Annual Report 2009

LE MÉDIATEUR
DE LA RÉPUBLIQUE

AN IMPORTANT PLAYER IN THE DEFENCE OF PUBLIC FREEDOMS

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

The figures provided in this report concern the year 2009.
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EDITORIAL

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DEFENDING HUMAN RIGHTS: A NEW DIMENSION

It is an established fact: we are living in a dislocated society. But this reality has never been so critical. As a privileged observer of social changes and Human sufferings, the Mediator of the French Republic notices everyday, *via* the requests sent to him, the speed at which the feeling of injustice is spreading in society. He is also aware of the urgent need to counter and the difficulty inherent in countering this feeling – a mixture of anxiety and rancour ready to spill into the worst outlets.

The first gap between citizens and the State is the one created by the increasingly complex law, hardly understandable to the individual. The consequence: citizens do not know their rights, wrongly assess the range of their rights and find them difficult to respect. They also have to deal with some civil servants, struggling to apply the law and to understand the purpose of their actions. Considering themselves as nothing but pawns in a system that is beyond them and imposes its inertia on them, they sometimes succumb to the temptation to apply laws in a manner that is rather more formal than humane. This dislocation is worsened by the aggressiveness or violence which is gradually taking precedence over mutual respect. On both sides, there is a feeling of fragility and isolation resulting in suffering.

In addition to this gap, citizens feel tossed around by the constant changes, supposed to be to their own advantage but which always turn out to be to their detriment. An example that readily comes to mind is the re-organisation of EDF-GDF (a French electricity company) which for the user resulted in a decrease in the quality of services and sometimes even in some losses. The situation has been worsened by the impact of the financial crisis, increasing the contrast between the collective wealth of France and the situation of the less privileged. Never in the past has the situation of such a large number of our citizens bordered on insecurity. The works of sociologists, like Éric Maurin, recently highlighted the huge difference between the fear of a drop in status, shared by most French people,

especially the middle and upper class, and the reality of the drop in status which affects a social minority: unfortunately, the most fragile members of society. This is especially the case, considering the distress of a growing number of citizens whose life is characterised by break-ups - professional, family, and geographic - the reaction of society in terms of solidarity policies, *via* the RA, CMU (universal medical coverage) or the Dalo law, shows declining efficiency. Far from alleviating the citizens' problems, the solutions proposed by the State in the face of misfortunes, ill-suited to some paths in life that are no longer linear, very often lead to a penalising delay, between the occurrence of a distress situation and payment of benefits. Overstretched, the social net, meant to reduce the shocks, inflicts more injuries on those it is supposed to help. However, it is obvious that the civil service should not add an avoidable suffering to an initial suffering. Therefore, this calls for an in-depth reflection on the solidarity policies, their impacts on behaviour, socialisation and experience.

In this tensed social context, it is essential to make optimum use of public funds. So, the lawmaker and State authorities were right to introduce a policy of fighting against fraud. Nevertheless, this necessary fight has given rise to a stricter proof system which today penalises honest citizens who make up a very large majority of the population, by placing them in a position of presumed guilty. Although the objective is praise-worthy, the system may hamper the links between citizens and their administrations. Here too, an independent authority like the Mediator of the French Republic can help to define a set of acceptable indices in the absence of proofs, and to protect the civil servant in charge of the file. Based on his analytical powers and in-depth knowledge of laws and administrative systems, the right balance has to be found between distrust and trust; for it is not possible to live in a system in which the constituent is always regarded as a suspect.
Furthermore, the situation is complicated by another factor: the increasingly pronounced distortion between the citizens' reality and the way it is reflected by the many indicators available to State authorities. Why not contractualise the objectives, develop the results, allow the entire public domain to be influenced by the culture of performance? But then these indicators must be pertinent and not be aimed solely at satisfying a hierarchy or attracting media attention. These indicators also ought to include the psychological dimension of relations with the user, which is, by definition, difficult to quantify. For example, an institution's average response time can be measured. But, is it possible to measure the pain suffered during this latency or uncertainty period? At a time when transparency has become the main factor of trust and when citizens wish to be able to measure correctly the quality of services rendered, there is a need for a debate on the validity of the performance indicators. That is the only way to do away with the suspicion of instrumentalisation triggered by these measurement tools, and to prevent the risk of a new gap between administrations and citizens. The rationalisation so much advocated for by administrations is supposed to put an end to the chaos and optimise the efficiency and performance of work organisations in the civil service. Logically, this rationalisation is first reflected by a standardisation of responses and mass processing of cases using a computer. At the same time, there is a call for personalisation on behalf of users and a desire not to be treated as a file number for a matter which sometimes concerns an entire life, with the inherent uncertainties and sufferings. These two tendencies, personalisation and rationalisation, are only superficially opposed and I am convinced that compatible solutions can be found.
Finally, our system as a whole is weakening from year to year. Those days when "community life" was based on the existence of common rules, local authorities that enforced them, and some citizens who knew and subscribed to them seem to be over. Collective hope has given way to collective concerns and media-induced emotions. Our society is managing its anxiety by being aggressive where we used to expect more solidarity. This is evidenced by the generalisation and trivialisation of violence at school, in the family, in hospitals, and against the police. The main factors of consensus in our society seem to have become obsolete: a diploma no longer guarantees a job; State intervention no longer guarantees the correction or elimination of an injustice. Our society, in search of a raison d'être, is today more exhausted psychologically than physically. Individualism projects the individual and lays more emphasis on his successes. It isolates him in his failures and sometimes develops self-contempt which gives rise to contempt for others. On the contrary, what is needed is to reinvent such modalities as the purpose of "community life", and to curb the spiral of failure and contempt when it occurs. We also need to maintain and develop our listening capacities. The philosophy that guides my action meets exactly these challenges: helping our fellow citizens to adopt a more positive attitude, through fear management and motivation of new hopes. It will not be possible to restore "community life" without offering everyone a place in the community, regardless of his value on the job market – a place where his value as a social being will be affirmed, and his Human dignity respected.

FIGHTING AGAINST FRAGILITY AND INSECURITY

Often considered by the citizens as the last resort for solving their problem, the institution of the Mediator of the French Republic is in close touch with complex human distress, pain and tragedies. I have put in place new tools to enhance the institution's listening capacities. In terms of new technologies, e-mediator is a first-level informa- •••

tion platform which enables the internet-user to know the role of the Mediator (what he does and what he does not do), to know whether the Mediator is empowered to handle a given problem, and to be channelled to a delegate mediator or the right organisation, to receive directly in his mailbox tools for information about the Mediator, *via* Gmail and MSN, at any time of the day or night, especially when the offices are closed (connection peaks are nights and weekends). Thanks to the online referral form, anybody can lodge a complaint with the Mediator of the French Republic *via* the website. Unlike the traditional mail system, almost all the requests received through this channel fall within the institution's field of activity. The number of requests has increased significantly with this new referral method.

Regarding call reception, the switchover from the switchboard's telephone lines, during peak periods, to all the assistants' extensions aims to reduce the number of lost calls and too much waiting.

These tools meet two closely related needs, which are of the utmost importance: listening and receiving. Our society is developing some means of expression for everyone, thanks to new technologies. But the question is which importance does it attach to listening? It is always more difficult to listen than to talk! Yet, we have a growing number of people with nobody paying attention to their situation and pain, and who, out of frustration, are more and more determined to make themselves heard: an example is the locking of bosses this year. I insist that our society, whose anxiogenic character is hardly decreasing, needs more than ever some listening and relaxing points. Today, reception is still considered as a minor function in the organisation of work. However, it is the user's entry point in the organisation, with two decisive missions: listening and directing. Wrong first answer or lack of answer generates some frustration. Bad orientation generates an avoidable time-related cost, an unnecessary congestion and again some frustration. Reception must be highly developed, and the staff handling this type of position must be qualified and trained accordingly.

While consolidating my own reception system, I noticed, however, that listening was no longer sufficient and that, in the face of despair and loneliness, it was necessary to support the constituent while his case was being examined. Therefore, there is the need to invent new administrative attitudes, from three missions: listening, answering, and counselling – a mission for which the institution considers itself a pioneer – so that no issue is left unresolved, or no procedure unsuccessful. We no longer have to manage a case but accompany a person to help him overcome a problem. Receiving is respecting, accompanying and reconstructing.

Another urgent need: striving to adopt laws that create rights which are not too complex to implement. Otherwise, we end up with laws that are difficult to apply and which fuel the citizens' anger and end up backfiring on the lawmaker. A typical example is the medical record, which, in theory, is sent to the requestor within eight days but is, in practice, difficult to respect. A real ambition must be to pass reality-oriented laws, based on a better evaluation of public policies. On the other hand, legislative inflation may also make laws difficult to apply or even generate situations of iniquity. Laws must create hope and not illusions.

To avoid a decline in the quality of civil service, we must learn from the lesson of merging ANPE with Unedic and reorganising the scheme for liberal professionals (RSI). Continuing with this system requires that the players introduce some procedures and means to prevent it from resulting in a lower quality of service and more complexity for the user. Here, we have to deal with the issue of accompanying the change, which has perfectly clear objectives but is neglected in its implementation. Reorganising the civil service is necessary; yet we must not rush things, we ought to take out time to reflect and define a real procedure. The human dimension of change is too often ignored in the management of companies and the civil service. Closing this gap is reducing people's suffering. We also need to take into account the fact that careers and lives are no longer linear, and adapt the systems to these new modes of life.

DEFENDING THE WEAKEST, PROMOTING MUTUAL RESPECT

In keeping with this change, the action of the Mediator of the French Republic consists in making reform proposals in several fields, with a clear objective: drawing the lawmaker's attention to unjust situations and proposing solutions to correct them. Thus in 2009, he made some proposals on consumer rights, medical accidents, nuclear test victims, medico-legal autopsies, indemnifying asbestos victims, and PACS (civil solidarity pact), with the idea that everybody must be treated equally before the law. In 2010, my services will continue their efforts on stillborn babies, maltreatment of patients, but also on violence and incivilities of patients and their relatives towards healthcare professionals. The aim is to act and promote mutual respect through educational initiatives.

In fact, 2009 marked a turning point in the life of the institution. Thanks to cooperation with the European Court of Human Rights or Défenseur des enfants (children's defender), we have been able to bring together all the parties concerned to examine several issues, such as *kafala* or isolated foreign minors, in an atmosphere of total independence, thereby encouraging a transversal approach of each topic in order to better understand all its aspects and bring in a global solution. The introduction of the Human rights defender will help us to take this

type of step even more effectively. It will also mark a new phase in the action to defend and promote Human rights.
On the international scene, the action is continued by reinforcing the association of French-speaking mediators, now well established in the landscape, which will open up to the English-speaking and Arabic-speaking networks. In 2010, the fourth meeting of Mediterranean mediators will be held in Spain, with one objective: restoring dialogue where it no longer exists. Partnership with Armenia within the framework of the European tender invitation won by France will be reinforced, just like collaboration with UN services, in order to obtain a real recognition of the role of Ombudsmen one of which will be the Mediator of the French Republic then the Human rights defender.

RESTORING TRUST AND GIVING A FRESH MEANING TO GOVERNMENT ACTION

The doubt expressed by our citizens about their institutions calls for a strong action. The only way to restore this trust, which is lacking so much today, is through excellence and exemplarity of government actions and public officials, based on ethics and transparency. Politicians, at the heart of conflicts of interests, are finding it difficult to convince citizens about their impartiality. Politicians are no longer considered as people to turn to in the face of injustices; they are rather sometimes accused of aggravating instead of correcting these injustices. The law is no longer regarded as something that protects the weakest from the strongest, but rather as a new arm used by the strongest to establish their domination over the weakest. Since the legal system is no longer a replica of a just system, the temptation is big either to adopt illegal systems, a snare and a delusion which promises another justice and hides the worst exploitations, or to give vent to ones anger and exasperation against the established system, in the violent acts that we are now too familiar with. Suspicion is a corrupting influence for our democracy. When this suspicion is fanned by public figures themselves, capable of discrediting an entire institution for their own selfish interest, when local players and central decision-makers disagree on the issue of decentralisation and revive old quarrels, it is necessary to again call on the responsibility of all public players. The real question is "how do we restore citizens' trust and politics from a civil service?" In this respect, I will focus all my efforts in 2010 on creating solid partnerships so we can all work in the same direction and optimise our action.
Politicians must first show some proofs of their efficiency again. Since it prefers carrier management to innovation and risk-taking, and compliance with procedures to respect of users, the civil service has ended up defending the permanence of structures, and giving priority to system comfort over citizens' interests. It is all about breaking away from this culture by making the citizen again the focus of public action and encouraging risk-taking. Under the pretence of the principle of precaution, we have ended up maintaining the illusion of a risk-free society and thus a certain level of opposition to change. We are not asked to guarantee "zero risk" but to ensure that risk factors have been taken into account.
Finally, politicians must respond to this search for meaning, first by reflecting on the objective, effectiveness and readability of their action and by associating the citizens therein. Listening time does not create immediate wealth but produces some meaning.
Helping political leaders to remain objective and take time for reflection, reconciling citizens' impatience with the quality of decision: these are needs which a strong and independent authority can help to meet. More generally, it is all about finding in the new relations emerging between the community and the individual a new type of balance between the legal authority and respect for individuals. In this context, this is the right time to change from Mediator of the French Republic to Human rights defender. ■

FOCUS

MEDIATION IS EXTENDED TO THE HEALTHCARE SECTOR

Created at the beginning of 2009, the Healthcare Security and Safety Unit (P3S) completes the institution's activity fields. It handles, among others, matters pertaining to problems of access to the law, healthcare related malfunctions and disputes arising from treatment hazards or errors, and performs its task in a new atmosphere of mistrust between a public opinion requesting for transparency and a medical world under pressure.

The law of 4 March 2002 on the rights of patients and the quality of the healthcare system has certainly ushered in some significant progress in terms of the rights of patients, especially by creating the Commissions in charge of relations with users and quality of healthcare (CRUQPC). These latter enable users of healthcare organisations to meet the healthcare personnel in the presence of a mediating doctor in order to find some solutions to problems encountered. In reality, however, these users in a bottleneck situation are often unaware of how to refer matters to this interlocutor, or even of his existence. Thanks to his experience in other potential conflict areas, the Mediator of the French Republic has been offering to complainants, for the past one year, a listening and information point, and to all the people working in the healthcare sector some means of restoring dialogue where it has been cut.

The mission of the Healthcare Security and Safety Unit does not end there. Its mediation role in matters pertaining to damage which may result in disciplinary measures or criminal, civil or administrative liability makes it a privileged observer of serious undesirable events. So, it was logical to entrust it with a mission of alerting the health authority. This was done through partnerships with the Health ministry, the High Authority on Healthcare, the healthcare supervision institute, the Afssaps (the French organisation in charge of healthcare and healthcare product security), the medical association council and even the nuclear security authority. It is the only system in Europe making it possible to ensure, *via* systematic information verification, a healthcare supervision through healthcare service users. In this spirit, the Healthcare security and Safety Unit strives to promote more systematic reporting of medical incidents, an essential condition for identifying malfunctions and improving practices. Physical mediation, in particular, has an educational value for professionals: it does not seek to hold somebody responsible, but to use the error positively.

Increasing lawsuits

Within this new framework, what are the main tendencies resulting from the activity of the Mediator of the French Republic in terms of healthcare? First of all, a rise in a phenomenon already noticed in the past: the increasing demand for information about users' access to law and, more generally, for transparency. In view of this new trend, healthcare professionals sometimes tend to withhold some information and to withdraw.

This phenomenon goes hand in hand with another big trend: the growing number of lawsuits. People who consider themselves victims of an error or a malfunction are increasingly tempted to take the matter to court, sometimes not only to obtain compensation, but also a criminal, administrative or civil penalty against the person or organisation deemed guilty. This phenomenon goes far beyond healthcare issues, both within and outside France: we know that, more generally, the disputes are settled more and more in courtrooms. The tendency is even higher in other fields, for the number of lawsuits filed against doctors is regularly overestimated by the medical corps itself. Nevertheless, it has a serious consequence here: it maintains and escalates deadlock situations. Healthcare professions are all the more tempted to cite professional secrecy, or to withhold certain information, out of fear of legal actions. During every medical intervention the fear of lawsuits weighs down on healthcare professionals, which encourages the temptation to withdraw.

Media hype over "scandals" and pernicious role of online information

When a patient dies or in case of serious complications, the doctor often justifies his silence by the fear of not being understood if he expresses himself in technical terms. However, this silence, this withholding of information, is often taken badly by the victim or his relations, who call for transparency. For a dead patient, the family does not content itself with an explanation in a few lines but rather asks to be given the entire file, whereas the surgeon or hospital in question contests the "communicable" character of the different information. The hostile attitude of relatives is fuelled by this refusal to provide information, sometimes considered more serious than the medical error itself. This gives rise to a spiral of misunderstanding which ends up in total deadlock situations. Only an impartial mediation, which starts with an in-depth examination of the medical record, can then help restore dialogue.

These deadlock situations are worsened by two phenomena. This first one is the media hyper over medical "scandals" which leads the general public to react excessively: without going back to the scandal of contaminated blood or growth hormone, we remember people's reaction after the death of a little boy at a hospital as result of an ampoule error and several radiotherapy incidents. Precisely, the P3S was created amidst several of these "scandals", i.e. amidst a crisis of trust vis-à-vis the medical world. The other phenomenon which appears obvious to the Mediator of the French Republic is the impact of the various information sources which the internet makes available to the general public. Some misinformed users, sometimes on the grounds of the information published on some forums without any scientific control, argue against the medical corps based on some patchy knowledge ill-suited to the situation or wrongly interpreted.

To intervene in such a tensed atmosphere, the Mediator of the French Republic must first clarify the situation by distinguishing between three possible events: medical complication (due to the patient's past health status), treatment hazard and erroneous medical accident. The task, which requires an in-depth examination of the file and listening to the personnel in question, is made more difficult by a paradox understanding of the medical hazards by the complainants: collectively these people understand that zero risk does not exist, but fail to admit it individually. In this respect the law of March 2002, which recognises hazard and compensation, is still not well understood.

The challenge of ordinary maltreatment

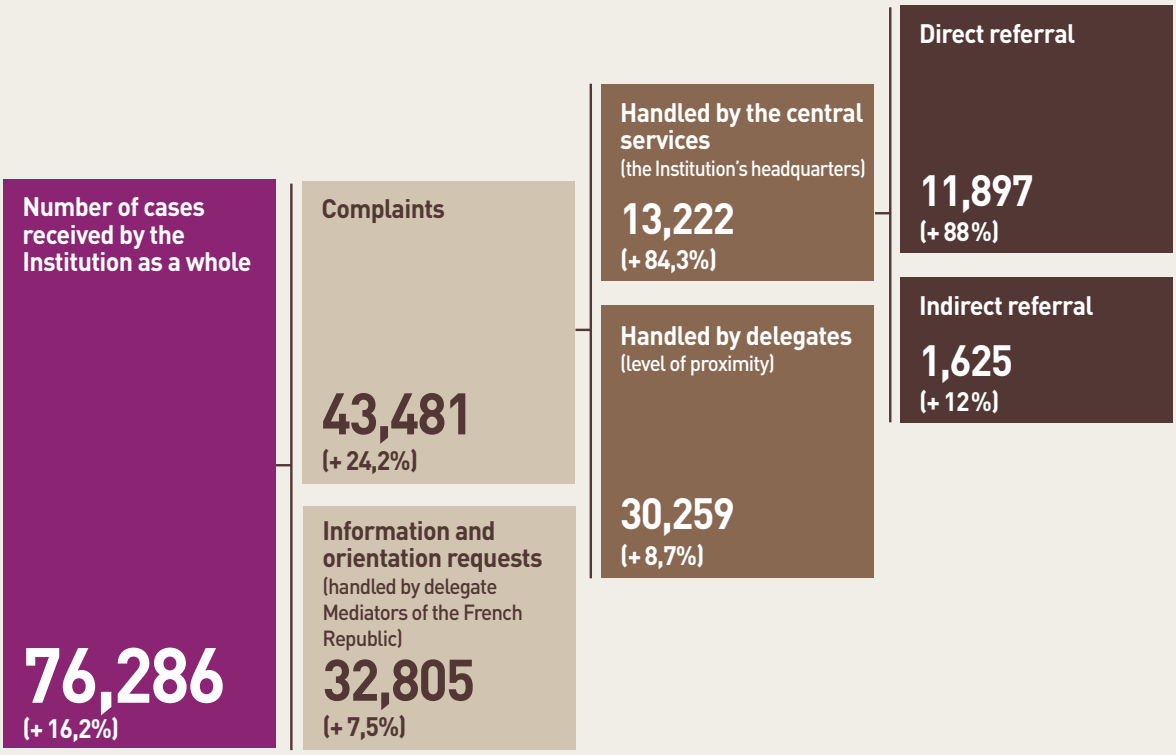
Finally, it will not be surprising to learn that the complaints lodged with the Mediator of the French Republic are so many and concern cases that are so complicated that the healthcare personnel is under pressure. This is particularly the case in emergency units which must cope with an ever increasing demand not always medically justifiable. The risk of being accused of lack of vigilance, wrong evaluation of the emergency situation or of a diagnosis error is increasing. Above all, we understand that the patient's right to information prior to an operation cannot be respected similary in case of emergency intervention. The disputes referred to the Mediator of the French Republic often emanate from this pressure.

Another consequence thereof lies in one other phenomenon, which the Mediator's Health and Healthcare Security Unit considers as a major challenge to be taken up: something that may be called ordinary maltreatment in hospitals. Out of the 4,795 requests from users of the healthcare systems examined, close to 8% concerned directly "ordinary" maltreatment. Be it for poor hygiene, insufficient consideration of the patient's pain or some of his characteristics – age, disability, isolation, vulnerability – these facts are not always to be attributed to lack of action on the part of healthcare professionals; they are sometimes aggravated by the fact that the patient is received in the wrong unit. Such situations also cause some pains to the witness thereof and also make the stress at the place of work less bearable. This pressure then compounds the one sometimes suffered by the healthcare professionals from patients or their relatives: incivilities, threats, intimidations, humiliations, verbal abuses, physical violence. The role of the Mediator of the French Republic, whose help is sought in one out of five cases by the healthcare professionals themselves – especially on issues of maltreatment -, is also to take care of the healthcare workers, without criticising them, and to strive, together with them, for a "good-treatment" policy. ■

THE YEAR IN FIGURES

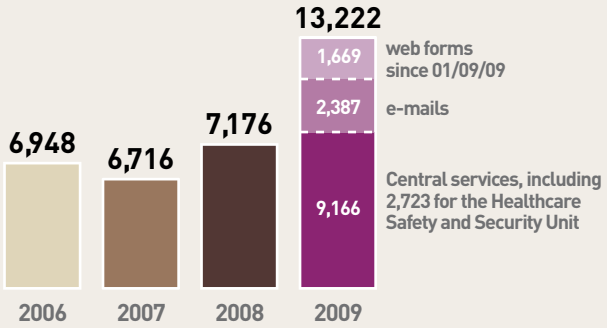
THE INSTITUTION'S OVERALL RESULTS

In 2009, the number of cases referred to the Mediator of the French Republic, the central services and delegates increased by 16% compared to 2008, with a total of 76,286 cases received. Information and orientation requests received by delegate Mediators of the French Republic rose by 7.5% compared to the previous year. The institution handled 43,481 complaints, 13,222 of which were handled *via* the central services of the Mediator of the French Republic, in Paris.



ACTIVITIES OF THE CENTRAL SERVICES

Number of complaints received



- *About 15,497 phone calls were made to the Institution's switchboard*
- *2,387 complaints were sent by e-mail and 1669 via the web form*
- *2,806 calls were made to the Healthcare Safety and Security Unit*

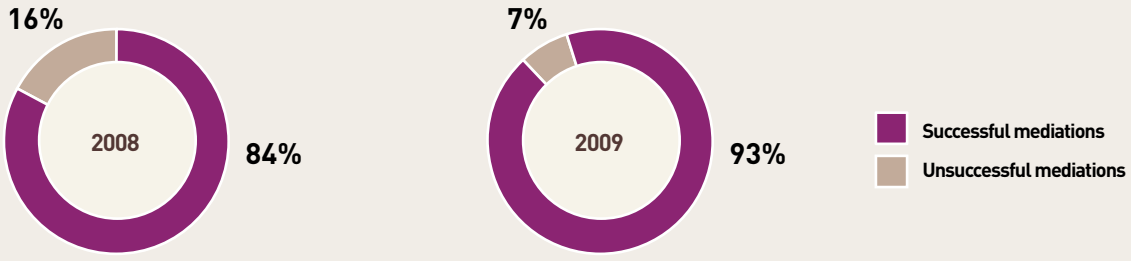
The changes in the number of cases handled by the institution merit some important remarks

The number of paper referrals has remained generally stable from one year to the other. On the other hand, all along the first seven months of the same years the number of cases sent in by e-mail (often laconic requests or incomplete files) has continued to increase. Therefore, in September the Mediator introduced a preformatted "referral" form, which has replaced the e-mail. The changes in the number of cases are also due to the attachment of the Healthcare Security and Safety Unit to the Mediator since 1st January 2009.

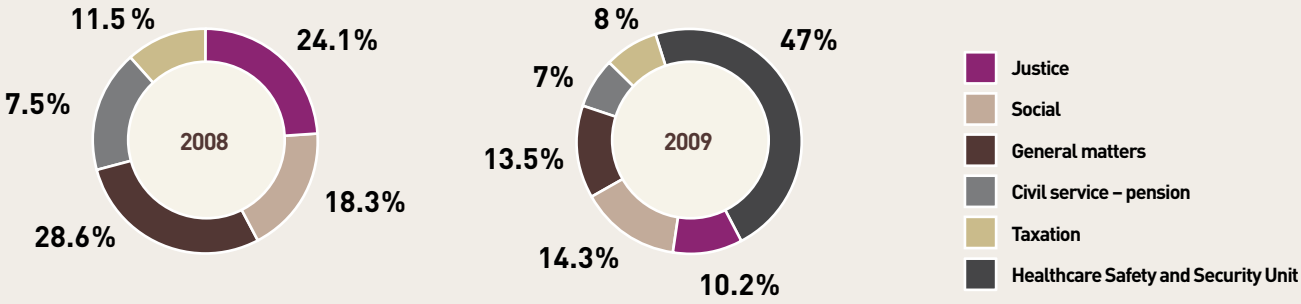
Beyond these technical observations, it is necessary to note that potential requests to the institution will continue to increase as a result of the complexity of the administrative system, on the one hand, and growing insecurity, on the other hand.

Moreover, these potential requests will become real requests as the institution and its local network get known more and more. However, it is regrettable that a certain number of local organisations, which could meet, channel, or even handle some of these requests or small user problems, no longer play their role.

