Annual report



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M. Dominique Baudis, Defender of Rights

ast year, the heads of the four authorities that make up the institution of the Defender of Rights today described a dehumanising society.

A society on the verge of hysterics, according to the Mediator of the French Republic, Jean-Paul Delevoye, who had alerted to the *burn-out*.

A society "plagued by discriminations" which the chairman of the High Commission against discrimination and for Equality (HALDE), Mr Éric Molinié, referred to as "a form

of a particularly revolting injustice which undermines the Republican pact."

A society in which "nearly 2 million children are living in destitution in France", noted the Children's Defender, Dominique Versini.

A society in which the independent authority in charge of security ethics encountered "some challenges, oppositions, and failure" in its mission of protecting Human rights, wrote Roger Beauvois, chairman of the National Commission on Security Ethics (CNDS).

This picture painted by my predecessors shows the level of the task and urgency. It depicts a crisis of trust: can our Republic live up to its ideals? It expresses a profound desire for a better and more concrete guarantee of the rights and freedoms, equality and solidarity which forms the basis of the republican pact.

In the face of such a situation, can the Republic afford to fold its arms and lend deaf ears to alerts from the authorities charged with ensuring the respect of rights? Can it afford to leave the citizens to sort out themselves the problems they encounter, be it as a result of a mistake made by an administration, a discrimination prohibited by law, in order to assert the rights of children or seek compensation for those affected by the violation of the rules of deontology by the police?

With the creation of the Defender of Rights, the Republic has taken up the challenge by offering every citizen new means of having his/her rights and freedoms respected thanks to an institution accessible to all and which has been given more powers than the independent administrative authorities grouped together today.

A constitutional amendment has given rise to an institution which is not only *independent* but is bound to be *impartial*. Whereas the Institution's independence is guaranteed by the specifications of the organic law, its impartiality stems from a task entrusted to it and which is based, among others, on the transparency and contradictory nature of its procedures.

The Defender of Rights is an institution which is easily accessible to all, and is *attentive* to the problems of citizens. Complaints related to our four fields of competence can easily be referred to us, including online. Our service is free of charge.

Charged by the executive and legislative authorities to put in place and nurture this new institution, I am well aware of my responsibility. My action is guided by a road map. In fact, pursuant to Article 13 of the Constitution, I presented a project before the Parliament and heard the proposals made by members of the National Assembly and Senators, who then approved my nomination¹.

Once I took office on 23rd June 2011, I started to pursue the five objectives of this project. The present report describes how, in less than one year, the four merged institutions have undergone a genuine transformation. This has made it possible to combine their skills while preserving each institution's achievements.

Combining resources without mixing up missions

Attentive to the legitimate concern of those who had feared a dilution of missions and a loss of acuity in the pursuit thereof, our institution has retained the achievements and specific characteristics of the 4 authorities which have been grouped together.

On the one hand, their employees are still at the service of the defence of rights which continues to benefit from their experience and commitment. Thanks to them, those seeking the help of the Defender of Rights find a solution based on proven expertise. The teams have continued to process complaints, take actions in favour of rights and make reform proposals.

On the other hand, for the fight against discriminations, promotion of equality, defence of children's rights and security ethics, the Defender of Rights enjoys the support of three specialised Commissions made up of qualified personalities, some of whom were already members of the HALDE, and of the CNDS.

Finally, the fight against discriminations supporting these three missions, the organic law has created three deputies to assist the Defender of Rights. Three deputies have been appointed, based on my recommendation: Ms Marie Derain, Children's Defender, Ms Maryvonne Lyazid in charge of the fight against discriminations and promotion of equality, and Ms Françoise Mothes, in charge of security ethics. They advise me, act

1. 49 Members of Parliament voted in favour, that is 74%, and 17 against, that is 26%.

as vice-chairpersons of the Commissions which have been put under their responsibility, and represent the institution on various occasions. A Delegate General for mediation with the public services, Mr Bernard Dreyfus, is in charge of following up this mission at the institution of Defender of Rights.

The number of complaints relating to child protection increased by 20%. There was more than 100% increase in the number of complaints pertaining to security ethics. This increase in the number of complaints will reassure those who had feared a decline.

Using the new institution's legal capacities fully

The organic law-maker has given the Defender of Rights a full range of legal tools enabling him to adapt his response to cases referred to him, no matter the mission concerned.

The first tool is self-referral. This power has enabled the Defender of Rights to intervene at his own initiative, with the consent of those concerned or their families. For instance, a group of deaf, deafened or hard-ofhearing people were not allowed to board an aircraft. Another example: this young man who was injured by the police during a demonstration in Mayotte, last autumn. In terms of security ethics, the Defender of Rights examines any situation leading to loss of life. The institution has already done so on three occasions.

Secondly, the Defender of Rights is vested with real investigative powers, ranging from simple request for explanation, in writing, to physical control on site. For example, the institution makes inspections in administrative detention centres to check the presence of minors. Thanks to this prerogative, extended to the defence of children's rights, it has been possible to bring an end to these situations which disregard the jurisprudence of the European Court of Human Rights.

Thirdly, the Defender of Rights has the resources required to promote a culture of human rights protection. In this context, amicable settlement plays a major role among the resources which can be mobilised by our institution: fully in keeping with the recommendations of the European Union and our national jurisdictions, the use of amicable settlement methods is given priority over all the other intervention methods, from informal mutual agreement to penal mediation under the supervision of the prosecutor's office.

Fourthly, whereas the realm of intervention of three of the previous institutions² stopped before the steps of the courts, the power of the Defender of Rights to express his view in a dispute presented before a (national or european) judge enables him to fully accompany victims in the recognition and reparation of the harms caused to them.

Moreover, the legal action of the Defender of Rights, both in terms of the individual cases referred to him and the formulation of reform proposals or promotion of human rights, equality and freedoms, tends to enhance the law and practices, at the service of a society based on equal dignity for all.

Thanks to the exchange of experiences and knowhow among the officials working with the Defender of Rights, it has been possible, within a few months, to develop these new intervention methods at the service of each mission entrusted to the institution.

A relation of trust with Parliament is an essential condition of the anchor of the Defender of Rights in our institutional landscape, and a guarantee of his efficiency. Already the work started with the Senate and National Assembly, especially through frequent exchanges with the Parliamentary commissions, attests to the quality and fluidity of this relation.

The Defender of Rights and his teams must always be attentive to civil society, associations and representative organisations. A key body in the democratic debate, both an observer and player in society, he not only has to fight against discriminations, arbitrary power, injustice, etc. but also to help, through dialogue, to create new perspectives, improve the law and practices, understand the society and strives for more justice, freedom and equality.

A better service to citizens without asking more from taxpayers

A significant number of complaints fall within the scope of competence of the four authorities merged to form the institution of the Defender of Rights, and benefit from new and extended prerogatives.

First, the creation of the Defender of Rights has opened up a unique access which makes it very easy for a complainant to refer cases to the institution, since he or she no longer has to wonder which institution(s) to turn to when his/her rights are violated.

It is, for instance, the case of schooling disabled children in an ordinary environment in accordance with the framework of the law of 11th February 2005 on equal rights and opportunities and the participation and citizenship of disabled persons. This was a task handled at the same time by the HALDE, the Mediator of the French Republic and the Children's Defender, each within the framework of the mission of its institution. Today, such matters are handled straightaway and transversally within our Institution, taking into account all the rights guaranteed by the different laws.

Mediator of the French Republic/Children's Defender/ National Commission on Security Ethics.

This easy access to rights facilitates the procedure of citizens seeking our assistance.

Secondly, thanks to the creation of a single admissibility department, cases are immediately channelled to the right unit where they can be handled quickly and effectively. In this respect, the introduction of a single computer application for recording, storing and tracing all the complaints is a major strategic project for which substantial credits have been mobilised.

Grouping services together within the framework of a single institution creates the conditions for the indispensable interaction between former separate entities. A typical example is the Healthcare Unit: it now cooperates closely in the processing of certain complaints sent to the Security Ethics Unit, Child Protection, disability or health status related discriminations. Its expertise contributes a precious input, which was not available when the authorities were working separately.

Thirdly, the Defender of Rights can resort to gradual intervention methods, be it for recommendations by law or equity, amicable settlement of disputes, civil or penal mediations... Today, these different intervention methods enable each of the missions created by law to better handle the complaints sent to it.

Delegates' network, guarantors of proximity

During my hearing by the Parliament on 15th June 2011, I promised to "make the Defender of Rights a proximity-oriented institution thanks to the regional network", with emphasis on the overseas departments and skill in terms of child protection, by combining the forces of the existing networks initiated by the three authorities who had put such systems in place. The delegates created with the citizens a relation of proximity thanks to the 411 voluntary delegates, all experienced, who bring in their skill and commitment at the service of those seeking the help of the Defender of Rights. This contact is important to re-humanise relations between citizens and public authorities.

