

Contribution of the Defender of Rights

To the examination of France by the Human Rights Committee (September 2024)

The Defender of Rights

The Defender of Rights is an independent administrative authority whose existence is enshrined in the Constitution and governed by Organic Law No. 2011-333 of 29 March 2011. It is responsible for ensuring respect for the rights and freedoms of citizens in their relations with the authorities and the services of the State, respect for the rights and best interests of children, and respect for ethics relating to persons performing security functions on the territory of the Republic. It is also responsible for combating direct or indirect discrimination prohibited by law or by an international commitment duly ratified or approved by France.¹ Lastly, it is responsible for directing to the appropriate authorities any person reporting an alert (whistle-blower) under the conditions laid down by law, and for safeguarding that person's rights and freedoms.

The term “Defender of Rights” refers not only to the institution itself, but also to the Chair of the Institution. Her appointment by the President of the Republic after consultation of the Parliament and her non-renewable term of office are a guarantee of her independence. The Defender of Rights is assisted by four deputies and a general delegate for mediation with public services. Her functions may only be terminated at her request, or if she is unable to perform them, in accordance with the conditions defined by decree of the Council of State (*Conseil d'Etat*).² In the exercise of her functions, she neither receives nor seeks instructions. The Defender of Rights and her deputies may not be prosecuted, investigated, arrested, detained or tried for opinions they express or acts they perform in the exercise of their functions.³

The Defender of Rights is competent in terms of protection of rights for the handling of individual complaints. It has extensive investigative powers. It is also responsible for promoting equality and access to rights. In this capacity, the institution contributes to the development of the law by issuing opinions on draft laws and reform proposals in the fields within its remit. The Defender of Rights also has a “studies and research” mission, enabling it to collect or commission the production of scientific data.

The institution employs 250 paid staff and 600 volunteer delegates throughout France.

In 2023, across all its missions, the institution received 137,894 complaints. 80% of these complaints are handled through mediation, which is successful in three-quarters of cases.

¹ It should be noted that the Defender of Rights is not competent to deal with racist or hate speech as provided for in the [Law of 29 July 1881 on freedom of the press](#).

² Art 1 of Organic Law no. 2011-333 of 29 March 2011

³ Art 2 of Organic Law no. 2011-333 of 29 March 2011

The institution handed down 320 decisions, including 150 with observations before the courts, 92 with recommendations, 30 decisions to refer cases on its own initiative, and 35 decisions on whistleblower certification. The Defender of Rights also submitted 8 opinions to Parliament, including one to the European Parliament.

A- General information on the situation of human rights in the country, including on new measures and developments concerning the implementation of the Covenant

The individual situations referred to the Defender of Rights, as well as the opinions she has formulated on legislative reforms in recent years, lead her to take a concerned look at the state of rights and freedoms in France, and the way they are being called into question.

This is reflected in the failure to enforce court rulings, and in criticism of the authority and role of the judge at both national and European level. It also results from restrictions on freedom of expression, demonstration and association. Finally, it is linked to challenges to the rights guaranteeing decent living conditions. This weakening of the fundamental rights of people in precarious and vulnerable situations affects precisely those who have the most difficulty asserting their rights and gaining access to public services. In recent years, a number of legislative and regulatory reforms have disturbed long-standing balances, restricting the access of certain sections of the population to their rights and freedoms, further undermining national cohesion.

Numerous European observers, beyond UN bodies such as the Council of Europe, the European Court of Human Rights, the Human Rights Commissioners, and the European Commission are also noting an evolution of this trend, admittedly long-standing, in several European countries but also in France, particularly in the aftermath of the various security and then health states of emergency that have followed one another since 2015.

Recent examples reinforce this concern. In 2023, the Defender of Rights expressed her concern at a number of challenges to freedom of association, including public criticism by politicians and intimidation by the police towards associations providing assistance to the most vulnerable or defending environmental rights (*See page 10 of this contribution*).

The Defender of Rights was also concerned that the Immigration Law, in the version adopted by the Parliament in December 2023 and referred to the Constitutional Council (*Conseil Constitutionnel*), seriously undermined the rights of foreign nationals, in particular by deferring access to certain social benefits for foreign nationals legally established in France, which would have made them even more vulnerable. In this context, the Defender of Rights submitted [observations to the Constitutional Council](#), which ultimately rejected the article 17 in question. But the general climate in France, in particular between December and January, and the comments made about the constitutional control of this law, also worried several institutional stakeholders.

In an unprecedented move, in November 2023, the Minister of the Interior also opposed a provisional measure ordered by the European Court of Human Rights⁴ and deported - on suspicion of Islamic radicalization - an Uzbek national who was at risk of torture in his country of origin, thereby making French sovereignty prevail. The case was referred to the Council of State, which ordered the return of the person on 7 December.⁵ The Minister nevertheless maintained his position.

⁴ A provisional measure is a measure ordered by the ECtHR which is binding on the State, where there is an imminent risk of irreparable harm to the applicant.

⁵ Council of State, order, 7 December 2023: the interim relief judge ordered the Minister to bring back the person expelled from the country in violation of the ECtHR's provisional measure, after noting in particular that he had not put forward any objective obstacle preventing the government from complying with the prescribed measure; *Le Monde*, 16 October 2023: "The government wants to accelerate the expulsion of radicalized foreigners, even if it means ignoring ECtHR case law";

In general, on the one hand, the Defender of Rights is concerned about a shift towards the primacy of national sovereignty and on the other hand about a growing challenge to the European and international system for the protection of human and fundamental rights. On the other hand, she is concerned by the fact that anti-human rights and anti-State of Law rhetoric and positions, which were the prerogative of identified minority parties and movements, are now more widely shared by politicians who are sometimes in positions of responsibility or in the process of becoming so, in both the legislative and executive branches.