Rate of successful mediations

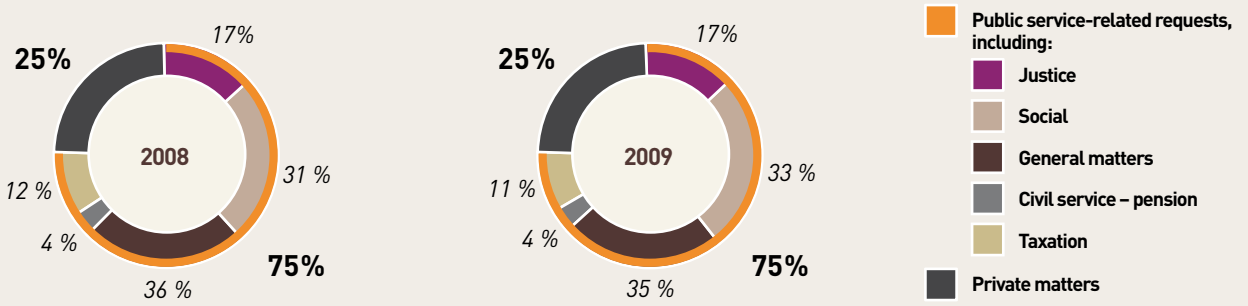


Breakdown of cases closed, by field of intervention

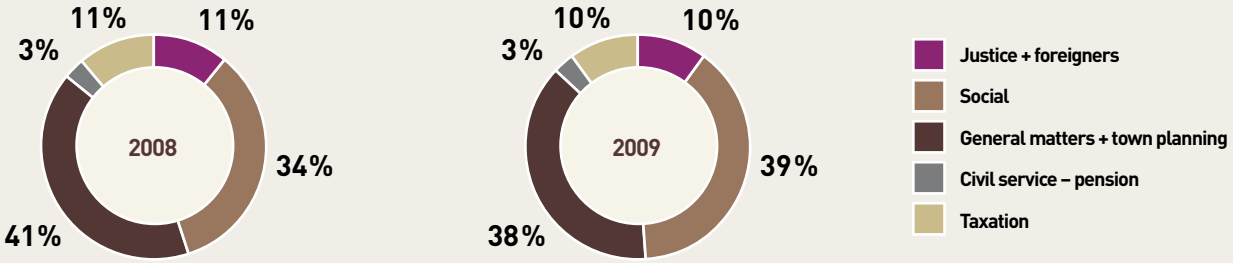


DELEGATES' ACTIVITIES

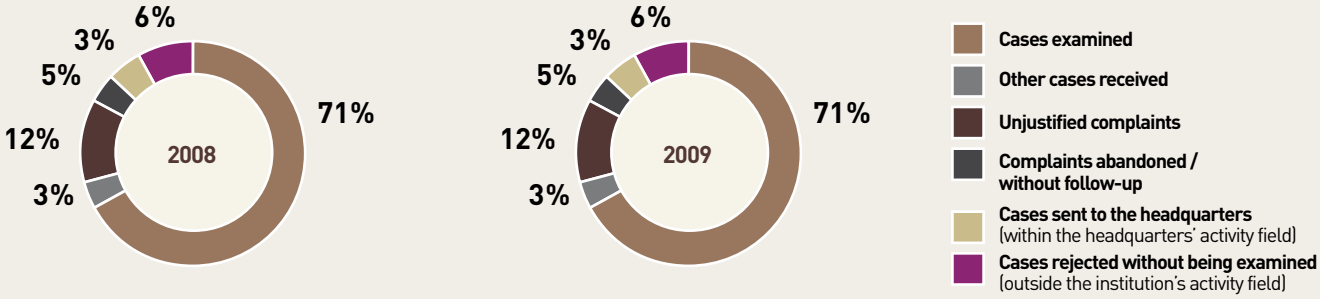
Information – fields concerned



Breakdown of complaints, by field of intervention



Handling of complaints



Complaints – the delegates' success rate

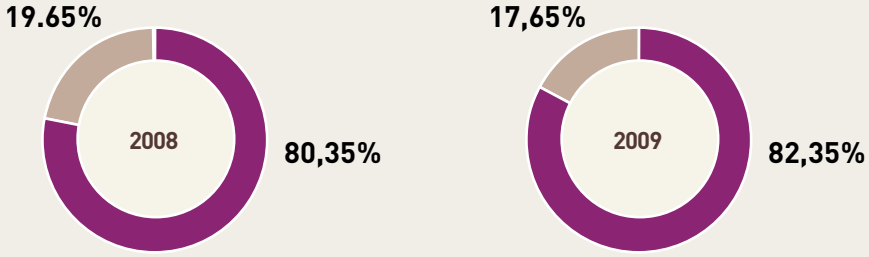


TABLE OF REFORMS

REFORM PROPOSALS ADOPTED IN 2009

PROPOSAL	DATE OF COMPLETION
Condition of inactivity for receiving disabled adults' benefit	07/01/2009
Early reimbursement of carry back loans	23/01/2009
Institution of a legal remedy for formal decisions by the tax administration	23/01/2009
Recognising foreign civil unions in France	04/06/2009 *(partial adoption)*
Health insurance – coordinating RSI and the national health service	16/06/2009
Undistrainability of pension increment to assist a third party	25/06/2009
Automatic application of the account balance privileged from seizure	25/06/2009
Possibility to sign a PACS in New Caledonia, Wallis and Fatuna	27/07/2009
Disciplinary actions applicable to doctors in public hospitals	19/08/2009
Television tax exemption for television sets rented by detainees	19/08/2009
Reclassifying category B civil servants into category A	18/08/2009 *(partial adoption)*
Paying death benefits to public-sector civil solidarity partners	07/12/2009

REFORM PROPOSALS ADOPTED AT THE BEGINNING OF 2010

PROPOSAL	DATE OF COMPLETION
Indemnifying victims of French nuclear tests	05/01/2010
Recognising foreign civil unions in France	13/01/2010 *Definitely applicable*

REFORM PROPOSALS NOT ADOPTED IN 2009

PROPOSAL	DATE OF COMPLETION
Access to the latest indices for secondary school teachers	04/06/2009
Validating periods of disability for the proportional pension of non-salaried agricultural workers	25/06/2009
Retirement benefits of professional fire-brigade commanders	28/07/2009
Automatic application of the quotient technique for deferred income	07/12/2009
Early retirement of some disabled civil servants	07/12/2009
Integrating old students of the international cycle of ENA (a grande ecole of public management)	07/12/2009

NOTEPAD

THE USER AND THE STATE IN THE FACE OF CRISIS

Although the epicentre of the crisis we were faced with this year was in the financial and economic fields, the shock wave also affected the public sector, relatively spared in some respects.
Therefore, the crisis says a lot about the latent difficulties existing in the relations between users and their administration, sometimes invisible because they are profoundly hidden, sometimes visible but intentionally ignored. An accusing finger is then pointed at the struggle to obtain clear, quick and reliable information, just like the resulting deficit when the surrounding world changes brutally, especially when the institutions and laws themselves change. By making these problems tangible, the crisis renders them unbearable: we then observe tension mounting among the protagonists up to a deadlock situation and sometimes confrontation.

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THE USER AND THE STATE IN THE FACE OF CRISIS

Citizen – administration: the big misunderstanding

Be it among themselves or towards the general public, administrations find it very difficult to offer effective and harmonious communication. For the citizen, the result is an absence of response to his demands, or insufficient, or even contradictory explanations. In the face of what he regards as contempt towards him, the user also feels like he is being tossed back and forth and even manhandled by some administrative services whose attitudes appear offhand to him.
On both sides, this type of situation generates strong feelings of dissatisfaction, stress and tension.

RELIABILITY AND CLARITY OF INFORMATION: THE BLOCKING POINT FOR CITIZENS VIS-À-VIS THE ADMINISTRATION

This is a widespread feeling among an ever increasing number of citizens, in a wide range of situations, especially when they have to deal with the public authority: the feeling that they are faced with a vertiginous stack of laws and regulations among which they can only know with difficulty which one applies to their particular situation. Through the cases they examine, the services of the Mediator of the French Republic very often notice that, in the face of these impenetrable normative stacks, the citizens require, above all, some information, a guide enabling them to find their way through the multitude of laws, and a working method which can help them to determine or find the information that will be useful to them.

An example is the case of Mrs C., a masseur/physiotherapist, who during a house call, left her vehicle on a parking space reserved for "delivery", thinking that her position as a medical auxiliary authorised her to do so. She was fined and she paid the fine. She then contacted the Mediator of the French Republic, not to contest the fine, since she did not know where to obtain information, but to know the conditions on which medical auxiliaries may park in Paris during their house calls. The Mediator of the French Republic informed her about the creation, by the council of Paris, of the house call parking card "Sésame soins à domicile" for healthcare professionals working in Paris. He specified to her the price of the card, the parking possibilities offered by this card as well as where and how to obtain this document.

On the field, slightly more than 50% of the 62,000 requests handled by delegates (Mediators of the French Republic) are not complaints about the civil service, as defined by the law of 1973, but requests for clarification from people lost in the complexity of the procedures, or people who feel that they have not been received and listened to. These citizens contact the institution's delegate network because they no longer know who to turn to, or because they have not obtained the answers they need from the administrative services concerned. So, a big part of the network's activity consists in listening to these persons, explaining to them the procedures to follow, informing them about their rights and directing them. A lot of requests received by delegates would have been avoided had the services concerned provided some concrete answers. In these cases, the institution simply gives the citi-

zens the necessary tools to sort out and control their situation again.
When it is all about explaining to a victim the reply given by the legal system to his complaint, the delegate's intervention helps attenuate the feeling of injustice which grows with the sluggishness and lack of response from the legal system.

In 2007 Mr J. fell with his bicycle because of a dog not kept on the leash. Since the owner of the dog had refused to give him the details of his insurance company so he can be compensated for the damage caused to his bicycle (over 1,000 euros), he lodged a complaint. The Gendarmerie handling this case did not settle it after one year.
Mr J. then asked a delegate to help him. The latter then contacted the Gendarmerie and learned that the case had been transferred to the law courts in April 2008 for a legal action. A call to the public prosecutor confirmed that a hearing concerning the complaint will be held before the court ... in 2009.

The citizens' need for information is particularly clear and legitimate, in a complex matter like taxation. It is all the more so bigger that it stems from a deep-rooted lack of understanding, because, let the truth be told, in most of the cases referred to the Mediator of the French Republic, the taxpayer does not understand his case. Two things are needed to solve this complexity of taxation: education and provision of guarantees.
Nevertheless, we have to moderate, bearing in mind that, on the one hand, this complexity is the corollary of justice and equity in the taxation system: to ensure the equality of all before the taxation system, the law is often obliged to go into a lot of details and tries to cover all possible situations. Therefore, towards the taxpayer, the role of the Mediator of the French Republic is to clarify and make understandable the laws

and decisions that concern him.

Mr L., a professional fireman, had a work accident which made him stop work for several months. He asked his tax office to inform him about the taxation scheme applicable to the daily allowances he had received in this respect. The tax office first informed him that these allowances were not subject to tax, and later told him the exact opposite. He then contacted another tax office which confirmed the untaxable character of these allowances. He also contacted the tax conciliator of his department, who informed him that all the allowances paid to civil servants following an illness should be considered as taxable income.
These contradictory answers, a source of legal insecurity for the complainant, made him seek the help of the Mediator of the French Republic in order to obtain an explanation about the existence of different taxation schemes applicable to the daily allowances payable in case of work accident.
The Mediator explained to Mr L., a regional civil service official, that his situation differed from that of employees solely indemnified by the social security office and for whom the tax law expressly provided an exemption prior to the financial law of 2010.

The taxpayer's need for information is not only due to the complexity of laws, but also for his own security. In fact, the French taxation system, because it is largely based on the principle of controlled declaration, with the possibility to make some rectifications in future, supposes that the taxpayer has a lot of guarantees. Since he knows his rights and obligations, he should be able to be sure about the validity of the position adopted by the tax administration. It is on this condition that he can prevent any risk of lawsuits. This applies particularly to a company with an investment project, or a liberal professional opening an office.
Although it is necessary for the taxpayer to surround himself with guarantees so as to avoid any dispute with the tax administration, he also needs to understand why he is being subjected to a tax adjustment. Now, at this point, when the application may appear obvious, some progress still needs to be made: despite the law of 11 July 1979 on the justifica- •••

tion of administrative acts, in this instance Article L. 57 of the tax procedure handbook, the taxpayer is still not in a position to understand well and exercise his rights. The administration often respects the legal stipulations, but limits itself to technical justifications, sometimes laconic, sometimes overabundant or even purely formal. In some cases, this justification may even be so vague that it can be regarded as a lack of justification.
When these complaints are recognised as well-founded, the administration finds it difficult to meet the requirements imposed on it by law and legal precedents, one of which is to satisfy the taxpayers' actual need for information. Therefore, the Mediator of the French Republic has an important role since he can ask the administration to specify the grounds of its decision.

The citizen lost in the labyrinth of contributions

Once the social field is touched, no one understands any longer the insurance contributors complaining about not understanding the methods of calculating the contributions required of them. The explanations given, when they are able to obtain them, are clearly insufficient and often make them contact the Mediator of the French Republic to help them interpret correctly the demands of social security organisations. Many citizens affiliated to the social security scheme for liberal professionals are lost in the subtleties of their scheme. Having created their self-employed activity without understanding all the calculation methods, they are bewildered by the various contributions, flat-rate calculations with regularisation at a later date. Since they end up not understanding what is required of them, they have a feeling of injustice in the face of the injunctions they are subjected to.
Behind the many complaints sent to the Mediator of the French Republic are human tragedies, like those of families left without any benefits while their case is being examined. An example is that of Mr and Mrs X, in a situation of financial insecurity, who applied for the active solidarity income (RSA) at a social security office (CAF).

This couple, whose income barely amounted to 300 euros a month, was about to have its water and electricity supply cut because they were not unable to pay their bills. In fact, since the end of Mr X.'s contract, two months had passed, yet his unemployment benefit request was still being examined at the unemployment unit of the army. Considering the situation of Mr and Mrs X., their case was handled by the Emergency section of the Mediator of the French Republic. They approached the unit so the social security office concerned, as well as the person in charge of the RSA request, could be contacted. Thanks to the intervention of the Mediator of the French Republic, it was discovered that the absence of an unemployment certificate was the reason why the request had not been processed. The different interlocutors, thus, also became aware of the existence of this document, thereby ending the deadlock situation.

The economic crisis increases the feeling of being treated unjustly, and in an unequal and discriminatory manner, when citizens have complied with the procedures and feel penalised for no reason. Therefore, the temptation is high to try to disregard and force the hand of an administration which they consider as having mishandled their case. We also have to take into account the tendency, more and more widespread among some insurance

contributors, to choose the most advantageous services. In view of these attitudes, the question that readily comes to mind is whether the information policy in this respect is sufficient considering the potential rights of insurance contributors, and, above all, whether it is still well suited.

The citizens' right to information must be taken into consideration and the public institutions' communication efforts have been intensified to suit the citizens' day-to-day life better. Citizens are increasingly conscious of the administration's obligations towards them. However, the slowly growing individualism and the more recent but brutal emergence of economic crisis have changed the attitudes. The result? A rising call for the law to be turned to the advantage of special interests: at different levels but always with force as can be seen in some complaints sent to the Mediator by some citizens who have gradually become public service "consumers". In this connection, the quality and effectiveness of the site "service-public.fr" seems to show the way to follow. It remains, however, to invent for the benefit of users who do not master information and communication technologies (ICT) an equivalent in terms of physical reception. This is the request made over several years by the Mediator of the French Republic for the creation of more legal access centres.

Ministries silent again ...

When the organisation concerned fails to heed the arguments of the Mediator of the French Republic to bring in a solution or response, this latter takes the matter step by step up the decision ladder, up till the minister, if necessary, in order to draw the attention of the highest authority to a failure to modify his interpretation of laws. He may propose a new law to the minister (regulation, circular, decree) to clearly specify the application of the law and get round the organisation's resistance. The Mediator of the French Republic may also ask for the minister's opinion about the law which serves as basis for the referral and the entire matter. Nevertheless, much patience is needed because the response time can be relatively long, especially when the requests are sent to the Labour ministry and to the Agriculture ministry or even some public organisations: complexity of the process, sluggishness and inertia of the hierarchy, etc. The absence of response not only expresses a desire not to reply, but sometimes an inability to do so. Although this situation, already highlighted by the services of the Mediator of the French Republic in 2008, seemed to have improved at the beginning of 2009, this apparent reactivity did not last and silence has again become a common reaction to the institution's requests.

Medical information, a rare commodity

Citizen information remains insufficient in the field of healthcare as well. This deficit is all the more tangible that in the face of doctors' knowledge, acquired during years of long and difficult studies, the citizens have the impression that they are in front of an insurmountable wall of knowledge. Since the organisation which used to work within the High Authority on Healthcare (HAS) joined the services of the Mediator of the French Republic under the name of the Healthcare Security and Safety Unit (P3S), there has been a significant rise in the number of information requests concerning healthcare system users' access to law. Almost all the cases referred to the Mediator, especially concerning medical accidents, have to do with the problem of access to information. The complainants' typical phrase is: *"I tried to know, but no one answered me"*. In case of medical accident, this request for transparency may meet with withholding or even denial of information, partly out of fear or out of self-protection. These attitudes may often lead to a total breakdown in dialogue, or even conflict, with a real desire to take a legal action on the part of the patient or his beneficiary. This is a new and rapidly growing phenomenon.

However, the people who, suspecting a medical or treatment error, contact the Mediator of the French Republic, often recognise the fact that they had neither asked the doctor or surgeon who had treated them any questions, nor referred the case to the hospital's mediator doctor. Yet this mediation does exist, at least in theory, in all hospitals since the law of 2002 on patients' rights, which also created Commissions for relations with users and quality of treatments (CRUQPC). Quite often the doctor or hospital should have provided a satisfactory answer, but they did not want or dare to start with this phase. People find it difficult to express their dissatisfaction to a doctor, because taboos are still strong in this field. Moreover, in a small village with only one hospital, •••

••• some people wonder how to return there after a lawsuit. The right to ask a simple question still does not seem natural. In fact, patients do not feel totally independent before a hospital's mediator doctor.
The intervention of the Mediator of the French Republic also concerns cases of complication wrongly understood, expected or not expected by the medical corps, after a surgery. His role is then to help the unhappy patient to differentiate between expected and unexpected complication, and to surmount the difference between two points of view: his *("Nothing was explained to me"* or *"It was explained to me in such a way that I could not understand")* and that of the doctor, who claims to have given loyal and complete information.

Mr F., aged 79, consulted an otorhinolaryngologist at a hospital for some discomfort in the oropharynx, with permanent clearing of throat. The otorhinolaryngologist noticed a tumefaction of the lower wall of the larynx which was spreading to the pharynx and decided to carry out a fiberoptic endoscopy, which confirmed the diagnosis. The doctor then decided, surprisingly without further prior examinations (scanner or magnetic resonance imaging) and under general anaesthesia, to explore this tumefaction with a view to performing some biopsies. This turned out to be a vascular malformation of the internal left carotid artery, and the surgeon, through his intervention, triggered massive haemorrhage which could not be controlled and ended in the constitution of a definite left hemiplegia.
In view of the incomprehension generated by the occurrence of such a tragedy, Mr F. and his family referred the matter to the Healthcare Security and Safety Unit. In fact, he had only been informed about a perfectly minor and common exploration of his throat for a "lymph node", without any mention of the possible risks inherent in the surgery. Thanks to an in-depth analysis of the case by doctors at the Unit, it was possible to provide intelligible information about the circumstances surrounding the occurrence of this medical accident.

Although the number of these initial information requests are decreasing, the institution is happy to observe a fall in the number of complaints about the difficulties encountered by users to access their medical records. This improvement resulted from the intervention of the Mediator of the French Republic at the Health ministry and hospital managements, due to the many complaints lodged with him. They concerned, in particular, the non-respect of the deadlines for communicating medical records.
We know that the law of 4 March 2002, known as "Kouchner law", on patients' rights enables patients to have direct access to their medical records. For a hospitalisation which dates back to five years, the hospital has a period of eight days to provide it. Now, the average deadline noted was three months, with one to nine months differences; it is henceforth just one month on average. We have to admit, however, that in many cases, this legal deadline is impossible to respect: if the person has gone through several units (emergency, reanimation, intensive care, surgery), it would be futile to imagine that his "route" can be reconstituted within such a short period. If the law contended itself with fixing a maximum period of fifteen days to one month, it would be possible to ask for a strict application thereof and to end some frustrations on both sides.
In terms of communicating medical records, some progress still needs to be made in one case: when it concerns a dead patient. We have noticed a certain inertia on the part of hospitals, an attitude the Mediator of the French Republic refers to as a "precautionary wait-and-see attitude". It does not concern communication time or the principle of this communication itself, but the communicable character of documents.

After spending 24 hours on a stretcher at the emergency unit before being hospitalised, Mrs S. was finally operated upon and died during the operation. Mrs S.'s family, especially her husband and her daughter, was received by the head of the emergency unit fifteen days after she had died to talk about his team's "erroneous diagnoses" and to apologise to the family and assure them that the medical record was at its disposal. Unfortunately, after making several requests for this record for three months and after breakdown of talks with the hospital, Mr S. decided to refer the matter to the Institution's Healthcare Safety and Security Unit.
Pursuant to Article L. 1110-4 of the public healthcare Code, medical secrecy shall not prevent information about a dead person from being issued to his beneficiaries, considering that these latter need it to know the cause of the death, defend the memory of the deceased, or exercise their rights, except where otherwise expressed by the person prior to his death. Therefore, the management of the Healthcare Safety and Security Unit intervened at the management of the CHU to cite the law and thus obtain the release of the medical record.

ADMINISTRATIONS SHORT OF REFERENCE POINTS

Late implementation of laws

Concerning the administrations' sluggishness in applying a law, the example of the implementation of the law of 1985 pertaining to the note "died in deportation" is emblematic: 24 years after its adoption, less than half of the cases have been handled! According to this law, the annotation "died in deportation" shall be made on the death certificate of any French citizen living in France or in a territory previously under France's sovereignty, protectorate or trust territory, who, having been transferred to a concentration prison or camp, had died there. The same annotation shall be made on the death certificate if the person had died during his transfer. The decision to make this annotation shall be taken, after investigation, by the minister in charge of veterans. According to the latest figures provided by the Defence ministry in a note dated 23 April 2009, 55,757 cases had been handled whereas historians estimate the number of persons concerned to range between 115,000 to 160,000. The Mediator of the French Republic has complained to the relevant ministries about the difficulties of applying this law In response, the Justice ministry issued a circular (dated 29 October 2008) to all the prosecutors' offices in order to clarify certain procedural points and encourage uniform processing of the cases. Moreover, the Defence ministry has increased the resources available to the relevant services in order to speed up the regularisation rates, which may be up to 3,000 annotations a year. Despite these praiseworthy efforts, it will take at least another 20 years to handle all the cases! The Mediator of the French Republic has asked the Justice ministry about the possibility to facilitate the current examination procedure, made unnecessarily long by the double intervention of the Defence ministry and law courts when a death certificate must first be issued. An amendment in keeping with this proposal will be presented to the Senate within the framework of the recommendation to simplify and improve the quality of law.

Laws applied wrongly in the absence of clear directives, which are long to obtain

One of the reasons sometimes given for the inertia of administrative services is almost irrefutable: the absence of application decree or circular. In most cases, even with the best will, the administrations concerned cannot apply the law in question without these "instructions for use". The circular, thanks to the specifications it gives, prevents some errors which may be prejudicial to the citizens. Therefore, the Mediator of the French Republic must frequently explain these facts to citizens seeking his help and who do not understand that they are not allowed to benefit from a law adopted by the Parliament.

Even when it exists, the circular still needs to be sent to the officials concerned.

They can all be consulted on the following website: www.circulaires.gouv.fr.

••• Mr M. had been a victim of vehicle plate number theft. It was not particularly difficult for him to have the fact recognised that he had not been guilty of the overspeeding recorded in October 2006 since he was on vacation in Corsica with his vehicle on the said date and since the make of the vehicle flashed by the speed camera was different from his.
The public prosecutor's office in charge of the automatic speed camera control also cleared him of the offence committed in November.
After lodging his complaint, Mr M., out of precaution, asked for a change of his vehicle's plate number. The service in charge of car ownership certificates only allows this change subject to the payment of a 46 euros tax, corresponding to a horsepower. Mr M. changed his plate number, paid this sum but, in accordance with the stipulations on the exemption application form appended to the report, he also submitted an application for exemption with the prefecture so he can be reimbursed the cost of changing the vehicle ownership certificate.
Since he had not received any reply to his last letter and his different telephone contacts, he sought the help of a delegate in March 2008.
Since Mr M.'s file, held by the prefecture, was clear, the delegate Mediator contacted the person in charge of the case at the car ownership certificate office. The latter, who was perfectly familiar with the case, informed the delegate Mediator that a reply letter was being prepared and that it was going to be in line with Mr M.'s request. After two reminders by phone, it was confirmed to the delegate that a letter had been sent to Mr M.
This letter dated 8 April 2008, specified that the reimbursement was authorised in accordance with a circular from the Justice ministry, which had not been circulated to the prefectures and that, despite this, Mr M.'s case was closed. The head of the office informed the delegate that he regretted this bad communication between ministries.
Mr M. thanked the delegate for his intervention which had made it possible "to find a solution in less than one month to a problem for which no solution had been found despite a relentless struggle for two years".

Mrs A. has been able to measure how long it can take to process a request. Declared at least 80% disabled in October 1975, she had been able to obtain by phone, for this reason, her early retirement benefits and thus received her old-age pension within the farmers' scheme on 1st July 2006, at the age of 57. Then on 29 June 2007, she asked Mutualité sociale agricole (MSA) – the farmers' pension scheme – to pay her the pension increment payable to people going on early retirement due to disability, in accordance with Law 2005-102 of 11 February 2005. MSA informed her that it could not access her application since it was awaiting some specifications from the ministry. When contacted, the Mediator of the French Republic, in June 2008 and in March 2009, drew the minister's attention to the fact that Mrs A., as well as other contributors entitled to this pension increment, were penalised. MSA's central office informed him on 21 August 2009 that the circular of 3 August 2009 giving the necessary instructions had finally been issued, and that Mrs A.'s case might be handled soon, nearly four and half years after the law had been adopted and two years after her first request...

Beyond the complexity of laws, we also have to look for the origin of this situation in the instrumentalisation of law. Over the years, members of Parliament have been asked to examine an increasing number of laws the sole objective of which has been to solve the current concern. Citizens, on their own part, have continued to call for the application of these laws, an expression of national sovereignty. Another deadlock situation often mentioned in the complaints: the voluntary partitioning in their domain of the different players and their representatives, who sometimes do not even dare give to the user some useful informa-

tion, pretending that this does not fall within their field of activity. With the growing feeling of being treated like a negligible quantity by the administration, the citizen sometimes questions the notion of public service, even though he does not always measure well the lack of resources, especially human resources, which characterises the other side of the counter.

Ineffective system interconnection

Since the law of 2003 reforming the pension schemes, the right to information has clearly improved (creation of the computerised processing of exchanges between pension schemes by decree 2009-1553 of 14 December 2009). Although it works effectively and provides reliable and comprehensive information for most contributors to the legally obligatory pension schemes, some difficulties still exist concerning the State civil service scheme. A central administration like that of the Education ministry, for instance, finds it difficult to reconstitute career. The problem is not necessarily to calculate the pension amount, since the reference period are the last six months of activity, but rather to validate the number of semester of activity. In fact, from one academy to the other, the low compatibility of computer systems and lack of interconnection are a major obstacle to information circulation. With the autonomy of universities, the problem may escalate. Already, a good number of universities have been unable to inform their employees, born between 1957 and 1959, about their pension entitlements, as required by law.

Congestion in emergency units

Regarding disorientated public services, it is also important to mention, in the healthcare field, the too long waiting period in hospital emergency units, always under pressure. We find these waiting periods, deemed improper, with sometimes very serious consequences, at the heart of the complaints lodged by users. How could it be different whereas the emergency units are "embolised" by ever increasing demands? Although the persons going there think otherwise, it is not always justified to resort to a hospital's emergency unit. Many people go there for minor infections instead of just consulting their general practitioner.

Upstream, we have the problems of regulation by the emergency service, a very exposed service which is becoming the receiver of social welfare request and misery, and must, at the same time, handle real emergencies that require immediate medical attention. All the problems of access to healthcare by vulnerable persons are found here, psychiatric patients, for example, who too easily call the emergency service. The service ends up knowing and noticing some "regulars" who call two or three times every night and who risk not being taken seriously by the person on duty if one day their call concerns a "real" emergency. Moreover, it is known that some people call the fire brigade excessively; the fire brigade has decided to start an information campaign on this issue.

Emergency service workers work under such a pressure that it is then difficult to claim that they have done their work badly. In most cases, this work is indisputably done well. Nevertheless, the Healthcare Security and Safety Unit of the Mediator of the French Republic has had some cases where the notion of emergency had escaped the doctor's attention, or even cases of incorrect behaviours: a patient that had not been examined, a wrongly anticipated complication, a badly assessed (thoracic or abdominal) pain.

Mrs B., aged 53, was complaining of sudden abdominal pains. After the attending physician's intervention, an acute ileus was suspected and she was rushed to the emergency unit of a hospital for surgical opinion. Upon arriving at the hospital, Mrs B. was quickly examined by an emergency physician, who made the same clinical observations but diagnosed serious constipation based on the X-ray of the abdomen. Mrs B. then spent 24 hours on a stretcher in the emergency unit before being hospitalised. Less than 12 hours after her hospitalisation, her situation deteriorated very rapidly. Despite the surgery performed urgently, she died the next day. After the medical record was analysed it appeared that the initial treatment by the emergency unit of the CHU was not in line with the data acquired from the medical science, and that the diagnosis of acute ileus had been much too late.

The crowds at the emergency unit was also said to be a reason for insufficient information: a doctor, a healthcare staff under pressure is bound to devote less time and attention to exchange with the patient. •••

When reducing inequalities leads to the creation of new ones

Until 2003 the main aspect of the civil servants' right to family related advantages provided for by the pensions Code was only open to women. After a ruling by the European Court of Justice on discrimination, France reformed the child-rearing bonus scheme through the pension-reform law of 21 August 2003. Henceforth, the child-related bonus is granted both to male and female civil servants, provided they prove they have interrupted their activity continuously for at least two months, within the framework of a statutory leave. Moreover, they have been extended to women who gave birth before taking up their post, on some conditions. This seemingly more egalitarian law has, however, generated some new iniquities. Thus, the many cases referred to the Mediator of the French Republic show that the new laws have finally led to the exclusion of men from the right to the bonus, instead of allowing them to benefit from it. In fact, the condition of continuous interruption of activity for two months is generally a given for women who have been granted postnatal leave the duration of which is above two months, but rarely for men… The new provisions have also made some women lose their previous entitlements: female teachers who give birth or adopt a child during school holidays without taking a maternity or adoption leave…

This was the case of Mrs L., a teacher and mother of two children adopted in 1984 and 1992. She had noticed that, when her pension was being calculated, only one of her children had been taken into account for the child-related bonus. In fact, for her first son, since the adoption had taken place towards the holiday period, she had not requested for adoption leave. The Mediator of the French Republic has drawn the attention of the Civil Service minister to the unequal treatment created by this law, but the reform proposal in this respect has never been taken into account.

Mrs L. has referred the matter to the administrative court, but her chances of having her situation regularised is almost zero, unless, perhaps, it is done within the framework of the 2010 pension reform, the recommendations of the Mediator of the French Republic or any other provision which may correct the disparity between the same and different civil servant categories, private sector employees and contract civil servants (governed by the private pension law).

Moreover, despite a positively evolving jurisprudence, some vagueness still persists, for twins or double adoption. The Mediator of the French Republic has extended the field of his adoption-related reform proposal to the entire child-based bonus system in anticipation of the 2010 pension reform and a possible overhaul of the entire scheme. ■

The citizen alone in the face of an unstable and insecure situation

In view of the incessant stacking up of laws and regulations, citizens are increasingly having the impression of being up against a real administrative jungle. The citizen often finds himself alone, without any operating mode to which to refer or any interlocutor to talk to. In this context, the temptation is high to think that the public systems, which are supposed to protect the citizens, are faulty and no longer fulfil their initial public service function. Many people end up imagining that the system protects itself more than it protects the citizens.

A LEGISLATIVE INFLATION WHICH CONTRIBUTES TO THE INSTABILITY OF THE NORM

What happens when the law changes between the time the citizen cites it and the time it is actually applied? Mr R. surprisingly became aware of the problem when he wanted to go on retirement.

