Annual Report 2006

LE MÉDIATEUR
DE LA RÉPUBLIQUE

An important player in the defence of public freedoms

Created in 1973, the office of the Mediator of the French Republic is an independent body that uses its skills to assist citizens, individuals or corporate bodies free of charge, with a view to improving their relations with the administration and public services. It handles disputes on a case-by-case basis, checks whether the organisation concerned by a complaint has acted in line with the public service mission entrusted to it, points out existing malfunctions and restores the complainant's rights. When an administrative decision, though legally founded, violates human rights, the Mediator of the French Republic is empowered to make recommendations in all fairness. He may also use his injunction power when the State fails to comply with a court decision taken in favour of constituents. The Mediator of the French Republic equally has an important reform-proposal power with which he helps improve administrative and legal procedures so that the law can be adapted to social changes, and iniquities stopped.

The institution owes its dynamism and efficiency to the quality of its employees at the headquarters, its national presence guaranteed by some 300 delegates, its flexibility and networking. Appointed by decree of the Council of Ministers, the Mediator of the French Republic has a single, irrevocable and immutable six-year mandate. The Mediator of the French Republic is a member by right of the National Human Rights Commission

The figures provided in this report concern the year 2006. The report was completed on 18 January 2007.

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Editorial

When a society abandons dialogue, it ushers in violence. This is the danger facing our democracy. A lot of companies and communities have got it right. This is why they have created mediation centres. Citizens also need to be listened to and be heeded, just like politicians. Over the years, more especially in 2006, the Institution of the Mediator of the French Republic has established itself as a place of dialogue, exchange and respect between players from different fields. By enabling them to join forces to fight for a common cause, devoid of any power struggle, it has served as a gateway for re-creating mutual trust between the constituent and the administration, between the citizen and the politician.

Jean-Paul Delevoye,
Mediator of the
French Republic

In 2006, associations, members of parliament, and legal authorities turned to the Institution, to seek our help and opinion. From guardianship, handicap to bad credits, the Institution serves as a forum for in-depth social debates. The Institution is entering a new phase due to the extension of its responsibilities to various fields.

In the social field, the government has asked the Mediator of the French Republic to appoint a delegate mediator in each departmental handicapped home. In the legal field, the draft organic law resulting from the Outreau affair provides for an extension of the powers of the Mediator of the French Republic. Any person who feels that the behaviour of a magistrate in a case he or she is involved in might constitute a disciplinary fault, may seek the help of the Mediator of the French Republic. No matter the methods applied, I think it is important to underline here two basic principles which must guide the on-going reflections. On the one hand, judicial independence and the independence of the Mediator of the French Republic must be respected. On the other hand, it is absolutely necessary to ensure a litigant that his or her complaints will be considered equitably and not in a situation of power struggle in which he or she will certainly have the impression of being in a legally weak position. Therefore, I remain particularly attentive to the implementation of this draft law.

Another development is looming in the Human rights field: external control of places of detention. France will soon ratify the United Nations Convention against torture and must create, within a period of twelve months, an independent body to control prisons. The Council of Europe recommends to Member States to give this prerogative to ombudsmen. So, in France, the Mediator of the French Republic will be entrusted with this task. It is important to point out, however, that it is not about inspection power but rather an assessment mission, aimed at improving the actions to take with respect for Human dignity. I have already met with some players in the prison world: managements, personnel, chaplaincy services, psychiatrists, and I will be particularly vigilant about the resources provided to carry out this mission.

These new developments will make the Mediator of the French Republic an ombudsman with similar prerogatives as most European ombudsmen. My ambition and the ambition of my officials for 2007 is to assume these responsibilities for total respect of Human dignity, vulnerable persons and justice.

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Notepad

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IN THE ABSENCE OF MARRIAGE, NO TRACE OF STILLBORN BABIES
Thanks to the Mediator's efforts, a work group has been created to improve the legal status of stillborn babies, in a manner that is more favourable to families.

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ALTERNATING CUSTODY, INAPPROPRIATE SOCIAL SECURITY CODE
For some years now, the Mediator of the French Republic has been studying the question of alternating custody, and has been making proposals aimed at maintaining the link between children and divorced parents, to enable these latter to play their parental roles.

p.22
A POSSIBLE SOLUTION TO THE PROBLEM OF DOCTORS WITH FOREIGN DIPLOMAS
Whereas these doctors had come to make up for the want of medical personnel in French hospitals, they found themselves in the grotesque and unjust situation of working without official authorisation.

p.27
JOB-SEEKERS OPENING A BUSINESS: SUPPORTING RISK-TAKING
It is paradoxical and unfair that job-seekers who have taken the risk of opening a business instead of continuing to benefit from their status as indemnified job-seekers are penalised when obliged to fold their business.

p.32
BAD CREDIT, A NEW SOCIAL EMERGENCY?
The term "bad credit" is used instead of the term "excessive debts" to demonstrate better a reality that has known significant changes over the past few years. To understand this phenomenon and assess the solutions, the Mediator of the French Republic has held several meetings with the institutional and field players handling this complex problem.

p.38
GUARDIANSHIP: CHRONICLE OF A REFORM
In less than five years, France will probably have one million persons under guardianship. How can all the aspects of these persons' life and family circle be taken into account?

p.41
DELEGATE MEDIATORS OF THE FRENCH REPUBLIC ACTIVE IN DEPARTMENTAL HANDICAPPED HOMES (MDPH)
Thanks to the presence of delegate mediators of the French Republic in MDPHs, it will be possible to observe the actual conditions for creating MDPHs and the possible difficulties of applying an ambitious and particularly complex law.

p.42
ESCHEATED LIFE INSURANCE POLICIES: BETWEEN ETHICS AND BILLIONS OF EUROS
In the absence of a constructive reflection on this issue, the number of beneficiaries found, in case of death of a contracting party, will remain very limited, and the feeling of prejudice will continue to increase among millions of potential beneficiaries of life insurance policies.

p.46
ASBESTOS, A LASTING HEALTH AND SOCIAL TRAGEDY
Within the framework of his reflection on the indemnity due to victims of asbestos, the Mediator of the French Republic was received by the inspectorate general of social affairs, attached to the Health Ministry, and by the committee in charge of this issue at the National Assembly. Obviously, the heterogeneity of the rules applied by the different schemes results in unequal protection of asbestos workers.

p.48
FAIR LIMIT TO THE EXERCISE OF SUBROGATION RIGHTS
The Senate's law commission, upon the incentive of the Mediator of the French Republic, pushed through the adoption of an amendment governing strictly the action of the social security offices pertaining to the recovery of the indemnity paid to victims of accidents or aggression.

p.55
FINES: RESPECTING THE RIGHT OF CITIZENS TO DEFEND THEMSELVES
The need to repress highway-code-related offences implies reflecting on the method of contesting the inherent fines. Today, laws make room for illegal practices, and unfair and forced fine collection can only be denounced.

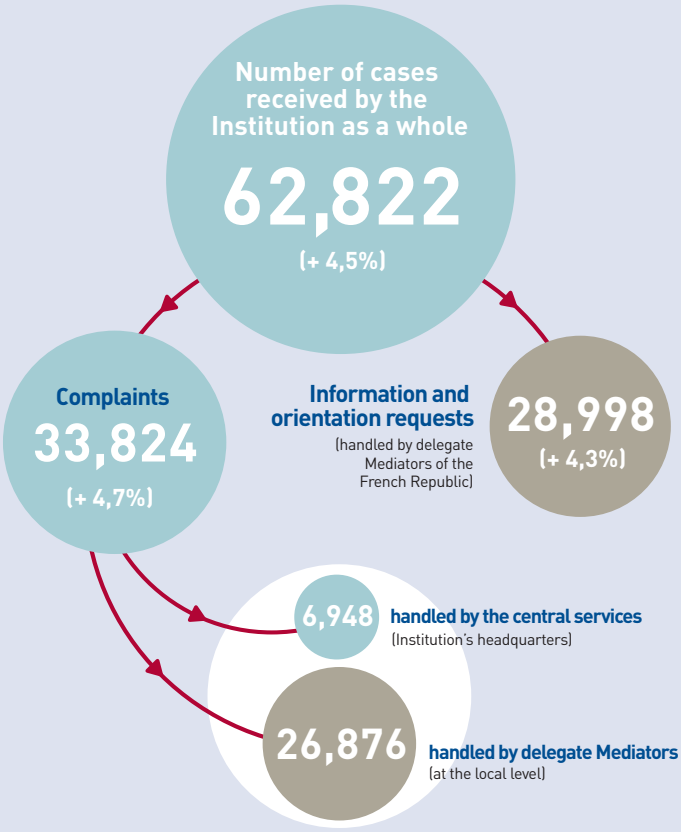
p.61
PRISONS: DEPRIVATION OF FREEDOM IS NOT SYNONYMOUS WITH DEPRIVATION OF ACCESS TO THE LAW
Handling the problems encountered by detainees and their family in their relations with administrations prepares the detainees' release and their chances of social reintegration. Moreover, the Justice Minister has proposed that general control of prisons be entrusted to the independent Institution of the Mediator of the French Republic. It will be a new service, run by specially trained controllers different from the current delegates.

p.63
STIC AND JUDEX, FILES THAT NEED TO BE IMPROVED
Consulting Stic and Judex files for administrative purposes does not offer the same legal guarantees as those planned for the working of the police record. A workgroup was asked to propose solutions which can reconcile the protection of life with personal liberties. The group's recommendations contain almost all the reform proposals made by the Mediator of the French Republic.

The year in figures

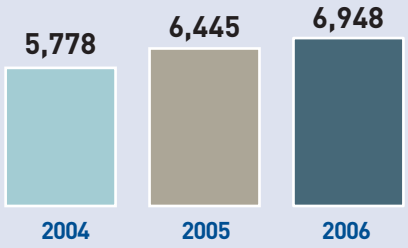
The Institution's overall results

In 2006, the number of cases referred to the Mediator of the French Republic, the central services and delegates, increased by 4.5% compared to 2005, with a total of 62,822 cases received. Information and orientation requests received by delegate Mediators of the French Republic rose by 4.3%, compared to the previous year. The Institution handled 33,824 complaints, 6,948 of which were handled via the central services of the Mediator of the French Republic, in Paris. In 2006, 48.4% of the complaints received by the central services were sent to the Mediator of the French Republic in line with the indirect referral procedure, through a member of parliament or a senator. Note that this percentage includes 209 cases subsequently regularised by the parliament (i.e. 6.2%).

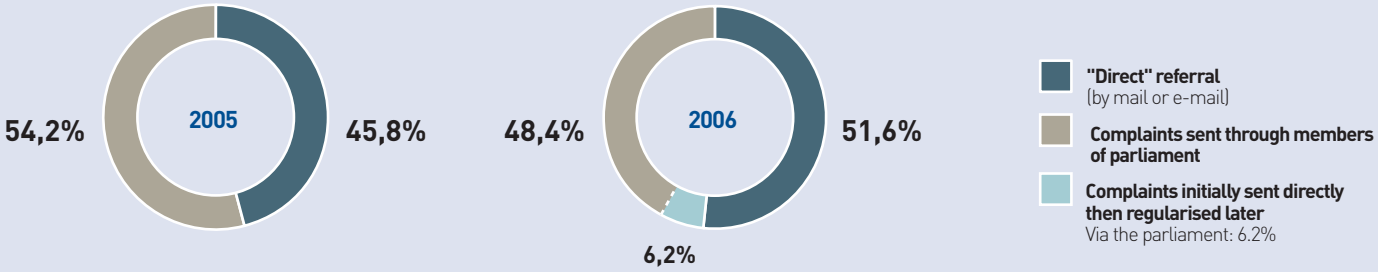


Activity of the central services

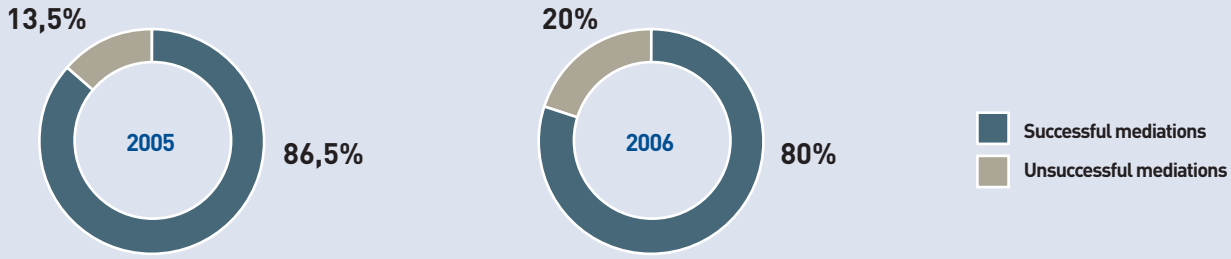
Number of complaints received



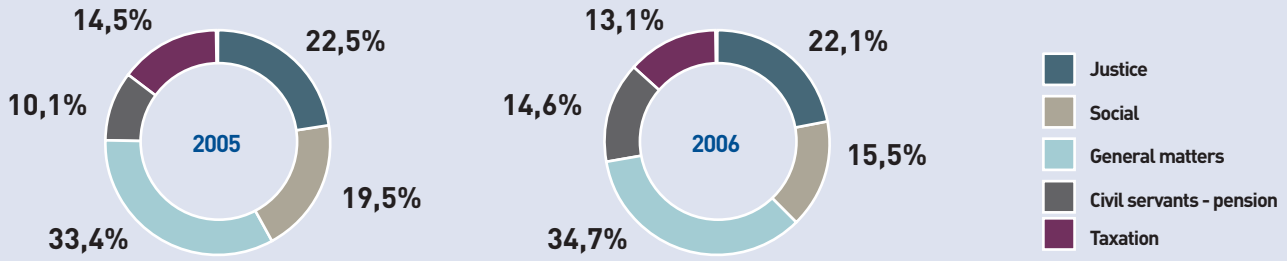
Methods used to refer complaints to the Institution's headquarters



Rate of successful mediations



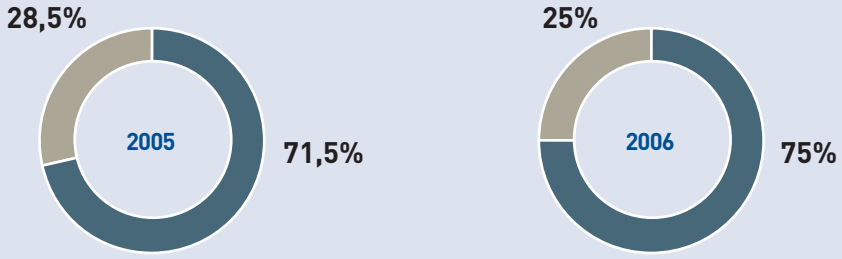
Classification of closed cases according to fields of intervention



The delegates' activity

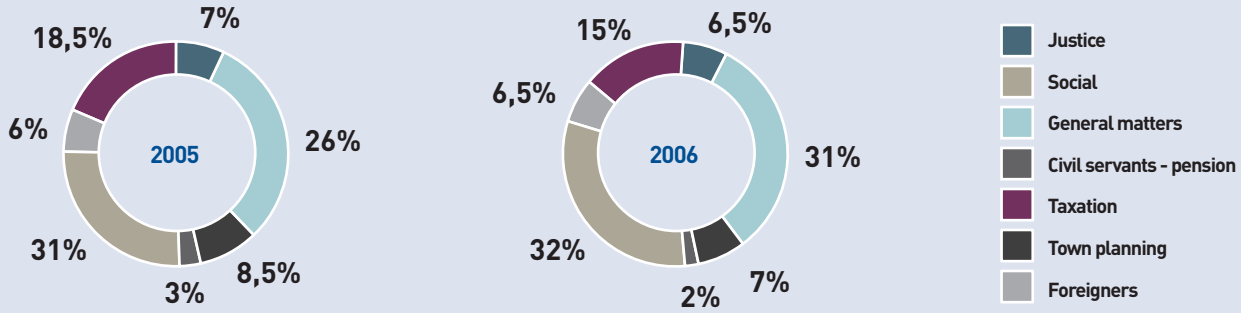
Information

Areas concerned

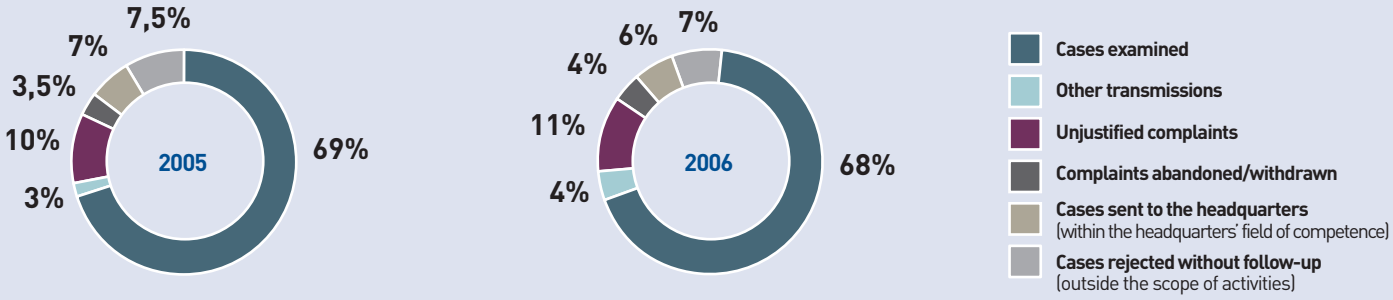


Complaints

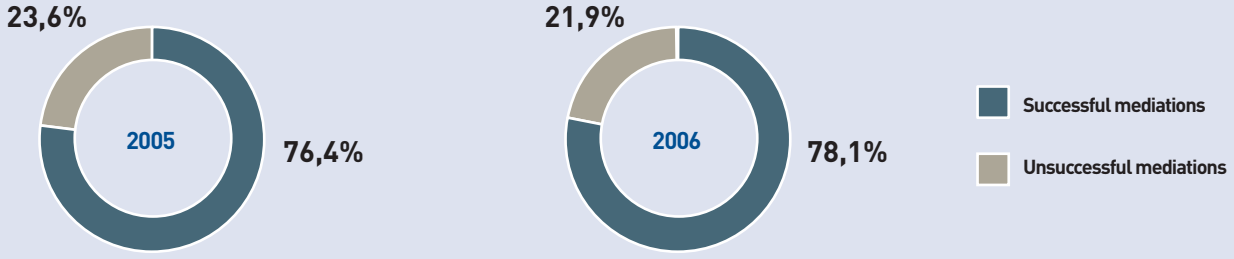
Classification according to fields of intervention



Handling of the cases



Rate of successful mediations by the delegates



Sociological study of the requests sent to the Mediator of the French Republic

At the request of the Mediator of the French Republic, *Sciences Po Développement* (a research organisation) conducted a study [1] about the requests received by the Institution's headquarters from March to September 2006. The conclusions of this study will be made public in the course of 2007. The figures below are extracts from this study.

Who refers cases to the Mediator of the French Republic?

Category

- Men: **55%**
- Women: **39%**
- Couples: **5%**

Age and status

- **1** out of 10 persons is **aged below 30**
- **1** out of 4 persons is **retired**
- **2** out of 3 persons are **of working age**

Place of residence

- **4%** of the complaints are from people living outside France
- **22%** are from people living in the Paris region
- **74%** are from people living in other parts of France (including the French overseas administrative departments and territories)

Socio-economic background

- **33%** are from people from a modest background
- **37%** are from people from an average background
- **23%** are from people from a rich background

What do people request from him?

- **2/3** of the requests are from people who ask the Mediator of the French Republic to help them cancel an administrative decision, or to push through a pragmatic solution to a dispute. They concern "ordinary consumerism or sense of civic responsibility" [2], where the administration is held responsible for the wrong done to the complainant.

- **1/3** of the requests are "pleas in favour of equity", in which the requestor acknowledges the fact that he or she is partly responsible for the case in question. It is then surprising to note that the complainant attributes an extraordinary power to the Mediator, including the power to reverse the course of events. This procedure is considered by the complainant as a last resort.

(1) This study, conducted by Mr Alain Chenu, director of the Sociological Observatory of changes (OSC/Sciences Po), and Mr Nicolas Herpin (CNRS/OSC), with the help of a doctorand at Sciences Po, made it possible to examine in detail more than five hundred letters. This sample was relatively representative of the French population.

(2) Notion developed in the global study to be published sometime in 2007.

Table of reforms

Reform proposals completed in 2006

13 proposals adopted

Subject	Completion date
Fixing a deadline for issuing building permits for building projects near a listed site	24.01.06
Granting family allowances for children living regularly in France	26.01.06
Maintaining for children the increase in housing allowance in case of alternating custody	01.02.06
Harmonising the disability pension and old-age pension benefits of unsalaried agricultural-sector workers	16.03.06
Fighting against forced marriages	15.05.06
Access to the pension-benefit adjustment system for spouses of farm managers with multiple pension schemes	18.05.06
Extending the system of replacing the indemnity paid in case of redundancy with old-age pension	22.05.06
Harmonising the surface area reserved for subsistence farming	26.06.06
Amicable partition of a succession when one of the beneficiaries is a minor or a protected adult	26.07.06
Modifying the rules for publicising the registration of de facto couples and the rules governing their property	26.07.06
The social security contributions paid by agricultural holdings for their casual workers	13.10.06
Including positron emission tomography in the nomenclature of medical acts	16.10.06
Subrogation rights of the national insurance	31.12.06

4 proposals not adopted

Subject	Completion date
Taking account of previous services for the redeployment of research lecturers	18.01.06
Tariff for the writ of summons delivered by bailiffs	05.04.06
Benefits of spouses of policemen/women killed in the course of service	24.08.06
Social welfare rights of job-seekers opening a business	31.12.06

18 reform proposals made in 2006

Subject	Submission date
Introducing the right to seek the decision of a judge, while contesting traffic code-related fines	**16.01.06** initiated on 26.12.05
Obligation to pay social security contributions for indemnities paid to jurors.	**26.01.06**
Modifying the rules for publicising the registration of de facto couples and the property law applicable to them.	**24.02.06** closed successfully on 26.07.06
Income tax and joint solidarity of couples in the legal sense of it	**08.03.06**
Equal treatment of physical persons, especially between married couples and de facto couples	**10.03.06**
Organising the activity of the legal representatives and guardians of protected persons	**17.05.06**
Sharing the survivors' pension benefit resulting from the death of a civil servant in case of multiple marriages and death of a beneficiary	**17.05.06**
Access by notaries public to the computerized bank-account file (Ficoba)	**11.07.06**
The response time to be given to tax authorities and the tax judge	**11.07.06**
How to grant and calculate early-retirement benefits to disabled social security contributors	**25.07.06**
Managing the estate of persons under guardianship and who have been banned from holding a bank account	**23.08.06**
Representing de facto couples at a court of first instance and at a local court	**23.08.06**
Reinforcing the powers of the judge in the application of the consumer law	**04.10.06**
Using an equivalent of the French tax notice for EU citizens, for housing and other social advantages	**12.10.06**
Bonuses for services taken into account while calculating the old-age pension benefits of female civil servants with one or more adopted children	**12.10.06**
Centralised data on the withdrawal of bank cards	**24.11.06**
Exempting from death duties the indemnities for hepatitis C infection	**12.12.06**
Fraudulent acknowledgement of paternity	**21.12.06**

Origin of a reform

From social reality to law: how a reform proposal comes into being

Initiating a debate on what is right and what is not right is the self-assigned mission of the Mediator of the French Republic. From detecting iniquities to proposing reforms, his methods give priority to listening and dialogue. This is evidenced by the two big reforms of 2006: reform of guardianship and the debate on bad credit.

All the reform proposals made by the Institution are based on a common methodology. First, detecting the iniquity situations which most reflect the citizens' reality, by examining the requests sent to the Mediator of the French Republic.
This first impression is then confirmed through rigorous field observations and in-depth consultation with the players, as well as by enhancing the reflection with experts and deeply analysing the problems.
Finally, opening the debate to the general public and helping political leaders take the decisions they may deem necessary in view of the facts available to them.

Detecting iniquities

The cases examined by the services of the Mediator of the French Republic often raise question of social changes or iniquities to which politicians and lawmakers must find answers. Beyond the isolated actions, the Mediator of the French Republic, his delegates and the experts in his central services are attentive to the unjust character of each situation. Behind an individual complaint is often a problem that calls for a collective response.