B. Information specifically on the implementation of article 1 to 27 of the Covenant, including with regard to the Committee's previous recommendations

Non-discrimination (art. 2, 3, 6, 19, 20 & 26)

Point 3: Discriminatory identity checks

Since its creation, the Defender of Rights has been referred to with the problem of discriminatory identity checks targeting a category of the population: young men perceived as Black or Arab. This reality no longer needs to be demonstrated. It has been documented for years (see in particular [the Defender of Rights investigation of 2017](#), as well as the [Paris Court of Appeal ruling of 8 June 2021](#)). There have been two recent developments in this area. Firstly, [the report issued by the Court of Audit \(Cour des Comptes\) on 6 December 2023](#), which notes the glaring lack of evaluation of the massive policy of identity checks, estimated at 47 million a year, and the inadequate supervision and oversight of the practice. Secondly, the [decision of 11 October 2023 of the Council of State](#), which ruled that discriminatory identity checks were a reality, and that this subject was a matter for a public policy. Investigations and rulings (see in particular [decision no. 2023-056](#) and no. 2024-111), as well as work carried out on the subject, have led the Defender of Rights to draw up a series of observations and make a number of recommendations.

On 15 February 2024, [the Defender of Rights drew the government's attention](#) to the need to take action and put in place a public policy commensurate with the challenges of the respect of rights and freedoms, the fight against discrimination and the improvement of relations of trust between the police and the public. Against this backdrop, and in view of the urgent need to change the situation, she has made the following recommendations:

- Set up an evaluation system for identity checks, their effectiveness and their impact on relations with the public, and ensure that the results obtained are published periodically
- Modify the legal framework for identity checks
- Supervise the practice of identity checks
- Reinforce the modules dedicated to identity checks in initial and in-service training courses for law enforcement officers, ensuring that they are effectively followed up
- Ensure traceability of identity checks
- Guarantee effective oversight by the public prosecutor's office of identity checks by both the judicial and administrative police.
- Guarantee the effectiveness of investigations and responses to established discriminatory behaviour

She made these recommendations for the examination of France by the CERD in 2022 as part of her [contribution](#), and [before the Council of Europe's Commission against Racism and Intolerance](#) in April 2024, and thus reiterates these recommendations before the Human Rights Committee.

To date, the Defender of Rights has received no response.

Anti-terrorism measures (art. 2, 3, 4, 9, 14, 15, 17 & 18)

Points 7 to 10: (...) provide information on the necessary remedies adopted for persons whose rights have been disproportionately restricted during the aforementioned state of emergency, the number of administrative measures taken during the period under review, the number of remedies sought, as well as information on the status of these review procedures, including judicial decisions, and, where applicable, compensation for victims.

The Defender of Rights draws the Committee's attention to the [ECtHR *Domenjoud v. France* judgment of 16 May 2024](#), concerning an administrative measure of house arrest based on the 1955 Law on the State of Emergency and finding a violation of article 1 of Protocol No. 2 to the Convention. It had intervened in the proceedings (decision no. 2022-01). The Court found that the applicant's procedural rights had not been safeguarded, and that there had been no individual and detailed assessment of his conduct or actions to establish the serious risk of participation in particularly violent outbursts.

The Defender of Rights therefore recommends that measures be taken to comply with this ruling, particularly in the implementation of similar measures, such as individual administrative control and surveillance measures.

Right to life (art. 6 & 14)

Point 11: The situation of French children held in camps in north-eastern Syria and their request to return to France

In its ruling of 14 September 2022, *H.F. et al. v. France*, the European Court of Human Rights found that France had violated Article 3 § 2 of Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which states that “*No one shall be deprived of the right to enter the territory of the state of which he is a national*”. In its ruling, the Court called for the decision-making process applicable to requests for the return of families to be surrounded by appropriate safeguards against arbitrariness. Thus, the rejection of a request for return must be formalized and notified to the families, and be subject to an appropriate individual examination by an independent body. This review must provide both the reasons for the decision and the opportunity to have them checked.

After having submitted observations to the Court in this case and following this ruling, the Defender of Rights submitted observations to the Committee of Ministers of the Council of Europe on the execution of the Court's ruling (decision no. 2024-023). She notes that the Court's judgment has still not been implemented and, in particular, that the legal remedies available to date do not meet the requirements set by the Court. The appeals were rejected by the administrative judge for lack of jurisdiction, on the basis of the theory of acts of government. On 14 March 2024, the Committee of Ministers [decided](#) to postpone the examination, having noted the absence, to date, of judicial review.

The Defender of Rights recommends the adoption of measures to comply with the ECtHR ruling, including the establishment of an effective judicial remedy, an effective and independent complaints mechanism, investigations and, where appropriate, compensation for victims.

Point 12 : Provide information on the number of people injured or killed as a result of or in the course of police operations (...) Provide also detailed information on the outcome of investigations into such deaths or violence, including racially motivated acts, on the penalties imposed on those found guilty of such acts resulting in death or injury, and specify what reparation measures have been provided to the victims of such acts and their families. Furthermore, provide information on the protocols and trainings provided to police officers who have resorted to such methods, including on the measures to be applied to preserve the integrity and dignity of individuals subjected to such methods.