Born in 1952, he started his career at the age of 14. At the end of 2007, after being laid off, he took some steps at the regional pensions fund (Crav) to benefit from the provisions on early retirement after a long career. Since he had only contributed for 161 quarters out of the 168 quarters required at that time to be entitled to the scheme at 56, Mr R started to pay to Urssaf, as of 13 March 2008, some contributions enabling him to regularise his period of apprenticeship of 1st July 1966 to 31 December 1969. Initially informed that these contributions would allow the validation of the missing seven semesters, he was later told that the contributions only concerned five quarters, which called to question his potential retirement date.

The Mediator of the French Republic informed him that, pursuant to the regulations existing at the date of payment of contribution arrears, his contributions for the period of apprenticeship were only valid for two quarters in 1966, instead of the four quarters erroneously indicted by the Crav. Moreover, for contributors born like him in 1952, the number of quarters required to be entitled to full pension benefits at ...

• • • **the age of 60 had been increased to 164 quarters, thus modifying the conditions enabling them to go on early retirement after a long career.**

If there is a domain that changes, legally speaking, faster that the citizens' ability to follow the change, it is actually that of pension which also depends a lot on the pensions funds' financial situation. Thus, the wave of early retirement resulting from the 2003 law and which had been followed by a more restrictive change in the corresponding law, has left a lot of citizens in midstream. A factor of insecurity for the citizens who find it increasingly difficult to anticipate their situation and its modifications, this legislative frenzy is all the more worrying since the issue is still far from being resolved.

RATIONALISATION – A SOURCE OF MALFUNCTIONS

Considering the large number of organisations and administrations, the administrative organisation is regularly rationalised in different sectors. Reducing the deadlines for processing requests, simplifying administrative procedures, reducing the number of interlocutors and steps to be taken, etc. - the objectives of these operations are simple and clear: facilitating citizens' relations with their administrations and making the processes more effective for the benefit of all. Thanks to the introduction of computer systems in the wheels of the civil service, some non-negligible progress has been made in this respect. However, the use of technological tools has sometimes been a source of many problems. As for the citizen, if he does not have all the information necessary for his orientation in this new system, and to understand the applicable rules, a lot of complaints show that they often feel like the victims of rationalisation instead of beneficiaries.

The social security scheme for liberal professionals (RSI), born from the merger of the two pension schemes for artisans and merchants and that of the health insurance for craftworkers, traders and liberal professionals, actually shows the difficulties inherent in trying to simplify a complex organisation. In fact, since 1st January 2008 the RSI is the only social security interlocutor for artisans, industrialists and traders. Thus, only one contribution demand is sent to contributors. This objective of simplification is, unfortunately, difficult to perceive given that the malfunctions resulting from the introduction of the convergence of RSI and Urssaf's computer systems are numerous and difficult to handle. For persons affected by these delays, the rare explanations, too technical or incomplete and in which the bad role conveniently falls to the computer's share, are best seen as indifference or contempt whereas the RSI staff really strives to play its public service role as best as it can.

COLLATERAL DAMAGE OF OPENING THE ENERGY SECTOR TO COMPETITION

The big structural and organisational changes undertaken, or about to be undertaken, in the civil service often suffer from insufficient support in terms of information and reception of the general public. The opening up of the energy sector to competition is a significant example.

The opening of the electricity and gas sector to competition has sometimes had negative effects on the day-to-day life of customers of the two major energy suppliers (EDF – GDF). The good image of these two former public services has become blurred: invoicing errors, bad contact (or even absence of contact) with customer services or unreplied mail have made a lot of users to seek the help of delegate Mediators. Thanks to the relations created by the Institution with the mediator of GDF and, more recently with that of EDF and energy, the delegates have been able to restore between energy suppliers and their customers a contact, sometimes cut for several months. Once again, the Mediator of the French Republic has noticed the malfunction in the call centres in charge of processing complaints, and the lack of information to customers. Many examples attest to this.

Mrs A. noticed, during the last quarter of 2007, that GDF had debited from her account some amount that did not concern her, since the address indicated was wrong. She contacted the customer service for several months. Since she obtained no reply, she referred the matter to a delegate of the Mediator of the French Republic. In March 2009, this latter contacted GDF, which took up the complaint, examined the file and regularised the situation and made the reimbursement of the unduly debited sum, expected for over one year.

To use the services of EDF in the Meuse, you really need a telephone!

Mr G, aged 58, is a victim of work disability and lives alone. Having just been re-housed following an expulsion by a previous landlord, he was finding it difficult to have a

gas supply contract he had signed with EDF in March 2008 executed. Now, since said date, the gas supply had not been put in place and Mr G. had tried without success to obtain an explanation by phone. The social worker in the sector had also tried in vain to contact the EDF service by phone. So, in winter, Mr G. had to resort to the use of an additional electric heater, in the absence of gas. He contacted the delegate on 20 January 2009 during a visit to the prefecture. The delegate Mediator immediately made several phone calls to the regional management of EDF and confirmed his request in writing.

The EDF service concerned (based in the Isère) phoned the delegate one month later to explain to him the problem it was facing: Mr G.r's telephone was no longer in service (as a matter of fact, the subscription had been terminated due to payment default) and thus, EDF had been unable to contact him to fix an appointment to activate the installation. In other words, EDF contacts its customers only by phone to install gas! The appointment was later taken *via* the social worker in the sector.

THE PRACTICAL CONSEQUENCES OF REORGANISING THE DECENTRALISED SERVICES OF THE STATE

In terms of the general public's understanding, some considerable problems may arise with the implementation of the general review of public policies (RGPP) in the departments. This complete reorganisation of the decentralised services of the State, mainly in the departments but also in the regions, will not be without any consequences for the citizens. Traditional departmental services, such as Youths and Sports, Equipment or Agriculture, will be fully integrated into new organisational charts which no longer correspond to what the general public used to know. All the names, acronyms, interlocutors and details will be modified. Even if this reform is made to be more effective and offer a better service, habits will initially be deeply disrupted, with some possible malfunctions.

The Mediator of the French Republic fears that these changes have not been sufficiently followed up with information and explanations to the general public. It is normal for the administration to have started working internally to solve the problems of organisation. But in a second phase, it seems important that the services address the general public directly to inform it about the changes made, since the success of a rationalisation •••

operation depends so much on its capacity to be understood by the citizens. Some national communications had been made on the topic of reform, but none of them gave any practical explanations. Since these latter are only possible at the departmental level, the Mediator of the French Republic would have preferred that the prefects receive very precise instructions. As for the need to inform citizens about the concrete consequences of reforms made, the Economic ministry is one of the institutions that have made the biggest progress, especially regarding tax payment.

"POLYMORPHOUS FILES"

The report is alarming: the distress situations in which citizens see the Institution as their last resort make up an increasing portion of the complaints. As a privileged observer of huge changes in our society, the Mediator of the French Republic has also become the yardstick for measuring the social atmosphere, since he is often confronted, through his permanent contact with all the classes of society, with the problems that painfully affect the less privileged. This is how a lot of complaints about the Dalo law (opposable right to housing) were sent to him, mainly from tenants about to be expelled. Though eligible for the right to housing, they may find themselves without housing before they are provided an accommodation considering the long waiting period inherent in social housing. Thanks to the intervention of the Mediator of the French Republic, it has been possible in several cases to postpone expulsion until a proposal is made to them. Moreover, a partnership has just been created between the minister for housing and delegate Mediators to guarantee the most precarious populations real access to the basic rights *(see Page 46)*.

Nevertheless, this task calls for moderation and vigilance, because in view of the increasing house rents and deteriorating individual economic situations, the issue of housing is rarely simple. Protecting the rights of every individual is sometimes tricky and delicate, since landlords are sometimes also in a precarious financial situation and tenants can act in bad faith. Also to be taken into account are those social housing requestors who tend to accumulate procedures as a means of pressurising and negotiating with the administrations, and who have a wrong conception of the Institution; they contact the Mediator of the French Republic hoping to, thus, speed up the procedures. The requests reflect the changes in a society they consider as increasingly unjust and in which all means are good to try to remedy an unfavourable situation. It is noteworthy that some of them contact the Mediator of the French Republic knowing very well that their request is not admissible, hoping only to slow down the legal procedures.

Complexity and opacity of the system: tendencies to be reversed

Cases referred to the Mediator of the French Republic concern more and more often a huge number of players, which result in long and complex processing. Cases of traffic offence-related litigation, where the interlocutors find it increasingly difficult to coordinate their actions, show very well how Kafkaesque situations can quickly emerge.

Mr F. committed a traffic offence while riding his moped. Although a licence was not needed to ride the moped, several points were deducted from his driving licence. Having been summoned for awareness-creation training, with a view to recovering the lost points, he had to pay the sum of 235 euros. Following the intervention of the Mediator of the French Republic at the Interior ministry, the points wrongly deducted by the administration were returned to Mr F. Still the problem of reimbursing the cost of the training remained pending. Now, the Interior minister informed the Mediator of the French Republic that he did not intend to approve it since the request for reimbursement resulted from an error made by a service officially under the responsibility of court authorities. On its own part, the Justice ministry thinks that it is the responsibility of the Interior ministry. The Mediator of the French Republic has referred the matter to the Prime minister for arbitration. The case is still being examined.

Number of disputes: a sign of malfunctions

An analysis of the disputes brought to the attention of the Mediator of the French Republic, especially in the taxation field, shows a tendency towards a general protest. He still receives some cases where the complainant highlights a very specific malfunction or where the complainant bases his complaint on a very particular legal point, but they no longer constitute a majority of the cases. This situation is on the one hand due to the fact that the tax administration has developed its own mediation bodies, such as the departmental tax conciliator, in charge of settling disputes amicably, and, on the other hand, due to the development of on-line administration (exchange of e-mails with tax offices, on-line tax returns, availability of forms on line, etc.). The Mediator of the French Republic, who has been following up this tendency since 2004, is happy that this change has continued and become a long term development. However, the real guarantee for the taxpayer remains the possibility to have his tax situation re-examined by an independent authority using its own means. In fact, internally, the departmental conciliator most often confirms the decision of the local service and his intervention often leads to a cancellation of the penalties rather than a real re-examination of the tax situation.
Nevertheless, the development of overall complaints seems to stem from contentious administrative behaviours, questionable or deemed as illegal by the Mediator.
This year, five of these questionable behaviours seemed to him worthy of special attention:

- When the administration applies its doctrine retroactively, it disrupts the taxpayers' forecasts and, thus, creates an atmosphere of legal insecurity and distrust of administrative actions.
- When the administration contributes to the instability of norms, for example pertaining to the applicability of tax credits in favour of renewable energies. Heat pumps have, in fact, been successively excluded from tax credit (decision of 1st February 2005) then included again, provided there is minimum performance (decision of 1st December 2005). The administration then required through instruction that they contain internal units, available in all living rooms (instruction of 18 May 2006), and finally excluded these units from the basis of tax credit (instruction of 11 July 2007).
- When the administration asks for an excessively formalistic piece of evidence, especially in cases of identity fraud (also refer to page 32), thereby attributing to a taxpayer some income he had not made. It may be understandable that it be naturally suspicious; yet it is regrettable that it waits for the results of a police investigation, whereas the reception of the money in question would require some material conditions obviously impossible to fulfil: obviously unrealistic turnover, considering the material and human resources applied, or even two full time employments supposedly held several hundreds of kilometres apart.

- When the administrations resort to some unrealistic legal constructions, which, for instance, result in the imposition of taxes on some unmade income. Such is the situation of the indemnities paid to some retirees from Charbonnages de France.
- When the tax administration takes late application measures. Thus, the Mediator of the French Republic received a certain number of cases in which a measure in favour of a category of persons had been taken, but its implementation was delayed. An example that readily comes to mind is the case of release from joint responsibility when, after a separation, an ex-husband organises his insolvency in order to escape from his liabilities and leave the ex-spouse, who also often has the children's custody, with the responsibility of reimbursing tax-related debts.

Moreover, in view of several malfunction-related cases, the Mediator of the French Republic has had to consider certain administrative behaviours as illegal, without interfering in the judge's field of activity.

This applies, in particular, to the rectification procedure imposed on persons who had wrongly benefited from the mobility benefit within the framework of the employment policy, obtained after filling out badly designed and incomplete obligatory declaration forms.

A second behaviour which may be considered as illegal is the fact that the administration sometimes adds further conditions to those stipulated by law. This is not part of these benefits and restricts the number of beneficiaries. The Institution has had to deal with many cases of this type, especially regarding tax credits for renewable energies, professional mobility or keeping of young children.

Thirdly, some protective administrative decisions seem to be excessive when they are meant to extend the period during which a taxpayer may have his tax returns rectified.

In the case referred to the Mediator of the French Republic, the administration, which had three years to correct a tax return, notified the tax payer just prior to the end of this deadline about a rectification and contested a deduction for whatever reason with a view to starting this period afresh and, thus, obtain additional three years to find a good reason. Now, this three-year deadline is usually a guarantee for the taxpayer, who at the end of this period should be able to consider his tax affairs definitely in order. This guarantee has been circumvented here since it was only after twelve years, after a change of reason, that the taxpayer finally knew why his tax return had been contested.

The Mediator of the French Republic has also observed that in case of tax investigation leading to an out-of-hand taxing of the results of a company, the administration tended to exaggerate the evaluations, whereas it is obliged to be as close as possible to the reality.

Finally, the processing of the complaints received in 2009 has also made the Mediator of the French Republic to make a proposal tending to create separate taxes in case of deferred income, to make more equitable the taxes on excess payments, and to limit the practice of inappropriate prescription interruptions. He has also suggested that the Taxpayer's Charter be used as argument against the administration.

Life courses which are no longer secure

The Mediator of the French Republic has noticed that, for an increasing number of its fellow citizens, relations with the administration are more and more characterised by break-ups, which often affect the most fragile members of society. Result: some individual paths in life which may "go off course" at any time. Worsened by the economic crisis, the fear of the incident which penalises or excludes is more and more often taking the form of an administrative intervention in the life course which is no longer secure.

➜ SOME PENSION BENEFITS DIFFICULT TO ACCESS

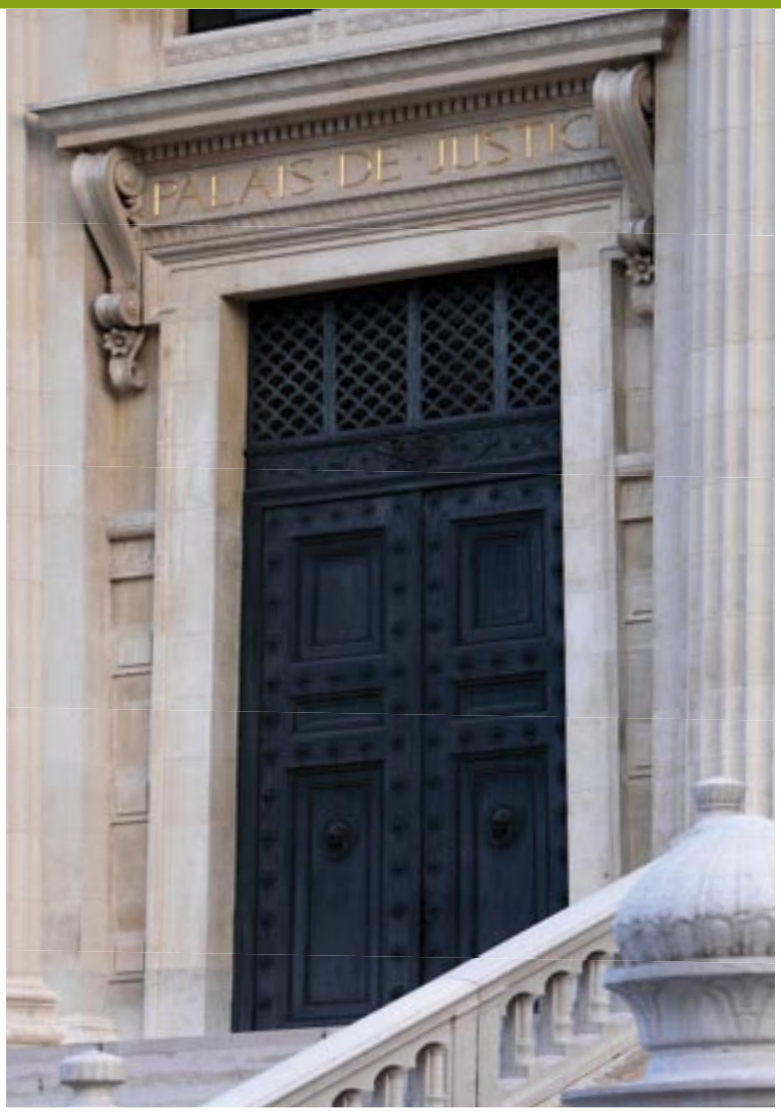
This may be the case of people wishing to be paid their pension benefits after spending part of their professional life abroad. In cases where the foreign pensions funds, especially in Algeria and other African countries, do not reply to requests by the French fund, career reconstitution becomes impossible, which prevents the payment of the pension benefits or only allows their payment at a reduced rate. The Mediator of the French Republic then contacts these funds and notifies the mediator of the country concerned about it – if the country has one. However, the procedure not always meets with success. Despite frequent interventions by the services of the Mediator of the French Republic for this type of cases and the collaboration recently developed with the CNAV and the CRAMs, a final solution remains to be found.

➜ SOME CONTRIBUTIONS TO BE REGULARISED

Sometimes while fulfilling a citizenship obligations, the constituent may find himself prejudiced or may find it difficult to restore his rights.

This is what happened to Mrs L., who acted as a member of the jury before the criminal court of Gironde from 6 October 1997 to 2 April 1998. Like any employee, her work agreement was suspended during this period and she was paid some compensation not subject to contributions. Thus, her pension was paid, calculating a basic salary amounting to the average of her

best 22 years, the number of which included the years 1997 and 1998 minus the period when she had served as member of the jury.
The Mediator of the French Republic contacted the regional health insurance office, the ARRCO, as well as URSSAF to estimate the suffered prejudice. The organisations gave all the assessed elements; still it was not all that possible to obtain the evaluation of the contributions to be paid for the basic old-age insurance. In fact, URSSAF stated that this case could not be regularised within the procedure of old-age insurance contribution arrears, since her service as member of the jury was not analysed as an employee activity.
The Mediator of the French Republic then referred the matter to the Justice Minister as well as the Social Affairs Minister, so the modalities for a possible exceptional regularisation can be defined. After being reminded about it several times, the Justice Ministry accepted, in view of the special situation of Mrs L., that an indemnity amounting to the amount of loss calculated by the services of the Mediator, be proposed to her. From this individual case, a reform proposal was made so that social security contributions be paid for indemnities paid to jurors. After several exchanges, the Justice Ministry accepted, the possibility of introducing the following system: payment by the persons concerned of their own social welfare contributions, which will then be reimbursed by the ministry upon production of documentary evidence, plus an indemnity. A circular is awaited.



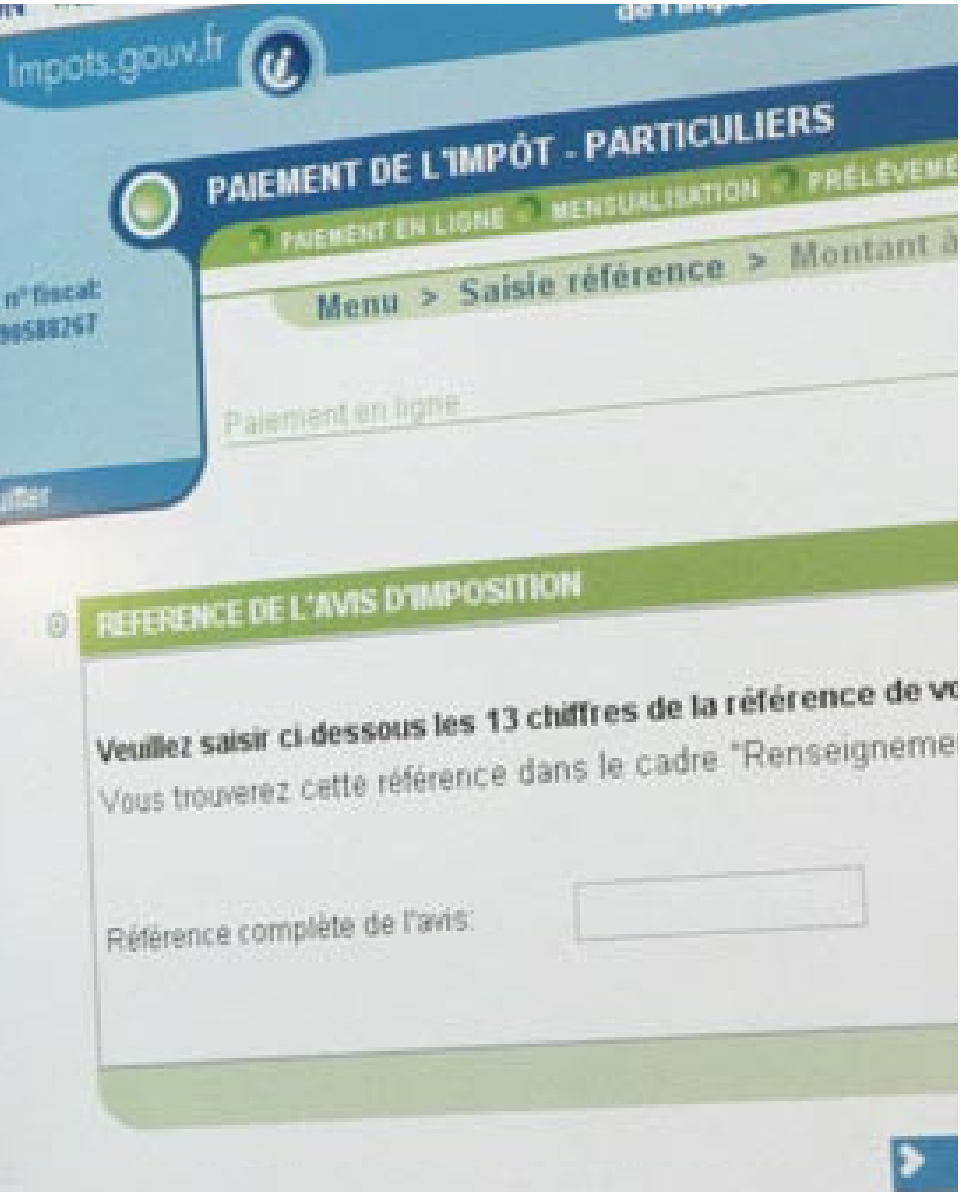
➜ PENALISING TEMPORARY SICK LEAVE

The institution is regularly contacted because of a civil servant's temporary sick leave. Theoretically, decisions about the sick leave are taken by the administration when the civil servant is declared unfit to resume his duty by a medical committee and after he has used up all his statutory leave entitlements. Typically, the Mediator of the French Republic is contacted about the situation of an agent who has used up his statutory leave and whose medical work aptitude report was not written at the right time due to the sluggishness inherent in the system, or administrative shortcomings. In fact, as long as the medical committee and, if applicable, the reform commission has not decided on the level of disability and possible adjustments to be made to return this civil servant to work, this latter is sent on sick leave. Landing on this administrative no man's land is all the more problematic since, despite the law guaranteeing remuneration, the person sent on sick leave may sometimes not receive any remuneration. Even •••

• • • if the regulation is strictly applied, the variability of procedural durations and the sometimes contradictory character of medical decisions is such that the civil servants concerned can sometimes be deprived of any remuneration between their last salary and their redeployment or, if applicable, the payment of their pension arrears, or dismissal (with the associated unemployment benefits). Therefore, after their illness, they find themselves in a precarious situation, which is felt as unjustified violence against them. The Mediator of the French Republic, thus, intervenes regularly to try and sort out these worrying situations and remind administrations that sick leave must always be accompanied by remuneration.

➜ NON-RESIDENTS OR RECURRENT TAXATION ERROR

There is a service with which the Mediator of the French Republic encounters some difficulties: the service in charge of the taxation of non-residents. However, it is a very special and exceptional situation since, generally, the tax administration works well. In this specific case, though, it may be reproached of delays, absence of response, uncorrected homonymy errors, sources of litigation which sometimes last for an unacceptable period, as shown by the case of Mr C.



He leaves in the Island of Madagascar since 2005 and, thus, depends on the taxation office for non-residents. On 15 November 2007, he received a third-party notification for his bank account concerning an income tax-related tax debt for 1998 and 2001. Now, Mr C. claimed that he had paid all his taxes for 1998 and produced his tax exemption notification for 2001. He then noticed that the name of the addressee, beside his own, on said notification was Mrs D. Now, the complainant stated that he did not know this person.

After sending in vain several complaints to the tax office in charge of non-residents and having noticed that the total debt amount had been seized from his account, Mr C. referred the matter to the Budget ministry and to the office of the French president. He only received some letters acknowledging receipt of his letters and informing him that his case had been forwarded to the tax office in charge of non-residents for examination. Mr C. then sought the help of the Mediator of the French Republic, who also contacted the tax office for non-residents. He is yet to receive any reply from this administrative service. ■

New links marked by distrust and suspicion

As they keep lasting long, the failures and other imperfections of the system, whose operations have ground to a halt in addition to being corrupt, have made users and administrations adopt new attitudes. Faced with this new situation, the law has started giving way to force on either side, leading to a profound change in relations between users and their administrations.

NO "PRESUMPTION OF INNOCENCE" FOR THE CITIZENS

In the eyes of the law, the issue of evidence is important. It is the basis for the legitimacy of any demand on the part of the citizen. However, some proofs are impossible to produce if a clue array system is not admissible. In this regard, the Institution's help was sought many times concerning increased fines, whereas the party concerned had never received the initial notification and, even in some cases, had been unable to use his vehicle in the place and on the date indicated.

As the citizen continues to see his good faith called to question, he ends up wondering whether the value of presumption of innocence varies according to the parties concerned and does not turn against him in case of conflict with an "almighty" administration. His relations with the civil service is then characterised by mistrust, which weakens the link between the State and citizens.

The motorist is always guilty

In this period of the fight against insecurity, the volume of traffic-related fines has soared. Although not many motorists contest the reality of the fines, the question of objections against the fixed amount of fines is raised. In this area, the problem is that a huge number of them claim never to have received the initial fine, sent by simple mail, and that, they did not pay as a result; they complain about having received an increased fine, by registered mail. The services of the Mediator of the French Republic have noticed that these motorists' obvious good faith was most often not taken into account by the administration. Since the simple mail was not secured, it becomes impossible for the offender to produce the proof of non-reception of the initial fine. In Germany, where the level of complaint is much lower, the initial fine is always sent by registered mail.

Attached to the effectiveness of the fight against traffic-related crime but anxious that it does not obstruct the free exercise of citizens' rights, the Mediator of the French Republic has also noticed that the existing procedures push the offenders to stop the proceedings by paying the reduced fixed fine, which is equivalent to recognising the offence. Moreover, they tend to dissuade them from filing an appeal through the mechanism of obligation to deposit the fee amount in case of complaint. The Mediator of the French Republic has had to draw the attention of the Justice minister to the propensity of some public prosecutors to make a ruling directly on the complaints without sending them to the judge when the conditions for admissibility are fulfilled. In response thereto, a circular dated 7 April 2006 on the criminal procedure policy pertaining to automated speed control pointed out this obligation imposed on public prosecutors by Article 530-1 of the Code of criminal procedure.

Finally, the complaints sent to the Mediator have also highlighted the distortions in the processing of payments, according to whether they are made on line or by mail, considering the deadline imposed by the Code of criminal procedure, since the payments made through this channel are only taken into account on the date of their processing by the office in Rennes. He has, therefore, made a reform proposal which tends to take into account, in the name of respect for law and equity, the date indicated on the postal stamp as proof of payment, subject to availability of the tax affixed to official documents, or cashing of the check later. In this regard, he has noted with satisfaction that the National Assembly has adopted during the first reading an amendment •••

• • • which institutes Article 14 B of the proposed law on the simplification and amelioration of the quality of law 1890 modifying in this sense Article 530 of the Code of criminal procedure.

Identity fraud, a phenomenon handled wrongly and which makes citizens suspicious

Private individuals sometimes find themselves in Kafkaesque situations in their relations with the police or justice. Cases of identity fraud, which are among the numerous cases handled by the Institution, are the symbol thereof. According to a report by the research centre for study and observation of conditions of life (Credoc), published in October 2009, a French citizen is more likely to be victim of identity fraud than burglary or car theft. The cost of such a phenomenon for society is almost four billion euros. In France every year, more than 210,000 persons fall prey to identity fraud. Direct consequence of the sophistication of services, anybody can become a victim of identity fraud, especially *via* his bank details. This offence may have some extremely negative consequences. Court actions are hardly a solution, since many complaints lead to a dead end. Delegates of the Mediator of the French Republic are often asked to intervene in some cases considered as unsolvable by victims, especially in the fields of taxation and traffic.

Authorised since 1st January 2007 to exercise his pension rights, Mr I., an Algerian national, lives in a Sonacotra hostel in Martigues, while his family lives in Algeria. In September 2008, the Cram for south-western France, the payer organisation, stopped paying his pension, stating that an investigation was being conducted for fraud. This decision was in response to the reception by the administration of a death certificate issued in Algeria with the name, date and place of birth of Mr I.

Despite the numerous steps taken by Mr I. himself and by the social services at his place of residence, the complainant could not prove that he was the actual beneficiary of the pension paid to him by the regional health insurance office. After seven months of administrative peregrinations, he referred the matter to the delegate Mediator. The latter undertook to reconstitute the requestor's career and life course. He assembled an array of documents tending to prove the complainant's identity and civil status and to authenticate his existence.

For this, he referred to two events that characterise the life of this retiree: the first one concerned the existence of a twin brother who had always lived in Algeria and whose death, in February 2007, had been the origin of the measure taken by the Cram. The second one was the loss in February 2006 by Mr L. of his Algerian residence certificate and passport.

