill foreigners when they tried to renew their residence permits, so revealing numerous situations of violation of rights. The Defender of Rights reported these problems to the Minister of the Interior and is awaiting his response. Nonetheless, following the Defender of Rights' intervention, a number of Prefects have agreed to deliver receipts even if medical reports have not yet been transmitted to the OFII's College of Physicians ([RA-2017-044](#)).

### **Refusal of residence permits resulting from ignorance of applicable law**

The rules set out in the Franco-Algerian agreement of 27 December 1968 are often disregarded, holding up delivery of permits to Algerian nationals. Such was the case with an Algerian national who had submitted a request for a residence permit as a parent of a French child, on the basis of Article 6.4 of the Franco-Algerian agreement, and was issued with a repeatedly renewed receipt over a period of three years, with the Prefecture demanding further proof that he was actually looking after his French daughter each time the receipt was renewed. Yet, as the Defender of Rights' services reminded the Prefecture in question, the legal and regulatory provisions applicable to Algerian nationals state that they have parental authority

over their French children, and it is not for them to prove that they are supporting such children, unlike nationals of other countries who come under the CESEDA. Following this intervention, the Prefecture decided to grant the complainant a residence permit.

Insofar as it is regularly referred to with regard to this question, the Defender of Rights recommended to the Ministry of the Interior that it ensure that Prefects remind their departments of applicable law concerning documents required for Algerian nationals requesting "parent of a French child" residence permits, as well as of the fact that receipts delivered for residence permit requests authorise their holders to work ([Decision 2017-123](#)).

## **2. Legal provisions limiting rights**

As far as access to rights is concerned, once they have finally succeeded in obtaining right of residence on French soil, foreigners, in principle at least, are treated the same as French nationals, as nationality is a criterion for discrimination prohibited by law (other criteria, such as an individual's situation as regards residence, may nonetheless apply). However, such equal treatment is regularly undermined by legal texts which, by establishing criteria other than that of nationality, which is prohibited, lead de facto to the curtailing of access to foreigners' fundamental rights.

### **Access to residence permits on the part of the disabled and particularly vulnerable individuals**

This year, as it regularly receives complaints from elderly migrants receiving the minimum old-age pension or retirement pensions below the *salaire minimum de croissance* (SMIC – minimum wage) and lacking the minimum resources required for obtainment of a residence permit, the Defender of Rights reiterated its recommendations that the SMIC should no longer constitute the level of means that has to be reached in order to have a legal right to delivery of a "long-term resident in the EU" permit, but simply act as an indicator of adequate means that does not exempt the administrative authorities from carrying out individual examinations of each situation when such level has not been reached ([Opinion 17-12](#))

### **Access to the “Private and Family Life” residence card on the part of parents of sick foreign children**

The Law of 7 March 2016 considerably improved the status of foreign parents of sick children by stipulating that both foreign parents of a sick child could be issued with autorisations provisoires de séjour (APSs – temporary residence authorisations) giving their holders the right to work. Nonetheless, the situation of such parents is still precarious. Due to the temporary nature of the right to residence that it confers (a maximum of 6 months), possession of an APS hampers its holder’s access to employment, housing and social benefits, even though the higher interest of the sick child should require that such access be facilitated.

simply that they are legally resident but also that their children entered France via the family reunification programme.

Although the system was validated by the European Court of Human Rights in a decision of 1 October 2015, the Defender of Rights nonetheless notes that the Court ruled without taking account of such realities as the length and uncertainty of family reunification procedures, cases in which implementation of a family reunification procedure becomes irrelevant, and the shortcomings of the family reunification programme in practice. Nor does the European Court’s decision impact the legal precedent set by the Court of Cassation, which ruled that refusal of family allowances to Algerian, Turkish, Moroccan, Cameroonian and Bosnian nationals



The Defender of Rights also reiterated its recommendations that the law be modified to provide for delivery of a “private and family life” card to foreign parents of sick children if, after a first renewal of the APS, they can show that their children’s state of health requires long-term care in France ([Opinion 17-12](#)).

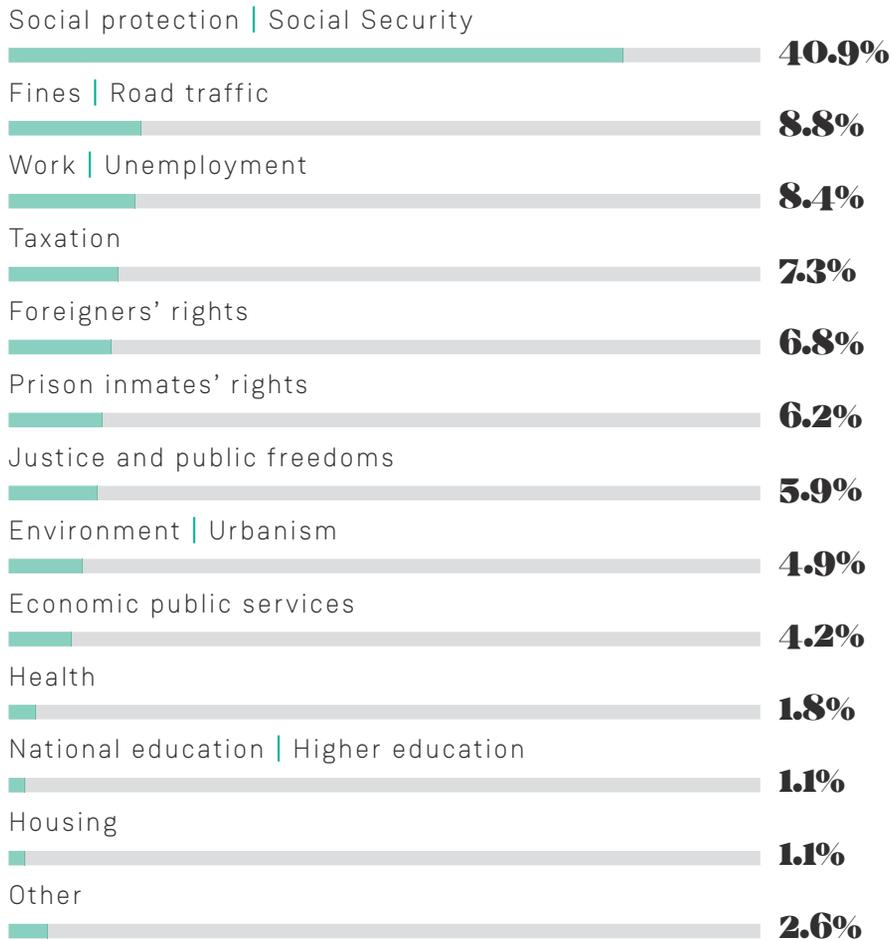
### **Refusal of family allowances**

The Defender of Rights, and the Children’s Ombudsperson, the HALDE and the Mediator of the Republic before it, have frequently emphasised the discriminatory nature of Social Security Code provisions requiring foreigners applying for family allowances to prove not

was discriminatory in view of the conventions between their countries and France. This particular legal precedent allowed for differences in treatment of foreign children depending on their nationality, which is why the Defender of Rights recommended that the law be modified so as not to make payment of family allowances conditional on the legality of parents’ residence, and continued to present its observations before courts while awaiting such modification to be made.



**Breakdown according to types of complaints addressed to the Institution in the field of public services**





# — III —

## Making children actors and subjects in respect for rights

### Types of complaints in the field of children's rights



27.5%

Child welfare -  
Child protection



23.5%

Education, early childhood -  
Schooling and extracurricular  
activities



17.4%

Filiation  
and family law

### Children's ages



44%

complaints concerning children between  
0 and 10 y/o

### Originators of complaints



32%

complaints coming from **mothers**



11,2%

complaints coming from **children**



## “Access to Rights – Rights of the Child” survey

The “Access to Rights” (Accès aux droits) survey’s [“Rights of the Child”](#) section reveals its respondents’ limited knowledge of the children’s rights enshrined in the International Convention on the Rights of the Child (ICRC) and highlights the worrying frequency of cases of abuse witnessed by the population.

### **Knowledge of the rights of the child**

To the question “*What children’s rights do you know about?*”, half of respondents were immediately able to cite at least one of the rights protected by the ICRC. The rights cited were often the same, however: The right to education (33%), the right to protection against abuse (23%) and the right to be in good health (18%).

### **Violations reported**

On average, 16 % of respondents stated that they had witnessed a violation of children’s rights in the last five years.

Cases of abuse (whether physical, verbal, psychological and/or sexual) seem to be the most frequently observed situations (63%). As regards their own children, parents cite other situations more spontaneously, relating to school (school bullying – 52%) or following marital separation (39%).

### **Action taken**

Faced with a violations of children’s rights, one in every two people take steps to make the situation known. Although this may seem a low reaction rate, it is nonetheless far

higher than rates recorded in the “Access to Rights” survey (discrimination, security ethics, and problems with public services), so highlighting the specificity of children’s rights.

Although failure to take action is still connected with lack of knowledge of children’s rights and of actors in child protection, the survey also highlights other factors: lack of certainty as to the illegality of the situation witnessed, lack of proof, fear of consequences, and lack of confidence in actors in protection of children’s rights. The feeling that “it’s none of their business” is also frequently cited to justify no action being taken (41%).



**Types of situations in which a child's rights were not respected**

(Last experience reported – Several possible responses)

	Experience concerning their own child	Experience concerning someone else's child	Total witnesses	Compared with the population as a whole
	%	%	%	%
Physical abuse	27	39	38	6
Consequences of a divorce or separation	39	29	30	5
Verbal abuse	17	32	30	5
Bullying at school	52	24	27	4
Psychological abuse	23	26	26	4
Problems connected with children's disabilities	14	11	12	2
Sexual abuse	14	6	7	1
<i>Numbers</i>	91	761	852	5,107

Champ : All survey respondents (n=5,117)

Raw totals - Weighted percentages

NB: Percentages cannot be added up as respondents may have given several responses.

# 1. An Institution that embodies the higher interest of the child

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The International Convention on the Rights of the Child (ICRC) provides the guiding principle according to which the higher interest of the child must be a primordial consideration in all decisions regarding children, whether taken by social protection institutions, administrative authorities or legislative bodies. It is this principle that guides the Defender of Rights in carrying out its mission of defence and promotion of the higher interest and rights of the child, in its opinions to Parliament and in its decisions and recommendations to the public authorities.

## A. An Institution that embodies the higher interest of the child

Two years after the UN Committee for the Rights of the Child's most recent observations to France, which painted a somewhat mixed picture, the Defender of Rights wanted to make an initial assessment of their implementation. Despite strong political determination and positive developments in legislation, there is still an imbalance between the rights enshrined in legal and regulatory texts and national action plans and the effectiveness of such rights. The Defender of Rights recommends that enough material and

human resources be allocated to public policies in the pipeline to ensure achievement of their stated aims.

In its report, the Defender of Rights extended monitoring of the implementation of the right to health and the theme of sex education, in an all-embracing crosscutting approach in line with the UN Committee's recommendations. In particular, it called for a national health strategy specifically for children: stepping up support to parents, prioritising prevention, and developing children's participation.

## B. Opinions to Parliament

This year, the Defender of Rights commented on the wide range of subjects on the Parliamentary agenda concerning various aspects of children's lives.

Heard by the Senate Law Committee's workgroup on sexual offences against minors ([Opinion no.7-13](#)), it called for organisation of a consensus conference enabling the many existing viewpoints to be aired, in particularly those of child and teenage victims.

It also asserted its opposition to establishment of an irrefutable presumption of non-consent, as included in several proposed laws, deeming that it would contravene the principle of presumption of innocence and the rights of defence. On the question of what age to set, if one had to be, the Defender of Rights reasserted its reluctance to see age thresholds introduced, preferring to see assessment of minor's discernment on a case-to-case basis.

However, it stated that it considered the 15 y/o threshold excessive, in view of social evolutions and young people's sexual practices.

Basing itself on complaints sent to it, the Defender of Rights also drew parliamentarians' attention to the need to improve the inadequate support and care provided to underage victims.

In the context of work carried out by the Senate Delegation for Women's Rights and Gender Equality, the Defender of Rights was questioned on respect of intersex people's rights. With regard to irreversible early treatments and/or operations, it recommended that the precautionary principle serve as a guide to medical teams ([Opinion 17-04](#)).

Lastly, following a hearing of the Children's Ombudsperson by the National Assembly's Committee on Social Affairs with regard to allocations to the 2018 Finance Bill's "Solidarity" mission, on the theme of "départemental care provided to unaccompanied foreign minors", the Defender of Rights emphasised that their situation was the subject of almost 15% of referrals to the Institution bearing on children's rights and reporting départements' shortcomings and lack of care provided to minors, in particular at borders or in holding areas. It made recommendations intended to make the higher interest of unaccompanied minors key to the care provided by the institutions concerned ([Opinion no. 17-10](#)).

## 2. The effectiveness of children's rights in public services

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In its last report on the children's rights, while taking note of the public services' shortcomings in taking children into account, the Defender of Rights welcomed the government's stated intention of overcoming institutional partitioning, developing mechanisms for coordinating actors (the Haut Conseil de la famille, de l'enfance et de l'âge [HCFEA – High Council for Family, Children and the Elderly] and the Conseil national de la protection de l'enfance [CNPE – National Council for Child Protection]) and launching national strategies on and for children. Complaints dealt with this year once again confirm how important this question is for child protection.



They also show that public services are often ignorant of children's rights, in particular the right not to be discriminated against due to state of health, disability or origin.

## A. Child protection

This year, the Defender of Rights again reasserted the importance of mobilising all public authorities, institutions and professionals with a view to decompartmentalising action taken on behalf of children to better protect their rights. It considers it essential to lend effective support to a change in culture and practices, through the training of professionals and dissemination of best practices ([Decision no. 2017-338](#)).

A situation emblematic of such shortcomings was revealed in a submission regarding four brothers and sisters, then between 2 months and 6 years old, who lived alone in the family home,

suffering from serious neglect, showing signs of delayed development and, for two of them, major autistic disorders that had been left untreated. The Defender of Rights intervened on its own initiative and concluded that the institutions and actors involved in child protection in the widest sense of the term (hospital, mother and child protection service, family allowance fund, town hall, etc.) should have done more to fulfil their legal obligations. There are major issues with regard to prevention of such situations, and actors need to be supported and accompanied.

## B. Access to healthcare

Hospitalised teenagers' and children's access to healthcare formed the subject of work overseen by the Defender of Rights. Its earlier [decision no. 2015-190](#) on hospitalised children and teenagers, published in September 2015, emphasised the shortcomings apparent in the training of caregivers and recommended enactment of a law giving parents the right to be present in hospitals. The UN Committee on the Rights of the Child then recommended to France that it re-examine conditions governing hospitalisation from a viewpoint focusing on the rights of the child.

Following this, in December 2017, the Fédération hospitalière de France (FHF - Hospital Federation of France) launched a survey among healthcare teams on children's reception in hospitals, covering over 1000 hospitals and some 3,800 medicosocial institutions. The survey, in which the Defender of Rights is involved, will provide responses helping to ensure better implementation of the right to information and access to rights, for children and parents alike, along with better knowledge of the problems encountered and best practices introduced to improve respect for hospitalised children's rights.



In order to have a scientific analysis of the subject, the Defender of Rights and the CMU Fund financed a study, published in March 2016, on “*Access to healthcare by children in the care of the child protection services (ASE/PJJ): Access to care and the meaning of care*”, produced by the University Paris Ouest Nanterre's EFIS research laboratory.

The study showed that the children and young people concerned were exposed to a wider range of problems in accessing healthcare, with frequent breaks in their care pathways. The Defender of Rights adopted [Framework Decision 2017-235](#) bearing on healthcare of children entrusted to the child protection system, in which it made a number of general recommendations: guaranteeing that children's

health be taken into account when their situation is assessed and they are put in the care of the child protection service; taking better account of health during placement of children; lending support to children during a change of status;

fostering coordination of actors involved in the health of children in care under the child protection system; developing training programmes for professionals on the health of children in care.

## **C. The public education service**

### **Accessibility of schools**

In 2017, the Defender of Rights again received complaints outlining obstacles encountered by disabled children during school hours and extracurricular activities.

A great many such complaints focused on discrimination experienced at school and during extracurricular activities. Among other things, they go to show that local authorities are ignorant of or simply do not have the resources to make the accommodations required to take in disabled children. The Defender of Rights acts to regulate situations of discrimination experienced by such children, while reminding local authorities of their obligations.

The school environment's accessibility is a key factor in disabled children's social integration. This being so, effective access on the part of children in wheelchairs or walking-frames, in schools that often lack access ramps and lifts, is of key importance. In the absence of such accommodations, parents are forced to send their children to schools outside their neighbourhoods.