The Defender of Rights does not produce breakdowns of victims/claimants by origin. Nevertheless, a number of complaints have been lodged with it, and are still under investigation.

The Defender of Rights has no statistics on the number of people injured. He does, however, receive complaints in which violence is denounced, and which in the majority of cases result in injuries. These are complaints received, some of which are still being processed, alleging disproportionate use of force.

In 2023, 437 complaints were received by the institution alleging violence (364 during police operations and 73 during gendarmerie operations).

In the “TRAORE” case, the Defender of Rights handed down [a decision on 26 June 2023](#), specifically concerning the technique of “rugby tackle”.⁶

In response to this recommendation, the national gendarmerie sent her the general note on “Unarmed Control of the Opponent” updated in March 2024, which contains, on the last page, an awareness of the risks of death from positional asphyxia. The Defender of Rights reiterates her request that a note devoted exclusively to this control technique be distributed to all gendarmes.

The Defender of Rights made a number of recommendations which she reiterates before the Committee, in particular that a specific note on the dangers of ventral immobilization be circulated within the national gendarmerie, given the sensitivity of the subject.

Right to liberty and security of person (art. 9) and Treatment of foreigners, especially migrants, refugees and asylum-seekers (art. 7, 9, 12, 13 & 24)

Points 16 and 19: The situation of foreigners intercepted and controlled at the French-Italian border

On 25 April 2024, the Defender of Rights issued a [framework decision no. 2024-061](#) on respect for the rights of people arrested and questioned at the French-Italian border by French security forces in two departments, Alpes-Maritimes and Hautes-Alpes.

This decision is the result of a contradictory investigation carried out with the authorities in question, and the implementation of the institution's powers of investigation and intervention. It comes in an unprecedented context, in which the Court of Justice of the European Union (CJEU, 4th ch., 21 September 2023) and the State Council (Conseil d'Etat⁷, Litigation department, 2nd and 7th chambers) have recently reaffirmed the obligation of European Union member states to apply the minimum legal guarantees set out in the European “Return” Directive to people who are stopped at the internal border, to ensure that their fundamental rights are respected.

Worryingly, this decision concludes that there are procedures and practices that do not comply with the Return Directive, European and national law. It also concludes that there are substantial and multiple infringements of the rights of people who are stopped, from the moment they are checked until they are removed from the country.

Entry refusal procedures contrary to EU law:

The Defender of Rights notes that people who are stopped are subject to an entry refusal procedure that does not respect the minimum legal guarantees of the Return Directive, such as recourse to a fair and transparent procedure, involving in particular an examination of the person's individual situation, the motivation for decisions in fact and in law, or access to interpreting.

⁶ Concerning the handling of X. during transport and in the brigade courtyard, the Defender of Rights noted breaches of ethics by four gendarmes. The Ministry of the Interior did not act on these individual recommendations at this stage, arguing that the legal proceedings were still underway.

⁷ Highest administrative court in France.

The number of people affected by these infringements is all the greater because the procedure is implemented over a very large and imprecise border area, which is in contradiction with European law.

Deprivation of liberty outside any legal framework:

A large number of people who are stopped are locked up for several hours, or even an entire night, in premises presented as ‘shelters’, without any legal basis and in undignified conditions. Even more worrying is that some of these people are vulnerable, such as families, minors and asylum seekers.

Obstacles to the right to asylum:

With regard to asylum seekers, the Defender of Rights notes in particular that if the person is considered as having ‘not entered’ the territory, entry is refused and no asylum application is considered. This practice, which is widely accepted, is blatantly contrary to the right to asylum, and constitutes a serious, widespread and lasting obstacle to access to the asylum procedure at the French-Italian border.

Serious infringements of the rights of minors:

Regarding minors, the Defender of Rights notes serious infringements of their rights, whether they are accompanied or unaccompanied, in violation of the best interests of the child and the rights of minors, as well as the guarantees of the Return Directive. In particular, the procedures put in place hinder unaccompanied minors' access to child protection.

In light of her alarming findings and conclusions, the Defender of Rights has formulated a series of recommendations, which she has addressed to the Minister of the Interior and Overseas, and to the prefectures concerned. She calls for an immediate end to the procedures and practices observed, and an end to the multiple violations of the rights of people who are controlled and stopped at the French-Italian border.

Point 19 (cont.): The situation of unaccompanied minors and respect for the presumption of minority until the final decision of the children’s judge

Over the past ten years, the Defender of Rights has given extensive coverage to the situation of unaccompanied foreign minors (UFM) in France. This work was the subject of a report published in 2022: [Unaccompanied minors under the prism of law](#). The institution continues to receive regular complaints about the failure to respect the rights of foreign minors. Most of these concern UFM.

On 25 January 2023, the Committee on the Rights of the Child, examining for the first time the French system for determining the minority of UFM, including judicial remedies, found a violation of the Convention on the Rights of the Child (CRC/C/92/D/130/2020). One of its recommendations is that a procedure be put in place that respects the principle of presumption of minority, including the retention of the person concerned within the child protection system until a final judicial decision has been taken on his or her minority. To date, the French system makes no provision for this.

The Defender of Rights therefore recommends that a legislative modification be initiated to ensure that all persons declaring themselves to be UFM benefit from the presumption of minority, and thus continue to be cared for by child protection authorities for the duration of the appeal procedure, until such time as a final court decision is reached.