To prove his physical existence, his attending physician, as well as his landlord, accepted to attest to the fact that he was still alive. The authentication of his civil status was obtained through a life certificate issued by the civil status office of the Algerian General Consulate in Marseilles and verification of the data contained in his Algerian passport and Algerian residence certificate issued by the services of the prefecture of Bouches-du-Rhône.

All these documents, plus various other official administrative documents and attestations from employers, were sent to the Cram to show that the complainant was a victim of wrongful declaration, especially since the possibility of fraudulent use of the lost official documents could no longer be dismissed. Thanks to the file compiled with the help of the delegate Mediator, the interruption of payment (which had been due to a death certificate sent to the Cram by a person denouncing an identity fraud in Algeria) was cancelled.

Proving your right to pension

The administration is also particularly very demanding concerning the reconstitution of career with a view to exercising pension rights. The problem encountered most often is the one in which the pensions fund rejects a requestor's application because no contribution had been made to it; the requestor is then asked to produce all the documents proving his situation and rights. Now, sometimes it could be all about an absence of contribution from an employer facing economic problems. Producing some documentary evidence of periods of work often dating back to several decades is an amazing feat. Therefore, it is better for each employee to preciously safekeep his pay slips and check that his pension contributions have actually been paid, by asking the pension fund for a career statement, especially when his employer is facing compulsory liquidation.

Unfortunately, it is not always easy to assemble pay slips over nearly 40 years of professional life, especially for citizens who have lost all or part of this documentation to disaster. The law then requires that the requestor proves to have paid his contributions by producing some conclusive and corroborating pieces of evidence which constitute some reasonable presumptions of his professional activity over the years in question. However, the intransigent nature of the rules imposed by the administrations is such that some citizens do not hesitate to talk of "presumption of guilt" towards them, whereas they are victims of an act of God.

In this period of tension on the job market, the contributors are trying as much as they can to produce all the documents at their disposal with the hope to have a more advan-

tageous pension. A regularisation remains possible, especially by providing an array of presumptions of contribution or at least deduction of contributions. It is also possible to buy back or regularise prescribed contributions in some circumstances, but this procedure is very costly. The fight against fraud, which has been intensified these past years, has its own share in this situation. Its importance no longer needs to be demonstrated, it also causes much collateral damage, basically among the weakest members of society. When lack of vigilance in an era is compensated for through increased harshness in the next era, it is often this category of the population that pays the price.

Problem of rights-creating financial decisions

In view of the complexity of laws and the diversity of individual situations, citizens sometimes make mistakes and make some illegal decisions. These mistakes must basically be corrected, but some of them create some rights to their beneficiary's benefit. The Council of State has, therefore, created this correction possibility in its jurisprudence and stated that individual decisions which create rights could only be corrected after a period of four months. Based on this, the Mediator of the French Republic has been able to intervene on a lot of cases, such as that of Mrs D., who had drawn his attention to a dispute concerning the payment of a debt by her deceased husband.

The latter, a public works engineer, had benefited from long-term leave, with full pay, from 7 July 2002 to 6 July 2005, then with half pay as from 7 July 2005. However, while renewing his long-term leave, the ministerial services had granted him long-term leave with full pay from 7 January to 6 July 2006 based on a decision of 25 November 2005, and it was only through a decision of 11 July 2006, i.e. more than seven months later, that the error was rectified. Therefore, the decision of 11 July 2006, which modified the decision of 25 November 2005, was late and the demand to pay the sum of 6,154.34 euros, issued on 29 November 2007 against his widow, was thus based on illegal provisions. On these grounds, the Mediator asked for and obtained the cancellation of this payment demand.

After several years of evolution towards some solutions that are more favourable to the citizens' legal security, especially the integration of non-formalised decisions into explicit decisions, the Council of State, however, specified on 12 October 2009 the difference between rights-creating decisions •••

and simple payment errors which, for some people, could resemble a turnaround in jurisprudence. In fact, it specified in its decision that "undue continued payment of a financial advantage to a civil servant whereas the beneficiary had notified the authorising organisation that it no longer fulfilled the conditions for the payment of this advantage, is no longer a decision granting a financial advantage but a simple payment error". So, it has become difficult for the civil servant receiving a demand to pay from the administration to know how to respond. Uphold the existence of a rights-creating decision? Blame it on the faulty responsibility of the administration? Highlight the financial responsibility of the accountant who did not check the legitimacy of the expenses? Is it acceptable for the administration to make payments without deciding on it in advance, even if implicitly? The Council of State has just answered this question positively by holding the fund responsible for the prejudicial effects. For the constituent, uncertainty has again become the rule, and legal action obligatory. Partnership work is in progress on this issue, with a view to improving the situation.

MORE AND MORE VIOLENT REACTIONS FROM BOTH SIDES

It has been mentioned above that in the medical field a request for explanation on the part of the patient and his family may result, if the reply is insufficient, in total breakdown of dialogue. In such cases, people tend more often to exhibit a double behaviour which generates verbal and, sometimes, physical violence: on the one hand, you have the health workers who adopt some self-protective attitudes and, on the other hand, user's whose incomprehension turns to aggressiveness. It is important to note that withholding of information on the part of the medical corps is regarded by the patient as a much more serious transgression than the medical accident itself.

Why this attitude on the part of the workers? In so-called cases of serious undesirable events, in principle, they all accept the "obligation to tell the truth", but not necessarily the entire truth. In most cases, when a healthcare related complication occurs, doctors say that they give an explanation; but they will minimise the iatrogeneous aspect (caused by the doctor, the treatment of medicines), not believing in the existence of an error. The professional is far less precise in the information given in case of death of a patient or significant morbid consequences.

In the exchanges they have with the institution's Healthcare Security and Safety Unit, doctors often make excuses by explaining that they are afraid of not being understood or being misunderstood if they use some technical terms. This attitude may result in the development of withdrawal attitudes, real withholding or even denial of information which, far from protecting them, only reinforces the requestor's aggressiveness.

The situation is worsening with the second phenomenon the emergence of which the Mediator of the French Republic has observed: the patients' wish to file lawsuits in this connection. The fear of lawsuits now weighs down on health workers before any medical act. However, although demands for indemnity are actually more and more frequent, lawsuits are far from reaching the imaginary level the general public thinks, since there are only about ten lawsuits a year.

Finally, a last phenomenon, also increasingly apparent, contributes to this tension, or even violence, between the medical corps and the patient or his family: the influence of the multiple vehicles of information to the general public, especially the internet and its forums. Over-informed and poly-informed, but most often badly informed users, argue against the medical corps based on patchy knowledge, ill-suited to the situation or wrongly interpreted and, thus, with unfounded certainty.

If violence keeps spreading in society, places where people are catered for, which by definition should be exempted from it, will no longer be so: considering the phenomena which have just been described, they are also most often arenas of altercations or even physical confrontations, which tragically underline the need for a good mediation over the long term.

In case of death due to wrong handling of a patient in the emergency unit, the family's assertions, characterised by much violence, with threats to physically take it out on the emergency doctor, have made the Mediator of the French Republic to warn the doctor in question *via* his management about the potential risk of aggression against him. In a second phase, the medical team of the Healthcare Safety and Security Unit analysed the treatments given to the patient because this latter was asking a lot of questions about their relevance. Mediation was finally organised between the family and the doctor, who cited the difficulties inherent in working in the emergency unit in view of an ever growing demand.

The family did not wish to file a lawsuit but to appeal to the CRCI in order to obtain a medical expertise and for the wrongful or non-wrongful character of this treatment to be determined.

In case of bad faith

Although the organisations sometimes hide behind on-going procedures or examination of records by a jurisdiction to justify their lack of response, they sometimes also intimidate the citizen, for example, by arbitrarily collecting some debts, as was the case with Mrs O.

She was given custody of her two grandchildren as a trustworthy third party, within the framework of the execution of rulings in educational assistance made by the judge handling cases involving minors in C. and, as from May 2003, by that of P. When she was living in A., she had never been informed that as a trustworthy third party, she could be paid some maintenance allowances. She only became aware of their existence when another department paid her these allowances without her taking any step. By the end of 2006, she asked at the department of A. to be paid retroactively the allowances she was supposed to be paid since 1998. Since she had only been partially indemnified and arguing that she had been badly informed about her rights, she sought the help of the Mediator of the French Republic.
The services of the Mediator of the French Republic considered that Mrs O. had been unjustly denied the indemnities payable to her, and her request was granted.

This type of conflict is also encountered in public hospitals, but in case of regional councils, the intervention of the Mediator of the French Republic comes up against a major point: using as an argument the principle of free administration of local governments, some of them go as far as ignoring calls to order and leave the citizen with the only option of filing a lawsuit.

Overzealousness, source of prejudice

In some areas, the administration has developed a tendency for hyperactivity that is sometimes manifested in some hasty decisions, which by limiting drastically the citizen's reaction possibilities, become prejudicial to him.

Mr and Mrs N. experienced some of it when they wanted to obtain a certificate of French nationality for their underage children from the law court. The court rejected their demand. The parents then filed an appeal with the Justice ministry, in accordance with Article 31-3 of the Civil Code. Now, following the rejection decisions and even before a ruling was made on this appeal, Mr and Mrs N. received a letter from the prefecture asking them to return the previously issued, secure, and valid national identity cards and passports. When its attention was drawn to the appeal in progress by the Mediator of the French Republic, the prefecture agreed to suspend its demand for return of the identity documents, while awaiting a decision from the Justice ministry, which after all turned out to be justified. In fact, this latter considered that they were actually French and asked the court to issue them a certificate of French nationality.

Although the decision of the administration here was not illegal and no malfunction was revealed, it was still a tragedy for this couple and its children. To justify its eagerness and harshness, the administration hides behind the law and the zeal necessary for the fight against fraud. This is all the more the case, since the prevailing principle in terms of issuing secure documents is to be particularly vigilant and apply the same rules to requests for renewal. Although recent, this exaggerated caution by the administration while issuing identity documents tends to be generalised, as shown by letters received by the Institution from French citizens born abroad or with one parent born abroad. The persons concerned, very often French by birth, often take this questioning of their identity, the basic component of their identity, very badly. This generates the feeling of being despised, of being in a fragile situation but also of being stigmatised and ostracised on grounds of one's name or far origins, without forgetting a vivid lack of understanding, since being in possession of a national identity card implies having proved one's citizenship while it was being issued…
These are so many reasons for the citizen to be resentful about the public authority. Although breaches of law are relatively rare, the offhand or too fussy attitudes of some administrations sometimes violate personal liberties, especially since sometimes the citizens are asked to provide proofs that are impossible to produce, such as the birth certificates of their parents, grandparents, or even great grandparents, which must be obtained from the judicial authorities of countries in which the •••

civil status of certain periods do not exist any longer... Here, the role of the Mediator of the French Republic is to inform the citizens about their appeal channels, but also about the various methods of obtaining French citizenship. It is noteworthy that at the request of the senators of foreign French citizens, the Mediator of the French Republic created in 2009 a delegate for foreign French citizens.
He also intervened in this respect at the Interior ministry. He was notified that a circular dated 24 September 2007 on the conditions for issuing and renewing national identity cards had been sent to the prefectural services in charge of examining these requests. These conditions had been reflected in a circular dated 2 December 2009. Said circular stipulates that holding a secure identity card whose renewal is requested for constitutes a presumption of possession of French citizenship, except where an item in the file causes a doubt. The circular further specifies that the following categories of persons shall not be required to produce a certificate of nationality, since they are in possession of French citizenship: Frenchs citizens born outside France or persons born outside France of at least one French parent. Also concerned by this exemption are persons born in a department or territory previously under French adminstration, people who returned to France after the Algerian war, and those born in France of foreign parents between 26 January 1889 and 1st January 1976.

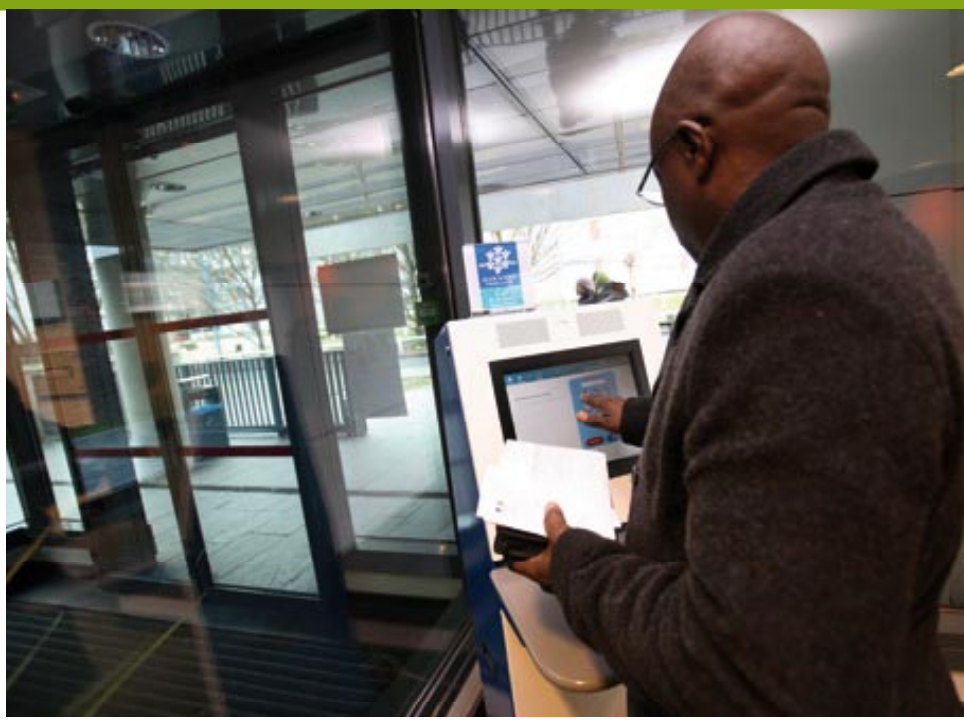
Nevertheless, it seems, based on the complaints received, that some services continue to adopt a very extensive interpretation of the notion of doubt and systematically require the production of a certificate of nationality with the inherent constraints for the citizens. The Mediator intends to re-examine this problem with the services concerned, and it is possible that a document superior to the circular be needed.

Sluggishness, a factor of insecurity

The law of 12 April 2000 on the rights of citizens in their relations with the administration stipulates that the absence of a reply to a demand two months after said demand is made implies rejection. But in reality, considering the number of demands and the processing deadlines imposed on some often overwhelmed administrations, more than two months are often required to give a reply to the citizens, without this silence being necessarily regarded as a rejection. For the citizen, however, this sluggishness in decision-taking and the lack of information on the progress of the procedure creates insecurity and can become prejudicial. What to do in the meantime? File an appeal on the assumption that the demand has been rejected? Do nothing, and risk receiving a rejection later? Some projects cannot wait several months to be carried out... For example, the Commission in charge of visa-rejection-related appeals takes on average fifteen months to examine a case, due to the high number of requests and the staff assigned to this service. In this case, the Mediator of the French Republic makes it possible for those concerned to know the status of their request and adjust their behaviours and plans accordingly.

The lack of promptness may also become manifest in the legal field, more especially in the handling of complaints. Although the Mediator of the French Republic is not empowered to intervene in ongoing court proceedings or litigation between private persons, his help may be sought in terms of complaints. In fact, complainants must be informed, in accordance with the stipulations of the Code of criminal procedure, about the decisions taken on their complaint so as to guarantee their rights. For instance, it is on the date of notification about closure without follow-up that starts the deadline for filing other appeals, like summons, referring the case to the State prosecutor, filing a lawsuit as plaintiff.

At the heart of individual freedom is the freedom to marry the person of one's choice. In most cases, you only need to go to your town council. However, the formalities and rules governing marriage become complicated when a French citizen wishes to marry a foreigner in another country. The law of 14 November 2006, which became applicable on 1st March 2007, introduced the obligation for any such French citizen to obtain a marriage aptitude certificate from the relevant French consulate. This document is issued after fulfilling the formalities of publishing bans prior to the marriage.
In practice, following a request to publish bans, the consular authorities, after examining the file, publishes it and issues the marriage aptitude certificate, with the possibility for the future spouses to be interviewed, which for the French spouse will be done *via* the civil-status official of his town of residence. During the interview, the reality of the future spouses' intention to marry will be checked through questions basically about both parties' knowledge of each other's life. In principle, respecting these procedures will facilitate, after the marriage, its registration in the French consulate's civil status register, and make it easier for the foreign spouse to obtain a visa. However, the help of the Mediator of the French Republic has been sought for a certain number of cases in which future spouses had encountered some difficulties, either to obtain the marriage aptitude certificate or, after the marriage, to obtain a visa for the foreign spouse.



Mr G. started, in May 2009, all the procedures for his marriage in Morocco with Miss Y. After interviewing the future spouses, the consular authorities informed them that the certificate would be issued within two months. The marriage was, therefore, organised for the end of October. In the absence of information at the beginning of August, Mr G. contacted the consular authorities, which informed him that there was some doubt about the validity of the marriage and that his file would be submitted to the public prosecutor of Nantes for approval. In reality, it was only sent to the prosecutor's office in October 2009... Because of this delay, the celebration of the marriage was postponed to a later date.

Although the issuing of a marriage certificate in advance is supposed to facilitate the registration on the civil status registers in France and enable the future spouse of the French citizen to obtain a visa, this is not always the case. The services of the Mediator of the French Republic have had to deal with several cases which give the impression that the issuing of this document does not exclude future difficulties. In at least two cases, the marriage aptitude certificate was delivered, not by the consulate itself but after a decision of the public prosecutor of Nantes, consulted by the consular authorities which had indicated some doubts about the future spouses' intention to get married. Once its authenticity determined through examination, the certificate was issued and the marriage took place. Nevertheless, in both cases, the consular authorities had again expressed some doubts when the marriage was to be recorded in the civil status register, and again consulted the public prosecutor's office in Nantes.

From silence to breakdown of dialogue

When the administration hides behind silence, justified or not, the situation often ends up in a deadlock. Dialogue is then broken and restoring it becomes particularly difficult, despite constant efforts by the Mediator of the French Republic in this respect. Although it is always possible to try to restore dialogue, *via* the correspondents of the Mediator of the French Republic in the different organisations or even *via* the relevant authorities, one must often wait until the end of the procedure cited by the administration in question to justify the deadlock. A typical example is the case of Mr B.

Mr B., a holder of an Algerian resident card, applied at the social security office (CAF) for family allowances because of his three children who, since 18 November 2003, had been issued the travel document for foreign minors (DCEM). The social security office rejected his application; on 12 December 2005, he referred the matter to the amicable settlement commission (CRA) which on 7 February 2006, decided in favour of paying the requested allowances, citing the jurisprudence of the appeal court according to which the DCEM validated the regularity of the arrival and stay of children in France. This decision was, however, overturned by the regional department of health and social affairs (Drass), on 24 March 2006. Mr B. then contested this reversal before the social security tribunal (Tass) and sought the help of the Mediator of the French Republic. The Institution's objection was met with a flat refusal from Drass, which explained that since a hearing had •••

been fixed for 5 June 2009, it could not intervene on this case before the decision of the court.

It is important to note that as from 5 April 2010, silence will no longer be an answer in at least one area: that of visas. A Community regulation, which obliges the relevant authorities of Schengen member States to indicate the reason for not issuing short-term visas and to reply within fifteen days, will become applicable as from this date. However, despite this progress, the services of the Mediator of the French Republic are expecting a lot of complaints in this connection, until the relevant administration starts applying this new regulation systematically.

Increasingly contested rulings

For years now, the French society has become "lawsuit-happy". Filing a lawsuit has become part of everyday life: citizens are increasingly asking the court to decide over disputes concerning the least aspects of their life, and are asking the State to rule in their favour. But then accepting court decisions is another issue; there is a step that many of them have not yet taken. Some citizens do not hesitate to seek the help of the Mediator of the French Republic, citing as argument a malfunction in the public service of the judiciary when a ruling is not in their favour, and even go as far as questioning the action of some magistrates or lawyers. They, thus, forget that Article 11 of the law of 1973 forbids the Mediator of the French Republic *"to intervene in any court proceeding or to question the validity of any court decision"*.

In the medical field, rejecting treatment hazards

In the medical field, tensions between complainants, on the one hand, and hospitals and doctors, on the other hand, are significantly increasing as risk-tolerance rates decrease.

Unfortunately, zero risk is as impossible to achieve in this field as in other fields. Now, although this reality is collectively accepted, it is not on the individual level, in the face of a concrete personal case. When a patient or his family asks for mediation, regardless of the level, it goes necessarily through a phase: distinguishing between complication and hazard, between hazard and wrongful medical accident. Any difference between what was expected by the medical corps and what was understood by the patient does not constitute a medical accident. However, these different notions are confusing to the complainants, who only remember their damage. The Mediator of the French Republic is, for example, often contacted by people complaining about some complications, sometimes, it is true, of sever inflammations, relating to a radiotherapy they had been subjected to, whereas they have been cured of cancer thanks to this treatment. These persons then explain that, if they had known about this risk of complications, they would not have accepted radiotherapy.

The services of the Mediator of the French Republic, thus, notices a delay in the information given to users about the avoidable or unavoidable character of an event, especially in this field of radiotherapy. Therefore, before any treatment is given, information provision should be improved, and a more rigorous attitude adopted. For the organisation of the unique meeting which makes it possible to give all the necessary information and explain the choices to the patient, surgeons could take as example the pre-anaesthesia consultations, which seem better organised. The Healthcare Safety and Security Unit has had to deal with some cases where the patient's reaction was all the more violent that this special meeting had been held by a surgeon whereas the intervention had finally been performed by another surgeon.

For the Mediator of the French Republic, the law of March 2002 has still not been well understood, whereas it created equity by recognising the hazard and organising its compensation. In this incomprehension there are probably some traces of the consequence of the scandal of the so-called contaminated blood: since then, the expression "responsible but not guilty" is wrongly considered as a refusal to accept the consequences of an accident. The notion of responsibility without fault, which is, however, part of our law, is not understood and, therefore, badly accepted.

Finally, it is noteworthy that the increasing media coverage of medical accidents, a relatively recent phenomenon, is a source of tension. Accidents are probably not deplored more today than before, but the media and public opinion, once alerted, tend to overreact. Here again, one can see the consequence of scandals like that of contaminated blood or growth hormone, or even more recent radiotherapy incidents. ■

PACIFYING RELATIONS, EASING TENSIONS: THE MEDIATOR'S CONTRIBUTION

Listening, supporting and educating: in the face of distress, violence, solitude, feeling of injustice, and mistrust, the action of the Mediator of the French Republic, marked by humanity, is already a first answer. His role is also to act and encourage action. Whereas public policies consist more and more often in managing fears and giving priority to emotions, the Mediator of the French Republic uses his privileged position of social observer to explore and analyse the public field, in order to continuously propose to the legislator some ways to develop and improve existing laws.

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PACIFYING RELATIONS, EASING TENSIONS: THE MEDIATOR'S CONTRIBUTION

Some answers to the demand for community life

Paradoxically, the rising distrust towards public authorities and the institutions that represent them is accompanied by the citizens' ever increasing demand for more protection and regulation on the part of the State. The Mediator of the French Republic, a neutral authority, has developed considerable expertise in the legislative and regulatory fields and acquired profound knowledge of the French administrative landscape, which makes him an important player in the public sphere and enables him to effectively help reduce social tensions, create solid links of trust between administrations and citizens and refocus public action on general interest.

For this, the Institution has unequalled human resources: 281 voluntary delegates who represent it throughout France. To ease tension, nothing is as good as the attention of a person physically present and available. The citizen talks freely to a person who receives him and who devotes to him all the time necessary for his case. What is more: this delegate has also developed a network of duly identified and easily accessible contacts in each organisation where the citizens encounter some difficulties.

Reintroducing a human dimension in the administrative wheels is the key to a successful mediation.

MEDIATING TO PROMOTE ATTENTION AND DIALOGUE

It is interesting to note that the Mediator of the French Republic is often obliged to perform a "global mediation". A typical example thereof is complaints about tax adjustments, which constitute a huge proportion of the cases in the sector. In a particularly striking case, settling the conflict highlighted a problem of procedure, lack of proof and lack of grounds for penalties; therefore, it called for a global mediation.

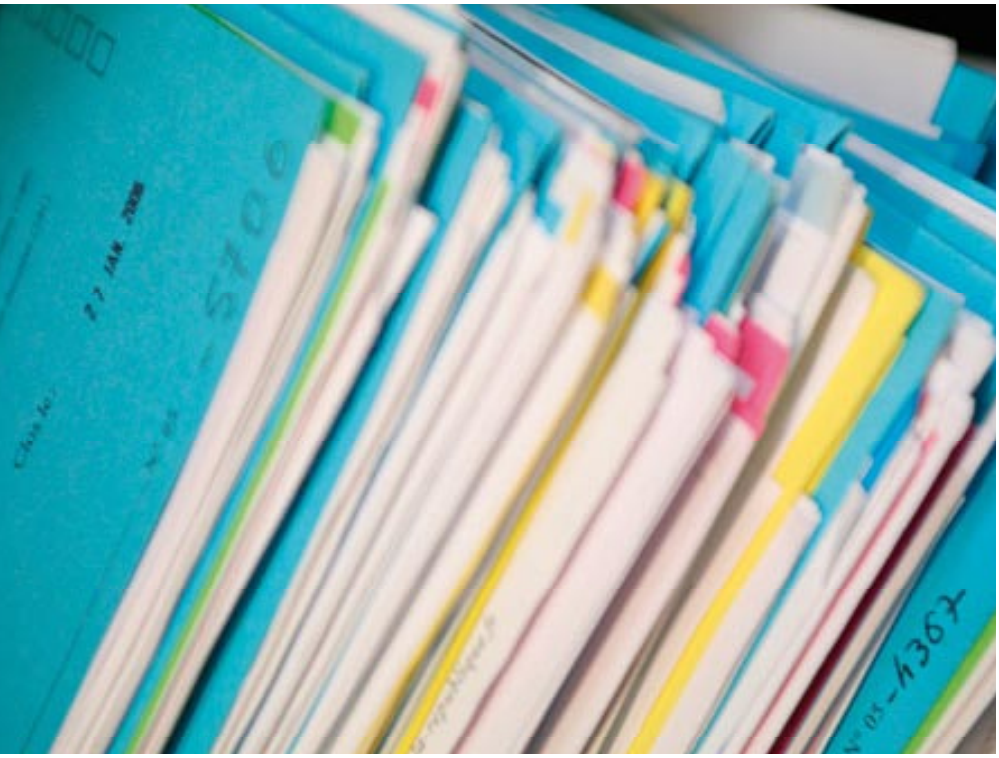
Far from being limited to taxation matters, the need for this type of mediation has been felt by all the services of the Mediator of the French Republic.

Immediately after the publication of law 1772 of 30 December 2006 on water and aquatic environments, Voies Navigables de France (VNF) (a French maritime organisation) considered as illegal the tacit renewal of the permit to occupy public rivers.

VNF thus proposed to all owners of living boats, until then authorised in Paris, to grant them a temporary stay permit until 31 October 2007, while waiting for a reply from the city of Paris concerning the demarcation of parking areas for more than one month.

Since the project of demarcating these areas was still being examined, the VNF decided to renew these authorisations till 30 January 2008 for some, and till 31 March for the others. At the end of these periods, since the city of Paris had still not announced its decisions, the VNF considered that the barge owners parked illegally and decided to charge them parking fees with increment, in accordance with Article L. 2125-8 of the general

Code on public property. It was only after the decision of the city of Paris was received, early June 2008, that they were offered some temporary lease contracts, valid from 1st June 2008 to 31 March 2013, and the increased fees were stopped.
After the intervention of the Mediator of the French Republic, especially the physical mediation, which brought together in spring 2009, the services of the VNF and those of the Mediator, the VNF decided to extend until 30 June 2008 the temporary measures that society had adopted to apply Articles 69 and 70 of the law of 30 December 2006, and to propose parking permits to the occupants concerned; based on these permits, a new invoice would be issued without increment, thus resulting in the cancellation of the debts stemming from the occupation without permit until 30 June 2008.
Thus, regular occupants of public rivers were not penalised by the absence of decision from the city of Paris concerning barge parking areas, a decision required by law, even though it is the VNF that issues and manages lease agreements on the public domain.



On the other hand, the amicable settlement of an individual conflict sometimes has a global effect. Although the individual decision taken by the administration at the initiative of the Mediator of the French Republic may not serve as jurisprudence - since he is not a judicial authority -, the reaction thereto applies to all taxpayers in the same situation. The Mediator asks the minister, in the name of equity, to adapt the situation of all the persons concerned to that of the requestor whose situation has just been modified. This is what happened, for instance, in the already cited case of mobility allowance: the minister has given instructions for all the rectifications, which concerned tens of thousands of persons, to be abandoned. The same thing applies to cases of retired miners, this time, with thousands of cases.

Extending mediation

In 2009, the Mediator of the French Republic and his services adopted the same working methods as those applied in the field by his delegates, in order to increasingly take account of the need to listen and for dialogue in each mediation action. Thus, physical mediation, i.e. real meeting between the complainant and a representative of the Mediator, or between several persons under his arbitration, has played a particularly important role in some cases. Although it sometimes made it possible to find a solution, it first of all and, above all, helped to restore some links between the administrations concerned and to bring together at the same place the parties involved in a case around a well identified objective, which is a prerequisite for restoring dialogue.
Mediation may not always be used to find an immediate and concrete solution to the problem raised; still it helps bring back the citizen's problems to the attention of each administration, which is already a victory in itself.