Meeting players and nourishing reflections

From the 62,000 cases handled in the course of the year by the Institution, some injustices emerge with striking obviousness; others reveal themselves and are confirmed with time.

The problems of bad credit, one facet of which was mentioned in the 2005 Annual Report of the Mediator of the French Republic, resulted in sustained exchanges and improvement efforts in 2006. In June, Jean-Paul Delevoye went to Dijon to participate in an excessive-debt commission; in September he went to Strasbourg to meet the association Crésus; in October he went to Laon to understand the working of the Passerelle (gateway) (an association created by the bank Crédit Agricole, specialised in accompanying excessively indebted persons); in November he went to Brussels to study the working of Banque nationale's positive centre. At the same time, he met with magistrates, the national association of judges of court of first instance, as well as representatives of finance companies and universities. Consulting with regional directors of Banque de France made it possible to have an overview of the situation of excessive debts in France and of the new categories of people affected by this. The Mediator of the French Republic also organised, on 15 November, a working day with 18 consumer associations. Obviously, these numerous players had been working to fight against excessive debts with similar proposals. But their messages and actions remained extremely compartmentalised. Sometimes, the attention of the Mediator of the French Republic is also drawn to a phenomenon by external players. This was the case for guardianships and the legal status of so-called "incapable" persons. Alerted by two journalists [1], the Mediator of the French Republic examined in 2005 the unacceptable abuse and legal loopholes which undermined the protection of the most fragile members of society. Before starting any reform proposal process, and to form an opinion of his own, the Mediator of the French Republic held several meetings with judges of the court of first instance, family associations, and private guardianship managers. He went to the Lyon region to see how the Union Tutélaire Rhône-Alpes (union of guardians in the Rhône-Alpes region) actually worked, accompanied by a member of parliament. He also met several with ministers and was auditioned by the National assembly's law and social-affairs commissions. All the players agreed on the urgent need for such a reform. Therefore, despite the existence of first-rate documents, such as the Favart report, and the draft law by Elisabeth Guigou, a final step remained to be taken: making a political decision.

Opening a debate to the general public

When it becomes clear that a cause brings together many players, sometimes with different opinions as to the actions to take, around converging positions, it merits to be taken to the political scene in order to find the right answers. The third step in a reform proposal can then be taken.

For the reform of guardianship, the Mediator of the French Republic decided to make a solemn call for a political decision, on 25 April 2006: "There is an urgent need for reform". To this end, he organised a press conference in which members of parliament and associations (ANJI, ANGT, FNAT, UNAF, UNAPEI, UNASEA) participated. A few months later, a draft law was submitted to the Council of State. Presented to the council of ministers on 28 November 2006, it is to be debated upon at the beginning of 2007.

The topic "Bad credit: a new social emergency?" was opened to public discussion on 14 December 2006. At a press conference, the Mediator of the French Republic expressed the view of major players (see box) whose proposals, concerning in particular offering social assistance to the affected persons, giving a sense of responsibility to the players, taking a loan inventory and as well as loan ethics, are currently being examined.

Guardianship: chronicle of a reform

- 23 November 2005: audition of Jean-Paul Delevoye by the Social Affairs section of the Economic and Social Council.

First semester of 2006:

- Meeting with Pascal Clément, the Justice Minister, and the minister in charge of families and elderly people
- Meeting with a member of the National Assembly's social affairs commission
- 25.04.06: press conference on "Reform of guardianship: an urgent need"
- 22.05.06: speech by Jean-Paul Delevoye at the 102nd congress of notaries public on the topic "Vulnerable persons"
- Summer 2006: submission of the text to the Council of State
- October 2006: Economic and Social Council report
- 28.11.06: presentation of the reform proposal to the council of ministers
- 13.12.06: audition by the president of the National Assembly's law commission
- January 2007: opening the debate at the National Assembly

(1) Linda Bendali and Nathalie Topalov, authors of La France des Incapables, Cherche-Midi.

Bad credit: preparing for a national debate

The press conference on "Bad credit: a new social emergency?", held on 14 December 2006, was attended by:

- Georges Gloukoviezoff, sociologist
- Emmanuel Constans, mediator of Minefi, Chairman of CCSF
- Michel Philippin, manager of LaSer Cofinoga
- Christian Noyer, governor of Banque de France
- Philippe Flores, judge of court of first instance, co-chairman of ANJI
- Benoît Jolivet, mediator at Fédération Bancaire Française (federation of French banks)
- Jean-Louis Kiehl, delegate Mediator of the French Republic, Vice-chairman of Crésus Alsace, executive chairman of fédération française Crésus
- René Petit, chairman of Passerelle, an organisation created by Crédit Agricole
- Jean Hilgers and Pierre Dejemeppe, manager of Banque nationale Belgium and chairman of the committee accompanying central positive
- Damien Guermonprez, general manager of banque Accord
- François Villeroy de Galhau, chairman and general manager of Cetelem. ■

■ LAW OF 3 JANUARY 1973

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

Cases treated by the Mediator

It seems necessary for the citizen to become again the focus of public politics. Blended families, cross-border migration, professional development are examples of issues which, within the current legal framework, give rise to deprivation of rights and increased inequalities. The individual and social insecurities arising from bad credit or increasing lifespan, for instance, call for a reform. More than ever, protecting the weakest members of society should be a concern for the politician and law-maker.
Finally, in an increasingly complex society, access to law is often a real problem. Here again, it is not fair that the most helpless be the first to be penalised.

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THE CITIZEN AT THE HEART OF GOVERNMENT POLICIES

Adapting laws to the new situation in society

Although the family is still the first circle of proximity, affection and protection, its representation has changed significantly. It has become a chosen and multiple-choice lifestyle. The legal statuses it is assuming and the blood ties it no longer necessarily covers blur the traditional boundaries. The law is increasingly tending towards a social reality characterised by births out of wedlock, blended families, voluntary separations or separate homes, imposed by professional life, etc. The Mediator of the French Republic is striving to have the law adapted to the 21st century family. His reform proposals contribute to the indispensable development of the law on issues like shared custody, taxation, fathers' right, and the notion of couple.

Harmonising the notion of couple

The notion of couple: a source of iniquities?

➜ The minimum allowances paid to those without any other income are multiplying and comprise today close to ten different types of allowances. This complex system is equally a source of iniquities: some people have access to allowances while others do not, and there is no difference in the situation of the parties concerned to justify such an inequality. The Mediator of the French Republic has, therefore, proposed a harmonisation of the resources applicable to the minimum benefits, especially the notion of couple.

In fact, the right to and the amount of these welfare payments are subject to the "family status" of the beneficiary. In some cases, the notion of family is strictly limited to the party concerned and his or her spouse. In other cases, the notion is extended to the applicant and his or her "de facto spouse", "the person with whom he or she is living as man and wife" or with whom "he or she constitutes a family". These are different expressions which result in inequality. The Mediator of the French Republic has, therefore, proposed to retain a single definition of "couple" that suits the recent changes in cohabitation practices.

To see the cases handled by the delegates and specialists of the Mediator of the French Republic, go to: **www.mediateur-republique.fr**

■ LORRAINE
A father, temporarily without any resident permit, wishes to bury his son in his country of origin. The delegate Mediator of the Vosges intervenes at the prefecture.

■ SOCIAL
Mrs L. has already given birth to a girl (today aged 7), a boy (stillborn) and will soon have a third child. Nevertheless, she is refused the maternity leave for the third child, which is longest. The non-viable child is not taken into account.

Regarding the welfare payment associated with the retirement pension and disability benefits, this harmonisation of the notion of family is granted thanks to the creation of a single welfare payment: the solidarity grant for elderly people, which will finally become applicable early 2007. The notion of family will thus be extended to married couples, de facto spouses, and partners.

In the absence of marriage, no trace of stillborn babies

➜ Changes in society and the slower legal changes sometimes lead to the emergence of no-go areas and particularly cruel situations. Thus, unmarried couples do not have any family-record book before the birth of their first child. If said first child is a stillborn baby, no document will bear any trace thereof. According to the general Instruction on civil status (IGREC), a stillborn cannot be recognised. To allow legal recognition and facilitate the parents' mourning processes, the Mediator of the French Republic has recommended that parents of stillborn babies, both married and unmarried ones without any other child, be allowed to have a family-record book to record their dead child, and to recognise the baby so that it can have parentage and a name. In view of the legal problems arising from this sensitive issue, the Mediator of the French Republic has created a work group to really examine the possibilities of improving the legal status of stillborn babies to suit families most. A comparison with European legislations shows that the French law is behind on this issue. The Mediator of the French Republic does not necessarily wish to call to question the minimum threshold defined by the circular of 30 November 2001 and which was fixed on the basis of the recommendations made by the World Health Organisation (WHO).

Beyond this right to parentage, the non-recognition of stillborn babies is a source of another iniquity between mothers and fathers. The Mediator of the French Republic has thus been alerted to the fact that fathers of stillborn babies are refused the daily allowances payable during paternity leave. Whereas, in the same situation, mothers are systematically granted their maternity leave, fathers are only granted their paternity leave upon presentation of a birth certificate attesting to parentage, which is not issued for stillborn babies. Meanwhile, paternity leave can be granted to the father of a baby who dies very shortly after being born, but for which a birth certificate has been issued. Therefore, the Mediator has asked that the fathers of these children be allowed to benefit from the daily allowances payable within the framework of paternity leave. In October 2006, this proposal was accepted by the ministry in charge of social security. A decree is expected in February 2007.

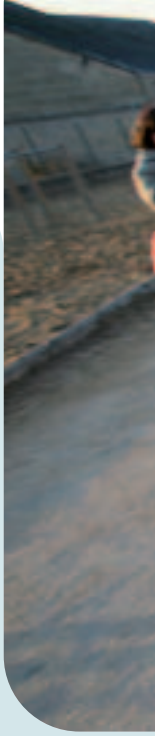
Married couples or de facto couples: the same property law?

➜ An unexpected consequence of the creation of the civil solidarity pact (PACS) has shown how the notion of official couple still needed to be harmonised. In January 2006, the Mediator of the French Republic was alerted by the national association of judges of court of first instance (Anji) to the spectacular rise in the number of requests for nullification of civil solidarity pacts at courts of first instance. The number of these requests has doubled within three years! Why? This is because notaries public wish to protect themselves against future liability, since Article 515-5 of the Civil Code provides that any property acquired by partners of a civil solidarity pact is supposed to be subject to coparcenary, unlike partners in a traditional marriage. In view of this situation, the Mediator of the French Republic proposed a reform of the property law applicable to partners of the civil solidarity pact wishing to opt for separate estate instead of coparcenary. This proposal was taken into account in Law 2006-728 of 23 June 2006 on the reform of successions and bounties.

Spouse, de facto spouse, partner ... Let us agree on one

➜ In the citizens' mind, the word "spouse" is more and more equated with de facto spouse, translating well the societal changes in this respect. Now, a number of laws do not reflect such changes and their application results in some misunderstanding on the part of the citizens. Thus, the persons authorised to represent a party at a court of first instance and local court are, in addition to the lawyer, the spouse, parents or relatives up to uncles or nephews, and a civil servant. However, there are no provisions for de facto couples or partners of a civil solidarity pact. Therefore, they cannot represent their "spouse" at courts of first instance or local courts. Now, the national association of judges of courts of first instance thinks that close to one-third of citizens wishing to be represented before a court of first instance would like to be represented by a de facto spouse if allowed. To comply with the principles of accessibility and proximity, which characterise the working of these courts, the Mediator of the French Republic, therefore, proposed that Article 828 of the new civil procedural code be completed by including de facto spouses and partners of a civil solidarity pact as those authorised to represent a party at a court of first instance and a local court. This proposal also concerns all the civil jurisdictions where representation by a lawyer is not obligatory (industrial tribunal, jurisdictional court, agricultural rent tribunal, social court, courts handling disability-related disputes). The justice ministry and the ministry in charge of budget and State reform have expressed their agreement with this reform proposal. ■

The commission for administrative simplifications (Cosa) is also in favour of this proposal.



Couples and the tax authorities

After the 2005 summer break, the National Auditors Department presented a study of the taxation scheme for couples, requested by the Mediator of the French Republic. Without questioning the joint taxation scheme, this report showed that the currency tendency towards new couple-formation modes requires some tax reforms. In 2006, the Mediator of the French Republic submitted several proposals in this respect.

Married but not living under the same roof!

➜ Two delegate Mediators of the French Republic in the Vaucluse and the Var handled a complaint from Mrs G. against the tax authorities of Seyne-sur-Mer, which had refused to send to her husband, domiciled in the Vaucluse, the council tax he was ready to pay for a garage he had bought as a separate property at his wife's residence. The couple was, in fact, married under the separate estate scheme and is not living together (he lives in the Vaucluse while she lives in the Var). Mrs G.'s husband had bought the garage at her residence in order to park a boat he used only in summer. A first intervention by the delegate Mediators made it possible to clarify the situation with the tax authorities: the tax authorities were ready to meet the requesters' need, provided they prove that the garage was only used by the husband living in another department. An affidavit signed by the husband and forwarded by the delegate Mediator was enough to have the tax authority reimburse Mrs G. the unduly collected tax.

In the name of the principle of reality, the Mediator of the French Republic has suggested that certain inconsistencies be removed from the tax law, especially the specifications of Article 6 of the General Tax Code: "Spouses shall be subject to distinct taxation if married under the separate estate scheme and if they do not live under the same roof [...]". In fact, this provision, equally applicable to *de facto* couples, is the only provision of the General Tax Code that uses matrimonial relationship to determine the separate taxation of couples if said couples are not living under the same roof. It "can create situations of iniquity" in terms of income tax, as underlined by the report of the National Auditors Department dated 21 September 2005. Finally, it does not take account of geographic professional mobility, one of the causes of separate residence, independent of the existence of a disagreement between the parties concerned.

Inconsistencies in the income splitting system

➜ The treatment given to widows or widowers depends on whether or not the child/children resulted from a marriage with the deceased. Thus, for a widow living alone with a dependent child, the number of parts may vary from 2 to 2.5. According to the National Auditors Department, "this distinction between children had while married or out of wedlock [...] is no longer adapted to the changes in society". In fact, the income splitting system has lost its consistency with the granting of additional half parts, especially to "bachelors or spinsters, divorcees or widows and widowers without any dependent child" and living alone without any dependent children.

To end this discrimination between "legitimate" children and "illegitimate" ones, the Mediator of the French Republic has proposed to remove the provision of Article 194 of the General Tax Code so as to eliminate the discrimination based on the origin of a child for a widow/widower. This proposal is in accordance with decree 2005-759 of 4 July 2005 on the reform of parentage, which has done away with the distinction between "legitimate" and "illegitimate" children.

The institution has also proposed that the system of granting an additional half part be replaced with a system of abatement, to decrease the amount of tax payable, for bachelors, divorcees or widows without any dependent children or with adult children no longer fiscally attached to them.

De facto couples and married couples: still some tax iniquities

➜ Inequitable tax situations exist between de facto couples and married couples. One of them concerns, especially, the tax exemption for the capital gain made from the sale of a main home. For separated or divorced couples, when any of the parties is obliged to leave the matrimonial home, the administration applies the exemption to the sale of their home, provided the home was the spouses' main home during the separation, and that the sale, motivated by the separation, takes place after a normal sale period usually estimated at one year. On the other hand, for de facto couples or couples formed under a civil solidarity pact, the one leaving the home has to pay tax on his or her own share of the capital gain from the sale! Moreover, the difference in the taxation procedure for the sharing of a property jointly acquired by de facto couples and which is not their main home, and the exemption of married couples from this tax, is an injustice against de facto couples.

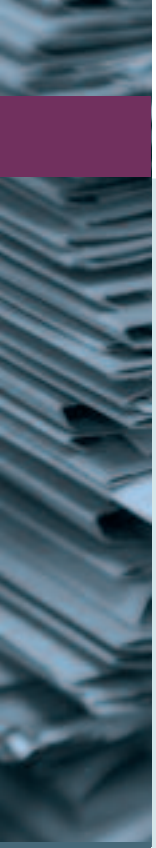
Therefore, the Mediator of the French Republic has proposed that an end be put to these fiscal differences, by extending to *de facto* couples the same system applied by the administration for separated or divorced couples in terms of the capital gain made from the sale of their main homes, and the sharing of a property jointly owned by de facto couples or civil solidarity pact partners.

When misfortune drains finances

➜ It is obvious that in case of misfortune, especially for married couples, the weakest is sometimes not protected. The Mediator of the French Republic handled this problem already in his 2004 annual report. The same problem was equally treated in the 2005 report of the Mediator of the Economic ministry, according to which "the attention given to requests for release from joint responsibility for taxation reflects the insufficient consideration of changes in family situations. Special attention should be paid to requests for release from responsibility. At least, the requestor should not be required to pay penalties for the reprehensible behaviour of his or her spouse if it cannot be established that the requestor had participated in the said behaviour". The joint responsibility of spouses, provided for in Article 1685 of the General Tax Code, may have dramatic human consequences for an ex-spouse. This is why the Mediator of the French Republic recommends that it be made obligatory to notify the other spouse about the existence and results of an investigation, indicating the nature and extent of his or her joint responsibility for the income tax. No text actually requires the administration to send to the person deemed jointly responsible with his or her spouse a warning indicating the taxes due by this latter after a tax investigation. Furthermore, the Mediator of the French Republic proposes that the joint responsibility of an ex-spouse be limited only to the payment of simple fees, once he or she establishes his or her good faith. This is important in that fines and increments may represent a high percentage of the amounts the payment of which is required. ■

■ TAXATION

In Seine-Maritime, Mr A., a divorcee, has custody of his children and pays alimony to his ex-wife. He is granted 3.5 parts, but he is not allowed to deduct the alimony. He is surprised about this.



■ SOCIAL FIELD

Mr F., waiting to obtain a divorce, receives his children in his home once every two weeks. He employs a childminder but cannot obtain any help: only one parent is entitled to family allowances.

■ SOCIAL FIELD

Mr and Mrs S. are separated. The court has decided in favour of sharing the children's custody and family allowances. But Mrs S. keeps everything, and Mr S. cannot obtain his own share from the social security office (CAF).

Shared custody: customary but not (yet) legalised

For some years now, the Mediator of the French Republic has been studying the question of alternating custody, and has been making proposals aimed at maintaining the link between children and divorced parents to enable these latter to play their parental roles.

Shared custody: inappropriate Social Security Code

➜ The law of 4 March 2002 clearly recognised alternating custody. This solution reflects the changes in our society and takes account of the wish of fathers to continue raising their children. In France, alternating custody is practised by 10.3% of divorcees. However, the rules governing the payment of family allowance in case of alternating custody still contradicts the general development of the family law. A lot of fathers have complained to the Mediator of the French Republic about this unjust situation: why should only one of the divorced or separated parents be paid the family allowance in case of alternating custody, whereas both of them share equally the resultant expenses? Most often fathers are disadvantaged by this illogicality.

An example is the case of Mr F. Waiting to obtain a divorce for the past two years, Mr F. receives his children in his home once every two weeks. Since his wife is not working, he accepts that she be the one to claim the family allowance to enable her receive family allowances and housing benefits. Mr F. employs a childminder when he has custody of his children, due to his professional obligations. In view of the existing law, which provides that only one person identified as beneficiary is entitled to the family allowance payable for the same child, he has been unable to obtain any allowance in connection with his children's custody.

The Mediator has, therefore, made a proposal to reform the method of paying family allowances to parents when alternating custody is retained during divorce or separation.

In January 2006, the decision of the Court of Appeal was sought by social security courts in a case in this connection. Without precedent and exceptionally, the Mediator of the French Republic and the ministerial delegation for families helped the Appeal Court in its preparatory work and issued a joint reflection. On 26 June 2006, the Appeal Court decided in favour of granting family allowances on a turn-by-turn basis to divorced parents in case of alternating custody.

New developments in 2007

➜ The relevant ministers have informed the Mediator of the French Republic that they are in favour of a fairer distribution of family allowances. Thus, the law on the funding of social security for 2007 provides that family allowances may be shared between fathers and mothers practising alternating custody of their children. This is the first significant progress for the families concerned. However, the practical modalities of this sharing have not yet been defined, neither has this system been extended to other types of family allowances. These are missions entrusted to a workgroup created by the Social Security Minister and in which the Mediator of the French Republic is participating.

Teachers: alternating custody now recognised

➜ For divorced or separated teachers having alternating custody of their children, the Mediator of the French Republic had proposed that the increment of the housing allowance (IRL) for dependent children be maintained. It has to be specified here that the IRL is payable by the municipality if it cannot provide accommodation for its employees. An increment of this allowance is planned for married teachers with or without dependent children, as well as for unmarried ones, widows or divorcees with dependent children. In case of divorce or separation, the teacher lost this increment if the child was fiscally attached to the other parent, even when the expenses for this child were shared equally by both parents. This anomaly was remedied by Decree 2006-24 of 3 January 2006. The increment of IRL is henceforth granted to "a divorced or separated teacher having alternating custody of at least one of his or her children". This applies to both parents if both of them are teachers. The reform became effective on 1st February 2006.

Other measures recommended by the Mediator of the French Republic for civil servants: his attention was drawn to the need to complete the regulations on the modalities for granting family income supplement (FIS) in order to take account of the situations of divorce where ex-spouses have alternating custody of their children. In fact, no provision seems to have been made for a seemingly frequent situation of joint custody of a child, with alternating homes. This reform proposal is still awaiting adoption. ■

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Fathers' right increasingly visible

Prior to the pension law of 2003, only female civil servants with three children could be granted some bonuses while calculating their pension benefits. But not men.

The European Court of Justice's (ECJ) Griesmar decision of 29 November 2001 has made its mark. Joseph Griesmar, a male civil servant and father of three children, claiming to be a victim of sexual discrimination pertaining to the calculation of his pension entitlements, filed an appeal with the European Court of Justice and the Council of State.

The French Council of State, in a ruling issued on 29 July 2002, stated that civil service pensions were payments and that "the French civil service pensions rule was incompatible with the equal pay principle, in that it adds one year to a female civil servant's working life, for the purposes of pension calculation, for each child she has, but not to her male colleagues who had also educated their children".

Therefore, the law on civil service pensions reform dated 21 August 2003 extended to male civil servants the one-year bonus previously available only to their female colleagues. Nevertheless, to be entitled to this bonus, a civil servant has to interrupt his or her activity for at least two months to raise a child, either within the framework of maternity leave, adoption, or parental presence, or temporary leave. The same thing applies to early retirement after fifteen years of service, with immediate effect and previously reserved only for female civil servants with three children without any particular condition; this was extended to male civil servants by the financial law amendment of 30 December 2004, subject to an obligatory two-month interruption of activity for each child.

While handling the numerous individual complaints, the Mediator had the opportunity to explain the field of application of these new provisions. ■

"Since European laws have not yet been harmonised, consumers of welfare benefits tend to choose their rights and lifestyle. In one country, social protection will be more interesting for them, and in another taxation, etc. Nomadism of consumer-citizens is a recent but real development in Europe."

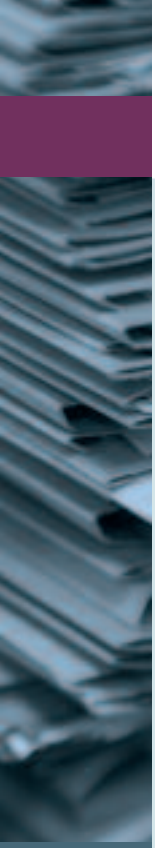
Mobility and life course

Mobility is at the heart of modern life. When people move to a foreign country to study, work or stay with their spouse, they are faced with different laws and legal systems, especially for their professional and social integration. When they return to France, it is sometimes difficult for these persons to have their diplomas and rights recognised, even when their movements had been limited to Europe. Therefore, there is sometimes a wide gap between the advocated "European mobility" and actual harmonisation of the different laws... Moreover, mobility is not just geographic. It can be sectoral. This is the case of people who, in the course of their professional life, change from being a private-sector employee to a civil servant or self-employed worker.
This change of status often results in a number of problems, which in turn leads to the increasing number of complaints received by the Mediator of the French Republic. They concern such issues as taxation, pension, unemployment benefits, recognition of professional experience and diplomas.

Professional circle: which recognition for diplomas?