Such problems are regularly referred to the Defender of Rights, which often settles disputes by reminding local authorities of the obligations they have pursuant to the International Convention on the Rights of Persons with Disabilities, the Law of 11 February 2005, the Decree of 21 December 2006, and the Law of 27 May 2008. It also emphasises that accommodations designed to enable permanent unimpeded access to school premises should also benefit disabled parents who wish to accompany their children.

### **The right to enrol in school**

Alerted to cases of refusal of school enrolment, the Defender of Rights found that five such

cases were due to discrimination in access to education based on place of residence, the particular economic vulnerability of the families concerned, and origin. They involved children living in camps ([Decisions 2017-134](#); [2017-195](#); [2017-236](#)) and social hostels ([Decision 2017-091](#)) and a child lodged by a third party ([Decision 2017-023](#)).

Noting that such problems continued to crop up in a number of municipalities, the Defender of Rights reiterated its recommendations on the subject, in a general decision of 7 December 2017 to the attention of all France's mayors ([Decision 2017-342](#)).

### **Right of access to the school canteen**

Reception in school canteens, regarded as extracurricular time included in children's right to education, raises special problems for disabled children. In the face of a refusal to accept an autistic child, the Defender of Rights investigated and concluded that it was a case of discrimination based on disability; it made recommendations to the Mayor to ensure that the child's interest would be taken into account and an end put to such discrimination. Its recommendations were carried out ([Decision 2017-025](#)).

School canteen accessibility also covers menu choices on offer. Dijon Administrative Court requested the Defender of Rights' opinion on the removal of pork-substitute menus served in a canteen, pursuant to the principle of secularity. The Defender of Rights deemed that the Mayor's decision and the Municipal Council's ruling could be considered as discriminatory, given the fact that the town hall had seen that pork-substitute dishes were served for over twenty years ([Decision 2017-132](#)).

The court annulled the Mayor's decision and the Municipal Council's ruling, on the grounds that it violated the higher interest of the child. The Town Hall appealed, and the case is currently being heard by the Administrative Court of Appeal. The Defender of Rights recently acted on its own initiative in a similar case of a mayor who had removed meat-substitute menus and ordered a menu including pork to be served once a week.

On the occasion of the enactment of the Law of 27 January 2017 bearing on equality and citizenship, the Defender of Rights was pleased to see that it established a right of access to school catering, when a school catering public service was present in a municipality ([Opinion 16-19](#)). This legislative development enshrined one of the recommendations made by the Defender of Rights in its report on "*Children's equal access to primary school canteens*", published on 28 March 2013. No discrimination based on their or their families' situation may now be made between children at school.

### **Rights of children within the school**

The Defender of Rights protects rights that are still too little known by schools and the general public alike, including children's **right to defend themselves in the event of a disciplinary procedure against them, and the right to be heard**.

Receiving a complaint bearing on the expulsion of a 15-year-old pupil without a hearing at a private school under a "contract of association" with the State, the Defender of Rights found this to be a violation of the higher interest and fundamental rights of the child, in particular the right to present his defence and be heard in any procedure against him. It recommended to the Ministry of National Education that it remind all private schools under contract to the State of the need to apply disciplinary procedures expressly guaranteeing the rights of the child, and in particular the right to be heard and defend oneself, and the principle of proportionality of punishments ([Decision no. 2017-210](#)).

The Convention on the Rights of the Child also enshrines children's right to be protected against all forms of violence. This being

so, after receiving a complaint bearing on **a nursery school teacher's repeated acts of violence against her pupils**, the Defender of Rights presented its observations before the Court of Cassation, asserting that the right of correction the teacher concerned claimed as justification for the acts of violence she had carried out had no basis in law and could not be cited as "customary" ([Decision no. 2017-120](#)). In an Order of 7 November 2017, the Court of Cassation ruled that the physical, psychological and verbal acts of violence of which the defendant had been found guilty exceeded the disciplinary powers assigned to teachers, and established the civil liability of the State (Cass. Crim. no.16- 84329).

In a similar case, the Defender of Rights was referred to regarding the situation of a number of nursery schoolchildren who had been subjected to acts of violence carried out by a municipal staff member. It made recommendations to the attention of the school principal, the mayor and the education authority inspectorate, in order to ensure that the children's testimony was taken into account, that education authority inspectors assisted school principals in management of eventual stress, and that all school staff were made aware of the issue of violence against children ([Decision 2017-198](#)).

Violence in schools also comes in the form of **the bullying that so many pupils are subjected to at the hands of their classmates**. A major awareness-raising campaign was carried out by the National Education service over the 2016/2017 school year.

Complaints submitted to the Defender of Rights demonstrate a lack of diligence and responsiveness on the part of school managements when dealing with this issue. In its first decision on school bullying, the Defender of Rights sent recommendations to the principal of the lycée concerned and to the Minister of National Education, whom it requested to disseminate the protocols and tools for combating bullying and work with all schools to promote the right of the child to be protected against all forms of violence ([Decision no. 2017-076](#)).

## **Children's right to non-discrimination**

Working to ensure respect of non-discrimination between pupils and of the principle of free State schooling and examinations, the Defender of Rights put a stop to the practice of a body responsible for supervising school and

competitive exams, which consisted of requiring parents of CAP and BEP candidates to pay the sum of five euros to cover postage costs involved in sending certificates to family homes by registered mail ([RA-2018-038](#)).

## **D. Foreign children**

In 2017, once again receiving regular complaints regarding the individual and collective situations of unaccompanied minors, the Defender of Rights confirmed that the public authorities tended to put other considerations, first and foremost migratory, before the higher interest of the child.

On the essential question of the **procedure for assessing age**, in a context where increasing numbers of young people claim to be unaccompanied minors, the Defender of Rights noted that many départements continued to resort to bone-age tests, which are all too often ordered when their necessity has not been established, within the meaning of the Law of 14 March 2016 bearing on child protection.

The Defender of Rights confirmed its opposition to bone-age testing, which it deems unsuitable, ineffective and undignified; It reasserted its position before Parliament (Opinions [17-03](#) and [17-10](#)), in the context of a third intervention before the European Court of Human Rights in ([Decision 2017-205](#)) and before judicial courts ([Decisions 2017-158](#) and [2017-248](#)).

Unaccompanied minors also have problems obtaining the **temporary work permits** required for them to complete their apprenticeship contracts.

In the context of its observations before the Council of State's Judge in Chambers ([Decision 2017-069](#)), the Defender of Rights pointed out that delivery of temporary work permits was their legal right, whether the minors in question had been taken under the wing of the child welfare services before or after they turned sixteen. The Council of State delivered a decision similar to the Defender of Rights' observations (CE 15/02/2017 no.407355).

With this judicial decision to back it up, the Institution made recommendations to the Ministers of the Interior and Labour with a view to clarifying the law and directions sent to prefectures ([Decision 2017-153](#)).

Finally, the Defender of Rights continued to protest against the confinement of foreign children, reminding the authorities concerned that the interest of the child is a priority consideration in all procedures. It is sorry to see that, after having fallen in 2013 and 2014 following France's sanctioning by the European Court of Human Rights, the number of children placed in administrative detention centres rose to 305 in 2017, not counting the children held in such centres in Mayotte. Referred to in 2017 with regard to the situation of 21 families with children and 8 age-disputed young people, it intervened regularly with the prefectures concerned, reminding them that such practice is contrary to the Convention on the Rights of the Child, and requesting that families be freed, or put under house arrest if required. The Defender of Rights was also alerted to situation of two foreign little girls, aged 6 and 3 and a half respectively, who were being kept in an airport's holding area. After carrying out a meticulous enquiry, it found that their higher interest had been violated along with a number of their rights throughout the procedure ([Decision 2017-144](#)). It also made recommendations to the attention of the Minister of the Interior, the Central Director of the Border Police and ad hoc administrators with a view to ensuring that the higher interest of both children concerned was genuinely taken into account.

# 3. Raising children's awareness on to their rights

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## A. Éducadroit

On 27 September 2017, after two years of development and consultation, the Defender of Rights launched the “Éducadroit” programme, designed to educate children and young people on rights and the law, alongside its partners, the “Cartooning for Peace” association in particular. The programme aims to raise children’s and young people’s awareness on the law and their rights, and help foster the adversarial spirit and critical analysis. The Éducadroit programme is not designed to be an academic course on legal notions, but rather to facilitate a process of questioning and reflection among children and young people.

Ten themes in all were selected. They are intended to provide answers to the main questions that children ask about legal matters, and encourage them to take an active part in social and political life.

1. What exactly is the law?
2. Who creates the law?
3. Are all equal before the law?
4. Who protects the law and rights?
5. Are sanctions the same for everyone?
6. Under 18 years old, what rights?
7. Do rights apply all the time?
8. What exactly are international law and European law?
9. Are rights the same in all countries?
10. Defend our rights, change the law!

In concrete terms, the programme includes an educational component providing teachers, participants and parents with:

- A resource centre listing over 200 teaching tools available to children and young people;
- [Two educational pathways](#) covering the programme’s 10 key points: A pathway for 6-11 y/o, comprising 10 videos, and a pathway for 12 y/o and above, based on the “Dessine-moi le Droit” (Draw Me the Law) exhibition created with Cartooning for Peace;
- A space dedicated to training, providing a training manual on Law, accompanied by a correspondence table for moral and civic education (EMC) modules created in partnership with the Ministry of National Education;
- A directory of speakers, enabling anyone to request input from a law professional or actor in
- Access to the law and rights, including the Defender of Rights’ jeunes ambassadeurs des droits des enfants (JADEs – Young Ambassadors of Rights for Children).

The project’s aims include setup of a network of actors contributing to the education of children and young people with regard to law and rights, and synergising actors already involved in this field.

The Éducadroit manual’s lesson plans were designed with the help of the Office central de la coopération à l’école (OCCE – Central Office for Cooperation at School); The Accès au droit des enfants et des jeunes (ADEJ – Access to Law for Children and Young People) Association set up the first “Law Club” in Marseille ; 6 classes were assisted in their reflections by researchers in the field of law, as part of the “Savanturiers du droit” (Knowledge Adventures in the Law) project; Judges spoke at

schools thanks to mobilisation of the Association des Jeunes Magistrats (AJM – Association of Young Magistrates); a philosophically orientated discussion sheet on the subject “What is the law?” was developed with the Centre international PhiloJeunes (International Philosophy for Youth Centre).

Over two hundred speakers are listed in the website’s online directory, representing 59 signatory bodies to the Educadroit Charter, who may be called upon to speak anywhere likely to foster discussion with children and young people. Members of the network, of which the InitiaDroit lawyers’ association is a special partner, continue to increase in number.

The *Cartooning for Peace* association also created the “Dessine-moi le droit” exhibition for



the programme, which is made up of works by cartoonists from a wide range of backgrounds (including Algeria, Cuba, France, Israel, Mexico, Palestine, Switzerland and Tunisia) and provides humorous but instructive illustration of Educadroit’s ten theme-based components. The exhibition’s 11 panels and related educational booklets are downloadable on

[Educadroit.fr](http://Educadroit.fr) or can be borrowed from the Defender of Rights’ head office or its territorial advisors in Bordeaux, Lyon, Marseille, Reunion Island and French Guiana.

This continually evolving programme is available free of charge to anyone involved in the supervision of children and young people, and only asks to be made maximum use of in order to improve education on law and rights.



## 7 innovative projects for education on rights

In partnership with law students, young people and community initiatives, the Defender of Rights has implemented seven innovative projects designed to develop children's and young people's education on law and rights in the context of the Educadroit programme.

Law students in law clinics at Paris 8, Paris Descartes, Bordeaux and Nancy Universities, the Paris Bar School, the HEAD Law School and the Young Magistrates

Association were trained and provided with tools to deliver talks on law to young audiences; the OCCE contributed to creation of the Educadroit programme and takes an active part in presenting it; the Centre International PhiloJeunes, part of a Franco-Quebecois programme for education on democratic and civic values, supported by UNESCO, created the "What exactly is the law? What is it for?" component for Educadroit; the ADEJ Association set up a legal club in Marseille, which

holds collective information sessions; the "Savanturiers du droit" programme, developed by the Centre de Recherche Interdisciplinaire (CRI – Interdisciplinary Research Centre), provides researchers in law to help guides classes' thinking on such topics as children's freedom of expression; and the "Cartooning for Peace" Association created Educadroit's "Dessine-moi le Droit" educational pathway, online and as a travelling exhibition in Metropolitan and Overseas France.

## B. Young Ambassadors of Rights for Children or for Equality (JADEs)

The "Jeunes Ambassadeurs des Droits auprès des Enfants ou pour l'Égalité" (JADEs) programme, fruit of a partnership between the Defender of Rights and the Civic Service Agency, embarked on its twelfth year of existence in 2017. It is the Institution's second scheme involving young people, but the only one created by young people for young people.

It is intended to advance knowledge of rights and their rights in particular among children and young people at secondary schools and recreation centres, as well as in hospital and in judicial youth protection facilities. JADEs' action assumes ongoing collective commitment on the part of the National Education Service, local authorities, three approved civic service associations (Unis-cité, Concordia and Centres d'Entraînement aux Méthodes d'Éducation Active [CEMEAs – Training Centres for Active Learning



Methods]) and the 30 delegates supervising the young people involved in their départements.

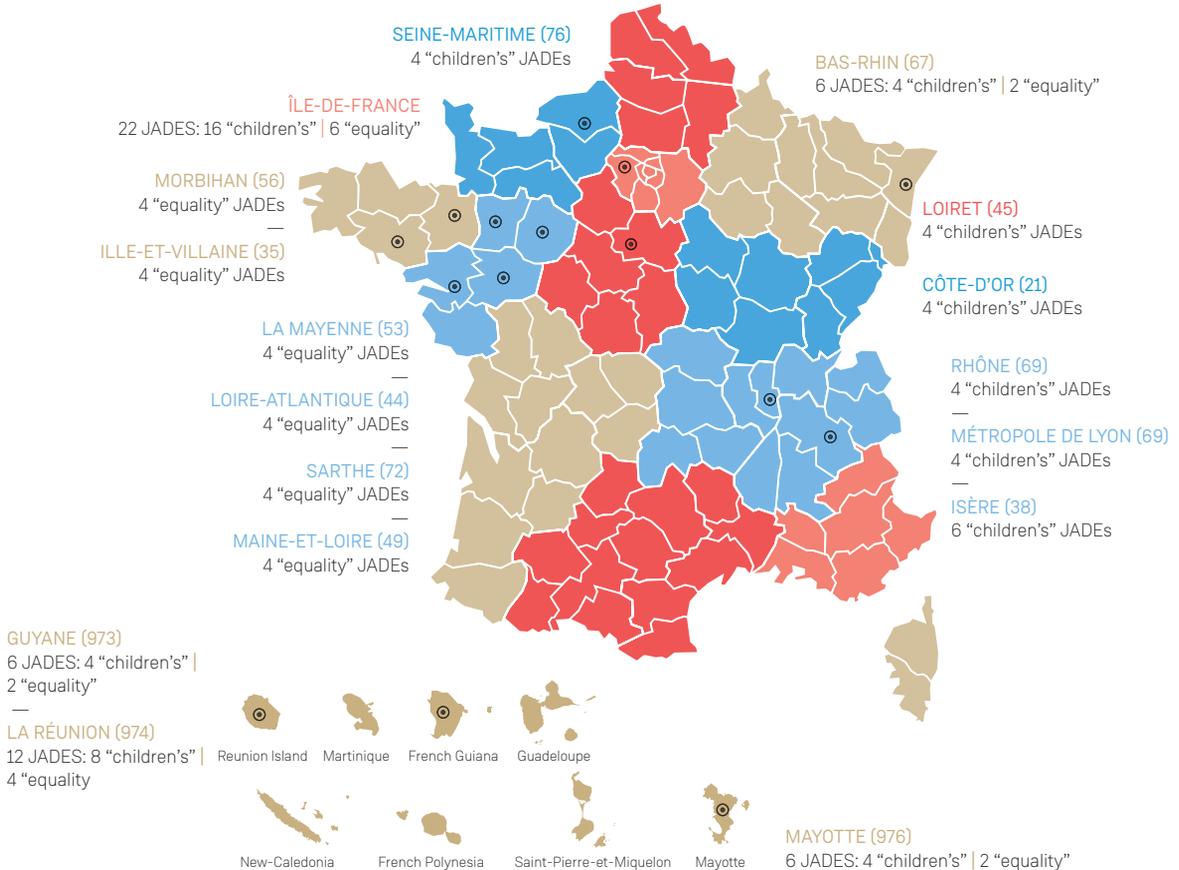
The programme has expanded considerably over the last four years, going from 48 to 102 young ambassadors at the start of the last school year, with coverage of five new départements – Seine-Maritime, Mayenne, Loire-Atlantique, Morbihan and Ille-et-Vilaine – bringing the number of participating départements to 23, plus the metropolis of Lyon.

