

Universal Periodic Review of France
Submission of the Defender of rights
(October 2022)

The Defender of rights

The Defender of Rights is an independent authority of constitutional rank, established by the organic law n°2011-333 of March 29, 2011. It is responsible for ensuring respect for rights and freedoms in relations with the authorities and services of the State, for the best interests of the rights of the child and for ensuring compliance with the code of ethics by persons carrying out security activities on the territory of the French Republic. It is also in charge of fighting against direct or indirect discrimination prohibited by law or by an international commitment regularly ratified or approved by France. Finally, it is responsible for directing to the competent authorities any person reporting an alert under the conditions set by law, and for ensuring the rights and freedoms of this person.

The Defender of rights is appointed by the President of France after consultation with the Parliament. He/she is assisted by four deputies and a General Delegate for mediation with public services. The institution has 230 agents and 550 volunteer delegates spread throughout the country.

The Defender of Rights is competent in the field of protection of rights through the processing of individual complaints, and in the promotion of equality and access to rights. In this respect, the institution contributes to the development of the law by formulating opinions on bills and proposals for reform that fall within its fields of competence. The Defender of rights also has a "studies and research" mission that allows to collect or commission scientific data. It has also set up several joint committees that allow him to pursue a structured dialogue with civil society and the public concerned in all his fields of competence.

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I- The situation of French children held in camps in North-East Syria

Since 2017, the Defender of Rights has received complaints from families of French children held in camps in North-East Syria. They demand to the French authorities to organize their return to France, in order to put an end to the conditions of detention that endanger their lives and expose them to inhuman and degrading treatment.

Thus, since 2019, the Defender of Rights has consistently recommended that the authorities organize the return of the children and provide them with effective remedies, as the national courts have declared themselves incompetent to deal with their request ([decision no. 2019-129](#)). In the best interests of the children, only the organization of the return of all the children with their mothers on French soil and their care by the competent services, is able to ensure their protection and put an end to the current violation of their fundamental rights.

In a [decision of February 23, 2022](#), the United Nations Committee on the Rights of the Child found that France had violated the right to life of French children held in these camps, their right not to be subjected to cruel, inhuman or degrading treatment, and their best interests. Consequently, the Committee considers that France is obliged to take measures to redress the violations suffered by these children and to prevent any further violation of their rights. It recommends that an official response be given, as a matter of urgency, to each request for the repatriation of child victims and that positive measures be taken to effect such repatriation. The Defender of Rights had intervened in the procedure ([decision 2021-201](#)).

On a different legal basis, in a [judgment of September 14, 2022](#), the European Court of Human Rights (ECtHR) considers, after having established France's jurisdiction, that the authorities have not guaranteed the children's effective right to enter their territory. The refusals addressed to the families were neither formalised nor motivated, which did not allow them to benefit from an effective right to appeal. Moreover, these refusals, which were not surrounded by the necessary guarantees against arbitrariness, did not sufficiently take into account the best interests of the children, their particular vulnerability and their specific needs. The Defender of rights intervened in the procedure ([decision 2020-125](#)).

Therefore, the Defender of rights requests the French authorities to respect their treaty commitments, to examine the families' requests promptly in accordance with the decisions of the Committee on the Rights of the Child and the ECHR and to provide them with an effective remedy.

II- The issue of prison overcrowding, conditions of detention and the follow-up to the ECHR judgment *JMB and others v. France*

On January 30, 2020, in the judgment *J.M.B. and others v. France* (32 cases), the ECtHR considered that France had failed to comply with articles 3 and 13 of the European Convention on Human Rights (ECHR), given the undignified conditions of detention and the ineffectiveness in practice of preventive remedies. The Court found that the occupancy rates of the prisons concerned reveal the existence of a structural problem, which calls for the adoption of general measures aimed at ending prison overcrowding, improving material conditions of detention, and establishing an effective preventive remedy. The Defender of Rights had intervened in the procedure (decision 2018-148). In a decision of September 16, 2021, the Committee of Ministers of the Council of Europe awaited the adoption of concrete measures by France and considered that the Court's judgment had not been executed.

The Defender of rights calls on France to respect its treaty commitments and to put an end to prison overcrowding and undignified detention conditions, which are contrary to the principle of absolute prohibition of inhuman and degrading treatment.

III- Discriminatory identity checks

As part of his mission to fight against discriminations and monitor compliance with professional ethics by the security forces, the Defender of rights studies and combats discriminatory identity checks.