While she was a minor, Miss X inherited from her father's company A., which operated a barge-tearing site and was placed under guardianship. Her father had died while a renewal of the agreement on temporary occupation (COT) of the public river was waiting to be signed with the VNF. Another company, B., partner of company A., had quickly declared to the notary public in charge of succession its desire to continue running the site. This latter had then contacted the VNF officials to obtain an extension of the occupation agreement as well as the approval of the operation, in order to transfer company A. to company B. In the absence of any progress in the takeover file, despite several attempts by the notary public, company B. and the Chairman of the departmental council of Seine-Maritime, this latter was obliged to refer the matter to the guardianship judge since the delay in the processing of the case was having some consequences extremely prejudicial to Miss X.'s interest. Despite that, company A. had still not been issued with any •••

COT or operation approval, thereby preventing its activity from being taken over by company B. Moreover, a fine was imposed on company A. for occupying the river without permit, and Miss X was asked to pay, as heir, the sum of 52,181.81 euros occupation fee. Moreover, the prefect informed Miss X about her responsibility concerning the restoration of the site. Since the last steps taken by the notary public and Miss X's lawyer did not receive any response, Miss X., now an adult and deprived of an asset which was turning into a considerable liability, sought the help of the Mediator of the French Republic. At a first meeting, the VNF made it known that a call for tender concerning the takeover of the site had been written but could not be reasonably published since it had little chance of succeeding. In fact, the difficulty of the case lay in the fact that the site was enclosed and the town-planning documents of the two towns concerned were not clear about the possibility to maintain on this site an installation classified as an environmental protection site, especially as the towns seemed to tend towards a "green park" project. Nevertheless, at a second meeting, attended by the towns concerned, it was agreed that the VNF, which planned to rehabilitate the site in order to create a model shipyard, should create strict specifications, with noise control as well as a pollution assessment, and that both towns would examine this project. Since discussions about the future of the site previously run by company A. have again been resumed with the towns, the Mediator of the French Republic has sent a recommendation in equity to the chairman of the VNF with a view to obtaining a cancellation of the fees required from Miss X for occupation without permit, and the payment of the site restoration cost by the VNF.

By giving priority to direct contact with the parties concerned, the Institution often prevents conflicts as shown in the example below:

Mr P., a farmer in Ille-et-Vilaine, notifies the delegate about a disagreement between him and the town council of B since the signature of a decision forbidding the movement of vehicles weighing more than 3.5 tonnes on the road leading to one of his plots. Now, this prohibition, sought for by the inhabitants of the town, made it impossible for the complainant to access his farm in order to work there, thus resulting in some economic losses for his business.
He had informed the city council about this situation, but this latter had withheld its decision, explaining that this decision had been taken for the safety of the village and told the complainant that another access to his farm was possible.
Now, Mr P. claimed that this second access violated some prohibitions concerning the transportation of pollutants which must be respected, and that this proposal was not acceptable.
The delegate then asked for an appointment with the mayor. The mayor vehemently confirmed the reasons for this decision, especially the safety of users. Nevertheless, he was ready to bring together all the parties involved in order to find a solution and promised to keep the delegate informed about the outcome thereof. Shortly thereafter, he sent him a copy of a new decision modifying the previous one and allowing Mr P to access his farm. So Mr P. was satisfied and abandoned his intention to file a lawsuit with the administrative court.

Reinforcing the complementarity of existing systems

If there is a field in which physical mediation has been successful, it is that of healthcare. The Healthcare Safety and Security Unit (P3S) of the Mediator of the French Republic has developed continuous orientation of users towards local mediation structures (the CRUQPCs, commissions in charge of relations with users and quality of treatments) and regional (mediation) structures (CRCI, regional commissions for arbitration and indemnification). About 30% of the requests received by the P3S were immediately processed by its dedicated centre because they consisted of information or orientation requests to these bodies.
For more complex matters, the Mediator of the French Republic, whose help is sought by users – and, it must be underlined, in about 15% of the cases by healthcare professionals (hospital directors, doctors, etc.) – strives to settle them rationally and not passionately, mostly through physical mediation. When a telephone conversation, often long, with the patient does not help to determine for certain whether it is a normal complication or normal evolution of the patients illness considering his medical history, the P3S doctors ask for a copy of the file to carry out an in-depth analysis based on medical records. After examining the file and with the patient or family's consent, the Mediator of the French Republic contacts the medical team concerned and proposes a medical mediation. Indicating the questions raised about this patient's treatment, the services of the Mediator of the French Republic propose to send over the coordinating doctor and a specialist in the field concerned to discuss the case with the team and analyse the entire treatment. This exchange must help detect possible malfunctions, determine the points to improve and the measures to take to avoid similar incidents in future.
This first physical mediation is considered by healthcare professionals not as a new source of constraints but as an opportunity to learn and make some improvements: this is the positive use of an error to progress.

Mrs V., aged 37, gave birth to a baby girl. Very quickly, the baby started showing some symptoms of serious heart problems. The child died five days after her birth, of extremely serious congenital heart disorder. Her parents contacted the Healthcare Safety and Security Unit of the Mediator of the French Republic to complain about non-detection on scan of foetal heart malformation. The analysis of the obstetric record was entrusted to the Unit's medical team. It concluded that the fœtus' heart had not been examined with all the required methodological rigour and by an ultrasound doctor who, confronted with some difficulties during the examination, had failed to refer the case to some more competent third parties. Antenatal detection of heart disorders is still difficult today, and 20 to 40% of serious congenital heart disorders are not detected on the ultrasound scan. The P3S medical team, therefore, met with the doctor concerned to give the recommendations of the technical committee on ultrasound scan for prenatal diagnosis as well as on the need to seek the help of more experienced colleagues in situations deemed difficult. The team also pointed out that although the detection of heart disorders does not yet seem to improve the survival and quality of life of unborn children, it at least allows serious prenatal maintenance with well informed parents, who may thus hope to be accompanied in their choice of medical termination of a pregnancy or optimal care at birth.

The purpose of the first physical mediation is also to prepare for a second one, this time with the patient or his family. To be successful, this ultimate meeting can only be organised after a prior discussion and collective reflection between healthcare professionals. Thus a common vision of the case can emerge and be shared between the Healthcare Safety and Security Unit (P3S) of the Mediator of the French Republic and the medical team concerned. It is on this condition that a corrective action can later be proposed to the victim or his family.
The P3S, thus, handled successfully more than sixty physical mediations in 2009.

The increasing need for networking in reform proposal tasks

The reform proposals made by the Mediator of the French Republic aim at a law or regulation, or a circular, whose application poses some problems with the general public or with the working of an administration, when these behaviours or provisions are the source of iniquity or obvious injustice, either because they allow the existence of a legal vacuum, or because their impacts have been wrongly assessed. Far from contenting itself with denouncing the malfunction, the reform proposal made by the institution also explains as precisely as possible the provision that should replace the existing text.
Apart from the proposal emanating from the Institution itself, reform proposals sent to the institution come from all classes of civil society. The reform service may be sought by members of parliament, magistrates, lawyers, administrations themselves or associations. However, it is often the delegates who make it possible to detect some malfunctions thanks to their presence in the field, or the examination sectors through individual complaints which are impossible to see through.
Once alerted, the Reform section starts some investigations and in-depth legal and technical analyses. It then remains to convince the political decision-makers so the reform proposal can know a legislative or regulatory extension.
To this end, the work of the Mediator of the French Republic is increasingly based on networking. In view of the difficulties encountered to have these reform proposals taken into account (absence of reply form ministries, collapse of inter-ministerial work groups, financial inadmissibility of parliamentary amendments, etc.), the Mediator of the French Republic has chosen to diversify his methods of intervention in order to push through or bring to the attention of a wider public the problems he highlights. He strives to organise the debate himself by bringing together the different parties concerned (associations, public organisations, magistrates, lawyers, members of parliament, representatives of ministries, etc.) in order to make a diagnosis and work out some solutions which will then be supported or accepted by the participants.

Thus, in 2009, some round tables were held under the chairmanship of the Mediator of the French •••

REFORM PROPOSAL: FROM INITIATION TO ADOPTION

1. REQUESTING FOR REFORM
- Any private person or corporate body may send a reform proposal request to the Mediator of the French Republic.
- The Mediator of the French Republic has a self-referral power in this respect. This is enriched, among others, by the cases handled by the Examination sections or delegates.

2. EXAMINING THE REQUEST
via the Reform section, with two possible results.
- **Preparing a reform proposal, in case of:**
  - recurrent malfunction of an administration or public service,
  - inequitable consequences resulting from the application of a statutory or legislative standard.
- **Rejection of the request:**

when the Mediator thinks, after examination, that the reform proposal request sent to him is not justified.

3. SENDING THE REFORM PROPOSAL TO ALL THE MINISTERS CONCERNED

4. SENDING THE REFORM PROPOSAL TO PARLIAMENT
When it arrives in the parliament, the reform proposal is also communicated to the chairmen of the parliamentary commissions concerned and to the draftsmen for the draft or proposed laws.

5. FOLLOW-UP INTER-MINISTERIAL COMMITTEE
The Mediator may ask for a reform proposal to be included in the agenda of an inter-ministerial committee placed under the chairmanship of the minister in charge of State reform.

6. CLOSING THE REFORM PROPOSAL
When the reform proposal is satisfied through an adequate measure or, more rarely, when it is rightfully rejected by public authorities, the Mediator closes it.

Republic, especially on the legal status and existing problems of children received within the framework of *kafala*, or even the status of the reform of subrogation rights of third-party payers concerning the amount of indemnities paid to victims of physical injuries. He also organised some work groups on the status of stillborn babies, PACS-related improvements and access by people suffering from mental deficiencies or chronic infections to employment assistance.

Moreover, some conferences were organised by the Mediator at the National Assembly on medical and legal expertise, amicable indemnification of medical accidents as well as the problem of consumer credit and excessive debts.
To promote his proposals and share his expertise, the Mediator of the French Republic also held regular meetings with ministers in the course of the year, and was auditioned by work groups and parliamentary commissions. He was, thus, auditioned concerning the draft law on the reform of consumer credit, for the preparation of the law on hospital reform and patients, healthcare and territories. He was equally auditioned about the draft law instituting a system of indemnifying victims of French nuclear tests, within the framework of debates on the indemnification of asbestos victims, about the modification of PACS couples, within the framework of the amendment of bioethics laws, and within the framework of preparations for the creation of a Human rights defender.

REINFORCING PARTNERSHIPS IN FAVOUR OF CITIZENS

In order to place the human being at the heart of relations between administrations and citizens, reinforcing the links between the Mediator of the French Republic and the different organisations that make up the French administrative landscape has become a priority for Jean-Paul Delevoye over the years. Thanks to the cases they handle and the contacts they create, the services of the Mediator of the French Republic maintain and develop a network of interlocutors, enter into partnerships, with the idea that privileged relations will rapidly bring in answers to the citizens who seek the help of the Mediator of the French Republic.
Prime among the partnerships that marked 2009 is the one set up through an agreement on 21 October with Pôle Emploi. Before Assedic and ANPE were merged into the new organisation, the Mediator of the French Republic only had a network of efficient and identified contacts at the Assedics. To cope with the difficulties encountered while creating

the network of correspondent, the Mediator decided to formalise the links between Pôle Emploi and the Institution. Signed on 21 October 2009 by Jean-Paul Delevoye and Christian Charpy, director general of Pôle Emploi, the partnership agreement also redefines the powers of the national mediator of the civil service for employment and the modes of collaborating with the Mediator of the French Republic. It also provides that the delegates have a contact in each region.

Also in 2009, the links between the services of the Mediator of the French Republic and the Caisse interprofessionnelle de prévoyance et d'assurance vieillesse (Cipav) – a pension fund for liberal professionals - were reinforced and improved. On the other hand, the cases received by the Mediator of the French Republic have shown that relations between Cipav and its affiliates have not known the same improvements.
Collaboration with Agirc (general association of supplementary pension funds for executives) and Arrco (association of employee supplementary pension funds) was also fruitful. 2010 is expected to offer a lot of opportunities to intensify and consolidate links with the Institution. It will also be a year to improve collaboration with the central office for social security organisations (Acoss) and the health insurance office for electricity and gas industries (Camieg).
The team of the Mediator of the French Republic was able, for the first time in 2009, to use the network of regional health insurance offices (Cram) to push forward pension-related demands involving some foreign pension funds. Pursuant to an agreement reached with the Mediator of the French Republic, the national pensions fund allows the Social section to seek the help of the Crams to process this type of case, the number of which will increase, and to reconstitute careers more rapidly.
Therefore, some partnerships can also be set up when the services of the Mediator of the French Republic have to handle a particular case. A lot of civil servants are paid nursery allowances, through their administrations' social services. Within the framework of the development of person-oriented services, a chèque emploi service universel (Cesu) – a check used to pay for services rendered by private individuals –, pre-financed by the employer, has been created. The Justice and Agriculture ministries were the first administrations that strove most for the success of this payment method. Nevertheless, civil servants wishing to use their Cesu to pay for their nursery expenses encountered some problems in some nurseries, especially municipal nurseries, which simply rejected this mode of payment. To justify their position, the local representatives argued that it was necessary for them to register with the Cesu payment centre to be able to accept this payment method, a solution that generates costs that they refused to bear.
After an unsuccessful intervention by the finance ministry, and in the absence of any answer from the social affairs ministry, the Institution approached the network of social security offices (CAF), the main partners of nurseries through registrations, within the framework of their healthcare and social initiatives. The Institution proposed to include the Cesu payment centre membership requirement in the renewal of the agreements. At the same time, the national social security office linked the Mediator of the French Republic with the Agency for person-oriented services, which became a real partner with which he worked to clear the situation. Thanks to their joint action in January 2009, the cost of processing the Cesus provided by the social security organisations to people in critical situations has been exempt from processing costs, within the framework of economic reflation. Continuing their work on this case all year round, the Mediator of the French Republic and the agency in charge of person-oriented services succeeded in obtaining the adoption of an inter-ministerial decree on 19 October 2009, exempting all the nurseries from Cesu-related costs.
Relations with the social security scheme for liberal professionals (RSI) also improved significantly in 2009. For the first time, all the contacts of the Mediator of the French Republic at the RSI met at the headquarters of the national RSI scheme, in the company of the Social section team and the Institution's director general. Since these contacts were appointed in 2008 and resumed their function this year, 2010 will make it possible to reinforce their links with the •••

••• Mediator of the French Republic and develop new areas of collaboration.

Concerning decisions on rights-creating financial matters, the joint work, started in the spring of 2009 at the initiative of the Mediator of the French Republic and mediators of the education ministry and economic ministry, has found renewed pertinence. This partnership is expected to help define a common vade mecum for all the administrations in the management of situations that generate unwarranted or excessive payments in order to offer the citizens more legal security in connection with administrative decisions.

A further step was taken towards the expectations of the Mediator of the French Republic, since during the last meeting of the work group on 1st December, it was agreed that a legal reform was required to set a clear rule so as to distinguish the payment error from the rights-generating event, fix the complaint deadline and determine the level of the civil servant's bad faith. There is also a plan to handle tax incidents relating to excess payments.
Concerning the right to housing, the Mediator of the French Republic and the minister for housing signed a draft agreement at the end of December 2009 to guarantee real access to the fundamental rights of the most destitute populations. This draft agreement makes delegate Mediators interlocutors of associations and of the unique referent (person in charge of each homeless person) in order to give real access to the fundamental rights of the most excluded persons (social welfare services, healthcare benefits, the right to housing, domiciliation, etc.).

Finally, the Mediator also signed an agreement with the national chamber of bailiffs in the middle of December.

MEDIATION IS GAINING GROUNDS

The Institution's role is to serve the entire population, including detainees. The agreement signed on 16 March 2005 by the Mediator of the French Republic and the justice minister kick-started a new action of the Institution: the creation, on an experimental basis, of offices of voluntary delegates in prisons. The only way to measure the level of needs in this area was to allow the Institution access to detainees. Thus, ten prisons, comprising a total of 7,500 detainees, i.e. more than 10% of the French prison population were chosen for an experimentation phase. This phase was completed in September 2006 on a very positive note. The Mediator of the French Republic and the Justice minister signed in January 2007 an agreement on a gradual generalisation, until 2010, of detainees' access to delegate of the Mediator of the French Republic.
The implementation of the programme has almost come to an end. As of 1st January 2010, 58,770 detainees (including 3,140 in the overseas territories), i.e. 94% of the total number of detainees, spread over 164 prisons, have direct access to a delegate of the Mediator of the French Republic. 60 of these prisons have regular office hours while 104 others have access on a case by case basis. 149 delegates (i.e. half of the total members of the network) are currently involved in the programme. Therefore, the Mediator of the French Republic actually maintains the objective he had fixed: ensuring, before the end of his mandate, that all detainees have direct access to a delegate.
Thus, the delegates are often called upon to handle various detainee-related cases, thereby sorting out cases which are extremely diverse but which all place detainees in very harmful situations.

This is the case of Mr R., a 65 year-old detainee, who had applied to his pensions fund for the payment of his pension benefits in February 2008. To regularise his situation, the fund asked him for his identity card, health insurance card and bank account details. After eight months and several reminder letters, he finally succeeded in obtaining his national identity card and health insurance card. Yet, at the detention centre, he was still faced with the problem of obtaining a photocopy of his health insurance card and authorisation to open an account. So, he could still not receive his pension benefits. After the intervention of the Mediator of the French Republic at the management of the detention centre, both problems were solved.

Thanks to this field experience, the Mediator of the French Republic was asked to help in drafting the prison law *(see page 66)*. ■

Proposals for a more humane system

The rising precariousness, insecurity and pauperisation of a part of the population – situations noticed by the Mediator of the French Republic and his delegates – strongly inspire the reform proposals which he submits to political decision-makers.

The insecurity and pauperisation of a part of the population is the main source of inspiration for the reform proposals made by the Mediator of the French Republic. One of the Institution's proposals, described in detail in his 2008 report, is first to reinforce, in all parts of the civil service, the reception and provision of information to these populations excluded from technology. The Institution also strives to take account of social changes in various areas such as family, consumer rights, the need for transparency and legal access. When the law appears to be incomplete, or even inexistent, to protect the weakest and restore a relative balance between existing interests, the Mediator of the French Republic proposes to political decision-makers some modifications to the existing law or its application.

This is the objective of the reform proposal concerning the payment of family allowances to parents of foreign children: the payment of family allowances for foreign children is subject to double control, which aims to ensure the regularity of the stay of the foreigner requesting for the allowance and that of the entry and stay of the minor child for which it is being requested. Article L. 512-2 of the Social Security Code (CSS) limitatively enumerates seven situations that give right to family allowances, including the situation of children arriving within the framework of family reunification.

The Mediator of the French Republic received a lot of complaints from foreign families staying regularly in France, whose children living permanently with them did not arrive in France in accordance with stipulations of the above article. The social security offices absolutely reject their request for allowances, which may be seriously prejudicial to these children and their condition of life.

- In the absence of a response more favourable to the interest of these children from the public authorities, the Mediator thinks that there is the need to modify Article 512-2 of the CSS in such a way that it is possible to regularise the situation of the children concerned when it is in their own interest.
  By proposing that, he limits himself to pointing out the decision of the Constitutional Council (decision of 15 December 2005), which states that it is not forbidden to depart from the rule according to which family reunion can only be requested for in connection with children living outside France on the date of the request. He adds that when, within the framework of family reunification, the situation of a child already living in France is regularised, this regularisation must give right to family allowances.
  Other actions aim to improve the rights of victims of physical injuries and the working of indemnification systems.

Victims of nuclear tests, medical accidents or physical injuries

Civilians and servicemen whose life had been endangered by the French nuclear tests performed between 1960 and 1966 in the Algerian Sahara desert and in the French Polynesia find it very difficult to have their prejudices recognised and to obtain compensation for them. During the presentation of the draft law by the Defence ministry to sort out this problem, the Mediator of the French Republic made several proposals to create a system of equitable compensation: drawing a list of radiation-induced illnesses through an independent scientific authority, presumption of causal relations between the illnesses noticed and the nuclear irradiation, payment of full indemnity for the prejudices by a specific and independent public fund, a compensation right opened to the victim's legal beneficiaries, or even creation of a pre-retirement allowance to compensate for the shortening of the life expectancy of State officials whose life has been endangered as a result of their participation in French nuclear tests.
In his reply to the Institution, dated 11 March 2009, the Defence minister expressed his agreement in principle on several points: reversal of the burden of proof in favour of victims, publication of a list of radiation-induced illnesses. However, he rejected two proposals: the creation of a dedicated public fund and pre-retirement allowances.
A draft law aimed at introducing a system of indemnifying victims of French nuclear tests was then proposed to Parliament.
Jean-Paul Delevoye was highly involved in this parliamentary debate. The final law was adopted on 22 December, introducing, among others, the recognition of a presumption of causality between the illness and nuclear tests, when the conditions defined by law are fulfilled, compliance with the contradictory procedure and the need for the Defence minister to indicate his reasons for rejecting some requests. The Mediator of the French Republic is very pleased about these advancements, which tend towards a more transparent and impartial system. He regrets, however, that the right of the victims' relatives to indemnification for their own losses is not provided for in the law. He hopes that the application decrees will quickly be published and that they will enable the indemnification committee to work independently and take account of all the illnesses concerned.

Another main issue on which the Mediator of the French Republic intervened: improving the amicable settlement of medical accidents, created by the law of 4 March 2002. This law has fully helped to improve the victims' situation by allowing the indemnification of medical hazards and facilitating the procedures. Nevertheless, this measure needs some improvements and developments to increase the number of victims benefiting from it. Therefore, the Mediator of the French Republic has submitted the following reform proposals to the public authorities: extending the system access right by bringing down the level of damage; allowing the national commission on medical accidents (CNAMed) to use its recommendation power to propose some definitions of the notion of "particularly serious problems in the living conditions" (TPGCE); improving the compensation of "Ricochet" victims, relatives of the victim who suffer the effects of the medical accident. These measures appear essential for victims of medical accidents who find themselves in often tragic situations.
Moreover, today, the law on physical injury is not a unified and homogeneous law. Its separation is fragmented between many procedures, sometimes jurisdictional, sometimes amicable, with the intervention of various players (private insurance companies, compensation fund, judges). This organisation creates considerable iniquities between victims, and much legal insecurity. It is possible to see two victims with the same level of prejudice obtain two very considerably different compensations, depending on whether it had been decided through a legal or amicable channel, but also according to the geographic location of the victims or jurisdictional venue.
Although the unification of the current indemnification procedures seems out of reach, it seems possible to propose some common methodological tools for all the parties involved in the indemnification of physical injuries. Following the Dintilhac report, which defined a reference nomenclature with a view to improving the equality of treatment and legal security of victims,

the Mediator of the French Republic has made a reform proposal making it possible to give a legal force to this nomenclature and make its use obligatory. This proposal would also make it possible to create a national database for the indemnification of physical injury, in which would be recorded all the indemnification decisions, both jurisdictional and amicable, and would present for each decision the grounds, amount of indemnity paid and its distribution. The Mediator also suggests creating, under the auspices of the Justice ministry, a pluralist national commission which would help spread a global approach to the indemnification of physical injury and play a regulation role by spreading good practices.

Better consumer protection

Among other concerns emerging among the population, the Mediator of the French Republic has been devoting his energies to the problem of consumer credit for the past five years. This easy payment method, which is seducing an increasing part of the population and compensates for low income, has a downside which sometimes plunges the consumer into excessive debts. To protect those resorting to it, Jean-Paul Delevoye has made some reform proposals several objectives of which have been included in the law on the reform of consumer credit, currently being examined by Parliament. Concerning the obligation to verify the borrower's creditworthiness, the draft law provides for the consultation, prior to loan granting, the national register for incidents pertaining to the repayment of loans to private persons (FICP), which must be complied with or else the interests will be lost. Moreover, the working of this register will become more effective, with a more reactive update. In accordance with the wishes of the Mediator of the French Republic, the maximum period during which the names of excessively indebted persons are stored in the FICP has been reduced to five years for people benefiting from the personal recovery plan. Moreover, membership of the excessive debt commission has been extended to a member of a social or family association, or a lawyer.

The supervision of advertisement has been reinforced, but the Mediator of the French Republic continues to request that the risks inherent in lateness or non-fulfilment of obligations be included in it. The Parliament should also add a provision on budgetary and financial education.

The period of reflection has been extended to fourteen days, in accordance with European rules. However, the Mediator of the French Republic regrets that the adopted law allows the fund to be disbursed and be used prior to the expiration of this period, which in practice makes it ineffective.

For renewable credit agreements, although the draft law mentions that each deadline must include a minimum reimbursement of the borrowed capital, these credits, which are most dangerous for excessive debts, are not sufficiently ...

controlled. Without requiring their complete prohibition, the Mediator of the French Republic thinks that it would be better if they were no longer renewed tacitly but through a written request by the borrower.

Finally, the Institution is satisfied with the work started by the Justice minister and Banque de France (the central bank of France) concerning the communication of information between the civil jurisdiction registers and those held by the commission on the excessive debts of private persons. This should improve the knowledge of the cases and reduce the examination deadlines. Beyond this connection, the Mediator of the French Republic is in favour of an exchange of records between the excessive debt commissions and the mortgage registry, so the commissions will have a maximum of information about the building heritage of the parties concerned and avoid, if necessary, having to sell the property. Moreover, the commissions' access to the vehicle registration system, which indicates the number of vehicles in circulation, seems necessary in order to reinforce the knowledge of the requestors' assets.

The attention of the Mediator of the French Republic has also been drawn to some excesses noticed in the field of bank charges, both in terms of clarity and amount. The European Commission, through the result of the study on financial services published on 22 September, is also in support of the reflection of the Mediator of the French Republic. Over the past ten years, much progress has certainly been made in terms of the transparency of these charges: tariff-related stipulations must be included in deposit account agreements; the client must be notified in advance about their modification. He is also informed every year, through a summary statement, about the amount of charges paid the previous year. Nevertheless, in the current context of economic crises, and considering the complaints sent to him, the Mediator of the French Republic proposed to the government some new initiatives that protect bank clients better. These proposals, fruit of a long reflection, concern, first of all, the adoption of an official glossary of terms describing the different categories of bank charges and the creation of a government website on which banks can display their charges, in form of a declaration, just like the site "envoidargent.org". Then there is a proposal to extend the sending of a summary of bank charges to holders of a "livret A" (a savings account), since this account is sometimes used as a deposit account. Banks are also advised to inform the client in advance, through an e-mail or SMS, if non-recurrent charges are debited, to facilitate the rectification of the situation. Concerning dud checks, there is a proposal to reduce the ceiling of rejection charges for checks on small amounts, and to stop the penalty amount paid to Trésor Public (inland revenue). Finally, the creation of a category of low charges for excessively indebted persons is necessary.

These proposals were sent to the ministries concerned in July 2009, arguing that the banking sector, in which clients often in difficult situations and the powerful banks confront each other, must be subjected more than any other to strict rules that guarantee transparency. The Finance ministry showed some reservations concerning these reforms, except for the measure on the penalty payable to Inland Revenue and the moderation of charges for excessively indebted persons. In October 2009, the Finance minister entrusted Marielle Cohen-Branche, magistrate at the court of appeal, with a mission of analysing and making some proposals on the relations between excessively indebted persons and banks. This mission will cover, among others, the question of bank charges and working of accounts. The Mediator of the French Republic hopes that his proposals will be taken into account this time.

The action of the Mediator of the French Republic has also made it possible to correct a shortcoming in the decree of 11 September 2002, which instituted an account balance privileged from seizure (SBI) allowing any person subjected to seizure to ask his bank to make available immediately, and within one month, a "feeding" amount equal to the monthly active solidarity income (RSA). According to the consumer associations and the rare studies available, the SBI remained underused because, among others, of its unknown character and an application subject to an express demand. The Mediator of the French Republic has, therefore, asked for the activation of the SBI to be automatic, so it can be applied upon confiscation of the bank account, without any prior request. Following his intervention, an amendment of the law, dated 12 May 2009, on the simplification and clarification of the right and procedures was adopted along this line. This measure became effective on 1st August 2009.

Nevertheless, an application problem has been noticed: some bank networks do not apply the SBI automatically in case of administrative opposition for a fine, while waiting for an application decree, whereas the tax authorities mention the automatic SBI in the notification letter on the opposition for the debtor. A request for clarification has, therefore, been sent to the relevant ministry by the Mediator of the French Republic.