The objective is to give each complainant, everywhere in France, the opportunity to be listened to. No matter the reason why a person is seeking the help of the Defender of Rights, it is indispensable that each delegate receives, listens to and directs the person within the institutional process, and registers his case. This first step was put in place thanks to a training programme in which all the delegates participated.

International activities

I measure the importance of the international dimension of the previous four authorities and the interest shown by our numerous partners in the new institution.

Be it within the framework of the United Nations Organisation (UNO), Council of Europe or European Union, we are associated with all reflection and evaluation activities pertaining to Human rights and fundamental rights. Our officials are recognised for their skills. They represent the institution in specialised networks such as the European Network of Equality Bodies (Equinet).

I have met with the new chairman of the European Court of Human Rights, Sir Nicolas Dusan Bratza, and the French judge, Mr André Potocki, in order to work out together the modalities of our cooperation in support of Human rights, the possibility for the Defender of Rights to submit observations to the Court within the framework of a dispute, and to help monitor the enforcement of the Court's decisions concerning France. These initiatives have resulted in a systematic intervention of the institution to prevent parents accompanied by minors from being held in administrative detention centres, a practice disapproved by the European judge.

Actions taken within the framework of bilateral partnerships (Macedonia, Quebec, Lebanon) or multilateral partnerships (with Eastern Europe and the Caucasus) allow knowledge transfer and sharing of experiences.

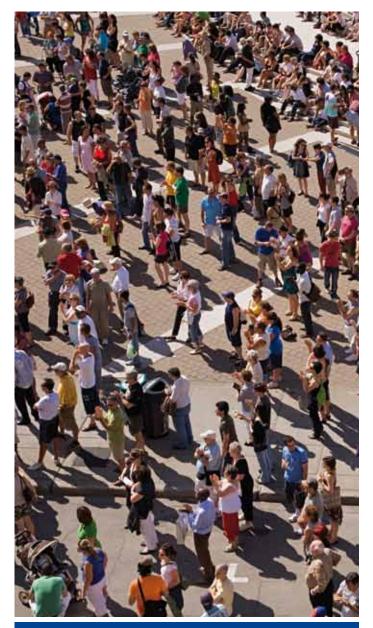
These initiatives contribute to the development of democracy in different, nearby geopolitical areas, especially the Francophone and Mediterranean areas.

This first report gives account of a transition period: first a quarter during which the four independent administrative authorities were working separately; then a quarter of uncertainty following the adoption of the organic law of 29th March 2011, up to the nomination of the Defender of Rights on 22nd June; and, finally, a semester devoted to installing and starting up the new institution.

Nothing would have been possible without the skills and involvement of the teams reunited within the institution of the Defender of Rights. Their mobilisation and expertise are the basis for the defence of individual rights and freedoms. The decisive action of voluntary delegates in the regions also attests to the civic involvement at the service of rights and equality, to which I wish to pay a very sincere tribute.

(Tomithique Baudis.

A new institution for a better access of citizens to the law



The Defender of Rights was created by Article 71-1 of the constitutional amendment of 23rd July 2008. Inspired by the success which the People's Defender had met in Spain, this provision brings in a constitutional consecration to the mission of Human rights protection handled by a group of independent authorities which it replaces. It makes our system of Human rights protection more **coherent and readable, to the users' benefit.**

The constitutional foothold gives the Defender of Rights **a superior legal status superseding** those given to the former independent administrative authorities which it has merged.

The organic Law of 29th March 2011 entrusted the Defender of Rights with the missions previously handled individually by the four independent administrative authorities: the Mediator of the French Republic, Children's Defender, the CNDS and the HALDE.

The Defender of Rights has **strong guarantees of independence:** he cannot receive any instruction from any authority, person or pressure group; his term of office is not renewable, and irrevocable; he has immunity from prosecution so he can exercise his functions properly. He is subject to a strict incompatibility framework.

A DEFENDER OF RIGHTS, THREE COMMISSIONS, FOUR AREAS OF INTERVENTION

The Defender of Rights has succeeded to four distinct authorities.

This is why the Parliament has assigned three deputies to the Defender of Rights, placed under his authority, in order to **identify his different activity sectors and avert the risk of diluting the missions of the previous authorities.**

On 13th July 2011, pursuant to Article 11 of the Organic Law, the Defender of Rights asked the Prime Minister to appoint three deputies:



Ms Marie Derain, in charge of the defense and promotion of children's rights;



Ms Françoise Mothes, in charge of security ethics;



Ms Maryvonne Lyazid, in charge of the fight against discrimination and promotion of equality.



Moreover, on 3rd August 2011, the Defender of Rights appointed **Mr Bernard Dreyfus** as Delegate Mediator General with the public services. Prior to that, he was Delegate General of the Mediator of the French Republic. The three deputies and the Delegate Mediator General have two missions:

- Representing the institution: they regularly represent the Defender of Rights before civil society during public events or meetings, both within and outside France; the three deputies are also Vice Presidents of the three Commissions.
- Offering advice and support: since the deputies and the Delegate Mediator General have specific fields of expertise, they bring in their experience and skills to the institution to handle complex cases.

The Defender of Rights benefits from the **expertise** of the three consultative Commissions. He presides over each of these Commissions, the opinion of which is required on every new issue. This multi-disciplinary view sheds light on the decisions of the Defender of Rights.

AN INTERVENTION, PREVENTION AND REFORM STRATEGY

As soon as it was created, the institution of the Defender of Rights developed **an original working method** which capitalises the experience acquired by the previous authorities, while inspiring it with a dynamism specific to the new institution. To this end, it bases its work on broader prerogatives and a global approach to the defence and promotion of Human rights.

Complaints may be sent to the Defender of Rights by any natural or legal person, including minors alerting for the protection of their rights. He "decides if the matters complained about or reported to him call for an intervention on his part." (See box next page)

A NEW INSTITUTION FOR A BETTER ACCESS OF CITIZENS TO THE LAW

WHO MAY FILE AN INDIVIDUAL COMPLAINT WITH THE DEFENDER OF RIGHTS?

Beyond the **direct referral**, open to any person concerned directly, the following parties may also refer cases to the institution:

In all cases:

- The legal beneficiaries of a person whose rights and freedoms have been infringed upon;
- Members of the National Assembly and the Senate, as well as elected French representatives at the European Parliament;
- The European Mediator, currently Mr P. Nikiforos Diamandouros;
- Foreign counterparts of the Defender of Rights.

Matters pertaining to the protection of children's rights may also be referred to him by:

- Any family member of the minor concerned;
- The medical or social services;
- Any association regularly declared for at least five years and statutorily involved in the defence of children's rights.

For the fight against discriminations, cases may also be referred to him by any association regularly declared for at least five years as of the date of the events and statutorily involved in the fight against discriminations, provided the person concerned has expressed his or her consent.

For matters relating to the respect of the rules of security ethics, he may also be contacted by any witness of events which may be deemed as an infringement.

Intervention methods

Beyond the fact that complaints may be sent to him by citizens, the Defender of Rights has a range of **diversified powers** enabling him to adapt to a lot of situations. His prerogatives are:

1 / INTERVENTION UPON HIS OWN INITIATIVE

The Defender of Rights may now intervene under any circumstances in cases that fall within his activity field. If the person concerned (or his beneficiaries) is identified, he must be informed and remains free to reject the intervention of the Defender of Rights (unless the interest of a child is concerned). On 21st September 2011, the Defender of Rights intervened immediately to sort out the problems encountered by a group of deaf and hard-of-hearing passengers who were not allowed to board an aircraft belonging to Air Méditerranée because of their disability.

2 / INTERVENTION BEFORE LAW COURTS

In all his activity fields, the Defender of Rights may decide to make some observations before civil, administrative or criminal courts in matters referred to him. This power was previously reserved for the HALDE. The other three authorities were not empowered to intervene before the courts: neither the Mediator of the French Republic nor the CNDS could intervene to legal proceedings; as for the Children's Defender the law which created it had formally forbidden its intervention before the courts.

Considering his new remit and the extension of his powers, in 2011 the Defender of Rights presented observations before judicial, civil and penal courts in 62 cases.

3 / INJUNCTIVE POWER

The Defender of Rights may employ a new, general and decisive prerogative conferred upon him by law: exercising a real "injunctive power" in following the recommendations he makes.

Unlike his predecessors, who had to limit their interventions to sending a recommendation to the person concerned, the Defender of Rights may, in the absence of a reaction from the person or in case of insufficient response, exercise a power of injunction, by issuing a formal and solemn order to comply with the content of the recommendation within a fixed period. If the injunction is not complied with, the Defender of Rights writes and publishes a special report.