Stateless diplomas

➜ Mr T. obtained his Architecture diploma at the University of Sarajevo in 1978. This diploma was issued to him in the name of the Republic of Yugoslavia – Republic of Bosnia-Herzegovina. Mr T. lives in France as a political refugee but his diploma is not recognised because, since the division of his country of origin in 1992, diplomas from the University of Sarajevo are no longer recognised. Only diplomas from the University of Belgrade are again recognised since 2002. For Mr T.'s diploma to be recognised in France, the University of Sarajevo, Bosnia-Herzegovina should have applied officially for the recognition of their diplomas. But even if it had, Mr T. could not have benefited from such recognition since he had never had the Bosnian nationality... When this problem was referred to him, the Mediator of the French Republic argued that whether it had been issued by the University of Belgrade or that of Sarajevo, the diploma at that time came from the same State. It had, therefore, been issued in the name of a united Yugoslavia. Although the recognition of diplomas is determined by the



■ GENERAL MATTERS
This foreign female doctor, married to a French citizen, cannot practise medicine in France. She must wait for the new tests planned for 2007 within the scope of the new approval procedures.

■ GENERAL MATTERS
Despite his diploma from the University of Dakar and further training in France, this oral surgeon cannot exercise his profession in France. He must wait for the new regulations...

date of the relevant decision and not by the date on which the diplomas have been obtained, the Ministry exceptionally allowed Mr T. to be registered with the association of licensed architects, thus enabling him to exercise his profession in France, in view of his status as a political refugee and the fact that his diploma had been issued by a country which was then unified.

Foreign doctors: recruited but not recognised

➜ This is a very frequent situation among doctors and other healthcare workers with diplomas from non European Union countries. All along 2006, the Mediator of the French Republic strove to find a solution to the problems of doctors whose status merited to be protected both for their sake and for the sake of the hospitals employing them in conditions that had become illegal in the sense of the 1999 law on universal medical coverage. Whereas these doctors had come to make up for the want of medical personnel in French hospitals, they found themselves in the grotesque and unjust situation of working without official authorisation. Some trade unions referred the matter to the Mediator, who met several times with the Health Minister on this issue. A fair solution is proposed in the law on the funding of the social security for 2007, which provides for a derogatory procedure authorising foreign doctors recruited before 10 June 2004, the date of the application decree of the 1999 universal medical coverage law, to work in France. The measure institutes an examination by profession, discipline or specialty – and no longer a competitive test, which will be reserved for them. The practical modalities for this test should make it possible to better take account of already acquired professional experience. Accepted candidates will then be assessed by the appointments commission. Another important development: holders of *Certificat de synthèse clinique et thérapeutique* (a certificate required by non-residential medical students to replace a general practitioner) will be exempted from this exam, since the exams for this certificate are the same. The application modalities for this system will be defined by decree and in conjunction with the parties concerned. The Mediator of the French Republic will remain vigilant regarding the application of this reform.

No-go areas still exist

➜ Some cases of doctors with non-European Union diplomas are not covered by any system. This is the case of this midwife who, although married to a French citizen since 1989, has only been able to gain admission into the national school of midwifery as a foreign student, since she was granted French citizenship a year later. As a result, she only had a "school leaving certificate" and could not work in France. Since her husband had been sent on a mission to Cape Verde Islands, she was able to work there for ten years. When she returned to France, she went for a four-year training course in France, passed her final year examination with honours, coupled with the ten years professional experience acquired in a foreign country. Still she was not allowed to exercise her profession in France. She has been invited for aptitude tests which will take place in 2007. ■

"We are in a society clearly tending towards the inversion between the community and the individual. Previously, it was the community that made and protected the individual. Today, emphasis is fully on the individual. The individual is given maximum freedom, and is thus prone to maximum fragility."

Uniform European laws

No tax notice, no access to welfare benefits!

➜ In France, for you to have access to various welfare benefits (social housing, zero-rate loans, etc.), you must present an income tax notice. Now, for EU citizens and French citizens working in another European Union country, it may be impossible to meet this requirement. Still no law had made any provision for this situation. In other words, if the regulations are strictly applied by the organisations in charge of council flats, France will not be able to provide social housing for these residents, even if their taxable income in the EU member-State where they lived previously did not exceed the ceiling fixed by internal regulations.

This situation could be interpreted by the Community judge as a de facto discrimination against Community citizens living in France or against French nationals who have lived outside France for several years. Therefore, it is incompatible with the Community law. This is why the Mediator of the French Republic has proposed a reform which takes account of a document that is equivalent to the French income tax notice for granting a council flat or access to other social benefits.

Profession: different definition between France and the European Union

➜ What happens when the definition of a profession differs from one country to the other and from the national to Community levels? This is the case for Mr Y., a dental laboratory technician, whose micro-enterprise status was reversed after an inland-revenue inspection. In France the definition of a dental laboratory technician covers two activity types: manufacturing and service. For the status of micro-enterprise, the French taxation law fixes the maximum income limit for each of these two activities. The distribution of Mr Y.'s income was not compliant with this rule. Contesting this decision based on the fact that the activity of a dental laboratory technician consisted only of manufacturing, Mr Y. sought the help of the Mediator of the French Republic. Upon examination of the case, it was confirmed that the assessment made by the tax inspection service concerning Mr Y.'s activity was in line with the existing taxation rules. However, this position of the French administration turned out to be incompatible with a higher standard: a European directive defining the activity of a manufacturing dental laboratory technician. On 13 June 2006, the Economic Minister modified the position of the French tax administration about the qualification of the activity of a dental laboratory technician. Thanks to this modification, the situation of Mr Y. was re-examined, and the new provisions applied exceptionally to the reminders sent to him for 2001 and 2002. ■

■ SOCIAL FIELD

A French couple moves to work for four years in Canada. When they returned to France, Assedic (the organization managing unemployment contributions and payments in France) refused them the allowance offered to people wishing to return to work (ARE).

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Professional mobility and compartmentalisation of social security schemes

The changing working world, professional developments, and lifestyles, both chosen and unchosen, are compelling more and more people to change their status successively from employee, business creator, service employee, self-employed worker, or even job-seeker or social benefit beneficiary.

Double mobility: geographic and sectoral

➜ The delegate Mediator of the French Republic in the Loire handled a typical case involving the double problem of geographic mobility and sectoral mobility, showing that the status of employer and the nature of work contract are too quickly lumped together. The proof: Mrs L., who lives in Eastern France, worked as a nurse at a hospital centre in Luxembourg until April when she stopped working there because she had to follow her husband who had been transferred to the Loire. Since she wished to find a job, she registered with Assedic and accepted a temporary employment from July to September. She then applied for the allowance granted to those wishing to return to work (ARE), for May, June, October and November. She was surprised to receive a letter from Assedic, rejecting her application for ARE because her employer in Luxembourg was a public-sector employer... But Mrs L. had been recruited as a private-sector nurse. Still this argument remained without any response until Mrs L. sought the help of the delegate Mediator in the Loire. The delegate Mediator then notices the error of which Mrs L. had been a victim, contacts the director of Assedic to draw his attention to the contestable confusion between the status of employer and the nature of work contract, and asks him to re-examine the matter. A few months later, the director of Assedic notified the delegate Mediator that Mrs L.'s application for ARE had been approved and informed Mrs L. that she would receive a backpay of the corresponding allowance, that is one year after her initial request. Meanwhile, Mrs L had fortunately found a new job.

Impact of "jumping" from one status to the other!

➜ In a country where social welfare is based on historically rather fixed professional status, the recent changes may result in loss of social rights, even for those that have never stopped working. This is the case of Mr R. who had worked for twenty years as a self-employed craftsman but had to sell his business.
Since he wanted to continue working, he took up a salaried job and was affiliated to the local sickness insurance fund as from 1st October 2004. Hospitalised for serious infection on 1st April 2005, he received daily sickness benefit until 30 September 2005. As from this date the daily sickness benefit was suspended, because the conditions for receiving this benefit requires, as from the seventh month, 200 working hours as an employee within the first quarter of the year preceding the sick leave..., which would be difficult for Mr R. to show since he was still a self-employed craftsman at the period in question! The amicable settlement board to which the matter was referred by Mr R.'s spouse confirmed the decision of the insurance fund, stating that there was no coordination between the fund for non-salaried workers and the general insurance scheme! In fact, although the period of insurance in the social security scheme for self-employed workers is already taken into account for the invalidity insurance, it has not been translated into law to give access to the daily sickness benefit payable within the scope of the general insurance scheme. Unfortunately, Mr R.'s state has not stabilised, which is a prerequisite for being declared invalid. So, because he had taken up a salaried job and is thus covered by the general social security scheme, the social-security contributor is excluded from a right acquired under his previous scheme and which he could have retained had he remained inactive.

This situation seems fully unfair. To solve this kind of problem, the Mediator of the French Republic plans to propose that full coordination be introduced between the health insurance scheme of self-employed workers and that of employees.

The pernicious impact of employing private-sector workers in the public sector...

➜ In the spring of 2006, the mayor of a town in Pas-de-Calais alerted the Mediator of the French Republic to the difficulties arising from new laws concerning the career of category C regional employees, although the purpose of said laws is to adapt better the redeployment possibilities for employees who have just been given a permanent status: civil servants, contract civil servants under public law, or private-sector employees.

These new laws are actually intended to encourage the employment of private sector workers and to create a gateway between the private sector and the public sector. They offer three redeployment possibilities: for former civil servants: resuming full-time services; for contract civil servants: resuming three-quarter of the services; finally, for employees from the private sector: resuming half of the service.

It also has to be specified that the new laws have had a pernicious effect, especially for small communities. Contrary to the expected result, they have slowed down the employment of private-sector workers due to inherent the additional costs...

The Mediator of the French Republic has, therefore, alerted the government and members of parliament to this situation. ■

“We have noticed that Europe has done away with its monetary borders but has built legal borders. There might be some legal conflicts. The European mobility may weaken the situation of French workers.”

Coordinating the social security schemes of civil servants

■ PENSION BENEFITS OF CIVIL SERVANTS

Mrs C. is separated from her husband, a railway worker. When her husband died, SNCF (the French national railway company) refused to pay her the widow's pension. Nevertheless, this should be brought into line with the general social security scheme, which is more advantageous...

■ SOCIAL FIELD

In the course of his professional life, Mr V. was affiliated to the general social security scheme, then the civil service scheme. But the rules for calculating old-age pension are different and his pension is reduced...

The coexistence of three categories of civil servants whose statuses, regulations, schemes and laws are not always compatible sometimes creates situations of injustice to which the Mediator of the French Republic was again alerted in 2006.

Contested career reconstitution

➜ At the beginning of 2006, the attention of the Mediator of the French Republic was drawn to the situation of 130 doctors working with the Education Ministry, who had been reclassified under very unfavourable conditions after being granted permanent staff status following a special competitive exam organised in 1993. The parties concerned had been classified as grade 2 Education Ministry doctors whereas some of them had worked for over twenty years as temporary employees!

Alerted to this situation, the Mediator of the French Republic notified the Education minister about this, emphasising the need to reform this classification. This classification conferred on said doctors a very unfavourable career, compared to other members of the medical profession, whereas they fulfilled the same missions. The Mediator of the French Republic was heeded since a decree dated 27 July 2006 was published in the *Official Journal* of 29 June 2006, modifying the statutory decree of 27 November 1991.

Some civil servants are automatically sent on sick leave, others not!

➜ Government employees, regional employees and hospital employees have a special social security scheme. The application of these three schemes differs from that of the general social security scheme in that administrations are entrusted with implementing them in accordance with the provisions of existing articles, but also in line with sometimes scattered laws which are not always known to their services... This situation creates inequality of treatments, especially for regional and hospital employees. This is because, although the rules on sick leave are properly applied, the same thing does not obtain when the employees have used up their statutory rights. These civil servants then find themselves in a very irregular situation and are sometimes deprived of their rights, thereby not receiving any payment, or special social security benefit... Thus, very recently, the Mediator of the French Republic obtained that a regional employee be finally sent on sick leave automatically, after four and half years, and that he or she be paid cash benefits retroactively. In view of these complaints and within the framework of his reform powers, the Mediator of the French Republic proposed that the provisions of the special social security scheme be integrated, for civil servants, into the statutory provisions, and that decree 86-442 on the maintenance of half pay for government employees be extended to the three categories of civil servants, in accordance with equality of treatment. Part of this reform proposal was received favourably for public hospital employees (Decree 2006-1466 of 27 November 2006). ■

Work contracts in the private sector

Penalising job-seekers opening a business

➜ Indemnified job-seekers who decide to open a business but fail in their initiative suffer some penalties, which is not encouraging for those wishing to return to work. Thus, when after closing their business, the persons concerned exercise their right to unemployment benefits to which they may be entitled as a result of their previous salaried work, they retain the welfare benefits provided by the scheme to which they were previously affiliated. That is, the scheme for non-salaried workers if in the business opened, the parties concerned had chosen this status. Although they are again allowed access to the unemployment benefits they had constituted as employees, the parties concerned are attached to the scheme for the self-employed to which they were only affiliated for a while, and which may offer them less favourable protection... especially if the contributions to the scheme for the self-employed have not been paid in full... which is almost always the case when the created business fails! In fact, in this situation, no cash benefits (daily sickness benefit, invalidity benefit) can be paid.

It is paradoxical and unjust that after taking the risk of opening a business instead of continuing to benefit from their status of indemnified job-seekers, these job-seekers are penalised when obliged to fold their business. Therefore, the Mediator of the French Republic has proposed to improve the protection of job-seekers opening a business by allowing them to benefit from the general social security scheme for the period during which they may exercise their right to unemployment benefits again: a period of three years after interruption of the unemployment benefit.

■ PENSION BENEFITS OF CIVIL SERVANTS

Mururoa was then a French territory... At retirement age, the servicemen on secondment in the Pacific remember this, but not the administration. The intervention of the Mediator of the French Republic has been necessary.

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■ PENSION BENEFITS OF CIVIL SERVANTS

Mrs W., a resident of the Bas-Rhin, wishes to have her civil-service years re-established by the general social security office. This is acceptable provided she reimburses the sums she had already received: it is forbidden to accumulate disability pension of the same origin under two different schemes!

Now, the law on the funding of the social security for 2007 contains a provision the impacts of which are radically the opposite, since it requires all persons opening a business to be immediately affiliated to the social security scheme to which they are attached by virtue of their status (social security scheme for the self-employed or more rarely the general social security scheme). The Mediator of the French Republic has alerted, without success, the government and members of parliament to the negative impacts of such a reform on the situation of job-seekers opening a business. He plans, however, to re-examine this issue with the relevant ministries, with a view to aligning better the social security schemes for salaried and self-employed workers. The objective is to ensure that a change of affiliation does not penalise job-seekers opening their business and loosing, as a result, their general social security coverage.

Helping create long-term employment for casual workers in the agricultural sector

➜ Decree 95-703 of 9 May 1995 provided, for agricultural holdings, a reduction in the social security contributions inherent in the salaries of their casual workers, if said casual workers were recruited within the framework of one or more fixed-term contracts, over a period of one hundred and fifty-four consecutive or non-consecutive calendar days, within one calendar year. Nevertheless, if within the year the holdings decide to offer an open-ended contract to these same workers, they loose this reduction.

To correct this malfunction, the Mediator of the French Republic had proposed a modification of the decree in question to encourage the holdings concerned to create long-term jobs, without changing the one hundred and fifty-four calendar days rule.

Law 2006-11 of 25 January 2006 on agricultural orientation introduced a new provision that allows the reduction of social security contributions to be maintained when a fixed-term contract is changed to an open-ended contract. It also ushered in new reductions in the employer and employee social security contributions payable for casual workers, and exempts persons aged below 26 from paying employee social security contributions for a maximum period of one month. These new laws encourage the holdings to convert certain short-term work contracts to long-term contracts, in line with the proposal by the Mediator of the French Republic. ■

When the retirement age arrives...

■ PENSION BENEFITS OF CIVIL SERVANTS

Mr F., of the Haute-Garonne, started – and ended – his career with the national police force. But the records for his first employment have apparently been lost. The Mediator of the French Republic assists him to recompile his record so he can claim the full pension benefits he is entitled to.

Long career and early retirement: conditions not always well understood

➜ In view of the massive arrival at retirement age of the post-war generations, and considering the increasing lifespan, pension reform law 2003-775 of 21 August 2003 was passed to maintain the equity and spirit of social justice which characterise our pension schemes. This law introduced, among others, new guarantees such as taking into account long-term careers. This right to early retirement, provided for in Article 23, concerns people who started working before the age of 17. These workers may exercise their right to full pension benefits before the age of 60. Nevertheless, pursuant to Articles L.351-1-1, D. 351-1-1 and R. 351-27 of the Social Security Code, there are some conditions for paying retirement benefits before the age of 60. They concern the duration of insurance (at least 168 validated quarters), the duration of social security contribution (which varies according to the age at which one's career was started and the retirement age) and the start of activity. Without impacting the rule about the legal minimum retirement age (60 years), the law of 21 August 2003, thus, introduced a possibility of dispensation on these three conditions. Now, this notion of accumulation of conditions has led to some complaints. For example, Mr N., aged 58, applied for early retirement at the regional pension fund (CRAV). Since

he had paid his social security contributions for five quarters before the end of the calendar year of his sixteenth birthday, and for a total of 164 quarters, his application was rejected by CRAV on grounds that he did not meet the valid insurance-duration condition.

Outside this provision, the law on pension reform also introduced an early retirement possibility for highly disabled workers. In fact, a worker suffering 80% permanent disability may ask to go on retirement before the age of 60, provided he or she has the minimum number of quarters required for contributions, and validated quarters. The Mediator of the French Republic received a complaint in this connection from Mr K., following the rejection of his application for early retirement whereas his status as a disabled worker had been recognised by the technical commission for orientation and occupational reclassification (Cotorep). Unfortunately, Mr K. was not entitled to this "disability-based" early retirement since his disability was only recognised on the day he became a job-seeker. He could not benefit from “long-career-based” early retirement either, because on the date of his request, he met only one of the three conditions required.

Insufficient harmonisation of pension schemes

➜ In June 2006, during the Consignments and Loans Fund forum, the Mediator of the French Republic expressed his opinion on the definition of adequate pension. In particular, he expressed his concern about the challenge of an ageing population and the solutions to bring in with respect to maintaining the living standard of retired persons, trans-generation relations, and the funding of public social security schemes. Regarding the gap emerging between active and retired persons, he advocated for increased solidarity, going beyond institutional divides. For example: professional mobility seems to be recognised for long careers...

The pension-reform law of 2003 instituted a system of early retirement before the age of 60 for employees who had started working at a young age. This provision became applicable on 1st January 2004 for those affiliated to the general social security scheme, and on 1st January 2005 for civil servants. Now, the Mediator of the French Republic has received complaints from former public servants, who had started their career in the administration and who, currently private-sector employees, meet the conditions for early retirement within the framework of the general social security scheme... however, without benefiting from their public servants' superannuation. In fact, the pension fund refuses to pay them their pension benefits: since their names had been removed from the books, they cannot benefit from a measure which became effective on 1st January 2005 for active public servants. Moreover, since their pension benefits had been calculated more than one year before, they can only receive said benefits as from their 60th birthday. Therefore, the interpretation of the civilian and military pension code seems to prevent them from having immediate access to their pension benefit, since failure to contest the evidence of entitlement to pension within one year after reception results in its irreversibility. So, the public servants are potentially entitled to early retirement. Yet, they cannot have it due to a law the objective of which is precisely to protect the right to pension. Moreover, there is no coordination between the general scheme, the special schemes and the inconveniences of professional mobility, whereas this latter is encouraged. When he noticed a conflict of rights resulting in iniquity, the Mediator of the French Republic asked the relevant government authority to modify the law to allow these public servants to be paid their pension benefits once their "long-career-based" pension benefits are calculated, no matter the scheme they are affiliated to when they file their application.

Pension reform: multiple pension schemes not understood

➜ The attention of the Mediator of the French Republic was drawn to the situation of spouses of farm managers with multiple pension schemes and who had retired before 1st January 1998, and to the conditions for increasing the small retirement benefits of unsalaried workers in the agricultural sectors. When they had contributed to pension funds other than the agricultural scheme during their professional life, these spouses received pension benefits below the minimum agricultural pension benefits they would have received if their incomplete farming career alone had been taken into account. This paradoxical situation resulted from the application of a law and regulations before the law of 21 August 2003. The objective was then to allow the spouses of farmers with multiple pension schemes better access to the increased pension benefits. However, due to the set of rules applied within the scope of the five-year agricultural pension revalorisation plan (1997-2002), spouses of farm managers with 27.5 to 32.5 years career in the agricultural sector and who received pension benefits from another scheme, found themselves excluded from this revalorisation plan.

The Mediator of the French Republic, therefore, called for a review of the conditions for access to the pension revalorisation for spouses of farm managers with multiple pension schemes. Agricultural-orientation law 2006-11 of 5 January 2006 introduced, in its Article 24, new provisions using the periods of contribution to the general social security fund for the disabled to determine a person's access to the revalorisation plan, while maintaining the person's right to the corresponding pension benefits of the general scheme. The adoption of this so-called "pension benefits for housewives" (AVPF) has enlarged significantly the access of spouses of farm managers with multiple pension schemes to the revalorised pension of unsalaried agricultural workers.

Moreover, the Mediator of the French Republic had made a reform proposal to put an end to the inconveniences inherent in the quarterly payment of disability pension and "normal" pension benefit by the scheme for unsalaried agricultural workers. This reform proposal was adopted on two occasions: pension-reform law 2003-775 of 21 August 2003 provided for monthly payment of the pension benefits of unsalaried agricultural workers, while decree 2005-1782 of 30 December 2005 applied this monthly payment method to the disability pension paid to unsalaried agricultural workers.

Biological and adoptive mothers: inequality in terms of pension

➜ For female civil servants, pension-reform law 2003-775 of 21 August 2003 causes unequal treatment between biological mothers and adoptive mothers. In fact, it modified the conditions for granting this bonus by subjecting it to continued interruption of activity for at least two months. Now, these conditions are hard to meet by women who had adopted a child before 10 July 1976 since the principle of adoption leave did not exist prior to this date. Moreover, for two children adopted before 1995, only one to two years' bonus is granted, compared to several years (five years maximum) for maternity.