Point 19 (cont.): The enforcement of the ECtHR ruling *Khan v. France*

In 2022, the Defender of Rights submitted observations to the Committee of Ministers of the Council of Europe on the enforcement of the *Khan v. France* judgment regarding the failure of the authorities to care for an UFM on the Calais moors (decision no. 2022-168). On 8 December 2022, the Committee [postponed](#) consideration of the case, noting that the judgment had not been fully implemented.

The Defender of Rights therefore reiterates her previous recommendations, also formulated in the 2022 report [Unaccompanied minors under the prism of law](#), in particular :

- collect reliable data on the number of people claiming to be UFM, assessed each year by the departments, those who were refused admission to child protection by the departments, and, among the latter, those entrusted to the child welfare agency by judicial decision (children's judge and court of appeal);
- play a greater role in the child protection system, in particular by making available to the departments structures or buildings capable of accommodating young people in temporary emergency care under dignified and appropriate conditions;
- increase the number of protection services for homeless minors, from outreach services to safe and secure centres, and train social workers to identify and support minors who are victims of human trafficking;
- set up day care centres close to where teenagers live, with specialized outreach services and the possibility of immediate, unconditional night shelter for UFM in transit;
- make the presumption of minority prevail with regard to UFM until a final judicial decision is taken;
- amend legislation to provide for the appointment of an *ad hoc* administrator for each young person claiming to be an UFM, before any assessment of his or her minority and isolation, to accompany and assist him or her in all administrative and legal procedures, until a final decision is taken on the case.

[Right to respect of privacy - global security and new technologies of information and surveillance communication \(particularly, algorithmic video surveillance, art. 17, 19 & 21\)](#)

Point 21: Provide information on the application of the principles of legality, proportionality and necessity in the regime established by Law No. 2021-646 of 25 May 2021 for a global security preserving freedoms, in particular on surveillance activities and the impact of surveillance devices and new technologies of information and surveillance communication, and on the measures taken to ensure that the provisions of the said law do not infringe the rights guaranteed by the Covenant.

Law no. 2023-380 of 19 May 2023 on the 2024 Olympic and Paralympic Games and various other provisions authorized, on an experimental basis and until the end of March 2025, the application of algorithmic processing to images captured by video-protection cameras installed in public spaces and by drones (or aircraft), “for the sole purpose of ensuring the security of sporting, recreational or cultural events”.

Experimentation with this system - known as “*augmented video protection*”, “*intelligent video protection*” or “*algorithmic video surveillance*” - is limited to events where there is a risk of acts of terrorism or serious threats to personal safety. The use of this technology must be authorized by the prefect “to ensure the security of sporting, recreational or cultural events”. The prefect must also ensure that the use of algorithmic video surveillance is proportionate to this purpose, and immediately terminate it if the conditions that justified the issue of the authorization are no longer met.⁸

⁸ Constitutional Council, 17 May 2023, n°2023-850 DC.

In this context, algorithmic video surveillance only provides “*attention signals*” for events predefined by decree no. 2023-828 of 28 August 2023, i.e. the presence of abandoned objects, the presence or use of weapons, the failure of a person or vehicle to follow the common direction of traffic, the crossing or presence of a person or vehicle in a prohibited or sensitive area, the presence of a person on the ground following a fall, a crowd movement, an excessive density of people and the start of a fire. This technology alone cannot therefore be the basis for an automatic decision with legal effects. It cannot be used for facial recognition, or for matching, connecting or linking with other personal data processing systems. Furthermore, the risks of bias and error must have been prevented during the development of the algorithms used, and human control and risk management measures must be implemented.

The freedoms to come and go or to occupy public space as well as the rights to privacy and personal data protection require compliance with this framework set by the legislator. The competent authorities therefore have a duty of vigilance on these points to ensure compliance.

Before the end of 2024, the Government will submit to Parliament and the Data Protection Authority (CNIL) an evaluation report on the implementation of the experiment, the content of which is determined by decree of the Council of State after consultation with the Data Protection Authority, and will be posted on the Internet on the same day.

The Defender of Rights will pay the utmost attention to this report, as well as to any complaints lodged with her on this subject during the Olympic and Paralympic Games.

Freedom of expression (art. 19 & 20)

Point 22: Provide information on the legislative measures taken to ensure the protection of journalists, human rights defenders and NGOs, particularly those working in the fields of human rights, migration and the environment, against censorship, harassment and deterrence through Strategic Lawsuits Against Public Participation (SLAPP), and to prevent the exercise of such abusive remedies by providing for the possibility of dismissing them at an early stage. Explain what measures have been taken to make judges and prosecutors aware of measures to punish abuse, in particular by ensuring that the cost of the procedure is borne by the person lodging the appeal, and what measures have been taken to provide concrete assistance to people subject to such procedures.

The Defender of Rights will be closely monitoring the transposition of the new SLAPP directive⁹, but its remit covers the support for whistleblowers. Indeed, in this context, it monitors and promotes the efforts undertaken by the Government to protect whistleblowers.

The relevant legislative framework is Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernization of economic life and its implementing decrees. This text has been significantly amended in line with the transposition of Directive (EU) 2019/1937 of 23 October 2019, by Law No. 2022-401 of 21 March 2022 and Organic Law No. 2022-400 of the same day, then by Decrees No. 2022-1284 of 3 October 2022 and 2022-1686 of 28 December 2022.