A NEW INSTITUTION FOR A BETTER ACCESS OF CITIZENS TO THE LAW

On 25th November 2010, a complaint was filed with the CNDS about the circumstances surrounding the death of Mr M. B. after a police intervention. At the end of his enquiry, the Defender of Rights sent his findings to the Interior Minister together with individual and general recommendations taken unanimously by the security ethics unit, and gave him two months, starting from the reception date of his decision, to notify him about the actions taken in response to his recommendations. Since he did not receive any reply within the fixed deadline, the Defender of Rights sent a second letter to the Minister, on 17th February 2012 reminding the minister of his obligation to reply and informing him of his disagreement with the position of the former Interior Minister consisting in not taking any disciplinary actions further to decisions taken in the past by the CNDS until he deems fit. Upon receiving the Minister's reply on 7th March 2012, the Defender of Rights notified the security ethics commission of its content and, after a unanimous decision by the latter, decided that a special report would be published, pursuant to Article 29 of the organic law dated 29th March 2011 and Article 17 of the decree dated 29th July 2011. (MDS 2009-207).

4 / INVESTIGATION

Firstly, the Defender of Rights has several **general, traditional information tools** (request for explanations and communication of documentary evidence). However, the use thereof may lead to some in-depth research which may expose some illegal practices. Secondly, the Defender of Rights may summon the person concerned (who may be accompanied by any adviser of his choice); he may also audition the person concerned or conduct a verification on site (in administrative or private premises, in the means of transportation accessible to the general public, professional premises, etc.), if necessary, under the control of a judge.

Following the decision of the European Convention on Human Rights, Popov c/ France, of 19th January 2012, which condemned France for detaining minors in an administrative detention centre, the Defender of Rights has, in each situation in which he had been notified about the presence of minors, required an inspection on site. These operations have been conducted in ten centres. Each time, an alternative emergency housing solution has been found for these children.

5 / SETTLEMENT OF DISPUTES

Today, the Defender of Rights is empowered to intervene in the settlement of disputes, regarding two major types of complaints: disputes resulting from various malfunctions and those caused by error.

Complaints relating to errors, lack of understanding, or even malfunction are subjected to amicable settlement procedures.

The intervention of the Defender of Rights is motivated by the desire to find a quick and pragmatic solution, in order to avoid litigation. This type of disagreements can be resolved in several ways (all of which require the agreement of the parties present).

Informal settlement

Most often this takes place by way of exchange of letters without any special formalities: this is the intervention method most preferred by the Defender of Rights.

• Recommendation for court settlement

This is made if a clearly identified legal response allows it.

A NEW INSTITUTION FOR A BETTER ACCESS OF CITIZENS TO THE LAW

Antoine and Thomas receive the Disabled Adult Allowance (AAH). Clément, on his own part, is a disability pension recipient. Each of them was searching a flat to rent and sought the services of a real estate group. Their applications were systematically rejected. After an enquiry conducted with the agencies concerned, (tests, phone conversations, etc.), the Defender of Rights discovered that the main reason given for rejecting their rental application was the nature of their income. On the pretext that they wish to ensure that property owners actually paid their rents, the branches of this group thought that only flat-seekers with sizeable or professional income were acceptable. For the Defender of Rights, this practice generated discrimination. He asked and obtained from the real estate group that all member agencies be instructed to stop this practice.

Recommendation for settlement in equity

This power which was previously reserved to the Mediator of the French Republic and the Children's Defender, it is now being experimented, successfully in some cases, in the fight against discriminations.

Other methods may be recommended, still within the framework of amicable settlement: the recommendation to start a mediation; civil, administrative transactions and penal mediation.

Complaints pertaining to errors, non-perfor-

mance (which constitute a serious violation or even an offence) or responsibility. In these cases, the Defender of Rights prefers the perspective of a **sanction** which the administrative or judicial authority has to take. This approach may require his intervention in three ways.

Helping citizens' access to the law

When an offence of discrimination is established or if the protection of children's rights is concerned, the Defender of Rights may offer pre-judicial assistance to the complainant in preparation of his/her case, by directing him or her to the most appropriate legal proceedings.

Intervention before the disciplinary authority

In all his fields of activity, the Defender of Rights may decide to convene a disciplinary committee in order to ask for the prosecution of a civil servant further to a significant infringement. Moreover, he may ask the public service to take some sanctions against a natural or legal person, public or private, subject to administrative authorisation or approval and who is responsible for the discrimination at the origin of the complaint. In the absence of a reaction from the disciplinary authority in question, the Defender of Rights writes a special report which may be made public.

During an intervention by the police in front of a secondary school, a 16-year old boy was injured on the eye and the face by a flash-ball gunshot (LBD 40 x 46 mm). In a first report, the policeman who fired the shot said he had acted in self-defence as a projectile was thrown at him. He then changed his statement during his audition before the Inspectorate General of Services (IGS), after viewing the amateur video on the internet. The Defender of Rights:

- Recommended that disciplinary actions be taken against the policeman who fired the shot and who made contradictory statements, thus violating Article 9 of the Code of Conduct of the National Police (excessive use of force, violation of the legal framework of the use of flash ball) and Article 7 (since he did not show any sign of «integrity» or «impartiality»);
- Recommended that some disciplinary action be taken against the sergeant who had ordered his teams to use the flash ball, thereby violating Article 9 of the Code of Conduct;
- Recommended immediate application of the specifications dated 31/08/09 concerning continuous training on, and annual renewal of authorisations for this type of weapon.
- Requested that the on-going reflection on the evaluation of «superpro» type flash ball be extended to 40 x 46 mm models, due to the adjustment factor noticed on the weapon in question.

Intervention before a judge

In all his fields of activity, the Defender of Rights may decide to intervene before civil, administrative or criminal courts to present his views on the matter at hand.

2 Promoting rights

The organic law provides that the Defender of Rights performs a preventive mission by promoting rights and equality.

1 / PROMOTING RIGHTS AND EQUALITY

The Defender of Rights takes preventive actions in favour of rights, freedoms and equality. In January 2011, he published, in partnership with the International Labour Organisation (ILO), a request on the perception of discriminations in the labour environment. Moreover, in close collaboration with the National Commission for information technology and civil liberties (CNIL), he compiled a guide of good practices, financed by European Commission, for companies, highlighting the legal framework for combating discriminations and promoting equality in recruitment and the career of employees.

2 / REFORM PROPOSALS TO PUBLIC AUTHORITIES

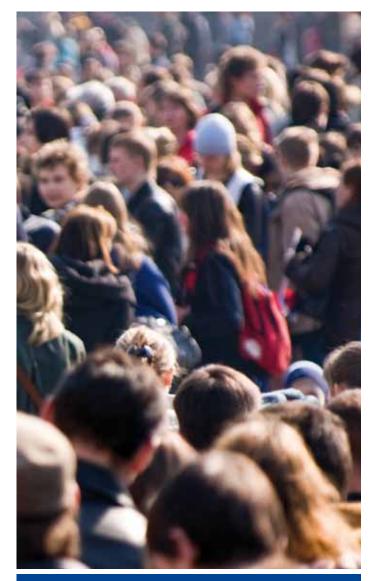
Like each of the previous institutions merged in the Defender of Rights, he is empowered to make proposals in his fields of competence.

In fact, the individual complaints examined are one of the particularly pertinent sources of the proposition to instigate reforms. The repeated malfunctions noticed in the individual cases may show the inappropriateness of the legal standards or framework leading to these situations.

After many complaints by people who had sold their vehicle but still continued to be fined and lose their points due to offences committed by the buyers of these vehicles, a loophole was identified which lead to the attribution of these offences to the seller of the vehicle until the registration certificate was changed by the buyer. The Defender of Rights obtained the modification of the law further to the introduction of a provision in the framework of Law 2011-1862 of 13th December 2011 on the distribution of litigation, providing that the vehicle buyer was to be held responsible for these offences as long as the seller could produce the vehicle ownership transfer certificate.



Merging the services and organising them into units and departments



Today, the institution has 220 budgetary positions, which corresponds to the addition of the staff of each of the four independent administrative authorities.

First of all, in order to **continue** the actions initiated by the authorities in question, it was decided to temporarily maintain the four "missions" headed by their former administrative directors. This immediately operational choice has enabled the employees to continue with their ongoing activities within the previous framework.

While bringing the services closer and harmonising their skills, it has been decided to largely retain the perimeter of the previous services and of a very large majority of former departmental heads. Therefore, it was decided to let the change be carried out by the agents themselves as much as by the organisation of the structure. Thus, the Defender of Rights, while preserving the specific features and visibility of previous missions, has defined a transversal organisation making it possible to develop to their fullest potential the powers conferred upon him by law. The services are organised into units: child protection, security ethics, healthcare, justice, etc. The units are grouped together in **departments**.

