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Defending rights and fighting discrimination in France

Claire Hédon: Interviewee
Olivier Giraud: Interviewer
Nikola Tietze: Interviewer

The following interview highlights the work of a French institution – the Défenseur des droits [Rights Defender], created in 2008 (constitutional law no. 2008–724 of 23 July 2003). This institution takes the form of an independent administration within the French institutional system. It is, on the one hand, the result of the process of transposing into French law the European directives on equal treatment and the fight against discrimination, in particular Directive 2000/43 of 29 June 2000 and, on the other, successor to the HALDE [Haute autorité de lutte contre les discriminations et pour l'égalité, High Authority against Discrimination and for Equality, 2005–2011], an independent administrative body. The Défenseur des droits has taken over the functions of the HALDE, which was France's response to the European Union's commitment to establish an independent public body to combat discrimination. This new body has also merged the functions of the Mediator of the French Republic (ombudsman for legal and administrative matters), the ombudsman for children's rights and the police ethics commission. On the other hand, the institution of the Défenseur des droits, which includes a large part of the HALDE's former staff (Latraverse, 2018), represents the historical configuration of social policy-making in France. Its mission and instruments combine and recombine the ideas and policy tools through which social policy seeks to address socio-economic inequalities, non-take-up, and discrimination (Giraud & Tietze, forthcoming). The Défenseur des droits "designs and implements actions to promote equality and access to rights" (Défenseur des droits, 2023). In this respect, the institution is based on the traditions of the French welfare state, while contributing to the transformation of the conception and implementation of social policies.

Claire Hédon was appointed Défenseur des droits by President Emmanuel Macron on 22 July 2020 for a six-year term. She is the third person to hold this office. A lawyer by training, she has worked as a journalist since 1993, specialising in health issues. Between 2005 and 2015, she held administrative posts in the organisation ATD Fourth World All Together in Dignity (an international NGO founded in

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France in 1957 to mobilise against poverty). She is a member of the Comité consultatif national d'éthique pour les sciences de la vie et de la santé [National Advisory Committee on Ethics in Health and Life Sciences].

Claire Hédon: I will begin by presenting the institution of the Défenseur des droits [hereafter the institution] because it is a special institution in the European context. It is undoubtedly the Spanish ombudsman that most closely resembles the French case. The constitutional reform of 2008, which included the institution in the Constitution, and later the organic law of 2011, impart it with considerable authority. This is not anecdotal, but greatly clarifies its mission.

First, it should be remembered that the legislature intended from the outset that the institution should not be concerned solely with handling individual complaints, but also with promoting rights and freedoms. It meant, among other things, that the institution had to make recommendations to ensure the law was applied in the best way. It is within this framework that the institution issues recommendations to parliament, but also produces reports of a more general scope. I am referring, for example, to the report on the increasing digitalisation of public services or on the extent of discrimination (Défenseur des droits, 2022). It is also within this framework that we carry out or finance research to gain a better understanding of the difficulties in accessing rights.

Olivier Giraud & Nikola Tietze: Could you list the institution's areas of competence?

Claire Hédon: Respect for the rights of users of public services, the fight against discrimination, children's rights, the ethics of the police and the protection of whistleblowers are our five areas of responsibility, which are presented here according to the number of complaints we receive. The whistleblowers remit is a good example of a system that has been improved in close collaboration with parliament, through a law passed in 2016 and another in 2022. When the law relevant for one of these five fields of competence has been well written, we see an increase in the number of complaints submitted. I will address these different areas of responsibility later. I'd like first to say a word about the institution's organisation.

We have 250 employees, most of whom are legal experts, 230 at our head office and around 20 throughout the regions. The regional heads of unit and project managers publicise our work and organise the work of the regional delegates. The institution relies heavily on the 600 local delegates, who work as volunteers and welcome claimants in 1,000 locations. At a time when public services have increasingly become digitised and users complain about not being able to meet someone in person, we offer the possibility of a face-to-face meeting, where claimants can bring their personal documents. Many, but not all, of our delegates are lawyers or former legal professionals.

