ANNUAL ACTIVITY REPORT 2015

Tapestry “*Dans le sens de liberté* [“Towards Freedom”] – Richard Texier – 1985”EDITORIAL

**A Full and Intense Year**

This Report, which is a summary presentation of the full Report, online on our website defenseurdesdroits.fr, shows the volume and variety of work accomplished by the Defender of Rights’ teams in 2015. Demand is strong and many-sided and the Institution’s response appears to be equal to the task.

For all that, what you are going to read is only a succinct account of significant concrete examples; as with any selection, the choices made are debatable; it constitutes an expression of the diversity of our activities and makes no claim to exhaustiveness.

This Report should also be assessed by the yardstick of the reality of rights in France today. From our position, the pursuit of effectiveness for existing rights and the demand to extend new rights constitute the expression of strong and impatient social demands.

However, the complaints that we take up only represent a proportion of the situations that the Defender of Rights could take into account. We are well aware of this fact, in particular with regard to discrimination and children’s rights.

On taking up office, I denounced failure to assert rights and to make use of public services and of the Defender of Rights, which constitutes one of the channels of access to rights and is my principal concern.

For this reason, I wanted to place this subject at the top of this document. We have done much to remove numerous obstacles to access to rights. However, our work is only beginning in this respect. This is my priority.

In 2015, the Defender of Rights was reorganised in order to give a central place to the promotion of equality, the fight against discrimination and access to rights. The Institution is henceforth online and in good order for action in this field.

In 2016 a large number of new initiatives will therefore be undertaken, on top of those conducted in 2015 and before and, first and foremost, the launch of a major survey of the general population, aimed at measuring and establishing the characteristic features of situations of failure to assert rights, and in particular the difference between “situational discrimination” and “auto-transferred discrimination”, according to the expression of certain socio-demographers.

The territorial delegates, whose number and presence on the ground has been increased, will play a major role in the promotion of equality and the fight against discrimination.

In 2015, the Defender of Rights handled a total of 75,000 cases in an effective and exemplary manner. Our specific and collective successes bear witness thereto.

The positions I have taken on certain public policies, Bills and draft regulations have not only reinforced the Defender of Rights’ role, but exercised an influence on Governmental and Parliamentary decisions, as well as upon public debate and the media.

The tragedies which have struck France have not failed to have profound consequences on the relations between the French and their institutions. The demand for protection has overridden the concern for freedoms and equality.

In these tragic circumstances, the Defender of Rights has endeavoured to call for balance between the legitimate requirements of security and respect for rights and fundamental freedoms.

It is also incumbent upon him to express the desire that equality should be reinstated at the heart of the republican vision, so that all may feel that they belong to this Republic, which needs to remain a common treasure.

This is also the case with regard to the need to conduct an active policy once again to fight against all discrimination, all prejudices and all inequality of treatment. This is incumbent upon the authorities at the highest level.

The Defender of Rights is confident, because he shares the view expressed by Saint-Exupéry during the war: “None can simultaneously feel themselves to be responsible and despair”.

Our Institution worked well in 2015. I measure my responsibility, and I hope to contribute to greater equality between all of the people in our country in 2016.

Jacques Toubon,

Defender of Rights

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79,592 cases of complaints  
+8.3% as against the complaints received in 2014  
54 cases taken up on the Defender of Rights’ own initiative  
151 cases handled on average per delegate

**Renowned Legal Expertise**

74,571 cases handled  
480 significant measures undertaken (recommendations of a general or individual nature, observations submitted to courts, reform proposals, opinions submitted to state prosecutor’s offices, cases referred to state prosecutor’s offices, civil settlements, cases taken up on the Defender of Rights’ own initiative in the case of serious situations etc.)  
300 decisions issued  
101 observations admitted to the courts  
197 general and individual recommendations  
109 reform proposals made to the authorities and 31 reform proposals fulfilled  
29 Opinions at the request of Parliament in a wide range of fields

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

832,451 visitors to the défenseurdesdroits.fr website  
3,900,000 pages viewed on the défenseurdesdroits.fr website  
A monthly newsletter sent to over 20,000 contacts   
More than 1 million media distributed for raising awareness of access to rights and increasing knowledge of the Defender of Rights

**Close Relations with Civil Society**

3 consultative committees composed of 22 qualified persons, which met 17 times  
8 permanent committees for dialogue with civil society, which met 14 times

**A Team at the Service of Rights and Freedoms**

250 colleagues at head office  
400 territorial delegates  
676 reception points throughout the territory as a whole

GENERAL STATISTICS

**Overall trends in complaints between 2014 and 2015**  
In 2015 the Defender of Rights received more than 120,000 requests for action and advice.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | 2014 | 2015 | Change | 2010 |
| Public Service | 34,527 complaints | 40,329 complaints | 16.8% between 2014 and 2015 | 38,091 complaints |
| Children | 2,493 complaints | 2,342 complaints | - 6.1% between 2014 and 2015 | 1,250 complaints |
| Discrimination | 4,535 complaints | 4,846 complaints | 6.9% between 2014 and 2015 | 3,055 complaints |
| Security Ethics | 702 complaints | 910 complaints | 29.6% between 2014 and 2015 | 185 complaints |
| Guidance and Advice | 31,206 requests | 33,132 requests | 6.2% between 2014 and 2015 |  |
| Telephone information | 39,130 calls | 42,443 calls | 8.5% between 2014 and 2015 |  |

2010: Data for the last year of activity of the four authorities which the Defender of Rights succeeded.

**For Information**

We have around 4,195 multi-qualified cases   
79% of complaints are received by delegates

**Breakdown of cases received by the Defender of Rights in 2015**

0-200 by department: 14  
From 201 to 400 by department: 29  
From 401 to 800 by department: 28  
From 801 to 1,600 by department: 19  
Over 1,601 by department: 12

**PART ONE**

**A PRIORITY: ACCESS TO RIGHTS**

2015, the first full year of activity of the second Defender of Rights, Jacques Toubon, was marked by a resolute commitment to promoting equality and access to rights.

Generally speaking, access to rights means that every person should be able to be informed of their rights and the means of asserting them, as well as of their obligations and how to meet them. Indeed, beyond his primary purpose, which is to ensure protection of the rights of persons referring cases to him within the framework of his acknowledged areas of authority, the Defender of Rights plays the essential role of a facilitator of access to rights, whether with regard to information he issues or guidance he offers to complainants, even before assisting them, if necessary, in order to reach resolution of the disputes they face.

In concrete terms, difficulties in access to rights are attributable in equal measure to lack of information on the actual rights and on the procedures that may be called upon to assert them, as well as the complexity of the procedures themselves. This complexity may lead certain persons to abandon the assertion of their rights. The actual design of the procedures sometimes also tends to exclude the very people for whom they are intended.

To this end, the Institution engages in actions for the promotion of equality, consisting of making rights known through operations for *provision of information to the audiences concerned*. It conducts initiatives for raising awareness among and *training actors* from associations and professionals, with the aim of improving their practices and contributing to the facilitation of access to rights. In addition, it makes recommendations to the authorities in order to bring about change in normative frameworks through *Opinions and proposals for legislative and regulatory reforms*. Finally, it conducts an active policy of partnership and dialogue with civil society, described in the full online version of this Report.

Moreover, when rights are guaranteed by law, or even by international conventions, effectiveness of rights is the central question, in other words the concrete possibility for those who meet the required conditions of enjoying the rights to which they are entitled. Relations between the persons concerned and institutions and administrations constitute a decisive factor of effectiveness. For this reason, The Defender of Rights devotes special attention to persons in situations of vulnerability, whether this situation be temporary or long-standing, based on circumstances or resulting from de facto situations. From this point of view, the territorial delegates are at the forefront.

On the basis of his findings and the research work which he conducts, the Defender of Rights continuously analyses the discrepancy between complainants’ actual situations, the rights to which they are entitled, and the obstacles placed in the way of fulfilment of rights or maintained by individual behaviours and social relations. Access to rights is therefore closely linked to issues of discrimination, equality and citizenship.

In order to encourage the assertion of rights, the Institution takes action, in particular, with regard to obstacles to procedures for access to rights (1) and measures enabling consolidation of the effectiveness thereof (2).

1. **WHAT OBSTACLES?**

The complaints referred to the Defender of Rights shed light upon the wide range of existing obstacles in the procedures to be taken for the assertion of rights. Whatever the nature of these difficulties, which may either result from objective factors (A) or from elements pertaining to individuals (B), they place users in a state of vulnerability that may give rise to situations of failure to assert rights.

1. **Objective Factors**
2. **Area of Residence, a Factor of Inequality in Access to Rights**

**This involves real innovation in the legal framework of the fight against discrimination.**

Since February 2014, “place of residence” has been on the list of prohibited discrimination criteria[[1]](#footnote-1) in order to enable persons residing in deprived neighbourhoods, already heavily affected by discrimination based upon their origin, to combat discrimination in access to employment or goods and services.

As far as goods and services are concerned, the introduction of the new criterion of place of residence has reinforced the fight against discriminatory practices affecting students from French overseas departments and territories in particular, with regard to refusal of tenancies, credit, sale etc. based upon their surety’s place of residence. Moreover, the Defender of Rights has stated his position on refusals to accept payment by cheque from certain clients due to their place of residence, which is henceforth considered illegal (MLD/2015-97, 20th May 2015).

He has also been led to set out his position on the exception provided for under article 225-2 of the Penal Code (*Code pénal*), which authorises the refusal of services “*when the person in charge of the provision of a good or service is in a manifest situation of danger*”. Within the framework of a complaint concerning a private carrier’s refusal to deliver IT equipment ordered via the Internet, after having analysed comparable exceptions in our national law, the Defender of Rights considered that the simple allegation of a risk connected in particular to a specific neighbourhood’s reputation cannot justify refusal of delivery or provision of a service, since this would support the very stereotypes that the new law is intended to combat (MLD/2015-101, 30th September 2015).

Moreover, this criterion of discrimination prohibited by law is used in support of complaints calling into question disparities in the territorial cover provided by public services, thereby suggesting an approach which seems to extend the scope of this 20th criterion as intended by the legislature.

The parents of school children and the mayor of a commune in Seine-Saint-Denis thus referred the conditions under which the 2014 new school year started to the Defender of Rights, which was marked by numerous vacant teachers’ posts and massive use of contract staff with little or no experience. The complainants considered that these elements constituted discrimination based upon the families’ place of residence , which compromised the quality of education provided and therefore their children’s chances of success.

The inquiry conducted by the Defender of Rights throughout 2015 showed that the local education authority’s administrative constraints and this difficult territory’s specific nature had placed the pupils of certain schools within the commune in an unfavourable situation, leading to **a breakdown of the principle of equality before the public service**. Although he observed progress for the start of the 2015 school year, the Defender of Rights asked the Ministry of National Education and the local education authority concerned to draw up an assessment of the needs of the commune’s schools and to mobilise the necessary resources in order to fulfil the objectives set for these priority education zones(MSP-MLD/ 2015-262, 9th November 2015).

Another case brought to the Defender of Rights’ attention involved the financial and operational situation of the only hospital in Metropolitan France catering for a population with a level of precarity of over 30%, beyond which excess organisational costs are allowed to increase, with a significant impact upon lengths of stay and the mobilisation of human resources. After being alerted by the Defender of Rights, the Minister of Health, Social Affairs and Women’s Rights, proposed an increase in the financial compensation for institutions with a “mission of public interest with regard to precarity” with high levels of precarity, within the framework of the Social Security Finance Bill for 2016. The health institutions concerned will thus have the benefit of an increase of 30% in the financing previously assigned in order to take their specific situation into account.

For its part, the issue of refusal on the part of Communal Social Action Centres to provide an official address to persons living in shanty towns, constitutes a real obstacle to access to rights. Indeed, while the law provides for a right to domicile in the commune of residence[[2]](#footnote-2), these refusals to grant official addresses are particularly harmful insofar as they stand in the way of the acknowledgement of basic rights such as the guarantee of medical attention (15-000957, 27th February 2015) and the enrolment of children at school, as well as the impossibility of declaring one’s occupation (15-010237, 11th September 2015). One commune also refused to bury a child on this basis even though its parents, of Romanian origin , were living on its territory (MLD/2015-002, 6th January 2015).

1. **Provision of Public Services Via Internet, a Factor of Vulnerability**

The expansion of digital public services unquestionably represents a step forward from the point of view of simplification and rationalisation of public management. The authorities reduce the cost of their action and users capable of using digital services complete their formalities more rapidly and easily.

On the other hand, those who do not have access to digital technology, due to lack of knowledge or lack of equipment or the ability to use it, encounter the greatest difficulties in accomplishing their formalities, as the movement towards virtual provision of public services progresses.

According to the study conducted in 2014 by Emmaüs-Connect on difficulties of access to and use of digital technology, around 6 million people in France today are affected by the phenomenon of “digital precarity”. Apart from the fact that it inexorably leads to new forms of exclusion, inequality of access to these different means of communication and to the use thereof quite simply prohibits access to basic needs and the exercise of fundamental freedoms.

When imposed and exclusive, the use of virtual methods can prove to be dehumanising. It can lead to various different forms of isolation with serious social consequences. Massive inequalities are thus observed between those who are familiar with digital tools and others, obliged to undertake multiple formalities (physical journeys in order to find a human contact, telephone calls etc.) when they do not quite simply give up, through discouragement, trying claim the rights to which they are entitled.

Accordingly, this finding underlines the need for a real transition to the digital world and support in the use of digital tools, ensuring provision of the material and cultural conditions to all in order to exercise their rights and maintain full citizenship, rather than simple user status.

**The introduction of virtual methods can preclude access to rights and prejudice the constitutional principle of equality before public services.** For this reason, it needs to be accompanied with reflection concerning support for individuals in access to public services , by means of the establishment of substitute measures to meet this need for proximity, providing digital mediation adapted to sections of the public, needs and territories.

This could be financed by redeployment of the savings made through the introduction of virtual methods of provision of public services. The Defender of Rights submitted a request for measures of this kind to the Finance and Interior Ministers and social protection bodies, and reiterated his proposals in the Opinion which he issued on the Bill for a digital Republic (*projet de loi pour une République numérique*) (Opinion no. 15-29).

1. **Personal Factors**
2. **The Particularly Vulnerable Situation of Certain Jobseekers**

Cases are often referred to the Defender of Rights concerning decisions to refuse the enrolment of children in school canteens, whose parents are looking for work or in insecure employment. Each complaint led to the issuing of a reminder to the authority concerned of the current state of regulations and case law, which lay down that access to school canteens cannot be made conditional upon the parents’ professional situation, but solely upon considerations connected with the running and organisation of the service. Although certain communes agreed to change their internal rules and regulations, others maintained their decisions, pointing out that the fixing of orders of priority was connected with school canteens' catering capacity, grounds which are accepted by administrative case law. Private member’s Bill (*proposition de loi*) no. 341, which is currently in the course of discussion before Parliament, is aimed at ensuring equal access to canteens for children, concerning which the Defender of Rights issued an Opinion on 26th November 2015 (Opinion n° 15-24). This would make it possible to put a stop to these disputes by providing for an obligation for authorities to guarantee the right of enrolment in school catering services in primary schools for all children.

1. **Precarity of Rights is often a result of Personal Status**

In 2015, numerous situations were referred to the Defender of Rights concerning **migrant persons subjected to denials of their fundamental rights, such as the right of security and shelter.**

For example, unaccompanied foreign minors encounter recurrent problems connected with child welfare services’ capacity to cater for them and French departments’ willingness in this regard. The increase in the number of proceedings calling children’s minor status into question, and the complexity of the means of remedy thereto, constitute an obstacle to the provision of care and shelter for them.

Apart from the special situation of unaccompanied foreign minors, the situations of migrant persons exposed to serious violence have been referred to the Defender of Rights, including women beaten by their spouses, victims of sexual harassment within the framework of their employment and exploitation within networks recruiting immigrant workers without residency permits.

The vulnerability resulting from migrant status in itself constitutes a real obstacle to the exercise of these persons’ rights, and all the more so insofar as they are in insecure social and legal situations. **The Defender of Rights has therefore decided to present an overall report in the spring of 2016, setting out the various different situations in which rights are not effective for foreign persons.**

1. **Accessibility, a Condition of Access to Rights for Persons with Disabilities**

Accessibility cannot be reduced to a simple question of compliance with technical norms intended to meet category-specific needs. It is above all a precondition for the effective enjoyment of civil, political, economic, social and cultural rights for persons with disabilities.

As the independent mechanism in charge of monitoring the application of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), the Defender of Rights took action within the framework of Parliament’s examination of the Bill for the ratification of Order (*ordonnance*) n° 2014-1090 of 26th September 2014 establishing the “planned accessibility agendas” (Ad’AP /*agendas d’accessibilité programmée*). The aim of the latter agendas is to postpone completion of the work for ensuring the accessibility of institutions open to the public (ERP / *établissements recevant du public*) and transport services, - as initially provided for under Act no. 2005-102 of 11th February 2005 -, beyond 2015 for periods of between 3 and 9 years.

Although he deplores the accumulated delays, the Defender of Rights supported the establishment of the Accessibility Agendas in his Opinions to Parliament (no. 15-10 of 18th May 2015 and no. 15-16 of 19th June 2015) issued within the framework of the discussion of the Act of 5th August 2015, in order to ensure effectiveness of the accessibility requirements fixed by the Act of 11th February 2005 and of the rights mentioned in the CRPD. However, he warns against any approach aimed at delaying the implementation thereof “*and therefore allowing discrimination resulting from lack of accessibility to continue*”.

In particular, persons with disabilities should be able to fully take part in political and public life (article 29 CRPD). The Act that provides that polling stations and techniques shall be accessible to persons with disabilities, whatever their disability, including physical, sensory, mental and psychical disabilities in particular. At the time of the French departmental elections of March 2015, the Defender of Rights published a [**Report on access to voting for**](http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_r_20150301_vote_handicap.pdf) **persons with disabilities**,in which he set out practical recommendations in terms of physical accessibility, access to information and support for persons with disabilities and proposed an accessibility assessment table intended for persons in charge of voting operations. These recommendations were recalled to the Interior Minister and mayors at the time of the last regional elections.

**Access to the Defender of Rights**

The issue of failure to assert due rights remains at the heart of the Defender of Rights’ concerns and his action is intended to focus on the most vulnerable groups in priority.

**Increasing Knowledge of Complainants and of the Institution’s potential audience**

At the end of 2015, the Defender of Rights launched a national survey of the general population aimed at establishing the prevalence of situations of inequality coming within his areas of authority as a whole (rights of the child, discrimination, public services, security ethics etc.) and identifying the context in which they occur and the attitudes of the persons who experience them. The results of the survey will thus provide precise information on the profile of persons likely to refer cases to the Defender of Rights and on the obstacles preventing them from calling upon organisations likely to support them in the assertion of their rights. The survey will be conducted in the first quarter of 2016, from a random sample of 5,000 persons in Metropolitan France. Further investigations in French overseas departments will be completed at the end of the year.

Similarly, an investigation into the impact of the introduction of virtual provision of public services in terms of access to rights will be conducted in 2016, in partnership with the *Institut national de la consommation* (INC - the French national consumers’ Institute).

**Application of Policy for the Promotion of Equality and Access to Rights at the Territorial Level**

Although this is an ambition involving the Defender of Rights’ delegates, it also draws upon support from the network of territorial advisers present in the major regions.

Moreover, it is implemented within the framework of a partnership entered into with the State Commission for Territorial Equality (CGET / *Commissariat général à l’égalité des territoires*). The Defender of Rights has thus begun testing a strategy for action within territories falling under urban policy and taking part in the territorial plans for fighting against discrimination (PTLCD / *Plans territoriaux de lutte contre les discriminations*) included in urban policy contracts. The selected pilot sites are the Urban Community of Plaine Commune, the town of Vaulx-en-Velin and the Urban Community of Ouest Provence. The Defender of Rights will take part in initiatives for awareness-raising, training and support of actors. Delegates for urban policy have been appointed, in order to improve the handling of discrimination and make the Institution known to the inhabitants of priority neighbourhoods.

**The Defender of Rights’ Delegates** **at the Forefront**

In order to provide a concrete response to this concern for access to rights and to the Institution, **the Defender of Rights continues to expand his network of delegates providing physical reception of the public throughout the national territory as a whole**. At 1st January 2016, there are thus 407 territorial delegates holding surgeries in 676 reception points. In particular, this consolidation makes it possible to meet the needs of populations living in isolated rural territories, as well as those coming under urban policy, where the presence of public services is on the decline. In 2015, this need for proximity was manifested in an increase of more than 10% in the number of cases handled by the delegates.

The Defender of Rights’ delegates also have a presence in every prison, with 159 of them thus providing surgeries for prisoners in order to defend their rights. In awareness of the importance of this mission, on 28th December 2015 the Ministry of Justice published a circular specifying the procedures for action by the Defender of Rights’ delegates within prisons.

Moreover, 78 delegates cater for the public within the Departmental Disability Support Centres (MDPH - *Maisons départementales des personnes handicapées*) and the Defender of Rights has set the objective of providing a “disability adviser” for each department in 2016.

Moreover, cases concerning refusals to register criminal complaints and inappropriate remarks are regularly referred to the Defender of Rights within the framework of his duties. These complaints represent a non-negligible proportion of cases referred within the field of security ethics and are particularly revealing in terms of the police’s image within the population. In order to provide the most appropriate response to complaints of this kind, a system of delegates in charge of dealing with these disputes has been put in place since 1st October 2015, on an experimental basis, in 5 regions and 2 departments.