Over the 2016/2017 school year, the young ambassadors raised 44,276 young people's and children's awareness with regard to promotion of children's rights and the fight against discrimination, not counting their participation in

76 events open to the general public that brought together a total of some 7000 people, including the "Train de la petite enfance" (Early Childhood Train) in the presence of the Defender of Rights and Children's Ombudsperson.

### Territorial distribution of JADEs in 2017/2018

102 JADEs: 78 JADEs in Metropolitan France (46 "children's" JADEs and 32 "equality" JADEs) and 24 JADEs in Overseas France



## C. The Train de la petite enfance (Early Childhood Train) initiative

From 3 to 20 November 2017, the Defender of Rights partnered the Train Expo Petite Enfance et Parentalité (Early Childhood and Parenting Exhibition Train) alongside a score of organisations including the Association des Maires de France (AMF – French Mayors Association), the Caisse nationale des allocations familiales (CNAF – National Family Allowance Fund), the SNCF Foundation and the OECD (Organisation for Economic Cooperation and Development). Promoted by the "Ensemble pour l'Éducation de la petite enfance" (Together for Early Childhood Education) Association, the exhibition train aimed to raise awareness and provide training on the issues and challenges of early childhood (0 to

6 y/o) in its multiple social, educational, sensorial, etc. aspects. At the exhibition, the Defender of Rights presented its activity with regard to defence and promotion of children's rights as well as its role as a recourse in the event of any violation of the rights of the child and as a mechanism for monitoring application of the International Convention of the Rights of the Child on behalf of the UN. Intended for parents, grandparents and children alike, as well as for professionals and elected officials, the Early Childhood Train left Paris and stopped off in thirteen French cities (including Bordeaux, Brest, Caen, Lille, Lyon, Marseille and Toulouse). It welcomed almost 32,000 visitors aboard.



Educapcity Rally children on the Defender of Rights' stand, June 2017

## D. Educapcity

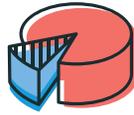
On 21 June, the Defender of Rights acted as a partner for the first year of the “EDUCAPCITY Citizenship Rally” final, which brought together over 3000 children who had either taken part in the regional stages or wanted to enrol in the capital stage, organised by the “Cap Sport Art Aventure Amitiés” (Cap SAAA) association.

As a staging point on the children’s itinerary, the Institution welcomed almost 400 children between the ages of 9 and 14 on an “expo-stand” set up in front of its Paris head office.

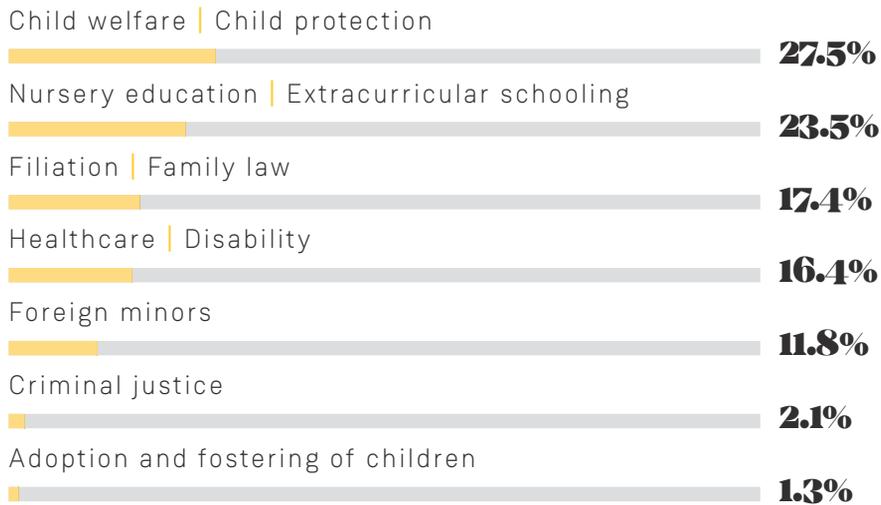
The exhibition was devoted to the Defender of Rights’ role with regard to protection of the rights of the child, and gave the children visiting

it a chance to answer three questions on the Institution “Who is the Defender of Rights?” “Can you write to the Defender of Rights?” and “Do special rights exist for children?” – they had to answer correctly if they wanted to continue on their way.

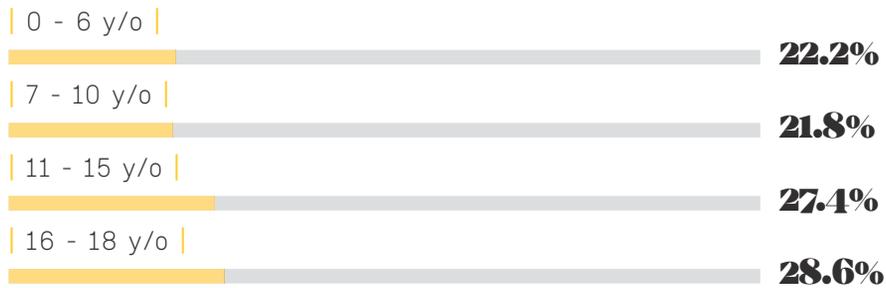
Run by the JADEs and the Defender of Rights’ services, the installation also enabled them to find out about the main rights of the child and add their contributions to the “We are all equal before the law” expression wall.



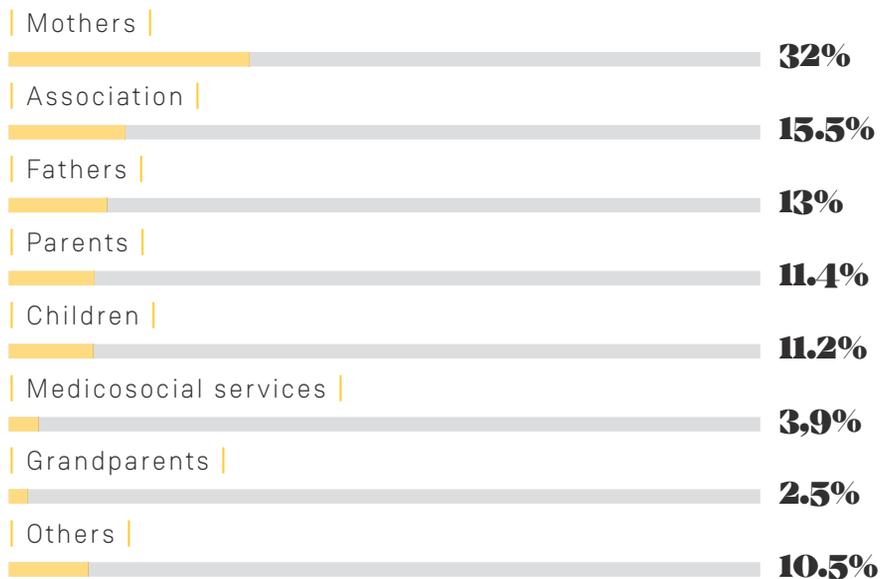
### **Breakdown according to types of complaints addressed to the Institution in the field of the defence of children**



### **Breakdown according to children's ages**



### **Breakdown by types of complainants**





# — IV — The Defender of Rights, upholder of the principle of equality

The principle of equality lies at the heart of our democracy, as we are reminded in Articles 1 and 6 of the 1789 Declaration of the Rights of Man and of the Citizen. Initially enshrined in general law, and then through equality in the eyes of public services, equality has been progressively embodied in the right to non-discrimination.

Tasked with combating direct and indirect discrimination as prohibited by law or international commitment, as well as with promoting equality, the Defender of Rights makes every effort to put an end to the acts of discrimination submitted to it, using all the powers that give it the right to do so. However, discrimination results from structures, deep-seated social mechanisms and the existence of socioeconomic imbalances and longstanding social hierarchies that help maintain it.

This is why the Defender of Rights is also committed to fighting for equality by endeavouring to make objective appraisals of the processes at the origin of inequalities and discrimination and deconstruct stereotypes, in particular through educating and raising awareness among economic and social sectors.

## Types of complaints in the field of the fight against discrimination



**21.8%**

are connected with **disability**



**17.6%**

are connected with **origin**



**11.9%**

are connected with **state of health**

## Fields concerned



**30.2%**

of complaints concern **private employment**



**22.3%**

of complaints concern **public employment**



## **10th Barometer of perception of discrimination at work: a reality that persists, affecting people unequally depending on their sociodemographic profiles**

The “Barometer of perception of discrimination at work”, produced each year by the Defender of Rights and the International Labour Organisation (ILO), provides a basis for accurate mapping of the scale of inequalities of treatment in the professional world.

The survey’s 10th edition, which made use of data from the “Access to Rights” survey carried out among the general population in 2016, confirms how much discrimination is still prevalent in the workplace and, through intersectional analysis, enables identification of the social groups most subject to it, according to characteristics of sex, age, origin or disability.

For the population as a whole, whether employed, unemployed or inactive, discrimination at work is still a widespread reality: one in every two people considers it to be frequent while seeking a job, and one in three during careers.

Acts of discrimination experienced during victims’ professional lives corroborate this perception: a third of the active population (34%) report that they have personally been the subject of discrimination (based on sex, age, pregnancy or maternity, origin, religious beliefs, disability or state of health), in access to employment or during their careers, over the last five years.

The intersectional approach helps emphasise the heterogeneity of the profiles of people concerned by situations of discrimination.

As the graph below shows, being a woman of child-bearing age, being seen as of non-European origin or being disabled are all characteristics associated with particularly high rates of discrimination in employment.

Women are systematically overrepresented in discrimination experiences reported, whatever motive is cited.

The world of work would seem to be a digest of social relations structured by prejudice

and persistent stereotypes. Traditional hierarchical subordination is progressively giving way to other problems, including casualization of work, the existence of mass unemployment, and new management practices that often take the form of informal pressures on employees, the youngest, women and the least qualified most of all.

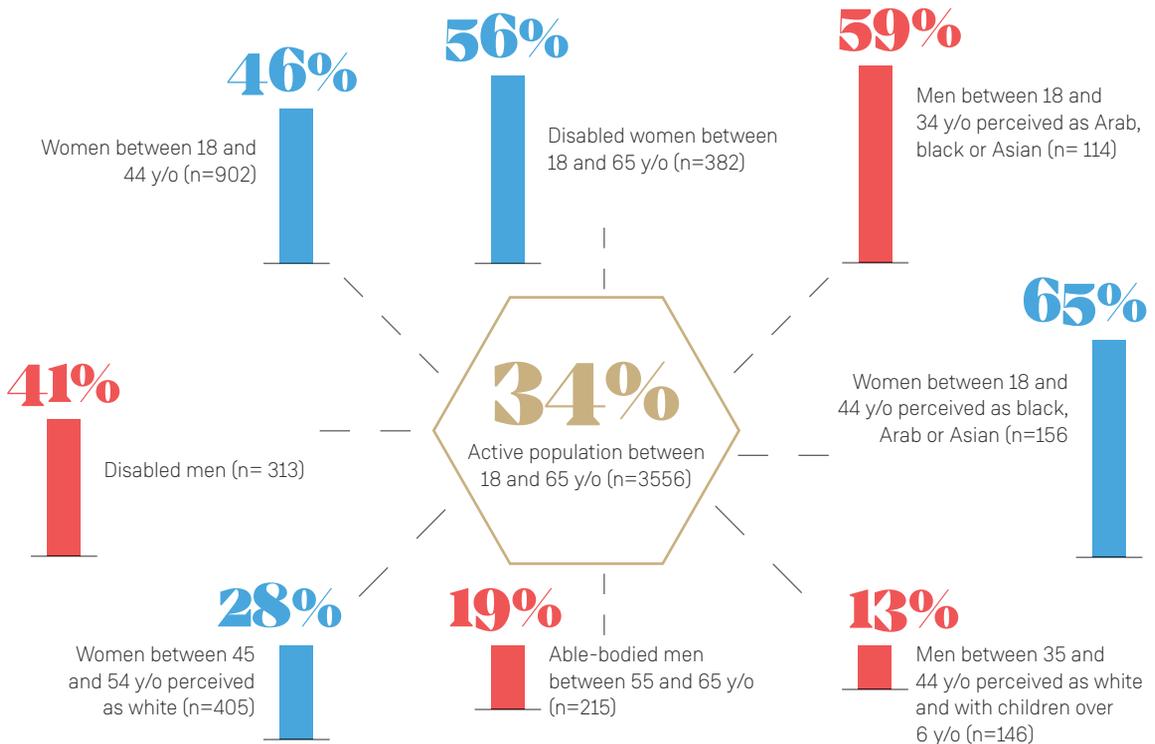
Complaints addressed to the Defender of Rights in the field of discrimination

confirm the findings of studies based on stated experiences: employment, whether with regard to recruitment, hiring or professional pathways, is the leading culprit when it comes to discrimination.

The Defender of Rights/ILO Barometer shows that age and sex are the two top motives for acts of discrimination connected with work (15%), followed by origin (8%), disability or state of health (6%) and religious beliefs (2%).

Findings based on complaints addressed to the Defender of Rights differ significantly: origin is still the leading criterion for referrals (around 20% of complaints) in the field of private employment, while state of health (around 21%) is the leading motive for referrals to the Defender of Rights in the field of public employment.

**Breakdown of discrimination experiences in the professional world for certain social groups (active population)**



# 1. Discrimination at work

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## A. Discrimination based on origin

In 2017, the Defender of Rights received 80 referrals bearing on origin-based discrimination at recruitment. Although the low number of such complaints is not representative of the scale of the problem, their content illustrates the ways in which discrimination is expressed. Even today it can still be the case that an act of discrimination based on origin results from a “human resources policy” implemented during the recruitment process.



This happened to a young woman who came to the Defender of Rights’ attention as she was not hired because the company concerned did not recruit “Africans”. During the course of an inspection, Labour Inspectorate officers came across a folder of CVs entitled “CV AFRIQIN”, containing all the CVs of individuals of African or overseas origin who had applied to the company for a job. After investigating, the Defender of Rights confirmed that the refusal to hire was discriminatory, in violation of Articles 225-1 ff. of the Criminal Code and L.1132-1 ff. of the Labour Code, and recommended to the company that it contact the complainant and offer to compensate her for the harm done and modify its recruitment methods ([Decision 2017-160](#)). In a similar case, another company asked applicants to input data on their birthdate and nationality on its website, when such information had no necessary direct connection with the job on offer or assessment of candidates’ professional aptitudes (Article L. 1221-6 of the Labour Code).

The Defender of Rights found that such data constituted a potential source of discrimination, and recommended to the company that it modify the configuration of its online job application form – which it agreed to do ([RA-2017-086](#)).

Discrimination not only occurs frequently during the hiring process, it also continues over the course of individual careers and within the work environment. The Defender of Rights was referred to by an employee of Maghrebian origin, who, after reporting discrimination in the promotion process, was subjected to openly racist behaviour, remarks on the part of his fellow workers and harassment by the company, generating a particularly offensive and humiliating racist climate.

The Defender of Rights presented its observations before the Industrial Tribunal, ([Decision 2015-269](#)) which recognised the discrimination based on origin and ordered the company to compensate the employee for the harm he had suffered.

The Civil Service is also clearly not free of such behaviour. The Defender of Rights was referred to by a complaint with regard to the racist remarks made by municipal councillors with a view to excluding a public servant. After investigating the case and conducted hearings, the Defender of Rights deemed that the facts of

discriminatory harassment were established and that the individual involved was right to request functional protection against such harassment.

It recommended to the Mayor to set matters in order and compensate the harm suffered by the public servant in question ([Decision 2017-005](#)).

## **B. Discrimination against women**

Acts of discrimination against women in their professional lives are often due to structural factors connected with career assessment and management, taking no account of pregnancy or the family responsibilities that still all too often weigh upon women, and based on practices and

prejudices firmly rooted in society. Wage inequalities persist, while discrimination connected with pregnancy or maternity continues unabated and sexual harassment currently affects one in every five women. ([January 2014 survey on sexual harassment at work 2014](#)).

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### **Penalising sexism: acknowledgement of environmental sexual harassment**

In view of its competence in matters of sexist discrimination and sexual harassment at work, the Defender of Rights contributed to advances in jurisprudence this year by presenting its observations in support of acknowledgment of environmental sexual harassment before the Orléans Court of Appeal ([Decision no. 2016-212](#)).

An employee working as a newspaper sub-editor complained of a particularly hostile work environment, marked by salacious jokes, insulting remarks about women, humiliating photographs posted on open-space walls, and pornographic computer wallpapers. Backing up the Defender of Rights' recommendations, the Court of Appeal acknowledged the notion of environmental harassment based on sex.