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At the head office, we have three investigative departments as well as a department for the promotion of equality and access to rights, a communications department, which plays a very important role in the public arena, a territorial department, and, finally, an administrative department.

When the institution was set up, there were fears that its powers would be diluted. In particular, the risk that discrimination issues would become marginalised was raised, but, in reality, our opportunities to take action have been strengthened and become more coherent because of the intersection of our fields of intervention. Take the example of a disabled child: he or she might face discrimination both because of being a child and being disabled. The situation of a child who is heard by the police, whether as a victim or as a perpetrator, may concern both the ethics of the police and children's rights. Another example concerns discriminatory identity checks: they are a matter of discrimination and police ethics at the same time.

It was important to enhance the visibility of the issue of discrimination among the general public. In this respect, the anti-discrimination hotline with the phone number 39 28 has had a direct impact, with a 29 % increase in complaints in the first year [the anti-discrimination hotline, 39 28, was established in February 2021]. Of the 138,000 complaints in 2023, only 6,700 concern discrimination. But this represents an improvement and it demonstrates something fundamental about non-take-up. I don't think we always deal with people who don't know their rights. The problem lies elsewhere. The fear of reprisals plays an important role for victims who question the usefulness of the process. However, this means that the institution needs to be known by the general public, particularly by those who are furthest removed from the law. To achieve this, we need massive campaigns on discrimination, explaining how it damages social cohesion. We are very short of resources in this area.

Since the start of my mandate, we have seen an increase in complaints from 100,000 to 138,000. Compared with our counterparts in other countries, the number of complaints relating to the ethics of the police and discrimination is lower. We need to raise our profile with the public who are furthest from the legal system because that is the institution's original mission: to complement the role of the courts for those who find it hardest to assert their rights. Reaching out to people facing disadvantages involves many activities. Connecting our delegates' offices to the Centre communal d'action sociale [CCAS, Local Authority for Social Services], youth job centres, associations and so on is among these activities. We must always be present in the judicial and law centres or prefectures [a *préfecture* represents the central state at the scale of the *département* (one of the territorial units of France). This administrative body has regulatory powers for issuing identity documents and applying the law relating to foreign nationals and their residence, but also for applying the rules relating to traffic and road safety as well as for

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authorisation procedures of all kinds and public enquiries at the initiative of the state]. Outreach is essential. These activities are reinforced by the joint committees of understanding, which have been established by the Défenseur des droits as our links with civil society. Such civil society associations identify difficulties that we don't necessarily see and then support claimants. Their role is crucial in the field of disability, for example. There are joint committees on disability, health, age, origin, and sexual orientation, and a joint committee on precariousness.

I could also take the example of the Roma. We contribute to the reports that France submits to the Council of Europe and the European Union. We have produced one for Roma and one for travellers since the difficulties these two groups face are different (Défenseur des droits, 2021a, 2021b). We realised that we had very few complaints from this population. Yet these are social groups whose rights are being massively violated. This led us to make several recommendations, including to ourselves, to improve our accessibility, in conjunction with French travellers' associations.

Olivier Giraud & Nikola Tietze: Apart from the situation of the European Roma, are there any specific problems concerning foreigners?

Claire Hédon: In 2023, a quarter of the complaints we received concerned immigration law. Since the beginning of this year, this figure has risen to one-third. This is a very worrying trend. The renewal of residence permits undoubtedly accounts for more than half of these requests. The people we encounter are legal residents who pose no problem and have been here for years. That they now are in an irregular situation is due to systemic failings of the public administration. The Cour des Comptes [French national Court of Auditors] has said that the reduction in staffing levels in the prefectures was untenable if the continuity of public services was to be guaranteed (Cour des Comptes, Who we are and what we do). I'm concerned about these people because this leads to absurd situations. Individuals whose cases are not processed lose their jobs and often also their social rights. Here are just two examples.