The individual complaints it has dealt with, the work it has carried out¹ and the exchanges with the various actors have enabled the Defender of rights to draw up observations concerning the existence of discriminatory identity checks. These negative experiences are associated with a low level of trust in the police force.

Three findings emerge from this work: a lack of traceability of identity checks, an insufficiently protective legal framework against discrimination and a lack of effective control by the judicial authority.

Identity checks in France are not subject to any legal traceability obligation. They do not have to be recorded, no receipt is issued, and the police and gendarmes are not obliged to record a check in a report if it does not result in the discovery of an offence. This lack of traceability of identity checks makes it impossible to measure the use of identity checks, to identify their legal basis and the reasons for the checks, or, a fortiori, abusive and discriminatory practices. In addition, there is no obligation to verbally justify the reasons for the check to the person being checked.

Moreover, the absence of a written record makes it very difficult for the person concerned to prove the discriminatory nature of the inspection, its legality and its very existence, and to usefully assert his or her rights through an appeal to the competent authorities. This situation does not allow either the internal authorities or the judicial judge to control the legality of identity checks and thus fully fulfill their role.

The legal framework today allows for identity checks to be carried out on any person, regardless of their behavior. The question arises as to the criteria on which officers base their choice of persons to be checked. It is clear from the work of the Defender of rights that they base themselves largely on subjective criteria such as their feelings or their "instinct". Since the criterion that led to the identity check is subjective, it is very difficult to verify it, especially since it is not formalized and the author of the check is sometimes unaware of the precise reasons that led him to carry out the check. The lack of information to the person being audited about the reasons for the audit is likely to give rise to a feeling of incomprehension and injustice, and encourages a feeling of suspicion. The spectrum of the laws governing identity checks is so poorly regulated that police officers are left to their own "instincts" or even "prejudices", which leads to abusive behavior, whether voluntary or not.

The Defender of rights also notes that in practice, a large part of identity checks is not subject to judicial control.

¹ Survey "Police/population relations: the case of identity checks", 2017. This survey objectified that this police practice targets mostly young men from visible minorities, accrediting the idea of "au faciès" controls. In the sample of more than 5,000 people, "80% of people corresponding to the profile of 'young man perceived as black or Arab' declare having been controlled in the last five years (against 16% for the rest of the respondents). These profiles are therefore "twenty times more" likely to be inspected.

The inadequacy of the legal framework, the lack of traceability and of effective judicial review are combined with other shortcomings, such as the lack of data collection on identity checks and of evaluation of their number and the conditions of their implementation, the lack of evaluation of the training of the security forces to prevent discriminatory identity checks, and the lack of dialogue between the police and the population.

Therefore, the Defender of rights recommends that the authorities take concrete and effective measures to put an end to discriminatory identity checks.

IV- Detention of migrant children

Children are still regularly kept in waiting zones. The Defender of rights was informed of the situation of a pregnant mother who was kept in a waiting zone with her two young children, in a 10m² room. The Defender of rights was also informed of the situation of a minor held in the waiting zone with her two parents, in the adult section, when she had a urinary infection and refused to eat.

The Defender of rights continues to be seized of situations of minors placed in administrative detention, despite the various judgments of the ECtHR condemning France.

In Mayotte, the Defender of Rights is regularly seized of situations in which children are attached to third parties who have no parental authority over them, before being placed in a detention center in Mayotte. The Defender of rights has also been informed of situations in Mayotte and in the Calaisis where minors are placed in detention centers due to an alteration of their date of birth, as the authorities do not take into account the civil status or identity documents presented, including civil status documents issued by a municipality in Mayotte. The Defender of rights also warns of an increase in the number of complaints concerning the detention of parents by the administrative authorities, without consideration of the situation of children who find themselves isolated on the national territory. Furthermore, the situation of children in administrative detention remains worrying, especially in Mayotte.

Recommendations:

Amend legislation, in accordance with the Convention on the Rights of the Child, to prohibit, under any circumstances, the placement of families with children in waiting zones or administrative detention centers

Put an end to the practice of changing the dates of birth of young exiles to remove them

Prohibit the practice of fictitiously attaching children to third parties who do not exercise parental authority over them, for the purposes of removal measures

V- Systemic discrimination against "Travellers"

In France, "Travellers" are confronted with discrimination in all areas of their daily lives: housing in connection with reception areas, accommodation, domiciliation, education, employment, access to health care, insurance, etc.