The Mediator of the French Republic, therefore, drew the attention of the government and members of parliament to the need for equal rights among both biological and adoptive mothers, and for them to be granted the same pension bonuses. However, his reform proposal was not adopted since, this time, it would create inequality to the detriment of those civil servants who had wanted or had been obliged to interrupt their activity to raise their children and whose career would thus have been hampered, unlike those civil servants who had not had this interruption. Nevertheless, the Mediator of the French Republic has reopened this debate, because during maternity leave and adoption leave, the career of the civil servants in question takes its normal course, and inequality supposedly concerns only agents that have asked for leave to raise their children. ■

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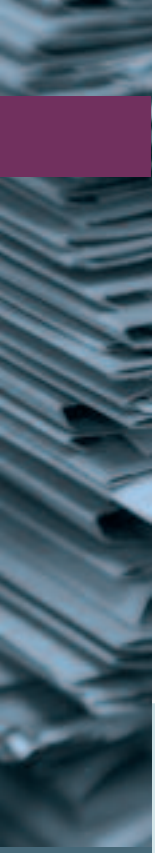


PROTECTING THE WEAKEST

Protecting the most vulnerable persons

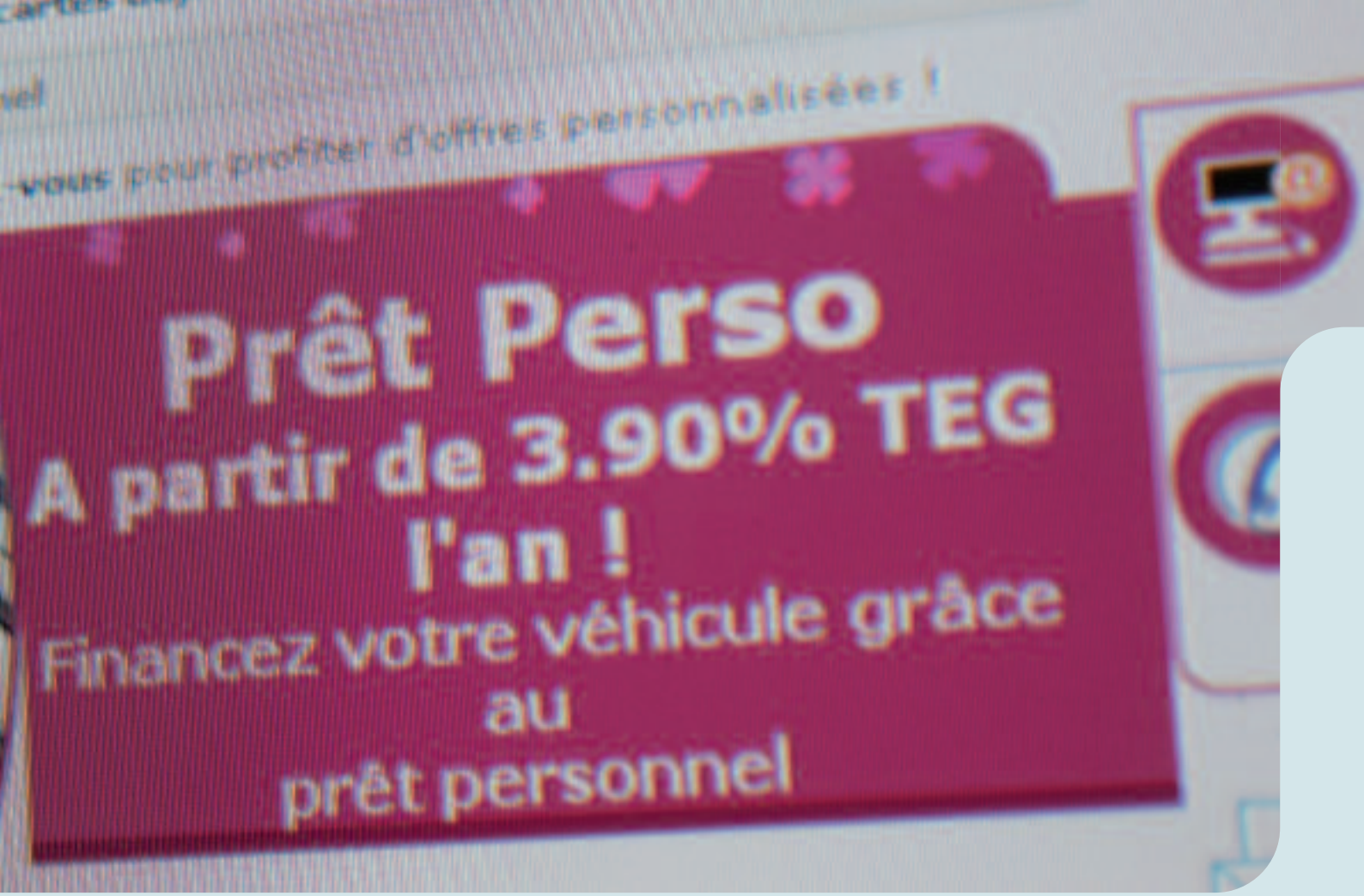
Any of us can suffer misfortune, we are all potentially vulnerable. Moreover, the increasing lifespan is a sign of progress, but also a source of concern - about possible dependence due to old age.
A study conducted during the 2006 congress of French notaries public showed to what extent we are concerned about this: 78% of the persons polled are afraid of loosing their independence in future... But this poll also highlighted our scepticism concerning the effectiveness of our solidarity system and of the protection currently offered to vulnerable persons.
In a system which tends to neglect the fragile, our duty is to strive, without naivety, for their protection.

Bad credit and protection of citizens

Excessive debt most often falls within the legal proceedings in which the Mediator of the French Republic may not intervene, in accordance with Article 11 of the law of 1973. In this case, the services of the Mediator of the French Republic explain, inform and advise the persons contacting them through the regional delegates and the admissibility department. Due to the common characteristics of these cases handled, the malfunctions or iniquities they reveal, the Mediator of the French Republic has made several reform proposals.

The middle class increasingly affected

➜ The term "bad credit" is used instead of "excessive debts" to demonstrate better a reality that has known significant changes over these past few years. In fact, abuse of credits resulting in excessive debts has decreased significantly. On the other hand, according to studies conducted by Banque de France, bad credits due to misfortune have increased and is the case for a vast majority of the families in difficulty: 70%. A situation of excessive debt may quickly arise. For example, after a separation: situations of excessive debts are mostly common among women saddled with debt after a divorce. Another example with illness

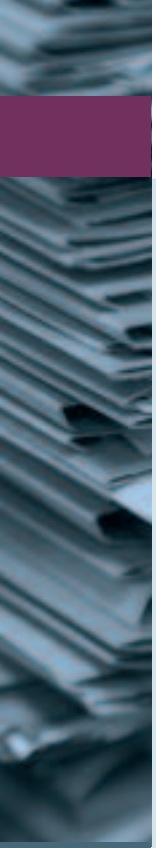


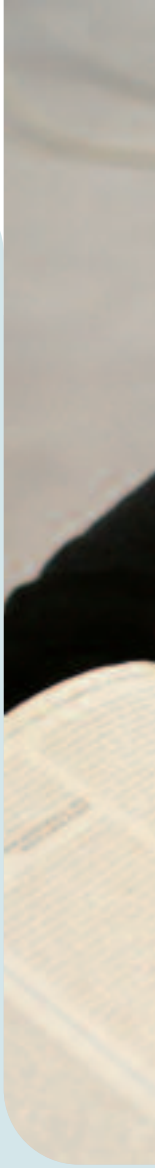
and accidents: Mrs A. borrowed the sum of 90,000 euros to pay the medical expenses required to take care of her 18-year daughter, disabled after a cerebrovascular accident. There is also a growing number of elderly persons sometimes excessively indebted in order to support a relation or grandchildren. With more than one million households concerned, bad credit is increasingly affecting the middle class.

"How good is a society that cannot maintain its cohesion by protecting the most fragile?"

Improving the balance between the consumer and the opposing party

➜ A consumer involved in a dispute against a professional (a finance company, for instance) may find him/herself in an economically and legally weak position. In fact, disputes arising from consumer law are most often settled in district courts. Now, before these courts, representation by a lawyer is not obligatory, and the consumer is not always aware of the technical provisions made in his or her favour by the consumer law. At the moment, the judge may not assist the consumer by indicating at his initiative a legal means favourable to the consumer, since an Appeal Court's decision forbids him to do so. However, this position of the Court of Appeal seems weakened. In fact, it seems that this decision is incompatible with the specifications of the new code of civil procedure, the European Convention on Human Rights, and the Community law. In October 2006, the Mediator of the French Republic, therefore, proposed that a judge be allowed to highlight without consultation the application of the consumer-protection provision, in order to re-create a balance between the parties.





■ GENERAL MATTERS
A private person contests the decision of the excessive-debt commission: in the rehabilitation plan, it did not take into account all the complainant's obligations.

Preventing files from speeding up exclusion

➜ The Mediator of the French Republic has highlighted some loopholes in the application of the so-called "personal recovery" procedure, the objective of which is to enable an excessively indebted person to resurface by wiping off his or her debt following the winding up of his or her personal estate by decision of the court. He has recommended, in particular, that the maximum period during which the names of excessively indebted persons are stored in the FICP (*fichier national des incidents de remboursement des crédits aux particuliers*), the national register for incidents pertaining to the repayment of loans to private persons, be reduced to five years. Being registered in the FICP for eight years may have some pernicious effects, because this file is accessible to banks. For people whose names appear in this register, this implies that it will almost be impossible for them to be granted any loan during this period, or even to open a bank account despite the existence of a legal right to a bank account. Now, a bank ban often leads to a wider social exclusion.

Moreover, little or no additional means were given to the relevant jurisdictions to make up for the increase in their tasks due to the implementation of the "personal recovery" procedure. The Mediator of the French Republic underlines the problems of these relevant jurisdictions which receive 20,000 cases annually.

■ GENERAL MATTERS
To discourage a civil servant's creditors, a pensions fund confiscated this civil servant's income in accordance with a payment plan worked out by the excessive-debt commission. In view of this situation, he could ask for a re-examination of his case.

In favour of a debate on the opportunity of the positive register

➜ There are two types of registers for fighting against bad credit. The first one, known as the "negative register" and which concerns payment incidents, applies only to France. As for the second one, the "positive register", available in nine European countries, the question of its creation is currently a topic of debate. The aim of this register is to draw up an inventory of the credit outstanding used by private persons. Today, the question of its creation is a controversial issue. Defenders of the positive register (Unaf, CLCV, UFCS, CNAFC) see it as a tool for the future, upstream excessive debt, since it gives more sense of responsibility to lending agencies while streamlining their relations with the client. The parties against (CSF, CGT Indecosa, Afoc, ADEIC-FEN, UFC-Que Choisir) stress on the risk of misuse for commercial purposes, the complexity of the system and also the possible violation of personal freedoms.

The CNIL (the national commission for information technology and civil liberties), on its own part, thinks that examples in other countries have shown how difficult it is to contain the positive centres within the limits guaranteeing personal rights and the need to protect data privacy. Before any debate on whether or not to introduce a positive centre in France, it deems it necessary to define precisely the targeted objective. Said objective must be unique and coherent. Finally, the CNIL asks the decision-makers the following question: regardless of the defined objective, and no matter its legitimacy and supposed effectiveness, can it justify establishing a file on almost the entire adult population in France? If yes, on what conditions?

To enhance the debate on positive centres, the Mediator of the French Republic went to Belgium on 26 November 2006. The Belgian model, managed by Banque National, seems to be exemplary both in terms of prevention and respect of liberties.

Close cooperation between the Mediator and political and social players

➜ To better understand this phenomenon and assess the solutions, the Mediator of the French Republic held several meetings with institutional and field players handling this issue: Banque de France, the excessive-debt commission, the personal-recovery-plan evaluation committee presided over by Guy Canivet, the national association of district judges, the Economic and Social Council, the Federation of French banks, etc. He also met with associations such as Crésus, a participatory association created in 1992, which in addition to a legal and financial activity, places emphasis on social and psychological support. Its recent actions include social microcredits, and days of "education on money". In October 2006, the Mediator of the French Republic equally met with leaders of Passerelle, an organisation created by Crédit Agricole in 1997 to listen to and guide excessively indebted persons. In 90% of the cases, the association plays a mediation role among creditors so as to work out a financial rehabilitation plan. Excessively indebted persons are offered psychological and financial support at Passerelle's 35 reception centres.

Finally, on 14 December 2006, the Mediator of the French Republic organised a press conference in which participated the governor of Banque de France, the manager of Banque Nationale Belgium, the vice-chairman of the association Crésus, the chairman of the association Passerelle, the mediator of Minefi, the mediator at the Federation of French banks, a sociologist, the manager of LaSer Conifoga, the manager of banque Accord, the co-chairman of the national association of district judges, and the chairman and managing director of Cetelem. The mobilisation of these leading institutional and association players at a press conference marked the start of a wide public debate on all the aspects of excessive debts and strong willingness to draw the attention of the government to the reforms that need to be made in this field. ■

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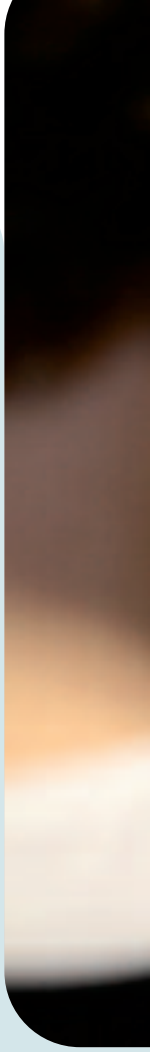

Helpless before social security organisations

Presumptive income assessment: highly unfair

➜ Mrs L. was notified by the social security office about the end of her entitlement to family-related housing benefit (ALF). Since she did not understand this decision, especially as the financial situation of her partner, a farmer, had deteriorated strongly, she appealed to the amicable settlement board, which confirmed the decision of the social security office, given that the interruption of the benefit had to do with the presumptive assessment of the family's income. Mrs L. then sought the help of the Mediator of the French Republic. After analysing her case and discussing with the social security office, the services of the Mediator of the French Republic could only confirm to Mrs L. that the security office had applied the rules correctly.

The current system of presumptive income assessment creates a lot of problems, with very unfair consequences. People who would have been entitled to the maximum benefit amount had their real income for the reference year been taken into account are paid less benefit or even deprived of their housing benefit due to the application of presumptive income assessment. The Mediator of the French Republic, who had already received similar complaints, proposed to stop using presumptive income assessment to calculate the family allowance and housing benefits paid on the basis of resources, but to return to the application of common law, that is calculating family and housing allowance based on the real income for reference year N-1. This proposal is supported by the social security offices and is among the recommendations of the Economic and Social Council. Moreover, the report on "rationalising the management of housing benefits", presented by the modernisation audit mission in October 2006, made a negative assessment of this system. Yet, the proposal has not yet been taken into account by the relevant ministries.

The commission for administrative simplifications (Cosa) is also in favour of this proposal.

24-euros allowance never paid. A soft-law rule?

➜ Mr M. was paid the personalised housing benefit up to 1st July 2006. After his rights had been examined according to the new family allowance scale, he received a letter from the social security office informing him that he was no longer entitled to any benefit as from 1st July 2006. Mr M. asked for specifications concerning the methods of calculating this allowance. The social security office replied him that he was no longer entitled to any housing benefit since "*the benefit amount was below the payment threshold fixed at 24 euros*".

If the law does not fix any limit, an allowance should be granted as from the first euros if the conditions are met by the beneficiary. Now, a simple decree institutes the non-payment of allowances below 24 euros... It is amazing that the regulatory power can thus limit the rights conferred on the citizens by law.

When his attention was drawn to this denial of rights, the Mediator of the French Republic asked for a cancellation of this law preventing the payment of housing benefits when they are below a certain threshold. He argued that the financial and administrative burden borne by the relevant organisations due to the payment of these little benefits on a monthly basis could be averted by paying them on a quarterly, half-yearly or yearly basis.

The members of parliament have heeded this message and have also called for a cancellation of this threshold. A lot of written questions sent to the government by members of parliament and senators, as well as amendments in line with this request, have shown the support of members of parliaments from all political sides for this measure in favour of justice. The national social security office, also in favour of cancelling this threshold, sought the assistance of the Mediator of the French Republic in the name of its governing board.

Thanks to this mobilisation, the government accepted, during discussions on the draft Finance Act for 2007, a Senate amendment aimed at bringing down this non-payment threshold from 24 to 15 euros. Some 120,000 families should benefit from this measure, which will restore their entitlements. The Mediator of the French Republic will ensure quick implementation of this measure, which requires the publication of adequate regulations. ■

Guardianship: a matter of concern

JUSTICE
Mrs W. is worried about the management of her uncle and aunt's property by third parties. What to do?

In less than five years, France will probably have one million persons under guardianship. This figure is growing constantly because of the increasing lifespan and development of old age-related illnesses. Therefore, there is an urgent need to reform our guardianship system, on the verge of explosion.

No status for half of the administrators, insufficient means of research, overworked jurisdictions... The law, which dates back to 1968, is totally ill-adapted. In June 2006, the reform of guardianship finally appeared on the parliamentary agenda. This global reform of the system of protecting vulnerable adults, debated upon at the National Assembly in January 2007, reflects some proposals made by the Mediator of the French Republic. In fact, this draft law contains specifications on the organisation of the activities of the legal representatives and guardians of protected persons, and a provision facilitating the management of the property of persons banned from holding a bank account.

JUSTICE
Mr H., both his grandmother's grandchild and guardian, cannot decide alone to sell his grandmother's property. He is surprised, but the law is clear on this matter.

Throughout 2006, members of parliament, associations, judges and the Mediator of the French Republic worked together to have the reform of guardianship included on the National Assembly's agenda. The draft amendment presented at the council of ministers on 28 November 2006 will be debated upon early 2007.

Simplifying the work of guardians

➜ Today, 80 full-time guardianship judges must cover some 700,000 guardianship measures. There is, therefore, an urgent need to simplify these procedures each time that the protection of vulnerable persons and their interest allows this! Thus, the Mediator of the French Republic had made a proposal on the modalities of sharing a succession amicably when one of the beneficiaries is a minor or a protected adult. In theory, a succession must be shared at a law court. Nevertheless, the law allows, with the consent of the family council or a guardianship judge, the succession to be shared amicably, provided the statement of realisation and liquidation issued by the notary public is approved by the court of first instance.

The reform proposal of the Mediator of the French Republic aimed to simplify the procedure for sharing amicably a succession involving a minor or a protected adult. He had proposed, among others, to cancel the approval by the court of first instance of the statement of realisation and liquidation issued by a notary public, and to subject it rather to the approval of the family council or a guardianship judge. Law 2006-728 of 23 June 2006 on the reform of successions and gifts, applicable since 1st January 2007, modifies Article 466 of the Civil Code, by specifying the conditions for sharing a succession when one of the beneficiaries is a minor. In fact, the authorisation to resort to amicable sharing is still given by the family council; pursuant to Article 466 of the Civil Code, this council is responsible for approving the statement of realisation and liquidation. Moreover, when the social security scheme for minors is not organised in form of family council, Article 389-5 of the amended Civil Code mandates the guardianship judge to issue the authorisation to resort to amicable sharing, and then approve the statement of realisation and liquidation. While waiting for the adoption of the reforms on legally protected adults, these provisions are bound to apply to adults under guardianship. Therefore, these legal provisions satisfy fully the reform proposals made by the Mediator of the French Republic.

Banking ban lifted but under judicial control

➜ The Mediator of the French Republic has also had to examine this phenomenon resulting from banning a person or the organisation in charge of legally protecting the assets of an adult under reinforced guardianship from issuing cheques on the account of the protected person if this latter is facing a banking ban. In the absence of any specific provisions in this situation, the guardianship managers are subject to Article L131-72 of the monetary and financial code, which bans banks from issuing cheque books to an account holder or his or her legal representative if any payment incident has been registered in his or her name due to insufficient fund and if he or she has failed to remedy the situation.

In August 2006, the Mediator of the French Republic, therefore, proposed to introduce an exception to the banking ban law, by allowing banks to issue guardianship managers, in their position as legal representatives, cheque books on the account of the protected person facing a banking ban. This reform proposal is reflected in the draft law on the legal protection of adults, which provides that "*a guardian may, with the authorisation of the judge or family council, if created, run under his or her signature the accounts held by a protected person if this latter is banned from issuing cheques*".

Better control of the activity of guardians

➜ For a long time, the activities of a guardian were to a great extent performed within the scope of voluntary work. But this activity has been developed and structured over the past few years. For many of these special administrators, it has become a real profession. This activity now has to be controlled in the interest of the personal under guardianship. The Mediator of the French Republic regularly receives complaints concerning the increasing suspicion of guardians, regardless of whether or not they are family members.

So, in May 2006, the Mediator of the French Republic proposed the definition of an annual procedure enabling the public prosecutor to draw a list of professionals in charge of the legal protection of adults. He requested that regulations be used to redefine certain guarantees required for registration on this list: conditions of qualification, duration of registration, institution of appeals, etc. The necessary control of this profession requires that people providing legal protection, individually, within an organisation or association, be subjected to similar conditions of access such as morals, professional experience, and training. Moreover, access to this profession, in accordance with the social action and medical social assistance law, must be subjected to public control through approval for physical persons, and authorisation for organisations. In a letter dated 2 October 2006, the Minister of Health and Solidarity spoke in favour of adopting the recommendations of the Mediator of the French Republic. ■

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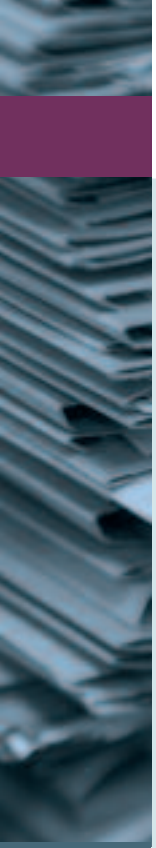
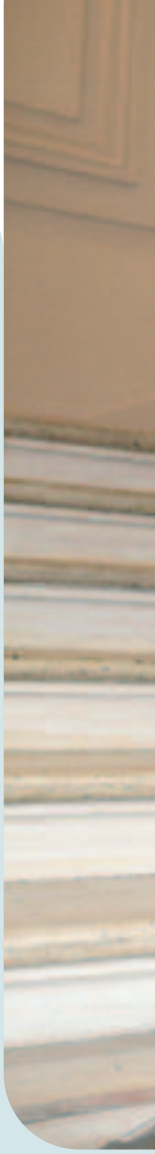




Disabled persons: let us remain vigilant

■ **PENSION BENEFITS OF CIVIL SERVANTS**

An unconfirmed art education teacher was assigned to areas not accessible in a wheelchair, which amounted to indirect dismissal.

Creating a disability compensation benefit, reforming the disabled adults' benefit, promoting social integration, improving mobility by relaxing the conditions for issuing parking cards, facilitating access to citizenship and voting right... The law of 11 February 2005 on equal rights and equal opportunities, participation and citizenship of disabled persons opens real prospects for better integration of disabled persons and respect of their rights. But we have to be attentive to the results of implementation and even possible developments. Some important decrees are still expected.

■ **PENSION BENEFITS OF CIVIL SERVANTS**

A disabled non-permanent worker could not be appointed in the absence of reserved employment in the Equipment administration that had recruited him.

Early retirement: still some loopholes

➜ The attention of the Mediator of the French Republic was drawn, in accordance with his reform proposal power, to the two loopholes in the early retirement scheme for disabled persons. For example, the case of Mr L., a recipient of pension for accident at work, whose request for retirement before the age of 60 was rejected because his case had never been examined by the technical commission for orientation and occupational reclassification (Cotorep), the only organisation authorised to recognise the 80% disability rate necessary to access early retirement, pursuant to Article L.351-1-3 of the Social Security Code. The consequence of this provision is that only the social security contributors who can produce the document from Cotorep certifying 80% disability are entitled to early retirement. Mr L.'s certificate indicating his pension for accident at work, no matter the level, could not be taken into account.

■ **TAXATION**

The tax law penalises disabled persons who prefer to work rather than being take care of by the community; the case of Miss V.

In July 2006, the Mediator of the French Republic made a proposal aimed at improving the system of early retirement for disabled workers. In fact, some conditions of access seem to be too restrictive and may prevent a good number of disabled workers from benefiting from this measure, who, like Mr L., have not had their disability recognised by Cotorep. It is, therefore, necessary to adjust this provision so that all persons with the same level of disability may go on early retirement.

A secretly implemented reform

➜ The instruction letter dated 20 February 2006, sent by the Minister of Health to the relevant organisations, replaced by a circular of 21 August 2006 from the national pensions fund (CNAV), takes account of this problem in that it enlarges significantly the categories of disabled workers entitled to this scheme, in order to better guarantee the contributors' right to information about their pension. However, the Mediator of the French Republic deems it necessary that these innovations be introduced in the relevant regulations...

Another iniquity: the law of 11 February 2005 instituted an increment in the pension applicable to disabled workers entitled to early retirement. Published on 30 December 2005, the decree on this regulations provides for an additional quarter to be validated free of charge for four quarters of social security contributions (so that 120 semesters of contribution will amount to 160). Nevertheless, this very advantageous calculation method is only applicable to retirement benefits taking effect after 31 December 2005. The government, however, allowed that, within the framework of the above-mentioned letter, this increment be granted on demand to disabled persons on early retirement since 1st March 2005, when the law of 11 February 2005 took effect.

However, the government thought it impossible to extend the retroactivity of this measure to early retirement taken since 1st July 2004, date on which the decree on the reduction of the retirement age for disabled adults became effective, because it was not possible to cancel already granted pension. The non-retroactivity of this increment poses a real problem of equity. The Mediator of the French Republic, therefore, asked the relevant ministries to reconsider their position on this point, to ensure equal treatment for all disabled workers eligible for early retirement.

Delegate Mediators of the French Republic active in departmental handicapped homes

➜ Some of the innovations introduced by the law of 11 February 2005 are: informing, receiving and allowing disabled people and their family access to the law. The creation of a departmental handicapped home in each department (MDPH) meets this objective. The purpose of these homes is to offer a unique access to all the rights and benefits concerning disabled persons, and to facilitate all the procedures relating to the situation of disabled persons.