First, an electrician whose employment contract had been suspended by his employer because his residence permit had not been renewed. This person is still awaiting processing at the *prefecture*. Of course, the suspension of his employment contract means this person is unable to earn a living. The second example is that of a woman who has been in France for several decades and now suffers from Parkinson's disease. This person receives the allowance for disabled adults. She risks suspension of this allowance because her application for renewal of her residence permit is not being processed by the prefecture. This is madness, both for the people concerned and for an institution like ours. These disputes fill up our offices. The delegates are supposed to be mediators. But mediating is not really what they're doing when they try to get the prefecture to process a case.

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Olivier Giraud & Nikola Tietze: What role does the law play in your actions and those of your colleagues?

Claire Hédon: Our interventions in disputes, for example with prefects or ministers we are asked to deal with, are based exclusively on the law. We are very careful about this. However, we do look at the gap between the law and its effectiveness.

Then, when we are heard in parliament as part of the legislative process, we are asked to give an opinion. Our opinion is completely independent (of the government, parliament, the Conseil d'État [Council of State, the highest level of the French administrative jurisdiction], etc.). The hearings take place several dozen times a year. The most recent dealt with housing law and access to rights for migrants. What links us to the administrative and judicial systems is that we can submit an opinion to the courts. When a case is referred to the courts, we can write an expert opinion at the request of one of the parties or at the request of the courts.

Migrants' rights is a key issue in terms of our relationship with the law, because it affects many other issues, such as the fight against violence against women and human trafficking. Moreover, we can make every imaginable plan to combat violence against women. If women find themselves without residence permits and under threat of deportation, we are not combating violence against women. Like combating human trafficking: if you make it harder to obtain a residence permit, you're encouraging it. We also make statements, in the form of "third-party interventions", to the European Court of Human Rights and the Court of Justice of the European Union.

However, mediation is our main method of action. In 80 % of cases, it is successful. In practical terms, mediation makes it possible, for example, to call an employer and point out that his actions are likely to constitute discrimination, and to ensure that they are brought to an end, in order to resolve the problem pointed out to us by the complainant.

Although the institution has no powers to enforce sanctions, it does have extensive powers of investigation. These include requests for documents, hearings, and on-site visits.

Olivier Giraud & Nikola Tietze: What other levers does the institution have at its disposal?

Claire Hédon: We have several modes of action. For example, when we take a position following a complaint, we sometimes go beyond the individual case to make more structural and general recommendations to a company or an administration, or even to an area of activity. We call these collective recommendations.

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In cases of proven discrimination, we can also resort to penal action. We can propose that the person submitting the complaint and the person against whom the complaint has been made enter into a settlement involving payment of a fine or compensation to the person concerned. The settlement must then be approved by the public prosecutor.

And then we have intermediaries in society, for example the JADEs who are our Young Ambassadors for Children's Rights and Equality. These are young people who carry out civic service, around a hundred of them every year, and go into schools, colleges, secondary schools, places of detention, youth judicial protection structures, structures for children with disabilities, to talk to children about their rights and the fight against discrimination. For us, it's a crucial mission to inform and educate children about their rights. It supports them in their freedom to speak out.

We also pay close attention to our communication and information tools, such as brochures or fact sheets providing information on rights or one that summarises all our recommendations on discrimination. These tools are available to both individuals and professionals.

Olivier Giraud & Nikola Tietze: Is publicising cases or issues also an important power?

Claire Hédon: Speaking out is power, that's for sure. But it is not a power of coercion. We make recommendations and follow up our recommendations. Through the publication of so-called "special" reports, we also publicise cases in which the response from the administrations or companies involved is unsatisfactory. It's a bit like "name and shame". We use our website for this, in addition to publication in the French government's official journal. The media pay close attention to what our institution has to say.

The annual report, presented to the National Assembly and the Senate, is also presented to the President of the National Assembly, the President of the Senate, and the President of the Republic. From this point of view, we are a very good observer of what is going wrong in society, because difficulties in accessing rights show the tensions in society. Resolving a large number of problems creates social cohesion. In this respect, the institution is not only an observer of society but also makes an important contribution to social cohesion, which I am convinced is threatened by discrimination. The main mission of the institution and our activities is to reduce this risk to the cohesion of society.