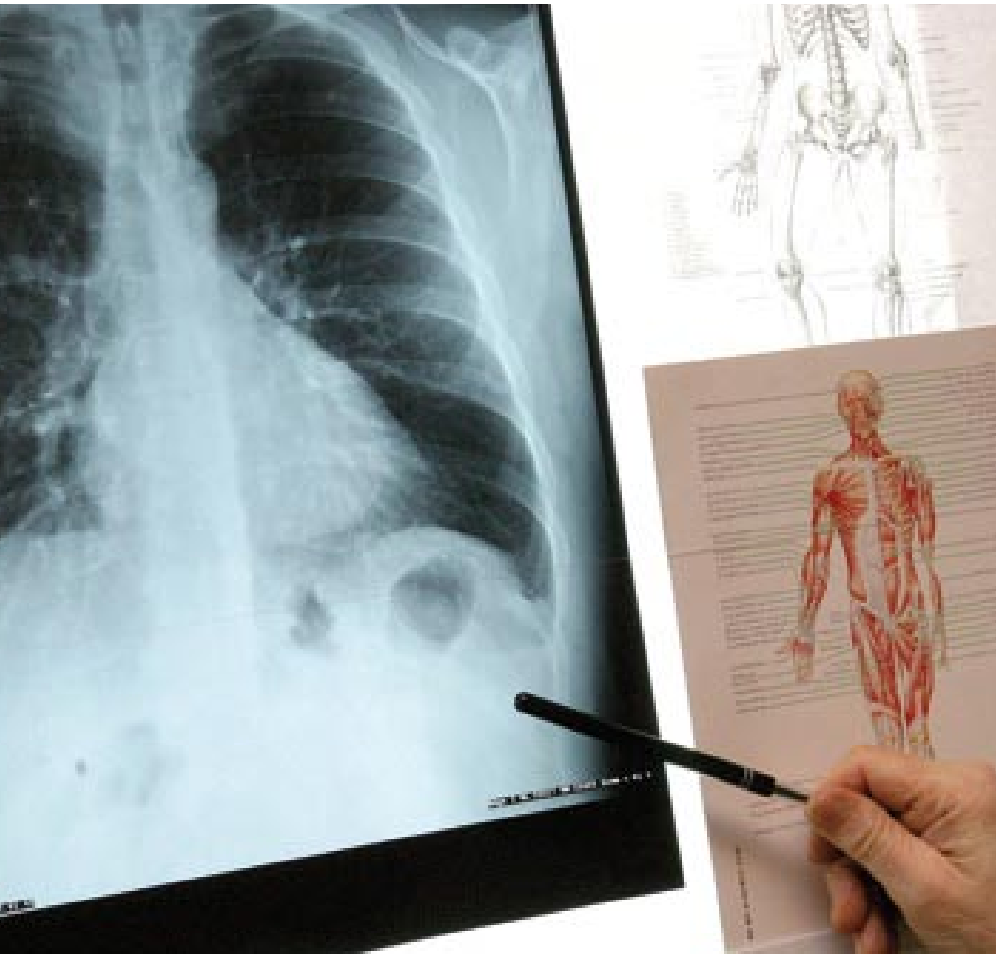
Television tax exemption: an injustice corrected in favour of detainees

In 2009, the Mediator of the French Republic obtained from the Budget minister to correct an anomaly which was prejudicial to a lot of detainees. Some delegates working

in prisons had alerted the Mediator of the French Republic in 2008 to the shocking difference between detainees who had the means to buy a television set and were exempt from television tax since they were not subject to council tax and those who rented these same television sets from socio-cultural associations which were not exempt from said tax and then required the detainees to pay it. Following an urgent request by Jean-Paul Delevoye, the Budget minister, through an instruction of 10 July 2009, put an end to this injustice and exempted the socio-cultural associations from the tax.

The painful asbestos case

The case of employees suffering from asbestos related illnesses has resulted in a long term mobilisation of the Mediator of the French Republic. Since 2005, based on the numerous complaints filed with him, Jean-Paul Delevoye has been constantly calling the attention of public authorities to the gaps in the specific pre-retirement scheme meant to compensate for the reduction of the life expectancy of victims of an asbestos-related occupational disease, or of people exposed to this risk. Provided they completely stop their professional activities, these persons may, sometimes at 50, have access to an early retirement benefit paid to asbestos workers (Acaata), created by the law on the funding of social security for 1999 and which is granted to the persons concerned until they become eligible for a full pension benefit. Initially meant for private sector employees, covered by the national scheme, this scheme was later extended to other professional sectors (agricultural sector employees, public-sector workers employed by the Defence ministry, sailors, etc.).



The Mediator of the French Republic has highlighted the difference in the rules applied to the health insurance scheme that covers this allowance and their lack of coordination, which lead to a very inequitable treatment of asbestos victims. This situation is particularly prejudicial to people who, as result of changes in their career, are affiliated to different insurance schemes. Moreover, certain asbestos victims can be deprived of their Acaata access right, simply because they are affiliated to a scheme that does not offer this allowance (civil servants, liberal professionals, employees covered by the miner's scheme, etc.) or even because they are employed by subcontracting firms. This is probably the case of an employee working for a subcontractor of an asbestos company and who is exposed to the danger like the employees of this company, and who will not have the possibility to benefit from the Acaata system. For example, an association complained to the Halde, which forwarded its complaint to the Mediator of the •••

French Republic. In fact, it concerns the mutual insurance coverage of a naval company whose employees cannot benefit from Acaata since this insurance company is not on the list of organisations, ports and, if applicable, professions, belonging to certain activity sectors in which asbestos had been used and which had been defined by an interministerial decree. This decision may appear justifiable in accordance with the law of 1999; yet the unequal treatment is obvious.

In view of this situation, the Mediator of the French Republic has made several reform proposals: extending the Acaata access right to any person recognised as suffering from an asbestos-related occupational disease; including the Acaata access right in all the schemes, taking account of the question of subcontracts, or even harmonising the conditions for access in the different schemes. Despite several official reports on this health tragedy, which have precisely highlighted the gaps in the different systems of compensating the victims and recommended some improvements (including those recommended by the Institution), no response has been obtained from the Social Affairs ministry concerning these recommendations. This latter sometimes refers to the negotiation between the social partners, and sometimes to the conclusions of a new report ordered by the government. Thus, during the debate pertaining to the draft law on the funding of the social security (PLFSS) for 2010, the minister informed members of parliament that he had contacted the Afsset (the French organisation in charge of healthcare security of the environment and at work place) which is expected to submit its report "in a few weeks time". Nevertheless, Article 119 of law 2006-1640 on the funding of social security for 2007, dated 21 December 2006, provided that some decrees must review the conditions for granting Acaata and the working of the early retirement fund of asbestos workers (FCAATA), but these decrees are yet to be issued.

The issue was not resolved either in the law on the funding of social security for 2009, in which the only measure concerning asbestos consisted in cancelling the FCAATA contribution of companies "listed" to have exposed their employees to asbestos. The reasons cited for this cancellation were the low yields of this contribution and the problems they posed to the companies concerned. Finally, during the debate on asbestos, within the framework of the PLFSS for 2010, the social affairs minister announced the publication of a decree which must exclude certain salary-related indemnities from the payments taken into account to determine the amount of allocation, despite some decisions of the appeal court to the contrary. The Mediator of the French Republic can only deplore this persistent lack of political will to apply the recommendations to improve the indemnification of asbestos victims and put to a stop the existing iniquities. A letter sent to Mr Darcos on 19 November 2009 still remains without any reply.

Pacs: recognising foreign partnerships and improving some social rights

Whereas this year marks the 10th anniversary of the PACS (the civil solidarity pact), some aspects of this system need to be improved, especially the recognition of foreign partnerships. In fact, several cases concerned the following model.

In December 2007, a member of Parliament had alerted the Mediator of the French Republic to the situation of Messrs G. and B., American and Danish nationals respectively, who were living in Nantes and had previously signed a "union pact" (equivalent of PACS) in Denmark. Since this union was not recognised in France, they were not allowed access to PACS–related rights. So, they decided to sign a PACS. Now, two foreigners wishing to sign such a contract must produce several civil status documents, including a certificate of celibacy issued by their country of origin. This is not possible for the parties in question. To obtain a certificate of celibacy, they need to cancel their "union pact" and, thus, lose several of their entitlements (survivors' pension benefits, for instance).

To end this deadlock situation, the Institution proposed, in collaboration with the Justice ministry, a reform making it possible to introduce in the Civil Code a rule on conflicting laws, such as for marriage, recognising that these foreign partners are subject to the rules of form and content of the law of the place of registration. It would, thus, be possible to assess the validity of these partnerships and the extent of their effects in our country. Of course, in accordance with the rules of private international law, the foreign law would be disregarded if it goes against public order in France. An amendment to this effect was examined and rejected by the National Assembly in October 2008. After several procedures, it was finally adopted in April 2009. This rule, integrated into Article 515-7-1 of the Civil Code, sets forth a general framework, long expected by the legal doctrine and legal practitioners, who then ask that it be applied by the different administrations and organisations. Two tax instructions were published to that effect on 20 and 30 December 2009.

Beyond this reform proposal, the Mediator of the French Republic recommended four other improvements to the law on PACS: introducing a leave for signing a PACS in the private sector, granting a survivor's pension to the surviving partner,

paying death benefits to public-sector civil solidarity partners, modifying the mobility indemnification system specific to the military (ICM).
These proposals were sent to the ministers concerned in February and March 2009. After creating some work groups on these issues, the first proposal was submitted for negotiation between the social partners. The second one will be examined in 2010 during debates on pension, and the decree taking account of PACS partners within the framework of the ICM is expected to be issued at the beginning of 2010.
Finally, the Mediator of the French Republic commends the progress made through the decree of 20 November 2009, which authorises PACS partners of civil servants or healthcare workers to receive the death benefits provided for by Article D. 712-19 of the Social Security Code. Until then, apart from the children of the deceased civil servant, only the spouse was entitled to these benefits.

The problem of adoption approval procedure

The Civil Code authorises adoption by a married couple or by any single person above 28 years. The mandatory authorisation for adoption is issued by the chairman of the departmental council, based on the decision of an authorisation commission. This commission gives its decision after a social and psychological investigation, which must ensure "that the conditions offered by the requestor from a family, educational and psychological viewpoint correspond to the need and interest of the adopted child". Despite the legal and regulatory changes in the authorisation procedure, aimed at its generalisation and simplification, there are still some divergences, especially in terms of jurisprudence.
In a ruling of 22 January 2008, France was condemned by the European Court of Human Rights (ECHR), following a Council of State decision, incompatible with the combined specifications of Articles 14 (prohibition of discrimination) and 8 (right to respect of private life) of the ECHR. In this decision, it was stated that the homosexual relationship, in which a single person was engaged during the examination of his adoption authorisation request, must be taken into account for the need and interest of an adopted child. The influence of sexual orientation played a decisive role in the request assessment, resulting in a difference in treatment. The Council of State had ruled on an appeal filed by a single person against a rejection decision taken by the chairman of the Jura departmental council on 26 November 1998. Now, in February 2009, sexual orientation was again implicitly used as argument to reject the requestor's application. Some justifications can be found in this reasoning since the French law opens the right to adopt a child to any single person, without any specifications on the adopting parent's sexual orientation or on the need for a referent of opposite sex.
In view of the obvious refusal by a regional authority to comply with the European law, the Mediator of •••

• • • the French Republic made a reform proposal in order to introduce, in the approval procedure provided for by the social work and family Code, the child's superseding interest, which may not be disregarded in favour of subjective evaluations.

Thereafter, on 10 November 2009, the administrative court of Besançon authorised the requestor to adopt a child. Still, the need for clarification and precision persists.

Reinforcing the legal control of legal autopsies

The Mediator of the French Republic is also asked to intervene in the field of ethics. In this case, his attention is drawn to the flaws in the legal status of legal autopsies and the malfunctions which these flaws might lead to.

Autopsy consists in making various incisions on a dead body in order to examine the internal organs. It is said to be "legal" or "medico legal" when it is made under legal mandate within the framework of an investigation, especially to determine the cause of death if unknown or suspicious.

Therefore, according to the report presented in January 2006 by the inter-ministerial mission on medical reform, "the absence of a legal or regulatory framework is a major characteristic of the French legal medicine". Legal autopsies, which are a major component of this legal medicine, are not governed by any specific provision in the Code of criminal procedure, whereas human samples constitute a particular measure of investigation which would merit some specific rules. In fact, autopsy is a violation of the integrity of a corpse which may be painful to the family of the deceased person.

Like any other measure of investigation and expertise, legal autopsy may be ordered by the examining magistrate or – more often – by the public prosecutor pursuant to Article 74 of the Code of criminal procedure. Moreover, as indicated by the afore-mentioned report, legal medicine is only governed by a set of circulars (8 in total), non-structuring and badly articulated between themselves, whose stipulations are scarcely implemented. This lack of standardised control is all the more surprising since the legal status of medical autopsies (conducted for healthcare or scientific reasons) was clarified by the bioethics law of 6 August 2004.

Several cases examined by the Institution highlight the problems caused by this shortcoming. The lack of control over medico-legal activities may result in medical practices that violate the dignity of a corpse, since the body is returned in a state that is inconvenient and shocking for relatives. Therefore, it is necessary to point out that the obligation imposed on doctors to ensure that a body is restored in the best state possible, in accordance with Article L. 1232-5 of the public healthcare Code, only applies to medical autopsies and not to legal autopsies.

Although some legal provisions sanction the respect due to the dead, it is all about general principles which do not specially aim at legal medicine. There is also a lack of specifications concerning the conditions on which corpses are restored, due to the absence of legal specifications on the principles and deadlines for this restoration. The corpse thus remains at the disposal of the legal authority until its release is authorised by said authority. This situation led to the condemnation

of France by the European Court of Human Rights (Pannullo and Forte ruling of 30 October 2001).
Finally, the problem of the fate of human samples is then raised. As underlined by the appeal court of Toulouse in its ruling of 28 April 2009 regarding a particularly painful case brought to the attention of the Mediator of the French republic, "there is no precise legal provision on how to handle samples taken during a legal autopsy".
In fact, these samples are concerned by Articles R. 1335-9 to R. 1335-12 of the public health Code, which fix the rules on the disposal of human samples. These rules concern only the organs or parts taken during treatments or similar activities (teaching, industrial research and production in the fields of human and veterinary medicine, as well as embalming activities).
The Mediator of the French Republic recommends the adoption of the following measures: extending to legal autopsies the obligation imposed on doctors to ensure that a body is restored in the best possible state; transposing into internal law the ECHR jurisprudence on the right of relatives to obtain the return of the deceased person's body within an appropriate deadline; defining a specific legal status for human samples.
Following the transmission of these proposals to the ministries concerned, the Justice minister informed the Institution by mail, in July 2009, about the initiatives taken to sort out the different problems detected. A circular has been sent out to public prosecutors' offices in order to harmonise the legal autopsy practices and call their attention to the need to ensure that bodies are returned to families in a dignified state.
Nevertheless, it is still necessary to fill certain legal regulatory gaps on autopsies, especially regarding the status of bonded biological samples and the response that can be given to a demand for a return of these samples. In his reply, the Justice minister stated that an interministerial work group, under the auspices of the Justice ministry, had been created to define a legal framework for these special bonded samples.

The quality of medico-legal expertise questioned

There are recurrent criticisms of the quality of medical expertise, especially when performed within the framework of a legal dispute, in which the credibility of justice and medicine is called to question. At the end of the collective reflection made with qualified personalities, the Mediator of the French republic submitted to the public authorities a reform proposal taking account of each stage of the expertise process and recommending three objectives: skill, independence, control. These recommendations were debated upon during a conference organised by the Mediator of the French Republic at the National Assembly on 6 October 2009.
There is no good expertise without good experts. This is why the Mediator of the French Republic has recommended to reinforce the procedures for selecting experts, by reviewing, among others, the methods of drawing up the national list of legal experts, currently under the responsibility of the office of the appeal court. A national commission on expertise could be created, including, in addition to the magistrates and experts, national expert companies, representatives of the professional orders and organisations concerned as well as representatives of private individuals. This list could serve as reference for appointing expert doctors both in a context of jurisdictional and amicable settlement of the litigation.

To be included on the list, the candidate must attest to his qualifications and exercise the profession in which he claims to be an expert. The commission in charge of drawing the national list could participate in the continuous training of experts, in collaboration with national expert companies. The appointment of an expert by a judge, outside this list or the lists drawn up by the appeal court, should be limited to exceptional circumstances and must be subject to a well-grounded decision. Collegiality should be resorted to for complex expertise operations.
Concerning expertise operations, the creation of a system of controlling the scientific pertinence of the experts' arguments and conclusions would be more than useful, as well as an evaluation by magistrates of the quality of answers given to the questions asked. The expert should explain precisely his methodological procedure and present a preliminary report to be subjected to a debate. In fact, the respect of the principle of contradictory discussion (i.e. the fact that during a proceeding, each party may discuss the facts and •••

• • • legal resources his adversaries have used as argument against him), although inherent in a legal debate, seems to be insufficiently applied to expertise. The parties often find it most difficult to specify the methodology and discuss the conclusions of the expert. The experts themselves regret not having any piece of information regarding the status of their reports and evaluation thereof by the judge and parties to the proceedings. Moreover, the Mediator of the French Republic suggests that expertise operations be assessed for legal proceedings.

To prevent conflicts of interests from disturbing the expertise and marring the entire procedure to which it is attached, the Mediator of the French Republic proposes that a declaration of independence be made by the expert at each appointment. This declaration would complete the oath taken during his registration to accomplish his mission honourably and conscientiously. Finally, the right to expertise within the framework of a civil legal proceeding is compromised by its cost and the rule obliging the requestor to make an advance payment thereof. Transparency and a relative harmonisation of remuneration are necessary, since the level of tariffs must also correspond to the quality and level of complexity of the expertise.

Promoting information culture in the healthcare sector

Beyond the reform proposals made by the Mediator of the French republic, his action also aims to improve on a daily basis, the behaviour of the players. This is, for instance, the case in the healthcare sector in which the Institution is seeking to develop within the medical corps a culture of reporting incidents and accidents, which is still too weak.

This shortcoming is due to two factors. First, when they report these incidents, the healthcare professionals do not have any protective measures, such that they may be afraid that the transmission of this information could penalise them, and that the report sheet could be kept in the patient's record, or even that it could be used by a bad-intentioned person.

The insufficiency of information is also due to the complexity of the procedures to follow and the multiplicity of their addressees. Let us assume that a person at a hospital is operated upon for hip prosthesis, is given a blood transfusion and dies. In such a case, it is possible to identify up to nine possible reports since one may suspect a problem of infection (to be reported to the Healthcare and social affairs department), or a problem relating to transfusion (French blood authority), or even a problem pertaining to the material used (Afssaps), etc. Moreover, these reports must be made by people who do not systematically communicate among each other, which makes the accident analysis even more complex.

Since no progress is possible without reporting undesirable events occurring in hospitals, a system ensuring the protection of users and which is consistent for the field workers should be put in place: for healthcare workers, a sort of "unique counter" for alert and surveillance. Concerning the return of information from citizens, the Institution's Healthcare and Safety and Security Unit is today the prefiguration of a system of unique counter. It is the privileged observatory for serious undesirable events and accidents reported by users. 40% of these events reported to the Mediator of the French Republic are cases pertaining to a prejudice which may result in disciplinary actions or which may engage the criminal, civil or administrative liability of a healthcare professional.

Collaborations with the Health ministry, the Healthcare supervision Institute, the Afssaps, partnership actions with the French Nuclear Safety Authority, the rapprochement with the national council of the medical association, the national association of nurses, the agreement signed with the High Authority on Healthcare are all actions that enable the Mediator of the French Republic to perform a surveillance and alert mission all the more efficiently, since he collects a huge amount of information both from healthcare professionals and users. For taken separately, information does not make any meaning, but if added up, it can constitute an alert for the healthcare authority to an event that may endanger a person or have an impact on public health. ■

Main orientations for 2010

In 2010, the Mediator of the French Republic intends to continue his reform initiatives based on four main objectives: following up new proposals, participating in the debates on pension, following up the execution of adopted proposals and paying special attention to some old issues on hold or which have been postponed.

SOME NEW PROPOSALS TO BE PURSUED IN 2010

Improving the rights of victims of physical injury

The Mediator of the French Republic has been alerted by various partners who question several aspects of the indemnification of victims of traffic accidents, introduced by the law of 5 February 1985, the so-called Badinter law. The Mediator first organised a conference on the system of amicable indemnification of medical accidents created by the Kouchner law.

Thanks to these exchanges and testimonies which highlight the multiplicity and stacking of systems that generate some iniquities for the victims, more or less properly indemnified and assisted according to the system in question, a decision has been taken to go beyond an occasional reform of these particular systems to propose a more global and consistent reform of all the indemnification systems for physical injuries.

Two additional reform proposals are, therefore, being prepared: one of them proposes to unify the methodological tools used by the different parties involved in the indemnification of physical injury, while the other aims to reinforce the rights of victims in the different systems.

These proposals are the subject of a large-scale consultation among the different players concerned (associations, magistrates, specialised lawyers, academics, insurers, members of parliament). Some important reports have been written on these problems: the report by Mrs Lambert-Faivre on physical injury-related rights, or the one by the work group headed by Mr Jean-Pierre Dintilhac, chairman of the honorary chamber of the appeal court; this latter had been of immense help to the work of the Mediator of the French Republic.

Finally, the proposals of the Mediator of the French Republic are in line with the concerns of the Parliament since a bill has been submitted to the National Assembly by Mr Guy Lefrand "aimed at improving the indemnification of victims of physical injuries resulting from a traffic accident".

Improving children's protection

This issue is the subject-matter of several proposals still in preparation or already communicated to the public authorities.

➜ SITUATION OF CHILDREN RECEIVED IN FRANCE ACCORDING TO THE *"KAFALA"* PROCEDURE

This matter has been mentioned in the earlier part of the report. It will be summarised here by saying that the Mediator of the French Republic wishes to obtain some answers to improve the situation of these children of North African origin.

➜ PAYING FAMILY ALLOWANCES TO PARENTS OF FOREIGN CHILDREN

The Mediator of the French Republic intends to obtain some answers, both legal and human, concerning the problem posed by the refusal of social security offices to pay allowances to foreign parents living regularly in France and whose children under their care had arrived in France outside the family reunification procedure.

He first alerted the Labour minister to this problem by mail on 11 February 2009 and again on 10 April 2009, especially as some rulings had been made against the social security offices. The letters remained without any answer; this is why a reform proposal was sent to the new minister in October 2009.

➜ REFORMING THE ADOPTION AUTHORISATION PROCEDURE

The mandatory authorisation for adoption, provided for in Article 353-1 of the Civil Code, is issued by the chairman of the departmental council, based on the decision of an authorisation commission.

To end the jurisprudence-related controversies and the differences noted between the departments, the Mediator of the French Republic has made a reform proposal in order to introduce, in the approval procedure provided for by the social work and family Code, the child's superseding interest, which may not be disregarded in favour of subjective evaluations.

➜ TAXES ON SUCCESSIONS AND DONATIONS CONCERNING SIMPLE ADOPTED CHILDREN

Unlike the tax scheme applicable to people adopted in a plenary manner, whose situation is similar to that of a child born in the family concerned, a simple adopted child is considered as a foreigner in terms of taxation, with regard to his adoptive family.

This is why at a time when reflections are being made on making the French adoption system more effective and coping better with the huge diversity of family situations, the Mediator of the French Republic is proposing to make some changes to the existing rules in order to reduce the inheritance taxes that must be paid by simple adopted children without going as far as bringing their scheme into line with that of plenary adopted children.

Improving the protection of disabled adults

One year after the entry into force of the law of 5 March 2007 on the legal protection of adults, for which the Mediator of the French Republic strongly strove, he has made an evaluation thereof, based on the main observations, criticisms and complaints sent to him, especially regarding the content of the application decrees required by law.

This important and complex system, in which a lot of healthcare, social and legal workers are involved, apparently requires further enhancements.

This is the subject-matter of a reform proposal concerning the methods of funding the social welfare of protected adults, the control of guardianship accounts and the modalities for taking an inventory of belongings, the situation of voluntary legal representatives, the quality of privileged creditors assigned to protected adults in case of compulsory liquidation of the guardianship organisation, reinforcing the resources of regional councils and magistrates.

THE NEW PENSION DEBATE

In 2008, the Mediator of the French Republic sent to the relevant ministers 14 reform proposals aimed at enhancing the pension debates which were supposed to take place that year, in accordance with the pension reform law of 21 August 2003.

In his information report on the planned 2008 pension debate, dated 8 October 2008, member of Parliament, Denis Jacquat, draftsman on old-age insurance for the cultural, family and social affairs commission, described in detail the proposals of the Mediator of the French Republic. They concern the following points: family benefits, early retirement for long career, survival pension of surviving spouses and ex-spouses, working retirees, excess contributions for part-time work in the civil service, job-seekers at the end of their career, taking account of the last working year for calculating the average annual salary and situation of people with several pension schemes, taking into account the periods of invalidity of non-salaried agricultural workers, validating the training internship of job-seekers, validating the military services done abroad or in the overseas territories before 1989, voluntary work for development, the incidental activity of a mayor's secretary and the right to information.

Since the pension debate has been postponed to 2010, the Mediator of the French Republic will strive to have his observations and proposals taken into account by public authorities.

FOLLOWING UP PROPER EXECUTION OF ADOPTED PROPOSALS

The Mediator of the French Republic follows up the implementation of adopted reform proposals which may be difficult to implement.

This is, particularly, the case in three areas: the reform of subrogation rights exercised against third parties, reinforcement of the legal guarantees for consulting the judicial police files for administrative investigation purposes (Stic and Judex), and unclaimed life insurance credits.

Subrogation rights against third-party payers

The Mediator organised a round table with all the parties concerned, with a view to assessing the reform introduced by Article 25 of the law of 21 December 2006. Mentioned

were the particular problem of work accidents and temporary invalidity allowances, especially following the appeal court decisions of 19 May, 11 June, and 22 October 2009; the need to officialise the nomenclature of prejudices and a concordance table; incidents pertaining to medical expertise; the possible need for an additional reform.

Unclaimed life insurance credits: satisfaction!

The Mediator of the French Republic is happy to notice that the processing of the stock of unclaimed credits, made possible by the INSEE (French statistics organisation) file provided for by the law of 17 December 2007, is now a reality. Thanks to the 6 million interviews conducted in 2009, 14,424 contracts were identified, and an additional sum of 121 million euros paid to beneficiaries (plus the 87 million euros paid in 2009 within the framework of the Agira-I provision of the law of 15 December 2005).

The Mediator of the French Republic is following with interest the bill submitted to the Senate by Hervé Maurey, which advocates for the publication by insurers, outside the annual reports, of statistical data on the contracts and sums held and paid, and concerning the steps taken to find the beneficiaries. Moreover, he extends the debate to unclaimed savings accounts.

Recognising foreign partnerships

The Mediator of the French Republic is following up the concrete application of Article 1 of law No. 2009-526, dated 12 May 2009, on simplifying and clarifying the right and facilitating the procedures, which had introduced Article 515-7-1 of the Civil Code.

EFFORTS TO BE CONTINUED IN 2010

The Mediator of the French Republic attaches special importance to some old cases which had been blocked or postponed too quickly.

Legal status of stillborn babies

Another painful issue on which the Institution has focused its efforts over many years: the legal status of stillborn babies. The Mediator of the French Republic drew the attention of public authorities, in 2005, to the need to consolidate and modify the legal status of stillborn babies, i.e. babies who had died before their birth was declared to the civil status office. This status, fixed by Article 79-1 of the Civil Code, has two major shortcomings: the absence of a standard definition of the notion of viability mentioned in Paragraph 1 of this Article, whereas viability is one of the two criteria for conferring a legal status on the dead foetus. Moreover, the Mediator of the French Republic has pointed out certain inequitable consequences of the civil status of a stillborn baby provided for in Paragraph 2 of this article. To leave this shadow zone, the Mediator of the French Republic has, among others, recommended to give a legal basis to be held as valid •••

- against the criteria of viability from the recommendations of the World Health Organisation (WHO).

At the instigation of the Mediator of the French Republic, Decree 2008-32 and the decision of 9 January 2008 have made it possible to grant paternity leave for stillborn babies (only when the dead child has reached the viability threshold). Under pressure from the Appeal court, two other decrees (No. 2008-798 and No. 2008-800 of 20 August 2008) and their application decrees were published in the Gazette of 22 August 2008.

The first one allows unmarried couples without a family record book to ask for this document in order to symbolically register their stillborn baby in it.

The second decree and its application decree aim to specify the conditions for establishing the status of stillborn babies, which is no longer based on the viability thresholds defined by the WHO (22 weeks of pregnancy or a weight of 500 grams) but on the production of a medical birth certificate. An inter-ministerial circular dated 19 June 2009 tries to specify the conditions for issuing this certificate, but the vagueness of the notion of birth and the absence of definition of the notion of viability also pose serious problems for the application of Paragraph 1 of Article 79-1 of the Civil Code, which provides for the issuing of a birth and death certificate (thus assigning a legal personality) when the child is declared born "alive and viable". The Mediator is thus concerned by the persistence of real legal insecurity, since the personal assessment of a health professional is again being used as basis for issuing certificates with serious legal consequences.

This is why the Mediator of the French Republic has decided to pursue the examination of this reform proposal, by referring this issue to the members of parliament entrusted with reviewing the bioethics law.

Donating one's body to science:

The attention of the Mediator of the French Republic has been drawn, among others, to the problems encountered by families of persons who have donated their body to science. Two specific problems have been identified; the fate of the body after being handled by the donees, and the expenses borne by the donors or their legal claimants. In theory, the donee organisation bears the cost of burying or cremating the body. However, since 1998 most, if not all, of the organisations only practice cremation after using the body.

Concerning the inherent expenses, the organisations in charge of this question have various practices, at their own rates. Donors are, thus, asked to pay fixed "closing costs" corresponding most often to service charges and, more precisely, incineration charges sometimes associated with the obligation take out funeral insurance policies citing the organisations as beneficiaries, as well as the cost of transportation from the place of death to the donee organisation.

To solve this problem, the Mediator of the French Republic had recommended the creation of a work group jointly run by the Education ministry and Interior ministry. He was, thus, able to create a global scenario for the reform of the procedure for donating one's body, concerning especially the introduction of a legal framework on the legal control of human remains, the obligation to give precise information to the donor regarding the handling and use of his body and the payment of the different charges. These proposals were sent in April 2008 to the two ministries in question (Education and Interior ministries) and are still awaiting arbitration. They have been taken into account by the commission in charge of reviewing bioethics laws.

Reinforcing the collaboration between national health service and occupational medicine

After a period of sick leave, the poor collaboration between occupational physicians and the medical advisers of the national health service may cause serious prejudices for the employee.

In fact, the interruption of the payment of daily allowances ordered by the health insurance office, based on the opinion of its medical adviser, considering that the insured employee is fit to resume work, may go together with the decision of the occupational physician to start a procedure for unfitness for work. Now, during this procedure (which may last up to six or seven weeks), the employee is left without any resources: he is not paid the daily allowance, since he is no longer on sick leave; he does not receive any salary either since he does not fulfil his work obligations. To solve these inconsistencies, the Mediator of the French Republic started a reflection work with the CNAMTS, which has already resulted in some measures. The CNAMTS thus sent out several circulars within its network to develop collaboration between the social security contributor, medical adviser, occupational physician and employer, so as to facilitate work resumption after a long period of sick leave. The legislator then intervened within the framework if the health insurance law of 13 August 2004. The social security Code (Articles L. 323-4-1 and D. 323-3) provides for the possibility for a medical adviser to consult the occupational physician in case of any work interruption going beyond three months. The purpose of this interaction is to prepare the conditions and modalities for resuming work or initiating redeployment procedures.