Nevertheless, disputes may arise between the commissions in charge of taking decisions on demands for benefits and the beneficiaries. Internal conciliation mechanisms inside the MDPH have been provided for by the law. But in case of failure, the matter may be referred to the Mediator of the French Republic. In each department, the Mediator of the French Republic has appointed a corresponding MDPH delegate who can quickly treat any complaints sent to him or her. For this decision to be quickly implemented, the Mediator of the French Republic has directly informed each General Council chairman about the appointment of a delegate in his or her department. At the same time, he has asked all the delegates concerned to take the initiative of contacting the elected representatives and the services responsible for applying the new measure, so that the players will be clearly identified to each other.

Quickly operational, the network of departmental correspondents should enhance the effectiveness of amicable settlement of disputes. The delegates concerned have all received adequate training. Thanks to the presence of delegate Mediators of the French Republic in MDPHs, under the motto quality, proximity and accessibility, it will be possible to observe the actual conditions for creating MDPHs and the possible difficulties of applying an ambitious and particularly complex law. In 2007, the Mediator of the French Republic will hold a meeting with all the field workers on the operation of departmental handicapped homes. ■

■ ADMISSIBILITY

Mrs P., physically weakened by an invalidating sclerosis, has her housing benefit and supplementary disabled adult benefit cancelled without any explanation. Her (erroneously cancelled) benefits could only be restored after the intervention of the Mediator of the French Republic.

■ NORTH

Thanks to the delegate's intervention, Mrs N. finally receives the ANAH grant. Her file had been misplaced...

■ **GENERAL MATTERS**

The parents of a little girl with multiple disabilities requested for a deduction of the council tax on the equipment to be used to create the area required to accommodate disabled persons. But the absence of an application decree impeded the implementation of this deduction. Since the decree was passed five years after the law, the claimants only obtained a partial deduction of this tax, retroactively and exceptionally.

Escheated life insurance policies: between ethics and billions of euros

Today, the 22 million life-insurance policies taken out in France amount to over 1,000 billion euros. Despite the death of some subscribers, an important part of this amount is not redistributed to the beneficiaries indicated in the policies. These are so-called escheated insurance policies. According to the Federation of French insurance companies, they range between 150,000 to 170,000 and amount to one billion euros. But these figures date back to more than seven years, at a time when the outstanding insurance policy amounts were estimated at 564 billion euros... Every year, several billions of euros are thus withheld by insurance companies, whereas they should have been paid out to beneficiaries, according to the wish of the deceased subscribers. This is an ethically unacceptable situation.

Article 18-III of the law on the funding of the social security for 2007 provides for the assignment to the pension reserve fund the sums resulting from life insurance policies, not claimed after a period of thirty years. This measure, which is sensible since it will allow this money to be used in the general interest, does not solve the problems resulting from lack of information to the beneficiary of a life-insurance policy, a problem very imperfectly solved through the creation of Agira (an organisation in charge of searching for beneficiaries), in May 2006.

Although the creation of Agira seems to be a good idea, the results at the end of the first six months are disappointing. Out of some thousands of requests received by Agira and reflected on all the subscribers, the positive replies do not exceed a few hundreds. In most cases, the companies seem to be technically unable to meet the demand provided for in Article L132-9-2 of the insurance code.

Moreover, there is an important psychological and ethical restraint to asking possible beneficiaries to make a pro-active search request.

To remedy this situation, insurance companies should be made to adopt a pro-active attitude on potentially escheated life insurance policies, based on different criteria: the subscriber's age, absence of exchanges with the subscriber over the preceding years... If the subscriber turns out to be dead, it would be the responsibility of the insurance company to notify the beneficiaries; if the beneficiaries are not named, reachable or even alive, it would be necessary to conduct a classical search for heirs. It is only after these stages that the policy may be declared escheated. Currently, there is no general obligation for insurance companies to notify the beneficiaries. In fact, Article L.132-8 of the insurance code only imposes this search if the beneficiary's addresses are indicated on the policy. In the face of this loophole, the Mediator of the French Republic plans to make a reform proposal instituting a general obligation for insurers to notify and search for beneficiaries.

In the absence of a constructive reflection on this issue, the number of beneficiaries found will remain very limited, and the feeling of prejudice will be growing among millions of potential beneficiaries of life insurance policies. ■

Protecting the interest of victims

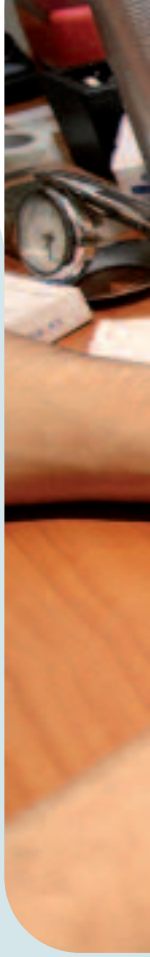
There are some extreme situations where common sense would require that we intervene rapidly and humanely, to help endangered persons. Compelled to act immediately, the victims sometimes find themselves in an awkward position in the face of contradictory laws. Sometimes, they also have to deal with very powerful and sometimes inconsistent laws. In the private field, as well as the public health field, it is the duty of politicians and law-makers to propose the necessary framework allowing the victims' rights to be respected equally.

When the family turns violent

The family is more than ever a value and a refuge. But, unfortunately, there are cases where family link is no longer based on one's attachment to the other, but on his or her "profitability". In such situations, a partner is no longer considered as an end but a means. It is all about forced marriages, domestic violence, etc. These situations are often met while examining the complaints received by the Mediator of the French Republic.

Against forced marriages

➜ On several occasions Défenseure des enfants received complaints concerning the situation of young girls trying to escape from forced marriages that they did not want. In general, these are young girls, aged 16 to 18, with French or dual citizenships, whose parents want to marry to men about whom they know little or nothing. Most often, these men are older and foreigners. The marriage fre-



quently takes place outside France. The Mediator of the French Republic and Défenseure des enfants had, therefore, decided to make a joint reform proposal making it possible to reinforce the laws which guarantee, for the validity of a marriage, that the consent of future spouses is obtained. This proposal contained several measures: fixing the minimum age for marriage at 18 both for boys and girls, interviewing future spouses more systematically, extending the possibility to file at the public prosecutor's office a marriage revocation action on grounds of vitiated consent, extending the deadline for revocation action by the aggrieved spouse, informing future spouses about their rights and obligations inherent in marriage, raising the awareness of this reality among all the social players that may be concerned...

Their proposals were included in the law of 4 April 2006 which reinforces the measures to prevent and repress violence among couples or against minors.

Actions are yet to be taken to make these measures more effective, especially in terms of training the staff of the civil status offices and providing information to spouses.

Domestic violence: difficult to reconcile the rights of fathers and mothers

➜ Associations for women's interests have drawn the attention of the Mediator of the French Republic to the difficulty of protecting victims of domestic violence, and the right of a father to have access to his children.

In a crisis situation, the associations argue that the best way to protect the victim is to place her in a secure place (a home or emergency accommodation centre). Moreover, this place should remain unknown to the violent spouse, which should not be a problem, except where the spouses have children. In fact, failing to communicate the address of the children to the other, violent, parent may be deemed a deprival of the right to exercise the father's parental authority. This situation is all the more difficult since failure to represent a child may be deemed a criminal offence.

The Mediator of the French Republic has, therefore, drawn the attention of members of parliament to this problem within the scope of the debate on the proposed law against domestic violence.

In addition to the protective measures which the family judge may take in such situations, another solution is to organise meetings between the parents and children on "neutral grounds". The link between the children and each of the parents is thus preserved without undermining the woman's security. Nevertheless, it would be necessary to develop these structures, by specifying their status and reviewing their funding. ■

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Unequal treatment of professional victims

In terms of work accident or occupational diseases, the French system is more than one century old. It was then based on the presumption of imputabilty to the employer and almost automatic indemnification of the harm suffered. However, this indemnification remained limited and was based on lump-sum compensation. Today, some victims are able to obtain full indemnity for the harm suffered, whereas the law is still based on lump-sum compensation. There is an urgent need to reform and unify the scheme for work accident and occupational diseases.

Civil service: some rights exist only in theory

➜ The Mediator of the French Republic often receives individual complaints from civil servants concerning the recognition of occupational diseases or work accidents and the inherent rights: stopping work as long as the person's state of health requires, maintenance of payment by the administration, re-integration or reclassification obligation, information concerning the procedure...

For example, a regional employee was sent on sick leave at the end of his official long illness-related leave. This situation lasted for more than two years before he could, after the decision of the medical committee, exercise his right to retirement for disability. During this period, the civil servant did not receive any daily sickness benefit to which he was entitled.

Another example: some civil servants have their names removed from the book and then sent on retirement for disability since they are deemed totally and definitely unfit to exercise their functions. Before taking such a decision, the administrations are, however, obliged to examine the possibility of redeploying such employees for a job that is compatible with their state of health: an obligation rarely complied with. The Mediator of the French Republic thus obtained the redeployment of a hospital employee who, despite his illness, wished to continue his career in a function more suited to his state of health.

These examples show the urgency of the reform proposed by the Mediator of the French Republic to harmonise the schemes for the civil service sectors.

■ SOCIAL FIELD

Mrs M, a school bus driver suffering from ankle traumatism, contests the decision of CPAM (the health insurance office) which is contesting the professional character of her accident.

Private – public sector: not everyone who thinks he or she is privilege actually is

➜ Today, victims of work accidents and occupational diseases in the private sector may obtain compensation for the harm suffered, in four different ways, depending on the circumstances surrounding the harm. One is through the State health insurance offices, within the framework of the AT-MP law (law on work accident and occupational diseases) which is based on lump-sum and automatic compensation. Another way is through the state health insurance offices and the social security tribunal, in addition to the lump-sum and automatic compensation, in case of inexcusable and intentional fault. Through the automobile guarantee fund, if it is all about a traffic accident. In this case, the harm is to be compensated for in full. Through the asbestos victims compensation fund. Here too, it is all about full compensation for the harm suffered. Over the past few years, the jurisprudence has improved and enables victims of work accidents and occupational diseases to be compensated in full for the harm suffered, no matter the circumstances surrounding the harm.

What is the situation of civil servants? The Council of State first relaxed the traditional lump-sum compensation rule, by allowing victims of work accident to ask for additional compensation according to the specifications of the common law on responsibility, if the work accident is aggravated through the administration's fault. In its decision of 4 July 2003, the Council of State went further by making it possible to compensate for losses not strictly financial, based on no-fault liability, and full compensation in case of administrative fault... Obviously, it is necessary to end the difference in the cause-based compensation plans, by using common-law liability as basis for indemnifying work accidents and occupational diseases. ■

Asbestos: a lasting health and social tragedy

■ PENSION BENEFITS OF CIVIL SERVANTS

A widow cannot obtain the payment of the life annuity for her husband who is a victim of occupational disease. But the pension fund receives favourably the arguments of the Mediator of the French Republic...

According to studies, exposure to asbestos has already caused 35,000 deaths. 60,000 to 100,000 other deaths are expected between now and 2030. Today, asbestos is the cause of more than half of the cases of professional cancer.

Early retirement: inequitable and incoherent conditions of access

➜ Workers coming in contact with asbestos can benefit from the early retirement scheme introduced by the 1999 law on the funding of the social security, which allows them access to the early retirement benefit paid to asbestos workers (the so-called Acaata benefit) until they fulfil the conditions for full pension benefits and provided they completely stop their professional activities.

Access to Acaata: inequality between schemes

➜ The Mediator of the French Republic has raised the issue of the differences existing within the different insurance schemes. Some special schemes do not cover the specific risk inherent in exposure to asbestos and do not give access to Acaata. This is the case for civil servants (except public-sector workers employed by the Defence ministry), employees covered by the miner's scheme and self-employed workers, etc. Moreover, when Acaata is applicable, the modalities for granting it depend on the scheme in question. Some schemes cover victims of an asbestos-related occupational disease and those prone to this risk even if they have not developed any illness. Others only pay the allowance to workers recognised as suffering from an asbestos-related occupational

disease. It is important to add that within the same group, different rules may be applied to employees exposed to asbestos, based on their professional status. Thus, priority is given to autonomy and the internal logics of the schemes over an individual's interests.

Obviously, the heterogeneity of the rules applied by the different schemes results in unequal protection of asbestos workers. The main difficulty stems from the absence of provisions on the reciprocity of the regimes.

Clarifying the social security provisions

➜ To remedy the difficulties ascertained, the Mediator of the French Republic has recommended several ways of improving the Acaata plan. First of all, it would be necessary to create equity between the persons exposed to asbestos in their professional activity, and to guarantee them the same level of social protection. It is also necessary to harmonise the conditions for granting the allowance within the different schemes in a way that favours the asbestos victims most. Finally, reciprocity measures may be introduced between the different health insurance schemes so that each of them can accumulate all the periods of activity giving access to Acaata.

Within the framework of his reflection pertaining to the indemnity due to victims of asbestos, the Mediator of the French Republic was auditioned by the inspectorate general of social affairs, attached to the Health Ministry, and by the committee in charge of this issue at the National Assembly. Their reports, presented in December 2005 and February 2006, include the observations and recommendations of the Mediator of the French Republic. It would be desirable that the global review of the plan for occupational diseases and work accidents be an opportunity to introduce a more equitable coverage for workers exposed to asbestos. ■

■ SOCIAL FIELD

The general social security scheme refuses to grant the Acaata benefit to a person suffering from an asbestos-related disease, arguing that the person was covered by the miners' scheme.

■ SOCIAL FIELD

Mr P. cannot benefit from Acaata: the company with which he worked was not included in the list of companies giving access to Acaata. He would be entitled to Acaata only if his company is registered on this list.

Hepatitis C: indemnification imposed by death duties

The Mediator of the French Republic received a complaint from Mrs B. after the death of her son. The deceased son had received through judicial proceedings a compensation for hepatitis C infection. Now, this compensation has been included in the list of inherited assets subject to death duties, unlike other types of contaminations. In fact, Article 775 B of the General Tax Code contains a list of indemnities exempted from death duties. Included in the list are the nominal value of indemnities paid or payable to persons infected, in certain conditions, by the HIV virus, Creutzfeldt-Jakob disease and its new variant, and persons suffering from asbestos-related diseases. To remedy this inequality of the tax-related treatment given to the indemnities paid to victims of hepatitis C infection due to blood transfusion or the exercise of their profession, the Mediator of the French Republic has made a reform proposal aimed at extending the exemption provided for in the foregoing Article 775 B to compensations paid to hepatitis C victims. ■

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Equitable limits to subrogation rights

When a person is a victim of road accident, aggression, etc., a judge grants him or her a lump sum for the physical and/or moral injury suffered. Now, since 1984, the social security office may ask the person to reimburse the sums advanced for his or her treatment, and even to be paid the indemnities it did not advance! When he was alerted to this, the Mediator of the French Republic proposed to modify Articles L376-1 of the Social Security Code and 31 of Law 85-677 dated 5 July 1985, so that subrogation rights may only be exercised on the compensation paid for injuries the treatment of which the social security office had actually paid for. He also proposed that partial compensation be opposable to payment by third-party payers.

The commission for administrative simplifications (Cosa) is also in favour of this proposal.

Sensitive to the arguments of the Mediator of the French Republic, the Senate law commission pushed through an amendment governing strictly the action of Social Security offices. In fact, subrogation rights should be exercised on a case-by-case basis only on the compensation for injuries paid for by the social security offices, excluding personal injuries. Moreover, if the victim is only partially indemnified, he or she could exercise his or her rights at the organisation in charge, preferably the surrogated fund. The Mediator of the French Republic is very pleased that the Parliament has legalised this progress in terms of victims' right. ■

MAKING THE LAW EASILY ACCESSIBLE AND PROTECTING INDIVIDUAL LIBERTIES

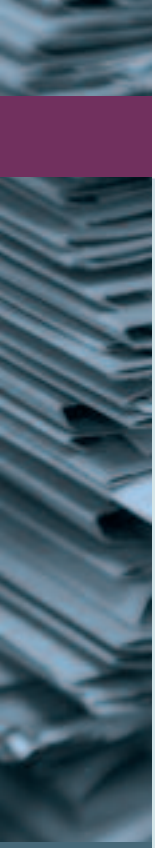
Opening new channels of access to the law

There is an obvious reality: for many citizens, access to the law is a problem. "*Ignorance of the law is no excuse*", but the complexity of laws and the labyrinth of procedures often constitute insurmountable barriers, thus creating painful inequality. The Mediator of the French Republic is particularly aware of the fact that the individuals most affected by this situation are the most helpless, those who need public support most but who, in a lot cases, do not even have access to clear and updated information about their rights. At the same time, new channels of access to the law seem to be emerging. This is reflected in the planned reform of the judicial system and the introduction of independent control for prisons. All along 2006, the Mediator of the French Republic contributed to the reflections and experimentations made by the government.

Guarantee of rights and stability of the norm

Emergence of "social consumerism" in the new French legal system

➜ In view of the current accumulation of laws, evidence of the fact that our society is getting increasingly complex, some reflections need to be made. We need to ask ourselves, among others things, whether certain decrees or amendments do not tend to aggravate situations... The complaints received by the Mediator of the French Republic do not only highlight malfunctions. They also show that the actual application of laws is sometimes far from the aims pursued by the lawmaker. Therefore, the need for reflections on and studies of the impact on the implementation of public policies cannot be overemphasised.



■ THE AUVERGNE

The Chief French Government Architect disapproves the construction of a wooden garage... Encouraged by the delegate mediator of the Puy-de-Dôme to go to the site and assess the request, he changes his decision...

■ GENERAL MATTERS

Mayor and sub-prefect take a conflicting decision on the application of the costal law and issuing of a building permit. The dispute is referred to the administrative court, and the beneficiary must wait...

In a situation where the norm becomes unstable, and access to the law complicated, individual attitudes reflect, in particular, a growing demand for the law and rules to be used in the citizens' interests. For example, complaints sent to the Mediator of the French Republic in connection with pension reform show that each complainant seems to consider unjust any situation where his or her own interests are not optimised, either because changes in the norm deprive him or her of his or her previously acquired right, or because, as a pensioner, he or she does not have access to new rights!

The pension reform clearly reflects this new type of social contributors' attitude to legal changes. Thus, the idea that future reforms may be less favourable would make some people to be on their guard against future impoverishment of the norm. This is at least one of the arguments used to explain the success of the "long career" plan which allows social security contributors to go on retirement at the age of 56, 57 and 58. On the other hand, the reform encouraging people to postpone their retirement would have more than moderate effects... Does this result in a godsend effect for the "social consumer" who takes advantage of the present "promotions"?

The institutions of the Republic are meant to be of general interest. It is essential to support this dimension which characterises our Republic, despite a certain tendency which is looming... In fact, people no longer fight for their rights, rather they wish to exercise their rights to the detriment of others; people no longer expect the judge to say what is right, but that he becomes an instrument of personal vengeance; people no longer ask for equal treatment or equity, instead they defend their personal interests... These are very typical behaviours in the field of town planning where the right of appeal is widely capitalised on.

The negative impacts of the proliferating town-planning laws

➜ Town planning laws have been subjected to a lot of modifications. Town councils, technical services, and regional directorates of equipment are finding it difficult to meet up, which may result in clumsy decisions and much dissatisfaction and disputes... However, the sometimes excessive use of appeal channels also contributes to the instability of the building permits issued to users. This is the case of these persons who are constantly prevented from selling their property because their neighbours keep taking legal actions against them, claiming that the building permit issued to the potential buyers is illegal. Although this type of dispute does not fall within the competence of the Mediator of the French Republic, such situations are frequent. Moreover, individuals and authorities have the possibility to appeal. For example, it is perhaps a State representative (prefect, sub-prefect, etc.) who intervenes to cancel the housing permit issued by a mayor... In the past, anybody granted a building permit ran the risk of losing it if he or she failed to start building before the permit was contested at a law court. But pursuant to the decree of 31 July 2006, if a complaint is lodged with the administrative jurisdiction or civil jurisdiction, the period of validity of the permit is suspended until an irrevocable decision is taken by the jurisdiction. This helps secure the building permit.

Another progress made at the beginning of 2006: the legal development made it possible to attain the objectives of a reform request made by the Mediator of the French Republic. This proposal was aimed at simplifying the applicable rules by fixing, among others, a deadline for issuing a building permit in a listed neighbourhood.

Nevertheless, it seems difficult both for communities and individuals to avoid every dispute, given the many appeal channels. For example, when a completed building is declared illegal by the administrative court judge, third parties, who feel aggrieved, have a period of two years to ask for its demolition or compensation for the harm suffered. The beneficiaries of the illegal permit may also apply for a regularisation of the building or for compensation by the community for issuing an illegal building permit... Finally, we have to underline the recurrent problem of buildings located at the edge of a village or an existing town, or close to agricultural enterprises.

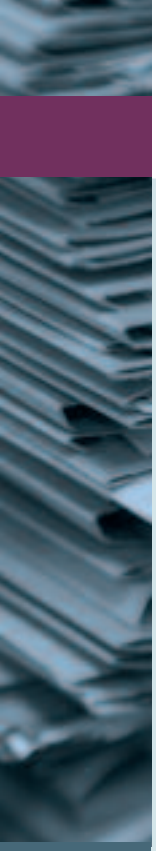
Striving for simplification

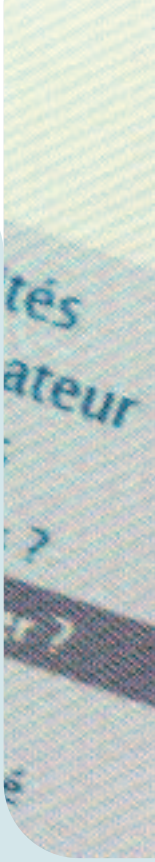
➜ At the beginning of 2006, the Mediator of the French Republic called for a simplification of laws and condemned the stack of sometimes contradicting laws and regulations. On 26 June 2006, the Mediator of the French Republic was invited to participate in the meeting of the commission for administrative simplification (Cosa), where he presented several reform proposals which were adopted by Cosa. The proposals include the proposal to stop using presumptive income assessment to calculate family allowances (cf. Protecting vulnerable persons, page 36); limiting the exercise of subrogation rights by social security organisations and third parties against victims of personal injury (cf. Protecting the interests of victims, page 48); representation of de facto couples or partners of a social solidarity pact before a court of first instance and district court (cf. Adapting laws to the new situation in society, page 15); removing the names of people who have cleared their debts from the excessive debtors register (cf. Protecting vulnerable persons, page 34), as well as the repeated demand for the payment of housing benefits below 24 euros (cf. Protecting vulnerable persons, page 37). Regarding the social welfare of jobseekers opening a business, Cosa reserved its opinion, arguing that this question was part of the more general problems posed by the social welfare of entrepreneurs (cf. Mobility and life course, page 27).

Be it to simplify procedures, make life easier for citizens, harmonise schemes or generalise a plan, the Mediator of the French Republic continues his reform proposals, which aim for transparency and legal equity.

■ GENERAL MATTERS

A complainant buys a land with a positive town-planning certificate. He also obtains a building permit. But during a legality check, the sub-prefect asked the mayor to cancel the town-planning certificate as well as the building permit! The mayor refuses. The administrative court cancels the building permit granted.





■ **GENERAL MATTERS**

Two neighbours clash over a permit to extend a cattle-breeding site. The law imposes 50 m for an agricultural enterprise. A decree has just changed this provision: the cattle-breeding site in question is henceforth governed by the regional healthcare regulations which only impose a distance of 5 m...

Simplifying appeal channels by making them very clear

➜ Some procedures turn out be a real headache for administrations. This is the case of appeal deadlines. Complaints sent to the Mediator of the French Republic by civil servants often reveal the complexity, if not the confusion, of the procedures and rules to be respected, not only for the user or agent but also for the administration. Thus, the two-month deadline for appeal opposable to the author of a request to an administrative authority amounts to rejection if the administration remains silent throughout said period. Now, it turns out that in such a case, the acknowledgement of receipt is obligatory, except if it concerns a problem between a civil servant and his or her administration. Moreover, this acknowledgement of receipt must mention the date of reception, the date on which, in the absence of a formal decision, it will the deemed rejected or accepted. Nevertheless, even in the absence of acknowledgement of receipt amounting to tacit rejection, the user may still file an appeal... As the law is not very clear on this matter, neither the users nor the ministerial employees are aware of this. This is why they oppose, often wrongly, when the user files an appeal upon expiration of the deadlines, unless the deadlines and possible appeal channels had been clearly mentioned in the rejection letter, generally not sent...

The services of the Mediator of the French Republic are currently examining a proposal to simplify laws and practices in order to contribute to the administrations' efforts to facilitate users' access to information and make the appeal channels more effective and transparent.