The Defender of Rights also ruled on a similar case concerning an employee who had been subjected to a deleterious environment at a telephone company ([Decision 2016-37](#)). The employee, who had reported remarks with sexual overtones made by a member of the management staff, had been accused of lying and sacked.

The Reunion Island Industrial Tribunal annulled her dismissal

and ordered her employer to give her back her job, subject to a daily penalty for non-compliance, resulting in the employer being obliged to pay the employee in question all wages owed since her dismissal almost four years previously.

This particular decision acts as a reminder to female victims that they can be protected against all forms of reprisals for having reported acts of sexual harassment.

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## **Sexual harassment: A decision in support of acknowledgement of victims' vulnerability**

After making use of its wide-ranging powers of investigation in a case concerning systematic sexual harassment at a cleaning company, the Defender of Rights' observations ([Decision 2015-247](#)) before the Paris Industrial Tribunal were followed up. The employees concerned and their union representative received almost €265,000 in damages for psychological and sexual harassment and for discrimination. The ruling made express mention of the Defender of Rights' investigation, which included dozens of hearings and several onsite checks.

The employees concerned, who were cleaning women of Maghrebian origin, most of them living by themselves and bringing up their children on their own, were the daily victims of salacious jokes, repeated sexist insults and gestures with sexual connotations, all carried out in an atmosphere of gender hierarchisation of tasks and major social precarity.

They had taken a long time to report what was happening as they were afraid of losing their jobs, and it was only with the help of the company's union representative that

they were finally able to do so. The women concerned and the union representative were systematically subjected to reprisals in the form of sanctions or dismissal.

In this case, the Defender of Rights analysed the acts of sexual harassment in the light of the women's situation of major economic vulnerability and with regard to the cleaning activity sector. The Industrial Tribunal based its decision on the legal and social analysis presented by the Defender of Rights.

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## **The Defender of Rights' action with regard to sexual harassment**

The Defender of Rights is competent to deal with complaints by victims of sexual harassment at work and in access to goods and services, as part of its mission to combat discrimination. Sexual harassment is regarded as a form of inequality of treatment between women and men (Directive 2006/54) and therefore constitutes an act of sex-based discrimination under French law.

The survey published by the Defender of Rights in 2014 shows that, in France, 1 in 5 women state they have been subjected to sexual harassment at work, but that women

seldom dare talk about it or take any steps to assert their rights. The survey also shows that over half of the working population, men and women alike, consider themselves poorly informed on sexual harassment at work (57%).

The Institution launched an awareness-raising campaign designed to provide ways of identifying and reacting to sexual harassment at work and knowledge of bodies to refer to, including the Defender of Rights.

[Information materials](#) were communicated to almost a thousand bodies across

French soil active in assisting victims of sexual harassment in any consequent steps they might take. The campaign was also disseminated on social networks (Twitter, Facebook, LinkedIn and YouTube) with the hashtag #Unefemmesurcing ("one woman in five").

## Zéro Cliché Prize for girl/boy equality

On 8 June 2017, the Defender of Rights hosted the prize-giving ceremony for the [5th edition of the Zéro Cliché competition](#) organised by the Centre pour l'éducation aux médias et à l'information (CLEMI – Centre for Media and Information Literacy) in partnerships with TV5 Monde/ Les Terriennes, Causette magazine and Les

Nouvelles News information website.

The competition rewards the best media productions by schoolchildren designed to deconstruct sexist stereotypes, in any press genre (article, humorous piece, interview, portrait, report, editorial, newspaper cartoon, column,

etc..) and in any medium (text, audio or video).

For the new 2017 edition, over a hundred creations were examined by a jury including the Defender of Rights.

### Pregnancy and maternity leave

Although the Defender of Rights is pleased to see increasing numbers of judgements handed down against acts of discrimination based on pregnancy, with more frequent convictions and heavier penalties imposed, it notes that, despite the fact that its observations before courts are usually acted on, there is no decrease in numbers of complaints received.

Announcement of pregnancy, in particular during a recruitment procedure, may well lead to a discriminatory refusal to hire. As an example, an applicant for a job at an old people's home, whom the HR Manager had asked to sign a contract as soon as possible, saw her upcoming job cancelled after she said she was pregnant. During the investigation mounted by the Defender of Rights, the home's management stated that it was ready to recruit the complainant immediately ([RA-2017-075](#)).

Pregnancy and motherhood are recurrent motives for discrimination in employment and also have an impact on career paths, remuneration and access to promotion, sometimes even leading to dismissal.

The Defender of Rights intervened on behalf of a complainant ([Decision 2017-11](#)) who had been subjected to discrimination with regard to remuneration (objectively unjustified wage freeze) and seen her career stagnate after she announced her second pregnancy and refused to put off her departure on maternity leave. The company concerned published two job offers corresponding to her position during and following her return from maternity leave.

Her state of health deteriorated and she was finally sacked. On 21 March 2017, the Versailles Court of Appeal ruled that the recruitment procedure launched during the maternity leave period constituted an act preparatory to her dismissal carried out during the legal period for protection of a woman who was pregnant or who had given birth, and that it was of no consequence that her dismissal had occurred after such period. The company was ordered to pay the complainant almost 200 000 euros in compensation for the various acts of discrimination she had been subjected to (Order of 21 March 2017).

As regards the Civil Service, the Defender of Rights also presented its observations before the Lille Administrative Court in the case of a woman, a technical services manager, who, upon her return from maternity leave, learned that her job would thenceforth be carried out by her assistant, and that she would be assigned a new position. What is more, her new post did not carry the same level of responsibility, as it only involved overseeing 10 public servants rather than the 80 she had previously been in charge of ([Decision 2017-157](#)).

There are sometimes several motives for an act of discrimination, and the intersectional analyses carried out by the Defender of Rights helps courts take full account of each of them. For example, it pronounced on the situation of an employee who had been subjected to unequal treatment based on her state of health, her pregnancies and her union activities alike.

Its analysis of the case led the Paris Court of Appeal, in a ruling delivered on 15 June 2017,



to find that there had been multiple acts of discrimination with regard to remuneration and professional assessment, followed by dismissal for no real or serious cause ([Decision 2017-029](#)).

One of 2017's emblematic decisions with regard to gender equality at work concerned an underhand act of discrimination connected with a measure initially aimed all civil servants of whatever sex. It concerned the practice of freezing civil servants' numerical ratings when they were absent, a measure which de facto penalised women more than men due to maternity leaves. The Defender of Rights had previously adopted a number of decisions establishing that freezing scores due to a public servant's absence constituted an act of discrimination based on sex and pregnancy in view of maternity leave. As regards the hospital

civil service, it recommended to the managers of hospitals involved that they re-examine the situations of public servants concerned and made a general recommendation to the Minister of Social Affairs and Health, reminding her of the legal framework governing ratings and the prohibition of this discriminatory practice. ([Decisions nos.2016-117](#) and [2016-191](#)). Its recommendation led to the Minister disseminating an information note on 9 January 2017, addressed to all regional health agencies and directors of public health institutions. The Minister also sent several reminders of the law to institutions identified as implementing the illegal practice of freezing such ratings.

## C. Taking account of disability and state of health

Referrals to the Defender of Rights bearing on lack of reasonable accommodation and discrimination against disabled individuals at work account for almost 9% of all referrals regarding discrimination. The Defender of Rights regularly presents observations on this subject before the courts, and has made full use of its power of recommendation, in particular to public employers.

It carried out a survey on administrations' digital policies and noted widespread non-compliance

with various of their number's obligation to make digital tools accessible to visually impaired public servants, along with inadequate training of public servants, project leaders and developers in particular.

It made recommendations to the Prime Minister, Minister of the Interior and Minister of Economy, calling for publication of a circular to the attention of administrations reminding them of their obligations with regard to digital accessibility and the need to train their staff,



information system management staff in particular. The Ministers of the Interior and Economy said that they had undertaken the preparatory work recommended ([Decision 2017-001](#)).

With regard to the territorial civil service, the Defender of Rights had occasion to remind municipalities of their obligation to guarantee health and safety in the workplace and follow any recommendations on the part of prevention physicians ([Decision 2017-2016](#)). In this respect, the Defender of Rights considered that a municipality's repeated refusal to adapt one of their officers' workstations, in compliance with the prevention physician's recommendations, constituted discriminatory harassment. It presented its observations before the Administrative Court ([Decision 2017-2016](#)), which found that the obligation to ensure health and safety at work had not been complied with, without, however, acknowledging that any act of discrimination had taken place, basing itself on absence of intention on the local authority's part, which raises a question.

The essential consideration of disability is not limited to the single field of physical or motor disability. Disabilities may also be psychological, sometimes expressed through problems in forming relationships, which may eventually have an impact on recruitment and career paths.

The Defender of Rights noted that employers lacked adequate training in this field, even though some of them were aware of an employee's disability.

Such was the case with a staff member who seemed to be on the way to obtaining

tenure, whose professional qualities were acknowledged, but who was refused tenure due to difficulties with social interactions, even though the company's director had received a medical certificate from a psychologist establishing that the complainant showed "many of the signs associated with Asperger's Syndrome". Investigation of the case revealed that the company was aware of the employee's disability and that his difficulties with social interactions were connected with his psychological disability, but had taken no steps to ensure his continued employment.

Following the Defender of Rights' decision to present its observations before the Labour Arbitration Court, the company in question offered to take the complainant back on its payroll, and he accepted ([Decision 2017-38](#)).

Distinct from disability but often connected with it, illness is also at the origin of a great many complaints. Dismissals following a long absence due to illness are frequent occurrences. The Defender of Rights pointed out their discriminatory nature, both in the case of an employee who had been the victim of an accident and was a recognised disabled worker, but who had been sacked without the company involved being able to show proof of the alleged disturbance to its operation ([Decision 2017-16](#)) and in that of three employees in one and the same company who had been dismissed for the same motive ([Decision 2016-240](#)).

## Religious discrimination

Referrals connected with religious beliefs only account for a very small number of complaints received by the Defender of Rights. In 2017, religion accounted for 4.3% of complaints addressed to the Institution reporting acts of discrimination, most of them in the field of employment (1.6%), public services (1.4%), education and training (0.5%), and equality with goods and services (0.7%).

Such complaints arise in a particularly unstable context marked by a blurring of the notion of secularity along with a number of divergences in jurisprudence.

The Defender of Rights witnessed the appearance of a new conception of secularity leading to progressive extension of the obligation of neutrality prohibiting religious signs, Muslim in particular, to private companies and access to private goods and services.

Over the past few years, jurisprudence relating to discrimination connected with religious convictions in the field of private employment, in particular with regard to dismissal, has developed in somewhat ambiguous fashion – ambiguities which should be cleared up in the wake of two rulings delivered by the Grand Chamber of the Court of Justice of the European Union on 14 March 2017 (ref. CJEU 14 March aff. C-157/1 and C-188/15).

They followed the Court of Cassation's decision of

22 November 2017 in the Bougnaoui case, which made it clear that the ban on wearing religious signs was only legal insofar as company in-house regulations or a memo to equivalent effect contained a “neutrality clause”, which had to be general and undifferentiated and could only apply to employees in direct contact with clientele, which was not the case in this instance. (Cass. Soc. 22 November 2017, no.2484 / 13-19.855).

Stances on religious neutrality go hand-in-hand with difficulties connected with suspicions of radicalisation directed at individuals of Muslim origin. In one case, a young girl had her placement at a day-nursery interrupted due to discriminatory suspicions ([Decision 2018-012](#)).

Complaints relating to religious discrimination in the public services often stem from a wide interpretation of the principles of secularity and neutrality in public services, and it is evident that such principles are regularly and wrongly applied to users. In one example, the Defender of Rights received a complaint bearing on a requirement imposed by centre d'hébergement et de réinsertion sociale (CHRS – Accommodation and Social Integration Centre) that its users not wear any religious signs – a prohibition accompanied by a refusal to process files and provide accommodation solutions to

individuals displaying such signs.

However, most complaints addressed to the Defender of Rights bear on the public education service, which seems to crystallise the main difficulties encountered. This is demonstrated, for example, by the case of a girl who had passed her baccalaureate but was not allowed to attend the Baccalaureate graduation ceremony because she wore a veil, as well as by a case in which the obligation of neutrality was imposed on a student at a University Institute for Teacher Training (IUFM) during her internship at a private lycée ([Decision 2018-013](#)).

Cases of discrimination based on religious convictions also exist with regard to access to private goods and services, and affect various activity fields, including access to leisure facilities (sports halls, bowling alleys, water parks, etc.).

Such situations most often consist of excluding women wearing veils, who are already excluded from public employment, access to various jobs in the private sector, and to various goods and services. They are subjected to a form of intersectional discrimination in which religious, gender and ethnic origin aspects often prove indissociable.

## 2. Discrimination in access to goods and services

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### Particular economic vulnerability at the heart of structural discrimination?

The Law of 24 June 2016 bearing on the fight against discrimination due to social precarity extended the field of French non-discrimination law by adding “*particular vulnerability resulting from [an individual’s] economic situation, either apparent to or known by [the] perpetrator*” of the act of discrimination to the list of criteria prohibited by law. The Defender of Rights is making every effort to ensure that this new discrimination criterion leads to renewed strategies on action on behalf of the most disadvantaged.

The criterion of particular vulnerability could play a key role in understanding – above and beyond the aspects of origin and gender (as well as disability, age, religion and sexual orientation) – the social aspect underlying numerous acts of discriminations. The Defender of Rights considered that refusal on the part of numerous prefectures to examine requests for admission or renewal of residence permits from people with no fixed address and only able to provide, as the proof of address required by law, a certificate

of address for service from a centre communal d’action sociale (CCAS – Community Centre for Social Action) or an approved body (“administrative domiciliation” service) constituted an act of discrimination based on particular vulnerability resulting from the economic situation, as prohibited by the Law of 27 May 2008 ([Decision 2017-305](#)).

### A. Discrimination in the banking sector

As is shown by the tests carried out by the municipality of Villeurbanne with the Defender of Rights’ support and made public in September 2017, discriminatory practices hamper access to banking products and services. The 90 situation tests carried out in 63 branches of 12 banks in Villeurbanne and its agglomeration highlighted discrimination based on origin in obtainment of real-estate loans.

Clients of foreign origin are given less time to state their case, receive less information and

almost never obtain a loan simulation; they are sometimes not even asked to sit down. Access to credit in order to set up a business also appears to be impeded by discrimination based on clients’ origin or sex, with women’s applications being turned down more often despite positive feasibility studies or financing plans ensuring low levels of risk.

## The new criterion of bank domiciliation

The Defender of Rights implemented the new bank domiciliation criterion on behalf of an individual living in Metropolitan France whose payment by cheque was refused by a shop in Guadeloupe, which expressly stated that “out-of-town” cheques were not accepted. The Defender of Rights recommended to the shop that it modify its conditions for payment by cheque, and advised the National

Cooperative Society to remind all the independent shopkeepers in its network of the discriminatory nature of such practices ([Decision 2017-162](#)). The party at fault confirmed that it had sent reminders to all its shops and drawn special attention to its decision in an information letter sent to all its employees and managers.

Subordinating payment by cheque to a condition based on

a person’s place of residence is an illegal act of discrimination prohibited by Article 225-2 4 of the Criminal Code.

Since enactment of the Programming Law of 28 February 2017 bearing on the real equality of Overseas French Territories, it has also been prohibited by Article 2 3° of the Law of 27 May 2008.

In a number of cases, the Defender of Rights had occasion to make use of its powers to facilitate transactions, thanks to its close collaboration with Public Prosecutors’ offices: In all such cases, following the Defender of Rights’ investigation, defendants admitted their guilt and transactions were then ratified by the Public Prosecutor.

This procedure was employed against a credit institution following its refusal to grant a

consumer loan to a person living in a hostel who required it in order to purchase a pair of glasses, constituting an act of discrimination based on place of residence and particular economic vulnerability.

The transaction was combined with payment of damages and measures to put a stop to such practices in all its branches ([Decision 2017-304](#)).

## B. Access to housing

### “Access to Rights – Housing” survey

The fifth section of the “Access to Rights” survey, published in late 2017, analyses conditions for access to housing and discrimination encountered while looking for rented accommodation. The study provided an overview of inequalities that can compromise the right to housing, which is acknowledged as a

fundamental right on which access to other rights essential to everyday life depends (education, health, public services, etc.).

Perception of discrimination in this area is particularly widespread: 46% of respondents considered that discrimination while looking for accommodation is frequent. Among the people who had

occasion to look for rented accommodation in the course of the last five years (almost a quarter of all the survey’s respondents), the great majority (70%) succeeded in finding what they were looking for in under a year, while almost a third found it a great deal more difficult: over a year for 10%, and a full 21% still looking at the time the survey was conducted.