2

- The Admissibility/Orientation Department examines the admissibility and orientation (or re-orientation) of all the requests. Since 24th January 2012, complaints are handled and received by only one department.
- The Regional Network Department manages relations between the institutions and its 411 delegates distributed around the country. These 411 correspondents see to proximity with complainants and a good-quality of response to their demands.
- The Personal Protection Department groups together the activities previously handled by each of the four institutions regarding issues related to the execution of sovereign powers (justice, security ethics, child protection, and healthcare).
- The Social Protection, Labour and Employment Department handles two activities performed in the past by the HALDE (private and public employment) and another sector previously handled by the Mediator of the French Republic (social protection).
- The Department "Protection of access to goods and services" handles an activity that typically falls within the activity field of the HALDE, and, to a lesser extent, that of the Children's Defender (access to private goods and services), an activity handled by both the Mediator of the French Republic and the HALDE (access to public services) and a specialty of the Mediator of the French Republic (taxation).
- The Expertise and Legal Affaires Department reinforces the intervention of the Defender of Rights. It groups together a Discrimination service and a subject-oriented expertise service.
- The Rights and Equality Promotion Department lays emphasis on the promotion of equality; children's interest and rights; the rights of disabled persons; security-related rights and freedoms (right to safety, detainees' rights, etc.).

 The Institutional reform, public action evaluation, documentation, studies and research department has a transversal mission. It focuses on the production of norms (drafting legal and regulatory proposals) or on making general recommendations. It is also in charge of writing opinions in response to parliamentary or governmental requests.

COMPLAINT: ONLY ONE ADDRESS

The orientation department receives all complaints sent to the Defender of Rights.

- It is accessible:
- By mail (7, rue Saint-Florentin, Paris Cedex 08);
- Online, on the institution's site (www.defenseurdes droits.fr / column: ("Defender of Rights");
- By phone (09 69 39 00 00).



Report on the activity of the Defender of Rights



A SUSTAINED ACTIVITY AND THE EVOLUTION OF COMPLAINTS

This annual report is a transition report which accounts of the activity performed in 2011 and in the first quarter of 2012. In 2011, until the nomination of the Defender of Rights on 23rd June, the four merged administrative authorities continued to work independently. From this date up until the beginning of 2012, the four "missions" were maintained while initiating a new coordination in their orientation and practice. The Defender of Rights further wished to maintain initial readers' pre-existing information, and reference frameworks.

3

EVOLUTION OF COMPLAINTS BETWEEN 2010 AND 2011

NUMBER OF	NUMBER OF	EVOLUTION
CASES IN 2010	CASES IN 2011	(%)
Handled: 91,065	Handled: 85,838	- 5.7%
Received: 92,948	Received: 89,846	- 3.3%

There was a very slight fall in the overall number of cases between 2010 and 2011.

Two main reasons explain this evolution:

- Previously, a lot of complaints were sent to several institutions at the same; since multiple referrals no longer exist with the creation of a single institution, the overall number of recorded complaints has logically fallen.
- The previous four institutions had signed some agreements allowing them to exchange cases which were not within their field of competence. Moreover, the Children's Defender was legally obliged to send to the Mediator of the French Republic any complaint about a public service. These reorientations were relatively numerous (8% to 10%). These two categories of complaints were counted by several authorities at the same time, both as complaints "received" and as complaints "processed."

A few months after the Defender of Rights took up his functions, the merging of skills seems to be a real improvement for a nonnegligible part of complainants who, instead of four counters, find only one entry point and, thus, save precious time in the processing of their complaint.

TABLE COMPARING THE POWERS OF THE DEFENDER OF RIGHTS AND THE HUMAN RIGHTS AND FREEDOM AUTHORITIES HE IS REPLACING

POWERS AND ACTIVITY F	IELDS	DEFENDER OF RIGHTS	MEDIATOR OF THE FRENCH REPUBLIC	CNDS	THE CHILDREN'S Defender	HALDE
Recommendation	By law	YES	YES	YES	YES	YES
Recommendation	In equity	YES	YES		YES	
Publishing a special report after recommendation and not complied with		YES, for all recommendations	Only if a court decision is not enforced	YES, but only in case of non- compliance with a recommendation (the CNDS does not have any injunction power).	Only if a court decision is not enforced	YES, for all recommendations
Immediate intervention		YES				
Direct access (without parlian	nentary filter)	YES			YES	YES
Transaction		YES				YES
Presenting observations before law courts		YES				YES
Referring a case to the dis authority	ciplinary	YES	In case of inaction, initiating disciplinary proceedings	YES		YES
Seeking the opinion of the of State for the interpretati and regulations		YES				
Asking for an examination by the Council of State and the State Audit Office		YES	YES			
Proposing legal or regulate modifications	ory	YES	YES	YES	YES	YES
Annual activity report		YES	YES	YES	YES	YES
General information tools (auditions, communication of documentary evidence/ injunction / formal notificat		YES	YES, but more limited powers	YES, but more limited powers	YES, but more limited powers	YES, but more limited powers
On-site verifications		YES, including unexpected verification on site with the agreement of the liberty and custody judge				YES, but no unexpected verification on site
Obstruction offence		YES	YES			

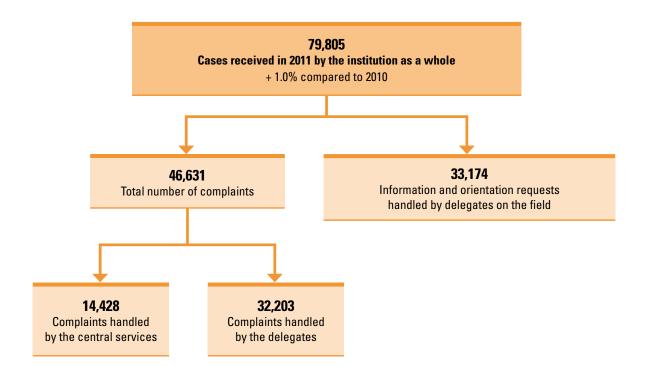
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MEDIATION WITH PUBLIC SERVICES: AN ACTION MORE THAN EVER INDISPENSABLE

It is the duty of the Defender of Rights to improve relations between the citizen, the administration and the public services, especially through mediation. Complaints may be sent to him directly and free of charge by a natural person (acting in his own name) or legal entity (acting on behalf of an association, a company or group), of French or foreign nationality.

2011 was both a year of results and transition for the mediation services.

In 2011, the number of cases received within the framework of mediation with the public services increased by 1% compared to 2010.



Although there was a slight decrease in the number of complaints received at the headquarters during this period of transition, the number of requests sent to delegates around the country increased significantly.

More than half of the 411 delegates now receive the general public in local structures, such as legal-information centres, legal-access points or public-service centres or detention centres, whereas, in the past, the delegates had their office hours in prefectures or sub-prefectures only. Their work is voluntary; their expenses are reimbursed.

Considering the scope of activities of the Defender of Rights, the role of delegates, required in a way to be a "generalist of complexity", is bound to be difficult. Delegates are meticulously selected and trained, while special attention is paid regarding the working tools made available to them. The Institution always strives to renew and diversify its human resources in the regions: regardless of whether they are from the public or private sector, the majority of delegates are retirees (75%); 56% of them are below 65 while one-third of them are women. An increasing number of them are recent retirees wishing to put their dynamism and experience at the service of the general public.

Requests are mainly **sent to the delegates** (80%) through direct contacts (meeting or phone call), even though the number of requests sent by e-mail is increasing regularly (7% of the requests). Several activity sections have been created to process requests and ensure the delegates' support.

Véronique was born in France of French parents. In 1984, she married Jan, a Dutch. In 2005, the General Consul of France in Amsterdam informed the French authorities that Véronique had just been naturalised Dutch. A civil status official then added the remark "loss of French citizenship" on the young woman's birth certificate, in accordance with the Council of Europe Convention which became effective on 10th June 1985 between France and the Netherlands. Upon discovering this remark, Véronique contested the loss of her French citizenship and referred the matter to the Ministry of Justice. She stated, among others, that she had acquired the Dutch citizenship in 1984, by marriage. In the absence of any reply to her letter, she sought the help of the Defender of Rights who sent the Dutch citizenship certificate issued by the Dutch consulate in 1984 -which was not on file- to the Ministry of Justice. As a result of this intervention, Véronique's request was granted and she was issued a French citizenship certificate.

The Justice unit

The Justice unit handles disputes between natural persons or corporate bodies and the public service of the judiciary when they think that there is a malfunction; it also handles issues pertaining to civil status and citizenship and questions relating to foreigners' rights, in two aspects: entry permit and stay permit.