Making the pensioners' life easy

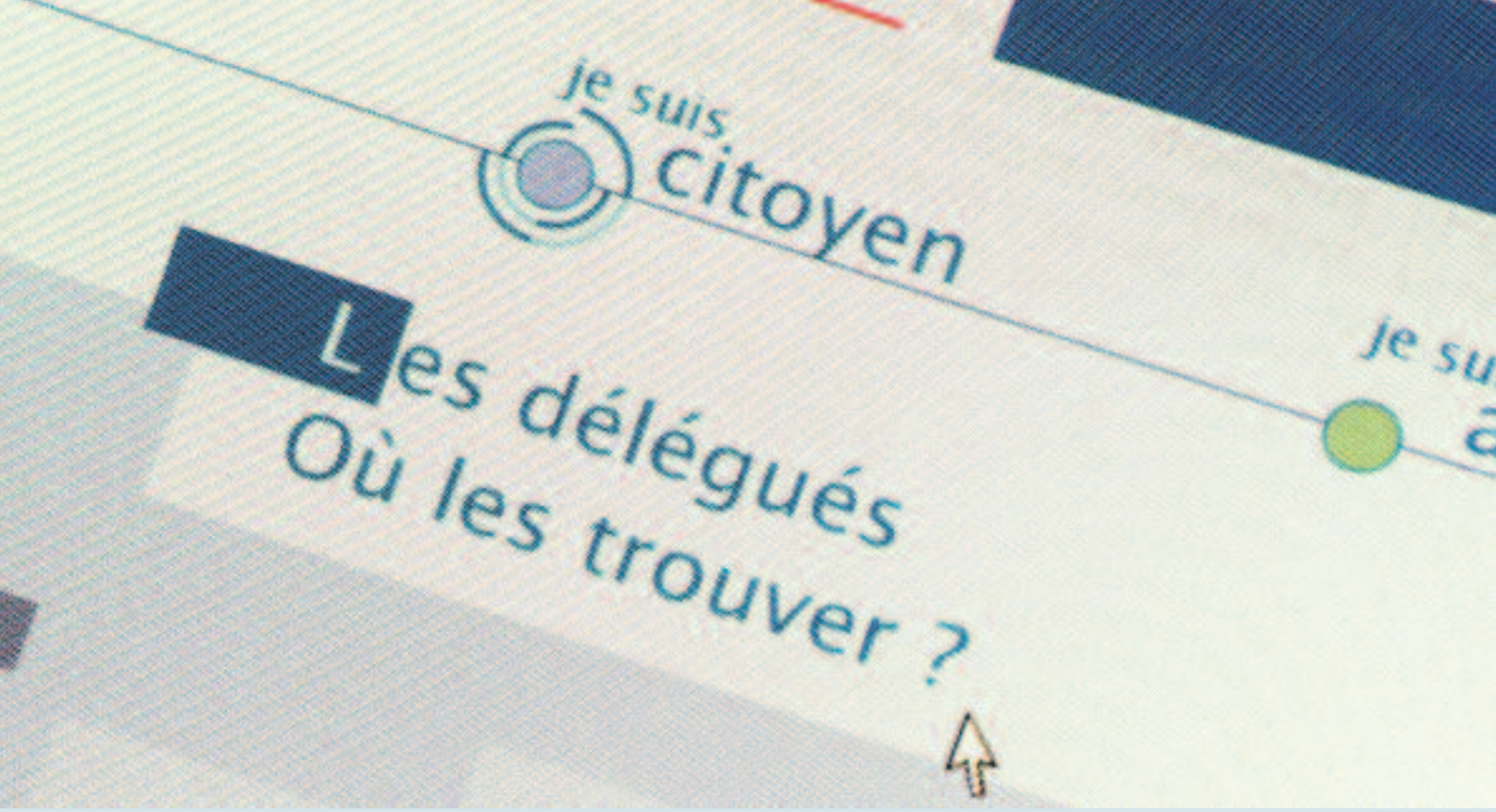
➜ To make life easy for pensioners and end the inconveniences inherent in the quarterly payment of disability and pension benefits within the framework of the plan for non salaried agricultural workers, the Mediator of the French Republic had made a reform proposal. The decree of 10 January 2006 on the payment dates for disability benefit under the health insurance scheme, the disability and maternity benefits of non salaried agricultural workers provides for payment on the eighth day of the following month.

Simplifying the schemes by harmonising them

➜ The diversity of existing laws is sometimes unjustified and, in some cases, generates inequality before the law. The attention of the Mediator of the French Republic was drawn to the disparity between the sizes of the plots of land the different categories of retired farmers are authorised to use for so-called subsistence farming. In fact, four plots had been allowed for subsistence farming depending on the categories concerned: general scheme, special scheme for retired persons, special scheme for beneficiaries of old-age pension instead of disability benefit, special scheme for farmers receiving early retirement benefits... In May 2006, a draft decree from the ministry of agriculture triggered off the gradual alignment of the special schemes with the general scheme.

■ **GENERAL MATTERS**

In an almost similar case, complainants cannot win the case. They are asking to be compensated for an illegal building permit issued by the administration, but they have been referred to a judge who will fix, if need be, the compensation amount.



Simplifying things by introducing automatic switchover

➜ Drawing inspiration from a method that is working already: this is the sense of the proposal made by the Mediator of the French Republic upon noticing the situation of persons deprived of all resources for several months for failing to submit their request for pension-benefit calculation on time. His proposal aimed to extend to all unemployment benefits the intermediary plan used for disability pension beneficiaries. It is meant to guarantee the rights of people loosing their entitlement to unemployment benefits once they are entitled to full old-age pension. He suggested, among others, that the automatic switchover system reserved for disabled persons should be extended to indemnified jobseekers. Old-age insurance and unemployment benefit officials have gradually made some progress in terms of institutional communication and provision of information to beneficiaries. Although other means are used, these developments are in line with the objectives of the reform proposal made by the Mediator of the French Republic.

Educating the citizens about laws

➜ In fact, almost half of the complaints sent to the Mediator of the French Republic concern a need for information. And problems are often solved through explanations. People tend not to accept decisions they consider as arbitrary. Explaining why such an administration has taken such and such decisions, or why the court has decided in favour of a specific solution helps people to understand - even if they fail to accept - the fact that the decision is in line with the law and respects peoples' rights. A lot of complainants, who thought they were right, regularly thank delegate mediators and the services of the Mediator of the French Republic for explaining to them why they were wrong, something nobody had done in the past...

Access to law is first access to information about administrative activities, including for the most distressed members of society. It is also understanding the mechanisms of access to the law through a systematic pedagogical procedure. It is within this logic of listening and offering assistance that the delegates and services of the Mediator of the French Republic are working and often make up for the insufficient application of the law of 12 April 2000 pertaining to information and orientation for citizens.

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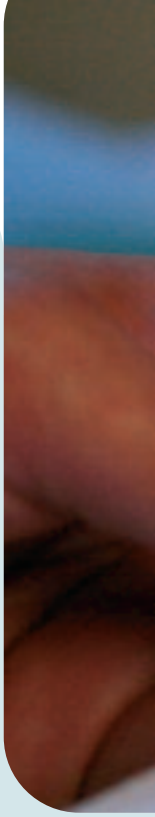


When court decisions are not applied... Case of AGS (wage-guarantee insurance)

➜ The attention of the Mediator of the French Republic has been drawn to the non-execution of certain court decisions, which is sometimes the case with the wage-guarantee insurance (AGS). When an employer is subjected to a collective procedure ending in compulsory liquidation due to insufficiency of assets, the rights of employees are normally protected by AGS. Assessing the right of employees requires the intervention of the trustee, who must prepare a statement of loans and credits within a specific period and ask the AGS for the corresponding advance payments. In a normal situation, AGS sends the advance to the trustee, who must transfer the sums immediately to the employees... However, in a certain number of cases where the amounts involved are subjected to compulsory liquidation, the employees find themselves in a situation where the trustee, and thus AGS, does not take any action. In fact, wage guarantee is only applicable if the fund in the liquidator's possession is not sufficient. Now, only the trustee has the information used to determine this insufficiency; the employees are helpless in this respect. In case of silence, inaction or refusal on the part of the trustee, the employee must refer the case to the industrial tribunal so that the amount due to him or her can be determined through the legal channel. According to a magistrate interviewed by the services of the Mediator of the French Republic, *"this problem seems to be due, in a good number of cases, to the fact that the liquidator, in the absence of any realisable asset and any hope of being remunerated for his mission, fails to immediately perform tasks that would not be beneficial to him..."*. The Mediator of the French Republic, therefore, proposes to examine this matter to find solutions that would enable employees to be quickly indemnified, in certain cases through direct payment to the beneficiary. ■

Reminding the administrations of the law

Is the pyramid of norms being reversed?

➜ The influx of legal measures seems sometimes to change the order which confers more authority on the constitution than on the law, and gives the law priority over the decree, etc. Now, we are having more cases where a ministerial letter departs from a decree, or where a decree contradicts the law, or where the law remains inapplicable in the absence of the necessary regulations... The fact that such infringements have become more commonplace probably contributes to the growing feeling of legal instability and results to mistrust and opportunism to which the legal authority should normally not be exposed in the rule of law.

Of what use is a law that cannot be applied? What is the value of a right which cannot be exercised? What is a public service where you have no-go areas? There are too many reasons to ask this type of questions.

The law is violated when a decree or letter limits its application

➜ Every month, 200,000 families are deprived of a right: the right to receive the housing benefit granted to them by law due to their low income. In fact, two statutory instruments of April and May 2004 stipulate that the housing benefit is not payable when it is less than 24 euros. The Mediator of the French Republic insists on seeking ways to stop this unjust rule which is contrary to the wish of the lawmaker who had not fixed any threshold. He has partially been proved right since this threshold has been brought down to 15 euros, thanks to a parliamentary amendment (cf. page 37).

Undermining the right of disabled persons to information concerning the possibility to go on early retirement: the Mediator of the French Republic continues his action in order to clarify and ensure full equity of the early retirement plan for disabled workers. In fact,

a simple ministerial instruction letter of 24 February 2006 enlarges the categories of disabled workers entitled to this scheme. But in the absence of being introduced to the appropriate regulatory level, these provisions are only known to particularly well-informed persons...

Children are still not attached to the health-insurance cards of their two parents, whereas the law of 4 March 2002 makes it possible! But this law only exists in theory. In fact, the decree governing its application has still not been issued... Therefore, the forms circulated by the CNAM (the State health insurance office) so that insurers can attach their family members to enable them benefit from the health insurance coverage contains incomplete information, in that it does not mention anywhere that children may be attached to each parent. There are two possibilities: either the law-maker has wished to create a law which must be made applicable through executive powers, or this law gives rise to too many problems, and it is then the duty of the law-maker to declare it inappropriate. Come what may, this issue, which impacts the day-to-day life of millions of persons, must not be left pending like this.

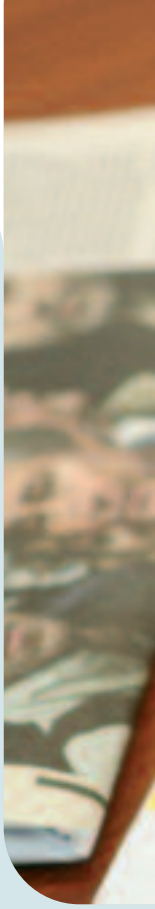
The law is not respected when it becomes impossible to contest fines

➜ We can only encourage the efforts made in terms of limiting speed on motorways. Yet some malfunctions, which affect the processing of fines and rights of appeal, must be underlined. 6.7 million driving-penalty-point endorsements were made within the first six months of 2006. Every year, some 9 million fines result in thousands of complaints. Although the error rate remains limited, the administration must handle a large number of litigation. But the complexity and opacity of the procedures for contesting the fines lead to serious malfunctions.

If fact, the current procedure is also aimed at dissuading offenders from contesting their fines, by imposing a very high increment in case of non-payment within 45 days. It, thus, restricts the possibilities of contesting the fines before a judge by introducing the principle according to which paying the fine nullifies the appeal, but also implies recognising the offence. In more serious cases, the admissibility of claims is subject to the obligation to record the required penalty amount. Apart from these limitations of access to the judge, there is also the illegal practice of public prosecutors, who directly give a ruling on the legitimacy of complaints sent to them, instead of forwarding them to the relevant court.

■ ALSACE
Mrs H. is fined for overspeeding. She pays the fine but receives a reminder six months later... Thanks to the intervention of the delegate Mediator of the Haut-Rhin, an error is detected in the fining procedure

■ PICARDY
A farmer in the Oise receives an increased fine for parking wrongly in Paris. The vehicle registration indicated on the report was that of a farm vehicle... With the help of the delegate mediator of the Oise the matter is closed within eight days.



■ THE MIDI-PYRÉNÉES
A disabled driver is wrongly fined for non-conformity of his GIC/GIG card (disabled persons' parking card). Initially rejected by the public prosecutor, his complaint is finally considered following the intervention off the delegate mediator for the Haute-Garonne.

■ PICARDY
An employee of EDF (a French electricity company) expresses his gratitude and "best regards" to the delegate mediator of the Aisne. The delegate mediator had had to intervene firmly and with perseverance to have the public prosecutor cancel a wrongly issued fine.

The need to repress highway-code-related offences implies reflecting on the method of contesting the inherent fines. Given the large number of complaints sent to him, the Mediator of the French Republic made, in January 2006, a proposal aimed at improving the exercise of the right to appeal to a judge to contest highway-code-related fines. This appeal must be filed by referring the matter, through the public prosecutor, to the local court which will decide, either according to the procedure without audience of the criminal court ruling, or through a judgement. The Mediator of the French Republic also called for the creation of a work group to be run by the ministry of justice. In a letter dated 28 February 2006, the Interior Minister approved the creation of this group. A ministerial circular of 7 April 2006 reminded public prosecutors of the exact range of their prerogatives.

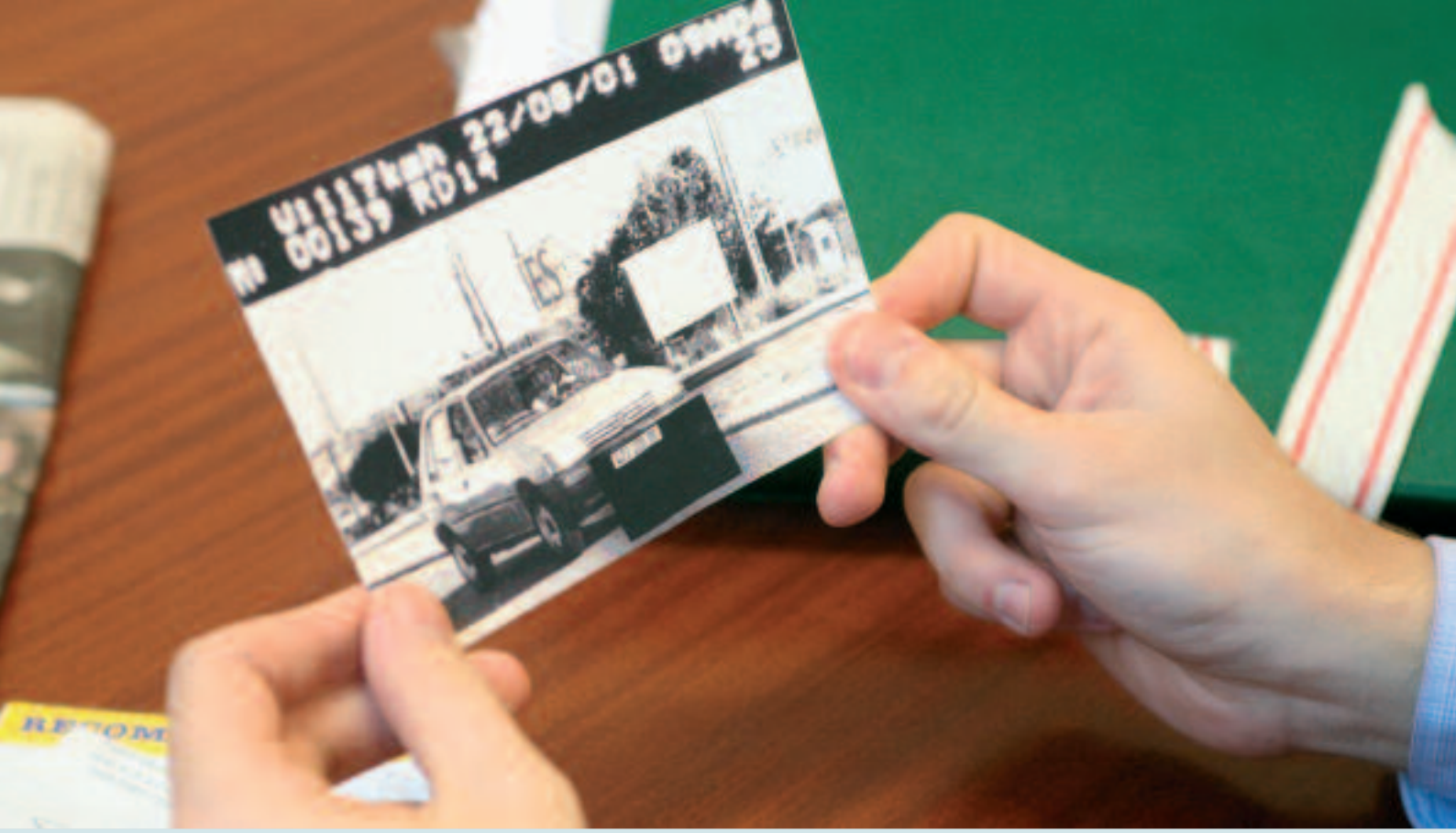
Finally, we have to point out that the very numerous cases handled by the Mediator of the French Republic have revealed the consequences of fine-related cases closed without any action. They may be important for low-income earners. In fact, although the Treasury reimburses the unduly paid penalty amount following an appeal, the expenses resulting from this procedure, that is 90 euros, remain partially payable by the user who must try to obtain its reimbursement through his or her bank or the Treasury.

Fines: laws make room for illegal practices

➜ The delegate Mediators of the French Republic and the sections examining complaints at the Institution's headquarters have noticed that the processing of fines remains a real source of dissatisfaction. A good number of offenders flashed by an automatic speed camera while overspeeding are required to pay a fixed fine with immediate increment, sometimes without being notified first about a demand to pay this fixed fine, or without receiving a photograph proving this offence, or sometimes even without a copy of the report compiled against them!

Apart from cases where the honesty of the offenders is not very obvious and where the vehicle ownership certificate has not been updated, a lot of complainants are obliged to seek the help of the Mediator of the French Republic after trying in vain two or three times and by registered mail to obtain the basic proof of the offence. In the mean time, they should have filed an appeal with deposit which, in the absence of tangible proof, will be illegally rejected by the public prosecutor. In fact, this latter is a police official and not a magistrate. He is not authorised to issue a penalty.

Moreover, since the appeal has been rejected, the deposit will then be considered as "payment" for the fine. This is sometimes imposed illegally on complainants to prevent them from contesting the fine later. Now, the availability of a picture is all the more necessary as cheats do not hesitate to usurp plate numbers. This exposes the real vehicle owners to heavy fines and penalty-point endorsements. In fact, Article L 223-1 of the Highway Code was formulated in such a way that the reality of an offence resulting in a penalty-point endorsement is established not only through the payment of the fixed fine, but also by merely "issuing an executory title for the increased fixed fine". The only thing that remains is to contest the increased fixed fine which, according to the law, is supposed to lead to the cancellation of the executory title and examination of the matter by a law court.



Unfair and forced fine collection

➜ In December 2004, the Mediator of the French Republic drew the attention of public accountants to the need to stop the use of third-party notification to collect police fines. This proposal has been heeded, given that the Economic ministry has replaced third-party recovery with administrative opposition for fines. Arguing that some branches of financial institutions block all the accounts held by offenders, and not just the amount corresponding to the fine as stipulated by law, the Mediator of the French Republic made several proposals, in June 2005, concerning bank charges and forced debt recovery by the Treasury.

The first proposal aims to get financial institutions to limit the commission they collect during the execution of administrative actions. The current situation is that the commission charged by banks during the execution of administrative actions has nothing to do with the amount owed to the Treasury. These fixed and non-proportional charges may range between 47 euros and close to 120 euros. Due to the divergent opinions of the different players, this issue of limiting the commission charged by banks is still a topic of debate.

Moreover, the simultaneous seizure of all accounts held by a debtor by the public accountant – who has the power but is not obliged to do so – may result in unjustified charges for the users. Therefore, the Mediator of the French Republic has also proposed successive rather than simultaneous notifications for low debt amounts, in order to prevent the pernicious effects of simultaneous notifications. On this point, an e-mail has been sent to all public accountants instructing them to first confiscate the most recent bank account (they can obtain this information from the Ficoba file – a file on bank accounts and similar accounts). On the other hand, even if the computer software used to manage the actions has been programmed for notification on just one account, public accountants still have the possibility to manually request for a notification on "all" the accounts.

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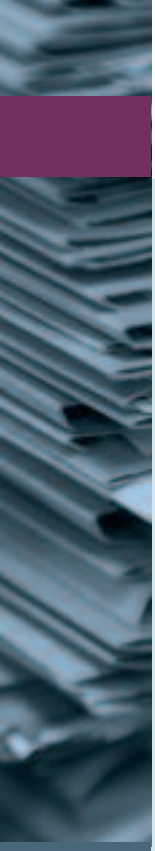

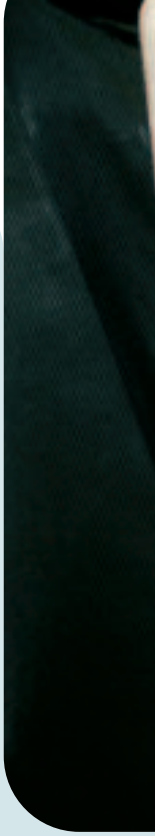

Response time: unfair imbalance in favour of tax authorities

➜ The attention of the Mediator of the French Republic has been drawn to the fact that no deadlines are imposed on tax authorities for procedures concerning taxpayers. The situation of tax authorities and taxpayers may not be comparable. Yet, there is a huge difference between the strict deadlines always imposed on taxpayers and the absence of deadlines for tax authorities in connection with the procedure prior to litigation. In the jurisdictional phase, the chairman of the administrative court is empowered to grant tax authorities extra response time beyond the six-month deadline, and to fix a strict deadline for taxpayers. This may result in long and often excessive waiting time for a judgement before the administrative courts.

This is the case of a complainant who reports that it took a director of tax services four years to reply, in three pages, to her request, two days before her case was to be examined by the administrative court! This example shows the need for a fair and equitable procedure guaranteeing a balance between the rights of both parties. This is why in view of the ideological criticisms and the position of the European Court of Justice, it seems necessary to reduce the overall waiting time for amicable settlement proceedings, and litigation.

The obligation which would require tax authorities to respond to litigation within strict deadlines – possibly determined according to the complexity of the case –, as well as the obligation for the administrative judge to record the case in the register upon reception would reduce the time taken by the proceedings and result in quicker tax collection, since appeal is not suspensive. Such a development would be in favour of taxpayers and meet the need for legal security. ■

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Reform of the judicial system, and new missions for the Mediator of the French Republic

In keeping with the report of the National Assembly Commission created after the Outreau affair, Mr Pascal Clément, the Justice Minister, presented three draft laws to the Council of ministers on 24 October 2006. The first one concerns the training and responsibility of magistrates; the second one tends to reinforce the balance of the criminal procedure; the third one modifies the law of 3 January 1973 instituting the Mediator of the French Republic.

The role of the Mediator of the French Republic in disciplinary procedures against magistrates

➜ The three draft laws on the reform of the judicial system mentioned above have been a subject of a general debate.

The draft organic law "*Recruitment, training and responsibility of magistrates*", adopted at the National Assembly on Thursday 14 December 2006, contains the following provisions:

"After the foregoing Article 48 of decree 58-1270 dated 22 December 1958, a new Article 48-2 has been inserted thus:

"Art. 48-2 — Any natural person or corporate body, who feels that the behaviour of a magistrate in a case he or it is involved in might constitute a disciplinary fault, may send a complaint to a Member of Parliament. The Member of Parliament shall forward the complaint directly to the Mediator of the French Republic if he deems it within the Mediator's field of competence.