Although these measures appear appropriate, experience has shown that this system does not work very well due to its unbinding character, since the consultation of the occupational physician by the medical adviser depends on the free will of the medical adviser. The Mediator of the French Republic is proposing to make this collaboration in case of foreseeable problems of work resumption by an insurance contributor. Second problem: the vagueness of the application decree of 23 December 2004, which does not indicate the nature of the information that can be transmitted, or the modalities of information exchange between doctors. Therefore, the Mediator of the French Republic has recommended the completion of this decree in this sense and the creation of a communication link which makes formal the communication of pertinent medical data.

The third and main problem is related to the financial loss unjustly suffered by the employee subjected to a procedure for unfitness. As seen above, throughout the duration of this procedure, the person concerned cannot receive his pay or sick leave allowances. This problem has already been taken into consideration for work accidents or occupational diseases. In fact, the law on the funding of social security for 2009 provides for the victims to continue receiving their daily allowances during a maximum of thirty days. It seems necessary to study the conditions on which this provision could be extended to health insurance.

The draft agreement on the reform of occupational medicine resulting from the agreements between social partners has made some proposals aimed at preventing the professional exclusion of employees on sick leave. This draft agreement thus recommended the creation of a collegial commission comprising the occupational physician, the medical adviser to the health insurance organisation and, if necessary, the attending physician, charged with proposing to the employee a pre-reinstating visit. If during the reinstatement visit the occupational physician declares the employee unfit and redeployment turns out to be impossible, the employer may lay off the employee, within twenty-one days following the declaration of unfitness. The agreement provided that, during this period, the employee would be indemnified by the health insurance office. If, at the end of the twenty-one days deadline, the employee had not been laid off, the employer must start paying his salary again.

In view of the trade unions' refusal to adopt the global agreement on the reform of occupational medicine, the initiative now belongs to public authorities. Mr Xavier Darcos, who on 4 December 2009 presented the main lines of this reform, also planned, among others, to make systematic pre-reinstatement visits and prior exchanges between doctors. •••

REGULATORY ACTS ON STANDBY

While a positive response from the minister or administration concerned has been sent to the Mediator of the French Republic, a certain number of reform proposals have not been successful in the absence of a regulatory act.

When will victims of blood-transfusion-induced hepatitis C be indemnified?

At the instigation of the Mediator of the French Republic, Article 67 of the law on the funding of the social security for 2009 provided for the indemnification of people infected by the hepatitis C virus following blood transfusion operations conducted by private organisations, by the national office for the indemnification of medical accidents, iatrogeneous and nosocomial infections (Oniam). Nevertheless, the procedure will only become operational after publication of the application decree submitted to the State Council and which is still on hold.

Securing the disability insurance scheme of State-employed civil servants

The Mediator of the French Republic made a reform proposal which aims to prevent some civil servants, whose names have been removed from the list of executives due to disability by their work administration following the decision of the reform commission, from being denied access to the civilian disability pension due to a wrong instruction. The relevant ministers informed the Mediator of the French Republic, by mail dated 8 October 2008, that they had given instructions to prepare a draft decree in order to implement the reform proposal. Up till now, despite a recent reminder, said decree has not yet been published.

➜ EQUIVALENT OF THE FRENCH TAX NOTICE FOR EU CITIZENS

The proposal aimed to replace the French income tax notice, required from Community citizens, with an equivalent document, in order to facilitate their steps to obtain social housing and "zero-rate loan". A work group created for this problem under the auspices of the Finance ministry recommended in July 2008 the issuing of a tax decree, which is still being expected. ■

A FRENCH-STYLE OMBUDSMAN

If there is one characteristic of Human rights that must be emphasised and relentlessly defended, it is their universality. Therefore, it is not surprising that the Mediator of the French Republic, deeply involved in social debates in France, is so much called upon to support and reinforce the action of national Human rights institutions across the globe. A reference in this field thanks to his internationally recognised expertise, he has started extending his powers and missions and will become the Human rights defender in 2010, a real French-style Ombudsman.

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A FRENCH-STYLE OMBUDSMAN

Responses of the Mediator of the French Republic to the big challenges of our society

EVER ACTIVE COOPERATION WITH THE NATIONAL HUMAN RIGHTS COMMISSION (CNCDH)

The work done in collaboration with the National Human Rights Commission (CNCDH) has been relatively intense, with the renewal of this body and nomination of new members at the beginning of the year. It is noteworthy that the Mediator of the French Republic is the only member by right of this Commission pursuant to the decree of 1st April 2009 on membership of the CNCDH. The reflection concerned, among others, the prison-related bill, the situation of isolated foreign minors, asylum law, immigration issues, reform of the law on minors, the thorny issue of wearing full veil, bioethics, trafficking in human beings, the "offence of solidarity" and, of course, the forthcoming institution of the Human rights defender.

This subject led to the creation of a special work group in September. This group, to which the Mediator of the French Republic has contributed actively and by which he has been auditioned, has also auditioned, among others, Mr Beauvois, chairman of the national commission on security deontology (CNDS), Mr Delarue, general controller of prisons, Mrs Versini, children's defender, Mr Leclerc, chairman of the commission on access to administrative documents (Cada), and a representative of Mr Schweitzer, chairman of the high authority on the fight against discriminations and for equality (Halde). Its objectives: enabling the sub-commission to which it is attached to make a decision which will help to define the structure of the Institution which will replace the Mediator of the French Republic, and to specify his missions and powers. The contri-

bution of the Mediator of the French Republic within this work group is partly inspired by several discussions he had all along the year with associations and several independent administrative authorities, such as the Cnil, Cada and the general inspector of prisons. *"The ambition of the Mediator of the French Republic has been to invite associations, important players in the creation of the Human rights defender, an institution which will be for them a privileged interlocutor and with which they will maintain closer links and more effective collaboration, especially since they will have participated in its creation",* explains the services of the Mediator of the French Republic. Based on a draft organic law presented on 9 September, the reflections of the Mediator of the French Republic should make it possible to clarify future parliamentary debates on the Human

IN THE CALAIS "JUNGLE"

The difficult situation of migrants

In an ever-changing political and social context, the question of Human rights is getting increasingly important over the years in the activity of the Mediator of the French Republic. In 2009, what was referred to as the Calais jungle by the media was probably one of the most emblematic cases in this respect. In January, Jean-Paul Delevoye, alerted to the situation of migrants in Calais, approached the people in charge of this matter in order help, through his expertise, in finding a solution to the humanitarian aspect of the issue. Since the Sangatte centre was closed in 2002, associations have played an important role in the distribution of meals, shower services as well as protection of and provision of information to migrants. However, due to the problems encountered, associations have called to question the help it was providing and asked the State to participate in the effort. In view of the deadlock situation, the Mediator of the French Republic set out to restore, outside the media, dialogue between the institutional players and associations. A neutral and independent player, he thus helped the parties involved to make some progress. Although some solutions were rapidly found pertaining to the distribution of meals, the question of day reception and shower services was more difficult to solve. The city council of Calais had wished, in view of the increasing number of complaints from residents, to close the day reception centre run by Secours Catholique (a catholic relief service), which had asked, in return, for the opening of a real reception centre for vulnerable persons. After some long negotiations, a draft agreement was finally signed, thanks to the intervention of the Mediator of the French Republic who had succeeded in restoring a link of trust between the city council and the association. It provides that the reception centre run by Secours Catholique be closed as soon as the day reception centre for vulnerable people, provided by the city council and run by Secours Catholique, is opened, in March 2010.

Contribution by the Mediator of the French Republic

Immigration minister, Éric Besson, decided in May to create a work group on isolated foreign minors including the ministries concerned (especially the Interior, Justice and Social Affairs ministries) as well as the Mediator of the French Republic and associations like the French Red Cross, France Terre d'asile and Enfants du Monde Droits de l'Homme. The Mediator of the French Republic focused, during the group's work sessions, on the different problems of isolated foreign minors, such as their reception and protection upon their arrival in France, as well as the difficulties encountered by *ad hoc* administrators while performing their task.

Moreover, since age determination is crucial to this type of cases, the Mediator of the French Republic recommended the development of the search for modern means of detection, in order to stop using, with time, the bone expertise currently used to determine people's age. Concerning asylum requests made by minors, he suggests the presence of an expert in such matters and an interpreter, as well as the training of the staff of the French office for the protection of refugees and stateless persons (Ofpra) on the specific needs of isolated foreign minors.

The Mediator of the French Republic also contacted the Assemblies of French departments in order to work towards better coordination of skills between the State and local authorities pertaining to the reception of isolated foreign minors.

Finally, following the dismantling of the Calais "jungle", the Mediator of the French Republic, during his visit of 25 September to the reception centre in Vitry-sur-Orne (Moselle), where the minors of Calais had been sent to, made three proposals:

- The exceptional measure taken by the State for the isolated foreign minors in Calais (at the cost of 700,000 euros) should be generalised to all isolated foreign minors in France.
- The State should create, for the •••

- reception of unaccompanied minors, a solid partnership with local authorities in order to solve the problems encountered by local authorities in the management of the facility, especially problems posed by obtaining authorisations for temporary fostering prior to the implementation of child welfare (ASE).
- A European fund for the protection of unaccompanied minors should be created, considering that the management of migratory flows is a problem that requires a European solution.

Although Éric Besson, through the conclusions of the work group on Unaccompanied Minors, has supported this initiative, the European commission vice-president, Jacques Barrot, invited to express his view on the last proposal of the Mediator of the French Republic, announced at the beginning of 2010, that the European Commission would be presenting an action plan on unaccompanied minors. Source of a major commitment on the part of the European Union, this action plan aims at prevention, protection and (re)integration, and will define the main lines of actions to reinforce the rights of these minors. Moreover, the group's reflections have resulted in the proposal of several actions which can be quickly implemented, and were mostly inspired by the Mediator of the French Republic. They include complete separation of minors and adults in waiting areas, provision of an office, at Charles de Gaulle Airport, for the *ad hoc* administrators in charge of accompanying unaccompanied minors not admitted into the French territory, reinforcing their number and training. Several other proposals, which call for further consultations and arbitrations, have been examined.

THE QUESTION OF PRISONS STILL LINGERING

Thanks to his experience in prisons, the Mediator of the French Republic was auditioned in 2009 by the Senate delegation on women's rights and equal opportunities for men and women in prisons, and was invited by the prison administration to enhance the reflections on the application of European prison rules in French prisons.

The Institution's action in favour of detainees is also taken within the framework of its reform proposal powers. The prison law has responded favourably to two questions raised by the Mediator of the French Republic from the observations of his delegates in prisons. The first one concerns the generalisation of legal access points (PAD) in prisons. In fact, the detainees' need for legal information, especially in areas outside the Institution's powers (family right, exercise of parental authority, successions, etc.) are today noticed by all the parties involved. This is attested to by the very positive results recorded in prisons like Fresnes, les Baumettes or even Meaux-Chauconin, where the quality of the system in place is recognised. Unfortunately, only about half of the prisons officially benefit from the existence of a legal access point. This existence sometimes even appears relatively theoretical when the service is not suited to the prison's characteristics, like for the Villepinte prison in which, for 900 detainees, the legal access

point amounted to the presence of a lawyer for half a day every month. This difference is due to the fact that the existence of a legal access point in prisons is only possible at the initiative of each departmental council on legal access (SDAD), within the framework of the modified law of 10 July 1991 on legal assistance.

The second one concerns the obligatory creation of contradictory inventories of the detainees' personal effects. Detainees' complaints about personal items lost during transfers, are among the problems frequently referred to the delegates. The restricted orientation committee had recommended to make contradictory inventories obligatory. This provision, which was not included in the bill because it was covered by a regulation, can still succeed within the framework of the close relations between the Institution and the prison administration.

The lawmaker has also recognised the role played by delegates in prisons, by making their presence official in these facilities in Article 6 of this law:

"Article 6 – To allow detainees access to the provisions of Law 73-6 of 3 January 1973 instituting the Mediator of the French Republic, the Mediator of the French Republic shall appoint for each prison one or more delegates entrusted with this mission."

KAFALA AND PROTECTION OF FOREIGN CHILDREN: PROGRESS THROUGH MEDIATION

Public authorities do not always respond satisfactorily to certain issues handled by the Mediator of the French Republic. To cope with what they consider as lack of will to tackle these problems which characterise their day-to-day on-field activities, associations have formed the habit of regularly seeking the Institution's help. The action and proposals of the Mediator of the French Republic on the issue of *Kafala* illustrate this tendency.

Specific modality for receiving a child under Islamic law, *Kafala* is defined as a child protection measure different from adoption, which is banned in many Islamic countries. Today, about 1000 children are believed to be in this situation in France. This legal reception, which may be declared before a notary public through a legal channel when a child is abandoned or cannot be raised by his parents, does not create any filiation link between the child in question and the person assuming his protection. In French law, it may be considered as a delegation of parental authority. However, the legal conception of the *kafala* in France and the existing laws place many obstacles to requests made by French or British families receiving these children they consider as theirs.

The couple L. experienced this and underwent a real obstacle course. Mr and Mrs L. are living in Switzerland, where they started child adoption procedures. After obtaining the Swiss approval, they adopted a child, H., in Morocco, through a *kafala* declared by the Moroccan legal authorities. One year after their return to Switzerland with H., the Swiss legal authorities officially declared the child adopted by the couple, based on this *Kafala*. Mr L., a German national, contacted his country's authority, which recognised the Swiss ruling on the adoption, thus conferring the German nationality on the child. Mrs L., a French national, also contacted the French consular authorities and took the same steps at the court of Nantes, the only authority empowered to recognise this adoption. Now, the prosecutor's office in Nantes refused to recognise the application of this ruling in France, arguing that it had been made based on a *kafala*, and that the French Civil Code forbade any adoption of a child whose personal law (in this case, the Moroccan law) prohibits adoption. Therefore, H. cannot be considered as the couple's son or as a French national. Since she did not understand this decision and the difference in the laws existing in the various European countries, Mrs L. sought the help of the Mediator of French Republic, who then explained the situation to the couple and advised them on other procedures to follow.

With the exception of *Kafalas* granted by the Algerian legal authorities, these difficulties start when a couple asks, within the framework of family reunification, to bring over to France a child adopted through *Kafala*. In view of •••

••• the complaints sent to the Mediator of the French Republic or the latest report by the Defenseure des enfants (children's defender), visa rejection decisions remain frequent. This situation favours illegal entry of these children into France, which as a result creates some problems for them until their adult age: especially obtaining a travel document enabling them to travel outside France, or a resident permit when they become of age. It also affects the social rights of the persons concerned, since they are not entitled to family allowances.

At the initiative of the Mediator of the French Republic, the different parties involved in the matter (ministries, embassies, parents' associations, magistrates, members of parliament, representatives of Défenseure des enfants) met at the Institution's premises. They made a joint diagnosis and agreed to continue their exchanges in order to work together, especially in pursuit of the following objectives:

- Consolidating the system of social investigation aimed at receiving a child within the framework of *kafala* by granting him a legal status and determining the relevant authority. This reflection will lead to a joint work meeting with representatives of the Association of French Departments.
- Drafting a circular for consulates, with a view to harmonising the rules applicable in terms of issuing visas to children received within the framework of *kafala;* studying the possibility to extend the issuing of family-reunification-based long-stay visas to all received regularly within the framework of *kafala*, in accordance with the jurisprudence of the Council of State
- Clarifying through an inter-ministerial circular to French administrations and social organisations the notion of *kafala* and its implications under French law, in order to facilitate the received children's access to social rights.
- Devoting a reflection session to the issue of *kafala* compared to adoption under French law.

PREVENTING THE MALTREATMENT OF VULNERABLE PERSONS IN HOSPITALS

Another challenge to be taken up: that of maltreatment. According to the Mediator of the French Republic, one of the big menaces to our society is what can be called "ordinary maltreatment". Not only does the Mediator observe a rise in problems related to these acts, he also finds them underlying a lot of cases he has handled.

Most of the time, it is the family that seeks the help of the Mediator of the French Republic, because the affected person –when he is not dead – can neither call nor express himself. Many of the cases concern this "ordinary maltreatment" in hospitals. It is a real taboo - that of an unwell society in which professionals are also under pressure, stressed up, violent with themselves and with others. The problem not only concerns elderly persons, but also all vulnerable persons. Within this population, we see the rise of the problems posed by disabled persons, psychiatric patients, homeless persons, obese children received in hospitals: people considered as different and, thus, treated differently.

A teenager is hospitalised for suspected appendicitis. An appendectomy is performed the next day. After this intervention, the mother of the teenager complained about lack of attention and information on the part of the surgeon. Without any apparent reason, this latter, during his post-operation visit, made an extremely disdainful remark against this teenager: "Why did I operate on you? In any case, you are full of fat and will soon die".

This taboo of ordinary maltreatment covers all deficits in terms of hygiene, all cases in which the pain is not taken into account, and also where the person, in the absence of surveillance and response to his calls, will try to move by himself, fall and sustain some injuries. This is very often the case in the geriatric ward, but also in follow-up treatments, for patients who find themselves in the wrong units and of whom neither the age, medical history, nor isolation is taken into account.

Christophe, aged 14 and a half, is followed up by his attending physician for Crohn's disease (chronic inflammation of the digestive tube). He is urgently hospitalised, after consultation, for suspected acute intestinal occlusion. After the diagnosis had been confirmed and since the general paediatrics unit was full, Christophe was hospitalised in a private room, in the adult digestive surgery unit, to be immediately operated upon, due to a possible threat of intestinal loop necrosis. The immediate impacts of the surgery are simple. Four days later, Christophe was having digestive problems (profuse diarrhoea and abdominal pains). A relatively high fever was noticed by the nursing staff. An haematological evaluation was made, which confirmed the existence of an infection. In the next five days, the general situation of Christophe deteriorated in the face of the indifference of the nursing staff in charge of him. Other haematological evaluations were made, confirming a septicaemia, but no antibiotic therapy was

given. Christophe was described by his parents as a "frail" teenager, since he was diagnosed with Crohn's disease. He is naturally shy, rather timorous and cries easily. Nevertheless, the nursing staff did not seem to take account of this aspect to adapt their behaviour, on the contrary. Within the eleven days of hospitalisation that preceded his death, as a result of an infection-induced state of shock, the nurses continued bullying him, especially at night: "Stop snivelling..."; *"We are not here to clean your shit..."*; *"There is no need asking for your mom, she won't be coming..."*. As a matter of fact, Christophe was confiding in his mother, every night, with a mobile phone, telling her about his unrelieved pains and his fears of being scolded by the nurses when he soiled his bed as a result of violent diarrhoea.

His parents, feeling that they had not been listened to attentively and compassionately by the management and health workers, sought the help of the Mediator of the French Republic, expressing the hope that such acts should not occur any longer. A mediation between the parents and the hospital was quickly organised and all the parties were able to express themself freely and defend their positions. Thereafter, the management of the hospital undertook to carry out:

- An information campaign among the hospital staff on the notion of positive treatment, reminding them of the charter on hospitalised children, especially the fact that children may not be admitted in Adults' sections, that a hospitalised child has the right to have his parents by him night and day, regardless of his age or situation, that the nursing team must be informed about and meet the child's psychological and emotional needs, and that the child must be treated with tact and understanding in all circumstances
- On the other hand, a reflection on the introduction of systematic record of cases of maltreatment by healthcare workers.

However, a certain number of factors are cited by healthcare workers to explain the maltreatment: their "suffering", the restrictive working conditions, sometimes faulty management, a much too rigid organisation. These problems are not always to be attributed to lack of action on the part of healthcare workers and are also a source of suffering for witnesses thereof, hence excessive stress at work, sometimes some illnesses that affect the workers. The Institution is also a place where nurses can be taken care of with regard to maltreatment, without stigmatising them. 40% of complaints from healthcare workers concern this issue.

Although the patient, a vulnerable person *par excellence*, remains a "privileged" victim, nurses them- •••

selves are now a category of "risk-prone" victims. It is sometimes difficult for healthcare workers to cope with a badly controlled aggressiveness expressed against them: incivilities, violent and obscene comments, threats, intimidations, humiliations and, more rarely blows.

Within the first ten months of 2009, the services of the Mediator of the French Republic received about 60 complaints from healthcare workers describing acts of violence made against them.

A woman arrived at the obstetric emergency unit, accompanied by her husband. The latter, seeing that two other women had been received before his wife, started getting impatient and angry. The nurses at the reception then took their time to explain to him that the situation of these two patients was very serious and that their vital prognosis would be engaged if they were not treated immediately. The man, who did not hear anything, started threatening them, accusing them of incompetence, and said he would do everything to make them lose their job.

The nurse, who reported this to the Mediator of the French Republic, described the rate at which this type of situation occurred and the increasing fear of being the target of violence on the part of some impatient persons at the emergency unit.

These situations constitute a major mental constraint, which may result in a burn out (professional exhaustion syndrome) of individuals and some deviating behaviours that can hamper the continuity and security of healthcare services.

The Mediator of the French Republic had the opportunity to notice the gravity of these problems during his day or night visits to some hospital services. ■

Expertise at the service of Human rights

EUROPE OF MEDIATION

Reinforcing the links of European mediation...

The Mediator of the French Republic is a privileged interlocutor of the Human rights commissioner at the Council of Europe. This solid link allows regular exchanges on the Institution's activity and the sharing of his expertise on some particular issues. Today, this relation is pursued more than ever within the framework of the "Peer-to-Peer" project, financed by the European Union and the Council of Europe, implemented by the Human rights commissioner in 2008-2009 and renewed for 2010-2011. Inspired by the ambition to create an active network of national Human rights structures – paying special attention to member States of the Council of Europe that are not part of the EU -, he plans, *via* his different thematic workshops, to facilitate and enhance the exchanges of experiences between mediators, ombudsmen and Human rights commissions, in order to reinforce the links within the European Human rights defence and protection system.

... and improving compliance with the rulings of the European Court of Human Rights

The Mediator of the French Republic also continued his contribution, in accordance with his undertaking with the Commissioner, which aimed at checking the execution of the decisions of the European Court of Human Rights, thus consolidating his close collaboration with Council of Europe's ministerial committee, charged with monitoring member States' execution of the Court's decisions. Reaffirming the importance of the Court's decisions and the need for them to be executed within the framework of national laws, he has maintained his link with the European Court of Human Rights, his vigilance as regards the Court's jurisprudence in order to prevent France from being condemned in future for non-respect of its European Human Rights Convention obligations. This is why the Mediator of the French Republic, thanks to his recognised experience in prisons, looked into the situation of the execution of ...

• • • the ruling Frérot versus France, which condemned France for violating Articles 3 (prohibition of torture, inhuman and degrading treatments), 6, Paragraph 1 (right to equitable proceedings), 8 (right to respect of correspondence) and 13 (right to exercise real appeal) of the European Convention of Human Rights.
In fact, following the activity report of the controller general of prisons and of the National commission on security deontology (CNDS), it seemed that the practices condemned by the European Court of Human rights in terms of body searches on and withholding of letters to detainees were still being practised. So, France, especially while preparing its draft prison law, had not taken the necessary measures to comply with the general specifications of the ministerial committee, to avoid repeated violations. As a result, the Mediator of the French Republic and the National Human Rights Commission (NHRC) informed the Committee about their observations and recommendations on the evolution of French law, recommending, among others, a more strict coordination of full body searches and the introduction of a proportionality principle in order to limit the practice thereof, as well as the adoption of an enlarged definition of detainees' correspondence.

INTERNATIONALLY RECOGNISED EXPERTISE

The numerous invitations received by the Mediator of the French Republic to share his expertise show the quality and effectiveness of the French model of institutional mediation as a source of inspiration for actions in favour of democracy and good governance, compared to the model defended in English-speaking countries.

Twinning with Armenia, a totally new initiative

The Mediator of the French Republic, in association with the Spanish People's Defender, was chosen by the European Commission to implement institutional twinning in favour of the Human Rights Defender of the Republic of Armenia, the first institutional twinning financed by the European Union in this country. It was within this context that the Mediator of the French Republic went on an official visit to Erevan on 6 July 2009, in order to meet his counterpart and the Foreign minister and Justice minister of the Republic of Armenia. In the past he had been represented at a conference organised by the Armenian Ombudsman on the freedom of expression and equitable process, during which a message on the independence of Ombudsmen had been delivered in his name.
In 2006, this country created the Institution of Human rights defender, which thanks to funds from the Organisation for security and cooperation in Europe, the Organisation for cooperation and economic development and the United Nations programme for development, has become a dynamic institution run by 45 motivated officials, very present in the field. It has, thus, established its independence. Thanks to its firm and courageous positions, it has built up a reputation of indisputable seriousness and credibility, which makes it an interlocutor to be reckoned with for Human rights related problems. This one-million-euro programme of cooperation, launched officially in Armenia on 26 October 2009, must, therefore, reinforce the institution and enable it to protect and promote better the rule of law and good governance. For eighteen months, the regular visits by experts from the services of the Mediator of the French Republic, also the project manager, the organisation of seminars, training of personnel, study visits or communication campaigns will make it possible to share experiences and practices, for mutual enhancement.

A player in the Francophone world

Secretary General of the Association of Francophone Ombudsmen and Mediators (AOMF), the Mediator of the French Republic hosted the executive meeting of AOMF in Paris on 31 March 2009. He supported the preparation of a study on the situation of children in Francophone countries and the institutional mechanisms for protecting the rights of children, with the support of the International Organisation of Francophone countries. Its progress status was noticed at the 6th congress of AOMF in Quebec, in September. The summary report on this work, presented in Tunis in November, offered all the players in the Francophone countries some points of reflection on the legal and institutional developments concerning effective protection and promotion of children's rights. Moreover, AOMF helped to institute a children's Mediator in Burkina Faso and Senegal.
Some training sessions were organised at the Centre for training and exchanges in mediation in Rabat, in May and December 2009. In the presence of some twenty participants from Francophone Africa, Europe and the Middle East, some experts from the Institution were made available to AOMF to provide some training on mediation techniques and the Mediator's intervention resources. Bilateral training was equally organised in Burkina Faso and

Mali on the role of delegates, with a view to creating them in these countries.

The impact of mediation recognised by the UN

Outside the 12th session of the UN Human rights council meeting in Geneva, on 24 September, the Mediator of the French Republic was invited to the round table held on the topic "The role of ombudsmen, mediators and national Human rights defence institutions in the system of promoting and protecting Human rights". This meeting was held within the framework of the adoption by the 3rd commission of the UN general assembly, handling, among others, the Human rights issues of a draft resolution on this same question on 6 November 2008. Considering that they must be independent, pointing out their role in terms of managing public affairs in administrations as well as improving their relations with the citizens and the working of public services, this draft resolution insists on their contribution to the institution of the rule of law and compliance with the principles of equality and justice.

Also emphasising on the role of international cooperation in the activity and effectiveness of mediation, the resolution encourages member States to create Ombudsmen, Mediators and other national Human rights defence institutions, or to reinforce them, to do everything to facilitate their action, promote them among the citizens and follow their recommendations. This draft resolution will be presented at the next session of the UN general assembly, in September 2010, and will reinforce the international recognition of the role of national mediation institutions in democracies.

Stronger links with the Mediterranean and Arab world

In the first semester of 2009, the structures of the new Association of Mediterranean Ombudsmen (AOM), created in Marseilles the previous year, were put in place before inaugurating the AOM headquarters in Tanger on 4 November. The Mediator of the French Republic, also the AOM Secretary General, organised the governing board's meeting in Stockholm in June 2009, outside the conference of the International Ombudsmen Institute. He also organised in Athens, on 14 and 15 December, an international conference of AOM entitled "Transparency in civil service and the role of the Mediator". A resolution was adopted after the association's general assembly, in which the member mediators undertook to develop their cooperation with the United Nations, especially by promoting in their countries the ratification of international instruments on prisons.

The expertise of the Mediator of the French Republic was widely sought within the framework of the cooperation initiated in 2008 with the Human rights unit of the Arab League and several Arab countries, which continued in the first semester of 2009. Some privileged relations were developed with Egypt, which chose to follow the French example and create a national mediation institution. The Mediator of the French Republic received the head of the central agency for the organisation and •••

administration of Egypt, during a visit organised by the Sigma programme (joint EU/OECD program in favour of good governance). Two meetings also took place in Cairo, with the minister for administrative reform, with a view to creating a mediator in Egypt. The Mediator then intervened at two conferences organised in Cairo, in May and December, respectively on the fight against corruption, and the creation of an Ombudsman in Egypt as well as on the topic "Ombudsman, cultural dialogue and Human rights in a changing society", in collaboration with the French diplomatic network.

In pursuit of the cooperation initiated in 2008 with Qatar's national Human rights committee – an equivalent of the French national Human rights commission-, a delegation from Qatar's Interior ministry came to France on an official visit and was received by the Mediator of the French Republic. Interested by France's immigration policy, the delegation visited the administrative prison in Mesnil-Amelot. The creation of a training centre in Doha is equally under study for March 2010 between Qatar's national Human rights committee and the Mediator of the French Republic.

The French model of mediation was also presented during an international conference organised in Ankara in May on Human rights and the creation of an independent mediator in Turkey. The expertise of the Mediator of the French Republic was also sought by the Iraqi Human rights minister, who wished to follow the French example to create Human rights structures in his country. Lebanon also called for the French expertise, following the voting of the law instituting the mediation institution in Lebanon. The Mediator of the French Republic, thus, participated in the conference on the promotion of the mediation institution in the Republic of Lebanon –organised at the Professional mediation centre of Saint-Joseph University, Beirut, on 6 November 2009 - and intervened during the round table entitled "Mediator of the Republic, the citizens' protector".