In addition, following the initiatives that he has been conducting in Mayotte since 2012, the Defender of Rights undertook a first mission in French Guiana. The unusual geographical and spatial shape of this territory, the multi-ethnic character of its population and the language barrier, soaring demographics and continuous immigration give rise to major gaps in terms of equal opportunities and access to rights and public services. Lack of territorial continuity makes equal access to public services difficult.There is thus a glaring divide between coast and river areas in terms of access to medical treatment. The high numbers of users of public services, problems connected with failures of the civil registration system, distance and the costs pertaining thereto, lead to a form of paralysis of the administrative services. On the basis of these findings, the Institution will be led to make general recommendations.

Finally, a system dedicated to dealing with complaints from French citizens living abroad will be operational at the beginning of 2016.

1. **WHAT EFFECTIVE REMEDIES?**

After having dealt with difficulties connected to access to rights, the question of the effectiveness of remedies still remains in a certain number of fields.

In the face of this fact, the Defender of Rights deals with individual situations, endeavouring to re-establish complainants’ enjoyment of their rights while reminding the persons implicated of the requirements that need to be met in order to ensure the effectiveness of means of remedy instituted before them (A). Apart from the complaints brought before him, the Defender of Rights works to promote consolidation of the effectiveness of remedies (B), acting within the framework of legal proceedings in order to give rise to changes in judicial doctrine and setting out proposals for legislative and regulatory changes.

1. **Established but Sometimes Inaccessible Rights**
2. **The Right to Education**

Refusals to Admit Foreign Children to School.

The Defender of Rights observed that children of foreign nationality, and those residing in shanty towns in particular, were unable to gain access to education under egalitarian conditions, thus infringing their right to education.

Refusals of enrolment in primary schools on the part of local authorities have thus been referred to the Defender of Rights on numerous occasions. Various different grounds are given in order to justify such refusals, including lack of an official address in the requested commune (which is in fact too often the result of abusive refusals to grant domicile) and other pretexts such as lack of currently valid residence papers and lack of stable accommodation, the imminence of an eviction/deportation or even the fact that children have not been vaccinated. Nevertheless, none of these criteria can constitute legitimate obstacles to enrolment in school but, on the contrary, should be grounds for immediate social assistance.

These refusals violate article 28 of the Convention on the Rights of the Child (UNCRC) and article 2 of the first additional Protocol to the European Convention on Human Rights, which provides that “***No person shall be denied the right to education****”*. Moreover, the obligation to provide access to schools is recalled in several texts, including circular (*circulaire*) 2012-141 of 2nd October 2012 from the Minister of National Education, which put in place the “UP2A” system in favour of the schooling of non-native speaking pupils arriving in specialised educational units, as well as circular 2012-142, which recalls that all children are entitled to schooling, whatever the period and practical details of their families’ housing, and specifies that the local authorities should play an active role in the provision of information to and guidance of families, including with regard to vaccination and healthcare for their children.

Lack of explicit refusal on the part of local authorities constitutes the principal difficulty in effective exercise of remedy by families which, in most cases, are given verbal refusals and have to provide additional supporting documents at each stage. The Defender of Rights’ primary role in situations of this kind is therefore to assist these users, who are often helpless due to language difficulties or lack of resources, in order to legally establish the implicit refusal of their claims arising from the absence of response on the part of mayors, in order to be able to dispute such refusals within the framework of specific remedies.

1. **The Right to Housing**

Overcoming the Lack of effectiveness of Remedies to Enforce the Right to Housing

Every year the Defender of Rights handles several hundred cases from households which, despite having recognised priority status in terms of the Enforceable Right to Housing (DALO / *Droit au logement opposable*), have not received any offer of local authority housing.

These financially insecure families’ living conditions are very often terrible: elderly or disabled persons living in unsuitable apartments, which they are unable to leave without the help of a third party, families crowded into studio flats or even garrets unfit for habitation, homeless people going from one insecure accommodation solution to another, while awaiting permanent housing etc.

**The Defender of Rights has made several recommendations aimed at promoting the effectiveness of the right to housing for modest and disadvantaged households**, both by planning the production of eligible housing for persons with acknowledged priority status in terms of enforcement of the right to housing (DALO) and through appropriate use of existing council housing (MLD/2015-291, 14th December 2015).

Moreover, the question of the efficiency of the French system has recently been emphasised by the European Court of Human Rights (ECtHR) which, in a judgement of 9th April 2015 (no. 65829/12), condemned France for deprivation of the right to effective remedy in a case in which decisions by domestic courts, enjoining the State to rehouse the petitioner as a matter of urgency, had not been executed more than four years later, thus rendering the right to enforcement of a ruling devoid of all substance.

Access to the Right to Emergency Accommodation

The right to emergency accommodation is established by article L.345-2-2 of the Social Action and Family Code (CASF - *Code de l’action sociale et des familles*), which provides that “*Any homeless person in a situation of medical, mental or social distress has access, at any time, to an emergency accommodation measure*”. It lays down the principle that accommodation for homeless persons in a situation of distress is unconditional and cannot in any case be subject to conditions of residence papers being in order, nationality, age, sex, family composition etc., which constitute infringements of the law. Refusals can only be issued to homeless persons on an exceptional basis, duly justified by the formalities actually undertaken by the administration. Within this framework, the Defender of Rights very regularly approaches the departments of the French Administration with territorial jurisdiction on behalf of homeless persons, often accompanied by very young children, requesting accommodation of this kind. Certain households, in principle entitled to permanent housing, are obliged to occupy emergency accommodation places, pending an offer of housing, thus contributing to the current overloading of the system and, de facto, threatening the reality of the right to emergency accommodation. **As far as the specific situation of migrant populations evacuated from plots of land occupied in the absence of any right or title is concerned, the Defender of Rights observes a serious lack of social, health and educational support measures, for which provision is nonetheless made by the interministerial circular of 26th August 2012, and of long-term accommodation solutions.**

When families, and very young children in particular, are cast onto the street, they are placed in a situation of deprivation of legal rights, which may constitute inhuman and degrading treatment for which the State may be held liable, as recently recalled by the European Court of Human Rights (ECtHR, 7th July 2015, Case of V.M. and others v. Belgium - Application no. 60125/11).

1. **Pension Rights**

Guaranteeing the Payment of a Provisional Retirement Pension to persons with pensions cover under the social security system: for an effectively enforceable right

In 2013, the Defender of Rights observed that thousands of persons covered by the Social Security system had to wait for several months (and sometimes several years) after retiring, for calculation of the amount and payment of their retirement pension. In order to face up to this alarming situation, he asked the director of the National Pension Fund (CNAV / *Caisse nationale d’assurance vieillesse*) to take all of the emergency measures necessary in order to ensure continuity of resources for beneficiaries deprived of means of support.

**At the same time, he also alerted the Minister of Health, Social Affairs and Women’s Rights who, apart from provisions for dealing with the immediate situation, decided to establish an enforceable right capable of guaranteeing the payment of provisional pensions** to persons with pensions cover, having fully completed a pension application at least four months before their desired retirement date.

However, as the Defender of Rights impressed upon the director of the National Pension Fund (CNAV), the practical details of this system established by decree (*décret*) no. 2015-1015 of 19th August 2015, which was the subject of CNAV circular no. 2015/51 of 29th October 2015, need to be aimed at ensuring that this guarantee of payment is simultaneously transparent, effective and open to the greatest possible number of people. He thus asked the actors concerned to make sure that this system is really brought to the public’s attention and is surrounded with appropriate information, of such a nature as to enlighten beneficiaries with regard to the nature and rate of the pension paid. T**he Defender of Rights intends to pay special attention**, in close relation with Members of Parliament specialised in these questions, **to the actions that will certainly be taken with regard to this question in 2016.**

1. **The Right of Asylum**

The Situation of Asylum Seekers

When asylum applications are not registered within a short period following the applicant’s appearance at the prefecture, asylum seekers are deprived of access to material reception conditions, and are thus obliged to live in a situation of extreme precarity. In certain regions of France, when asylum seekers appear at the prefecture with their full applications, they are nevertheless not issued with any provisional residence authorisation, but are merely given appointments for the lodging of their asylum applications, with a waiting period of between three and six months. These administrative practices delay the issuance of provisional residence permits and access to the asylum procedure by several weeks, or even several months, and exclude asylum seekers from the benefit of the reception system. In certain regions of France, they create a de facto category of “pre-application asylum seekers” excluded from the national reception system, who cannot claim the rights attached to their status in the same way as other asylum seekers elsewhere in French territory.

In his decision MSP/2015-221 forming a third-party intervention before the European Court of Human Rights in the *A.J. v. France* case, **the Defender of Rights raises the question of whether, insofar as it thus delays the procedures for implementation of the right of asylum, the reception system for asylum seekers meets the necessary requirements in order to ensure the effectiveness of their rights.**

The Defender of Rights has also had occasion to make his position known with regard to the overloading of the asylum seeker reception system and the consequences of the processing channels put in place in terms of access to the most basic rights, **by means of his Opinions submitted to Parliament, his Report on the situation of migrants in Calais and his third-party submissions before the ECtHR**. His approach expresses the will to ensure respect for fundamental rights and verify the effectiveness of asylum seekers’ acknowledged rights under French law and the "Reception" Directive (Directive 2013/33/EU of 26th June 2013).

The guarantees imposed by the “Procedures” and “Reception” Directives have been transposed by several measures, which constitute unquestionable advances in terms of the protection of rights during the asylum application processing period. However, the Defender of Rights questions the choices and conditions of implementation of measures taken in order to increase the fluidity of the channels for processing asylum seekers’ situations. For example, he notes an increase in scenarios of rejection of applications without examination (creation of inadmissibility procedures and striking off of applications) and an acceleration of the procedures under which applications are dealt with by the judge, and in most cases by a single judge, in a field in which firm conviction is particularly important.

1. **Indispensable Support for Reinforcing the Effectiveness of Remedies**
2. **Consolidation through Case Law: the example of Verification of the Legality of Identity Checks**

Several cases have been brought to the Defender of Rights’ attention, which were referred to the court of first instance of Paris by complainants having undergone multiple identity checks, which they considered to be based upon their origin and therefore discriminatory, in order to establish the State’s liability. Having been dismissed in the first instance, they lodged appeals and, within this framework, the Defender of Rights submitted observations before the Court of Appeal of Paris (MSP-MDS-MLD/2015-021, 3rd February 2015).

The Defender of Rights’ observations are in line with his **report devoted to police/citizens relations**, made public in October 2012. Without giving a view on the facts of each specific case, the Defender of Rights wanted to bring the findings, which he has reached on the legal framework and existing guarantees and practices with regard to identity checks, to the court’s attention, in particular concerning the positive obligations incumbent upon the State to protect persons against discrimination and ensure the effectiveness of remedies.

The Defender of Rights draws particular attention to the question of the grounds for checks, which are to a large extent based upon subjective criteria such as feeling or “instinct”, thus raising the difficulty of objective examination of the choice of persons whose identities are verified within the framework of checks ordered by the State Prosecutor’s Office (*parquet*) and administrative checks, which may be made upon any person regardless of their behaviour.

**In its judgements of 24th June 2015, the Court of Appeal took the Defender of Rights’ observations into consideration, allowed the appeals in 5 cases and dismissed them in 8 cases.** It recalled that the Constitutional Council of France (*Conseil constitutionnel*) entrusts the ordinary courts with the task of ensuring respect for fundamental rights. Identity checks should therefore be made in compliance with the fundamental rights of the person and the principle of equality of treatment without discrimination. In this respect, States should not only refrain from discrimination, but have to take all necessary measures in order to avoid discrimination.

**Identity checks made on discriminatory grounds, in particular on the basis of origin or simple appearance, thus infringe the principle of equality of treatment and therefore constitute gross negligence for which the State may be held liable.**

In order to be effective, remedies need to enable the person concerned to prove the existence of a wrongful act. However, since the law does not enable any traceability of checks, the legal framework constitutes an obstacle to judicial review, liable to deprive the person of effective remedy, a situation which justifies adjustment of the burden of proof. In accordance with the European Court’s case law, persons whose identity has been checked have to present a body of serious, specific and corroborating circumstances, making it incumbent upon the authorities to prove that the check was justified.

The Court notes that existing studies show that certain groups, from deprived neighbourhoods in particular, are “over-checked” and that the use of racial profiling is known and appears to be a widespread practice. However, this information of a general order needs to be corroborated by factual elements establishing the circumstances of the check in question.

In the presence of an attestation revealing a check targeted at persons on the basis of their foreign physical appearance, the authorities need to be able to prove why systematic and exclusive checks of a particular group due to skin colour or origin may be justified by specific and special circumstances. **In the absence of elements of this kind, and even if the check took place without any humiliating or insulting remarks, it is liable to constitute an instance of discrimination constituting gross negligence for which the State may be held liable.**

1. **Consolidation through Legislative Channels: the Example of the Creation of a Means of Civil Remedy with Regard to Discrimination and Access to Goods and Services**

As far as access to goods and services is concerned, the legal arsenal for fighting against discrimination is not the same with regard to all legally-prohibited criteria. Indeed, only the criteria of sex and origin, on the one hand, and the field of housing, on the other hand, have the benefit of full legal protection, at both the civil and criminal levels, introduced by the Act of 27th May 2008.

For other criteria, the sole response provided for by law is thus that established under articles 225-1 and 225-2 of the Penal Code (*Code pénal*). It provides for fines and terms of imprisonment and is only concerned with deliberate discrimination, presupposing that real evidence makes it possible to establish a deliberate intention to refuse a good or service or to make the latter subject to a discriminatory criterion

In many situations, connected with age or disability in particular, this exclusively criminal response is unsuitable. In these cases, it would be more effective to also take a civil and administrative approach, as in employment matters.

Indeed, if approached in terms of compensation rather than sanction, discrimination in access to goods and services would be more effectively apprehended and would have the benefit of change in the burden of proof and the notion of indirect discrimination.

In his Opinion no. 15-23 of 28th October 2015 on the Bill implementing the application of measures concerning justice in the 21st-century, the **Defender of Rights** **drew the legislature’s attention to the appropriateness of simplifying this legal framework, by extending the protection offered by the Act of 27th May 2008 to access to goods and services in civil and administrative proceedings. It was also suggested on this occasion that the notion of discriminatory harassment should be included in the text**, with reference to the whole of the criteria prohibited by the Labour Code (*Code du travail*), the Penal Code and Act no. 83-634 of 13th July 1983.

**Creation of a Collective Means of Remedy with regard to Discrimination**

The Defender of Rights has officially declared himself in favour of the creation of a system of collective remedy, with regard to the fight against discrimination, on several occasions. He issued a new Opinion before the Senate's Law Commission at the time of the discussion of the first reading of the Bill implementing the application of measures concerning justice in the 21st-century (Opinion no. 15-13, 28th October 2015).

Going beyond the traditional principle that judgements are only effective between the parties to the proceedings, he supported the introduction of a class action, facilitating victims’ access to rights by extending the effect of a judgement to other similar proceedings.

In particular, a measure of this kind would make it possible to settle disputes whose financial proportions do not justify remedy before the courts, as well as providing an answer to difficulties connected with the inadequacy of victims’ resources in the face of the respondent.

Moreover, the creation of a collective means of remedy with regard to discrimination would make it possible to ease congestion of the courts through more pertinent handling of mass litigation.

In order to prevent unjustified proceedings, at this stage of the Parliamentary discussion it is envisaged that associations and trade unions will be invested with a monopoly in the initiation of class actions with regard to the fight against discriminations.

However, examination of the complaints sent to the Defender of Rights highlights the difficulties encountered by certain victims in obtaining support from trade unions and associations in order to apply for remedy before the courts. **For this reason the Defender of Rights considers that collective access to the courts should not be limited by making it subject to the good will of a third party** This position is all the more justified in view of the limited means at the disposal of trade unions and associations which, after being called upon for a number of cases of major litigation, will no longer be in a position to provide access to class actions for all victims of discrimination.

As far as the implementation of remedy of this kind is concerned, in the course of a visit to Québec in October 2015, the Defender of Rights noted the existence of a specific arrangement, the *Fonds d’aide au recours collectif* (“Class Action Assistance Fund”), in charge of following up the compensation of victims and the enforcement of judgements. This organisation, which makes it possible to contribute to the financing of class actions on the basis of legal and administrative costs connected with the distribution of damages, could provide useful inspiration for the terms, which need to be elaborated, for the implementation of this new collective means of remedy in the French court system.

**Launch of the “Equality against Racism” Initiative**

For several years, the Defender of Rights has observed that complaints of discrimination based upon persons' origins represent the majority of cases of discrimination brought to his attention. The results of the 8th indicator report on the perception of employment discrimination (*baromètre sur la perception des discriminations dans l’emploi*) confirm the scale of discrimination of this kind in French society today. Its analyses come within a more general context in which racist remarks are becoming “commonplace” within spaces of public expression as a whole.

Although not all racist remarks and acts can be considered to constitute discrimination in legal terms and do not therefore come within his jurisdiction as far as investigation is concerned, on the other hand, the fight against racial prejudice is at the heart of his activity for the promotion of equality. Quite apart from the discrimination to which it may give rise, racism is a form of violence exercised on a daily basis by a large number of persons in great impunity, in total violation of law and the fundamental values of the Republic.

In October 2014 the Defender of Rights therefore issued a first call for action, asserting his will to fight against racism on the basis of his role of promotion and prevention, as well as his commitment to access to rights.

On 27th January 2015, at the time of the official launch of the “Action for the Defence of Equality against Racism” (“*Mobilisation pour la défense de l’égalité contre racisme*”) project, he brought together about thirty institutional, economic and cultural actors as well as representatives of civil society, in order to propose initial lines of action for a common response to all manifestations of racism: acts, remarks, violence and discrimination.

About fifty partners, including companies (Casino, SNCF, La Poste, Aéroports de Paris, Google, Twitter, Facebook, etc.), institutional actors (the CSA, the CNIL, etc.) and associations (SOS Racisme, the LDH, the MRAP, the LICRA, etc.), as well as cultural actors (Museum of Immigration History and the Camp des Milles museum etc.), have joined the action.

The Website w[ww.egalitecontreracisme.fr](http://www.egalitecontreracisme.fr/) was launched on 15th September 2015, and is at the heart of this federated initiative brought together by the Defender of Rights.

The website is aimed at the public at large as well as professionals, and declares the will to make the law and means of action accessible to all. It approaches the fight against racism in a pragmatic manner. The project, which is coordinated by the Defender of Rights in its capacity as an independent institution, makes it possible to bring together and federate each of the partners’ actions and organise provision of information on the actors and means of fighting against racism in France today, in order to increase the transparency thereof for the public.

The objective is to increase the accessibility of a complex area of law and reduce the feeling of inevitability and the prevalence of failure to seek remedy. The platform is aimed at victims and witnesses confronted with racist remarks, discrimination and violence, by providing them with legal information appropriate to their situation, indicating pertinent means of remedy and available support:

The “**I Want to Take Action**” (“***Je veux agir***”) section is aimed at those wishing to get involved by calling upon their company, community, school or class, or their professional or personal environment. The site provides them with ready-made tools, training materials, contributions from third parties, films, guides etc.

The “**I Want to Alert Others**” (“***Je veux alerter***”) section is aimed at persons having witnessed racist acts or remarks, or who wish to report writings in the press, Internet contents, remarks or behaviours seen on television screens or heard on the radio etc.

Finally the “**I Want to Defend Myself”** (“***Je veux me défendre***”) section is aimed at victims of verbal or physical assault and racist behaviours, whether based upon their origin, religion or physical appearance. A page of results is given for each concrete situation, setting out the law, formalities, means and contacts.

Since its launch, the platform has been widely relayed via the social networking services. The Defender of Rights is convinced of the pertinence of this initiative and is continuing his call for action, since the platform is intended to expand via the development of the network.

**Launch of the egalitecontreracisme.fr platform on 15th September 2015**  
42 partners  
85,000 media sent and distributed by the partners  
832,000 views of the égalitecontreracisme.fr campaign messages on Twitter

**SECOND PART**

**AN INSTITUTION: EFFECTIVE INITIATIVES**

The Defender of Rights is entrusted with powers of a different nature by an Institutional Act (*loi organique*), enabling him to have graduated authority for action at his disposal. His actions, which are exclusively based on the law, can thus be adapted to the requirements of the situations he is called upon to examine. He offers approaches ranging from mediation and observations before the courts to recommendations and calls for sanctions. This combination of powers is used to promote the effectiveness of rights.

On the one hand, the Defender of Rights can act in a completely autonomous manner with a view to ensuring the application of current law and regulations, by means of amicable settlement, as well as more formally by means of recommendations of a general order (I).

On the other hand, the Defender of Rights sheds light upon the work of judges (II) and the legislature (III) through his expertise.

The number of the Defender of Rights’ decisions, opinions and observations which have been followed shows that, in a space barely 54 months, he has been able to take his place within the institutions of the French Republic.