In a certain number of cases, the intervention of the Justice Section has contributed to the review of a file previously suspended by the public service in question, for different reasons: incomplete file or information, misunderstanding between the user and the administration, the relevant service is waiting for a reply from another administration. In areas where the public service has extensive discretionary power independent of any malfunction, especially regarding the stay of foreigners, the action of the unit may consist in persuading the public authorities to review its position when some elements of fact or law does not seem to have been sufficiently taken into consideration.

An intervention in this direction requires the existence of strong and convincing arguments, such as some new information not transmitted to the decision-making authority, a particularly inequitable situation or a decision with a disproportionate impact the policy objective pursued.

Concerning the working of the public service of the judiciary, the Justice unit handled, in 2011, several complaints concerning the activities of courts, within the framework of enforcement actions.

3

A review of these files revealed some significant delays in the payment, or even non-payment, of funds payable to creditors (citizen and court officers). These problems due to the absence of a bailiff, the only person authorised to take this action, contribute to the deterioration of relations between users and the administration, thus putting the officials of the services concerned in difficult situations in the face of a legitimate lack of understanding on the part of creditors, some of which may be in delicate financial situations.

Within the framework of a wage-withholding procedure, Annie was unable to receive the withheld credit amount. After several attempts, she no longer received any amount from the bailiff of the district court. However, Annie learned that the entire amount withheld had been paid to the bailiff of the court. After the intervention of the Defender of Rights at the office of the director of the clerk of the district court in question, part of the sum was released. Moreover, when informed about the serious operational problems of this authority, the Defender of Rights sought the opinion of the head of the departmental directorate of public finances, who decided to carry out an audit. contest tax audits (examining the procedures for checking, rectifying and analysing the grounds for taxation).

Rolande, a corporate manager, aged 70, created her small/medium-sized, medical and para-medical vocational training company alone. Her company was subjected to a tax audit. The auditing services questioned the company's exemption from value-added tax (VAT): Rolande had forgotten to submit form 3511. Helpless, Rolande sought the help of the Defender of Rights who noted that aside from this formal obligation, the company fulfilled all the conditions required to be exempted from the VAT. Moreover, had Rolande been notified earlier, she would have submitted the required form. The Defender of Rights provided Rolande with the elements of fact and law which enabled her to convince the tax administration.

Furthermore, the service has observed in some cases the negative impact of the general revision of public policies in terms of the reduction of staff in the tax administrations.

2 The Taxation unit

Almost all the disputes examined by this unit cover various national taxation claims and local taxation. Some complaints highlight the problems of applying international tax agreements.

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, these cases result from situations with a lot of economic, financial and social implications.

The analysis of the tax-related litigation referred to the unit show a growing tendency to

In the context of a land purchase, Aude had submitted to the mortgage registry an application for attribution of a plot batch number six month earlier. She needed a reply before the end of 2011; otherwise the transaction would be null and void. As the date was approaching and her request had still not been granted, Aude contacted the Defender of Rights. Due to lack of personnel, the mortgage registry was 170 days late in the processing of its files. Therefore, Aude's request would not be examined until March 2012, especially since the registry was bound by law to handle the requests in a chronological order. Exceptionally, the file indicated by the Defender of Rights was treated favourably after the intervention of the central services of the tax administration. Aude was thus able to implement her project.

3 The General Matters unit

The complaints handled by this unit cover almost all of public law, except as regards laws on foreigners.

The section is empowered to handle conflicts pertaining to the following: agriculture, regional authorities, culture, defence, public domain, economy, public services for the distribution of electricity and gas, education and vocational training, environment, expropriation, public contracts, administrative police, regulated professions, public transports and public works, town planning and fines.

The company B. produced a film for a hospital within the framework of a public contract. Unable to obtain final payment for its services, the company B. sought the help of the Defender of Rights on the ground that the payment deadline for the invoices had long expired and was posing a serious financial problem for this company, thus putting its future at stake. The Defender of Rights reminded this hospital that, in terms of public procurement, Article 98 of the public contract code imposes on the contracting authority some general payment deadlines. The deadlines are 50 days for public hospitals. After this deadline, the contractor or subcontractor is entitled to default interests without any other formality, starting from the deadline expiry date. As a result of this intervention, the company B. was able to obtain full payment of its invoices.

4 Employment, Civil service and Social security unit

In the face of a system of social protection with standardised working methods and changing norms, the citizen whose particular case requires personalised processing becomes a prisoner of compartmentalised statutes and operators often solely motivated by performance. In this case, the Defender of Rights creates the necessary interface.

Marc worked in Great Britain from 2008 to January 2011, then in France in April 2011. Registered as a job-seeker, he applied for the allowance granted to people wishing to return to work, without success. According to the National job centre, his unemployment benefit file was incomplete. The work performed by Marc in France had erroneously been paid using a "chèque emploi" service (a service voucher). The National Job centre therefore asked Marc's former French employer to contact URSSAF (French body managing social security payments and funds) in order to obtain an employer's statement and a pay slip in conformity with the law. Marc sent all the documents to his nearest National Job centre and after several unfruitful reminders, he sought the help of the Defender of Rights, who argued that the deadline imposed for analysing the documentary evidence was not reasonable and that, in any case, his employment contract in the UK was sufficient to warrant payment of the allowance due. In the end, Marc received a back pay of 40,000 € corresponding to the ARE.

In 2011, the section saw the emergence of a problem in relation to the outcome of the Grenelle Environment Forum in terms of photovoltaic power generation (+ 17% complaints): the decrease in the feed-in tariffs for electricity produced via photovoltaic installations, through several successive decrees in 2010 gave rise to an influx of complaints.

5 The Health and safe care unit

In 2011, close to 3,000 requests were received at the Health and safe care unit.

The main grounds of complaints for 2011 remained the same as for 2010: request for individual clarification of a case based on a medical and legal analysis (55%); request for mediation assistance (20%); request for legal or medical information (15%); testimony, alert (10%).

3

In March 2010, Georges, aged 80, on holidays in Morocco, was urgently hospitalised in a clinic for acute sciatica on a herniated disc. When he returned to France, he asked to be reimbursed at the national centre for healthcare abroad. He received a negative response, then a second one after complaining. The centre argued that the healthcare was not «unexpected»: it could have been programmed. Georges sought the help of the Defender of Rights. After analysing the medical record, the Defender of Rights wrote to the national centre for healthcare abroad, demonstrating that it had been without doubt an urgent and, therefore, unscheduled treatment. This record was again submitted to the medical examiner and Georges was reimbursed the medical costs.

Reform Proposals Department

The Defender of Rights contributes to the evolution of laws and regulations thanks to his reform proposal powers, reinforced by the analysis of individual complaints and observations of recurrent malfunctions of the public service. In 2011, he supported the reform proposals made by the Mediator of the French Republic. Four of them were successful:

- Reinforcing the legal control of legal autopsies;

- Taking care of children in medical and pedagogical-psychological centre;
- Reimbursing excess payments made to civil servants;
- Maintaining the daily allowance paid in case of part-time work on health grounds.

Brigitte, ill for more than twenty years, had been waiting for a kidney transplant. Her two nieces, Sylvie and Laure, volunteered to donate theirs. The case was rejected by the hospital treating Brigitte because the 2004 bioethics law does not cite nephews and nieces as authorised donors. Sylvie and Laure sought the help of the Defender of Rights who contacted the Biomedicine Agency and Parliamentary Assemblies. A reform proposal was worked out and added to the bioethics law of 7th July 2011, which extended the circle of organ donors between persons living outside the family framework to «any person who can provide evidence of close emotional link for at least two years with the recipient." Brigitte could again request for an organ transplant. Sylvie and Laure's files were then accepted by the hospital to examine their compatibility.

"After your intervention, my administrative situation was regularised and I started receiving my disabled adult benefits again. Thank you." XAVIER (RHÔNE)

"Your availability and determination have certainly been decisive... Emma and her daughters arrived in Paris yesterday!"

RELATIVES OF EMMA, RETAINED ABROAD BECAUSE SHE DID NOT HAVE HER IDENTITY DOCUMENTS (LOIRET)

"Thank you for the energy and effort you have invested in order to restore my rights."

JACQUES, TO WHOM HIS HEALTH INSURANCE ORGANISATION REFUSED TO ISSUE A HEALTH INSURANCE CARD (SEINE-ET-MARNE).

DEFENDER OF RIGHTS

FIGHTING AGAINST DISCRIMINATIONS: PREVENTING AND FIGHTING

The mission of the Defender of Rights is to fight against direct or indirect discriminations prohibited by law or by an international commitment ratified or approved by France. He ensures that each person knows his/her rights, has them recognised and applied according to the 18 discrimination criteria stipulated in the laws.