Such periods differ greatly, however, depending on the rental sector sought for and people’s profiles. Whereas the youngest, mostly childless respondents usually found accommodation in the private rental stock with the least delay, individuals less able to meet the conditions for access to such housing owing to their lack of resources and/or being stereotyped are often forced to limit their searches to the social housing stock.

**Among respondents who had looked for accommodation to rent, 14% stated that they had been faced with an act of discrimination (for whatever motive).**

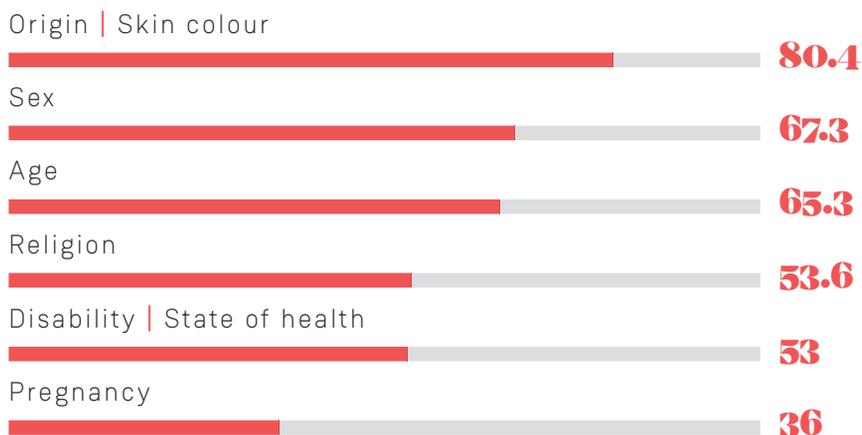
This percentage varies considerably depending on the social groups concerned. From 5% among men perceived as white and qualified to 19% among the disabled, 24% among single mothers with children under 3 years old, 30% among

individuals perceived as Arabs and as high as 40% among individuals perceived as black.

However, few people who stated they had experienced discrimination had taken any steps to assert their rights (only around 11%). Almost no legal proceedings are initiated in this field. The difficulty of proving an allegation, complexity of procedures and long waiting periods are enough to dissuade most people.

### **Alleged motives for discrimination during the search for rented accommodation**

Several possible responses - (n=250)



The “ALUR” Law on access to housing and renovated urban planning introduced further obligations incumbent upon the real-estate professions. Prohibition of discrimination is now an acknowledged professional requirement, expressly incorporated into Article 3 of the Annex to the Decree of 28 August 2015 setting out the rules comprising the code of ethics applicable to real-estate professionals.

The Defender of Rights had occasion to point out that real-estate professionals subject to the provisions on prohibition of discrimination as legal entities may also be banned from practising pursuant to Article 9-21° of the Law of 2 January 1970 governing real-estate activities.

Discrimination in access to private housing may be the result of ignorance of the legal framework on the part of private individuals or employees. Whether confronted with guilty parties or operators in good faith, the Defender of Rights promotes knowledge of applicable law, evolution of practices, and mediation.

A woman was refused rental of an apartment because she wanted to occupy it with her 8-year-old daughter. Discrimination due to the complainant’s family situation was apparent, and the Defender of Rights decided to remind the agency concerned of the legal framework ([Decision 2017-259](#)).

Discrimination can also result, for example, from a private owner refusing to rent an apartment to a young couple because they are expecting their first child, so as to “take account of the interests of the joint owner living downstairs”. In this case, the Defender of Rights decided to remind the owner of the terms of the law, and recommend that he compensate the complainants for the harm done to them. The owner paid them the sum of 300 euros, corresponding to the difference between the rent they would have paid and the rent they currently pay for housing rented as a matter of urgency following his refusal ([Decision 2017-092](#)).

Online platforms are not free of discriminatory advertisements, and the Defender of Rights does its utmost to ensure they do not turn into lawless zones. It was referred to by a user regarding online publication of an advertisement penned by a private individual: “If you’re homosexual, a party person, too strung out, stressed, dirty, drugged up, alkie, etc.... Good luck to you, but that’s not my scene”. The Defender of Rights reminded the advertisement’s author of the legal framework and noted the platform operator’s commitment to take the necessary measures to combat publication of discriminatory ads ([Decision 2017-036](#)).

## C. Access to transport

The Defender of Rights received a complaint relating to disabled people’s inability to access promotional offers only available on a website dedicated to the sale of rail tickets. The company managing the site provided no objective justification for this difference in treatment, but explained that the situation was caused by data-processing problems that it was trying to sort out. The Defender of Rights took note of the changes that had to be implemented and concluded that the policy of refusing disabled people’s access to preferential fares on international rail



journeys constituted a discriminatory practice within the meaning of Article 19-2 of the EC regulation of 23 October 2007, as well as Article 21 of the Charter of Fundamental Rights on

the one hand and Article 2-3° of the Law of 27 May 2008 revised, on the other. The Defender of Rights recommended to the company managing the website that it enable disabled

individuals to access all its promotional fares, including those for international journeys ([Decision 2017-169](#)).

## **D. Access to recreational activities**

Perpetrators of acts of discrimination need to be reminded that there is a price to pay for such acts. Such was the case in 2017 with regard to discrimination at the entrance to a discotheque. For refusing to allow a group of friends of Maghrebian origin to enter, the disco's manager

was sentenced to 6 months' imprisonment and an 8,000-euro fine, after the Defender of Rights' observations had been taken into account. The legal entity also had to pay each complainant 500 euros and was fined 10,000 euros ([Decision 2017-044](#)).

## **Opinion on acts of discrimination in the field of sport**

On 18 September 2017, in the context of drafting the 2018 Finance Law, the Defender of Rights was heard by the National Assembly Committee on Cultural Affairs and Education's rapporteur, with regard to the "Sport, Youth and Community Life" mission (Opinion 17-08).

Heard with respect to its mission of combating

discrimination and promoting equality as well as with respect to its mission of protecting and promoting the rights of the child, the Defender of Rights pointed out that racism, sexism, homophobia and prejudice connected with disability were still all too present and taken for granted in sport, depriving children and adults alike of access to

physical activities and sports.

While acknowledging the efforts made by the Ministry of Sport, the Defender of Rights made a number of recommendations, including launch of a new campaign on prevention of discourtesy and development of training actions combating discrimination.

## **E. Access to funerary care**

It has been several years since the Defender of Rights first recommended lifting the ban on embalming the bodies of HIV and/or a viral hepatitis carriers, considering that such prohibition constituted an act of discrimination. In 2012, the [Institution's report on funeral legislation](#) recommended that professional embalmers' practices be developed and secured.

The desired reform was implemented in 2017, lifting the ban through publication of two texts: [the Order of 10 May 2017](#) setting the conditions for embalming at home, and the [Decree of](#)

[10 May 2017](#) bearing on the conditions under which embalmers practised their profession and information on embalming provided to families. Since 1 January 2018, it has been legal to embalm the bodies of HIV carriers, with France adopting regulations similar to those in countries that also permit such funerary care.

# 3.

## Taking account of disability: A culture of lateness

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Effectiveness and defence of the rights of the most vulnerable sectors of the public, including the disabled, are central to the Defender of Rights' actions. It sees that they are guaranteed full exercise of all human rights in compliance with France's international commitments.

Ratified in 2010, The International Convention on the Rights of Disabled Persons (ICRPD) clearly identifies the environment as being responsible for and co-producer of the "situation of disability", as it is with regard to individual deficiencies and incapacities. It invites States to adopt inclusive public policies, acting simultaneously on environmental and personal factors in order to enable full and effective participation by disabled individuals.

Yet, even though major progress has been made over recent years with regard to disabled people, in particular under the impetus of the Law of 11 February 2005 on equality of rights and opportunities, participation and citizenship, the Defender of Rights regrets to note that France's commitments at international level are not always truly or sufficiently taken into account in the drafting, implementation and assessment of public policies on disability.

### A. The rights of the disabled under the eye of the United Nations

The Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas-Aguilar, was mandated as an independent expert by the UN Council for Human Rights and General Assembly to deliver opinions on implementation of the rights of disabled people throughout the world.

During her visit to France in October 2017, she wanted to meet the Defender of Rights. While pointing out that considerable progress had been made over recent years, the Defender of Rights emphasised that there was still a great deal of time to catch up on, and that constant vigilance was required if the rights acquired by the disabled were not to be challenged. Among other things, he drew the Special Rapporteur's attention to the following points:

- The lack of statistical data on the situations and needs of disabled persons (see inset);
- Inclusive education and the inadequacy of measures adapted to the needs of disabled schoolchildren, as regards, among other things, training of education professionals, disability-related accommodations at schools, individuals accompanying disabled schoolchildren, and schooling in private establishments under State contract;
- Difficulties that disabled children encounter in access to extracurricular and out-of-school activities;
- The unsatisfied needs of individuals with autistic or behavioural disorders;

- Reception by établissements et services sociaux et médico-sociaux (ESMSs – medicosocial institutions and services): Disabled individuals with no compensation solutions adapted to their needs, lack of complementary care (such as speech therapy) for people in ESMSs, and the situation of disabled individuals taken into care in Belgium;
- Compensation of supplementary expenses connected with disability: difficulties connected with the prestation de compensation du handicap (PCH – disability compensation allowance), in particular as regards “human aid” and “technical aid”;
- The allocation aux adultes handicapés (AAH – Allowance for Disabled Adults): lowering of disability rates and challenging of rights in the AAH.



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## **Inadequate statistical knowledge of disabled people’s situations and needs**

The Defender of Rights examined the question of data on disabled persons in the context of its promotion and monitoring of application of the International Convention (ICRPD), which obliges signatories to report on progress made in its implementation, which implies availability of accessible and comparable statistical data.

In order to measure the effectiveness of disabled

people’s rights, it is therefore essential that France provide itself with an efficient national system for centralisation and exploitation of indicators, statistical data, studies and research on the situations and needs of the disabled in general and autistic individuals in particular.

However, the various available data sources do not always have the same notion of disability. Statistical

sources and reference periods also vary, meaning that comparable results are unavailable.

There is therefore continuing lack of data on numbers of disabled individuals, their situations, their needs, and responses provided, which makes effectiveness of rights difficult to measure.

Full implementation of Article 6 of the ICRDP bearing on

the rights of disabled women involves production of data according to sex. More generally, available data hampers any real account being taken of the diversity of disabled people's situations, most of all those whose characteristics are likely to reinforce their vulnerability.

The Defender of Rights has repeatedly alerted the public authorities to the lack of quantitative and qualitative data on disabled people and their needs. It shares such

observations with the Court of Auditors, which is why, on 28 September 2017, the Defender of Rights adopted a decision ([Decision no. 2017-257](#)) in which it made a series of recommendations intended to improve such knowledge and its dissemination.

The lack of statistics was brought up by the UN's Special Rapporteur on the Rights of Persons with Disabilities at the end of her visit to France, and [Decision 2017-257](#)

will certainly underpin the Defender of Rights' future contributions to other work.

Implementation of a number of its recommendations is already underway: the Ministry of Health and Solidarity has announced the upcoming launch of an "Autonomy" survey among the disabled and the elderly, to be conducted in 2021-2022 but whose outlines are yet to be defined.

## B. Assessment of public policies on autistic individuals



On 10 November 2017, the Defender of Rights was heard by the Court of Auditors in the context of the drafting of the 4th Autism Plan. It emphasised that the action strategy under development should lead to increased inclusion of autistic individuals in public policies.

It deemed it essential to do everything possible to encourage bridgeways between medicosocial and ordinary sectors, along with initiatives on training and accompaniment of non-specialist professionals in such sectors as early childhood, education, extracurricular and out-of-school activities and child protection, in order, among other things, to break down the barriers erected by received ideas on autism.

Lack of training on and accompaniment of disability in general, and the specificities of autism in particular, is a source of discriminatory practices leading to repeated breaks in autistic individuals' care pathways throughout their lives.

The Defender of Rights also drew the Court's attention to the need for public policies to define strategies and actions in support of parenting as far upstream as possible. Such support for parenting might be provided via "respite" and family support mechanisms, involving siblings in particular. In addition, the Defender of Rights stressed the importance of recognising and involving parents as possessors of their own expertise in caring for their children.



## C. The 2017 Presidential Election's accessibility to disabled voters

The Presidential Election is a highpoint in the democratic calendar. The Defender of Rights keeps a close watch on full exercise of citizenship.

During the 2017 Presidential Election, as is the case with all elections, the Defender of Rights went into action to ensure that disabled individuals were able to participate fully in political life and exercise their right to vote effectively, on the basis of their equality with all other citizens.

In addition to ensuring accessibility of offices and voting techniques, guaranteeing disabled individuals the effectiveness of their right to vote also involves making the entire voting process accessible, including the election campaign itself. Yet, on this particular point, the Defender of Rights had noted marked differences in solutions put forward, which is why it conducted interviews with each candidate in the Presidential Election, stressing the need to ensure their campaign's accessibility and requesting them to ensure that:

- Public policy meetings were held at venues accessible to disabled persons and served by accessible forms of transport;

- Debates were accessible to disabled persons (audio-induction loop systems, simultaneous translation of discussions in French sign language (FSL) and cued speech (CS), simultaneous transcription by velotyping, dissemination of information in forms that are easily read and understood by people with intellectual disabilities, etc.) ;
- Ensuring their websites and mobile apps are accessible;
- Making written propaganda documents (programmes, tracts, profession of faith, etc.) accessible along with video materials disseminated online.

As the Defender of Rights pointed out, such measures also help make the campaign accessible to a wider electoral audience including elderly voters suffering from loss of autonomy and illiterate voters who have problems accessing all the information disseminated by candidates.

## The lack of a special system enabling deaf or hearing-impaired citizens to take part in Defence and Citizenship Day

The Defender of Rights received a complaint from a hearing-impaired individual who was unable to participate in Defence and Citizenship Day due to the absence of adapted measures.

Its intervention with the Ministry of Defence's departments enabled the complainant to take part in the Day and benefit from translation into sign language.

The Defender of Rights nonetheless recommended to the National Service Department that it take appropriate measure to ensure that any disabled person wishing to take part in Defence and Citizenship Days, whatever their disability might be, would benefit from a specially adapted mechanism enabling him/her



to receive the same information as other participants ([Decision 2017-060](#)).

The Ministry undertook to include a special clause in conventions asking the people concerned to request the reception accommodations they required. The special needs of people with reduced mobility will henceforth be

taken into full account in upcoming infrastructure operations. For hearing-impaired people that require them, subtitles will be added to video sequences broadcast during Defence and Citizenship Days, and sign-language interpreters will be provided by the competent National Service Centre.



### Breakdown according to types of complaints addressed to the Institution in the field of combating discrimination

Criteria / Fields	Private employment	Public employment	Public services	Goods & services	Education	Housing	Total
Disability	3.80%	4.90%	3.80%	3.50%	3.80%	2.00%	<b>21.80%</b>
Origin/Race/ Ethnic group	6.40%	3.40%	3.10%	2.00%	1.20%	1.50%	<b>17.60%</b>
State of health	3.80%	4.90%	1.20%	1.10%	0.60%	0.30%	<b>11.90%</b>
Nationality	0.70%	0.30%	4.30%	1.20%	0.30%	0.30%	<b>7.10%</b>
Union activities	3.10%	2.50%	0.20%	0.00%	0.10%	0.00%	<b>5.90%</b>
Age	2.30%	1.30%	0.50%	0.80%	0.30%	0.30%	<b>5.50%</b>
Religious convictions	1.10%	0.50%	1.40%	0.70%	0.50%	0.10%	<b>4.30%</b>
Family situation	1.20%	0.80%	0.80%	0.50%	0.10%	0.80%	<b>4.20%</b>
Sex	2.20%	1.00%	0.30%	0.60%	0.10%	0.00%	<b>4.20%</b>
Pregnancy	2.40%	0.90%	0.10%	0.10%	0.10%	0.10%	<b>3.70%</b>
Place of residence	0.30%	0.20%	0.90%	1.00%	0.10%	0.40%	<b>2.90%</b>
Economic vulnerability	0.50%	0.10%	0.80%	0.80%	0.10%	0.50%	<b>2.80%</b>
Physical appearance	1.20%	0.20%	0.40%	0.30%	0.20%	0.00%	<b>2.30%</b>
Sexual orientation	0.30%	0.30%	0.30%	0.30%	0.10%	0.10%	<b>1.40%</b>
Sexual identity	0.40%	0.10%	0.40%	0.20%	0.00%	0.00%	<b>1.10%</b>
Political opinion	0.10%	0.50%	0.20%	0.00%	0.00%	0.00%	<b>0.80%</b>
Patronymic	0.20%	0.10%	0.20%	0.20%	0.00%	0.10%	<b>0.80%</b>
Mores	0.10%	0.20%	0.00%	0.10%	0.00%	0.00%	<b>0.40%</b>
Bank domiciliation	0.00%	0.00%	0.00%	0.20%	0.00%	0.00%	<b>0.20%</b>
Genetic characteristics	0.10%	0.00%	0.00%	0.00%	0.00%	0.10%	<b>0.20%</b>
Loss of autonomy	0.00%	0.00%	0.00%	0.10%	0.00%	0.00%	<b>0.10%</b>
Other	0.00%	0.10%	0.30%	0.10%	0.00%	0.30%	<b>0.80%</b>
<b>General total</b>	<b>30.20%</b>	<b>22.30%</b>	<b>19.20%</b>	<b>13.80%</b>	<b>7.60%</b>	<b>6.90%</b>	<b>100%</b>



# — V — The Defender of Rights, a watchdog for safety and freedoms

The right to safety, enshrined in the 1789 Declaration of the Rights of Man and of the Citizen, includes the freedom not to be imprisoned without good cause:

*"Art. 2. The goal of any political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety and resistance against oppression."*

As in previous years, 2017 was marked by the pervasiveness of the terrorist threat across our national territory, along with political determination to further ensure citizen's safety by adopting new measures restricting rights and freedoms. Such evolution sometimes results from confusion of the right to security and the right to safety, and has even led to the former being considered a fundamental right. However, only the right to safety, which aims to protect citizens against arbitrary action on the part of the State, is included in the natural and imprescriptible rights enshrined in Article 2 of the 1789 Declaration of the Rights of Man and of the Citizen. It is a prerequisite of effective exercise of rights and freedoms, without which there can be no real individual or collective security. One of the Defender of Rights' tasks is to ensure that this balance is not upset by security policies that may lead to risks of abuse and arbitrary measures.