1. **GENERAL RECOMMENDATIONS BY THE DEFENDER OF RIGHTS**

With regard to the cases referred to him, either directly or through his delegates, in most cases the Defender of Rights takes action on an amicable basis. Moreover, his role is to promote an approach without litigation insofar as this appears to the complainant to be the most satisfactory channel. A large number of situations giving rise to complaints result from administrative complexity or lack of knowledge of changes in norms and case law. For this reason the **Defender of Rights bases his actions upon legally-established positions. His mediation with parties against whom complaints are directed thus has every chance of being successful.**

The thousands of individual cases dealt with in this manner lead to the establishment of recurrent findings. Apart from satisfying complainants, when their claims appear to be well-founded, the Defender of Rights endeavours to draw more general lessons from the cases submitted to him. He is thus led to make general recommendations through topical reports (A) and at the time of his decisions (B).

1. **Reports from the Defender of Rights**

* **Report on Students’ Access to Healthcare (May 2015)**

Cases are regularly referred to the Defender of Rights concerning disputes between students and the organisations in charge of managing their compulsory health and maternity insurance. By means of a questionnaire placed online on his website from 5th December 2014 to 5th December 2015, the Defender of Rights collected 1,500 testimonies concerning students’ access to their social security. Analysis of these testimonies and complaints confirms the existence of serious failings in students’ social security, as well as inadequacies in terms of the provision of information to students about their rights and access thereto in particular. The Report drawn from this information sums up the extent of deterioration of the service provided: abnormally long waiting periods for affiliation, unusable national healthcare electronic insurance cards (*Carte Vitale*), absence of respect for coordinated treatment programmes, delays in reimbursement that penalise students and health professionals and incomplete or even non-existent institutional information. This situation causes particular prejudice to students suffering from long-term illnesses (ALD / *affections de longue durée*), foreign students and students training abroad, who are obliged to advance the funds for treatment. Generally speaking, these problems endanger access to healthcare for students, whose rights appear to be still more insecure than those of other persons with cover under the social security system.

In order to remedy this alarming situation, the Defender of Rights made eleven proposals intended to considerably improve the quality and management of the process of social security affiliation for students, as well as subsequent follow-up of their files and provision of information on the rights to which they are entitled.

These proposals led the French National Assembly’s assessment and control mission on the social security finance Acts to hear the Defender of Rights. Moreover, the Students’ Mutual Insurance fund (*La Mutuelle des étudiants* / LMDE) has been administratively attached to the CNAMTS French National Health Insurance Fund for Employees (*Caisse nationale d’assurance maladie des travailleurs salariés*), a measure constituting a first important step towards the difficulties encountered by students being taken into account by the authorities.

* **Report to the United Nations Committee on the Rights of the Child (June 2015)**

This report assessing France's implementation of the International Convention on the Rights of the Child (UNCRC) is the third since the establishment of the Defender of Children as an institution in 2000.

As the investigator of numerous complaints concerning non-respect of the rights of the child and an actor in promoting the best interests of the child, the Defender of Rights regularly sets out observations and analyses. **The report which he published in June 2015** is based upon these positions as a whole.

The conclusions which he draws from analysis of the French situation are ambivalent. Progress has admittedly been made in several fields (disability, child protection, reorganisation of the school system, plans against autism, national plan to combat human trafficking etc.), but is still too limited overall.

Recurrent difficulties thus still remain in terms of access to rights for the most vulnerable children: children with disabilities and poor and/or foreign children. The mistrust still shown towards the central notion of the best interests of the child and lack of knowledge thereof mean that these obstacles cannot be overcome. Moreover, territorial inequalities remain, in particular with regard to child protection and access to healthcare and education.

The Defender of Rights observes that the Convention on the Rights of the Child is still too little-known, despite the fact that the principles of non-discrimination, the best interests of the child and the child’s right to expression and involvement in decisions concerning it, which are at the heart of the UNCRC, are essential for social progress. They still continue to be inadequately taken into account in public policies and practices.

**The Defender of Rights, who sets out 128 recommendations in his Report, thus hopes that France will take all of the necessary measures in order to guarantee practical application of the international Convention on the Rights of the Child for all.** France will submit its own report to the Committee in January 2016.

* **Annual Report on the Rights of the Child (20th November 2015)**

Out of the 300,000 children subject to child protection measures, it appears that almost 70,000 have disabilities. These children are doubly vulnerable and should have the benefit of double protection. However, because these forms of protection fall under separate public policies, they paradoxically fall victim to incapacity to overcome institutional compartmentalisation, stacking up of measures and the wide range of different actors.

Yet, children with disabilities catered for by child protection appear to be invisible, overlooked by policies for support of persons with disabilities and child protection alike. From the inquiry conducted by the Defender of Rights in French departments, it emerges that the rate of prevalence of disabilities is very markedly higher amongst children subject to child protection (17% as against 2% respectively). Mental disabilities and behavioural disorders appear to be disproportionately prevalent among children catered for by the Child Welfare services. However, these are precisely the situations that place the departmental services in the greatest difficulties.

**Would the implementation of child protection measures remain justified if the upheavals caused to family life by disabilities were really taken into account and appropriate support provided?** The Report *Handicap et protection de l’enfance : des droits pour des enfants invisibles* [“Disabilities and Child Protection: Rights for Invisible Children”] highlights the absence of efficient systems for diagnosing children’s disabilities and informing their parents thereof, as well as major difficulties of coordination between actors in early prevention. Various different situations giving rise to dangers, or risks of danger, for children with disabilities are likely to make them subject to child protection. However, apart from proven educational inadequacies, in numerous situations action on the part of the Child Welfare Services (ASE / *Aide sociale à l’enfance*) is taken as a result of institutional shortcomings, and lack of specialised places in particular. Greater awareness therefore needs to be raised among actors responsible for the assessment of dangers, with regard to the specific nature of particular disabilities, and the use of experts should therefore be encouraged. Similarly, the majority of child welfare measures are implemented in non-specific institutions. **There is therefore a risk of compartmentalisation of the measures provided for children, to the detriment of an overall and shared view of their needs.**

* **Report on Exiles and Fundamental Rights: the Situation in Calais (October 2015)**

News and current affairs have been punctuated by worrying violations of exiles’ fundamental rights at the Franco-British border for around twenty years. In 2012, after several months of investigations and on-site inspections, the Defender of Rights published a decision concerning the harassment to which the migrants present in the Pale of Calais were being subjected by the police (MDS/2011-113, 13th November 2012). At the end of 2014, he deemed that the system of screening migrants for access to the site where meals were distributed infringed the migrants’ dignity, as well as their liberty to come and go (MDS/2014-150, 9 December 2014).

Beyond breaches of security ethics alone, the will to gather the migrants together on a new plot of land, away from the town centre, as well as the increase in their number, led the Defender of Rights to declare himself in favour of a more transverse approach to access to fundamental rights. For this purpose, at the time of two missions conducted in June and July 2015, the Defender of Rights’ officials met the mayor, the public prosecutor at the court of first instance and representatives of the police and local associations; they visited the exiles’ principal living areas and the PASS (*permanence d’accès aux soins de santé*) free medical clinic for persons without resources.

On the basis of this detailed inquiry involving all of the parties concerned, the Defender of Rights found that migrants’ living conditions in the territory of Calais constituted inhuman and degrading treatment and violated the best interests of the child and the right to live a normal family life in particular. He made numerous recommendations in a Report made public on 6th October 2015, concerning the unconditional right to accommodation, protection of health and material reception conditions for asylum seekers in particular. These recommendations were aimed at immediate provision of shelter for women and children living in the shanty town, development of the wasteland in order to make living conditions less disgraceful and for an increase in the resources of the PASS free medical clinic.

However, exclusively humanitarian responses, which the authorities have moreover begun to provide, however urgent, cannot be enough: Calais remains an admittedly spectacular symptom of the pitfalls of the European Union’s migration policy aimed at reducing legal channels of emigration. However, the right to leave the country, including one’s own, in order to apply for asylum in particular, is an internationally and constitutionally established right. For this reason, the Defender of Rights welcomed the opening of numerous asylum application procedures since the beginning of 2015, and recommended the suspension of the Dublin III Regulation, at least on a temporary basis.

Finally, the Defender of Rights was deeply concerned that the violence described in his Report of 2012 had not disappeared, the use of tear gas even having become “frequent” according to the very terms of a police memorandum.

**The administrative courts have very recently (on 2nd and 23rd November 2015) confirmed the Defender of Rights’ analysis since, on the basis of his Report, the urgent applications judges of the Administrative Court of Lille and of the** **Council of State (*Conseil d’Etat*) have issued administrative directions to the State and the commune of Calais, several of which repeat the Defender of Rights’ recommendations.**

1. **Decisions of the Defender of Rights**

* **General Recommendations concerning the Issuance of SNCF “Large Family” Cards**

In the course of 2015, disputes concerning the issuance of “Large Family” cards by the SNCF were brought to the Defender of Rights’ attention. Indeed, several complaints made by families with a child born outside of marriage reported refusals to issue this card, which are unjustified, both with regard to current regulations and in view of the prohibition of discrimination on the basis of family situation. These cases were successfully settled on an amicable basis, the SNCF departments having acknowledged their error and having undertaken to remind all of their officials of current law, in order to avoid the recurrence of situations of this kind in the future.

**However, the situation of families with children in joint custody and residence remains unresolved.** In his decision no. 2014-091 of 29th August 2014, the Defender of Rights made a recommendation to the Minister for Ecology, Sustainable Development and Energy that the criteria for the granting of “Large Family” cards should be widened to include both parents in the case of families with children in joint custody and residence. The Defender of Rights emphasised that refusal to issue this card to a parent who does not receive child benefit, but who nevertheless actually takes responsibility for dependent children within the framework of joint custody and residence, could be considered to constitute discrimination on the basis of their family situation. In February 2015, within the framework of following up this decision, a letter of administrative instruction was sent to the Ministry, which stated that a complete overhaul of the measure, in accordance with the Defender of Rights’ recommendations, was in course and would be effective at the beginning of 2016.

* **General Recommendations concerning the “Child Welfare Plan” (April 2015)**

By means of a questionnaire sent to the Councils of all French departments, the Defender of Rights established the fact of insufficient implementation of the “child welfare plan” (*projet pour l’enfant* - PPE), a major child welfare tool which, according to the provisions of the Act of 5th March 2007 reforming child protection, should be drawn up in each French department.

The Defender of Rights made general recommendations to the Government and to the Presidents of the Councils of departments as a whole, aimed at promoting the implementation of the child welfare plan (PPE), as an essential procedure in the provision of measures for children within the child protection system. These recommendations are aimed at supporting the PPE, which is the result of an approach focused upon children and their fundamental needs, built with them and their families. It is intended to ensure a coherent course of measures for the child, elaborated with the actors involved as a whole, in order to promote the pertinence and continuity thereof.

The Defender of Rights firmly reasserted this position of the time of the parliamentary debates on the private member’s Bill concerning child protection. On 24th August 2015, he thus issued an Opinion (no. 15-08) confirming his positions concerning the best interest of the child, and first and foremost the urgent need to establish a centralised child protection data collection system (MDE/2015-103, 24th April 2015). The text whose examination is currently being completed in Parliament is partly in line with the Defender of Rights’ recommendations.

# General Recommendations concerning internal alert mechanisms in the fight against discrimination with regard to the protection of employees’ rights (July 2015)

Noting an increase in the number of alert mechanisms in the private sector’s various different companies, the Defender of Rights issued recommendations in order to ensure that these mechanisms really take the protection of employees into account and are effective in the defence of rights. In first place, it is thus recalled that authorisation by the French Data Protection Authority (CNIL) provides a strict framework for these mechanisms and that staff representative institutions have to be consulted with regard to them. Alert mechanisms have to be easily accessible and well-known to employees whose rights have been prejudiced, in particular with regard to discrimination and harassment. It needs to be possible for alerts from employees to be dealt with in an impartial and independent manner, which respects confidentiality. The Defender of Rights also recalls that employees who make use of these alert mechanisms in good faith, should not be subjected to retaliatory measures. Finally, in order to measure the effectiveness of these mechanisms, they need to be assessed on a regular basis.

The Defender of Rights asks private sector employers, who are bound by an obligation to protect their employees, to comply with these recommendations when putting alert mechanisms in place (MLD/2015-151, 2nd July 2015).

# General Recommendations concerning Non-Lethal Weapons (July 2015)

The Defender of Rights considered that the new framework for the use of non-lethal weapons (Flash-ball superpro®, LBD 40\*46 and Taser X26®) could not guarantee the protection of individuals’ rights and, more particularly, ensure their protection from bodily harm. He therefore made several recommendations, including prohibition of the use of Flash-ball superpro® during demonstrations, due to the weapon’s lack of precision and the seriousness of injuries that can result from its use and, pending the solution of a substitute for **this weapon** (which has been in the pipeline for more than 2 years), **the adoption of a general moratorium on its use.** He also objected to the new policy of purchasing Taser X26® electric guns not equipped with audio and video recording facilities (MDS/2015-147, 16th July 2015).

1. **CONTRIBUTION TO THE ACTIVITY OF THE JUDICIAL SYSTEM**

In a legal world in a continual state of flux, the Defender of Rights has no hesitation in involving himself in cases brought before the judge at the time of new legal questions. The points of law settled by court decisions then provide so many levers of action, which enable the Institution to encourage the reaching of amicable settlements on a sound legal basis.

The Defender of Rights’ activity in the field of legal proceedings enables him to include the results of his investigations in court case-files, provide in-depth legal analyses before urgent applications judges and submit his positions in favour of progress in terms of rights for examination by the highest courts (A). In other circumstances, when called upon by the judge, the Defender of Rights plays the role of a public officer concerned in the administration of justice, whose contribution promotes access to rights, enlightens the court by providing expertise in his field of competence and supports the development of case law (B). Finally, the Institution can also act in legal proceedings before European courts (C).

1. **Observations before the Courts**

This year, on more than 100 occasions, the Defender of Rights once again took the initiative of submitting numerous observations to the courts.

* **Refusals on the part of Airlines to Take Persons with Disabilities on Board**

For several years, alongside complainants with disabilities and associations, the Defender of Rights has been involved in denouncing the discriminatory policy implemented by certain airlines with regard to persons with disabilities, of systematic refusing to take unaccompanied disabled persons on board, without even verifying their capacity to travel alone.

Judging these practices to be discriminatory, in application of European regulation no. 1107/2006 of 5th July 2006 and criminal law, the Defender of Rights made submissions before the courts with regard to several cases referred to him and, most recently, before the Court of Cassation in litigation between three persons with disabilities and an airline company (MLD/2014-30, 9th September 2015).

The company in this case was **found guilty of discrimination, by a decision of the Court of Appeal of Paris** of 5th February 2013, and ordered to pay a fine of 70,000 euros. The Court of Appeal considered that, on the one hand, the refusal to take the passengers concerned on board was not based on any security grounds justified and imposed by law and, on the other hand, that unlike other airlines, the company had deliberately decided not to train its staff in the provision of specific assistance to meet disabled persons’ needs. The company then lodged an appeal on points of law to the Court of Cassation and, in a decision delivered on 15th December 2015, **the Criminal Division of the Court of Cassation dismissed the appeal of the airline company - now definitively convicted - on the grounds that the Court of Appeal had fully justified its decision.**

* **Moral Harassment on the Basis of Origin**

The Defender of Rights considered it appropriate to make observations in order to support the construction of case law clarifying the legal reasoning likely to lead to the acknowledgement of discriminatory moral harassment.

In one case brought to the Defender of Rights’ attention, an IT engineer, who had been subjected to remarks of a racist character in the absence of any effective action on the part of the employer, was then placed on sick leave for a severe depressive disorder, before being declared unfit for any job and dismissed. **The Defender of Rights deemed that the causes of the dismissal were to be found in this moral harassment.** On the basis of Court of Cassation case law (Court of Cassation, company law division [*Cass. soc.*], 24th June 2009, no. 07-43994), he asserted that the dismissal was therefore null and void. He submitted his observations to the Industrial Relations Tribunal (*Conseil des prud’hommes*) (MLD/2013-263, 30th December 2013) which, in a ruling of 26th June 2015, had made a similar analysis and pronounced the termination of the contract by the court on basis of the employer’s fault, producing for the latter the effect of the dismissal being null and void due to its discriminatory character. Furthermore, it awarded the complainant over 51,000 euros in damages for the various different kinds of pecuniary and non-pecuniary damage suffered because of the loss of their job, discriminatory misconduct and failure to fulfil the obligation to provide security.

* **Debates Concerning Surrogacy**

# At the time of two rulings, the ECtHR condemned France for violation of the right to respect of the privacy of children born by means of surrogacy (GPA – *grossesse pour autrui*), guaranteed under article 8 of the European Convention on Human Rights (ECtHR, Mennesson and Labassée v. France, 26th June 2014, no. 65941/11). In particular, the Court recalled the precedence taken by the best interests of the child over the interests of society and third parties: France has the right to prohibit surrogacy on its territory pursuant to the margin of discretion left to States, but it cannot infringe the right to an identity to which children conceived in this way are entitled.

The Defender of Rights brought the need to bring French national law into line with ECtHR case law to the attention of the Ministers of Justice and of the Interior. Moreover, when two appeals on points of law were referred to the Court of Cassation concerning the entry of foreign birth certificates in the French population register, the Defender of Rights decided to submit his observations. **He asserted the precedence of the best interests of the child over any other consideration, in view of the fact that depriving a child of civil status can only have harmful results.**

On 3rd July 2015, the General Assembly of the Court delivered two rulings in which it considers that surrogacy agreements should not prevent recognition of the descent of children born to a parent of French nationality, thus asserting the precedence of the best interests of the child, guaranteed by article 3-1 of the Convention on the Rights of the Child, and the right to respect of privacy, protected by article 8 of the European Convention on Human Rights, over any other consideration (General Assembly [*Ass. Plén.]* 3rd July 2015, no. 619, 620).The Court of Cassation considers that if foreign birth certificates are neither defective nor forged and the information declared therein corresponds to the reality, according to the meaning of article 47 of the Civil Code (*Code civil*), entry thereof in the register cannot be refused. In both cases, the foreign birth certificate indicating the biological father and the mother having given birth, according to the meaning thereof under French law, could be entered in the register since it met the conditions of article 47.

However, in spite of the rulings of 30th July 2015, in situations of dispute, court decisions on the substance of cases concerning the entry of birth details in the population register are still unstable and lacking in clarity. Whereas the court of first instance of Nantes upholds most requests for entry in the register, on the basis of article 47 of the Civil Code, ECtHR case law and the best interest of the child, the Court of Appeal of Rennes appears to be less inclined to do so and harsher towards complainants since, for example, in order to establish paternal relationships of descent, it requires “*a biological report drawn up by an expert before the court and entrusted to a duly authorised laboratory*”, something for which the Court of Cassation does not ask. [[3]](#footnote-3)[1] The latter will necessarily be led to clarify the situation.

# Opinion on Access to Assisted Reproduction for All Women

# The Act “authorising marriage for couples of the same sex” of 2013 extended adoption to couples of the same sex, which had already been possible for single persons since 1966. For its part, access to assisted reproduction (*procréation médicalement assistée* / PMA) remains limited to heterosexual couples in order to remedy infertility, which in some cases is not of biological origin. Since the parenthood of women, whether single or in a couple, is recognised through adoption, the opening up of access to assisted reproduction would guarantee equality of rights. It would also enable the legal uncertainty, in which same-sex parent families currently live, to be brought to an end, the latter being subjected to long proceedings in order to be able to establish the spouse’s relationship of filiation with children born abroad by means of assisted reproduction.

# Following his hearing on 1st July 2015 before the Senate’s “*Assisted Reproduction and Surrogacy: French Law in the Face of Developments in Case Law*” fact-finding mission, the Defender of Rights issued an Opinion (Opinion No. 15-18, 3rd July 2015) in favour of access to assisted reproduction for all women, whether in a couple or single, in order to make progress towards equality of rights whatever the women’s sexual orientation or family situation.

* **The Best Interests of the Child in Mayotte**

An adult accompanied by two minor children taken in for questioning in the territorial waters of Mayotte, where he had arrived from the Comoros, was subject to a prefectural order obliging him to leave the territory with the children. He was placed in detention as an illegal immigrant with the two minors. The following day, the complainant, a mother lawfully residing in Mayotte, asserted that she was the mother of one of the minors and referred the case to the administrative court in an urgent application. The latter dismissed her request for suspension of the expulsion of her son, who was deported to Comoros. However, the child had family ties in Mayotte, the existence of which was not disputed by the administration, since his parents were legally residing there and covered by residence permits bearing the note “private and family life”.

The mother referred her minor son’s situation to the **Defender of Rights**, who submitted his observations before the urgent applications judge of the Council of State(MDE-MLD/2015-002, 6th January 2015), **noting that the measures taken against this minor did not respect his right to respect of his private and family life and disregarded the best interest of the child, established by the ECHR and the UNCRC. Indeed, the deportation measure resulted in a child of 9 years of age being left on his own, without any legal representative, and without the prefect of Mayotte or the first instance urgent applications judge verifying that he would be taken back to his country of origin in complete safety.**

By a decision of 9th January 2015 the urgent applications judge of the Council of State deemed that the placement in detention as an illegal immigrant and forced deportation of a minor child should be accompanied with special guarantees called for by the vital attention that needs to be paid to children’s best interests in all decisions concerning them, pursuant to article 3 of the UNCRC. Insofar as possible, the administrative authority therefore needs to endeavour to verify the foreign minor’s identity, the exact nature of their ties with the adult accompanying them and the conditions under which they will be taken care of in the place to which they are to be deported.