From 1st January to 31st December 2011, the HALDE and the Defender of Rights, within the framework of his mission of fighting against discriminations, received 8,183 complaints.

The first discrimination criterion mentioned remained discrimination on grounds of origin, which represents 23.5% of the complaints, followed by discrimination for health and disability reasons (23%) the problems encountered by women (discrimination due to pregnancy, family situation or sex) occupy the third place (11.6% of the total). Complaints concern mainly employment, be it recruitment, career development or redundancy, in the public and private employment sectors.

The Defender of Rights has various resources to accomplish his mission: amicable settlement, formal mediation, recommendations and the possibility to intervene as auxiliary of justice by replying to requests for legal opinions by judges or, finally, by presenting his own opinion before a court of law.

Amicable settlement

Preferred whenever possible, it is used both by regional delegates and legal officers at headquarters. It consists in using dialogue to create an agreement between the parties involved.

Tanguy applied for a job. During his job interview, the employer informed him that the tattoo he was wearing on his wrist posed a problem. Tanguy declared that he was ready to wear a plaster to hide his tattoo. Some days later, Tanguy learned that his application had not been accepted as a result of the company regulations which prohibited any tattoo or piercing. Considering himself a victim of discrimination in employment on grounds of his physical appearance, he sought the help of the Defender of Rights. The head of the company confirmed the provision of the internal regulations and justified it by explaining that tattoos or piercing may be disturbing to the general public. Following this intervention, the company's headquarters accepted to offer Tanguy a fixed-term working contract.

• Legal mediation

It is a formal alternative dispute resolution method that intends to bring parties to reach an agreement through the intervention of a third party.

Didier, a computer engineer, had been several times on sick leave over a long period between May 2005 and September 2009. When he returned to work, he no longer found his previous functions or level of responsibilities. He felt that he had been demoted and complained of being deprived of his work. When contacted by the Defender of Rights, his employer accepted a mediation. The mediation was successful.

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• Recommendation

Sent to a private organisation or to administrators, it is a method that proposes to solve a particular problem, but also to prevent risks of discriminations in future.

Nadia was looking for a job. She applied for an internship in the UK. Housing was organised in host families, on a half-board basis. Nadia filled out a detailed questionnaire on her eating habits and indicated that she only ate "halal" food. According to her, during the selection interview, the jury basically exclusively asked her questions on this point and pointed out that this would pose some problems regarding the conditions for accommodation. Although gathering information about the candidates' eating habits seems legitimate in view of the objective pursued, namely to place them in host families, using said information as part of the selection process seems disproportionate. Moreover, this practice may look neutral, yet it constitutes an indirect discrimination (Decision LCD- 2011-53). Upon the recommendation of the Defender of Rights, the training organisation has changed its practices.

Hélène, intellectually disabled from childhood with slow thinking, had been employed since 1991, first as a cleaner, then for the past one year as a mail processing official at a mail distribution centre. Following an internal re-organisation, her position was done away with twice. Three positions were proposed to Hélène far from her house; these positions required a driving licence which she could not obtain due to her disability. She was finally dismissed for "impossibility of redeployment due to rejection of three position proposals", although she had explained to her employer her status as a disabled worker. In the course of the enquiry, the employer stated that he had never known that Hélène was disabled. Nevertheless, in view of the information gathered which indicated otherwise, the Defender of Rights decided to present his observations before the Appeal Court of Orleans. On 15th November 2011, the Appeal Court recognised the discriminatory characters of the employee's dismissal on grounds of her disability, ordered her reintegration and ordered the employer to pay its employee more than 58,000 € in damages. (LCD 2011-86).

• Presenting observations before courts of law

Since 1st May 2011, the Defender of Rights has intervened in cases before the courts in which the HALDE had previously decided to present some observations. Moreover, since the summer of 2011, he has decided to present observations in 37 cases.

The local union of a ski school, whose mission was to organise the work and activity of ski instructors, had adopted a motion of "retirement" which prevented instructors above 61 from exercising their activity outside school holiday periods, thus limiting their source of income and their pension entitlements. Some instructors considered this as a discrimination on the ground of age and contested this decision before the Court. The Defender of Rights, who had succeeded the HALDE, presented the observations adopted by the HALDE to the court, citing a direct discrimination on the ground of age. On 21st February 2012, the Court of first instance of Albertville declared admissible the observations presented by the Defender of Rights and decided that the measure in question was actually a discrimination on ground of age and this requirement had to be withdrawn from the local professional regulations. (HALDE 2010-265)

Laurent, Nezir and Nadine reserved some flight tickets via the internet with a low-cost airline, without specifying that they were in a wheelchair. Without evaluating their independence, the airline refused them access to the aircraft arguing that they were unaccompanied. Considering that they had been discriminated against due to their disability, the three of them took the matter before the criminal court. The Court of first instance asked the Defender of Rights to present observations attesting to the discrimination on grounds of disability. The airline was condemned to a 70,000 € and ordered to pay 2,000 € to each of the three plaintiffs. (HALDE 2010-105 to 107).

The complainants, public-sector workers and trade union representatives, complained of obstructions and delayed advancement in their career which, they thought was as a result of their trade union activities. An enquiry conducted by the Defender of Rights revealed that they had not benefited from a career progression comparable to average public-sector workers in a similar situation, the moment their hierarchy had become aware of their trade union membership: this pointed to the existence of serious indications leading to a presumption of a violation of the constitutional principle of equality and non-discrimination on grounds of union membership. The administration did not provide sufficient evidence to rebut this presumption. Therefore, the Defender of Rights decided to present his observations before the administrative court of appeal. (LCD 2012-9 to 19).

The action of the Defender of Rights and his services is not only focused on the resolution of conflicts. A big part of his function is devoted to **prevention and promotion.**

The first target of promoting rights and equality concerns the fights against stereotypes and prejudice.

 It is all about informing, training people to know better and analyse the phenomena leading to discriminations, in order to prevent and fight against them.

- Thus in 2011, three remote training modules were made available on the site of the HALDE: "Promoting equality in education", "Recruiting without discriminating", and "Living together without discrimination." In 2011, the site was consulted 15,000 times, with over 10,000 downloads. An updated version of the three modules is now available on the site of the Defender of Rights. Moreover, the "Education" module has been put on line on the open and remote training site of the Ministry of Education: it was consulted 91,000 times in 2011.
- The Defender of Rights also conducts a set of research, polls and studies making it possible to observe people's experiences in the field of employment, housing, education, etc. and to develop the right tools to put an end to violations of equality, and discriminations.

The second objective is to promote a change in the practices of all the players. This is achieved through dialogue with potential or actual victims, and with public and private institutional players. Thus, the Defender of Rights organises regular consultations with associations representing particularly exposed groups (disabled persons, lesbians, gays, bisexuals and transgender persons), and conducts, together with them, some awareness-creation and information campaigns...

The third and final objective is to identify and design some tools to bring about real equality, awareness and change. In 2011, the Defender of Rights, in collaboration with the CNIL and with the support of the European Commission, compiled a practical guide intended for business leaders, recruiters and human resources managers, to explain, in form of sheets, the legal frameworks and methods of promoting the diversity of employee recruitment. This booklet can be downloaded from the site (www.defenseurdesdroits.fr).

Finally, the Defender of Rights must contribute to the implementation of the International Convention on the Rights of Disabled Persons, effective since 20th March 2010.

3

"I didn't know I was going to be heard. But I had to express myself, at least to rid myself of it; it was too heavy a burden to carry."

ANNIE, DISCRIMINATED AGAINST DUE TO HER DISABILITY (BOUCHES-DU-RHÔNE) "I wish to thank you for the effectiveness of your intervention to have the amount of my pension revalued."

MICHÈLE, WHOSE PENSION ORGANISATION DID NOT WANT TO RE-EXAMINE HER FILE (NORD)

"I am grateful for the work done by the Healthcare Section (...) without which I would still be waiting for a hypothetical indemnity."

ANDRÉ, VICTIM OF A VERY SERIOUS INFECTION IMMEDIATELY AFTER A MEDICAL INTERVENTION. (ILLE-ET-VILAINE) "You informed me about the very positive improvement of Ms R.'s professional situation and the closure of her case. Thank you for the effectiveness of your action."

A MEMBER OF PARLIAMENT WHO HAD ACCOMPANIED A DISCRIMINATION-RELATED COMPLAINANT (DORDOGNE)

CHILD PROTECTION: INTERVENTION AND CREATION OF AWARENESS

The Defender of Rights is in charge of defending and promoting the superior interest and rights of children. He is assisted in this mission by the Children's Defender. Children's rights are consecrated by law and by the International Convention on the Rights of the Child. Adopted unanimously by the UN General Assembly in 1989, this convention with 54 articles recognises the fundamental rights of the children of the world. France ratified it in 1990. Thanks to the guarantees offered by laws and regulations, a Commission, and a deputy who has retained the title of Children's Defender, actions taken in favour of children are given special attention due to the sensitiveness of the questions raised.