## Motifs des réclamations dans le domaine de la déontologie de la sécurité



**33.1%**

concern acts of violence  
(police, demonstrations, etc.)



**15.3%**

concern refusals  
to register complaints



**10.1%**

concern compliance  
with procedure

# 1. Respect of rights and freedoms in the context of the fight against terrorism

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In the face of the terrorist threat, the State has the responsibility of taking the measures required to ensure citizens' security and providing itself with tools enabling it to combat the threat more effectively. But it must always do so in compliance with the Rule of Law.

Since the state of emergency came into effect on 13 November 2015, the Defender of Rights has made every effort to ensure that these fundamental principles are respected by the public authorities. Extension of the state of emergency up to 1 November 2017 and subsequent enactment of new counterterrorism laws have led the Institution to pursue this mission by exercising all the powers conferred upon it by the Organic Law.

## A. The Defender of Rights and implementation of the state of emergency

Between November 2015 and November 2017, the Defender of Rights received 110 complaints relating to the state of emergency, including 78 referrals concerning measures expressly taken under the state of emergency: 51 searches, 21 house arrests, 2 searches followed by house arrest and a prohibition to leave French territory, and 1 search followed by house arrest and a request for cancellation of subsidiary protection; 35 referrals concerned situations indirectly connected with the state of emergency and having professional consequences or impacting individuals' freedom of movement.

Over a third of these referrals concerned security ethics, in particular the way in which administrative searches were conducted.

The Defender of Rights intervened in two cases of administrative searches in which individuals' procedural guarantees were not complied with, and a landlord, a third party in the operation, had been unable to receive compensation for the

damage caused by the search ([Decisions 2017-258](#) and [2017-337](#)).

Following dismantlement of the Calais camp in October 2016, the Defender of Rights also had occasion to intervene in a dispute regarding setup of a protection zone in compliance with a prefectural order based on Article 5 of the Law bearing on the state of emergency, which permits setup of protection and security zones whose inhabitants' lives are carefully regulated. Considering that it had not been established that the legislature had ensured a balanced reconciliation of the constitutional value of safeguarding public order on the one hand and fundamental individual freedoms on the other, it presented observations before the Council of State in support of a request for communication of a priority constitutional question on the Article's compliance with the Constitution ([Decision 2017-291](#)).

In a decision delivered on 6 October 2017, the Council of State decided to accept the request

and, on 11 January 2018, the Constitutional Council declared the abovementioned provisions, as drafted before the [Law of 11 July 2017](#) be contrary to the Constitution, with immediate effect, deeming that the legislature had not made creation of protection and security zones conditional on anything except implementation of the state of emergency, that

it had not defined the kinds of measures likely to be taken by the Prefect in order to regulate the lives of people inhabiting such zones, and that it had provided no guarantees with regard to their implementation.

## **B. The Defender of Rights' other actions in the field of the fight against terrorism**

In parallel to actions carried out in the context of the implementation of the state of emergency, the Defender of Rights expressed major reserves with regard to the incorporation into common law of administrative measures inspired by the state of emergency and restricting rights and freedoms, such as introduction of buffer zones, closing of places of worship, individual administrative control and surveillance measures, and entries and seizures. From its point of view, such measures enabled a “sham” exit from the state of emergency on 1 November 2017.

Hence, in two opinions addressed to Parliament (Opinions 17-05 and 17-07), the Defender of Rights considered that the provisions of the Law of 30 October 2017 stepping up domestic security and the fight against terrorism and seeming to make the exception the rule, weakened the rule of law and upset the balance between legitimate security requirements and the guarantee of protection of rights and freedoms at the basis of our criminal law, as well as the balance between the role of the judicial authorities and the administrative authorities, which latter have now been entrusted with further powers.

It also pointed out that, alongside criminal law and proceedings, another “administrative law on prevention of terrorism” was developing, reflected in the Internal Security Code and contrary to many of our legal principles. Such legislative evolutions see the law on a downward slide into a rationale of suspicion, without the individuals concerned benefiting from the legal guarantees inherent in any criminal proceeding, sometimes even before any crime has been committed. In its opinions, the Defender of Rights also requested the legislature to clarify and specify a number of provisions whose

wording was too vague, in order to meet the requirements of legality and predictability, and give thought to further guarantees protecting rights and freedoms, in particular through prior judicial review. It also expressed reserves on other provisions bearing on controls in border areas; transposition of the European Directive on use of passenger name record (PNR) data, and radio surveillance.

Lastly, with regard to individuals concerned by mechanisms implemented to counter radicalisation, the Defender of Rights emphasised how difficult it was for people under individual surveillance to obtain any legal remedy or at the very least an amicable settlement of their situation, insofar as some of the information relating to collection of their personal data is governed by national defence secrecy. The Defender of Rights' classical mediation mechanisms, along with those of administrative responsibility, which are recommended most often by the Defender of Rights' departments, are put out of action due to the special nature of systems implemented.

The Defender of Rights also delivered two opinions to Parliament regarding the Law of 28 February 2017 bearing on public safety ([Opinions 17-01](#) and [17-02](#)). It expressed major reserves on the introduction of a framework for the use of weapons common to police officers, gendarmes, customs officers and the military, on widening the option of recourse to anonymity during criminal proceedings in order to protect police officers', gendarmes' and customs officers' identities, and finally on the strengthening of the measure first adopted in 2016 on administrative control of people returning to France from terrorist groups' theatres of operations.



It also pointed out that provisions enabling an employer to dismiss an individual working as a security guards at transport company, when his behaviour was not compatible with the exercise of his duties, were not accompanied by adequate guarantees as regards the right to appeal and respect of the principle of adversarial proceedings.

Protection of rights and freedoms in the context of the fight against terrorism also concerns **the rights of terrorist attack victims** and their families; who should be able to receive protection, support and assistance from the State. The Defender of Rights made recommendations to this effect.

On the occasion of the colloquium held by UNESCO on 9 January 2017, focusing on the rights of victims at international level, the Defender of Rights reminded participants of the need to promote solutions at European level in order to ensure the effectiveness of the victims' international rights: the right to an effective remedy, the right to be treated with respect and dignity, the right to protection and assistance, and the right to reparation. In a decision delivered on 30 June 2017 ([Decision 2017-193](#)), it issued recommendations based on the European Union Directive of 15 March 2017 bearing on the fight against terrorism and organised into three main focuses: improvement in the accompaniment of victims and/or their families in the process of compensation, provision of more help with decision-making for the Fonds de garantie des victimes d'actes de terrorisme et d'autres infractions (FGTI - Guarantee Fund for the Victims of Acts of Terrorism and other Crimes), and improvement of support lent to foreign victims.

Several of its recommendations were taken up by the FGTI, including its Board of Directors' recognition, on 25 September 2017, of the principle of greater consideration of the harm done to victims by fear of imminent death and to relatives of dead victims by the waiting and anxiety involved, reassertion of the principle of fair procedure based on the adversarial process, in particular during medical expert assessments,

through adoption of a Charter on medical assessment of victims of terrorism, published on 3 July 2017, and the drafting of a guide on compensation of terrorism victims, the first to include an indicative frame of reference for assessment of various types of harm done.

Finally, following on from opinions addressed to Parliament in 2015 on the Bill bearing on intelligence gathering (Opinions [15-04](#) and [15-09](#)), the Defender of Rights intervened before the European Court of Human Rights in its capacity as *amicus curiae*, in the case of the Association confraternelle de la presse judiciaire (Legal Press Association) versus France, on the compliance of the intelligence law of 24 July 2015 with Articles 8, 11 and 13 of the European Convention on Human Rights, which protects the right to respect of privacy and correspondence, including the confidentiality of exchanges between lawyers and their clients, freedom of the press, secrecy of journalists' sources, and effectiveness of the protection regime review procedures. In its observations, the Defender of Rights reminded the Court of its jurisprudence on lawyers' and journalists' professions and covert surveillance, going on to emphasise States' obligations to ensure effective protection adapted to this category of professionals, who are all too likely to be targeted by covert surveillance measures. The Defender of Rights submitted a series of observations for the Court's assessment, bearing on the law's shortcomings in this regard and on the mechanisms for authorisation and monitoring of surveillance measures ([Decision 2017-280](#)).



## Counterterrorism and protection of fundamental rights, the Defender of Rights' action

### Recommendations on administrative searches in the context of the state of emergency

- Decision [no. 2016-069](#) of 26 February 2016 bearing on measures to take in order to protect children during search operations;
- Decision [no. 2016-153](#) of 26 May 2016 bearing on the conduct of searches and respect for procedural guarantees;
- Decision [no. 2017-258](#) of 20 November 2017 bearing on compliance with procedural guarantees;
- Decision [no. 2017-337](#) of 4 December 2017 bearing on compensation of third parties to search procedures.

### Recommendations relating to terrorism victims

- Decision [no. 2017-193](#) of 30 June 2017, bearing compensation of terrorism victims.

### Opinions to Parliament

- Opinion [no.15-25](#) of 1 December 2015, bearing on security in railway stations in the face of the terrorist threat;
- Opinion [no. 15-27](#) of 11 December 2015, bearing on the prevention and fight against attacks on public safety and terrorist acts on public transport
- Opinions [no. 16-03](#) of 25 January 2016 and [no. 16-06](#) of 26 February 2016 relating to monitoring of the state of emergency;
- Opinions [no. 16-04](#) of 12 February 2016 and [no. 16-08](#) of 16 March 2016 relating

to the bill stepping up the fight against organised crime, terrorism and their financing, and improving the effectiveness and guarantees of criminal procedure;

- Opinions [no. 17-01](#) and [no. 17-02](#) of 16 and 24 January 2017 relating to the bill on public safety;
- Opinions [no. 17-05](#) and [no. 17-07](#) of 7 and 27 July 2017 relating to the bill stepping up domestic security and the fight against terrorism.

### Observations before the courts

- Decision [no. 2017-291](#) of 3 October 2017 relating to transmission of a Priority Preliminary Ruling on the Issue of Constitutionality (QPC) concerning Article 5 of the Law on the state of emergency in the context of a dispute over setup of a protection zone in Calais' Lande camp.

## 2.

# Respect for rights and freedoms by the security forces in performance of their missions

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*“Respect of the Declaration of the Rights of Man and of the Citizen, the Constitution, international conventions, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and law and regulations”,*

*“Maintenance of peace and public order”, “Protection of people and property”, “At the service of Republican institutions and the population”, “Respect of society’s interests, victims’ rights and detainees’ rights”, “Loyalty, sense of honour and commitment”, “guarantee of freedoms”, “Defence of the Republic’s institutions”, “Maintenance of public order and internal security”.*

The key principles set forth in the articles of the various codes of ethics govern the behaviour of all individuals performing security missions on French soil, whether they are police officers, gendarmes, soldiers, private security officers, or security guards employed by the RATP or SNCF.

Field studies, multidisciplinary reflection and regular exchanges with actors in the field of security lead the Defender of Rights to issue opinions and recommendations, in particular with a view to promoting best practices and combating bad ones.

The Defender of Rights noted breaches of security ethics in less than 10% of the referrals it dealt with over the course of 2017, which means that there were no breaches to be found in a little over 90% of referrals, either because the facts had not been clearly established or because the officers in question had acted in compliance with ethical rules. These figures remain stable from one year to the next.

2017 was marked, however, by an increase in requests for disciplinary proceedings by the Defender of Rights, from 3 in 2016 to 10 this year. Although such requests concern individual situations, the responses or lack thereof from the ministries concerned to the Defender of Rights’ recommendations might well be interpreted as a problematic tolerance vis-à-vis certain breaches of security ethics.

The Defender of Rights handled 101 complaints concerning police violence in 2017. In 96 cases, it found there had been no misconduct, whether because the use of force had been necessary and proportional to the demonstrators’ violence or with regard to the situation (8 referrals), or because the perpetrators of the acts of violence or the facts had not been clearly identified (61 referrals), or because the complainants had withdrawn their complaints or simply wished to communicate their testimonies (27 referrals). The Defender of Rights found that there had been disproportionate use of force by police officers in 5 referrals, justifying the requests for disciplinary proceedings in 4 of them (Decisions [2017-045](#), [2017-089](#), [2017-277](#), [2017-321](#)).

Two main subjects for concern arise from the Defender of Rights activity over the course of 2017: law enforcement and the failure to react in the face of racist or discriminatory behaviour.



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## “Access to Rights – Police/Population Relations” survey

First part of the presentation of the [“Access to Rights”](#) survey’s results; the study analyses relations between the police and the population in the context of identity checks.

The survey highlights generally satisfactory relations between the population and security forces – the great majority of the population say they have confidence in the police (82%) – and shows that identity checks are rare occurrences – 84% of respondents said they had never had their identities checked over the course of the last five years (90% of women and 77% of men).

However, certain social groups report rather different experiences. Almost 40% of young people (18-24 y/o) said they had been subjected to identity checks over the course

of the last five years. For this sector of the public and over the same period, young men who said they were perceived as being black or Arab/Maghrebian were particularly concerned: 80% of them said they had been subject to at least one identity check by the security forces.

Compared with the population as a whole, and all things being equal, such individuals are 20 times more likely than other people to be subjected to identity checks.

They also testify to deteriorating relations with the security forces, reporting overfamiliarity (40% as against 16% for the general population), insults (21% as against 7% for the general population) and police brutality (20% as against 8% of the general population)

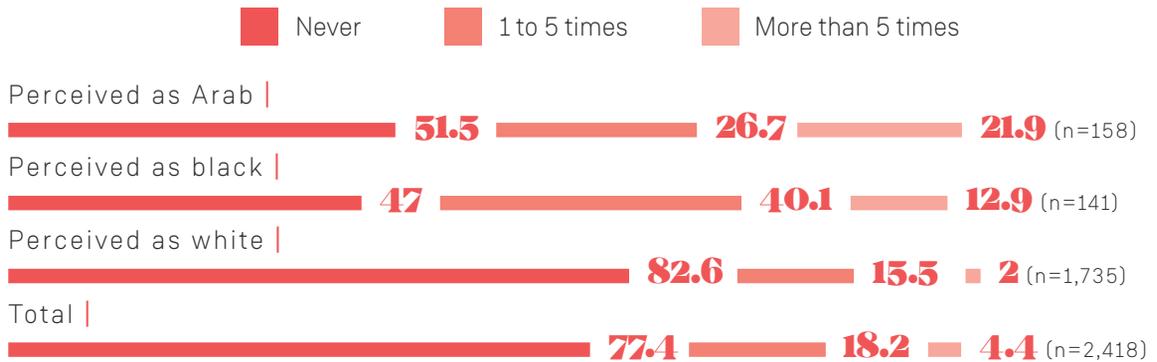
suffered during the most recent check.

The frequency of checks also nurtures a sense of being discriminated against among those subjected to them, along with feelings of defiance towards police and judicial institutions, largely due to the fact that the officers concerned tend not to give out any information on the reasons for identity checks.

**Final observation:** Individuals reporting breaches of professional ethics during identity checks seldom take steps to remedy the situation (only 5%), mainly because they think that there is no point in doing so, which suggests that they have decided to waive their rights.