Olivier Giraud & Nikola Tietze: How is the institution structured to combat discrimination?

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Claire Hédon: The first objective is to raise awareness of discrimination, which refers to any unfavourable difference in treatment in one of the areas covered by the law and in one of the criteria covered by the law. The areas concerned are access to employment and access to goods and services (obviously housing, but also restaurants and nightclubs). In this respect, the NGO SOS Racisme is doing good work on the issue of nightclubs and restaurants, particularly by testing. As far as the criteria are concerned, there are 26 of them. The second point, when I talk to my foreign counterparts, is that in France, actual discrimination is more significant than it seems, and it is difficult to recognise. Equality is an objective inscribed on the pediment of our town halls, but the reality is that we are not there yet. Acknowledging this state of affairs in a society that claims to be universal does not mean dismantling our system of values; on the contrary, it means working to make it more effective. However, progress has been made in the fight against discrimination, with gradual recognition of the reality of disability, gender inequality, and LGBT+ issues. This progress does not mean that all problems have disappeared. Since the start of my term of office, for example, I have been impressed by the number of decisions on discrimination relating to pregnancy, for example because women returning from maternity leave are unable to find an equivalent post or an equivalent salary.

Discrimination based on origin is less recognised. It does not give rise to enough complaints. The people who call our helpline often ask our listeners whether they are really being discriminated against. We also have to deal with the issue of fear of reprisals. Several recent decisions concern victims of sexual harassment who were dismissed for slanderous denunciation. We have been able to carry out investigations and the cases are now before the courts. The investigations carried out show the physical and psychological problems caused by discrimination. The social impact of these problems is truly damaging, given that one in five people say they have been discriminated against. That figure rises to one in three for young people. These figures are massive.

Olivier Giraud & Nikola Tietze: Do you think the intersection of discrimination grounds is an important phenomenon?

Claire Hédon: There are two big words about discrimination: systemic and intersectional. The first, "systemic", involves understanding what it is about the way a sector operates or is organised overall that can generate discrimination. "Systemic" is often misunderstood. It does not mean that everyone discriminates or is racist or sexist. It means that we need to look at what it is in an organisation that can generate discrimination and, above all, what can perpetuate it. For example, in cases of repeated sexual harassment in a company, we ask how things are handled in the company in such cases and how the victims are heard and listened to.

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On intersectionality, we regularly have to explain why things are often more complicated for women perceived as black or Arab who have lower income. One of the barometers carried out by the ILO [International Labour Organisation] on young people showed that young black women with an income of less than €1,300 said twice as often as the rest of the population that they had been victims of discrimination. One person in two said so. This is an essential element that we frequently mention in our decisions, referring to several criteria. In our decisions, we refer to both origin and economic vulnerability. This last criterion is one of those recognised by France. Other countries have also adopted it, but not all.

As we present things publicly, we try to show how the mechanisms of these two issues of discrimination work: systemic and intersectional discrimination. This ensures that the concepts are clear.

Olivier Giraud & Nikola Tietze: The institution often has to combine the production of standards with the handling of individual, concrete cases. How does this work on a day-to-day basis?

Claire Hédon: This is an important question. Regarding the 2024 immigration law, which notably provided for restricting access to social protection schemes for a group of foreign individuals, we mobilised the concept of discrimination, viewed in light of the fundamental principles of social protection.

Conversely, when we deal with the difficulties foreign individuals face daily in accessing social rights, we observe relatively few cases of discrimination in the application of the law. Rather, it's the common law issues and even access to public services and social rights that matter, always with the question of equal treatment. We must then start from the concrete difficulties encountered by individuals and mobilise social protection organisations. In some regions, like Guadeloupe, the CAF [Caisses d'allocations familiales, Family Allowance Fund] has obtained regular funding from the national branch to cover delays caused by the prefecture. But this doesn't happen everywhere. Sometimes the blockages have serious consequences for the individual.