A section devoted to Child protection brings together experienced officials who had been in charge of these questions in the old institution "Children's Defender".

A new dimension is brought in by the fact that the Rights Promotion department takes into account some child-protection promotion projects, considering its experience and intervention capacities. The extension of the system of Young Ambassadors for Children's Rights by the regional network management, and the importance now attached to reform proposals on children-related laws by the Reforms Department of the Defender of Rights all serve that same purpose.

Since his nomination, in addition to the report "Foster children, children under care: defending and promoting their rights", met with great interest (report available on the site of the Defender of Rights), the actions taken by the Defender of Rights and his deputy have been reinforced with much stronger legal tools than those of the previous Children's Defender.

This first report attests to the dynamism of the institution in favour of those who deserve the highest attention, our children, and the desire of the Defender of Rights and of the Children's Defender to continue working towards this goal. As the structures are preserved, the working tools reinforced, and the commitment clearly expressed, this particular mission of the defence of the superior interest of children requires conviction and energy from all.

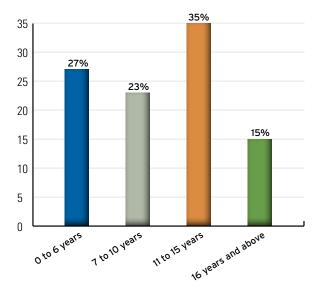
The number of child-related complaints sent to the Children's Defender then to the Defender of Rights is constantly increasing.

In the 2011 calendar year, the mission received 1,495 complaints, compared to 1,250 in 2010, and processed 2,272 cases, compared to 2,053 in 2010. The 1,495 complaints received basical-

ly concerned individual situations (1,443) and, in more rare cases, some collective situations (52).

Increase in the number of complaints received between 2010 and 2011

DISTRIBUTION BY AGE OF COMPLAINANTS WHO SOUGHT THE HELP OF THE CHILDREN'S DEFENDER IN 2011:



368 new complaints were received in the first quarter of 2012 (including 25 collective cases). In terms of annual rate, these figures are above those of 2010 and, therefore, seem to confirm this tendency towards increment.



3

Geography of complaints

Complaints are received from all the departments, including the overseas departments. Their geographic distribution (according to the department in which the child is living) shows that Paris remains the most represented department; the Île-de-France region represents 28% of the cases, followed by the Rhône-Alpes, Languedoc-Roussillon and Aquitaine regions. A lot of complaints come from big cities, and 11.5% of the children concerned are living abroad.

Collective complaints come mostly from Île-de-France, then from the overseas departments.

Mathias, aged 13, has multiple disabilities. However, considering his desire to learn and the care accessible to him, the Ministry of Education considered him fit to continue his high school education. Yet despite repeated demands, the parents of Mathias could not obtain the green light of the Departmental Home for Disabled Persons (MDPH), required to enroll the boy. The MDPH stated that their file would not be examined before six months, which compromised a full school year for Mathias. The parents sought the help of the Defender of Rights. His initial attempts to contact MDPH were in vain. The Defender of Rights then alerted the principal of the school, the Regional Council Chairman, and the academic inspectorate. A positive response was finally received. Mathias could continue his education on the conditions required by his disabilities: the right materials, special needs assistant, transport and benefits.

2 Complainants

60% of the complaints received come from one or both parents (14% in collective complaints), and 9% from the family circle. 8% of the complaints are filed by the children themselves.

For the Defender of Rights, processing childrelated complaints sometimes implies long interventions, often made with several interlocutors: Regional Councils, Ministries of Justice, Interior, Education, and Foreign Affairs.

In the course of his intervention, the Defender of Rights develops a new point of view, the basis of which is the superior interest of children, and which he asserts among all the parties involved in a case.

Anton and Wlad are two children aged respectively of 2 years and 10 months. Their mother had come to join her husband in France and had remained in France after her visa had expired. Wishing to regularise her situation, she had followed the advice of the French Office for Immigration and Integration by filing an application for family reunification. She left France, leaving Anton and Wlad under their father's care. However, the Prefectoral authorities rejected her application arguing that her husband did not have stable and sufficient resources, such as an open-ended work contract (Art L 411-5 of the law on foreigners' entry and stay in France). However, according to the ministerial instruction of 17th January 2006 on foreigners' family reunification, having an open-ended work contract is not a condition for obtaining an authorisation for family reunification. Moreover, it is the Prefect who determines whether the decision to reject family reunification infringes upon the right to private and family life (Article 8 of the European Convention on Human Rights), and on the superior interest of the child (Article 3 of the International Convention on the Rights of the Child). In view of their very young age, Anton and Wlad actually needed the presence of their mother. The Defender of Rights, therefore, asked the Prefect to benevolently re-examine this family reunification request. Less than one month later, the father informed the Defender of Rights that he had received a positive response.

> The help of the Defender of Rights was sought concerning the situation of Olga and her two children. She, together with these two schoolchildren, one of whom was ill, were held in an administrative detention centre, separated from the father who had not been arrested. Pursuant to the so called Dublin II Convention, the family, which originated from Chechnya, was supposed to be returned to Poland, the country in which it had made the first request for asylum. The Defender of Rights considered that returning this family to Poland would be contrary to the superior interest of the children, who needed some stability. This was not guaranteed since their father was not obliged to return to Poland. The children were afraid of being separated from their father. This situation had some impact on their psychological balance. Moreover, the UN High Commission for Refugees (HCR) and the European Council for refugees and exiled persons had drawn the attention of European authorities to the problems inherent in returning asylum-seekers to Poland: detention (sometimes for 12 months), inadequate or even absence of social protection, and overall reception conditions below the minimum European standards. These observations were applicable, more specifically to this situation since the Chechen origins of this family was unfavourable to them considering the context in Poland. Therefore, the Defender of Rights asked the Prefect to re-examine the particular situation of this family so it could file an asylum request in France. The Prefect accepted the release of Olga and her children, and to allow an asylum request to be made in France.

The promotion of rights is the key factor in child protection. This is why the Young Ambassadors for Children's Rights are recruited for civic service mission.

32 in 2010 - 2011, then 36 in 2011-2012, they are entrusted with two missions:

- Designing and carrying out information campaigns for children and youths on all their rights, based on the International Convention on the Rights of the Child;
- Getting people to know the Defender of Rights and his missions.

The programme is supported by institutional partners: Ministry of Education (academies of Créteil, Grenoble, Lyon, Paris, Strasbourg and Versailles), some Regional Councils (the Bas-Rhin, Isère and Rhône), some towns (Asnièressur-Seine, Issy-les-Moulineaux, Conflans-Sainte-Honorine, Villejuif, Vitry-sur- Seine).

In 2010-2011, the Jades worked with 22,785 children in 140 colleges; 23 recreation centres; 23 specialised structures and 21 "public" events.

"Thank you very much for intervening among the relevant authorities and for defending the problems we had raised. Our children now have a better prospect for inclusion and access to citizenship."

THE HEAD OF A MEDICAL AND PEDAGOGICAL CENTRE HAS BEEN ABLE TO OBTAIN THE PAYMENT OF THE TRANSPORTATION COSTS FOR YOUNG DISABLED PERSONS IN HIS CENTRE (GIRONDE).

"Thank you for your help, you have contributed to Margot's success at school. She has just scored 14/20 in maths and 16/20 in recitation. She is happy in this new college which opens up new perspectives for her!"

MARIE, WHO HAS OBTAINED EDUCATION ALLOWANCE FOR HER DISABLED DAUGHTER (THE SOMME)

3

SECURITY ETHICS: MORE CASES OF INTERVENTION

The Defender of Rights is charged with ensuring that people working in the field of security in France respect the ethics of the profession. His help may be sought by any French citizen or foreigner living in or outside of France, victim or witness of any events which would constitute a violation of the ethics by security officials working in France.

The need to find the right balance between the obligations inherent to public service responsible for the security of goods and persons and the respect of human beings is at the heart of the mission of the Defender of Rights in matters of security ethics. There has been a constant increase in the number of complaints since the creation of the CNDS, in 2000. In 2011, most of the complaints concerned the systematic use of "handcuffing"; excessive practices, insults and violence on the part of the entire security forces (with or without weapon); the opportunities and conditions for detention or non-detention: fallacious presentations of events in reports, absence of, incorrect and incomplete incident reports...