### Frequency of identity checks over the last five years depending on the fact of being perceived as Arab/Maghrebian, white or black (men)

Over the course of the last 5 years, how many times have you had your identity checked by the police or gendarmerie? (%)



Field : All the male population (n= 2,422)

Interpretation : Over the last five years, 17.5% of men perceived as white stated they had been subject to identity checks, as against 53% of men perceived as black.

Weighted percentages. Raw totals

## A. Reconciling keeping the peace with the freedom to demonstrate

On 14 February 2017, pursuant to Article 32 of the Organic Law of 29 March 2011, the President of the National Assembly referred to the Defender of Rights with a view to carrying out a study on “The consequences of the doctrine and practice of law enforcement in France by the security forces in view of the ethical rules governing them”.

Upon completion of the work involved, the Defender of Rights found that implementation of ways of keeping the peace that were more protective of freedoms was an essential condition for less confrontational management of such operations. Although security requirements connected with the excesses observed during demonstrations call for a legitimate repressive response, priority should be accorded to preventive actions that do not fly in the face of the freedom to demonstrate, as the Defender of Rights’ Deputy, Vice-Chair of the Board for the Ethics of Security, Claudine Angeli-Trocraz was quick to point out (see page 37).

In 2017, the Defender of Rights delivered several decisions following referrals that led it to investigate whether or not security

forces had been guilty of disproportionate interference with the freedom to demonstrate. In a number of cases, it found there had been no disproportionate interference with demonstrators’ freedom of assembly. As regards the circumstances under which contentious questioning took place, the Defender of Rights deemed that the security forces had not made an error of judgement in considering that the situation could degenerate and that it was appropriate to issue warnings to disperse, which, after all, was in compliance with the legal framework provided for by Article 431-3 of the Criminal Code, and then to question demonstrators who had not heeded their warnings (Decision 2017-061).

However, the Defender of Rights considered that their decision to disperse a crowd that had gathered on a municipality’s square on the occasion of a minister’s visit had violated its members’ freedom of assembly and movement. Nonetheless, in view of the context of rising tension in which the decision was made, combining a ministerial visit with a collective’s call to demonstrate that might at any moment lead to an influx of demonstrators and outbreaks

of violence, the Defender of Rights did not recommend that individual disciplinary action be taken against members of the security forces in question, but only that they should be reminded of the principle of discernment laid down in Article R434-10 of the Internal Security Code (Decision 2017-026).

### **Article R. 434-10 – Discernment**

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*“The police officer or gendarme shall, in the exercise of his duties, demonstrate discernment.*

*He shall, in all circumstances, take account of the nature of risks and threats in each situation with which he is confronted, and the time he has to act and choose the best legal response to it.”*

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In addition, recourse to such measures as identity checks during demonstrations should be limited to the strict minimum. In one referral, the Defender of Rights found that demonstrators had been subjected to identity checks on a dubious legal basis (Decision 2017-061). The Defender of Rights was referred to in another case with regard to judicial handling of law enforcement, and, more specifically, the procedure of relocation of identity checks provided for in a Direction of 16 March 2016. It expressed the greatest reserves with regard to this Direction, given that the system has no legal basis and is not in keeping with the provisions of Article 78-2 of the Code of Criminal Procedure, bearing on identity checks. It also had doubts about such procedure’s compatibility with freedom of movement and freedom to demonstrate (Decision 2017-073).

The Defender of Rights reminded those concerned that use of certain “intermediate force” weapons during demonstrations should be supervised and limited, given the tensions that such weapons arouse and the serious injuries and even deaths they cause. Hence, it deemed that the “LBD 40x46” defence-ball launcher’s technical characteristics and conditions for use were ill adapted for use in the context of law enforcement operations, which should lead to its removal from the list of weapons allocated to the security forces in this context.

It found that a police officer’s use of this weapon, even if only as a dissuasive measure, was disproportionate. Establishing a breach of the provisions of Article R. 434-18 of the national police’s code of ethics, it recommended that disciplinary proceedings be taken against the officer in question (Decision 2017-277).

### **Article R. 434-18 – Use of force**

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*“Police officers and gendarmes shall use force within the framework set by law, only when necessary, and in a manner proportionate to the goal to be achieved or the seriousness of the threat, as the case may be.*

*They shall only use weapons in the case of absolute necessity and in line with the legal provisions applicable to their status.”*

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Finally, whenever possible, law enforcement methods should be based on negotiation, dialogue and education. The Defender of Rights made a number of recommendations aiming to make law enforcement in France less confrontational. In particular, it recommended:

- 1) that initial and ongoing training of officers responsible for keeping the peace be intensified;
- 2) that use defence-ball launchers in law enforcement operations be prohibited, whatever types of security forces are called upon to intervene;
- 3) that maintenance of public order be reintegrated into the administrative police’s mission of preventing outbreaks of violence and supervising exercise of the freedom to demonstrate taking a non-confrontational approach designed to protect individual freedoms;
- 4) that communication and dialogue be stepped up in management of public order, both before and during demonstrations, so as to make security forces’ actions more comprehensible and encourage concertation.



## **B. Respect for the principles of impartiality and non-discrimination in the performance of security missions**

The Defender of Rights' work on discrimination, identity checks, defence of foreigners' fundamental rights and maintenance of public order has led to referrals raising new ethical questions on the behaviour of the security forces when checking on possession of residence permits or involved in law enforcement operations bringing them into contact with migrants or people of foreign origin.

### **Article R. 434-11 – Impartiality**

*“Police and gendarmerie personnel carry out their duties with complete impartiality.*

*They give the same attention and the same respect to each person. They do not make any distinctions in their acts or their remarks which may constitute one of the forms of discrimination described in Article 225-1 of the Criminal Code.”*

The Defender of Rights received a complaint bearing on an order disseminated among officers at a Paris police station on 11 April 2014, in which, among other things, they were

told to systematically remove Roma families living on the streets and list places where they congregated on the public highway.

It found that the order was discriminatory in character and had no legal basis. It recommended that the police commissioner who issued the order be reminded of the terms of Article R. 434-11 of the Internal Security Code and of Article 40 of the European Code of Police Ethics bearing on the principles of impartiality and non-discrimination (Decision 2016-319). The recommendation was not followed up, as the Ministry of the Interior deemed that the order was not discriminatory but simply clumsily phrased.

### **Article R. 434-16 – Identity checks**

*“When an identity check is authorised by law, police and gendarmerie personnel do not use any physical feature or distinctive mark [as grounds] to choose whose identity is to be checked unless there is a specific alert justifying this.*

*Identity checks are done without harming the dignity of the person who is checked.*



*The pat-down search is only a safety measure. It is not a systematic measure. It may only be done if it is necessary to ensure the security of the police officer or gendarme or police officer who performs it or the security of other people. Its aim is to check that the person under scrutiny is not carrying any object that is dangerous for him/herself or for others.*

*Every time that circumstances allow it, the pat-down search must be done out of sight of the public.”*

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With regard to methods used to check migrants, the Defender of Rights was informed of the circumstances in which a Congolese national had his residence card checked when he was on the premises of an association in order to undergo emergency treatment after he had fractured his pelvis. Following its investigation, the Institution found that the check, which was carried out in one of the association's treatment rooms, was inappropriate as it had hindered humanitarian action and violated the complainant's fundamental rights, constituting a lack of discernment in breach of the security forces' code of ethics (Decision no. 2017-054). In another case, two prostitutes of Chinese nationality complained of having been questioned at home, handcuffed and taken into custody by the police officers who had in fact

intervened at their request, following violence on the part of one of their clients. They had trouble communicating with the investigating officers, which violated their right to a fair trial. The Defender of Rights made recommendations stressing the need to implement the right to language assistance (Decision no. 2017-221).

The Defender of Rights was also referred to with regard to situations of inappropriate behaviour on the part of security forces when not on duty. It brought to light the racist character of a costume party on the theme of Africa held at a police officer's house, during which police officers had made themselves up in blackface and posted photographs of the party on social networks. After acquainting itself with the facts uncovered by the administrative enquiry and collected observations from the five officers concerned, the Defender of Rights found that the party had violated respect for personal dignity and the duty of professional discretion and exemplarity incumbent upon police officers. It recommended that disciplinary proceedings be taken against the five officers for their lack of discernment (R. 434-10 of the Internal Security Code) and breach of the duty of exemplarity (Article R. 434-14) (Decision no. 2017-086). The Defender of Rights' recommendation was not followed up, as the Ministry of the Interior deemed that the officers' behaviour was not racist.

**Article R. 434-12 – Credibility and reputation of the national police and national gendarmerie**

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“Police and gendarmerie personnel maintain their dignity under all circumstances.

At all times, on or off duty, including when they communicate via digital social networks, they restrain from any act, comment or behaviour that could damage the reputation of the police or the gendarmerie.

They take care not to harm the credit and renown of these institutions by their behaviour.”

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The Defender of Rights also requested that disciplinary action be taken against a gendarme who shouted,

”They’re starting to really piss us off, these fucking Arabs!” while he was cycling to work in plain clothes.

The Defender of Rights was not convinced by the gendarme’s explanation that his remark was directed at a third party following provocation,

as such circumstances, even if they proved to be true, would in no way exonerate him from his ethical obligations. It considered that the measure taken by the national gendarmerie’s General Inspectorate – summons of the gendarme in question to be informed by his superiors of such breach of ethics and ordered not to do it again, without their taking any disciplinary action – was inadequate (Decision 2017-215). The Defender of Rights’ request is yet to be followed up.

**Article R. 434-14 – Relations with the population**

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“Police and gendarmerie personnel are at the service of the general public.

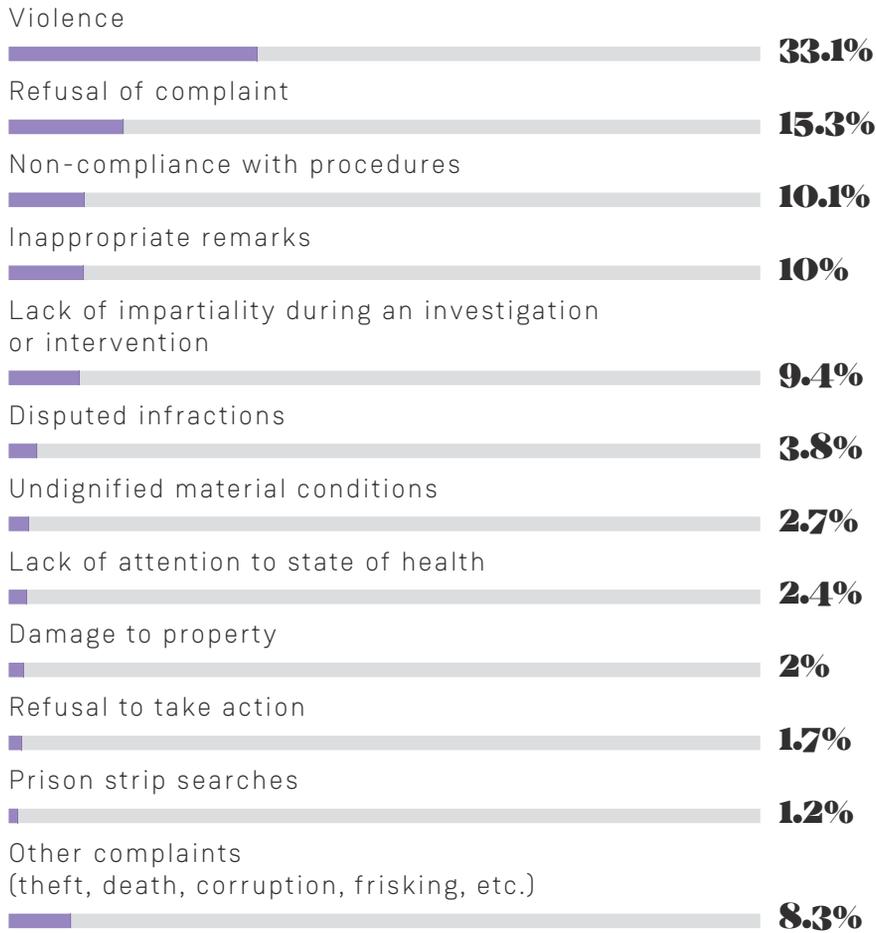
Their relationship with the public is one of courtesy: it requires the use of “vous”.

Respectful of human dignity, they make sure they behave in all circumstances in an exemplary manner, so as to inspire respect and consideration in return.”

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**Breakdown of the main reasons for complaints addressed to the Institution in the field of security ethics**



**Security activities in question**



**52.2%**

Regarding national police



**19.8%**

Regarding prison administrations



# — VI — Financial and human resources

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**Law of 20 January 2017 bearing on the general status of independent administrative authorities and independent public authorities:**

**Article 21 –**

*“Each independent administrative authority and each public authority shall, before 1 June every year, address an activity report to the Government and to Parliament, providing details of the performance of its mission and its resources. It shall include a multiannual plan for optimising its expenditures, which assesses the foreseeable impact on its workforce and on each category of expenditure, of pooling its services with the services of other independent administrative authorities or independent public authorities, or with those of a ministry. Such reports are published.”*

## 1. Human resources

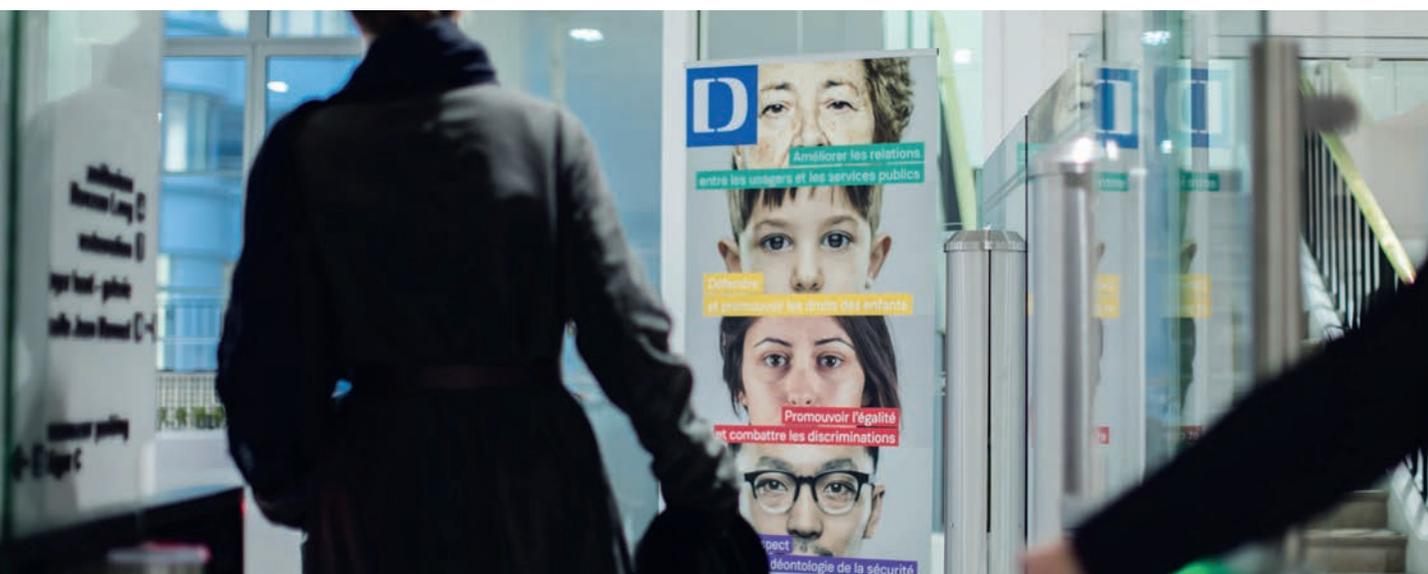
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With regard to human resources, 2017 was marked by continued pooling of support functions, efforts to improve working conditions, a move to measure the Institution’s social climate, ongoing measures to ensure a better balance between professional activity and personal life, and promotion of gender equality.

Taking advantage of the move to the single SEGUR-FONTENOY site in September 2016, the Defender of Rights was very much in favour

of pooling support functions with the Prime Minister’s departments (financial management, logistics, documentation, commissary and travel management).

Between 2011 and 2017, the number of staff devoted to support functions fell by almost 50%, a direct consequence of the efficiency of merging former independent administrative authorities and of support-function pooling, which resulted in 9 transfers, 4 abolitions and 4 redeployments of posts.



The Defender of Rights has let a total of 13 jobs go over the past three years.

Apart from that, and in order to cope with the ongoing increase in its missions and cases referred to it, the Institution turned to its human resources, requalifying assistants

as legal officers and creating a position for orientating whistleblowers. It also set an example by converging, as far as was possible, its management, steering and monitoring practices towards interministerial common law.