"The Mediator shall seek for the necessary information from the first appeal court chairmen and from the public prosecutors of said courts, or from the chairmen of high courts of appeal and State prosecutors of said courts.

"He may not give any assessment pertaining to the magistrates' jurisdictional actions.

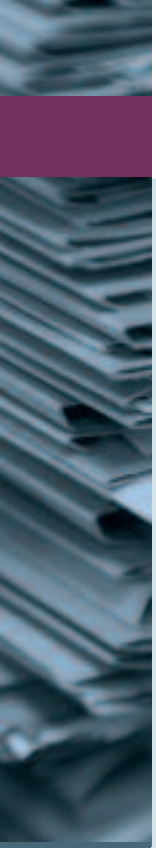
Where he feels that it may receive a disciplinary qualification, the Mediator of the French Republic shall forward the complaint to the Justice Minister. In this case, he shall notify the complainant and the magistrate in question about the action he has taken.

"A copy of the documents sent by the Mediator of the French Republic to the Justice Minister shall also be sent to the magistrate concerned.

"The Justice Minister shall ask the relevant services to conduct an enquiry. "The Justice Minister may take disciplinary measures pursuant to Article 50-1 and paragraph one of Article 63. The Justice Minister shall notify the Mediator of the French Republic about the results of the enquiry and the next steps to be taken.

"Where the Justice Minister decides not to take any disciplinary action, he shall inform the Mediator of the French Republic about it, specifying the reasons for his decision. This latter may compile a special report which shall be published in the Official Journal of the French Republic".

■ THE NORD – PAS-DE-CALAIS
A detainee, a former construction worker, cannot obtain his career record from the relevant services. The delegate mediator at the prison helps him to obtain said record.



■ THE ÎLE-DE-FRANCE

A detainee who has been in prison for three years is threatened to have his bank accounts confiscated because of debts incurred in the mean time by his wife. He seeks the help of the delegate mediator of the Seine-et-Marne prison, who educates him on his rights and obligations and assists him in compiling an excessive debt file.

■ THE RHÔNE-ALPES

A former detainee notices that the period of remunerated activities in prison has not been taken into account by the CRAM. A delegate mediator helps him to take the necessary steps that he did not have the courage to take alone.

From time to time, the Mediator calls the attention of the Justice Minister

➜ Reflections are being made since 1998 on the role which the Mediator of the French Republic could play in disciplinary procedures stemming from malfunctions in the public service of the judiciary. Since 1999, as evidenced by his report, the Mediator of the French Republic calls the attention of the Justice Minister from time to time to the particularly alarming situation of such and such jurisdiction and the need to reinforce his means. Therefore, the Mediator of the French Republic may examine disputes between a natural person or corporate body and a public service of the judiciary, without intervening in the judicial activity in the real sense of it. The Mediator of the French Republic may thus handle any activity resulting from the administrative task of these jurisdictions: citizenship, civil status, jurisdictional assistance, etc. He intervenes in case of malfunction in the judicial or non-judicial administrative measures taken by the public service of the judiciary.

Moreover, to examine the complaints handled by the justice section, the Mediator of the French Republic first consults with the service or professional. If necessary, he may consult, via his ministerial correspondent, the directorate general of the legal services, the head of the court or ordinal authorities before intervening with the legal representative of the Treasury or the insurance company of the professional concerned, especially when lawyers or notaries public are involved.

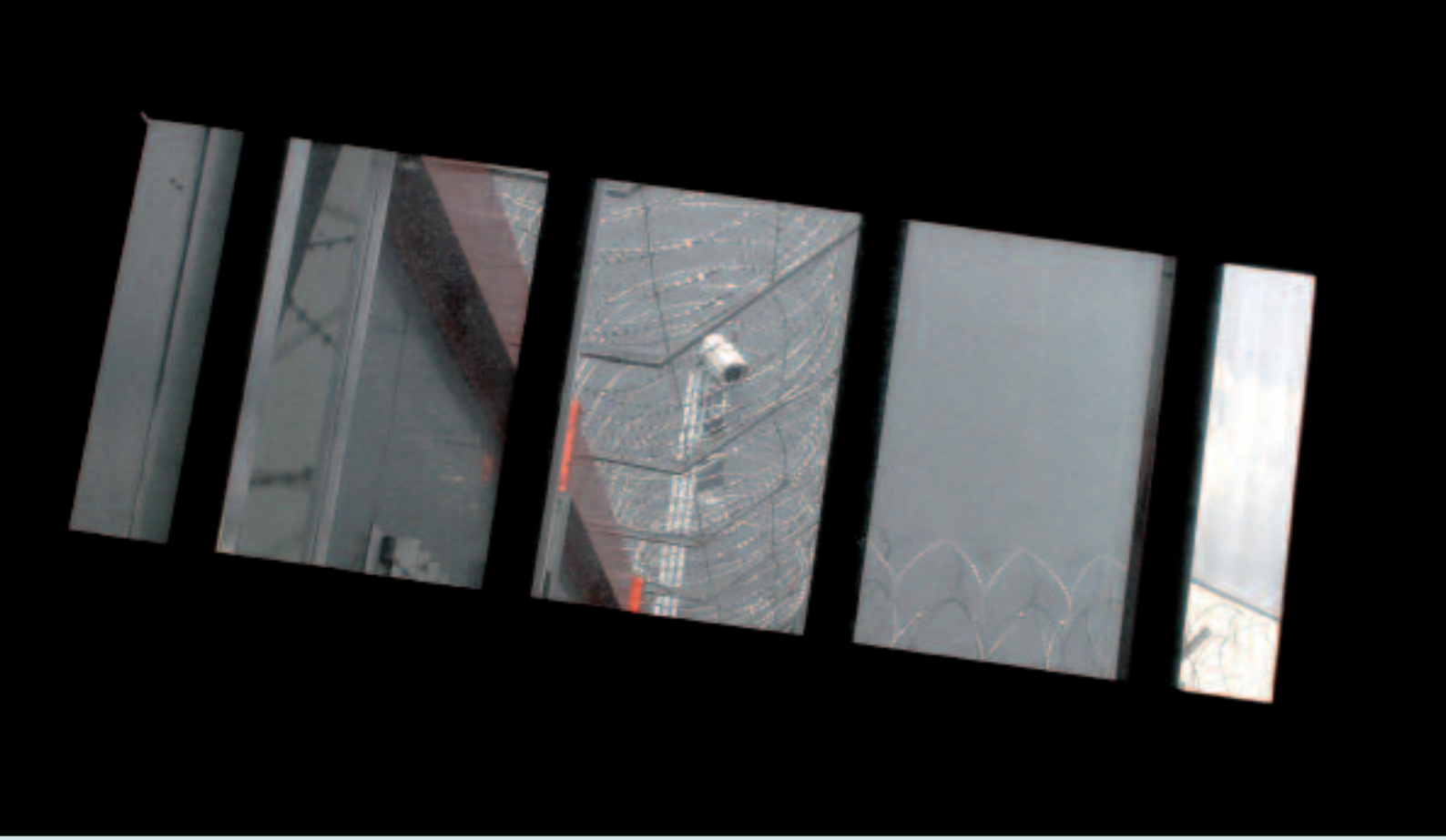
In 2006, the "Justice" section of the services of the Mediator of the French Republic handled 22.1 % of the cases closed. For the three hundred delegate Mediators of the French Republic, the field of intervention "Justice" represents 6.5 % of their activity for 2006.

Restoring the necessary trust

➜ We know how this reform is being expected and to what extent, in particular, the Outreau affair has undermined the trust the citizens have in their judiciary. In this area, it seems important to reaffirm two principles. In the first place, the independence of the judicial authority as a constitutional principle and basis of our rule of law. But also the protection of a litigant against possible malfunctions which may change the legal system. The case in point is not the extension of the Mediator's field of competence or the urgent need to make the legal institution more transparent, more accessible and more humane. It is all about restoring people's trust in the legal system, which is indispensable to French democracy.

Improving the legal system by protecting the players involved

➜ The attention of the Mediator of the French Republic was drawn to the absence of social security contributions for jurors selected for a court session. This is how the Mediator got to know about the case of an employee selected as juror in the lawsuit filed against Mr Maurice Papon. The trial had lasted for six months. It turns out that during this period, no social security contribution had been paid by his employer as a result of the suspension of his payment, nor by the Ministry of Justice for the indemnities paid in relation thereto. This absence of contribution resulted in the loss of two quarters of contributions to the general pension scheme while calculating his pension entitlements. The Ministry of Justice also received similar complaints from jurors appointed to participate in a paedophilia trial in Angers and which had lasted several months. In this situation, the Ministry of Justice has accepted, with the consent of the budget department of the Economic Ministry, to reimburse the social security contributions which these jurors had voluntarily paid to URSSAF.



Therefore, the Mediator of the French Republic has proposed to introduce an obligation to pay social security contributions for indemnities paid to jurors. Although acceptable to the Health Ministry, this proposal has come up against the opposition of the Justice Ministry, especially because of the occasional nature of the contribution of jurors and the nature of the indemnities paid to them. ■

Prisons: deprivation of freedom is not synonymous with deprivation of access to the law

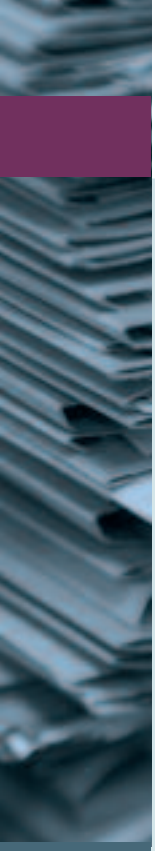
At the beginning of 2006, reports about the situations of French prisons were particularly alarming. On 15 February 2006, Alvaro Gil-Robles, the Council of Europe's Human Rights commissioner, published his report, followed on 24 May, by the International Prison Observatory report, which deplored the sometimes disgraceful states of French prisons. In the aftermath of this, there was an assessment of the general situation of prisons, with the participation of delegate Mediators of the French Republic. One hundred and thirty seven delegate Mediators of the French Republic volunteered to distribute questionnaires to some 45,000 detainees and ensured that the 15,600 answers were returned for processing, according to the rules of confidentiality.

Giving detainees access to the law and reintegrating them into society

➜ The agreement signed on 16 March 2005 between the Mediator of the French Republic and the Minister of Justice kick-started the opening of delegate-mediator offices, on an experimental basis, in ten prisons. The presence of delegate Mediators of the French Republic on site, once a week, helps improve concretely the access of 7,500 detainees to the law. It is not the fact that they are deprived of it, but rather their detention, that makes it difficult for them to have access to information, to the complaint procedures and to the services of the Mediator of the French Republic. The Mediator of the French Republic also sees a second objective in it: facilitating their reintegration into society. Handling the problems encountered by detainees and their family in their relations with administrations prepares the detainees' release and their chances of social reintegration.

■ THE ÎLE-DE-FRANCE AND PROVENCE-ALPES-CÔTE D'AZUR

Questioned in a Parisian street, Mr L. is obliged to abandon his van which is then impounded. As a result of an administrative error, the judge's authorisation to send the vehicle keys to his partner does not reach said partner, thus prolonging the confiscation of the vehicle and increasing the inherent fines. Since Mr L. is apparently not responsible for this delay, the intervention of the delegate mediators of Aix and of Paris helps him to reduce his debt.



In the experimental phase, delegate mediators have exactly the same powers inside and outside prisons. No administration, including the prison administration, is excluded from their field of intervention. The delegates have the Institution's entire prerogatives, starting with independence. They are answerable in their mission only to the Mediator of the French Republic who appointed them. To optimise the effectiveness of their action, the delegates work in organisations in which "legal-access points" exist and which provide detainees with "general" legal information and thus enable the delegate mediators to focus on their actual mission: settling disputes with administrations.

From experimentation to generalisation

➜ Three main lessons have been learnt from the experimentation. Firstly, having delegate offices in prisons meets a real need: the number of complaints received in a year was about 700, that is from 10 % of the detainees in the 10 sites (1). Moreover, the intervention of delegates was effective because it then became possible to handle disputes which could not be settled through any other channel, especially cases involving prison administrations. They represent 30 % of the complaints: loss of personal items, request for transfer or management of allowance, for example.

Since the result of the experimentation had been positive, the Justice Minister announced on 19 October 2006 that offices of delegate Mediators of the French Republic would be created in all French prisons. Twenty-five new offices will be created in prisons with more than 300 detainees, especially in the Fleury-Mérogis prison. 60 % of prisoners in France should thus have direct access to a delegate Mediator of the French Republic. The Justice Minister also proposed that general control of prisons be entrusted to the independent Institution of the Mediator of the French Republic. It will be a new service, run by specially trained controllers different from the current delegates.

It should be noted that the demands received by delegate mediators from prisoners have made it possible to place emphasis on some administrative malfunctions which the Mediator can try to correct through his reform proposal powers. Furthermore, while examining the situation of a prisoner, cases pertaining to his or her family outside are often handled, and the prisoner is better prepared for reintegration into society.

Moreover, according to prison directors, the presence of delegate Mediators of the French Republic may be an important factor in reducing tensions and preventing conflicts. Listening, taking account of complaints and helping to resolve the difficulties encountered with social, tax, or prison authorities are a major progress in terms of prisoners' access to the law.

Towards external control of prisons and detention centres

➜ Today, if France ratifies the optional UN Convention against torture, it must introduce external control of prisons, which is equally recommended by the Council of Europe and the European Parliament. This new control may be entrusted to the independent authority of the Mediator of the French Republic, as stated by the Justice Minister in October 2006. In November 2006, the Mediator of the French Republic started a series of consultations with the major players in the field, especially in the prison world. ■

(1) The prisons in Fresnes, Marseille-Les Baumettes, Aix-en-Provence–Luynes, Saint-Étienne, the detention centres in Melun and Bapaume, the prisons in Poissy, Nanterre, Épinal and Toulon–La Farlède.

Protecting individual liberties

The use of defensive means sometimes undermines individual liberties. Does the protection of public safety impede access to employment? Must selective immigration be accompanied by disrespect for personal dignity? The current situation calls for increased vigilance. Although the individual is often the focus of debates, said individual is sometimes deprived of his or her personal and family rights.

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Individual liberties and files

STIC and JUDEX, files that need to be improved

➜ Different laws have instituted and created the possibility to consult judiciary-police files within the framework of a preliminary investigation prior to an administrative decision on access to certain jobs, especially in the security and defence fields. These files are also consulted while processing applications for French citizenship or stay permits. The main purpose of the offence processing system (Stic), for the national police force, and the legal documentation and operation system (Judex), for the Gendarmerie, is to group together information from investigation reports compiled after initiating a criminal procedure. It contains a record of offences, but these files are not updated after legal decisions are taken (conviction, discharge, acquittal, dismissal), in the absence of regular transmission of these legal decisions by the public prosecutor to the file managers. Both the Stic and Judex files will be combined at the beginning of 2007, with the creation of a common judiciary-police file called Ariane.

All along 2006, the services of the Mediator of the French Republic received a growing number of complaints concerning the reliability, verification and updating of the data contained in these files. These complaints meet with a particular response due to a recent development. In fact, the law of 23 January 2006 modifies the system of recruiting security agents by private security companies. They were 11,000 in 1982,

■ PROVENCE-ALPES- CÔTE D'AZUR

Mr Z. cannot work as a security guard because the prefectoral services rejected his application. The intervention of the delegate Mediator of the Alpes-Maritimes shows that the Stic file had not been updated...

78,000 in 2006... Henceforth, prefects may reject an applicant not only on grounds of the objective criterion of the existence or non-existence of data in the police record, but also on the basis of more subjective criteria concerning the behaviour or morals of the applicant. This information is available, among others, in Stic and Judex files. Diverted from their initial objective, these two systems seem to serve as "an unofficial police record". Now, consulting the Stic and Judex files for administrative purposes does not offer the same guarantees as the police record.

The Mediator of the French Republic has, therefore, called for an improvement of the conditions for transmitting legal decisions from the public prosecutor's office, and the introduction of guarantees for citizens that may be subject to an administrative enquiry for which the Stic and Judex files may be consulted. At the plenary assembly of the National Human Rights Commission in February 2006, the Mediator of the French Republic presented the amendment summarising all his concerns in this field, and then met with the chairman of CNIL (the national commission for information technology and civil liberties). On 20 April 2006, he visited the division of the technical and scientific police located in Écully to see how the Stic file works.
On 15 June 2006, Mr Nicolas Sarkozy asked Mr Alain Bauer, chairman of the orientation committee at the national crime Observatory, to create a work group entrusted with finding, within six months, solutions that can reconcile personal protection with individual liberties. The Mediator of the French Republic participates in this work group. On 23 November 2006, the chairman of the work group submitted his report to the Interior Minister. The group's recommendations contain almost all the reform proposals made by the Mediator of the French Republic.

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Which information right for families? The case of Ficoba files

➜ The attention of the Mediator of the French Republic was drawn to the impossibility, for notaries public, to access the computerised Ficoba file – a file on bank accounts and similar accounts, especially in order to establish declarations of succession. This situation can be absurd in that some inheritors must pay a fine (for involuntarily omitted bank accounts), because of a piece of information that the administration had refused to communicate to them!
In July 2006, the Mediator of the French Republic, therefore, proposed to extend the Ficoba file to the already existing information access solutions used for other files.

File, excessive debts and confidentiality: an impossible equation?

➜ Using certain files to prevent excessive debts may also quickly undermine individual liberties. This is the subject-matter of the on-going discussions on positive and negative files (cf. paragraph "For a debate on the opportunity of the positive file", page 34). ■

Immigration and foreigners' rights

Towards selective immigration: a path to mark out with signals

➜ Mr B., a Russian student, lives with his French mother. When he obtains his postgraduate degree, he requests for a change of status as the company where he had done his internship wishes to employ him. But he is refused the stay permit. Reason: there are too many candidates, and there are not enough jobs in the department. The appeal filed with the support of the company that wishes to employ him is equally rejected. The help of the delegate Mediator of the Haute-Garonne then becomes necessary. He calls the administration's attention to the circular from the Employment Minister, dated 15 January 2002, which asked prefects *"to examine with benevolence the applications for a change of status filed by foreign students at the end of their university studies when said students present an employment proposal or contract from a French company for which this recruitment would be of technological and business interest"*. The real equation between the proposed employment and Mr B.'s training is proved and he is issued a one-year temporary stay and work permit.

The thirteenth important immigration law reform in France since 1980, the law of 24 July 2006 on immigration and integration provides for the principles of "selective immigration". It gives priority, among others, to receiving "the most motivated students intending to pursue higher education". The procedures are facilitated for students meeting the defined criteria. Moreover, the "competence and talent" card, valid for three years, facilitates the admission of foreigners with higher potentials. At the same time, this law defines yet more strict conditions especially for family reunification, for which the minimum period of stay before application has been increased from twelve to eighteen months. Family reunification has also been subjected to the notion of "republican integration". Finally, foreigners living in France for ten years are no longer automatically issued a stay permit. Any foreigner not issued with a stay permit or whose demand for stay permit renewal is rejected shall be obliged to leave the country within one month; the foreigner shall have a suspensive right of appeal.

The Mediator of the French Republic is very vigilant about the application of this law of 24 July 2006. Although it is necessary to control immigration, it is also necessary to be vigilant about the respect of the right of foreigners living regularly in France to a private and family life.

■ THE ÎLE-DE-FRANCE
Due to the historic circumstances surrounding her country of origin, Mrs F. cannot provide her parents' marriage certificate required to complete her application for naturalisation. The delegate Mediator of the Hauts-de-Seine intervenes at the prefecture.

■ JUSTICE
Mrs E., a French citizen born in Egypt, cannot provide the birth certificate required to renew her identity card. A favourable solution is found thanks to the intervention of the Mediator of the French Republic.

■ JUSTICE
Mrs A. complains about the difficulties she is having to regularise the situation of the father of her children, with whom she is living. The Mediator of the French Republic underlines the private and family character of the demand. A one-year permit is issued.

Regularising the situation of children: unduly limiting conditions

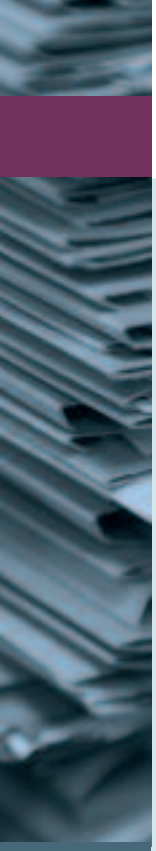
➜ Mr T., a Russian, applied to the social security office for family allowance for his three children, Canadian nationals, who had arrived in France with his wife in February. He received a rejection letter, which was confirmed at the end of an amicable settlement, because there was no proof that his children had arrived and stayed in France pursuant to the law on family allowance, by producing, among others, the medical certificate issued by the international migration office. On the recommendation of the Mediator of the French Republic, he then sent to the social security office the DCEM (the document for the movement of underage foreigners) issued in November. The social security office recognised his right to family allowance in December, one month later. But he was not paid any family allowance for the period of March to November as the children's stay had not been recognised through an official document. Yet the parents had been staying legally in France. The attention of the Mediator of the French Republic was then drawn to the fact that certain criteria for assessing the regularity of children's entry and stay in France were unduly restrictive. He proposed that the allowance be granted to foreigners holding a temporary stay permit granted on grounds of respect for private and family life or territorial asylum. Within the framework of the draft law on the funding of social security for 2006, the government pushed through an amendment aimed at specifying the rules for granting family allowances to foreigners living in France. This new law contains the basic recommendations made by the Mediator of the French Republic. Nevertheless, it seemed necessary to alert the Interior ministry in charge of defining the application rules so that these rules respect strictly the legal provisions and not reduce its range through the particular requirement of the items enumerated restrictively.

Visas: marriages of convenience in the line of sight

➜ Some people get married just to obtain a visa for France. For example, a marriage celebrated in Turkey between a Turk and a French. This latter had had two short stays in Turkey and claimed that they corresponded and phoned each other regularly through a third party as they did not have any common language... The entry visa for France was refused by the relevant authority. Therefore, if a marriage between a French citizen and a foreigner has been celebrated outside France, it is essential to record the foreign marriage certificate in the French civil status registers. It is then the responsibility of the consular or diplomatic authorities to notify the French authorities if they assume that said marriage is bogus. If after six months the public prosecutor has not given a ruling on the nullity of the marriage, the consular or diplomatic authorities must transcribe the marriage certificate. It is only after this formality that the foreigner may apply for a visa. Nevertheless, even if the marriage certificate has not been contested, the consular authorities may refuse to issue the visa if the marriage seems fraudulent.

■ JUSTICE

Mr K.'s receives a positive reply to his demand to abrogate the deportation measure taken against him for the past three years. In view of the elements in Mr K.'s file, the Mediator of the French Republic asks for the situation of Mr K. to be examined benevolently.



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Fraudulent acknowledgement of paternity: a shocking misuse of procedure!

➜ Fraudulent use of civil status records may undermine for a long time the right of a child to real parentage. This is the tragedy of acknowledging paternity for a sum of money paid to the mother of a child born in France. This is a seemingly enduring situation as shown by some cases reported to the Mediator of the French Republic. The law of 26 November 2003 on immigration control, the stay of foreigners in France, and citizenship has made a first attempt to curb these practices, by abolishing the automatic delivery of a (ten-year) residence permit to a foreign parent of a French child. Henceforth, the presumed father must prove that he actually contributes to the child's upbringing and education. Moreover, Law 2006-911 of 24 July 2006 on immigration and integration has corrected an astonishing imbalance which existed in the criminal law, because in the past bogus acknowledgement of paternity was not an offence, whereas a party to such a false declaration was liable to legal proceedings pursuant to Article L. 622-1 of the law on foreigners' entry and stay, and right to asylum. An analysis of the existing law reveals other "loopholes" in the paternity-acknowledgement procedures, especially as a result of the limited powers of civil status officers. In fact, they cannot complain to the public prosecutor if they doubt the validity of the acknowledgment of paternity, whereas they have such a prerogative in terms of marriage. This renders unstable the control power of the public prosecutor provided for in Article 336 of the Civil Code, which allows him to contest a legally established parentage "if facts from the acts themselves make them unlikely, or in case of fraud". Moreover, as said earlier on, the procedure for obtaining a stay permit from prefectures require that the father must prove that he actually contributes to the child's upbringing and education. The fulfilment of this condition is actually verified by the relevant services.

Which access to the law for foreigners?