Complaints could only be filed with the CNDS through a Member of Parliament, the Prime Minister, the Mediator of the French Republic, Chairman of the HALDE, the general inspector of all places of deprivation of liberty, and the Children's Defender. The organic law, which created the Defender of Rights, has extended the right to file a complaint to "any victim or witness of events he or she deems as a violation of the rules of security ethics." As a result, the filter used in the past no longer exists, which explains why the number of complaints has doubled.

CHANGES IN THE NUMBER OF CASES BETWEEN 2010 AND 2011

NUMBER OF	NUMBER OF	EVOLUTION
CASES IN 2010	CASES IN 2011	(%)
Handled: 195	Handled: 185	- 5.1%
Received: 185	Received: 363	+ 96.2%

In 2011, the Defender of Rights:

- Used fully all the resources at his disposal. To fulfil his mission properly, he used his rights of immediate intervention after examining the circumstances in cases of serious injuries or death during or following an intervention by the security forces;
- Took many decisions in matters of ethics and security. After receiving the unanimous decision of the members of the Commission in charge of security ethics regarding the circumstances of the two persons who had died in 2009 (Decision 2009-207) and 2010 (Decision 2010-175) during or following an arrest made by policemen, he concluded that the policemen had acted without proper judgement by using excessive force.

On 3rd December 2010, following a radio call, three policemen went to a workers' hostel in Marseilles, where Mr Z. had stabbed his room mate. One of the policemen tried to enter Mr Z.'s room, and the latter, very angry, threw a mug at the policeman's head before picking up a glass. One of the two policemen was reported to have tried, in vain, to disarm him using his expandable baton. Considering himself in a situation of self defence, the policeman wearing the flash ball fired at Mr Z., at the level of the chest. The policeman became unconscious due to the choc he had suffered on the head.

The two other policemen then handcuffed Mr Z., who was unsteady on his feet. A few minutes later, noticing that he seemed unconscious, they called the fire brigade. Mr Z. died the next day of cerebral oedema and pulmonary oedema. The expertise report relating to the investigation concluded that there was a direct link between the shot and the death. On 27th October 2011, the policeman who had fired the shot was arrested by the investigating judge in charge of the case. The investigation conducted by officials of the Defender of Rights showed that the distance between Mr Z. and the policeman who had used the "superpro Flash Ball" was less than 5 meters. According to the instructions of the Directorate general of the national police concerning the use of this weapon, at this distance a shot "may cause serious, sometimes irreversible or even deadly injuries." The behaviour of Mr Z., alone against three policemen, threatening not with a knife but with a mug, then a glass, could not justify the use of a potentially deadly mean of defence such as a shot from a flash ball at such a short distance, especially at the level of the thorax. The Defender of Rights asked that disciplinary action be taken against the policeman who had fired the shot for excessive use of force. pursuant to Article 9 of the Code of ethics of the national police.

- The Defender of Rights reaffirmed the principle of independence of the disciplinary and criminal charges. He informed the Minister of Interior that it was necessary to refrain from nurturing the confusion according to which the disciplinary action was dependent on legal proceedings.
- The Defender of Rights continues his evaluation of the usefulness and modalities of use

of certain weapons (such as flash balls and tasers). He has, more especially, asked that the training on and conditions for renewing flash-ball permits be reinforced. As a result of this request, the Minister of Interior stated that a "a reflection [was] in progress concerning the evaluation of the material concerned and the changes which may be introduced regarding the use thereof."

 In 2011, the CNDS handled a case involving the use of a taser by the gendarmerie, during the arrest of Mr J-F. M.
 After a minor dispute, he was pursued up to his residence by two gendarmerie vehicles.
 The gendarmes, assisted by a municipal police officer, used batons and truncheons (tonfas) on the windscreen of his vehicle, then used the taser in contact mode four times to control and handcuff him.

The CNDS deplored this excessive use of force and asked that disciplinary action be taken against the gendarmes concerned.
It is necessary to highlight the position of the European Commission on the prevention of torture pertaining to tasers: "The use of tasers should be limited to situations in which there is real and immediate danger for life or a clear risk of serious injuries [...]."

The commission has expressed "some serious reservations" on the use of this type of weapon in "contact" mode. It issues the following warning: "Well-trained law enforcement officials have different control techniques at their disposal while directly in contact with a person they must control."

- The Minister of Interior, sharing the conclusion of the CNDS, indicated in its reply that the gendarmes had acted without proper judgement.

- The Defender of Rights pointed out that "in the absence of reasonable motive to suspect that a person is hiding some prohibited items, subjecting a person to palpation [patdowns] is an excessive violation of human dignity compared to the objective attained" (Decision 2010-34). In his reply, the Minister of Interior recognised the fact that the control of identity documents should not be systematically accompanied by a pat-down

inspection, and that the police forces have been reminded about this.

- More than two years after the Law on prisons no 2009-1436 of 24th November 2009, which prohibits the systematic use of full-body search inspection of detainees, became effective, the Defender of Rights has noticed that this practice still persists. He intends to work together with the General Inspector of all places of freedom coercion, and to make a recommendation aimed at preventing excessive use of full-body search.

Article 57 of the Law on prisons contains some specifications on the use of full-body search on detainees, and prohibits, among others, their systematic character, pursuant to Article 3 of the European Convention on Human Rights and the decision of the European Court of Human Rights, However, more than two years after the law on prisons came into force, it seems that strip searches are sometimes still practised systematically, as shown by some on-going cases (complaints 2011-276 and 2011-354), as well as several administrative court decisions. The question of systematically carrying out strip searches on detainees while searching cells has also been raised (Decision 2010-23). This simultaneity, although compliant with the Ministerial instruction of 26th July 2004, violates the provisions of Article 57 of the Law on prisons. Therefore, the CNDS has recommended that all the laws and regulations on body searching be harmonised. The Minister of Justice has approved this recommendation. The Defender of Rights plans, in keeping with their agreement signed on 8th November 2011, to work together with the General Inspector of all places of freedom coercion so as to come up with some recommendations on to the prevention of excessive use of full-body search.

- Finally, 10% of all the cases referred to the institution concern refusal by the police or gendarme services to record people's complaints. The Defender of Rights, therefore, had to draw attention to the provisions of Article 15-3 of the Code of criminal procedure which require police or gendarmerie services "to record complaints filed by victims of violations of criminal law."

"We are very satisfied with the conclusions of the report from an official and impartial Commission, and which describes our point of view on what actually happened."

THE FAMILY OF A MAN WHO HAD DIED FOLLOWING A POLICE INTERVENTION (HAUTS-DE-SEINE)

Appendix

International action: a transmitor of French values



During his audition before the Parliament on 15th June 2011, Mr Dominique Baudis defined his objective as follows: "making the Defender of Rights a transmitor of French values in the field of Human rights and public freedoms."

The Defender of Rights affirms his presence internationally, in organisations where the position of France is expected and often listened to. The Institution wishes to be considered as "National Institution for the Protection and Promotion of Human Rights" (INDH), having regard to the Paris Principles. This situation confers some special responsibilities on the international scene, whereas the Institution represents France in a series of networks responsible for the protection of Fundamental Human Rights.

NETWORKS TO WHICH THE MEDIATOR OF THE FRENCH REPUBLIC BELONGED

NETWORKS	ORGANISATION	PARTNER COUNTRIES
International Coordination Committee (committee of all accredited INDH)	United Nations	Member countries of the United Nations
Peer-to-Peer Project (network of Ombudsmen; exchange of expertise and good practices)	Council of Europe	Member countries of the Council of Europe
European network of Ombudsmen (exchange of expertise and good practices)	European Ombudsman (EU)	EU member countries
Association of Mediterranean Ombudsmen	Independent network	Countries in the Mediterranean basin
Association of Francophone Ombudsmen and Mediators	Independent network	OIF member countries
International Ombudsman Institute	Independent network	Countries with an Ombudsman institution

NETWORKS TO WHICH THE CHILDREN'S DEFENDER BELONGED

NETWORK	ORGANISATION	PARTNER COUNTRIES	KEY 2012 EVENT / STAKE
Enoc (European Network of Ombudspersons for children; exchange of expertise and good practices)	Council of Europe	Member countries of the Council of Europe	Annual meeting in Cyprus, 10-12 October

NETWORK TO WHICH THE HALDE BELONGED

NETWORK	ORGANISATION	PARTNER COUNTRIES	KEY 2012 EVENT / STAKE
Equinet (network of anti-discrimination organisations)	European Union	EU member countries	General Assembly in Nov. 2012 which will take place after the Summit for equality organised under the auspices of the Cyprus presidency of the EU

• Some recognised and acknowledged actions

Faced with difficult and sometimes painful situations, officials of the Defender of Rights regularly see their interventions recognised and acknowledged by people who have sought the help of the institution. Some letters are contained in Pages 19, 23, 26 and 29 of the report.

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