1. **Opinions submitted to** **State Prosecutor’s Offices and Judges**

In addition, ordinary and administrative courts may request expert opinions from the Defender of Rights in support of proceedings in progress. State Prosecutor’s Offices thus requested his methodological support in order to devise discrimination test operations and provide training for the departments and external partners in charge of the completion thereof. They may also request the Defender of Rights’ opinion within the framework of their investigations, which they do on an increasingly regular basis.

* **Opinions given to State Prosecutor’s Offices**

By way of example, an opinion was requested from the Defender of Rights by a State Prosecutor’s Office concerning a discriminatory dismissal by a public hospital based upon a socio-educational assistant’s state of health (15-004199, 25th November 2015). He was also asked for an opinion concerning the situation of a disabled person having lodged a criminal complaint after an insurance company, providing cover for unpaid rent, had refused to consider their disability pension to be a resource, thus preventing them from gaining access to the accommodation they wished to rent. In the latter case, the State Prosecutor’s Office followed the opinion given by the Defender of Rights and decided to institute proceedings against the insurer for discrimination on the basis of a disability (n° 14-013730, 8th October 2015).

* **Opinions given to Administrative Judges**

The issuing of opinions casts light on specific legal issues for administrative courts, which is particularly useful with regard to discrimination. Above all, these opinions enable judges to have the benefit of the Defender of Rights’ investigative work, conducted on a completely impartial basis.

The administrative court of Orléans thus requested an opinion from the Defender of Rights concerning an application lodged by a nursing assistant, who was a contract member of staff in a hospital, complaining of her employer’s refusal to grant her request for training with a view to granting her permanent staff status, due to her state of health. The complainant’s employer claimed that her physical fitness was incompatible with the duties of assistant nurse, despite the fact that the preventive medical adviser had declared her fit on two occasions, without any reservations. Apart from the fact that the employer had taken the place of the only authority entitled to make an assessment of a medical order, it had done so at an inappropriate moment, since physical fitness for the exercise of duties could only be assessed at the end of training, before confirmation in the post. **For this reason, in accordance with the principle of change in the burden of proof, the Defender of Rights considered that the complaint referred to him contained enough evidence to establish the discriminatory character of the disputed decision.** By a ruling of 21st April 2015, the administrative Court considered that “*the grounds for refusal of the [applicant’s] request for placement in the position of a trainee, as an assistant nurse, has to be considered as illegal discrimination in recruitment*”.

* **Cross-Cooperation**

When the Defender of Rights commences the investigation of complaints coming within his field of authority, he questions the complainant with regard to whether a criminal complaint has been lodged and whether proceedings are in progress, if the case in question may have criminal implications, as in the case of discrimination and security ethics. If this is the case, the Defender of Rights requests authorisation to continue his investigations from the competent State Prosecutor’s Office, in accordance with the provisions of article 23 of the Institutional Act concerning the Defender of Rights.

The investigations conducted by the Defender of Rights on the basis of this authorisation supplement those conducted by the court.

For example, in 2015 the Defender of Rights thus passed a case on to the State Prosecutor's Office concerning a commercial counsellor, assigned to clients who refused to work with her, due to her North African origins and her Muslim religion. The investigation drew upon an on-site check and several interviews, providing suitable opportunities for identifying the grounds that had determined the attitude of the respondents, - which was clearly based upon the complainant’s origin and religion -, who also confirmed that they refused clients of North African origin.

Following a complaint referred to the Defender of Rights alleging acts of moral harassment in a context in which the complainant had made a criminal complaint, after granting an investigation authorisation the public prosecutor at the court of first instance requested an opinion. The case involved moral harassment in the form of repeated racist acts against the victim on the part of her work colleagues and senior managers, in the face of which the employer had made no response, despite the complainant’s denunciations. This situation was defined as discrimination (MLD /2015 – 133, 5th May 2015).

It should also be pointed out that the Institutional Act also established a **settlement** procedure based upon approval by the State Prosecutor’s Office, in order to enable the Defender of Rights to implement a specific criminal response in the face of the types of discrimination mentioned under articles 225-1 and 225-2 of the Penal Code. The use of formal settlement enables the perpetrator to pay a fine and compensate their victim, when the approved settlement has been enforced, thus resulting in the termination of criminal proceedings. In 2015, a settlement (MLD/2015-13, 7th April 2015) of this kind was thus adopted in a case reported by an estate agent, concerning the owner of a property who refused potential tenants with North African-sounding surnames. This was established by evidence from a telephone test conducted by the Defender of Rights’ officials. The woman against whom the claim was directed was represented by a lawyer, who agreed to the settlement in order to avoid court proceedings against her client.

1. **CONTRIBUTION TO THE ACTIVITY OF THE LEGISLATURE**

The Defender of Rights can make recommendations with a view to legislative and regulatory reforms and may be consulted with regard to any Bill or private member’s Bill coming within his area of authority. The Opinions that he submits to Parliament are thus intended to inform parliamentary procedure and public debate.

In the course of 2015, the Defender of Rights was heard by Parliament on 29 occasions, that is to say twice as many times as in 2014. Because of current affairs in 2015, many of his contributions were concerned with inquiries in the security field (A), without prejudice to his contributions with regard to the protection of fundamental rights (B).

1. **Reconciling a Guarantee of Respect for Liberties with Legitimate Security Requirements**

The year 2015 was marked by terrible terrorist attacks in January and November, which naturally led to the Institution to express itself on several occasions on the subject of security and with regard to Bills initiated in order to prevent and face up to terrorism.

* **Act No. 2015-912 of 24th July 2015 concerning Intelligence**

The Defender of Rights was heard by the Law Commissions of the National Assembly and of the Senate with regard to a Bill concerning intelligence (Opinions no. 15-04, 2nd April 2015 and no. 15-09, 29th April 2015). His Opinions were structured around three key points concerning **the protection of fundamental rights and respect for private life as guaranteed under European law:**

• he demanded that the law should meet the requirement of predictability. Indeed the Defender of Rights emphasised that the Bill was not specific and explicit enough to ensure that all persons would be informed, in an adequate manner, of the circumstances and conditions under which the law authorised the public authorities to use surveillance techniques and engage in similar infringements of the right to respect of private life and correspondence.

• he denounced inadequate control of requests for authorisation and implementation of intelligence techniques by the National Commission for the Oversight of Intelligence Techniques (CNCTR - *Commission nationale de contrôle des techniques de renseignement*) in terms of means, powers and procedure.

• he drew attention to numerous remaining questions concerning the effective nature of judicial review of decisions by the Council of State, with regard to restrictions placed upon the right to a fair trial.

* **Bill no. 3314 concerning Prevention and the Fight against Incivility, Violation of Public Security and Terrorist Acts by Travellers on Public Transport**

The Defender of Rights warned against the creation of an exception to ordinary law which, by assigning a public security role to private security officers who do not have the legal arsenal surrounding the exercise of “legitimate force” at their disposal, raised difficulties with regard to respect for liberties. The Defender of Rights considers that the internal security services of the SNCF French national railway company and the RATP Paris public transport system should be governed by the Internal Security Code (CSI / *Code de la sécurité intérieure*) rather than the Transport Code (*Code des transports*). Furthermore, he recommends that appropriate training should be given both to new officers and those already holding positions. **Without disregarding the legitimacy of security concerns, the Defender of Rights considers it essential to more specifically regulate and control measures of coercion exercised against the public in SNCF and RATP stations and trains.** He considers that a **traceability** mechanism and controls should be put in place, in order to avoid the creation of new sources of tension. Moreover, the Defender of Rights continues to question the permanent character of measures for fighting against fraud and incivility taken in “*special circumstances connected to the existence of serious threats to public security*” (Opinion no. 15-27 of 11th December 2015).

* **Concerns with Regard to Operation “*Sentinelle*”**

With regard to the effects of the recent terrorist attacks, the Defender of Rights has not failed to raise questions with regard to the legal situation of the 10,000 soldiers deployed within the framework of operation “*Sentinelle*”. In essence, the latter do not have any authority with regard to the maintenance of public order and safety, still less with regard to criminal investigation. In case of incident, they can only use their weapons within the framework of legitimate self-defence and proportionate response. This situation should be taken very seriously from two points of view.  That of the legal protection of the soldiers: how can they defend themselves within a legal framework in order to avoid being simple targets? That of the protection of citizens from an ethical point of view, since soldiers are henceforth on patrol on the public highway in the same way as police and gendarmes: what applicable rules and on what basis? Having discussed his concerns with the Secretary-General for National Defence and Security, **the Defender of Rights will be led to set out his position on the lines of policy that the government is set to establish at the beginning of 2016.**

1. **Contributing to the Reinforcement of Fundamental Rights**

Amongst other legislative texts on which the Defender of Rights has declared his position, we shall examine three examples, which have enabled him to further a certain number of his proposals and suggested amendments.

* **Act no. 2015-1463 of 12th November 2015 and Adoption of the 3rd Protocol to the Convention on the Rights of the Child (Annual Report on the Rights of the Child 2014)**

The Defender of Rights’ continuous action in favour of the signature and ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, has been successful. **Signed on 20th November 2014, this text was ratified on the eve of 20th November 2015, the annual** **Universal Children's Rights Day.**

It is thus henceforth admissible for minors or their representatives to make criminal complaints before the United Nations Committee on the Rights of the Child against violations of their rights, according to their age and level of maturity. The new procedure thus put in place constitutes an additional lever in favour of the defence of children’s rights. At the same time, pursuant to article 27 of the Institutional Act of 29th March 2011 specifying the performance of his duties, the Defender of Rights may “*assist in preparing the case or help the petitioners to identify the appropriate procedures… including when the latter have an international dimension*”.

Following the objections filed by the Defender of Rights and certain representative associations, the Government has abandoned the idea of accompanying the instruments of ratification with a restrictive interpretative declaration.

* **Act no. 2015-925 of 29th July 2015 concerning the Reform of Asylum Law (Opinion 15-05, 1st April 2015)**

Amongst other criticisms made by the Defender of Rights, some had positive results, for example **the abolition of the requirement for the establishment of domicile prior to asylum applications**.

In order to commence formalities at prefectures with a view to asylum applications, foreigners lacking a place of residence had to have the benefit of establishment of their official domicile at the address of an association officially approved by the prefecture, in accordance with a more restrictive procedure than for the establishment of domicile under ordinary law, whose shortcomings the Defender of Rights has had occasion to emphasise for several years.

Indeed, this system enabled prefectures to oblige associations to apply a *numerus clausus* to provisional residence applications*,* meaning that asylum seekers were not immediately registered and were de facto deprived of the benefit of material reception conditions, sometimes for several months. Today, asylum seekers only have report to an association in charge of reception preliminaries, responsible for assisting them in their formalities.

Another improvement resulting from the Defender of Rights’ recommendations: **inclusion in the law of a 3-day deadline for the issuance of proof of asylum applications.**

The Government had announced that prefectures would register asylum applications within three days in order to comply with the “Procedures” Directive, which the Bill was intended to transpose. However, the text submitted to the Law Commission of the National Assembly, concerning which the Defender of Rights declared his position, remained silent on this point and the Defender of Rights therefore recommended that this fundamental provision should be included in the Act, which was acknowledged.

Moreover, the extension of the notion of “reuniting family” (of persons having obtained refugee status) to partners united by a civil solidarity pacts (PACS) and well-known partners was also adopted, corresponding to one of the Defender of Rights’ recommendations in the aforementioned Opinions, as well as a previous recommendation by the *Médiateur de la République* (French Mediator) [formerly an independent government agency with specific regulatory powers in charge of the improvement of relations between citizens and the administration].

* **Act no. 2015-1776 of 28th December 2015 concerning the Adaptation of Society to Population Ageing (Opinion 15-03, 7th March 2015 and 15-19, 9th July 2015)**
* Establishment of loss of autonomy as a prohibited criterion of discrimination mentioned under Act no. 2008-496 of 27th May 2008 concerning the fight against discrimination

A new criterion of discrimination was added to the list established by article 1 of the Act of 27th May 2008: “loss of autonomy”. Although the Defender of Rights’ Opinions had recommended more specific drafting of this article, **the fact remains that this new criterion will, in accordance with the Defender of Rights’ intentions, enable the legal framework of his action to be clarified in the face of situations of abuse and, in particular, reinforce his authority with regard to abuse in private sector institutions.**

Compulsory provision of information with regard to the right to appoint a trusted person as legal representative, before interview with the head of the institution.

In addition, the Defender of Rights was pleased with the reinforcement of the rights of persons catered for in institutions and departments concerned with social welfare as well as healthcare and social welfare. In accordance with his recommendations, information on the right to appoint a trusted person as legal representative will be issued before the residency contract is entered into.<0}

**THE DEFENDER OF RIGHTS AND THE STATE OF EMERGENCY**

On the evening of the attacks 13th November 2015, a state of emergency was immediately ordered for a 12-day period, then extended for a period of three months from 26th November by Act no. 2015-1501 of 20th November 2015 extending the application of Act no. 55-385 of 3rd April 1955 *concerning the state of emergency and reinforcing the effectiveness of the provisions thereof*.

**The Act of 20th November 2015**

Following the adoption of the Act, Parliamentary control was put in place. Under the terms of the new article 4-1 of the amended law of 1955, “*The National Assembly and the Senate shall be immediately informed of measures taken by the Government during the state of emergency. They may ask for any additional information within the framework of the control and assessment of these measures.”*

In this context and in his role of defence of individual rights and freedoms, the Defender of Rights decided to receive any complaints concerning problems connected with the implementation of the measures taken pursuant to the legislation on the state of emergency, in particular through his territorial delegates. Moreover, he has opened a space devoted to the provision of legal information on the Institution’s website (<http://www.defenseurdesdroits.fr/fr/letat-durgence>).

Between 26th November and 31 December 2015, the Defender of Rights thus received **42 complaints concerning measures expressly taken under the state of emergency**, for the most part connected with **searches (18 cases referred) and placements under house** **arrest (11 cases referred)** amongst which 2 resulted in dismissal from employment and loss of an airport security coordinator’s authorisations and official approval. More than a third concerned Ile-de-France.

In addition, complaints were referred to him concerning situations that might be described as “collateral damage” of the state of emergency properly speaking. These included **4 refusals of access to public places** (including exclusion from a cinema, refusal of access to a secondary school for a mother wearing a veil and refusal of access to a police station to a person wearing a veil), **2 arrests for questioning** (of which one was followed by placement in police custody), **1 complaint concerning 2 dismissals from employment for wearing a beard, 1 disciplinary suspension** with reporting **of an employer** due to the nickname entered in the employee’s record, **1 refusal to issue a passport, 1 check at an airport** and **1 vehicle search** in violation of the passengers’ right to privacy.

The Defender of Rights has undertaken to examine complaints coming within his fields of authority in complete independence and impartiality, and in particular “compliance with ethics by persons exercising security activities within the territory of the Republic”, as well as the fight against discrimination, failings in public services and protection of the rights of the child.

At the same time, the Defender of Rights regularly passes on information collected in this way to the National Assembly and the Senate in order to support and enlighten Parliament in its role of control and assessment of the measures taken by the Government within the framework of the state of emergency.

Although certain complaints have already been resolved on the basis of a successful amicable settlement (compensation or adjustment of conditions of house arrest), most are still in the course of investigation and examination in view of the most recent administrative case law. Indeed, within the framework of the increased cooperation put in place in 2015 with the Council of State, the Supreme Court agreed to keep the Defender of Rights informed, on a daily basis, of rulings made by courts, on the substance of cases, and by itself, with regard to disputes concerning the state of emergency.

The Institution will be led to announce its findings, and even its recommendations, at the end of the period of state of emergency opened by the Act of 20th November.

**Revision of the Constitution**

In terms of the prospect of the state of emergency being constitutionalised, as well as extension of deprivation of French citizenship, even before the Parliamentary examination of the constitutional plan, the Defender of Rights considered it his role to declare his position in public debate, in order to thereby recall the fundamental principles of the Republic.

On 23rd December 2015, day of the presentation of the planned constitutional reform to a Cabinet meeting, the Defender of Rights pointed out that he would “*pay particular attention, in particular in view of the first complaints that he is investigating, of respect for the distinction between measures of “restriction” and “deprivation” of liberty recalled by the* *Constitutional Council (*Conseil constitutionnel*) [Decision no. 2015-527 priority preliminary ruling on constitutionality (*QPC*) of 22nd December 2015] for determination of the respective competences of the administrative and ordinary courts.*

*Moreover, and because it will indeed one day be necessary to end the state of emergency, announcements concerning the imminent tabling of a penal text appear to indicate that ordinary law, that is to say “everyday law”, is to be radically hardened. Apart from the fight against the financing of terrorism, the Prime Minister has mentioned the stepping up of identity checks, visual inspection and searching of luggage, modification of the rules of legitimate self-defence etc. It is thus appears that a shift to a regime based upon a permanent state of crisis is taking place, characterised by long-term restriction of the exercise of rights and freedoms. This cannot take place without real and sustained public debate, in which the Defender of Rights will take part by virtue of his constitutional duties”.*

**THIRD PART**

**ONE MISSION: FOUR AREAS OF AUTHORITY**

1. **USERS OF PUBLIC SERVICES’ RIGHTS AND FREEDOMS**

*The Defender of Rights is entrusted with the task of:*

*1° Defending rights and freedoms within the framework of relations with the State administrations, local and regional authorities and public institutions and bodies entrusted with public service roles;*

**\***

Users of public services’ access to rights may be impeded by various obstacles attributable both to failings on the part of these services and the lack of clarity of the applicable legal norms and mechanisms, which are often highly technical and difficult for users to understand.

1. **Protecting Users against** **Failings on the part of Public Services**

Reduction of public expenditure and rationalisation of management methods through control of costs have contributed to deterioration of the quality of service provided by bodies in charge of public service roles and an increase in waiting periods for the processing of applications. In combination with restrictive physical reception practices and a certain lack of clarity as far as the law and applicable mechanisms are concerned, this situation gives rise to numerous complaints.

* **Deteriorated Quality of Service**

In the field of social protection, in which the number of complaints is steadily increasing (more than 40% of cases referred, in all fields), the Defender of Rights observes **a decline in the essential guarantees provided to users of public services by the Act of 12th April 2000 concerning citizens’ rights in their relations with the administrations.** What can be said of free access to legal norms when, in the majority of cases, the examination of claims by social bodies henceforth takes the form of simple internal directives of which nobody is even aware of the existence? What can be said of the provision of information with regard to procedures and deadlines for remedy, which are often absent from notification sent to persons with social security cover when, indeed, the persons concerned are not directed to their Internet accounts in order to consult them? What has become of the compulsory indication of the person responsible for the file, which has disappeared from correspondence sent by social security bodies and has been replaced by a telephone platform number, whose ineffectiveness has already been emphasised?

* **Abnormally Long Waiting Times for the Processing of Claims**

Due to inadequate resources allocated to the competent departments, or poorly anticipated or unanticipated increases in the numbers of claims, users are often faced with unusually long waiting times, during which their access to rights is at least temporarily suspended.

This is well illustrated by the situation of persons with pensions cover under the social security system, awaiting calculation of the amount and payment of their retirement pension. These situations can sometimes continue for many months (and in certain cases several years) and place persons having paid contributions, in particular those with low incomes, in a position of extreme precarity. In addition, users often come up against absence of response on the part of the social protection bodies, and are unable to obtain any explanation concerning the delay affecting them. This absence of provision of information inevitably feeds a feeling of lack of consideration which worsens the person’s distress.

In another field, these abnormally long waiting times for the processing of claims also affect asylum applications, which involve essential rights. Apart from the problem of the management of queues within prefectures for the lodging of residence permit applications, a case was referred to the Defender of Rights concerning a Madagascan national who, having requested residence authorisation as a French national’s wife, was issued with a certificate of application by the prefecture concerned, instead of the acknowledgement of receipt authorising her to work as provided for by law. This insecure situation, which required renewal of the certificates of application every four months, continued throughout the two years during which her application was processed by the prefecture. After action on the part of the Defender of Rights, she was issued with a long-stay visa marked “private and family life” issued to her as the spouse of a French national (MDE/2015-311 of 4th January 2016).

* **Complex Legal Norms and Mechanisms: an Administrative Maze**

Access to the legal rules and mechanisms guaranteeing certain rights is often difficult. They call upon technical knowledge which cannot be expected from the majority of users. The latter are often unaware of the scope of the rights which they can claim, the required conditions for entitlement thereto and the documentary evidence to be provided etc. The problem is all the more serious insofar as deterioration of the service provided and the previously noted physical reception practices contribute to increasing this lack of clarity.

The implementation of tax credit for expenditure for improving the environmental quality of housing (article 200c of the General Tax Code (*Code général des impôts*)) has been referred to the Defender of Rights on numerous occasions: this scheme has been reformed every year since 2009! Tax payers are often unaware of the scope of these successive changes concerning details – for example, the number of windows to be changed – which have often given rise to numerous tax adjustments. Although overall, the Directorate General of Public Finances (DGFIP / *Direction générale des finances publiques*) has shown understanding and agreed to remit increases and penalties after action on the part of the Defender of Rights, instability of this kind gives rise to numerous disputes, and above all to incomprehension on the part of taxpayers, who are granted tax credit for one year and meet with a refusals or increases the following year.