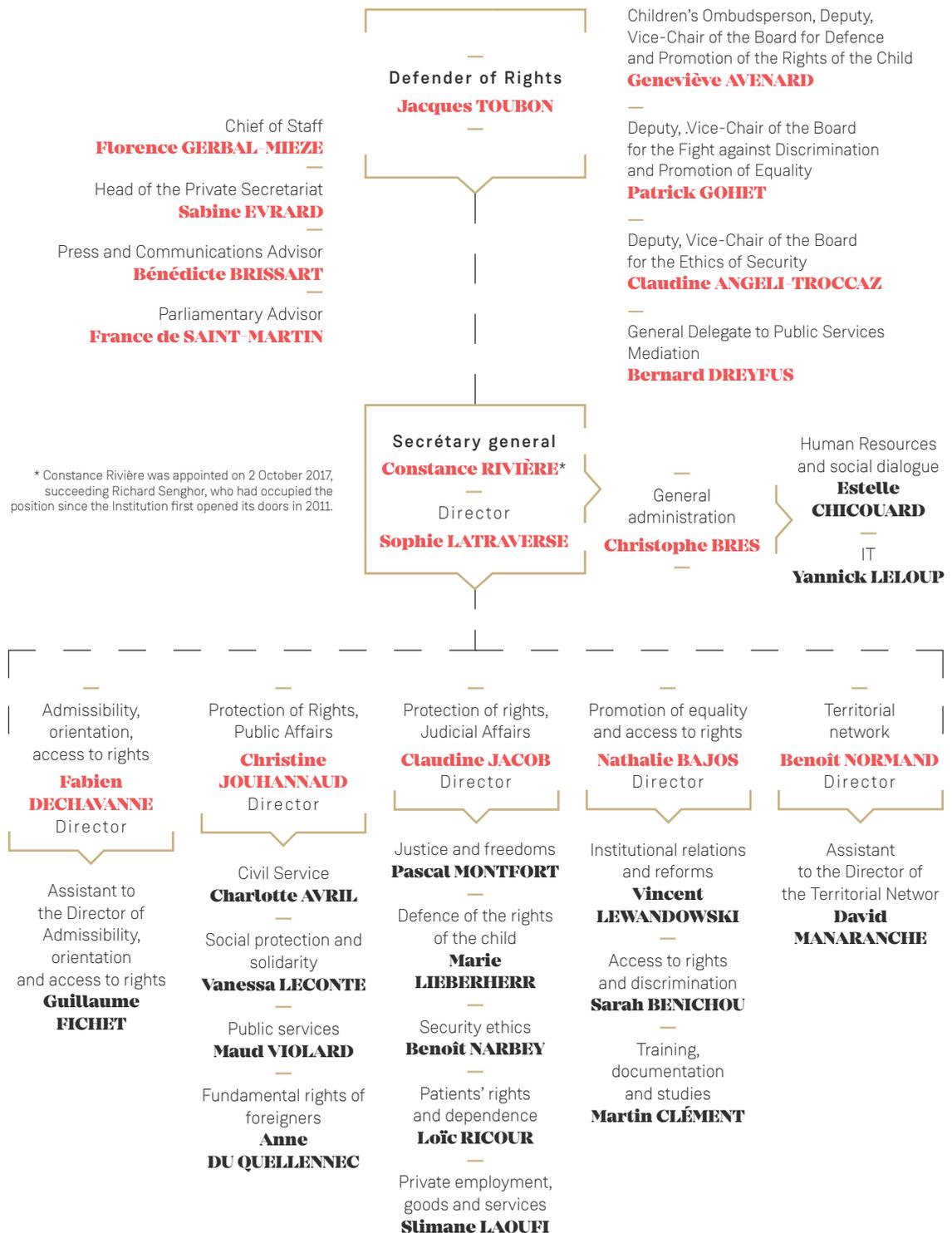
## Head office staff

Ongoing pooling of support functions: A significant decrease in the workforce

Workforce according to administrative situation from 2014 to 2017				
	31.12.2014	31.12.2015	31.12.2016	31.12.2017
Seconded staff	59	63	55	53
Civil servants in normal employment	1	0	0	0
Seconded, reimbursed	1	1	0	0
Seconded, non-reimbursed	6	5	4	3
Permanent contracts (CDIs)	77	82	87	92
Fixed-term contracts (CDDs)	72	66	67	67
Casual contracts	12	10	18	6
Title 3 *	7	7	8	8
<b>Total</b>	<b>235</b>	<b>234</b>	<b>239</b>	<b>229</b>

\* Private-law employees made available by social bodies, whose reimbursement falls within Title 3.

## Organisation chart – 2017



\* Constance Rivière was appointed on 2 October 2017, succeeding Richard Senghor, who had occupied the position since the Institution first opened its doors in 2011.

### The 2017 Social Barometer: A way of assessing the social climate

Following consultation with staff representatives, the Defender of Rights launched a Social Barometer on 8 September 2017, to the attention of all the Institution's employees. The survey comprised a total of 73 questions, including 6 open questions enabling respondents to express themselves freely, on the following subjects: work at the Institution (general questions); working conditions; relations at work; health at work; HR support; professional prospects. A total of 152 employees took part in the survey, almost 70% of the workforce, testifying to the initiative's interest

The Barometer enabled an initial general diagnosis to be made, identifying measures taken that employees are happy with along with efforts yet to be made. It showed that Defender of Rights employees are proud to work for the Institution, motivated, and professionally committed. Working conditions and the balance achieved between personal and professional life were also appreciated. Efforts to be made in order to improve working conditions are largely in the areas of work organisation, to counter the effects induced by the various in-house reorganisations that have taken place over recent years and are not yet fully completed, and, for contract staff, salary levels. The survey's results were examined during a meeting of

the Health, Safety and Working Conditions Committee (CHSCT) held on 11 December 2017, and led to the drafting of a priority action plan for 2018, which includes a programme on psychosocial risks.

### A transparent supervised salary policy

The Defender of Rights cannot but share the Court of Auditors' opinion of the need to "implement human resources management rationales that can be reconciled with the efforts currently being made to bring a measure of coherence back to public employment" (see the 2017 report on independent administrative authorities' wage policy).

The wage policy for contract staff (70% of workforce) is governed by a management framework drawn up in 2013. In 2017, pursuant to the regulations, 58 employees who had not benefited from any wage revaluation measures for the previous three years, with the exception of the evolution of salary index points, benefited from individual examination of their remuneration, largely in view of professional interview results or evolution of their functions: 31% of employees did not have their remuneration revalued, while 69% benefited from revaluations going from 10 to 20 extra index points.

### Promotion of gender equality

Breakdown of staff by hierarchical category and sex

	Women	Men	Total	% of women
Category A+	18	13	<b>31</b>	58%
Category A	106	28	<b>134</b>	79%
Category B	36	7	<b>43</b>	83%
Category C	18	3	<b>21</b>	85%
Total	178	51	229	78%

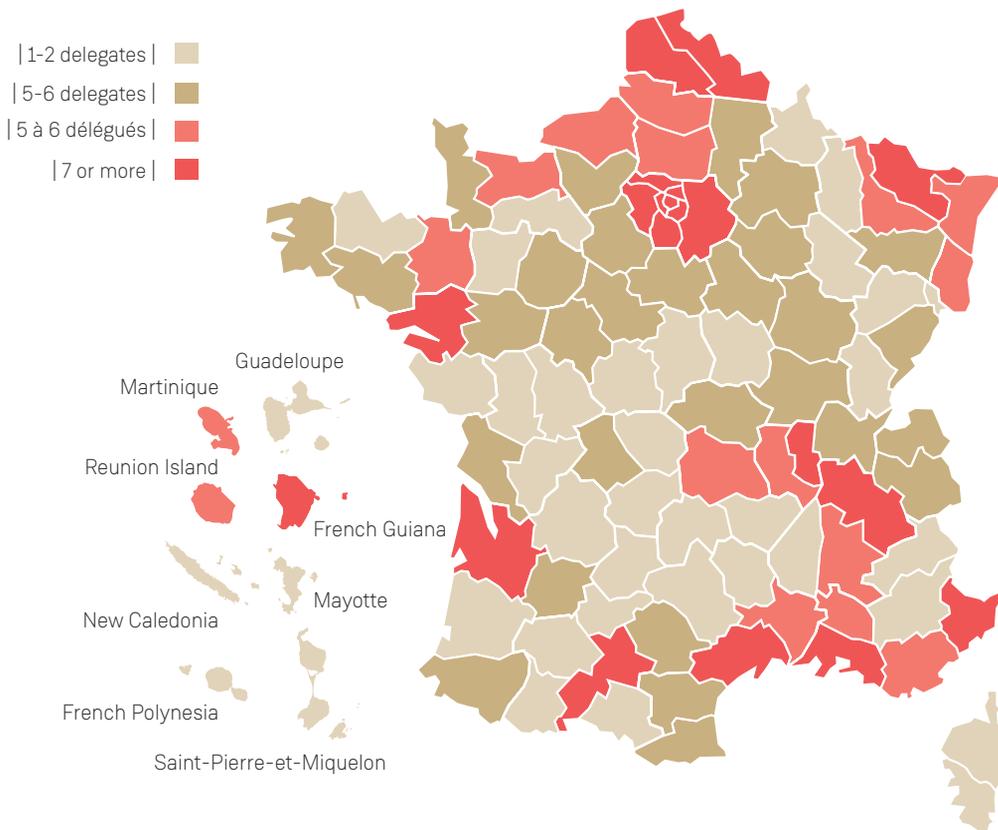
With over 78% of women at the Institution, the Defender of Rights seeks to provide the best possible balance between professional activity and personal life, and to promote professional gender equality by doing so. 52% of directors and heads of centres or units are women and 86% of contract staff upgraded in-house in 2016 were women, a sign that the Institution's policy fosters professional equality at all levels of responsibility. In addition to classical mechanisms for calculating working time, the following measures are worth mentioning:

- more than twenty staff members were working part-time at 31 December 2017;
- granting parental leave and leave for personal reasons: all requests were granted (7 staff members on leave for personal reasons at 31 December 2017);
- telework: staff have had the option of one day's telework a week since March 2017: at

31 December 2017, 92 staff members had opted for telework, over 40% of the workforce;

- the scheme by which an hour a day is deducted from women's work schedules as from their third month of pregnancy;
- systematic replacement of staff members on maternity leave by employees on short-term contracts, ensuring a return to work in good conditions despite the decrease in the workforce resulting from the lower job ceiling;
- opening of a day nursery accommodating 34 children, available to SEGUR- FONTENOY site staff since October 2017; the amenity also contributes to family empowerment, with the employer taking responsibility for child care arrangements and working hours adapted to staff members' work patterns.

### Breakdown of Defender of Rights delegates by département in 2017



## 2. Budgetary resources

In 2017, appropriations made available to the Defender of Rights for Programme 308 “Protection of rights and freedoms” were to the tune of €21, 266,827 in commitment appropriations (CAs) and €21,487,641 in payment

appropriations (PAs). Staff costs (Title 2) accounted for over 70% of the Institution’s budget. Consumption of appropriations was to the tune of €20,953,963 in CAs and €21,245,400 in PAs

	Staff Costs (Title 2)	Operating costs (Title 3)		Total budget	
	CAs=PAs	CAs	PAs	CAs	PAs
<b>IFL budget</b>	<b>16,154,864</b>	<b>6,439,739</b>	<b>6,439,739</b>	<b>22,594,603</b>	<b>22,594,603</b>
Available budget	15,724,090	5,542,737	5,763,551	21,266,827	21,487,641
Consumed budget	15,494,328	5,451,137	5,751,072	20,945,465	21,245,400

2017 was marked by full implementation of the pooling of some support functions and related costs with the Prime Minister’s departments. In budgetary terms, this is expressed in the 2017 initial finance law by:

- elimination of appropriations to the tune of €1.5 million in CAs and €5.2 million in PAs, following the move to the Ségur-Fontenoy site, and consequent end of expenditure on rents and management of former premises prior to restitution.
- the transfer of €2.2 million in CAs=PAs to Programme 129 “Coordination of Government Work”, in order to cover expenditures now pooled, mission costs, site management, logistics, appropriations for training and social action, and a percentage of IT costs.

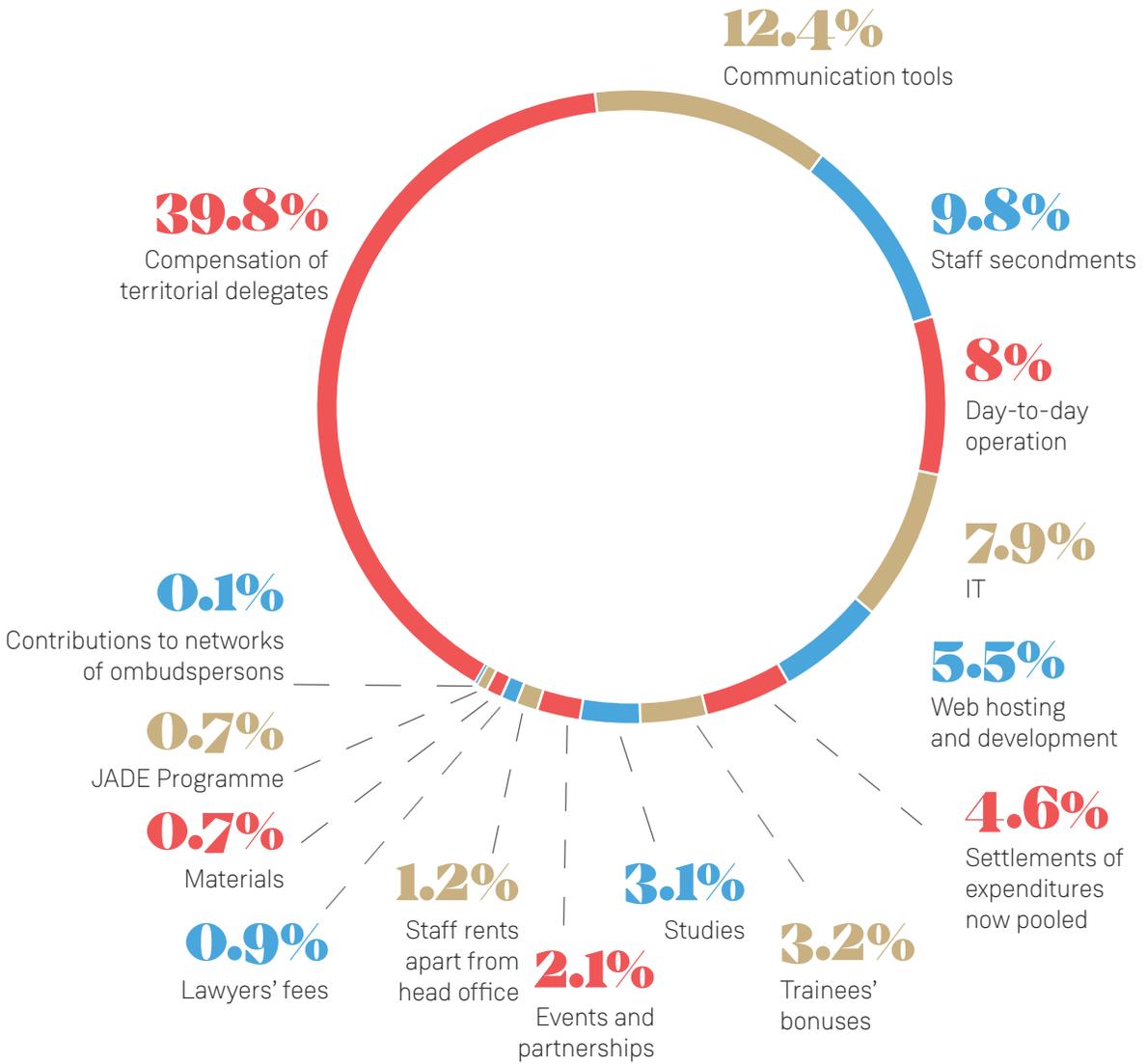
In addition to pooling resources with the Prime Minister’s departments, the Defender of Rights keeps a close watch on control of public expenditure and compliance with

the rules governing public procurement. For most of its needs, it makes use of the Prime Minister’s departments’ pooled interministerial procurement contracts, and of the Union des Groupements d’Achats Publics (UGAP – Union of Public Purchasing Groups). In addition, the development of the Defender of Rights’ territorial network and policy on promotion of rights, both essential given the regular extension of its field of activity over recent years, was made possible through use of existing resources resulting from a series of in-house reorganisations.

The structure of expenditures evolved between 2016 and 2017 following pooling of resources and the move to the Ségur-Fontenoy site. Hence, the first expenditure item (almost 40%) is now devoted to compensation representing costs allocated to the Defender of Rights’ territorial network. Apart from the wage bill, operation costs for 2017 break down as follows (see diagram below):



### Breakdown of operating costs for 2017





Operation "Place aux Droits!" in the city of Toulouse,  
October 2017

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