These texts significantly strengthen the protection of whistleblowers by:

- facilitating the whistleblowing procedure, by removing the obligation for whistleblowers to make an internal report before taking any other action, and by designating 41 authorities responsible for collecting whistleblowing reports;

⁹ [Directive - EU - 2024/1069 - EN - EUR-Lex \(europa.eu\)](#).

- improving the protection offered to whistleblowers, notably in terms of criminal liability (which cannot be incurred for the violation of secrets or the dissemination of documents necessary for disclosure) and civil liability (which cannot be incurred for damage caused to the person implicated by the whistleblowing report);
- reinforcing measures to combat SLAPP (criminalization of discriminatory behaviour towards whistleblowers or attempts to prevent whistleblowing, civil fines against those responsible for abusive recourse).

The Defender of Rights has been given new powers to provide better support for whistleblowers. In addition to his duties of guidance and protection, the Defender of Rights can now direct requests that do not fall within the remit of one of the 41 external authorities designated by the State to the authority he considers best placed to deal with them.

The Defender of Rights can also issue an opinion on the status of whistleblower, to prevent possible retaliation, thus helping to make the whistleblower's process safer. Lastly, the Organic Law of 21 March 2022 states that it will submit a biennial report to the President of the Republic and the presidents of the two assemblies on the overall functioning of whistleblower protection. The first biennial report will be published in September.

Human rights defenders can be protected as whistleblowers if they meet the French definition of a whistleblower and comply with the reporting procedure laid down by law. It should be noted that public disclosure of the facts is in principle prohibited (except in situations of grave and imminent danger). French law also protects those who assist whistleblowers as facilitators.

While the importance of recent advances is to be welcomed, it is already apparent that the system has certain shortcomings:

- Financial and psychological support for whistleblowers remains inadequate. Outside of the provisions for legal costs or subsidies that may be requested from the judge¹⁰, the texts merely provide for the possibility, for the external authorities, to offer psychological and financial assistance. At present, none of the authorities concerned is in a position to offer such assistance.
- No action has been taken by the public authorities to promote the whistleblower protection scheme, with the result that it remains largely unknown, particularly to those for whom it is intended.

¹⁰ « Art. 10-1 of the Law of 9 December 2016 « III.- A. – In the event of an appeal against a retaliatory measure referred to in II, where the claimant presents factual elements that lead to the assumption that he or she has reported or disclosed information under the conditions provided for in Articles 6 and 8, it shall be for the defendant to prove that his or her decision is duly justified. The judge shall form his or her opinion after ordering, if necessary, any measure of inquiry that it considers appropriate. Under the same conditions, the plaintiff may ask the judge to award him or her, at the expense of the other party, an advance on the costs of the proceedings based on the respective economic situations of the parties and the foreseeable cost of the proceedings or, where his financial situation has seriously deteriorated as a result of the report or public disclosure, an advance to cover his subsistence. The judge shall give its decision promptly.
« B.- In the course of civil or criminal proceedings, where the defendant or the accused presents evidence from which it may be assumed that he has reported or publicly disclosed information under the conditions set out in Articles 6 and 8 and that the proceedings brought against him are intended to hinder his reporting or public disclosure, he may ask the judge to award him, at the expense of the plaintiff or the civil party, an advance on the costs of the proceedings based on the respective economic situations of the parties and the foreseeable cost of the proceedings or, where the plaintiff's financial situation has seriously deteriorated as a result of the report or public disclosure, an advance to cover the plaintiff's maintenance. The judge will form his opinion after ordering, if necessary, any investigative measures that he deems useful. He shall give his decision promptly. The judge may decide, at any time during the proceedings, that the advance is definitively forfeited. »

For its part, the Defender of Rights has undertaken a number of initiatives to raise the profile of whistleblowers among the general public: the publication of a guide¹¹, a dedicated page on its website¹² and communication campaigns¹³. The Defender of Rights also regularly speaks on the subject of whistleblower protection, at the request of judges, lawyers and academics.

Freedom of conscience and religious belief, of expression and association (art. 2, 18, 19, 22 & 26)

Point 23: Freedom of association

Protected by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms, freedom of association is one of the fundamental principles of a democratic society. Like freedom of communication, assembly and demonstration, it allows the expression in the public arena of the plurality of opinions and collective interests within society. Associations enable society to make visible problems that are ignored by the institutions. In particular, many of them are structured to defend and make audible those whose voices are generally too weak to be heard.

For several years now, the Defender of Rights has been denouncing a weakening of this freedom, which manifests itself in different ways, more or less insidiously.

Since 2016, the institution has deplored the existence of intimidation practices by law enforcement against NGOs for the defence of the most precarious people present on the ground during expulsion operations in exile camps (see the report [The fundamental rights of foreigners in France](#), 2016).

On the occasion of the adoption of the law reinforcing respect for the principles of the Republic, the Defender of Rights also denounced the restriction on freedom of association that is established by making the award of subsidies conditional on the signing of a ‘contract of republican commitment’ (*contrat d’engagement républicain*). This contract no longer requires associations simply to refrain from committing offences, but also to commit themselves positively and explicitly, in their aims and organisation, to principles that are those of the public authorities. Such a reversal partly distorts the status of associations, which are not public actors, and authorises very extensive State control over the actions of associations (see [opinion 21-01](#) of the Defender of Rights).

Lastly, it should be remembered that this same law facilitated the dissolution of NGOs by making it possible to hold them responsible for acts committed by one of their members acting in this capacity, if they are aware of them and have refrained from putting a stop to them. This provision imposes an obligation to monitor members, which is particularly burdensome for a small and little organized association.