Similarly, allowances granted to ensure the territorial continuity of public services raise difficulties of the same kind. Numerous decisions of incompetency issued to applicants have thus been referred to the Defender of Rights, since jurisdiction in this regard was transferred from the national student welfare office (CNOUS / *Centre national des œuvres universitaires et scolaires*) to the French overseas departments and territories migration agency (LADOM / *Agence de l’outre-mer pour la mobilité*) on 1 June 2010. The national student welfare office (CNOUS) then transferred the applications remaining to be processed for the 2009-2010 university year, considering that they no longer came within its jurisdiction. These applications were not then processed by the French overseas departments and territories migration agency (LADOM), which considered that applications made prior to the 2010-2011 university year did not come within its jurisdiction. The Defender of Rights approached these two bodies, enabling the payment of the allowance by the CNOUS. However, from the point of view of the applicable mechanisms’ lack of clarity, it should be pointed out that there henceforth exists a risk of confusion for students from Réunion, due to the establishment of a territorial continuity allowance for the Réunion region in 2015, which cannot be claimed at the same time as allowances paid by LADOM.

1. **Pragmatic Solutions**

The solutions provided by the Defender of Rights in order to guarantee access to rights for users of public services implement a pragmatic combination of amicable settlement of disputes and provision of expertise.

* **The Results of Mediation in Access to Rights**

The partnership-based approach implemented by the Defender of Rights with the major social protection bodies as a whole constitutes the primary source of amicable settlement of complaints. For this reason, in the face of the scale of problems encountered by users, this year the Defender of Rights wanted to meet the managers of the principal bodies (the social insurance system for the self-employed (*Regime social des indépendants*), the national pension fund (*Caisse nationale d’assurance vieillesse*), the interprofessional provident insurance and pension fund (*Caisse interprofessionnelle de prévoyance et d’assurance vieillesse*), the central fund of the agricultural compulsory mutual social insurance scheme (*Caisse centrale de la mutualité sociale agricole*) etc. in order engage in discussion with them about the numerous failings ascertained through complaints.

He thus took action in order to break the deadlock in the situation of a person unable to obtain calculation of the amount and payment of a reversion pension, since the pension and occupational health insurance fund (CARSAT - *caisse d’assurance retraite et de la santé au travail*) could not obtain any information from the interprofessional provident insurance and pension fund (CIPAV - *Caisse interprofessionnelle de prévoyance et d’assurance vieillesse*) to which her deceased husband had contributed, concerning the number of quarters validated by the latter body and the amount of the reversion pension to be paid. The Defender of Rights obtained the essential information for calculation of the amount and payment of this pension from the CIPAV (MSP/14-5544).

**Mediation also enabled the cost of transport of a child, obliged in view of his pathology to stay at a children’s healthcare institution (MECS / *Maison d’enfants à caractère sanitaire*) located more than 600 kilometres from his home, to be taken care of by a state national health insurance office (CPAM / *Caisse primaire d’assurance maladie*).** Although the claim for payment of air transport costs had initially been rejected by the **state health insurance office (CPAM)** on the grounds that these journeys did not constitute medical treatment, **the Defender of Rights impressed upon the** French national health insurance fund for employees (**CNAMTS** / *Caisse nationale de l’assurance maladie des travailleurs salariés*) **that there were no grounds to take this criterion into account in this instance, insofar as these costs were connected with the child’s hospitalisation.** The **CNAMTS** agreed with this analysis and considered that since the MECS was a health institution considered to be an alternative to hospitalisation, the costs of transport to these centres indeed came under article R. 322-10 1° of the Social Security Code (*Code de la sécurité sociale*) and should be paid by the body (MSP/14-5751).

An identical mediation procedure made it possible to end the deadlock in the situation of an employee who had been refused payment of daily allowances of sickness benefit for her second pregnancy, which occurred during her parental child-rearing leave. According to the state national health insurance office, the employee should have returned to work, for a least one day, at the end of this leave before taking maternity leave; however, the employee did not meet the conditions fixed under article L.1225-52 of the Labour Code (death of child or sharp reduction in the household’s resources) in order to be able to bring her parental leave to an end. The Defender of Rights impressed upon the **CNAMTS** that this analysis was based upon an erroneous interpretation of article L.1225-52, which is only concerned with return to work. As far as maternity leave is concerned, these provisions on the contrary have to be combined with those of article L.1225-17 of the same Code, which provides that leave of this kind shall begin six weeks before the expected date of birth, without the possibility of any other requirements being set. In addition, he recalled the personal nature of maternity leave entitlements, established by European Community law on several occasions. After re-examination of its position, the **CNAMTS** agreed togrant daily maternity benefit allowances, to social security contributors as from the date of ending of their parental child-rearing leave, thus going back on its interpretation of article L.1225-52 of the Labour Code (MSP/14-4373).

However, this type of mediation procedure is not always appropriate. This is well illustrated by the case of the crossing of private property by electric power distribution structures, in the absence of easement agreements lawfully entered into with the owners (pylons, electrical cables, transformers etc.). The location of public electric power distribution structures has to comply with current regulations and protect owners’ rights to have their property at their disposal, and in particular to enclose and build, while taking into account the public interest pertaining to maintenance of the public supply of electric power. The responses made to the Defender of Rights’ officials by *Électricité Réseau Distribution France* (ERDF) (Company in charge of the management of France’s electrical power distribution network) regularly acknowledge the impossibility of producing the requested easement agreements, but assume that these structures are lawful by virtue of the sole fact that they have been in place for several years. In the majority of cases, this does not enable investigation of complaints with a view to amicable settlement. In a few very specific cases, solutions have nevertheless been found at the local level in order to rectify the situation.

**The Meaning of Absence of Response to Claims**

A reform was announced in May 2013, reversing the traditional principle that failure on the part of administrations to reply to applications submitted to them amounted to *refusal* thereof, meaning that such absence of response would henceforth amount to *acceptance*. This was presented as a measure simplifying relations between users and the administration.

By the Act of 12th November 2013, the legislature made provision for the progressive implementation of this rule. **Since 12th November 2015, it has applied to all administrations.** However, the Act of 2013 had made provision for an initial series of exceptions to this principle (for administrative complaints and remedies, claims of a financial character and claims concerning relations between officials and their administrations etc.). 42 decrees have been made since that time, bringing the number of exceptions to over 2000…!

How can this situation be understood in order to interpret the meaning of absence of response on the part of administrations and the resulting consequences? Paradoxical simplification…

<http://www.legifrance.gouv.fr/Droit-francais/Silence-vaut-accord-SVA>

* **Expertise in Disputes placed at the Users’ Service**

The submission of observations, which has been tried and tested in the fight against discrimination, has fully established its place in defence of the rights of users of public services, without hindering the partnership-based approach with which it is combined.

**This is well illustrated by the difficulties encountered with the** **social insurance system for the self-employed (RSI / *Régime social des indépendants*), which punctuated the year 2015.** The Defender of Rights was led to make submissions before the courts for complaints concerning refusals of claims for daily sickness benefit allowances by the RSI self-employed social insurance fund on the grounds that the persons concerned had been affiliated to this scheme for less than one year (article D. 613-16 of the Social Security Code), despite the fact that before their affiliation to the RSI, they had been claiming unemployment insurance benefit, and were affiliated to the general social security system. Notwithstanding article L. 172-1 A of the Social Security Code introduced by the Act of 19th December 2007, acknowledging the continuity of entitlements acquired under the former system of affiliation insofar as new entitlements had not accrued under the new affiliation, the national RSI self-employed social insurance fund maintained an interpretation of the texts derived from case law established prior to the incorporation of this provision into the Social Security Code (Court of Cassation, 2nd Civil Division [*Cass. civ. 2ème*], 12th July 2006, no. 05-12802).

**The Defender of Rights considered that in the absence of any break between two successive affiliations, it was incumbent upon the RSI fund to apply the provisions concerning coordination between the various different social security schemes.**

Following the Defender of Rights’ submission of these observations (MSP/ 2015-109, 12th June 2015) and in continuity with the ruling delivered on 7th September 2015 (2nd Civil Division [*Cass.civ. 2ème*], 17th September 2015, no. 14-22931), **the Court of Cassation dismissed the appeal on points of law brought by the** **national RSI self-employed social insurance fund**, deeming that the previous period of affiliation should be taken in account, including with regard to the maintenance of entitlements, within the framework of examination of the condition of one year’s affiliation to the scheme (Civil Division [*Cass. Civ.*], 26th November 2015, no. 14-22926)

**Finally, it is to be noted that in 2015 the Defender of Rights submitted observations before a professional association for the first time, the** **French national professional association for doctors (*Conseil national de l’ordre des médecins*).** This concerned a refusal of treatment based upon the mode of cover of health insurance (State Medical Assistance [*aide médicale de l’Etat* – AME]), which the complainant considered to be discriminatory. The doctor confirmed that the consultation had been refused on the basis of AME State Medical Assistance, due to the administrative burden involved therein. The Defender of Rights decided to set out his observations before the disciplinary court of first instance of the *Ordre des médecins* professional medical association and recalled that the conditions of management of health insurance could not justify refusal of treatment under the terms of article L.1110-3 of the Public Health Code (*Code de la santé publique*). He concluded that a refusal of treatment of this kind was discriminatory in nature and recommended that the actors concerned should undertake joint reflection with regard to the justifications used by health professionals. Following the disciplinary court of first instance’s decision to dismiss the complaint, the professional medical association’s national committee itself decided to lodge an appeal, partly taking up the Defender of Rights’ arguments (MSP/2015-039, 19th February 2015).

*For the exercise of these areas of competence, the Defender of Rights is assisted by a* *Delegate-General for mediation with the public services,* ***Mr Bernard Dreyfus****.*

In view of the fact that complaints coming within this area of duty represent around 80% of the total and constitute the territorial delegates’ main activity, several different working groups are responsible for following up this work. In 2015, a committee for relations between users and public services was established. It brings together about fifteen associations representing various different sectors of activity (teaching, health, transport, energy and services etc.).

**The Principal Grounds for Complaints Submitted to the Institution in the Field of Public Services**

**Social Protection: 37.7%**  
Old age pensions, affiliations and contributions, family, disability, social security and healthcare benefits

**Work and Unemployment: 9.9%**Professional occupation and career, management of public servants, unemployment

**Tax: 8.1%**Income tax, local taxes, VAT

**Road-traffic law: 7.9%**  
Driving licenses, fines for motoring offences, identity theft

**Law pertaining to foreign nationals and nationality: 5.9%**  
Visas, residence permits, family reunification

**Deprivation of liberty: 5.8%**  
Prisoners’ rights, prisons administration

**Local and regional authorities: 5%**  
Access to services, subsidies

**Environment and urban planning: 4.9%**

**Economic public services: 3%**  
Local public services, EDF, GDF, France Télécom

**Health: 2.9%**  
Patients’ rights, medical incidents, violence, infections associated with treatment, occurrences connected with health products

**State Liability: 2.7%**  
Claims for compensation, actions to recover damages paid on behalf of another

**Civil status: 2.1%**  
Birth certificates, identity papers, guardianship, registration of acts

**Local authority housing: 1%**

**National education and higher education system: 0.8%**

**Other: 2.3%**

**For Information**

**45%** of complaints concern obstacles to social entitlements and obtainment thereof

**Major issues** referred to delegates: **90% of complaints received** by the delegates at their offices involve questions connected to the functioning of public services

**II. THE BEST INTERESTS AND RIGHTS OF THE CHILD**

*The Defender of Rights is entrusted with the tasks of:*

*2 ° Defending and promoting the best interests and rights of the child as enshrined by law and by international covenants legally ratified or approved by France;*

**\***

2015 was a critical year since, the Defender of Rights, who is in charge of ensuring compliance with the Convention on the Rights of the Child (UNCRC), **presented his first report to the United Nations Committee on the Rights of the Child during the summer** in preparation for France’s hearing, on 13th and 14th January 2016[[4]](#footnote-4).

The concerns and positions expressed therein provide inform and inspire the whole of the Institution’s actions in favour of the protection and promotion of the rights of the child.

Moreover, this year more than 50% of individual complaints referred to the Defender of Rights in the childhood field were once again concerned with family law and child protection, which explains his high level of involvement in these questions.

In view of the interest that the Institution also takes in disability issues, the Defender of Children took a particular interest in the situation of children located at the intersection between two mechanisms: child protection and provision of support measures for dealing with disabilities. **In the face of these children’s invisibility, the Defender of Rights decided to devote his Annual Report for 2015 to them:** ***Enfants handicapés et protection de l’enfance : des enfants invisibles[[5]](#footnote-5)* [“Children with Disabilities and Child Protection: Invisible Children”]***.*

These two Reports are more specifically mentioned in part II of this Report.

1. **A Commitment to Child Protection**

* **The Situation of Unaccompanied Foreign Minors**

In French overseas departments and territories and Metropolitan France alike, the Defender of Rights once again maintained **particular vigilance with regard to the situation of unaccompanied foreign minors**, an issue at the centre of the Defender of Rights’ trip to Mayotte in September 2015, which gave rise to a new Mission Report (<http://www.defenseurdesdroits.fr/fr/publications/rapports/rapports-thematiques/mayotte-situation-sur-les-droits-et-la-protection-des>). On the one hand, within the framework of following up his general recommendations published in December 2012 (MDE/2012-179) and August 2014 (MDE/2014-127), and also owing to the continuing flow of individual complaints on issues of access to rights and to the courts, provision of shelter, assessment, schooling etc. Observations were submitted to the courts, and before the Court of Cassation in particular, and the Defender of Rights had the opportunity, within the framework of Parliamentary debate, of reasserting **his desire that the completion of medical examinations for the purposes of determining young migrants’ ages should be definitively brought to an end** before the Rapporteur of the National Assembly.

* **Violence against Children**

In order to fight against violence committed against children, the Defender of Rights was led to take action at an international level. He thus contributed to the European “Let’s Talk Young” project on violence against children. This 2015 project of the European Network of Ombudspersons for Children (ENOC), of which the Defender of Rights is a member, asked about twelve young people in 10 countries to speak about the issue of “*Violence against children*”. It enabled their voice to be heard on an issue which directly concerns them. Their contributions are gathered together on a Blog: [https://projetenoc.good or very good wordpress.com/](https://projetenoc.wordpress.com/).

* **Child Welfare**

In the placement of children it remains an essential consideration to take the child’s best interests into account, as well as the stability and permanence of the measures provided for them, which are henceforth part of a declared will to ensure that the child’s course of placement is made secure.   
  
In addition, for children it appears important that, at the time of entrusting them to foster families employed by the councils of French departments, family placement services and educational services should take the age of the child, as well as the age of the family assistant, more effectively into account. Indeed, family assistants may reach the age limit for employment in civil and local government service while providing care for the child. The question of retirement then appears brutal and complex for both the child and the family assistant.  
  
The Defender of Rights recalls the importance of the age difference between the child and the family assistant to the councils of French departments (MDE/2015-290, 3rd November 2015). He recommends ensuring proper provision of information to family assistants, by systematically taking up the question of the relation between the length of the agreement and the age limit for employment in civil and local government service. He recommends putting retirement preparation interviews in place, in the interests of both the children catered for and the family assistants, in order to raise any possibilities of continuing to work beyond the age limit.

Finally, the Institution continued (cf. Opinions nos. 14-08 and 14-09) to act in the course of the parliamentary discussion on the private member’s Bill concerning child protection (Opinion no. 15-08) and also issued an Opinion on Act no. 2015-1402 of 5th November 2015 which, as recommended by the Defender of Rights, enabled the training given to professionals in contact with abuse to be supplemented by training in procedures for the reporting thereof to the administrative and legal authorities (Opinion no. 15-14).

1. **A Commitment to the Effectiveness of the Rights of the Child**

The Defender of Rights is committed to promotion of the rights of the child and acts in the face of the continuing ineffectiveness of some of these rights. This is the case, in particular, of the right to healthcare and the right to education.

* **The Right to Healthcare**

At the time of the meetings of the Defender of Rights’ Joint Committees on Health and Child Protection in the autumn of 2013, the deterioration of care provided for hospitalised children and adolescents was raised. In 2014, in order to examine these findings more closely, the Defender of Rights put in place a Children and Hospitals working group, bringing together representatives of institutions, associations and hospital professionals. In first place, this working group noted that respect for children’s rights in hospital was marked by major differences at the territorial level as well as, more seriously, the existence of major differences in some cases within the same hospital, between paediatric departments, highly specialised departments and general departments. Inequalities are thus to be found at all levels: provision of care for children and adolescents, access to information, rights and treatment, presence of parents and siblings, pain management etc.

Following this work, in September 2015, **the Defender of Rights adopted a decision concerning respect for the rights of children and adolescents within health institutions** (MDE-MSP/2015-190, 4th September 2015), which sets out about fifteen recommendations aimed at guaranteeing respect for the rights of hospitalised children and adolescents.

* **The Right to Education**

This year, in following up individual cases referred, the Defender of Rights was led to recommend that special attention should be paid to the situation of young people engaged in apprenticeships (MDE /2015-066, 29th April 2015), as well as respect for schoolchildren’s rights in the organisation of disciplinary committees, in particular in private institutions under contract with the State (MDE/ 2015-128, 28th May 2015).

Convinced that all progress made for the weakest has a lever effect in favour of change to the advantage of all, the Defender of Rights is heavily engaged in favour of foreign children residing in shanty towns, as well as children with disabilities, whose access to schooling and extracurricular activities is too often impeded. In order to increase the effectiveness of each of these children’s rights, the Defender of Rights implemented the whole of his means of action (mediation, reminders of the law, recommendations, reports, observations before the courts) and also undertook transverse initiatives aimed at encouraging dialogue and cooperation between the various different actors (State, departments, local and regional authorities, civil society etc.).

The Institution thus continued its action in favour of access to activities in extra-curricular time for children with disabilities. The reform of school timetables launched in 2013 was brought into general use with the commencement of the new school year in 2014. This reform, and the increase in extracurricular time accompanying it, raises the question of access to these activities for children with disabilities. Indeed, since these are optional public services, when they are put in place they should be open to all children, including children with disabilities.

In the course of 2015, apart from is actions for individual cases, the Defender of Rights therefore undertook several initiatives in order to make the right of access to extracurricular activities effective for all children. Having gathered together the actors of extracurricular activities in the course of the month of June 2015 in order to set up a watchdog within departments, the Defender of Rights worked in association with the French national solidarity fund for the autonomy of elderly and disabled people (CNSA - *Caisse nationale de solidarité pour l’autonomie*) and the Ministry of National Education in order to identify the measures to be put in place at the start of 2015-2016 year. The CNSA thus made a request to Departmental Disability Support Centres (MDPH - *Maisons départementales des personnes handicapées*) for an assessment to be made of the need for support measures for children with disabilities in extracurricular time. In addition, the Ministry of National Education asked the educational departments to facilitate the use by local and regional authorities of assistants for pupils with disabilities (AESH - *Accompagnants des élèves en situation de handicap*).

In the light of an assessment undertaken in November 2015, the Defender of Rights will approach the Assembly of Departments of France (*Assemblée des départements de France*) in order to emphasise the disparities in the functioning of Departmental Disability Support Centres (MDPH), in terms of assessment of the support needs of children with disabilities, and to point out the difficulties ascertained with regard to collective transport.

Moreover, numerous initiatives were undertaken with a view to raising children’s awareness of their rights. Two of these may be mentioned as particularly illustrative of the approach taken by the Institution.

In the capacity of Chair of the *Comité spécialisé sur les droits de l’enfant de l’Association des Ombudsmans et Médiateurs de la Francophonie* (AOMF - “Special Committee on the Rights of the Child of the Francophone Association of Ombudspersons and Mediators”), the Defender of Children and Deputy Defender of Rights coordinated the organisation of the “*Tes droits, c’est tout un art !*” [“Your rights are an art in themselves!”] Exhibition. Young people from six different French-speaking countries were thus able to express their perception of children’s rights through drawing, poetry, song and sculpture etc. after their awareness of their rights had been raised by the various different tools created by the AOMF, such as videos and their educational file also completed in 2015: <http://www.aomf-ombudsmans-francophonie.org/aomf-enfants/l-aomf-et-les-droits-de-l-enfant/videos-decouvre-tes-droits_fr_000241.html>

**The Defender of Rights Initiatives in Favour of the Education of Young People in Their Legal Rights**

In view of the importance of legal rules in our society, the Defender of Rights intends to contribute to young people’s education in their legal rights.

The law is essential to the functioning of our social contract and omnipresent in daily life. Indeed, it fulfils indispensable functions: it organises and makes life in society possible, provides the basis and framework for action on the part of the authorities, expresses and protects collective values, defines the boundaries of the rights and duties of all and enables the pacific settlement of conflicts, if necessary through the courts.

For this reason the Defender of Rights considers that acquisition of the fundamental notions of the rule of law by young people should be part of the common base of knowledge and skills that their educational environment is in charge of passing on to them, in order to prepare them for the exercise of active and responsible citizenship.

To this end, he wishes to involve legal professionals and actors from the educational world within the framework of partnerships entered into with the Institution. Moreover, the agreement signed on 7th January 2016 with the Ministry of National Education provides for The Defender of Rights’ involvement in the objective of education in law included in the new moral and civic education programme. This project will also lead to the creation of a digital space providing access to suitable and varied educational resources.