Then, to return to the theme of discrimination as a mobilisation issue, today the name of our institution indeed makes the concept less visible than in the days of the HALDE (see abstract). Today, when we think of the Défenseur des droits, it's primarily the question of fundamental rights that comes to mind; which of course includes the issue of equality before the law and discrimination. In the 2016 report on the fundamental rights of foreigners, we find an analysis of a whole series of fundamental rights: access to civil status, health, work, etc. This general perspective is also consistent with the new general title of the institution. However, with the anti-discrimination platform, created in 2021 within the Défenseur des droits, we

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have brought this concept back to the forefront and created opportunities for us to work on it with the actors involved in this issue.

Olivier Giraud & Nikola Tietze: How does fighting discrimination relate to equality or promoting equal rights for the poorest?

Claire Hédon: First, the reality of poverty is not simply a lack of income, it also involves difficulties in accessing rights, housing, work, quality education, healthcare, or even culture. These difficulties are the daily reality of people in precarious situations. Economic vulnerability is also a criterion of discrimination, certainly difficult to use and operationalise, especially in courts, but it is truly interesting. In connection with this, we have redone all the work on the fight against fraud and its impact on access to rights. We observe in some complaints about situations qualified as fraudulent by the CAF and CPAM [Caisses d'allocations familiales: private-sector organisations of family assistance providing public service under the French Social Security Code and Caisse primaire d'assurance maladie: the primary health insurance fund] that there are errors, for example in declaration, made by beneficiaries without fraudulent intent. We try to have these errors reclassified because it changes many things in the relationship with the social administration. We have also noticed that certain social groups, such as foreigners or single women, are subject to checks too frequently. Society is evolving on a large number of issues, including about people in precarious situations. The suspicion of abuse and fraud often doesn't allow people to get out of their situation. This needs to be said, especially because there is still a collective representation that people are responsible for their poverty.

More globally, our experience shows that society has failed in many ways with respect to these people whose rights have not been effective, and who have faced specific inequality. We should recall the number of school instruction hours that were not carried out in Seine-Saint-Denis [a *département* in the north of Paris, in which a large number of municipalities face a combination of social disadvantages (unemployment, very high social housing rates, low household incomes, etc.) and some are among the poorest in France]. In the case of the French Antilles, our report showed that 20 % of primary school hours are not provided. This corresponds to one less school year during primary school. So blaming young people for academic failure under these conditions of inequality is largely unfair.

We also find a major problem of inequality in access to healthcare. The situation has improved with regard to Complémentaire santé solidaire [Complementary Solidarity Health Insurance] because reimbursements for healthcare professionals have been automated. This has reduced refusals of care as was shown in a study by OFCE [L'Observatoire français des conjonctures économiques, French Economic Observatory: An independent research organisation within the Sciences Po, a research university specialised in political and social sciences] that we funded. How-

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ever, the processing of *L'aide médicale de l'État* for foreigners [AME, medical aid for foreigners] remains outside the processing tools of the official health insurance system, and this may partly explain the discriminatory refusals of care that AME beneficiaries still face.

Olivier Giraud & Nikola Tietze: How does the European Union influence the activity of your institution?

Claire Hédon: European Community law is very important in our analyses. We regularly rely on the European Convention on Human Rights or several other European directives, as well as other international commitments beyond Europe, such as the International Convention on the Rights of the Child, ratified by France, as well as the Convention on the Rights of Persons with Disabilities. In the case of Europe, the directive on whistleblowers has been crucial for our activity. We also work with our European counterparts to ensure that the directives that concern us are moving in the right direction.

But we also monitor access to rights in the application of European law. We have observed occurrences at some of these borders and we have issued a decision, first to the Court of Justice of the European Union, then to the Conseil d'État. Moreover, the Conseil d'État has referred to the Court of Justice of the European Union on internal borders, namely Briançon and Menton [towns that are located on the Italian border, in areas considered to be transit points for illegal migrants], where since 2015, the French state has concentrated a large part of its controls. I went to Briançon with lawyers, and other lawyers went to Menton. Our decision is partly based on these observations. To summarize, we say that people are placed in administrative detention, thus deprived of freedom of movement without any legal basis, and then expelled, also without a legal basis. People who wish to apply for asylum are unable to start the procedure. Unaccompanied minors cannot prove that they are minors. These actions constitute violations of rights.