The Defender of Rights observes, through the complaints she receives, an intensification of the risks of attacks on freedom of association. She calls on the public authorities to pay the utmost attention to this issue.

Freedom of assembly and association and excessive use of force (art. 6, 7, 19, 21 & 22)

Point 24: Respect for fundamental rights during law enforcement operations

¹¹ <https://www.defenseurdesdroits.fr/guide-du-lanceur-dalerte-314>, translated in English, available on the website, subject to numerous consultations and downloads.

¹² <https://www.defenseurdesdroits.fr/orienter-et-protger-les-lanceurs-dalerte-180>

¹³ In particular [on June 23](#), International Whistleblowers’ Day

The Defender of Rights generally receives complaints concerning demonstrations of a protest nature, but the issues raised in this context are likely to be found at any event on the public highway, whether sporting events, gatherings of supporters, declared or undeclared demonstrations, or site security.

The Defender of Rights thus took up an ex officio case concerning the circumstances in which force was used, in particular tear gas grenades and defence ball launchers (*lanceurs de balle de défense*), by municipal police officers and national police officers against people celebrating the victory of the Senegalese team in the African Cup of Nations (CAN), on 6 February 2022, in Saint-Denis. It also issued a [decision after being referred to by nineteen Liverpool fans concerning incidents during the Champions League final at the Stade de France, between Liverpool FC and Real Madrid on 28 May 2022](#).

The jurisdiction of the Defender of Rights extends to any person carrying out a private or public security mission on the territory of the Republic. In fact, in addition to the national police and gendarmerie, private security guards and municipal police officers, massively mobilised during the Olympic and Paralympic Games, as well as the army (such as the soldiers of Operation *Sentinelle*) and reserve police officers and gendarmes, are concerned by the following developments.

The Defender of Rights has developed an understanding of policing through the referrals it receives and investigates, as well as through its reflections and work on the subject.¹⁴

In this contribution, the Defender of Rights wishes to reiterate a number of her recommendations in this area:

- Ensure that identity checks, security searches, visual inspections and confiscation of objects are carried out without discrimination and with respect for rights and freedoms (see above the response to point 3, page 3 on discriminatory checks):

The Defender of Rights also points out that any check carried out using criteria based on physical characteristics associated with real or supposed origin, without any prior objective justification, is discriminatory and therefore prohibited. She insists on the need, whatever the legal framework of the check carried out, to explain in understandable terms, particularly to people who do not speak French, the reason for the choice of the person being checked. This measure contributes to a better understanding of police action and is an appeasement factor.

- Clarify the regime for confiscating objects and appeals:

During events, people are searched and screened, particularly around secure sites and perimeters. These measures are used for preventive purposes, to avoid a breach of public order, particularly with regard to the safety of people and property.

During its investigations into law enforcement operations, the Defender of Rights has received numerous complaints from people complaining of having had objects or materials confiscated that were not illegal, and that posed no danger to their bearer or to others, such as physiological serum, swimming goggles, banners or badges. These items were either confiscated, damaged and thrown away, or seized in the event of an offence and taken to the nearest police station. Most people explained that they had not been informed of the procedure to follow to obtain the return of their belongings and had sometimes never been able to get them back.

While these measures make it possible to avoid serious incidents when people are stopped in possession of dangerous or prohibited items, this legal tool is sometimes used disproportionately in that it leads to the confiscation of items that do not represent any danger and are not illegal.

¹⁴ Defender of Rights, *Law enforcement with regard to the rules of professional ethics*, 2017; framework decision no. 2020-131, 9 July 2020; opinion no. 20-08, 30 november 2020.

Consequently, the Defender of Rights encourages the Minister of the Interior to issue clear and precise instructions to officers on the legal framework for seizing objects, on the objects that may be seized, on the way in which seized objects may be returned or destroyed, and on the information that must be communicated to the persons affected by a seizure, so that they understand the measure to which they are subject, and so that they can take legal action if they wish to challenge it.

- Ensuring that use of force and weapons complies with the strict legal conditions governing them:

The Defender of Rights would like to emphasise the recommendations she made in her decision on the aforementioned crisis at the *Stade de France*, particularly with regard to the use of weapons by law enforcement.

The use of force in law enforcement, of which the use of weapons is one form, is strictly regulated by the Criminal Code and the Internal Security Code. The combination of these two sets of provisions means that force can only be used in the event of an assembly likely to disrupt public order, on the public highway or in a public place. It can only be used after a warning has been given. (*See also the response to point 25, pages 13 and 14 of the contribution*).

- On the issue of summonses:

The Defender of Rights reiterates the need for a prevention message and the importance of receiving this message before any use of force and recommends that the Minister of the Interior develop the means of communication provided for in the National Law Enforcement Scheme (SNMO). In the context of events, whether sporting or not, European or international, she insists on the need to make this communication, in particular in the case of summonses, intelligible in several languages, in particular English, in addition to French.

An assembly can be dissipated by the police after two warnings to disperse have gone unheeded. However, many claimants state that they did not hear any warnings before force was used against them. This problem had already been noted during the study carried out by the Defender of Rights concerning the demonstrations against the Labour Law in 2016 or the demonstrations linked to the Yellow Vests movement in 2018. During the demonstrations against the Pension Reform, this issue arose again. This was also the case during the Champions League final at the *Stade de France* on 28 May 2022, when foreign fans said they did not hear any warnings to move away from the access gates before law enforcement used tear gas. The authorities questioned stated that summonses in foreign languages cannot be issued as there is no legal provision for this.¹⁵

In this respect, the Defender of Rights has already called for greater communication and dialogue in the management of public order, before and during demonstrations, in order to make the actions of the security forces more understandable and to restore the place of the mission of protection and service of the public of law enforcement.