➜ Insufficient training and information, overworked services... A certain number of complaints sent to the Mediator of the French Republic attest to a quality of reception and service with little or no respect for the principle of access to law and equity. For example, an Algerian had to pay a 55 euros tax in order to have his residence certificate renewed, whereas since 1st January 2003, Algerian citizens with residence certificates, which are valid for ten years, are exempted from this tax! Thanks to the intervention of the delegate mediator of Moselle, the Algerian was reimbursed said sum by the prefecture.
The attention of the Mediator of the French Republic has also been drawn to the delays observed for the submission of naturalisation-application related files at prefectures. Some prefectures summon the parties concerned for interview in 2008! Others do not offer any telephone contact possibility which would facilitate the processing of claims. ■

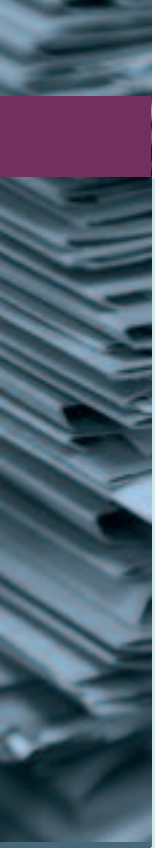
Bringing the values of mediation to the world

In a society increasingly considered as a forum for confrontation and conflict, mediation is getting ever more important and mediators or ombudsmen tend to be always at the heart of social debates. Anxious to open these debates and enhance his proposals, the Mediator of the French Republic actively maintains his networks at ministries, universities that can contribute to the reflections and debates, and among professionals and associations, both at the national and international levels.

Promoting Human rights with the Human Rights Commission

➜ Since 1993, the Mediator of the French Republic is a member of the National Human Rights Commission. Created in 1974, this Commission is made up of representatives of NGOs, Human rights organisations and qualified personalities as well as lay people and representatives of religions. The National Human Rights Commission is consulted and makes recommendations for the government on draft laws, national and international laws, and participates in social debates. In the course of 2006, the Commission continued its engagement on issues pertaining to any form of discrimination, but also bioethics, arms sales, administrative retention, racism and xenophobia.
Although the law of 1973 does not confer on him any particular prerogative in the field of Human rights, the Mediator of the French Republic participated actively in these big debates. In February 2006, the report of the Human Rights commissioner, Alvaro Gil-Robles, followed by the International Prison Observatory report, which deplored the disgraceful situation of French prisons, ushered in assessments of the general situation of prisons, under the auspices the Mediator of the French Republic, Jean-Paul Delevoye, and Robert Badinter, a former Justice Minister. Objective: propose to political leaders ways to improve a situation which many national and international authorities consider as unsatisfactory. Alerted by social workers, the Mediator of the French Republic had already started for eighteen months an innovative experiment in prisons, by sending his delegates there. This experiment will continue in 2007.

Moreover, the Mediator of the French Republic remains very attentive to issues with direct impact on the respect of human dignity and fundamental human rights. He is following with great attention the implementation of certain laws, especially the law of 24 July 2006 on immigration and integration of foreigners.



Thinking Europe of law with European ombudsmen

➜ In Europe, the Mediator of the French Republic maintains regular relations with some one hundred counterparts and contacts, federated by the European Mediator. Mediators and ombudsmen from member States of the European Union and European Economic Area meet every two years. Thanks to this network, cases such as the problems of cross-border workers are easier to handle together. Federated under the auspices of Nikiforos Diamandouros, the European Mediator, this network is also an enormous knowledge base and a forum for exchange of information and experiences which fuel debates prior to any reform proposal. For example, within the scope of the on-going reflections on excessive debts, the Mediator of the French Republic went to Belgium to understand better the role of positive files there. Furthermore, in keeping with the reform of the French judicial system, the Mediator of the French Republic also contacted his European counterparts in order to compare effectively different legal systems and learn from successful experiences. The Mediator of the French Republic has also asked his counterparts to open a debate on the problems of immigration, integration and foreigners' right.

At the European level, the Mediator of the French Republic strives for better harmonisation of national and Community laws. In the course of 2006, the Mediator of the French Republic called, on many occasions, the attention of politicians to the differences between French laws and European laws.

In Vienna, in June 2006, the Mediator of the French Republic participated in the European conference of ombudsmen. France will be hosting in Strasbourg in 2007 the next meeting of the national mediators and ombudsmen of European member States.

AOMF (Association of Francophone Mediators and Ombudsmen): bringing the values of democracy to the world

➜ Jean-Paul Delevoye is the secretary general of AOMF, the Association of Francophone Mediators and Ombudsmen, and, as a result, participated in several of its assemblies in 2006. Apart from the linguistic ties, this organisation brings together countries which share the same democratic and Human rights values. In 2006, the Mediator of the French Republic took several initiatives to help the member States develop their own mediation system: reception and training, exchange of skills, provision of computer resources, etc. He received, among others, the mediators of Djibouti and Morocco, and mediation teams from Senegal and Mali. In December 2006, the Mediator of the French Republic went personally to Senegal to witness the inauguration, in Bamako, of the headquarters of the Mediator of the Republic of Mali, as well as the 11th edition of the Democratic discussion forum.

Mediation in the world

➜ A number of organisations and personalities around the globe are showing interest in the Institution, and are learning from the Mediator of the French Republic about his role and activities. In 2006, the services of the Mediator of the French Republic received successively three Chinese delegations. They also received the chairman of the Human rights section of the Turkish Prime Minster's cabinet, as well as Becky J. Hoover, an American lawyer and academic. ■

About the Institution

Whether or not it is admissible, each complaint sent to the Mediator of the French Republic is replied to, with arguments in support of the reply. To guarantee fair access to law and information, and examine the most complex cases, departmental delegate mediators and experts at the central services perform a really laborious task. When individual complaints reveal general malfunctions or iniquities, there is the need not only for sporadic actions, but also for in-depth analyses and broader reflections. Therefore, all the reform proposals made by the Mediator of the French Republic reflect the day-to-day realities of French citizens and are based on the expertise and field work of jurists and the Institution's delegates.

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Bringing the Institution closer to all

If the buzzwords for the activities of the 270 delegate mediators are proximity, efficiency and rapidity, the quality of the services they render to the population in their daily life makes these voluntary civil servants a network of reliable partners, whose support is highly sought by citizens who have problems with administrations.

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

The delegates handle 90% of the cases referred to the Institution

➜ Traditionally present in prefectures, delegate Mediators also have offices in the heart of sensitive neighbourhoods, in local organisations (such as legal-information centres and municipal centres) and, since 2005, in prisons.

Listening to, settling disputes between and informing citizens puzzled by the complexity of administrative procedures

➜ The proximity of the delegates' offices, the fact that their services are free of charge, and their readiness to listen reassure the persons puzzled by complex procedures and anonymous voice servers; they thus help to ease often tensed situations, through clear and impartial explanations.

52% of the cases handled by delegate mediators are information and orientation requests made by a population overwhelmed by the complexity of laws and the administrative organisation, a form of malfunction dreaded by the most vulnerable and least informed members of society.

Reacting quickly, while remaining vigilant...

➜ Emergency situations are handled properly thanks to the organisation of the delegates into a network, and the contacts established in local administrations. The delegate mediators know how to quickly decode administrative procedures and channels since they used to work with them. Former civil servants or retired company executives, or even young doctorands, they all have good legal training or a public-sector experience. In 2006, the Regional Development section organised for them 250 general training (computer, legal training, etc.) days or specific training (on disability, detention) days.

They are equipped with laptop PCs and an Internet connection, and can thus communicate with each other and with the Institution. This is how it was possible to organise the distribution of a questionnaire to 45,000 detainees within a short time. The network structure is particularly suited to the handling of emergencies: thanks to the contacts set up with the administrations and between the delegates, quick solutions are found for sensitive problems.

As observers of administrative practices, the delegates detect malfunctions and also try to correct them with the services concerned, thus helping to improve the public service. ■

270 delegate mediators

55,874 cases received in 2006

338 public reception centres

A central legal-access point

Telephone, e-mails, and emergency unit: the Admissibility section adapts the referral modalities of the Mediator of the French Republic to the citizens' new practices and the urgency of certain situations. This complainant reception and orientation platform also examines non-admissible complaints.

The Admissibility section performs two distinct functions. The first one consists in receiving and examining the requests sent to the Mediator of the French Republic. Admissible complaints are then forwarded to one of the Institution's five examination sections, or to regional delegates. Thus, the Admissibility section received and handled the 6948 requests which arrived at the central services in 2006.

The second function of the Admissibility section corresponds more particularly to the objectives of the Mediator of the French Republic in terms of access to the law, proximity and education. It is all about handling complaints which are not admissible in accordance with the law of 3 January 1973. The non-admissible cases handled in 2006 basically concerned fines, town planning and private disputes: family problems, relations between tenants and landlords, consumer law, on-going legal proceedings, etc.

Making the law easily accessible

➜ Non-admissible cases are examined in order to give each complainant the clearest, most comprehensive and most useful answer possible. Therefore, reach reply specifies why the Mediator of the French Republic is not empowered to intervene in such a case, which steps the complainant should have taken – or can still take –, the addresses of the organisations or persons to contact, if need be. In fact, the Admissibility section has noticed that the general public has a poor knowledge of services such as 3939 or CIRA (inter-ministerial centres for administrative information). In 2006, the Mediator of the French Republic, therefore, initiated a rapprochement which will gradually make it possible to work more closely with these services.

Taking new practices into account

➜ Pursuant to the law of 3 January 1973, complaints must be sent indirectly to the Mediator of the French Republic through a senator or a member of parliament. Now, the urgency of certain situations or referrals through such means of communication as telephone and e-mails must henceforth be taken into account. In 2006, the Admissibility section thus received 3,119 e-mails. Out of principle, the Admissibility section does not reject any request not sent through a member of parliament, but asks the complainants to regularise their procedure.

Moreover, the Admissibility section may detect the urgency of a complaint upon its reception: risk of expulsion, blocked bank accounts, non-payment of a minimum income, etc. In this case, its emergency unit handles the matter. This was, for instance, the case for a self-employed craftsman whose bank accounts had been blocked for an allegedly unpaid 85 euros hospital bill. Within one hour, the emergency unit highlighted a malfunction between the hospital administration and the Treasury, and obtained a cancellation of the banking ban and the inherent charges. ■

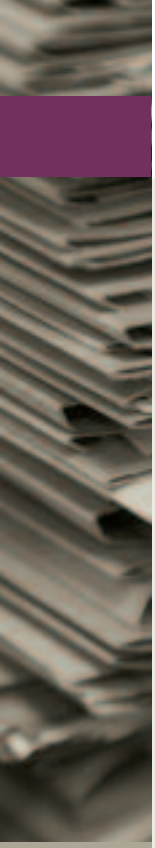
Within the services of the Mediator of the French Republic, the Admissibility section receives and channels complaints to the relevant sections. It also examines non-admissible complaints.

3,033 cases closed by the central services

41% outside the Mediator's field of competence

209 cases handled by the emergency unit

3,119 complaints received by e-mail, that is + 100 % compared to 2005



Putting the day-to-day life under the microscope so as to correct malfunctions

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

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

1,390 cases were closed in 2006

A special assistant examines an average of **175** cases a year

20% of the disputes concern town planning, environment, the public domain, public works and roads

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

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

In fact, a large number of cases are settled thanks to the good cooperation of regional authorities and public administrations. Nevertheless, in 2006, in two cases where a solution seemed possible but could not be found as a result of silence or refusal on the part of the administration involved, the Mediator of the French Republic exercised the power conferred on him by law to publicise his recommendations so as to finally persuade the parties to come to an understanding.

For the most important or frequent issues, the General-matters section compiles technical and topical notes highlighting the main lines of a reform to envisage. ■

Areas covered by the General-matters section

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

Making public-sector employers face up to their responsibilities

A lot of clichés are changed by cases handled by the civil servants/Pension benefits section.
Situations of unemployment reveal a lack of coordination between the social security schemes; the payment of pension benefits is often impeded by belated publication of application decrees, while disability may result in total absence of income. Insecurity and urgency are now part of the life of civil servants.

➜ The Civil servants/Pension benefits section examines complaints filed by civil servants from three public-service levels (the State, regions, hospitals), who are in disagreement with their administration. Nevertheless, these complaints must not call to question the exercise of hierarchical and disciplinary power by the administrative authority (Article 8 of the law dated January 1973).

In 2006, a lot of requests concerning the right to civilian pension benefits were filed by active civil servants. Concern about this issue seems to be rising more than in the previous years, due to the changes ushered in by the 2003 pension reform, and as a result of the gradual and sometimes late publication of application decrees. Many people complained about the administrations' sluggishness and information gaps, which may hamper the payment of their pension benefits. Moreover, there is still a growing number of complaints about sexual discrimination in terms of retirement pension and widow's pension.

The second most frequent case referred to the Mediator of the French Republic concerns the payment of unemployment benefits to contract civil servants and regional and hospital employees. The law on this matter is so complex that public-sector employers have a poor knowledge thereof, thus generating a good number of complaints. The most frequent disputes arise from the legitimacy of a civil servant's resignation, the period of indemnity, and the lack of coordination between the unemployment insurance scheme and the public sector. The situations handled by the section are often precarious and urgent, but are resolved by the Mediator of the French Republic.

Immediate pensioning for disability or unfitness for function is also a source of a good number of disputes, basically due to the absence of (the obligatory) redeployment of the civil servant for another function compatible with his or her state of health. Moreover, this is often because of the delayed decision of the administrations in charge of recognising the civil servants' unfitness for their function, or on the possible payment of pension. This makes it impossible for the parties concerned to get paid. Therefore, the Mediator of the French Republic intervened on several occasions at some administrations to check that the procedures were properly applied. Furthermore, he proposed that the same law be used for the three public service levels, and this reform proposal was received favourably for public hospital employees. The only reform proposal yet to be adopted is cancelling the obligation to pass through the Economic ministry, which does not exist for the other two civil service levels and which, in case of rejection, may deprive the civil servant, whose name is removed from the books, of any income. ■

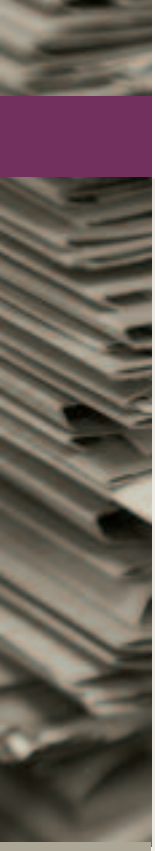
Within the services of the Mediator of the French Republic, the Civil servants – Pension benefits section examines complaints sent in by civil servants from the three levels of civil service.

585 cases were closed in 2006

50% cases concerned civilian and military pension benefits

45% concerned the career of civil servants

5% concerned recruitment



Explaining the law and encouraging amicable settlements

Second section in terms of the number of complaints received, the Justice section noticed a very high increase in the number of requests concerning protected adults. The feeling of arbitrariness sometimes expressed in the complaints lodged by foreigners was given sustained attention in order to explain the decisions and point out the elements not sufficiently taken into account by prefectural services.

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

885 cases were closed in 2006

A **50%** increase in the number of cases pertaining to protected adults

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

With 60% of the cases handled, foreigners' right is the largest part of the activity of the Justice section, which is destined to accompany foreigners all along their life: visa, stay permit, family reunification, naturalisation, etc. The Justice section performs an important educational mission. The Justice section generally works with the foreigners' office of prefectures, the central civil status office of Foreign Ministries, Public prosecutors, clerks at the citizenship department of the Justice Ministry, etc.

Matters pertaining to civil status, citizenship, guardianship, court officers, as well as criminal and civil cases represent 38 % of the cases examined by the section. Although they are particularly complex, civil status-related case are sometimes resolved within forty-eight hours. In general, the examination periods do not exceed four months. Note: the number of disputes concerning adults under guardianship is rising quickly, with a 50% increase in the number of cases received in 2006.

Also in 2006, the intervention of the Mediator of the French Republic in prisons was considered a success. This innovative experiment will be extended to all the French prisons in 2007. ■

Managing emergency situations in the labyrinth of the social security scheme

Social security and welfare schemes are having problems adapting to the unstable professional and private situations. Old age and unemployment are the most frequent issues handled by the Social section. The cases examined reveal an urgent need for laws, especially in favour of dependent persons or people in precarious situations.

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

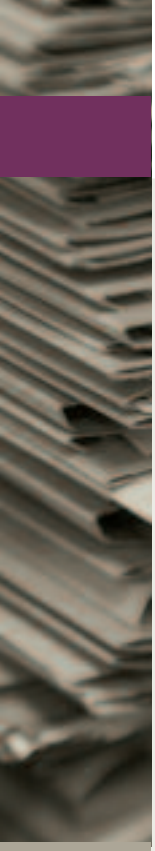
Another characteristic of the Social section is its method of working as a network with its correspondents in social security organisations and administrations, or with regional delegate Mediators of the French Republic who are often closest to the complainants. It is, therefore, the responsibility of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

The increasing complexity of laws and their application makes it more difficult to examine the complaints sent to the Social section. The multiple professional situations associated with different schemes, as well as the law on pension reform, give rise to an ever increasing number of complaints. Furthermore, complaints sent in by disabled persons or parents of disabled children highlight the emerging needs of disabled persons: special education allowance, reimbursement of accommodation and transport expenses, disability cards, compensations, fixing the rate of disability. The Social section is particularly striving to create links with departmental handicapped homes (MDPH) and the national solidarity office for autonomy. It works closely with delegate referents of the MDPHs.

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

Within the services of the Mediator of the French Republic, the Social section examines complaints pertaining to the obligatory social welfare coverage of the entire population, except civil servants. It is basically all about disputes arising from the social security benefits of the general scheme, the social security scheme for self-employed workers and farmers, contributions, pension benefits, family and welfare benefits, minimum income, housing benefits, employment aid, and unemployment benefit.

620 cases were closed in 2006



The French and taxation: a great need for education

Education is an essential aspect of the work of the taxation section. Once a complainant understands the position of the administration and no longer considers himself or herself a victim of injustice, he or she generally gives up any legal action. Only one out of two cases requires the intervention of the Mediator of the French Republic at the administration, and possibilities of free review are less and less frequent.

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

527 cases were closed in 2006

90% of the cases concerned taxation

30% of the tax-related complaints came from companies

10% of the cases were in connection with fees and various compensations

80% of the mediations are successful

➜ 90% of the cases examined by the Taxation section concern State or council tax. The complaints are filed by natural persons or corporate bodies (companies, associations) due to disagreement between them and administrations. 30 % of the complaints come from companies. The nature of these cases may vary a lot. Presented at all stages of administrative and litigation procedures, they result from very diverse situations with a lot of economic, financial and social implications, ranging from a few euros to the survival of a company and the future of its employees. Cases of inland-revenue inspection in companies and the social consequences occupy a large space, with more than one third of the complaints received. As for personal taxation, they are generally linked to family situations, be it for divorce (deduction of alimonies, increase in dependents' allowance, etc.), or for inter-generation solidarity. Finally, complaints involving regional authorities basically concern changes in their taxes and fees, especially in connection with the collection of household refuse.

In addition to the solutions of compromise, tax relief or deduction brought to the complainants, the replies also contribute immensely to pedagogy and explanation of administrative decisions, especially when the case leaves no room for mediation or free review, which is now frequent.

So, the activity of the Taxation section is basically State finance administration oriented (taxes, public accounts, and customs). Its contacts are their central services or those located in the regions: tax services, Treasury offices... The Taxation section also intervenes in some organisations attached to the Economic ministry, such as the national agency in charge of indemnifying French citizens overseas, and for various local taxes and fees – at the regional authorities.

Finally, other cases handled by the section, that is 10% of its activity, are not tax related: land registry, mortgage, indemnification of repatriated French citizens, but also television licence. ■

Reform proposals: at the heart of public debates

In a legislative landscape where escalating laws may hamper the authority of law and generate certain confusion, the reform-proposal power of the Mediator of the French Republic is basically exercised in two areas: searching for equity and correcting malfunctions in the public service. In so doing, he helps to make administrative procedures and practices fairer and simpler.

➜ The laws of 3 January 1973 and of 12 April 2000 confer on the Mediator of the French Republic the power to make reform proposals himself, through direct referral from a citizen, a member of parliament or another independent authority. The reform proposal mission is a logical extension of the individual mediation task. In fact, this makes the Mediator of the French Republic an observer of the social realities that fuel any useful reflection with a view to improving our laws.

In terms of reform, the Mediator of the French Republic has a large field of action at the heart of on-going debates: changes in the family, professional mobility, harmonisation of European and national laws, protection of citizens and consumers, disabled persons, work accidents, and occupational diseases. The reform proposals of the Mediator of the French Republic are either aimed at correcting the malfunctions in a public service or in an administration, or reducing the situations of iniquity resulting from the application of a regulatory or legal standard.

When the examination of a reform request does not result in a reform proposal in the real sense of it, but the problem raised is real, the Mediator of the French Republic alerts the relevant ministries to it so as to possibly make a reform at the level of these ministries. In 2006, 27 cases were thus reported; they concern, among others, the payment of disability pension to repatriated persons, the issuing of passports to underage children of divorced couples, leave for parental presence, surcharged numbers, affiliating children to the health-insurance card of each of their parents, the situation of doctors with a foreign diploma.

In 2006, the Mediator of the French Republic made eighteen reform proposals, aimed at protecting people (welfare, fundamental rights, vulnerable persons), or improving public systems (taxation, the legal system, etc.). Thirteen reform proposals were adopted. ■

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

103 open reform requests

101 closed reform requests

18 open reform proposals

13 adopted reform proposals

Administrative and financial management for 2006

BUDGETARY MEANS: €11 056 000

Staff (salaries - charges- training) (officials and delegates)	**€7 166 000**
• Salaries of headquarters staff (among others, temporary staff and reimbursed expenses, including social security contributions)	€5 834 000
• Allowances for delegate mediators of the French Republic	€1 180 000
• Training of staff and delegates	€152 000
Operating expenses (excluding staff-related expenses)	**€3 528 000**
• General premises management expenses	
– (including rent)	€2 223 000
– General operations	€728 000
• Miscellaneous expenses (including contingences and amortisement)	€577 000
Investments	**€362 000**

NEW ORIENTATIONS FOR 2006

Obligations of result and performance indicators

Within the framework of the implementation of the LOLF (organic law on the Finance Act), the Mediator of the French Republic fixed for the services some obligations of result, especially with regard to response time, the quality of mediation and of reform proposals.

As a result, apart from the performance indicator contained in the Finance Act, other internal management indicators and guidelines were implemented and sent to parliamentary commissions in 2006.

File traceability

Following the acquisition of a new data-processing software solution in 2005, efforts were geared in 2006 towards developing the traceability of files, using several criteria: classification by subject, and by geographic area, including in the Admissibility section.

Creating a Charter for the Institution

At the beginning of 2006, the "Charter for the Institution" of the Mediator of the French Republic was created. This charter presents the service commitments with, in particular, a development in terms of reception at the Institution, informing and assisting citizens in their administrative procedures, the modalities for handling cases, as well as the reform powers of the Mediator of the French Republic.

Staff training

The long-term training plan for delegates and headquarters' staff continued in 2006 with, for the first time, the provision of special training for each section. This will be intensified in 2007.

Moreover, the new objectives fixed by the Institution led to the development of two new orientations in 2006:
- training of delegate mediators in prisons;
- training of the headquarters' staff upon the arrival of a public accountant.

Transparency of human resources management

To comply with the specification of the LOLF, with a view to clarity in his action, and transparency, the Mediator of the French Republic reimbursed the salaries of the staff placed at his disposal and who had been transferred to him in 2006, which explains the wage bill of 2005 to 2006.

The staff of the Mediator of the French Republic (as of 31 December 2006)

		CATEGORIES		
	TOTAL	**A**	**B**	**C**
Staff placed at his disposal	47	32	8	7
Staff from state and regional health insurance offices (CPAM and CRAMIF)	5	0	0	5
Seconded staff	15	11	0	4
Staff working under contract	23	16	0	7
Staff assigned by the Government Office of Secretary General	4	0	1	3
TOTAL	**94**	**59**	**9**	**26**

TO FIND THE CASES CITED IN THIS REPORT, THE ORGANISATIONAL CHART, THE LAW OF 3 JANUARY 1973 AND NEWS ABOUT THE INSTITUTION:

WWW.MEDIATEUR-REPUBLIQUE.FR

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