Olivier Giraud & Nikola Tietze: Do you have exchanges or cooperation with similar institutions that are counterparts in other countries?

Claire Hédon: Yes, that is an important element in informing our reflection on our work and activities. For example, in the case of discriminatory identity checks, we worked on examples from the London and Montreal police forces. When the French police say it's impossible to ensure the traceability of identity checks, I don't really see why it's possible on the other side of the Channel but not here in France. There are 800,000 "stops and searches" per year in England and Wales, while there are 32,000,000 identity checks in France. But across the Channel, checks are recorded on tablets and people can retrieve a receipt from the police station the next day if they feel the "stop and search" went badly or was discriminatory. These

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international elements of comparison inform our thinking when we draft recommendations about discriminatory identity checks. In this area, an appeal is pending on a judgment at the European Court of Human Rights. We have also submitted the matter of identity checks to the Cour des comptes [Court of Auditors], raising the question not of discrimination, but of the effectiveness of these checks and their effect on the relationship between the police and the population. This is a public policy that has a cost, so it's normal to ask the question. Out of 47 million annual identity checks in France, only 15 million are road checks. Road checks provide precise figures on the percentage of people checked under the influence of drugs, alcohol, without registration or without insurance, but for the 32 million non-road identity checks, there are no figures detailing the follow-ups.

We are also undertaking clarification of the institution's language, our website, and our letters to complainants, inspired by our counterparts in Quebec. Benefiting from their experience has saved us a lot of time and energy. This clarification benefits the most disadvantaged, whether they are foreigners, single women, or those in precarious situations. But in reality, it benefits everyone. Violations of these people's rights can also affect everyone's access to rights. This aspect has been confirmed in other cases as well. For example, the investigation into access to general practitioners and the risks of discrimination revealed that one in two people has difficulty seeing a doctor – even without being affected by any discrimination criteria!

We are also members of several networks such as the Francophone mediators' network, AOMF [Association des Ombudsmans et Médiateurs de la Francophonie, Association of Ombudsmen and Mediators of Francophonie], the Association of Mediterranean Ombudsmen, and the International Ombuds Association. There's also the Equinet network on discrimination [European Network of Equality Bodies], the one on the ethics of security forces, and the one on whistleblowers. It was in this context that I was able to meet the IOPC [Independent Office for Police Conduct], our counterpart in England and Wales, and the London police in London. It was the same with Montreal.

Olivier Giraud & Nikola Tietze: To conclude our interview, what do you currently consider to be the most urgent issues in terms of defending rights in France?

Claire Hédon: These aspects relate to the question of access to rights, particularly unconditional admission [to public services and authorities] without a prior appointment. This remains essential for us, even more so when people are in precarious situations and/or have no access to digital technologies. This central theme for our institution was at the heart of the 2023 annual report. We must not forget that nearly a third of the population in France is digitally excluded.

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Moreover, although the resources that we have been allocated have at times been augmented, the resources granted to public services have been increasing less rapidly than social needs for twenty years. We observe that this growing gap widens inequalities.

The closure of institutional offices open to the public, the development of online procedures, and the increasing complexity of processes – with CAF, CPAM, France Travail [French labour office], etc. – have made it considerably harder for people to have access to their rights. I'm thinking particularly of people in precarious situations, those with disabilities, the elderly, or foreign nationals. The deterioration of relations between the administration and users results in resignation, non-take-up, and loss of rights. But it also adversely affects public officials' sense of meaning at the workplace. Deteriorating working conditions make it difficult for them to fulfil their mission. As I mentioned earlier, the processing of residence permit applications by prefectures is the most acute form in which these structural difficulties are manifested.

In this context, the work of our institution constantly reminds us of the uniqueness and essence of public service: respect for the great principles of continuity in providing service, equality treatment for all service users, and the ability to adapt to the needs of all users. We are fighting to promote a true "culture of rights" centred on users.

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