Institutions have a major responsibility in the production of these discriminations which take on a systemic dimension, which aggravates the marginalization of travelers, accentuates inequalities and reinforces the stereotypes that are at work as well as "anti-Gypsism".

In October 2021, the Defender of rights published a report entitled: "Travellers": removing barriers to rights" to renew her recommendations.

The quantitative objectives set by the departmental plans, more than twenty years after the adoption of the “Besson” law of July 5, 2000, have still not been reached. Regarding the quality of the reception areas, several studies show that many of them do not meet the conditions required for dignified housing for travelers. Most of them are isolated and far from public and private services, and half of them are located near sources of pollution or polluting facilities. Finally, some are located in the direct vicinity of a Seveso site.

The quality and quantity of these areas must be effectively implemented.

In particular, article L. 512-7 of the Environmental Code must be amended so that the distance rules between an installation classified for environmental protection and a residential area are extended to reception areas.

In general, the “Besson” law has the effect of disproportionately restricting freedom of movement and in fact constitutes an obstacle to the itinerant lifestyle. In fact, the obligation to set up reception areas applies mainly to municipalities with more than 5,000 inhabitants. However, the latter are largely in the minority in France, which excludes “Travellers” from the majority of French municipalities.

In addition to this very worrying situation in terms of reception, the treatment of “Travellers” by local authorities and security services has become more severe. The latter are subject to a double penalty since, on the one hand, they do not have a sufficient number of reception areas and/or areas in good condition to park, and are thus forced to park on sites that are not reserved for them. On the other hand, because they park in areas where they are not allowed, they are evacuated and fined, which they can hardly pay, due to the precariousness of many of them and the obstacles to an effective challenge of these fines and thus to the effective use of their rights.

The Defender of rights therefore recommends, in the absence of provisions allowing for the effective protection of the rights and recourse to their rights of “Travellers”, to put an end to the procedure of the fixed fine “against illegal settlements”.

Beyond that, the recognition of the caravan as a dwelling would allow, as also recommended by the UN Special Rapporteur on the right to adequate housing in her [report of August 24, 2020 on the right to housing in France](#), to remove many of the discriminations to which travelers are subjected.

VI- The situation of elderly people in residential care facilities for the dependent elderly called “EHPAD”

The Defender of rights regularly receives complaints about restrictions on the rights and freedoms of persons in “EHPAD”. She has been called upon even more frequently in this respect since the beginning of the health crisis related to the Covid-19 epidemic.

In the last six years, 1150 complaints about the conditions and methods of medical and social support were sent to the Defender of rights, 80% of which concerned an “EHPAD”². Examination of these complaints repeatedly showed violations of fundamental rights, respect for the dignity and integrity of persons in “EHPAD”. In particular, the effectiveness of: the principle of free choice, informed consent and the right to information of the person being cared for, the right to appropriate care and support, the right to health, the freedom to come and go, the right to privacy, intimacy and the maintenance of family ties, the right to property, the right to recourse and protection against all

² 45% of the complaints concerned an “EHPAD” with public status, 30% of the complaints concerned a private associative EHPAD and 25% of them concerned a private commercial “EHPAD”.

forms of maltreatment.

The most numerous violations are due to the lack of human resources and organizational deficiencies that do not allow professionals to accompany residents as they would like. A shortage of staff, high turnover, team exhaustion and a lack of supervision are often observed. Residents' rights and freedoms cannot be an adjustment variable in situations of staff shortage.

In addition, the health crisis related to the Covid-19 pandemic has highlighted shortcomings already noted by the Defender of rights, particularly with regard to the right to maintain family ties, the freedom of movement and the failure to respect the consent of residents. In addition, the particular vulnerability of elderly persons in "EHPAD" to Covid-19 has led the authorities to organize increased protection for these persons by adopting strict restrictive measures, which deviate from the general law, outside the specific normative framework.

On the basis of these findings, the Defender of rights prepared a report on the rights of persons placed in "EHPAD"³, in which 64 recommendations were formulated to improve the observance of these rights.

The Defender of rights recommends that the French authorities improve the care of persons in "EHPAD" and ensure the effectiveness of their rights by taking the measures she recommends in her report.

³ Report "The fundamental rights of elderly people accommodated in "EHPAD"", 2021. It aims at reminding that the persons accommodated in EPHAD have the same fundamental rights as the rest of the population