On 20th November 2014, and throughout the year 2015, France celebrated the 25th anniversary of the United Nations Convention on the Rights of the Child. **An operation of approval of independent events by the Defender of Rights was thus launched, by means of the award of an official label, in order to mobilise actors and promote the visibility of their actions.** The official label was thus awarded to high-quality physical and virtual initiatives, materials and events intended for children, adults, professionals and the public at large, making direct reference to the [United Nations Convention on the Rights of the Child](http://www.defenseurdesdroits.fr/sites/default/files/upload/defense_des_droits_des_enfants/Convention-internationale-des-droits-de-lenfant.pdf).

A hundred or more projects promoting the rights of the child were awarded official labels by the Defender of Rights:<http://25anscde.defenseurdesdroits.fr/projets_labellises.html>).

In addition, the Defender of Rights undertook **an initiative for raising young people’s awareness of legal rights within the framework of school life and places providing extracurricular activities.** In the first place, this involves facilitating and increasing the initiatives of legal professionals (lawyers, members of the national legal service, academics etc.) working with these audiences and actors from the educational world (teachers, popular education movements, the judicial youth protection service (*protection judiciaire de la jeunesse*) etc.) by promoting networking and pooling of their experience. **The “Young Ambassadors for Children’s Rights”** (**JADE - *jeunes ambassadeurs des droits auprès des enfants*) are involved in this initiative.** The latter, who are trained and organised by the Institution, thus acted in 17 departments raising the awareness of 32,340 young people in the course of the year.

*The Defender of Rights chairs the committee which assists him in the exercise of his jurisdiction with regard to defence and promotion of the rights of the child …/… (article 11 of the Institutional Act concerning the Defender of Rights).*

***Ms Geneviève Avenard****, Defender of Children, Deputy Defender of Rights, Vice-Chair of the Committee on the Defence and Promotion of the Rights of the Child*

This committee is composed of six members:

Ms Dominique Attias, barrister, Vice-Chair of the Bar of Paris, Mr Christian Charruault, divisional President at the Court of Cassation, Mr Eric Legros, psychoanalyst and former director of a (child protection) association, Mrs Anne-Marie Leroyer, lecturer at the Sorbonne School of Law and specialist in law of persons and family law, Mr Jean-Pierre Rosenczveig, honorary member of the youth court of Bobigny, Ms Françoise Simon, Director of Child and Family Affairs of the Council of the Department of Seine-Saint-Denis.

The *Defence and Promotion of the Rights of the Child* Committee met five times in 2015. Apart from the exchanges and debates which it organised, it was consulted in particular with regard to planned recommendations concerning child protection: this is illustrated by the recommendations issued after consultation of this panel with regard to the child welfare plan ([MDE/2015-103 of 24th April 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mde-2015-103-du-24-avril-2015-relative-des)) and the age limit for family assistants ([MDE/2015-290 of 3rd November 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mde-2015-290-du-3-novembre-2015-relative-la)).

**The Principal Grounds for Complaints Sent to the Institution in the Field of the Defence of Children**

**Child protection / protection of children**

2015 : 30%  
2014 : 28%

**Filiation/Relations of descent and family law**

2015 : 23 %  
2014 : 25%

**Early years education / schooling / extracurricular activities**

2015 : 21%  
2014 : 18%

**Health/ disabilities**

2015 : 12%  
2014 : 13%

**Foreign minors**

2015 : 10%  
2014 : 13%

**Criminal justice**

2015 : 2%  
2014 : 2%

**Child adoption and fostering**

2015 : 2%  
2014 : 1%

**Distribution of cases referred by complainants**

Mother: 29.4%

Others: 18.9%

Father: 13.2%

Associations: 12.5%

Parents: 11.9%

Children: 4.9%

Grandparents: 4.2%

Close friends and relations: 2.2%

Health and social welfare services: 1.4%

Ministry of Foreign Affairs: 1.4%

**For information:**

**30%** of cases of complaints concerned children between 11 and 15 years of age  
Followed by **3 other age groups**: 0 to 6 years (23%), 7 to 10 years (23%), 16 to 18 years (24%).

The “**Others**” category of complainants therefore includes: “JADE, School, Lawyers, MPs and Elected Representatives etc.”

The “**Parents**” category corresponds to cases jointly referred to us by both parents.

1. **THE FIGHT AGAINST DISCRIMINATION**

*The Defender of Rights is entrusted with the tasks of:*

*3 ° Fighting against direct and indirect discrimination prohibited by law or by international undertakings lawfully ratified or approved by France, as well as promoting equality;*

\*

The complaints received over the last 10 years constitute a real mine of information on the discriminatory practices and difficulties with which people are confronted. **Continuing a strategy combining improvement of knowledge of the complaints that he receives and of the manner in which discrimination arises and takes concrete shape, the Defender of Rights intends to mobilise all of his levers of action in order to improve understanding of situations of discrimination and push back the boundaries of the effectiveness of rights.**

His overlapping areas of authority including rights and freedoms in public services, security ethics and children’s rights enable him to have an understanding of the intersecting questions concerning the most vulnerable groups subjected to discrimination, which are not successfully dealt with by the legal framework of discrimination alone.

**The inequalities to which persons with disabilities are subjected provides an enlightening example.**

**At the time of the 10th anniversary of the Act of 11th February 2005, the Defender of Rights thus published a** [**Report**](file:///C:\Users\slatraverse\AppData\Local\Microsoft\Windows\Anniversaire%20loi%20de%202005\Bilan%20DDD%20et%20Handicap\10ansactionsdroitpersonneshandicapees-100215-accessible.pdf) **assessing the numerous actions which he undertook, between 2005 and 2015, for the defence of disabled people’s rights, illustrating his constant involvement in this field.** Due to the transverse nature of his duties and his action throughout national territory, including in French overseas departments and territories, the Defender of Rights is, indeed, in the front line for examining the difficulties that fill the daily lives of persons with disabilities and for ensuring the implementation of their rights. 10 years after the promulgation of the Act of 2005, the Report shows an uneven picture: although progress has been made in many areas, considerable delays remain. By way of example, with regard to education, although the Act gave undeniable impetus to the schooling of children with disabilities in an ordinary environment, the fact remains that today several thousand disabled children are still deprived of their fundamental right to education due to lack of places in health and social welfare institutions and services. Similarly, as far as employment is concerned, in spite of what is intended to be a highly protective legal framework and the constant engagement of the various different actors, employment constitutes the primary domain in which discrimination occurs on the basis of disability.

In order to assess the situation in concrete terms, 10 years after the promulgation of the Act of 11th February 2005, the Defender of Rights went to the Nord department in order to meet the managers of the Departmental Disability Support Centre and his contacts within associations, and to visit an institution catering for elderly persons with and without disabilities. This trip also provided an opportunity to visit a Belgian institution catering for persons of French nationality with disabilities.

1. **The Fight against Employment Discrimination Remains a Central Objective**

* **Access to Employment**

The labour market is affected by serious tensions and access to employment constitutes an obstacle course that encourages discriminatory practices. Although the scale of this phenomenon is well-known, repression remains insufficient to make a significant impact.

On the one hand, there is an obvious and great difference between the reality of discrimination and the number of complaints made to the Defender of Rights. In particular, the objective of the promotion of equality and access to rights is to reduce this discrimination.

On the other hand, in view of the large number of complaints concerning employment discrimination, the results obtained at the time of investigations and inquiries conducted by the Institution are not satisfactory, in particular with regard to discrimination on the basis of the person’s origin.

In order to improve the handling of these cases, the private employment agency (*pôle Emploi privé*) put together a working group for the purpose of specifically examining complaints concerning refusals of recruitment on the basis of which it was not possible to successfully handle, in order to renew the methods of inquiry used and administer the burden of proof more effectively.

More than 1500 cases were thus analysed and 600 cases were selected in order to feed reflection on the lines of policy to be applied.

Certain findings can now be made. Inquiries can be successfully conducted when a situation test completed by the complainant, giving rise to inter partes responses from the employer, make it possible to provide grounds for requests for justification. In several cases in 2015, these inquiries gave rise to decisions which then led to payment of compensation to the complainant by means of a formal settlement.

Apart from discrimination tests, situations in which rejected job applications can be compared with other applications, and in which it is possible to gain access to traces left by persons responsible for discrimination at the time of the recruitment operation, enable the establishment of proof. The length of time for which information is kept therefore becomes a real factor of the effectiveness of protection against job recruitment discrimination.

**In 2015, the Defender of Rights already wanted to reinforce access to evidence of this kind of discrimination, in terms of the length of time for which data collected within the framework of recruitment processes is stored.** He undertook joint work with the CNIL (the French data protection authority) in order to ensure that archives are stored for a period corresponding to the prescription period fixed at five years with regard to employment discrimination (MLD/2015-104, 20th May 2015).

**Transgender persons** also encounter difficulties at the time of job recruitment. Thus, in one case in which the complainant had received an offer of employment as coordinator, on the basis of a telephone interview and her CV alone, she was refused after having arrived at work for the first time: the employer, having realised that she was a transgender person, decided not to go through with the recruitment. In a ruling of 4th June 2015, on the basis of an inquiry by the Defender of Rights, the industrial arbitration court of Tours, granted a sum corresponding to five months’ wages as compensation for the prejudice suffered. (MLD/2013-203, 4th November 2013).

**Minimum or maximum conditions of age,** continue to hinder access to certain public sector jobs. The movement of progressive removal of these obstacles, which has been underway for several years, made new progress in 2015. The Defender of Rights presented his observations before the Council of State in a case concerning the minimum age of 40 years required of candidates for the second competitive examination for lecturers in public law, considering that it was not justified by objective factors and constituted discrimination (MLD/2015-020, 20th January 2015). The Council of State declared rejections of candidature of this kind to be null and void on the grounds that the difference in treatment did not meet any essential and decisive professional requirement (CE., 26th January 2015, no. 373746).

The Defender of Rights also recommended the abolition of the age limit of 50 years for access to competitive examinations for hospital doctors in state employment in French Polynesia (MLD/2015-36, 20th February 2015).

The Defender of Rights regularly organises meetings of employment agencies and encourages their involvement, by means of the “[*Ensemble pour l’égalité dans les recrutements*”](http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_cha_20130710_intermediaires_emploi.pdf) [“All Together for Job Recruitment Equality”] Charter and the distribution of posters and a leaflet informing job applicants of their rights in the face of recruitment discrimination. A guide has been produced for professionals, with their support, in order to specify legal risks and good practices to be put in place in order to “[**Recruit with digital tools without discrimination**](http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/636150490_int_valide_ft_fini_complet.pdf)”.

* **Career Paths**

Once again this year, **one can only note the persistence of differences in pay between women and men.**

The Defender of Rights received the results of a study on the situation of women in public employment. Jointly financed by the General Directorate for the Administration of Public Employment (DGAFP - *Direction générale de l’administration et de la fonction publique*) and the Defender of Rights and launched in 2013, **it reported an average wage difference of 12% between women and men in public employment (as against 19% in private sector)** and greater difficulty in moving up the pay scale for women. Occupational segregation also continues in the public sector with a major impact on wage differences, while maternity remains a major source of wage inequality. Today the results of this research constitute means of mobilisation against these continuing inequalities within public employment, which for a long time wrongly considered itself to be exemplary because of the egalitarian virtues of competitive examination and the framework of employment.

In this period of tensions it appears important to emphasise that **complaints concerning discrimination within careers on the basis of the person’s origins** are distinguished insofar as in most cases they mention direct discrimination expressed in concrete terms by situations of violence and hardship at work. This violence takes the form of harassment by senior managerial staff and colleagues. Yet, despite very clear case law, when public employees and officials complain, employers are slow to respond, or respond in an inadequate manner, showing great reluctance to sanction the persons responsible. The more serious the situation, the more the handling of the case is rendered difficult for the victim by the work context, and this problem increases in proportion to the size of companies. The burden of the complaint is borne by the victim, presenting a major problem in terms of effectiveness of rights.

Difficulties arise in employment when the **employee’s state of health** is affected, and refusals to cooperate on the employer’s part still often resemble harassment. Although case law with regard to the occupational redeployment of unfit employees is henceforth well-established, the Defender of Rights still receives a large number of complaints concerning their state of health. The judge may order the employer to pay considerable sums and pronounce their reinstatement within the company. The Defender of Rights’ experience in disputes in this area is often called upon. However, proceedings can be very long. At the end of seven years of proceedings, and after adjournment by the Court of Cassation, in a case in which the Defender of Rights submitted observations, the Court of Appeal of Agen considered that the real grounds of dismissal was the employee’s state of health and declared the dismissal null and void on the grounds of discrimination (MLD/ 2012-68, 24th May 2012). It ordered the company to pay a sum of 28,200 euros in damages and found in favour of the employee’s request by ordering the latter’s reinstatement in the company. Furthermore, it ordered the employer to pay wage arrears to the amount of 392,000 euros due to the nullity of the dismissal.

1. **Guaranteeing Equality of Access to Goods and Services**

Discriminatory practices concerning goods and services are particularly prejudicial to people’s daily lives and living conditions. For example, in the banking sector, the **right to a bank account** constitutes a major issue of access to rights for all persons in a situation of precarity, whether recently arrived on French territory and/or homeless (2015-108, 13th May 2015 / 2015-281, 21st December 2015 and 2015-302, 21st December 2015).

**Discriminatory practices are also observed in connection with people’s surnames, illustrating the persistence of prejudices which harm the person’s very identity,** including the difficulties encountered by married women in freely using their surnames and the obstacles encountered by transsexual persons, in having their changes in first name and/or sex taken into account. When called upon by an association, the Defender of Rights adopted a general recommendation aimed at recalling the legal framework and emphasising that titles do not have any legal value, being only a social convention and not a component of civil status (MLD/2015-228, 8th October 2015).

Complaints were also referred to the Defender of Rights concerning **restrictions with regard to access to marriage for all** laid down by the circular of 29th May 2013 presenting the Act opening marriage to persons of the same sex, insofar as it excludes persons of eleven different nationalities due to bilateral agreements entered into with these countries. The Defender of Rights considered that refusals of marriage of this kind were of a discriminatory nature in particular with regard to the European Convention on Human Rights and decided to submit his observations before the Court of Cassation (MLD/2014-72, 9th April 2014). In its decision delivered on 28th January 2015, it considered that the Moroccan law prohibiting marriage to persons of the same sex was incompatible with French public policy. The Defender of Rights then asked the Minister of Justice to draw the consequences of this ruling, which should apply to foreign nationals as a whole whose countries prohibit homosexual marriage, by considering a possible reform of the circular of 29th May 2013. The latter has not been amended, and the Defender of Rights continues to request this measure from the Minister.

The complaints received by the Defender of Rights highlight discrimination based **upon religious expression** manifested on a daily basis in terms of access to goods and services. Women wearing a veil remain the principal victims. In the weeks following the attacks of January 2015, it was observed that the cases referred showed a considerable increase in situations accompanied with verbal assault and aggressiveness with racist connotations towards persons perceived as belonging to the Muslim community, and in particular in the context of aggressive acts on the part of neighbours and passers-by. These situations occur in public places and living areas, and in relations between neighbours in particular, with regard to which the Defender of Rights calls for vigilance on the part of all managers of goods and services and providers of social housing.

*The Defender of Rights chairs the committee which assists him in the exercise of his jurisdiction with regard to …/… the fight against discrimination (article 11 of the Institutional Act concerning the Defender of Rights)*

***Mr Patrick Gohet****, Deputy Defender of Rights, Vice-Chair of the Committee for the Fight against Discrimination and the Promotion of Equality*

This committee is composed of eight members:

Mr Rachid Arhab, journalist, Ms Gwénaële Calvès, lecturer in public law at the University of Cergy-Pontoise and specialist in non-discriminatory law, Mr Yves Doutriaux, Member of the Council of State, Ms Dominique Guirimand, Honorary Member of the Court of Cassation, Ms Françoise Laroudie, Secretary-General of *Arche en France*, Mr Jamel Oubechou, association worker, Ms Françoise Vergès, researcher and Mr Mansour Zoberi, diversity and social solidarity manager, Casino Group.

The *Fight against Discrimination and Promotion of Equality* Committee met on 5 occasions in 2015. Apart from the exchanges and debates in which it engaged, it was also consulted with regard to planned recommendations concerning job recruitment discrimination ([MLD/2015-114 du 20 May 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mld-2015-114-du-20-mai-2015-relative-un); [MLD/2015-140 of 9th July 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mld-2015-140-du-9-juillet-2015-relative-un); 2015-264; 2015-104). This panel also discussed the Defender of Rights’ initial decisions implementing the new residence criteria, in the field of employment ([MLD/2015-63 of 20th May 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mld-2015-063-du-20-mai-2015-relative-un)) and access to services ([MLD/2015-97 of 20th May 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mld-2015-097-du-20-mai-2015-relative-des); [MLD/2015-101 of 30th September 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mld-2015-101-du-30-septembre-2015-relative))

**The Principal Grounds for Complaints Referred to the Institution in the Field of the Fight against Discrimination**

**(Data as a whole in percentage terms)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Employment | Public service | Goods and services | Education, Training | Housing | Total |
| Origin, (race), ethnic group | 9.6 | 6.2 | 2.8 | 1.3 | 2.7 | 22.6 |
| Disability | 8.3 | 4.1 | 2.9 | 3.7 | 2.1 | 21.1 |
| State of health | 9.6 | 0.7 | 1.2 | 0.7 | 0.6 | 12.8 |
| Age | 4.3 | 0.7 | 1.3 | 0.3 | 0.3 | 6.9 |
| Trade union activity | 5.5 | - | 0.1 | - | - | 5.6 |
| Pregnancy | 4.5 | 0.1 | 0.1 | 0.1 | - | 4.8 |
| Family situation | 2.5 | 0.6 | 0.7 | - | 0.6 | 4.4 |
| Sex | 3.1 | 0.3 | 0.8 | 0.1 | 0.1 | 4.4 |
| Religious convictions | 1.4 | 0.6 | 0.6 | 0.7 | 0.1 | 3.4 |
| Nationality | 0.6 | 1.7 | 0.3 | 0.1 | 0.1 | 2.8 |
| Physical appearance | 1.3 | 0.7 | 0.5 | 0.2 | - | 2.7 |
| Place of residence | 0.8 | 0.5 | 0.9 | 0.2 | 0.2 | 2.6 |
| Political opinion | 0.9 | 0.2 | 0.3 | - | 0.1 | 1.5 |
| Sexual orientation | 0.7 | 0.4 | 0.2 | - | 0.2 | 1.5 |
| Other | 1.2 | 0.9 | 0.5 | 0.2 | 0.1 | 2.9 |
| Overall total | 54.3 | 17.7 | 13.2 | 7.6 | 7.2 | 100 |

**For information:**

The “Others” section brings together criteria concerning patronymic, sexual identity, morals, genetic characteristics and criteria solely present in EU community and European law, which represent around **3% of cases referred with regard to discrimination**.

**Housing: the principal criteria of discrimination**

**7.2% of complaints in the field of the fight against discrimination concern housing**

**Origin, (race), Ethnic Group**

Private housing: 1%  
Local authority housing: 1.7%

**Disability**

Private housing: 0.9%  
Local authority housing: 1.2%

**Family situation**

Private housing: 0.2%  
Local authority housing: 0.4%

**State of health**

Private housing: 0.1%  
Local authority housing: 0.5%

**Employment: the principal criteria of discrimination**

**54.3% of complaints in the field of the fight against discrimination concern employment**

**Origin, (race), Ethnic Group**

private sector employment: 6.6%  
public sector employment: 3%

**State of health**

private sector employment: 4.7%  
public sector employment: 4.9%

**Disability**

private sector employment: 3.6%  
public sector employment: 4.7%

**Trade union activity**

private sector employment: 3.9%  
public sector employment: 1.6%

**Pregnancy**

private sector employment: 3.2%  
public sector employment: 1.3%

**Age**

private sector employment: 1.9%  
public sector employment: 2.4%

**Sex**

private sector employment: 2.2%  
public sector employment: 0.9%

**Family situation**

private sector employment: 1.4%  
public sector employment: 1.1%

**Religious convictions**

private sector employment: 0.9%  
public sector employment: 0.5%

**Physical appearance**

private sector employment: 1%  
public sector employment: 0.3%

1. **POLICE ETHICS**

*The Defender of Rights is entrusted with the tasks of:*

*4° Upholding compliance with professional ethics by persons exercising security activities on French territory.*

For the exercise of his jurisdiction, the Defender of Rights is assisted by the “Security Ethics” Committee, which he chairs; the committee is vice-chaired by his Deputy in this field.

**\***

In the course of 2015, the Defender of Rights continued to exert the whole of his powers in favour of improved compliance with security ethics. Apart from handling cases referred by complainants, training initiatives with security actors and Opinions issued to Parliament, the Defender of Rights drew upon his territorial network for the first time in this field, within the framework of experimentation aimed at the implementation of mediation at a local level.

Since 1st October 2015, six delegates covering five regions – Rhône-Alpes, Aquitaine, Midi-Pyrénées, Centre, Auvergne and Pays de Loire – and two departments – Savoie and Haute-Savoie – have begun handling complaints by means of mediation, within the field of security ethics involving police and gendarmes in cases of inappropriate remarks and refusal of complaints. After two months of experimentation, solutions have thus been found in six cases.

He also presented observations for the first time before a court, the Paris Court of Appeal, on the sensitive issue of discriminatory identity checks. Finally, he reinforced his international initiatives in this area.