- Guarantee the transparency of law enforcement action and the effectiveness of the right to appeal

The demands for exemplarity, professionalism and transparency are at the heart of the relationship of trust between the security forces and the public. The use of body cameras, the identification of law enforcement officers, and respect for the role of journalists and observers are essential to guarantee the transparency of the actions of law enforcement officers and the effectiveness of the right to appeal in the event of a breach of professional ethics on their part.

- Systematise the use of body cameras and guarantee the identification of members of law enforcement in the interests of transparency

The law provides that, in the course of their duties to prevent breaches of public order and protect the safety of people and property, members of the national police force, the national gendarmerie or municipal police forces may use individual cameras to produce audiovisual recordings of their actions when an incident occurs or is likely to occur, having regard to the circumstances of the action or the behaviour of the persons concerned.

In the interests of transparency in the actions of the security forces, which protect both the public and the agents of the security forces, the Defender of Rights encourages police officers and gendarmes to systematically activate their individual cameras in the event of identity checks, QR code checks, palpations, searches and seizures of objects.

In addition, since 1 January 2014, the Identity and Organisation Reference System (RIO) must be worn systematically¹⁶. Wearing the RIO makes it easier to identify officers and their affiliation to the national police or gendarmerie, the only two forces whose members carry identification numbers. However, it is clear from the work of the Defender of Rights and the many complaints it receives that it is sometimes difficult to identify law enforcement officers, particularly during law enforcement operations. In a decision of 11 October 2023¹⁷, the Council of State noted that the failure of police and gendarmerie officers to visibly wear their registration numbers is widespread.

These practices, which prevent officers from being identified, are neither legal nor regulatory and undermine communication and trust between law enforcement agencies and the public. It also hinders the monitoring of officers' conduct in the field by their superiors, inspectorates, the Defender of Rights and the judicial authorities. Furthermore, compliance with professional ethics, in particular the obligation of exemplarity, and effective monitoring of the behaviour of the security forces also help to protect the officers themselves, at a time when their actions are increasingly being filmed and made public.

In its decision of 11 October 2023, the Council of State ordered the Minister of the Interior to take, within 12 months, all necessary measures to ensure that the individual identification number is actually worn by police officers and gendarmes. He also ordered that this number be enlarged so that it is sufficiently legible, particularly when the forces of law and order intervene during gatherings.

The Defender of Rights insists on the imperative nature of wearing the identification number, so that it is visible and legible, and encourages the Minister of the Interior to implement the injunction of the Council of State of 11 October 2023, aimed at making the identification number more legible before the start of the Olympic and Paralympic Games.

- **Guarantee the mission of journalists and observers (see the answer to point 27, pages 15 and 16 of the contribution)**

Point 25 : Provide information on the measures adopted to follow up allegations of any use of force by law enforcement during demonstrations, in particular between 2018 and 2020, including the use of riot guns and intermediate weapons (...)

In terms of law enforcement, the Defender of Rights has received complaints regarding several series of demonstrations:

- Between 2016 and 2018, the Defender of Rights has received **122** complaints linked to the demonstrations against the Labour Law and **33** linked to the mobilisation at the Notre-Dame-des-Landes "Zone to Defend" ('ZAD');
- Between 2018 and 2020, the Defender of Rights has received 206 complaints (regarding the Yellow Vest movement ('gilets-jaunes'), high school student demonstrations, climate protests, the demonstrations on the 'Blanquer' Law and on the Pensions Law). It has dealt with 125 cases and 81 are still under investigation.

¹⁶ Depuis le 1^{er} janvier 2014, l'article R.434-15 du code de la sécurité intérieure impose aux fonctionnaires de police et aux gendarmes d'exercer leurs fonctions en uniforme, sauf exceptions, et de se conformer aux règles relatives à leur identification individuelle. Un arrêté de 2013 prévoit que le « référentiel des identités et de l'organisation » ou « RIO » doit être systématiquement porté (arrêté du 4 décembre 2013 relatif aux conditions et modalités de port du numéro d'identification individuel par les fonctionnaires de la police nationale, les adjoints de sécurité et les réservistes de la police nationale, NOR INTC 1327617A.)

¹⁷ CE, Ass., 11 octobre 2023, n°454836.

- Grievances of referrals since the start of the Yellow Vests movement (there may be several grievances per referral):
 - o Use of riot gun (46 referrals)
 - o Violence (disproportionate use of force – 55 referrals)
 - o Arbitrary procedures (preventive arrests, confiscation of objects, relocated identity checks – 48 referrals)
 - o Use of other intermediate force weapons (sting-ball grenades, tear-gas grenades – 18 referrals)
 - o Caging, kettling (26 referrals)
- **In 2023**, in the context of the protests against the draft law on the rectifying financing of social security, known as the « Pension Reform » (*réforme des retraites*), the Defender of Rights received more than 170 complaints from people claiming to be witnesses of deprivation of liberty in kettling, arbitrary arrests or violence.
 - Alleged grievances :
 - o Use of force : 39 referrals
 - o Arbitrary procedures (questioning, police custody, identity checks) : 27 referrals
 - o Use of grenades and tear gas : 25 referrals
 - o Caging / Kettling : 22 referrals
 - o Use of riot guns : 7 referrals

The investigations of the Defender of Rights are still ongoing.¹⁸

The use of weapons by law enforcement officers is strictly regulated by law, which stipulates that weapons must only be used when absolutely necessary. In the case of law enforcement, the forces of law and order cannot disregard this legal requirement, regardless of the context in which they decide to use force: assault, deliberate violence, destruction of property or dispersal, for example.