Finally, in keeping with his desire to promote international cooperation between mediation institutions and defend Human rights, Jean-Paul Delevoye organised an international conference in Paris, on 1st February 2010, which brought together member States of the Arab League and the Council of Europe around the Arab Human rights charter and the European Convention on Human Rights. The issues discussed include freedom of religion, discrimination, the universalism and relativism of Human rights, as well as their effectiveness. Mr Robert Badinter discussed the issue of death penalty.

Strong international presence

In Warsaw on 10 December 2009, the preparation of the draft cooperation agreement by Mr Janusz Kochanowski, the commissioner in charge of civic rights protection in the Republic of Poland, and Mr Jean-Paul Delevoye, the Mediator of the French Republic, would soon usher in the creation of a cooperation network within the scope of the Eastern European partnership decided by the European Union. This partnership programme, a joint initiative of these two institutions, is meant to support the national mediation institutions of Armenia, Azerbaijan, Byelorussia, Georgia, Moldavia and Ukraine from 2009 to 2013. The main purpose of this agreement, based on voluntary cooperation of the partners, is to reinforce the powers of Ombudsmen and help build a democratic society, by attaching much importance to individual rights.

A partnership agreement will also be signed with Brazil's Ombudsman institution following a visit made in November 2009 for an international conference in Brasilia on the role of Ombudsmen in reinforcing participative democracy, within the framework of the French year in Brazil.

The Mediator of the French Republic participated in a world congress of the International Institute of Ombudsmen, organised in Stockholm, in June 2009, to mark the 200th anniversary of the creation of the Swedish Ombudsman. He intervened to present to his 120 foreign counterparts the originality of the French model of mediation.

In France, the Mediator of the French Republic participated, as a member, in the meeting of the governing board of the world Human rights Forum, held to choose the topic of and organise the 4th forum, which will take place in Nantes from 28 June to 1st July 2010.

During his visit to Luxembourg on 24 March, the Mediator of the French Republic explained to his counterpart in Luxembourg how the Healthcare Safety and Security Unit was created at the Institution and the constitutional reform which will institute the Human rights defender, an institution which Luxembourg would also like to create. He then met the Prime minister and the head of Parliament. In May, a delegation from the Dutch Ombudsman met the Mediator of the French Republic for exchanges on cooperation between the Mediator of the French Republic and the French national Human rights commission, with a view to creating a similar commission in the Netherlands. More recently, the Belgian mediator also showed interest in the delegates of the Mediator of the French Republic present in prisons, with a view to introducing a similar system in Belgium. ■

The Human rights defender, a French-style Ombudsman

The Institution of the Mediator of the French Republic has really gone a long way since its creation by the law of 3 January 1973! The Institution, whose creation was adopted at that time by only one vote, has been able to find its place in society. It has immensely contributed to democratic debates and become a major player in terms of rapprochement between administrations and citizens.

For many years, several academics had called for a constitutionalisation of the role of the Mediator of the French Republic.

Moreover, various parliamentary reports had been seeking to see a certain number of independent authorities combine their action more and more. It is in this context that the work of the commission headed in 2007 by Édouard Balladur has led to the proposal to extend the current powers of the Institution, to allow direct referral and, finally, group together a certain number of authorities.

The report proposes "*that the name Mediator of the French Republic be modified and that the existence of a fundamental Human rights defender be officially recognised by the constitution*".

Jean-Paul Delevoye had been advocating for this French-style Ombudsman for some time, supported by several former ministers and eminent legal experts. In 2007, Jean-Paul Delevoye had asked his officials to work towards possible legal changes to improve the working and impact of the Institution. Occasionally assisted by constitutionalists and advertisers, the teams of the Mediator of the French Republic conducted some polls, studies and questionnaires, among others, in order to compare the powers of existing Ombudsmen within and outside Europe. Their analyses reinforced the proposals made by Jean-Paul Delevoye to political decision-makers to channel •••

••• the evolution of the Mediator of the French Republic.
The constitutional amendment of 23 July 2008 officially created the Human rights defender by devoting to it Article XI B of the constitution dated 4 October 1958. By elevating it to a constitutional level, the Republic wanted to show the authority it intended to confer on the future institution, just like some of its European countries, such as Spain, Sweden or even Portugal, have done already. The constitutionalisation is fully keeping with a desire to give it a more solid foundation in the institutional edifice and a ranking that places it above political players and other public services. By making it possible for everyone to contact it directly, the lawmaker wished to make the institution accessible to a larger number of people and thus favour better access to law. In fact, the Human rights defender may be contacted by any person who considers himself wronged by the working of the public service, and will also have a self-referral power.

The actual institution of the Human rights defender requires an organic law specifying the status, missions and powers of this new institution. A first law was adopted by the Council of Ministers in September 2009 then sent to the Senate. Meant to make more consistent and effective the entire institution in charge of protecting Human rights and liberties, the powers of the Human rights defender are expected to cover those of the Mediator of the French Republic, Defenseur des enfants (children's defender) and the National security deontology commission. The Human rights defender will also reinforce his links with other independent administrative authorities working in the field of Human rights protection, especially the High authority on the fight against discriminations and equality (Halde) and the CNIL (the national commission for information technology and civil liberties), of which he will be a member of the colleges.

These provisions are yet to be specified. This will be the topic of the parliamentary debate which will take place in 2010 and will validate definitely the activity fields, organisation and powers of the Human rights defender. Jean-Paul Delevoye continues his reflection, with his services and some experts, on this new institution; he will also propose some further improvements in 2010 during the parliamentary auditions which will punctuate the completion of the organic law instituting the Human rights defender.
As it is, the draft law presents some progress and the Human rights defender should actually be given more powers and resources. His injunction power will first be reinforced. He will, thus, be able to enjoin the administration or organisation concerned to take the necessary measures if the recommendations he has made have not been complied with. The Human rights defender will propose to conflicting parties to conclude a transaction. He will have the possibility to be heard before any court of law in order to present his observations in any on-going proceeding, be it civil, administrative or criminal. Finally, he may refer to the Council of State any request for opinion on the interpretation or range of a law or regulation, to avoid any possible difficulties inherent in divergent interpretations of applicable laws. Furthermore, the Human rights defender will have more developed inspection and investigation tools. He may order the communication of any bit of information and items, and will have the right to access administrative or private premises.
The question of recommendation in equity will be prime among the issues that will remain at the heart of the Mediator's proposals. In fact, in terms of amicable settlement, which is the core of his activity, the Mediator of the French Republic often comes up against a particular difficulty which is due to the existing contradiction between two laws.
Moreover, within the framework of the proposals made by the Mediator of the French Republic, he may be called upon to make what is called a recommendation in equity, in some particular cases.
This notion, mentioned in Article 9 of the amended law of 3 January 1973, is one of the bases for the action of the Mediator of the French Republic. Rarely used, and meant to be used parsimoniously, it basically aims to sort out an issue in the absence of laws, either in case

Title XI B, Article 71-1 of the amended Constitution dated 4 October 1958

"The Human rights defender shall ensure that Human rights and liberties are respected by State administrations, regional authorities, public organisations and any other bodies vested with a public service mission or in respect of which he may exercise some powers pursuant to the organic law. Complaints may be sent to him, on the conditions stipulated by the organic law, by any person who deems himself wronged by the working of any public service or organisation mentioned in the first paragraph. He may also intervene at his own initiative.
The organic law shall define the powers and intervention modalities of the Human rights defender.
It shall specify the conditions on which he may be assisted by a college in pursuit of some of his functions. The Human rights defender shall be appointed by the French President for a non-renewable six-year term, after application of the procedure provided for in the last paragraph of Article 13. His functions shall not be compatible with those of the Government and members of Parliament. Other incompatibilities shall be fixed by the organic law. The Human rights defender shall be answerable to the President and Parliament, regarding his activity."

of conflicts between laws of the same value and, finally, when the consequences of the application of a text individually create a particularly inequitable situation. In these exceptional cases, the Mediator of the French Republic tries to propose a solution compatible with the spirit of the law or regulation. "Such a recommendation - little-known or even unknown – is not always understood and accepted by the various public services for which it is meant. Therefore, the organic law could specify the modalities for implementing the Human rights defender's recommendations in equity in order to reaffirm the primacy thereof".

In fact, it would be necessary to see to it that the intervention of the Human rights defender, based on equity, is implemented, regardless of any provision to the contrary. The exemption from any liability, especially financial liability, of the officials who will be implementing the Human rights defender's recommendation in equity should also be provided for to make fully effective this very original power. Furthermore, a special report to the Parliament on these recommendations with financial implications could also be envisaged.

The Human rights defender is, therefore, an undeniable institutional advancement and is in line with the much sought-after logic of rationalisation and efficiency. The most appreciable progress is without doubt with regard to complainants themselves: people who consider themselves victims will soon have an easily identifiable and accessible interlocutor.

The Mediator of the French Republic is not a political decision-maker; it is the legislator that will decide the content of this bill. Nevertheless, the Mediator is still free to draw the attention of politicians to certain points and to highlight some unchanging principles: no matter the area and internal organisation chosen, the Human rights defender can only confer additional powers and resources on the independent authorities it will group together. Elevating the Defender to a constitutional level can only result in an "ascending vacuum extraction effect" for these authorities. Future debates will give priority to defending causes and persons over preserving existing structures. ■

ABOUT THE INSTITUTION

Every activity of the services of the Mediator of the French Republic tends towards one objective: finding an answer to each complaint, since the complainant is guided in the administrative labyrinth. More easily accessible to the citizens, the Institution has reinforced its listening capacity by completing its presence in prisons or even by promoting the Healthcare Safety and Security Unit. Created on 1st January 2009, this latter is meant to complete the field of activities of the Mediator of the French Republic. Proposal forces known to bring about some changes in the legal frameworks, the Institution's sections are working towards the transition to a Human rights defender.

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REGIONAL DEVELOPMENT DEPARTMENT

Delegates: men and women close to those who need them

Developing a proximity-oriented network: 419 reception centres allowing everybody access to the Institution.

By the end of 2009, 281 delegates were receiving the general public in 419 reception centres; these figures have continued to grow over the past few years. Always acting in keeping with its mission, the Institution tries to get closer to those who need it most, such as people living in sensitive neighbourhoods, disabled persons or detainees.

Today, 210 delegate Mediators of the French Republic receive the general public in local structures, such as legal-information centres, legal-access points or public-service centres, or even structures made available by regional authorities. 108 delegates still receive people in prefectures and 33 in sub-prefectures. Most of the recent structures result from the delegates' permanent concern to get closer to users: five delegates in the Gard are thus receiving the general public in twelve different reception centres; some other delegates have split their offices, like in Liévin, the Pas-de-Calais, or in Saint-Denis de La Réunion. The situation of a reception centre is not fixed: if the activity of a reception centre is not satisfactory, the office is transferred. This is how in 2009, that of Vernon, in Evre, was transferred to Louviers, that of Vandœuvre-lès-Nancy to Briey and that of Saint-André to Saint-Pierre in Reunion.

Reinforced presence in prisons

The implementation of the programme was continued at a constant rate and, by the end of 2009, the situation could be considered as satisfactory: 57,500 detainees (including 3,140 in the overseas territories), i.e. 94% of the total number of detainees, spread over 164 prisons, had direct access to a delegate. 60 of these prisons have regular office hours while 104 others have access on a case by case basis. 149 delegates (i.e. more than half of the total members of the network) are currently involved in the programme.

281 delegates

419 reception centres

57,500 detainees have access to a delegate

A harmonious development thanks to mutual efforts

Such a high growth should not be at the detriment of the quality of interventions. The delegates are given continuous training by the Institution (close to 250 training days in 2009). All the delegates have access to the Institution's information system (messaging system and intranet portal), which is a means of documentation and exchanges within the network. Finally, the delegates are also encouraged to combine their know-how through team work. Today, 226 delegates from 73 departments, i.e. more than two third of the network, meet regularly at work meetings which favour cohesion in approach to issues and bring them additional support by bringing about regular exchanges between them.

These delegates now meet four or five times a year, within an interdepartmental framework, for some work meetings involving about ten participants. The meetings are held according to geographic criteria, or ease of transport. The Centre, Brittany, Limousin and Champagne-Ardenne regions discovered this type of work since the start of 2009 and have continued.

THE ADMISSIBILITY SECTION

Directing, informing, and handling emergency situations

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

The Admissibility section plays two basic roles. First, it receives all the requests sent to the Mediator of the French Republic, directly or *via* a member of Parliament. It then examines the requests, forwards those that are admissible to any of the examination units of the Mediator of the French Republic and, if applicable, to the Healthcare Security and Safety Unit, or to the regional delegates. In 2009, there was a rise in nationality and pension-related requests from citizens of former French territories, as well as in requests concerning fines.

2009 was also characterised by the introduction of other methods of referring cases to the Mediator of the French Republic. In September, the Admissibility section put in place an electronic form. Within a few weeks, this tool was adopted by the citizens who, by using it almost like the traditional mail, have practically doubled the number of requests sent to the Mediator of the French Republic. Advantage: it speeds up exchanges when the section needs additional information on the complaints, which can then receive a quick reply or be forwarded for examination. The success of this form will not make it replace the traditional mail, since the target population is not the same.

The second task of the Admissibility unit corresponds to another mission of the Mediator of the French Republic: serving as a legal-information access point and local interlocutor. For the Admissibility section, a golden rule is never to leave a request without a reply. In fact, it is all about processing all complaints not admissible because they are not within its activity fields in the sense of the law of 3 January 1973. Such requests represent nearly half of the requests sent to the Mediator of the French Republic and basically concern private litigation: family problems, relations between tenants and landlords, consumer law, on-going legal proceedings, etc. The complainants receive, after their requests are processed by the unit, a clear, complete and useful reply which explains why the Mediator of the French Republic is not empowered to handle such a matter, which steps they ought to have taken or could still take, and the addresses of the organisations to contact if necessary. The Admissibility section thus solves the problem of lack of knowledge of administrative procedures on the part of the general public. Sometimes the Admissibility section detects the urgency of a complaint upon reception: threat of expulsion, blocked bank accounts, loss of minimum income entitlement, etc. The very short time the complainant sometimes has to file an appeal may also increase the need for immediate reply. 118 cases were thus handled by the emergency unit in 2009.

6 443 cases received (outside the Healthcare Security and Safety Unit).

118 cases handled by the emergency unit; 12 of them resulted from processing forms.

52.5% of the complaints sent to the Institution were not admissible, i.e. 3,377 cases examined by the Admissibility section.

2,387 e-mails received and processed. 1,669 forms since 1st September 2009; 1342 led to the creation of a file, i.e. 80.4%.

THE GENERAL MATTERS SECTION

High technicality in an ever-changing environment

Enumerating the areas covered by the General-matters section would amount to drawing a list like Prévert of everyday tragedies and the big matters of principle which punctuate everyone's life. This is a section where legal rigour and initiatives are combined to effectively examine admissible complaints.

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

666 cases closed in 2009.

782 cases opened in 2009 including.

39% concerned fines and road traffic.

and **29%** concerned urban planning, environment, the public domain, public works and roads.

Quite often, it is necessary to "dissect" a situation which has become complex over the years, before finding a fair legal solution. The Mediator of the French Republic cannot impose any solution. Since he is neither part of the dispute, nor the legal representative of either parties, nor a judge; he follows matters from a distance, which enables him to offer his service free of charge to complainants, and to achieve an agreement between the parties involved on a solution which closes the past and opens the present. This requires the readiness to listen and... A lot of time.

Due to the variety of the cases it handles, the General-matters section has a lot of interlocutors at the local level (regional authorities, prefectures, DDE, Drire, Drass, etc.) and national level, especially in ministries.

The cases handled require high technicality and constant update of the knowledge of ever-changing laws and jurisprudence. For the most important or frequent issues, the General-matters section compiles technical and topical notes highlighting the main lines of the reforms to make.

AREAS COVERED BY THE GENERAL-MATERS SECTION

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

THE CIVIL SERVANTS/PENSIONS SECTION

Career, insecurity, unemployment, illness, pensions: polymorphous complaints

The social welfare of civil servants is far from perfect. Moreover, contrary to clichés, job and income insecurity also exist in the civil service as well as among contract civil servants. Finally, even if the 2003 pension reform is a bit far back in time, the issue of pension is the second matter referred to the section, after career-related complaints.

The Civil Servants/Pensions section handles conflicts concerning civil servants from the three civil service categories (departments, hospitals and State), if such conflicts do not concern the hierarchical powers of the administration that employs them. It also receives cases from officials without a civil servant status but who have been employed within the framework of a public contract; the number of this employee category is growing as regional authorities and administrations are increasingly resorting to contractual workers. Handling these cases requires particular expertise but also more and more flexibility. In fact, although the career management aspects are subject to civil service rules, the problems of the civil servants' social welfare and social security are increasingly tending towards the big schemes of the private sector.

The Mediator of the French Republic always receives a huge number of complaints concerning unemployment benefits, not only because some hospitals or small regional authorities have poor knowledge of the subtleties of the law in relation thereto, but also because, like the State itself, they practise self-insurance, and the payment of the unemployment benefits they have not budgeted for often constitutes an additional cost they are unwilling to bear. Thanks to the action of the Mediator of the French Republic, many of them have understood that signing an agreement with Unedic and Pôle Emploi (organisations in charge of unemployment benefits) was becoming a wise precaution in view of the changes in the civil service and the rise in the use of contract workers. On the other hand, despite the imminent adoption of the reform proposals made by the Mediator of the French Republic to harmonise on this point the statuses of the three civil service categories, complaints continue to come in from civil servants sent on compulsory sick leave and, who sometimes remain without income for several months due to their administration's transgressions.

406 cases opened in 2009

and **302** cases closed including

32% concerned pension-related cases

and **8%** concerned unemployment-related cases

26% of the mediation actions successful

Concerning career management and their long-term impacts on pension, the massive influx of related complaints has ceased since 2008. Today, the Civil Servants/Pension benefits section handles increasingly complex and sometimes multifaceted issues, which require refined legal expertise. The positive side to this decrease in the volume of complaint, which continued over three quarters of 2009, is a significant improvement in the quality of service. The cases were managed as needed, thus allowing more effective and more demanding contact with prison administrations. Moreover, the rate of successful mediations has doubled.

Complaints concerning veterans and war victims have remained stable, fuelled by the low resources used by the administration to absorb the impacts of political decisions which, though generous, require long and complex examination.

Finally, since the end of October, there has been an influx of new complaints (about 25% of the complaints received in November and December). Absorbing this new influx while maintaining the same quality of service will be the challenge of 2010.

THE JUSTICE SECTION

Directing the complainant and facilitating dialogue with the administration

The justice section basically handles issues pertaining to foreigners' rights, citizenship and civil status. In 2009, the distribution by type of requests handled was close to the one observed in 2008, however, with a slight decrease in the number of complaints on foreigners' rights.

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

With 32% of the cases handled, foreigners' rights is the largest part of the activity and concerns foreigners all along their life: visa, stay permit, family reunification, naturalisation, etc. In this particular area, the Justice section does an important pedagogical work, in order to better inform the complainants, among others, about the administration's "power of assessment", often considered as unjust.

In terms of volume, questions pertaining to citizenship (18%) and civil status (17%) are two other most important sources of the complaints handled. The rest of the section's activity consists in handling requests concerning the public service of the judiciary and legal proceedings as well as court officers. Although the examination periods rarely exceed a few months, civil status-related issues, despite their complexity, may sometimes be resolved within 48 hours.

591 cases opened in 2009 including

32% concerned foreigners' rights

and **18%** concerned citizenship-related issues

537 cases closed

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

In 2009, efforts to generalise the creation of offices of delegate Mediators of the French Republic in prisons were continued, crowning with success the experiment started in 2005 in order to increase detainees' access to mediation. Fully in keeping with the Institution's pedagogical missions, it continued its action to improve prisoners' access to law.

THE SOCIAL SECTION

For better understanding between contributors and social security organisations

The help of social security organisations and social welfare offices are increasingly sought, and these organisations are finding it difficult to provide a solution suited to the big difference in professional and family situations. Old age and unemployment insurance is the most frequent issues handled by the Social section.

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

Giving explanations to citizens is one of the major activities of the Social section. In the labyrinth of the social security procedures and laws, the requestor is often helpless and, sometimes, appalled. A simple piece of information can make a difference when a citizen's request for aid is rejected, or when the citizen is deprived of his allowances without prior notification, or even has to cope with the silence of certain organisations. While examining cases referred to it, the Social section often has the opportunity to explain social security regulations and their application.

The Social section also creates and develops some networks of contacts in social welfare organisations and in administrations, important intermediaries in pursuit of its activities. Also acting in close collaboration with the regional delegates of the French Republic, characterised by their closeness to citizens, the Social section strives to choose, depending on the urgency of the cases, the interlocutors and intervention methods most suited to its activity.

521 cases closed in 2009. including

33% for old-age insurance

and **21%** for unemployment insurance

829 cases opened in 2009

The very frequent changes in laws, especially in the social field and which can make administrations give contradictory answers, increase the number of complaints sent to the Mediator of the French Republic. Their examination is even more complicated by the relative unsuitability of the laws to social changes. The social mobility and multiple professional situations associated with different schemes are largely the reason for the increasing complexity of complaints.

Many others concerned the question of retirement, a recurrent issue which constitutes a big part of the activity of the Social section and is likely to remain so in 2010 and beyond.

THE TAXATION SECTION
Towards better guarantees for taxpayers

The conditions for applying regulations, often considered as unstable and too restrictive – thus unjust –, reinforce the desire to obtain more clear information and have real guarantees.

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

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

458 cases opened 2009 including

26% concerned a derogatory or favourable tax scheme

12% concerned inland revenue inspection in companies

8% concerned transfer of property

15% concerned cases, related to the economic crisis, concerning free reviews

366 cases closed in 2009

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

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

THE REFORM SECTION

Convincing the authorities to accept public debates on important issues

In the face of escalating laws, which can result in difficulties of application for administrations and unjust consequences for the citizens, the reform proposal powers of the Mediator of the French Republic are basically focused on the pursuit of two objectives: searching for the highest level of equity and correcting malfunctions in the public service.

The law of 3 January 1973, reinforced through that of 12 April 2000, confers on the Mediator of the French Republic the power to make reform proposals himself, or through direct referral from a citizen, a member of Parliament or any member of the civil society. The reform proposal mission is a logical extension of the individual mediation task. In fact, this makes the Mediator of the French Republic an observer of the social realities that fuel his reflection with a view to improving our laws or regulations. Beyond that, the Mediator of the French Republic intervenes in social issues: changes in the family, pension, mobility in Europe, protection of citizens, consumers and fragile populations, indemnifying victims of healthcare tragedies, working of justice and the healthcare system, etc.

12 reform proposals adopted in 2009

6 reform proposals not adopted in 2009

55 reform proposals awaiting a reply

The reform proposals sent to the ministries concerned are either aimed at correcting the malfunctions in a public service or in an administration, or reducing the situations of iniquity which result from the application of a law. In 2009, 15 new reform proposals were made on various issues such as PACS related social rights, protection of children, bank charges, indemnification of victims of French nuclear tests or reinforcing the legal status of legal autopsies.

HEALTHCARE SECURITY AND SAFETY UNIT (P3S)

Understanding, intervening, alerting

Most often contacted directly *via* a dedicated phone number, the P3S deploys some resources suited to the complexity of demands – from simply directing the requestor to the local mediation offices to deeply examining the issue in case of conflict after a healthcare-related incident – to prepare a future physical mediation.

With close to 6,000 requests received in 2009, the Healthcare Safety and Security Unit (P3S) has proven its importance and the pertinence of its attachment to the Mediator of the French Republic. It has innovated the means of contacting the Institution. Although it can still be contacted through the delegates in the field or through the headquarters' switchboard, about 75% of the requests reach it directly through a dedicated toll-free number publicised to the maximum through information campaigns to users of healthcare services. The calls are received *via* an external centre, which was already specialised in food security.

Nearly half of these calls are information requests from users of healthcare services or requests to be "routed" to the right interlocutor. Although the number of these initial information requests is decreasing, the institution is happy to observe a fall in the number of complaints about the difficulties encountered by users to access their medical records. This improvement resulted from the intervention of the Mediator of the French Republic at the Health ministry, due to the many complaints lodged with him. It is noteworthy that 15% of the calls are made by healthcare professionals, often when dialogue with a patient is broken: they then search for an independent and neutral interlocutor. Other calls indicate the problems inherent in the exercise of medical professions, or even malfunctions which may be likened to "ordinary maltreatment".

A huge number of complex cases require an in-depth examination on the part of the P3S. The Unit receives complaints from users involved in a dispute with healthcare workers or hospitals; in this case it asks for the medical record concerned, uses some specific resources to analyse each case and methodologically go through each "history". Every fortnight, a medical staff meeting is held in the Unit with a permanent doctor, another part-time doctor, a nurse, five doctors working on a temporary basis (from a hospital or clinic), an emergency doctor, a general practitioner, an anaesthetist / resuscitation specialist and a visceral surgeon. They devote one day or one and half days to analysing cases, together with ten thematic delegates: reference persons, professors, a radiotherapist, a magistrate.

It is this work that enables the Unit to better understand the serious undesirable events referred to it, and to identify possible malfunctions, medical errors or mistakes.

60% of the cases concern medical or surgical accidents

17% of the cases concern nosocomial infections

10% of the complaints are violence related (compared to 2% in 2008)

8% of the requests concern access to law

5% of the cases concern accidents relating to the use of a healthcare product

60 physical mediations in 2009

2,723 cases opened 2009

1,769 cases closed in 2009

2,806 calls received at the call centre

ADMINISTRATIVE AND FINANCIAL MANAGEMENT FOR 2009

Budgetary means	**11,099,009.00 €**
Staff related expenses	7,274,792.00 €
Headquarters' staff*	5,914,792 €
Delegates	1,280,000 €
Trainings	80,000 €
Operating expenses*	3,704,217.00 €
Office premises (including rent)**	1,980,700.00 €
General resources (including loans provided by the State budget)	1,239,517.00 €
Other external services	484,000.00 €
Investments	120 000.00 €

* Integration of Midiss, now P3S

** 475,000 € rent profit made it possible to cover the spending differential noticed while transferring Midiss to P3S and to return close to 300,000 € to the State budget at the end of the business year

In 2009, the projects started in 2008 were continued, and new others initiated.

Improving reception

Collaboration with the French documentation services was reinforced in order to achieve full and immediate processing of phone calls which need to be channelled to other administrative services, especially by dialling 39 39.

At the end of 2008, the Prime minister and the Mediator of the French Republic signed an agreement aimed at:

- Improving the processing of e-mails and phone calls from users
- Increasing the use and improving the quality of the general-information and user-orientation systems: www.service-public.fr and 39 39.

The entire implementation process was spread over 2009.

Creation of a Healthcare Security and Safety Unit (P3S)

2009 was marked by the integration of the Healthcare Security and Safety Unit (P3S) into the Institution of the Mediator of the French Republic. The P3S is charged with reinforcing dialogue between users of the healthcare system and healthcare professionals. It analyses and processes all information requests or complaints about non respect of patients' rights, the quality of the healthcare system, healthcare safety and security, and access to treatments.

In fact, at the request of the Health minister and through an agreement with the High Authority on Healthcare, the Midiss (Mission for the development of mediation, information and dialogue for healthcare safety and security) was transferred to the Mediator of the French Republic on 1st January 2009; this has led to a significant increase in the number of cases referred to the Institution.

At the P3S, the changes in the activity resulted in the recruitment of expert and temporary doctors.

Real estate strategy

In 2004, the Mediator of the French Republic tried to reduce the cost of renting office premises for his central services.

The fact that the Mediator of the French Republic has regularly declared that the lease contract signed in 2003 was costly (in terms of cost per square meter) has led the landlord not only to pay for the big works initially specified in the lease contract as payable by the tenant, but also to finance the installation of a lift servicing all the floors, and works making it possible to have additional spaces, especially a training room.

Finally, some additional spaces have been made available to the services of the Mediator of the French Republic at a reduce rate.

In its final letter of 1st September 2009, the State Audit Office stated that some "positive changes" had been made regarding the situation of the Institution's accommodation. Moreover, it gave a glowing report on the management of the Institution. .

The staff of the Mediator of the French Republic (as of 31 December 2009)

		CATEGORIES		
	TOTAL	A	B	C
Staff placed at his disposal by administrations	33	24	5	4
Staff from State and regional health and social security insurance offices (CPAM, Urssaf and Cramif)	4	0	0	4
Seconded staff	10	7	1	2
P3S	5	4	0	1
Staff working under contract	35	26	0	9
Staff assigned by the SGG* (10 of them had the status of seconded staff until 2007)	13	3	2	8
TOTAL	**100**	**64**	**8**	**28**

** Secretariat General of the Government.*

Contacting the Mediator of the French Republic and his delegates

THE MEDIATOR OF THE FRENCH REPUBLIC

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

DELEGATE MEDIATORS OF THE FRENCH REPUBLIC

The list of delegate Mediator of the French Republic, their address and office hours are available on the Institution's website:
www.mediateur-republique.fr
Column: Delegates / where to find them?

HEALTHCARE SECURITY AND SAFETY UNIT

N°Azur 0 810 455 455
PRIX APPEL LOCAL

and

www.securitesoins.fr

le Médiateur & vous

www.lemediateuretvous.fr

The space of exchange and reflexion about rights

CHAT WITH THE MEDIATOR OF THE FRENCH REPUBLIC

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

MSN: mediateur-republique@hotmail.fr
Google Talk: mediateur.republique@gmail.com

Sending your complaint to a member of parliament of your choice

NATIONAL ASSEMBLY MEMBER

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

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