1. **The Handling of Complaints**

* **From Recommendations to Observations before the Courts**

The Defender of Rights issued recommendations of a general order in 10% of the cases handled in 2015 as a whole.

For example, in his decision MDS/2015-148 of 1st October 2015, the Defender of Rights, following his predecessor in his report of 2012 “concerning police-citizens relations and identity checks”, recalled that any negative feeling following action by the police, concerning remarks perceived as improper and identity checks referred to as abusive or experienced such, contributes to the worsening of tensions between these forces and the population and calls the legitimacy of State action into question.

**The Defender of Rights considers good relations between the police and the population to be a major issue and will continue his commitment to improving them.** He thus recommended that explanations should be given to persons whose identities are checked by police officers and gendarmes with regard to the reasons for the check.

Since its creation the Defender of Rights has been pursuing reflection on identity check procedures, about which it made a Report in the autumn of 2012. Within the framework of this work, the Defender of Rights submitted observations to the Paris Court of Appeal at the time of a case referred by 13 young people of African and North African origin who considered that they had been subjected to discriminatory identity checks on the basis of their origins (MSP-MDS-MLD/2015-021, 3rd February 2015). In several rulings of 24th June 2015, taking up the Defender of Rights’ reasoning and arguments, the Court of Appeal condemned the State due to the discriminatory nature of five of these identity checks, on the basis of article L.141-1 of the Code of Judicial Organisation (*Code de l’organisation judiciaire*). **The Defender of Rights publicly welcomed this decision, which is likely to “further the debate on the need to regulate identity checks, from the double point of view, desired by all, of better-targeted action, a guarantee of increased police effectiveness, and of an improvement in their relations with the population”.**

The State and the persons whose appeals were not granted entered an appeal on points of law to the Court of Cassation, before which the Defender of Rights is set to submit his observations.

The Defender of Rights also noted **individual faults justifying the lodging of applications for disciplinary action**. Three illustrations thereof are set out below.

On the one hand, decision MDS/2015-175 of 10th July 2015 concerning inappropriate remarks and acts on the part of a police officer in the course of an action in a supermarket, on 12th April 2013, and faults observed in the course of an investigation resulting therefrom, conducted by their senior commander.

On the other hand, decision MDS/2015-138 of 21st May 2015, concerning the circumstances in which Mr X was taken in for questioning by police officers, who made him to fall off of the unlicensed motorbike which he was riding, without a crash helmet, with their car on 25th June 2012.

Finally, decision MDS/2015-139 of 21st May 2015 concerning a police officer’s violation of his professional secrecy obligations in having disclosed to the employers of Ms X, a youth worker by profession, the circumstances under which she had been taken in for questioning by a police team for acts of public and manifest drunkenness.

A number of complaints are regularly submitted to the Defender of Rights denouncing **unnecessary and excessive measures in the course of operations for the maintenance of law and order**. Some of these measures are taken in spite of the absence of any disturbance of public order during peaceful demonstrations, after the model of meetings of the “Watch” [“*Veilleurs*”] or “Mothers’ Watch” [“*Mères veilleuses*”] action group, arising from the protests concerning the Act opening marriage to persons of the same sex.

The Defender of Rights recently made to important decisions concerning **the practice summarily referred to as the “kettling” of demonstrators**, which consists of imposing a measure of confinement, encirclement or isolation for a specific length of time upon a group of persons present in a public place. This measure was thus imposed upon about sixty mothers and children, from the “*Les Mères Veilleuses*” action group, who were deprived of their liberty for almost three hours at the time of a rally near the Ministry for Families, on 9th December 2013.[[6]](#footnote-6) The Defender of Rights found that this kettling was “*manifestly disproportionate, in particular with regard to its duration and the virtual absence of any risk of disturbance of public order being caused by the demonstrators*”.

The Defender of Rights had already had occasion to emphasise, through a decision issued on 21st May 2015, “***that any restriction of freedoms, including those of expression, assembly and demonstration in particular, as well as of the freedom to come and go, should be strictly proportionate to the objective pursued*”.[[7]](#footnote-7)** A demonstrator complained of having been surrounded by police officers and held in the street, with other demonstrators assembled in response to a call from the *Ligue des droits de l’Homme* (LDH – “Human Rights League”) at the time of a visit by Manuel Valls to Asnières-sur-Seine, for more than three hours, on 28th January 2013.

In a previous decision, adopted on 24th November 2014 concerning the circumstances under which a person attending the military procession of 14th July 2013 had been subjected to an identity check and had had their flocked pennant confiscated, bearing the logo of the “*La Manif’ pour tous*” movement, the Defender of Rights had recommended, in particular, the abolition of the general prohibition against “banners, posters and any other media expressing demands” among members of the public present in the controlled areas at the time of the military procession of 14th July.[[8]](#footnote-8)

* **The Question of Non-Lethal Weapons**

The use of so-called non-lethal weapons is another issue of concern for the Defender of Rights. He regularly takes up cases on his own initiative in which weapons of this kind are liable to have caused prejudice of particular seriousness (such as mutilation or disability) and regularly issues decisions concerning the use of these weapons.

On his own initiative, the Defender of Rights thus took up a case concerning the course of events of an action conducted by soldiers of the gendarmerie with regard to a person (Mr X) threatening to commit suicide, the use of the Taser X26® electroshock gun during this action, and the circumstances of this person’s death, shortly after being taken in for questioning (Decision MDS-2015-171 of 3rd July 2015).

The Defender of Rights observed a lack of communication between the different gendarmerie units. He deplored that the possibility of a heart problem, of the consumption of psychoactive medicines and the victim’s specific physical and psychic state on the day of the events, as well as the remarks of Mr X’s partner concerning his state of health, had not been sufficiently taken into consideration with a view to more pertinent negotiation and the elaboration of a strategy for action more appropriate to the reality of the situation.

The military measures implemented then appeared to be disproportionate in view of the event having led to the commencement of the operations (a call to the fire brigade from Mr X’s partner concerning his state of health) and the real situation, in so far as they contributed to dramatising the situation.

While questioning the rapidity with which the Taser X26® was fired, in view of the vulnerability of Mr X’s situation, the Defender of Rights did not note any breach of ethics on the part of the two soldiers involved in the firing, in particular in view of the elements of which they were informed.

However, the Defender of Rights recommended that all soldiers authorised to use X26® Tasers and present of the day of the events should be reminded that any information concerning a person’s state of health, including their possible state of health, and more generally any information concerning precautions for this weapon, should be brought to soldiers’ attention before they envisage the use thereof.

This case is obviously not unconnected to the new overall recommendations made by the Defender of Rights with regard to the Flash-ball superpro®, LBD 40\*46 and Taser X26® non-lethal weapons (Decision MDS/2015-147 of 16th July 2015).

1. **Contributions to Professional Reflection and Practices**

* Security questions before Parliament

The Defender of Rights is particularly vigilant with regard to security issues and regularly issues Opinions to the members of Parliament in order to shed light upon public debates.

He thus issued an **Opinion (Opinion 2015-06 of 16th April 2015) concerning the maintenance of law and order** presented before the National Assembly’s commission of inquiry into the objectives and methods of maintenance of Republican law and order in a context of respect for public liberties and of the right to demonstrate, on 6th April 2015. In this Opinion the Defender of Rights denounced several types of practices violating the freedom to come and go and/or freedom of expression in particular, and questioned the authorities, in various different regards, concerning the suitability of the preventive and repressive measures used in view of real disturbance or risks of disturbance of public order presented by the participants in a demonstration.

The Defender of Rights was heard by the Senate’s fact-finding mission on “*Security in railway stations in the face of the terrorist threat*”. Although the Defender of Rights fully supports the legitimate objective of public security in means of transport and SNCF and RATP railway stations, he notes that the private member’s Bill confers coercive prerogatives upon private security officials, coming within the field of public security, a choice which necessarily imposes a series of precautions, which he lists in his Opinion no. 15-28 of 11th December 2015.

The Defender of Rights thus recommends more specific regulation of the conditions of exercise and control of coercive measures liable to be implemented against the public in SNCF and RATP railway stations and trains, in order to avoid the creation of new sources of tension in relations between the population and representatives of authority. In particular, he proposes specification of the circumstances and grounds for action as well as the provision of objective criteria for the selection of passengers subjected to coercive acts. He also proposes the establishment of a system of traceability concerning controls implemented by officials, in order to meet the need for transparency with regard to these new security missions.

* **The Training of Security Actors**

Within the framework of a partnership between the Interior Ministry and the Defender of Rights, in the course of 2015 the latter developed a series of 20 training sessions aimed at the 233rd, 234th and 235th year groups of student police officers trained in the ten national police schools, reaching a total of 2,109 police students. These training initiatives were aimed at providing elements of knowledge concerning:

* the Defender of Rights’ missions and actions;
* types of direct and indirect discrimination prohibited by law;
* the Defender of Rights’ action concerning compliance with ethical rules by persons exercising security activities, with particular regard to identity checks.

The Defender of Rights and his Deputy and officials were also involved in initiatives at Saint-Cyr-au-Mont-d'Or with trainee police superintendents, at Cannes-Ecluses-, with trainee officers of the French national higher educational police training school (ENSP - *Ecole nationale supérieure de police*), in Melun, with trainee officers of the national gendarmerie officers’ training school (EOGN - *Ecole des officiers de la gendarmerie nationale*), at Agen, with students of the national prisons administration training school (ENAP - *Ecole nationale d’administration pénitentiaire*) and at the national territorial civil service centre (CNFPT - *Centre national de la fonction publique territoriale*) in Pantin, with municipal police from the Ile-de-France.

Furthermore, one of the Defender of Rights’ initiatives **was the development and strengthening of new and existing partnerships with international institutions and foreign counterparts**.

He received a delegation from the **Committee for the Prevention of Torture of the Council of Europe (CPT)** at the time of its periodic visit France in order to share his observations with it concerning issues arising from cases referred in the field of security ethics. He also brought up the general recommendations issued by the Institution within the CPT’s area of authority (Decision MDS/2014-107 of 9th January 2015 concerning means of physical constraint and surveillance at the time of removal of prisoners from prison in order to go to hospital; Decision MDS/ 2015-10 of 6th February 2015 concerning public and manifest drunkenness; and Decision MDS/2014-118 of 1st August 2014 on the use of videos at the time of prison disciplinary proceedings etc.). The outcome of various different disciplinary and legal proceedings involving police officials was also mentioned.

**The Defender of Rights organised the second meeting of the “Independent Police Complaints Authorities’ Network” (IPCAN) on 23rd March 2015, in Paris, which brings together more than ten of his international counterparts.** It should be recalled that, the Defender of Rights was behind the initiative to launch this network, at the time of a first meeting in Paris in 2013. Among the four institutions that preceded the Defender of Rights, the National Commission on Security Ethics (CNDS - *Commission nationale de déontologie de la sécurité*) was indeed the only body that did not have its own network of international contacts.

The topic of the second meeting of IPCAN was “**Democratic Crowd Control”.** It was open to numerous professionals, members of police forces and specialists in the maintenance and reestablishment of law and order, both French and European, representatives of the Council of Europe and of the Organization for Security and Co-operation in Europe (OSCE), as well as researchers working in this field.

Finally, as part of a European Commission programme, the Defender of Rights took part in institutional twinning for the establishment of the Turkish Ombudsman, in order to present various different issues to this young institution, including the organisation of the police in France, the internal and external control bodies pertaining thereto and practical issues arising from complaints handled by the Defender of Rights, such as the maintenance of law and order, the proportionality of the use of force and various different measures of deprivation of liberty etc.

*The Defender of Rights chairs the committee which assists him in the exercise of his jurisdiction with regard to …/… ethics in the field of security (article 11 of the Institutional Act concerning the Defender of Rights).*

***Ms Claudine Angeli-Troccaz,*** *Deputy Defender of Rights, Vice-Chair of the Security Ethics Committee*

This committee is composed of eight members:

Ms Nicole Borvo Cohen-Séat, Honorary Senator, Ms Nathalie Duhamel, former Secretary-General of the CNDS (French National Commission on Security Ethics), Mr Jean-Charles Froment, lecturer in public law and director of the IEP of Grenoble (Grenoble Institute of Political Studies), *Maître* Sabrina Goldman, lawyer at the Bar of Paris, Mr Jean-Pierre Hoss, Honorary Member of the Council of State, Ms Sarah Massoud, investigating judge at the Court of first instance of Créteil, Ms Cécile Petit, first honorary counsel for the prosecution at the Court of Cassation and Ms Valérie Sagant, member of the national legal service and deputy director of the *Ecole Nationale de la Magistrature* (French National School for the Judiciary).

The *Security Ethics* committee met on seven occasions in 2015. Apart from the exchanges and debates that it organised, it was consulted in particular with regard to planned recommendations concerning the terms of the procedures implemented in case of manifest and public drunkenness ([MDS/2015-10 of 6th February 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mds-2015-010-du-6-fevrier-2015-relative-aux)) as well as the circumstances of police action at the time of demonstrations ([MDS/2015-126 of 21st May 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mds-2015-126-du-21-mai-2015-relative-aux); [MDS/2015-298 of 25th November 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mds-2015-298-du-25-novembre-2015-relative)). This panel also dealt with cases of discrimination involving private security officers (MDS-MLD/2015-17) and a municipal police officer ([MDS-MLD/2015-57 of 20th March 2015](http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mds-mld-2015-057-du-20-mars-2015-relative)).

**The chief grounds for complaints submitted to the Institution in the area of security ethics**

**Violence**

2015: 28%  
2014: 28%

**Non-compliance with procedure**

2015: 17%  
2014: 15%

**Refusal to intervene**

2015: 13%  
2014: 9%

**Inappropriate remarks**

2015: 12%  
2014: 15%

**Lack of impartiality**

2015: 11%  
2014: 10%

**Other grievances** (theft, death, corruption, security frisk searches etc.)

2015: 10%  
2014: 12%

**Abusive reporting of offences by police officers**

2015: 4%  
2014: 6%

**Failure to take state of health into consideration**

2015: 3%  
2014: 3%

**Prison searches**

2015: 2%  
2014: 2%

**Security activities involved**

National police: 53%

Prisons administration: 22%

National gendarmerie: 14%

Private security services: 4%

Municipal police: 4%

Public transport security services: 2%

Other: 1%

**For information**

Increase in cases of complaints implicating the national police as compared with 2014

**Defending Rights and Promoting Equality in Europe and in the World**

The Defender of Rights extends his action to the European and international framework. He maintains regular contact with the various organisations for the monitoring and implementation of France’s undertakings with regard to fundamental rights and contributes to their work.

**A Year of Consolidating Relations with European Institutions**

Jacques Toubon met the whole of the **EU Commissioners** with jurisdiction in the Defender of Rights’ fields of action[[9]](#footnote-9) (February and July 2015). The objective was to propose reinforced cooperation and engage in exchanges with regard to the defence of migrants and asylum seekers’ fundamental rights, the fight against racism and defence of the rights of the child, as well as possible modes of cooperation, amongst other issues.

The Defender of Rights actively cooperates with other bodies such as the Committee on Petitions of the European Parliament, the European Commission against Racism and Intolerance and the European Committee for the Prevention of Torture.

In May 2015, he organised day-long working seminar with officials from the Liberties Committee of the European Parliament. In November 2015, at the invitation of the European Parliament and the European Ombudsman, the institution took part in an inter-Parliamentary seminar on the issue of: **“The Role of the Ombudsman in Modern Parliamentary Democracies: a Regional Perspective”** Organised within the framework of the European Parliament’s support for reinforcement of capacities for the Parliaments of the Balkan countries and Turkey, this seminar provided an opportunity for exchanges on the good practices resulting from the Defender of Rights’ action: the wide spectrum of the Defender of Rights’ restrictive powers, its promotion as a tool for improved access to rights and respect for fundamental freedoms. Moreover, also in the course of this year, the Defender of Rights exercised his role of institutional support with regard to **the Ombudsman of Turkey[[10]](#footnote-10)**.

The Defender of Rights also maintained close relations with the European bodies responsible for persons with disabilities. A delegation led by the Deputy in charge of the fight against discrimination and the promotion of equality met with the Directorate-General Unit for employment of the European Commission and the European Forum on 27th May 2015.

The Defender of Rights continued his involvement in the European Network of Equality Bodies (EQUINET), in particular with regard to the migrant workers Directive[[11]](#footnote-11), the transposition of which is planned for 2016. Article 4 of the Directive provides for the appointment of **a body with jurisdiction with regard to non-discrimination of EU nationals on the basis of their nationality** by each of the governments. A conference was organised on this subject by EQUINET in association with the Defender of Rights, on 8th December 2015 in Paris, in order to engage in exchanges on the implementation of this new obligation. This conference also provided an opportunity for the Defender of Rights to call for the creation of a new dynamic by the network in order to face up to new issues in the fight against discrimination.

**Moreover, the Defender of Rights set out to promote the issue of the fight against racism at the European level,** at the time of the annual seminar of the Council of Europe’s body for the protection of human rights, the European Commission against Racism and Intolerance (ECRI), on the issue of responses to the question of failure to assert rights, with the inauguration of the “No Hate Web. No Hate Speech” Symposium organised by the LICRA (International League against Racism and Anti-Semitism), in partnership with the Conference of INGOs of the Council of Europe ECRI on 29th May 2015 and by his participation in the Colloquium organised by the European Commission at Brussels on 2nd October 2015 entitled: “Tolerance and Respect: Preventing and Combating Anti-Semitic and Anti-Muslim Hatred in Europe” in order to present the Defender of Rights’ “Equality against Racism” initiative. Moreover, he received a visit from a delegation of representatives of the Council of Europe’s European Commission against Racism and Intolerance (ECRI) in order to collect elements of information on the progress made by France since the ECRI’s 4th Report in 2010, and engage in exchanges on the Institution’s action with regard to the fight against racism and racial discrimination, with a view to the preparation of its 5th report concerning France.

Following their meeting in Strasbourg in December 2014, the Defender of Rights and **Niels Muiznieks, Council of Europe Commissioner for Human Rights**, established regular contact concerning the whole of their subjects of common interest and, in particular, with regard to the increase in the expression of intolerance and racism, the situation of Roma and travelling peoples, the reception of asylum seekers and the situation of migrants in Calais, the conditions of reception of unaccompanied foreign minors and the situation of children and adults with disabilities without any solution in France.

**An Independent Actor before the United Nations Committees**

The **United Nations Committee on the Rights of the Child** is a body of 18 independent expert which controls the implementation of the International Convention on the Rights of the Child by its States Parties, as well as the two Protocols on the involvement of children in armed conflicts and the sale of children, prostitution of children and pornography.

Procedure before the Committee obliges the States Parties to submit regular reports on the measures they have taken in order to put their undertakings under the Convention into effect. Article 45 of the Convention provides for a process of consultation of civil society, specialised institutions and institutions for the defence of human rights, which are encouraged to submit independent reports to the Committee. Thus, on the basis of article 4 of the Institutional Act, following the example of the Defender of Children in 2003 and 2008, the Defender of Rights and his Deputy submitted an independent report to the Committee in February 2015, within the framework of the examination of France’s 5th periodic report. The Defender of Rights’ report sets out an assessment of respect for the rights of the child as guaranteed by the Convention and puts forward a hundred or more recommendations. The Defender of Children took part in the Committee’s pre-session meeting in June 2015, alongside the *Contrôleur général des lieux de privation de liberté* (“General Inspector of Places Deprivation of Liberty”) and several associations specialised in the defence of children’s rights.

The **Committee on the Rights of Persons with Disabilities** (CRPD) is a body of independent experts which monitors respect for the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) by the States Parties. As in the case of the Committee on the Rights of the Child, each State has to submit periodic reports on the effective implementation of the Convention. In July 2011, in accordance with the stipulations of article 33 of the Convention, the Defender of Rights was appointed by the French government as an independent mechanism in charge of monitoring the application of the CRPD, in association with the authorities and civil society. In this capacity, as part of a national mechanism, he fulfils a mission of protection, promotion and monitoring of the application of the Convention.

Within the framework of monitoring the Convention, the Defender of Rights coordinates a Monitoring Committee, composed of representatives of the *Conseil français des personnes handicapées* (CFHE – “French Commission for Persons with Disabilities”), the *Conseil national consultatif des personnes handicapées* (CNCPH - “National Consultative Commission for Persons with Disabilities”), the *Commission nationale consultative des droits de l’homme* (CNCDH - “National Consultative Commission on Human Rights” and the *Comité interministériel du handicap* (CIH – “Interministerial Committee on Disabilities”). Once France’s initial report has been handed over to the UN Rights Committee, the Defender of Rights will issue his assessment report, as an independent mechanism, in order to shed light upon the effective implementation of the Convention for the CRPD.

**An Actor in favour of French as a World Language**

In addition, in the capacity of General Secretary of the AOMF (*Association des ombudsmans et médiateurs de la Francophonie*), the Defender of Rights coordinated various different activities for the association 2015 and, in particular, the organisation of four topical training courses aimed at Mediators’ colleagues and support for the Mediation institutions of Togo, Guinea, Burkina Faso and Benin.