The Defender of Rights has repeatedly warned of the excessive use of weapons during demonstrations, exposing demonstrators to disproportionate use of force by the forces of law and order. This risk is greatly increased by the inaccuracy of certain weapons, in particular the riot gun and the Cougar launcher, which regularly hit people who were not in any way the intended target of the action. In particular, for several years now, the Defender of Rights has been recommending that the LBD 40x46 (riot gun) should not be used in law enforcement, due to the extreme seriousness of the injuries that this weapon is likely to cause to people in or near places where demonstrations are taking place.

More generally, the Defender of Rights encourages greater vigilance regarding the use of weapons in crowd management on the public highway, in particular tear gas, as its use presents health hazards and does not make it possible to distinguish between demonstrators and third parties, or between people in good health and those in poor health, as was the case at the Champions League match on 28 May 2022¹⁹.

¹⁸ To be noted: 1/5th of the complaints, 35/170 are concerned by the prior agreement given to the Defender of Rights by the public prosecutor or magistrate referred to the courts. At this stage, the Defender of Rights will not take action on approximately one third of the complaints received, either because the complainant does not respond to our requests for clarification, or because they are testimonies, or because the person making the complaint is not a direct witness to the facts and is therefore not entitled to make a complaint, and has brought to the attention of the Defender of Rights facts that are already being processed, or that are not substantiated, or that do not justify a self-referral.

With regard to the defence ball launcher (LBD) 40x46, the Defender of Rights recommends banning its use in law enforcement. During the Pension Reform demonstrations, it was obviously used much less. The first and second versions of the National Law Enforcement Scheme (SNMO) maintain the use of the LBD in demonstrations. However, it is planned to include, outside the case of legitimate self-defence, the positioning of a supervisor next to the LBD shooters within the formed units to assess the overall situation and the movements of the demonstrators, designate the objective and ensure that the shooter understands the orders. The Defender of Rights will pay close attention to the implementation of this provision.

Point 26: Provide information on the number of preventive arrests and detentions made on the occasion of the above-mentioned demonstrations, as well as details on the legal basis for such arrests and detentions, their justification and their conformity with the principles of legality, necessity and proportionality. Also provide information on the number of complaints that have been lodged following the said arrests and detentions, and the measures taken to ensure that they were not related to the legitimate exercise of the right to freedom of expression and peaceful assembly.

With regard to preventive arrests, the Defender of Rights received 27 complaints in 2023. They are currently being investigated, and it should be remembered that control of these measures is placed under the authority of the public prosecutor. However, given the large number of complaints denouncing preventive or arbitrary arrests, it is necessary to question the criteria that led to these arrests, in particular the instructions given to the forces of law and order in the context of controls and arrests, but also their legal basis.

The Defender of Rights recalls that in the context of law enforcement, the primary mission of the forces of law and order is an administrative mission of prevention and supervision of the exercise of the right to demonstrate. While ensuring that a demonstration runs smoothly by avoiding possible violence or clashes is part of this mission, this cannot lead to the removal of a large number of demonstrators who are not breaking the law, either by their behaviour or by the objects they are holding, at the time of their arrest.

Point 27: With reference to the new National Law Enforcement Scheme (SNMO) of the Ministry of Interior published in 2020, provide details on the measures taken to guarantee the freedom of journalists and human rights defenders working on the issues of disproportionate use of force by the police during demonstrations, including those not notified to the authorities, without fear of harassment, stigmatisation or criminalisation of any kind.

On the occasion of the *Yellow Vests* and the Pension Reform demonstrations, the Defender of Rights received complaints from civil society observers and journalists about the action of the forces of law and order in relation to their missions (use of force or arrests, which they believe were unjustified and prevented them from continuing their mission, even though they were clearly identifiable).

Freedom of the press is one of the fundamental principles of democratic systems, based on freedom of opinion and expression. The Defender of Rights points out that *'while police officers, like all citizens, enjoy the right to respect for private life, they may not prevent the recording or public dissemination of images or words in the course of their duties'*^[1].

In this respect, the National Law Enforcement Scheme specifies that journalists may move freely within the security arrangements, that they may continue to carry out their duties when a crowd is dispersed and that they may wear protective equipment.

^[1] Circular no. 2008-8433-D of 23 December 2008.

Consequently, the Defender of Rights will be vigilant as to the concrete implementation of the protective provisions set out in the National Law Enforcement Scheme, so that they effectively allow journalists and observers, who will be numerous and come from all over the world to cover the event, to freely exercise their mission during operations to maintain order or during future major events.

Furthermore, the National Law Enforcement Scheme does not grant the same protection to observers as it does to journalists. Consequently, in a decision handed down on 29 December 2023, the Council of State annulled point 2.2.3.3 of the National Law Enforcement Scheme insofar as it completely excludes independent observers from the benefit of its provisions.^[2]

Pending a new version of the scheme, the Defender of Rights examines the complaints submitted to her, ensuring that independent observers have received the same attention as journalists and, as with any person at a demonstration, that they have not been subjected to disproportionate action by the security forces.

^[2] CE, 29 December 2023, no. 461513.