Moreover, he organised its 9th Congress in Québec, at which the AOMF adopted the Québec Declaration, calling for reinforcement and consolidation of mediation institutions as promoters of democratic values and good governance, guardians of the integrity of the Administration, of the Rule of Law and of respect for Human Rights. Amongst its mechanisms for the consolidation of institutions, the AOMF has a website and a compendium of doctrines for Ombudspersons, which is a tool of reference, pooling and comparison.

**PART FOUR**

**RESOURCES: FINANCES AND HUMAN RESOURCES**

1. **BUDGETARY RESOURCES**

The principal figures concerning the financial resources at the Institution’s disposal for the fulfilment of its duties are given below.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Credits 2015** | **Commitment Authorisations-CA** | | | **Payment Appropriations-PA** | | |
| **Initial Budget Act** | **Available** | **Consumption** | **Initial Budget Act** | **Available** | **Consumption** |
| **Staff expenditure**  **Item 2** | 15 738 117 | 15 659 426 | 15 573 226 | 15 738 117 | 15 659 426 | 15 573 226 |
|  | **Commitment Authorisations-CA** | | | **Payment Appropriations-PA** | | |
| **Initial Budget Act** | **Available** | **Consumption** | **Initial Budget Act** | **Available** | **Consumption** |
| **Operating expenditure**  **Excluding item 2** | 9 610 978 | 11 554 516 | 11 119 931 | 13 500 000 | 11 827 416 | 11 179 067 |

The Institution’s total budget established in programme 308 (Protection of rights and liberties, for which the Secretary General of the Government is responsible) amounted to €27,436 842 M in available payment appropriations after precautionary reserve and transfer to the programme. 97.33% of this budget was consumed. The creation and progressive expansion of the Department for the promotion of equality and access to rights (PEAD - *Promotion de l’égalité et accès aux droits*) from the 1st quarter of 2015, did not enable the completion of certain planned actions and studies included in the budget in the 2015 financial year.

A third of the administrative appropriations were devoted to expenditure for the rent of the premises currently occupied by the Institution in Paris (rue Saint-Florentin and rue Saint-Georges).

The operations for modernisation of the expenditure chain, in association with the Ministerial budget and accounting controller and the department of administrative and financial services of the Prime Minister’s office, were continued and stepped up. While the Defender of Rights’ suppliers were encouraged, 9% of them henceforth follow a paperless procedure of settlement of their invoices, that is to say 15% of invoices received, for which the payment deadline is less than four days, out of an overall allowed time of 7.59 days (-13% as compared with 2014). The rate of misstatements in payment requests decreased from 2.97% to 0.53%.

Since 2015, the Institution has been administratively attached to virtually all of the contracts offered by the Prime Minister’s office and by the union of public procurement groupings (UGAP - *union des groupements d'achat public*). Similarly, the opening of Government Information Service (*Service d’information du Gouvernement*) communication contracts to the Institution has increased the number of service providers that it is possible to use within the secure procedures.

At the beginning of November 2015, Chorus DT software was put in place within the Institution for integrated management and invoicing of journeys on the part of its officials and territorial network delegates; this tool will enable optimisation of the processing of invoices and accelerate the payment of mission expenses, while reducing the administrative burden currently incumbent upon the administration.

1. **HUMAN RESOURCES**

Finally, the principle figures concerning the human resources at the Institution’s disposal for the fulfilment of its duties are given below.

* **A Few Key Figures (Data from the Social Balance Sheet at December 31st 2014)**

The average age of the Defender of Rights’ officials is 43.5 years; around 25% of officials are at least 35 years of age; 76% female officials (much higher rate than that observed in public employment); 14 officials took maternity leave in 2014 (7 in 2012 and 11 in 2013); 14 persons recognised as workers with disabilities were maintained in their employment; 70% of the Defender of Rights’ officials belong to A and A+ category; over half of officials (54%) have less than 6 years’ service.

* **Position of Salaried Workforce at 31st December 2015**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Actual workforce at 31st December, according to administrative situation, from 2011 to 2015 | | | | | |
|  | 2011 | 2012 | 2013 | 2014 | 2015 |
| Officials on secondment | 31 | 31 | 35 | 59 | 63 |
| Officials in normal position of employment | 14 | 12 | 10 | 1 | 0 |
| Reimbursed staff leasing | 17 | 17 | 14 | 1 | 1 |
| Staff leasing free of charge | 12 | 12 | 13 | 6 | 5 |
| Permanent employment contracts | 70 | 74 | 70 | 77 | 82 |
| Fixed-term employment contracts | 67 | 65 | 78 | 72 | 66 |
| Short-term contracts | 6 | 10 | 10 | 12 | 10 |
| Item 3 | 7 | 7 | 8 | 7 | 7 |
| Actual Staff TOTAL | 221 | 225 | 235 | 235 | 234 |
|  | | | | |  |

The initial Budget (LFI - *loi de finances initiale*) for 2015 set the ceiling on employment within the Defender of Rights Institution at 226 full-time equivalents (FTE) worked. Beyond the employment budget, while including short-term contracts which provide replacements for officials on sickness or maternity leave, overall consumption for the year 2015 amounted to 219.2 FTE, for 234 officials actually present at 31st December; to which may be added, in particular, 30 trainees assigned to the departments each quarter. In 2015, the Promotion of Equality and Access to Rights (PEAD) department was reorganised, benefiting from the vast majority of possible recruitments, with regard to communications in particular.

Apart from the adoption of a recruitment procedure that is better suited to the Institution’s requirements, the Institution also adopted its “professional trades register” in 2015. The latter enables a more efficient recruitment policy at the collective level, in view of the departments’ requirements and, at the individual level, provision of better service to officials in terms of career mobility. The adoption of this “professional trades register” thus also enabled the establishment of a skills frame of reference, mapping of jobs for each department, according to the professions exercised, independently of their postings, substituting professions common to all for the 4 former professional institutions’ various different titles.

Social dialogue with the staff representatives constituted a priority in the course of 2015 and was particularly sustained: 7 times with the technical committee (professional trades register, activity indicators, reorganisation of departments etc.); 4 times with the joint consultative committee; 5 times with the health and safety committee, in particular with regard questions concerning the move to the Fontenoy site.

**The Status of Delegates**

In order to achieve the objective of access to rights for all in the most effective manner, certain delegates hold surgeries at several reception points. For this reason there are 676 places of reception for 396 delegates at 31st December 2015.

The French departments constitute the territorial framework within which the delegates exercise their duties. Their area of authority is defined according to the place of residence or work of the complainant or of the implicated party. They take on-the-ground action concerning the situations referred them, with a view to a rapid response.

Each delegate provides surgeries receiving the public in person two half days per week, which they hold for the most part in local facilities: Legal Advice Centres (*Maisons de Justice et du Droit*), municipal premises, Legal Information and Advice Access Points (*Points d’Accès au Droit*), Prefectures etc. They also act in prisons and work in association with Departmental Disability Support Centres (MDPH).

**Distribution of delegates according to the different types of reception facilities**

Councils of French departments: 8

Sub-prefectures: 56

Public service access centres (*Maisons des services publics*): 44

Legal Information and Advice Access Points: 64

Prisons: 159

Communal premises: 111

Prefectures: 98

Legal Advice Centres / Branches etc.: 136

The territorial network constitutes the local level of the Institution and currently represents the principal channel for referral of cases to the Defender of Rights.In 2015 (30th November), **the delegates had taken up 61,114 complaints and dealt with a total of 57,673 cases.** The average waiting time for the processing of cases is 127 days. 72% were successfully settled on an amicable basis and 8% were abandoned by the complainant.

In the exercise of their duties, the delegates conduct local initiatives to raise the Institution’s profile and make the Defender of Rights better known, for example by means of partnerships with local and regional authorities whose services are in direct contact with the population. This is the case in particular at the time of the annual assessment of their activities at the departmental level.

Moreover, they conduct initiatives for the promotion of rights by playing a role of provision of information and raising of awareness among the public and, of course, among institutional actors and associations. Appropriation and knowledge of the Defender of Rights’ missions is a decisive issue, in particular in order to enable groups, which are sometimes vulnerable, isolated or in a situation of precarity, to assert their rights. This is particularly the case in urban policy priority areas where experiments are being conducted in order to promote access to rights in the Bouches-du-Rhône, Rhône and Seine-Saint-Denis.

These initiatives are concerned with defence of the rights and liberties of users of public services, defence of the rights of the child and the fight against discrimination.

1. **A NEW FACILITY AT THE** **FONTENOY** **SITE IN THE AUTUMN OF 2016**

In 2015, the central departments of the Defender of Rights were still divided between two sites: rue Saint-Florentin (75008) and rue Saint-Georges (75009). As stated in previous Annual Reports, the Institution will set up in new premises, also in Paris, on the single site of Place de Fontenoy (75007) in the autumn of 2016, thus completing the operational merger by means of geographical reunification of its teams.

The year 2015 was very busy, since work pertaining to this project was conducted simultaneously at several different levels, with priority given to preparation of the Fontenoy site plans, participation in the working groups organised by the Prime Minister’s office and logistical preparation for the move.

Reflection has henceforth been commenced with regard to the merger, in close collaboration with the department of administrative and financial services (DSAF - *Direction des services administratifs et financiers*) of the Prime Minister’s office. The gains expected in 2017 and beyond with regard to support posts (Finances, general resources, Documentation, HR) should enable job increases in professional posts.

The establishment at Fontenoy will provide the Defender of Rights’ departments with suitable working conditions for fulfilment of the duties entrusted to them by the legislature in the service of their fellow citizens.

1. **INFORMATION TECHNOLOGY**

Apart from the move to Fontenoy, which draws upon the IT centre’s resources due to the sensitive nature of the transfer of equipment, on the one hand, and the need to ensure that each official’s workstation is fully operational from the first days of their arrival, on the other, a high level of demand was placed upon the department in order to protect the Institution’s IT security.

In association with the official in charge of Information Systems Security for the Senior Official responsible for defence and security within the Prime Minister’s office and the Defender of Rights’ technical teams, several IT security audits of the information systems were conducted. Corrections plans are elaborated and regularly followed up on the basis of the recommendations made.

Due to successive delivery delays, **the Defender of Rights’ Agora2 professional trades application programme project**, launched over two years ago, required increased investments in terms of monitoring and management, in association with the finance centre.

**ORGANISATION CHART**

**Defender of Rights**: Jacques Toubon  
**Deputies:**Defender of Children: G. Avenard  
Security ethics: C. Angeli-Troccaz  
Fight against discrimination and promotion of equality: P. Gohet  
Delegate-General for mediation with the public services: B. Dreyfus

**Office:**Head of office: F. Gerbal-Mieze  
Press adviser: S. Benard  
Parliamentary adviser: F. de Saint-Martin  
Head of secretariat: S. Evrard  
  
**Secretary Genera**l: R. Senghor  
Head of legal expertise: S. Latraverse  
  
**Departmental Director-General**: L. Machard

Information technology: Y. Leloup  
Finances and general affairs: S. Parrot-Schadeck  
Human resources: E. Chicouard

Admissibility, advice, access to rights: A. Dupeyron

Protection of access to goods and services: F. Dechavanne

Access to private goods and services: F. Dechavanne E

Access to public services, public affairs: M. Violard

Social protection, work and employment: C. Jouhannaud  
Private employment: S. Laoufi   
Public employment: C. Avril  
Social protection and solidarity: V.Leconte

Protection of persons: A. Feltz  
Legal affairs: M. Lifchitz

Defence of the rights of the child: M. Lieberherr

Security ethics: B. Narbey

Health: L.Ricour

Promotion of equality and access to rights: N. Bajos  
Access to rights and fight against discriminations and Studies and research: S. Benichou

Communications Training Documentation: P.B. Delaroche

Reforms Partnerships European and International Affairs: V.LewandowskiI

Territorial Network: B. Normand

**Distribution of Delegates of the Defender of Rights by Department**

**2015**

1-2 by department: 50

3-4 by department: 24

5-6 by department: 15

7 and more by department: 13

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NOTES

**1** The Planning Act (*loi de programmation*) no. 2014-173 of 21st February 2014 on cities and urban cohesion. (**p.17**)

**2** Articles L.264-1, L.264-4 and R.264-4 of the Social Action and Families Code (*Code de l’action sociale et des familles*); a ministerial circular of 25th February 2008 specifies that Communal Social Action Centres (CCAS / *Centres communaux d’action sociale*) are obliged to establish an official address for persons who are de facto on the territory of the commune, and people living in shanty towns in particular. **(p.18)**

**3** Court of Appeal of Rennes, Section (*chambre*) 6a, 28th September 2015, no. 492, 14/07321. Also see Court of Appeal of Rennes, Section 6a, 30th November 2015, no. 660, 14/01043, 6th section a, decision (*arrêt*) no. 660. (**p.42**)

**4** <http://www.defenseurdesdroits.fr/sites/default/> files/atoms/files/150717-rapport\_enfants-onu\_sans.pdf. (**p.62**)

**5** <http://www.defenseurdesdroits.fr/fr/mots-cles/> rapport-annuel-enfant. (**p.62**)

**6** Decision MDS /2015-298, 25th November 2015. (**p.80**)

**7** Decision MDS/ 2015-126, 21st May 2015. (**p.80**)

**8** Decision MDS /2015-159, 24th November 2015. (**p.80**)

**9** Frans Timmermans, European Commissioner for Better Regulation, Inter-Institutional Relations, Rule of Law and Charter of Fundamental Rights; Vera Jourova, Commissioner for Justice and Gender Equality; Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship and Marianne Thyssen, Commissioner for Employment, Social Affairs, Skills and Labour Mobility. (**p.85**)

**10** This initiative aimed at supporting the reinforcement of institutions, the rule of law and human rights, conducted in partnership with our Spanish counterpart, the *Défensor del pueblo*, is financed by the IPA fund (Instrument for Pre-Accession Assistance), the principal financial mechanism through which EU aid is directed to EU candidate and potential candidate countries. (**p.85**)

**11** Directive 2014/54/EU of the European Parliament and of the Council of 16th April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers**.** **(p.85)**

Design and creation: *Défenseur des droits* - January 2016

Photo credits: DSAF – DPN / *Défenseur des droits*

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### Article 71-1 of the French Constitution.

The Defender of Rights watches over respect for rights and liberties by State administrations, local and regional authorities, public institutions and all bodies entrusted with public service roles, or with regard to which the Institutional Act (*loi organique*) invests him with authority.   
(…)The Defender of Rights is appointed by the President of the French Republic for a non-renewable six-year term of office, after application of the procedure provided for under the last paragraph of article 13. His duties are incompatible with those of a Member of Government or Member of Parliament. The other incompatibilities are fixed by the Institutional Act.

The Defender of Rights issues reports on his activity to the President of the French public and to Parliament.

**Institutional Act (*Loi organique*) No. 2011-333 of 29th March 2011 concerning the Defender of Rights**

**Article 1**   
The Defender of Rights is appointed by decree (*décret*) by a Cabinet meeting, after application of the procedure provided for under the last paragraph of article 13 of the Constitution. (…)

**Article 2**  
The Defender of Rights is an independent constitutional authority and does not receive any directions in the exercise of his jurisdiction. (…)

**Article 4**   
The Defender of Rights is entrusted with the tasks of:  
1° Defending rights and freedoms within the framework of relations with the State administrations, local and regional authorities, public institutions and bodies entrusted with public service roles;   
2° Defending and promoting the higher interests and rights of the child as established by law or by international undertakings lawfully ratified and approved by France;  
3° Fighting against direct and indirect discrimination prohibited by law or by international undertakings lawfully ratified and approved by France, as well as promoting equality;   
4° Ensuring compliance with professional ethics by persons exercising security activities on the territory of the French Republic.

**Article 5**Cases may be referred to the Defender of Rights:  
1° By any natural person or corporation that considers that its rights and freedoms have been infringed by the operation of a State administration, local or regional authorities, public institution or body invested with a duty of public service;  
2° By a child raising the protection of its rights or a situation endangering its interest, by its legal representatives, the members of his family, medical or social services or any association lawfully declared at least five years before the date of the acts and intended on the basis of its articles of association to defend the rights of the child;   
3° By any person considering themselves to be a victim of discrimination, whether direct or indirect, prohibited by law or by an international undertaking ratified and approved by France, or by any association lawfully declared at least five years before the date of the acts and intended on the basis of its articles of association to fight against discrimination or assist the victims of discrimination, jointly with the person considering themselves to be a victim of discrimination or with their agreement;  
4° By any person who has been a victim or witness of acts which they consider to constitute a breach of the rules of ethics in the field of security.  
Cases concerning the doings of public or private persons and corporations may be referred to the Defender of Rights.  
Moreover, she or he may take up cases on their own initiative or have cases referred to them by the eligible parties of the person whose rights and freedoms are in question.   
He takes up complaints referred to his deputies.

**Article 6**Cases are referred to the Defender of Rights free of charge. (…)

**Article 7**Complaints may also be sent to MPs, Senators and French representatives at the European Parliament, who pass them on to the Defender of Rights if he considers that they call for action on his part. (…)

**Article 8**   
When he takes up a case on his own initiative and when cases are referred to him other than at the initiative of the persons considering themselves to have been wronged or, in the case of children, their legal representatives, the Defender of Rights can only act on the condition that the person or, if necessary, their eligible parties have been informed and are not opposed to his action. However, he can always take up cases on his own initiative which appear to him to call into question the best interest of the child and cases concerning persons who are not identified or whose agreement cannot be sought.

**Article 11**

I. ― The Defender of Rights chairs the boards which assist him in the exercise of his duties with regard to defence and promotion of children’s rights, the fight against discrimination, the promotion of equality and ethics in the field of security. (…)

**Article 18**   
The Defender of Rights may ask for explanations from any natural person or corporation implicated before him. To this end, he may hear any person whose assistance he considers useful.  
Natural persons and corporations implicated shall facilitate the accomplishment of his duties. (…)

**Article 25**   
The Defender of Rights may make any recommendation which appears to him likely to guarantee respect for the rights and freedoms of persons wronged and to settle the difficulties raised before him or prevent the repeat thereof. (…)

**Article 26**

The Defender of Rights may conduct the amicable settlement of disputes brought to his attention, by means of mediation. (…)

**Article 28**   
I. ― The Defender of Rights may propose to the person referring the complaint and the person implicated that they should enter into a formal settlement, the terms of which he may recommend. (…)

**Article 29**   
The Defender of Rights may refer cases to the authority invested with power to begin disciplinary proceedings for acts brought to his attention the character of which appears to him to constitute grounds for sanction.  
This authority shall inform the Defender of Rights of measures taken in order to follow up cases referred by the latter and, if it does not bring disciplinary proceedings, of the grounds for its decision. (…)

**Article 32**The Defender of Rights can recommend that legislative or regulatory amendments be made that appear useful to him. (…)

**Article 33**   
The Defender of Rights cannot call court decisions into question.  
Civil, administrative and criminal courts may, on their own initiative or at the request of the parties, ask him to submit written or spoken observations. (…)

**Article 38**The Defender of Rights, his deputies, the other members of the committees, the delegates and the officials placed under his authority as a whole are bound by professional secrecy with regard to the facts, acts and information of which they are informed due to their duties, without prejudice to the elements necessary for drawing up the opinions, recommendations, orders and reports provided for under this Institutional Act. (…)

1. Planning Act (*loi* *de programmation*) no. 2014-173 of 21st February 2014 on cities and urban cohesion. [↑](#footnote-ref-1)
2. Articles L.264-1, L.264-4 and R.264-4 of the Social Action and Families Code (*Code de l’action sociale et des familles*); a ministerial circular of 25th February 2008 specifies that Communal Social Action Centres (CCAS / *Centres communaux d’action sociale*) are obliged to establish an official address for persons who are de facto on the territory of the commune, and people living in shanty towns in particular. [↑](#footnote-ref-2)
3. **1** Court of Appeal of Rennes, Section (*chambre*) 6a, 28th September 2015, no. 492, 14/07321. Also see Court of Appeal of Rennes, Section 6a, 30th November 2015, no. 660, 14/01043, 6th section a, decision (*arrêt*) no. 660. [↑](#footnote-ref-3)
4. <http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/150717-rapport_enfants-onu_sans.pdf>. [↑](#footnote-ref-4)
5. <http://www.defenseurdesdroits.fr/fr/mots-cles/rapport-annuel-enfant> [↑](#footnote-ref-5)
6. Decision MDS /2015-298, 25th November 2015. [↑](#footnote-ref-6)
7. Decision MDS/ 2015-126, 21st May 2015 [↑](#footnote-ref-7)
8. Decision MDS /2014-159, 24th November 2014. [↑](#footnote-ref-8)
9. Frans Timmermans, European Commissioner for Better Regulation, Inter-Institutional Relations, Rule of Law and Charter of Fundamental Rights; Vera Jourova, Commissioner for Justice and Gender Equality; Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship and Marianne Thyssen, Commissioner for Employment, Social Affairs, Skills and Labour Mobility. [↑](#footnote-ref-9)
10. This initiative aimed at supporting the reinforcement of institutions, the rule of law and human rights, conducted in partnership with our Spanish counterpart, the *Défensor del pueblo*, is financed by the IPA fund (Instrument for Pre-Accession Assistance), the principal financial mechanisms through which [E](https://fr.wikipedia.org/wiki/Union_europ%C3%A9enne)U aid is directed to EU candidate and potential candidate countries. [↑](#footnote-ref-10)
11. *Directive 2014/54/EU of the European Parliament and of the Council of 16th April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers* [↑](#footnote-ref-11)