



Paris, 16 April 2015

**Opinion of the Defender of Rights No. 15-06**

**The Defender of Rights,**

Pursuant to Article 71-1 of the Constitution of 4 October 1958;

Pursuant to Organic Law No. 2011-333 of 29 March 2011 concerning the Defender of Rights;

Having been heard on 16 April 2015 by the National Assembly's Committee of Inquiry on the Missions and Methods of Maintaining the Republican Order in a Context of Respect for Civil Liberties and the Right to Demonstrate.

The Defender of Rights issued the attached opinion.

The Defender of Rights

Jacques TOUBON

## INTRODUCTION

### *1- Petitions concerning both stages of maintaining order*

The Defender of Rights deals with, through petitions referred to the security ethics board, cases in which the state security forces intervene in a process of maintaining or re-establishing order. By maintaining and re-establishing order, the Defender of Rights means any action by law enforcement agencies, whether preventive or repressive, within the context of demonstrations, gatherings on a public street, urban violence, evacuation of squats, concerts, public festivals and the evacuation of sit-ins on private or public land.

The Defender of Rights regularly receives petitions, as previously did the National Commission on Security Ethics (French acronym: CNDS), on cases involving the use of force and arms by the police or gendarmes in order to defend or evacuate a location or to arrest one or more individuals in a demonstration (“re-establishing order”). More recently, it has also regularly received petitions concerning cases involving preventive actions of security forces within the context of “maintaining order” (preventive arrests, identity checks, etc.). Many petitions have been brought by participants in the “Manif pour tous” demonstration.

Considering the very high number of demonstrations and gatherings in France, the number of petitions received by the Defender of Rights remains low. Equally, concerning the maintaining of order, the Defender of Rights has not yet received petitions concerning prior or subsequent actions by the intelligence services.

### *2- Data pertaining to petitions relating to maintaining order*

The proportion of **petitions concerning maintaining and re-establishing order** remains very low.

Accordingly, out of 461 petitions currently being processed, challenging police officers and gendarmes, forty cases relate to maintaining order.

Of these petitions, participants in the Manif pour tous movement have submitted thirty petitions to the Defender of Rights, corresponding to ninety plaintiffs. Three petitions have also been submitted concerning the protest movement against the construction of the new Notre-Dame-des-Landes airport and two concerning the protest movement against the Sivens Dam (petitions on the death of a young man and a petition submitted by around ten other demonstrators, including a young woman whose hand was injured by a grenade thrown into a caravan). The other petitions concern demonstrations that garnered less media attention (fire services demonstration in Grenoble, demonstration on the premises of the General Council of Tarn, etc.).

In cases already handled by the Defender of Rights and by the CNDS (since 2006), some fifteen of those petitions challenged the use of weapons during operations to maintain order, especially two less-lethal launcher models.

The **number of times recommendations** made by the Defender of Rights concerning maintaining and restoring order **are followed** is unsurprising given the number of cases it receives. To give a general idea, the recommendations of the Defender of Rights, for all decisions made in 2014 in the field of security ethics (therefore, extending beyond the

maintaining of order), was 70.5%. In 2013 it was 81% (recommendations followed or partially followed).

Concerning maintaining order, only one decision was issued (for which the Defender of Rights still awaits the response of the Interior Minister), as the other petitions are still being processed. Concerning re-establishing order, requests for disciplinary proceedings by the Defender of Rights have in the main been acted upon where these concerned perpetrators of unsanctioned violence, but requests for disciplinary proceedings against order givers were less frequently acted upon.

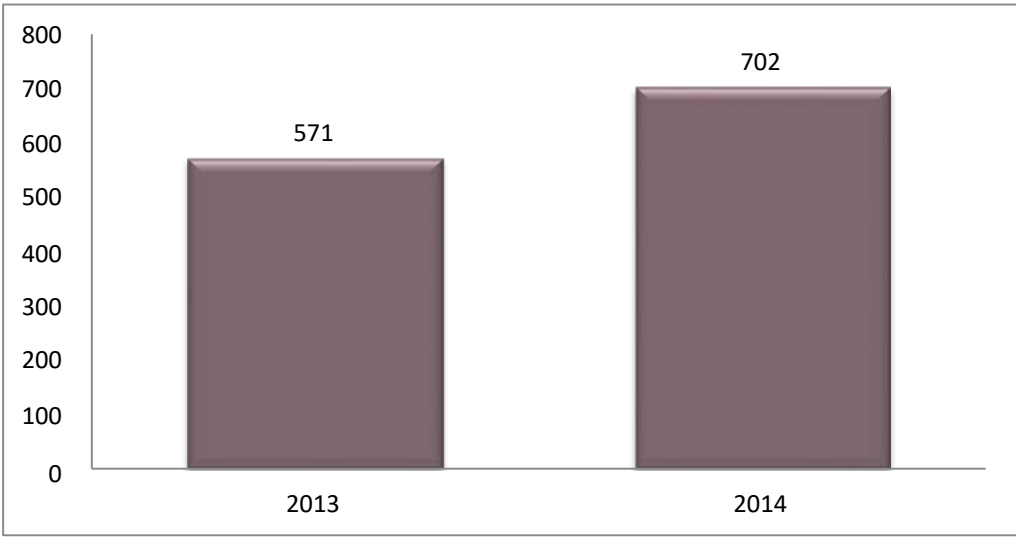
By contrast, the general recommendations of the Defender of Rights seeking to reform the rules governing situations in which two less-lethal launcher models may be deployed (see below), have been partially followed, although general recommendations have been followed more frequently than individual recommendations.

**General figures for petitions and responses to decisions in the field of security ethics**

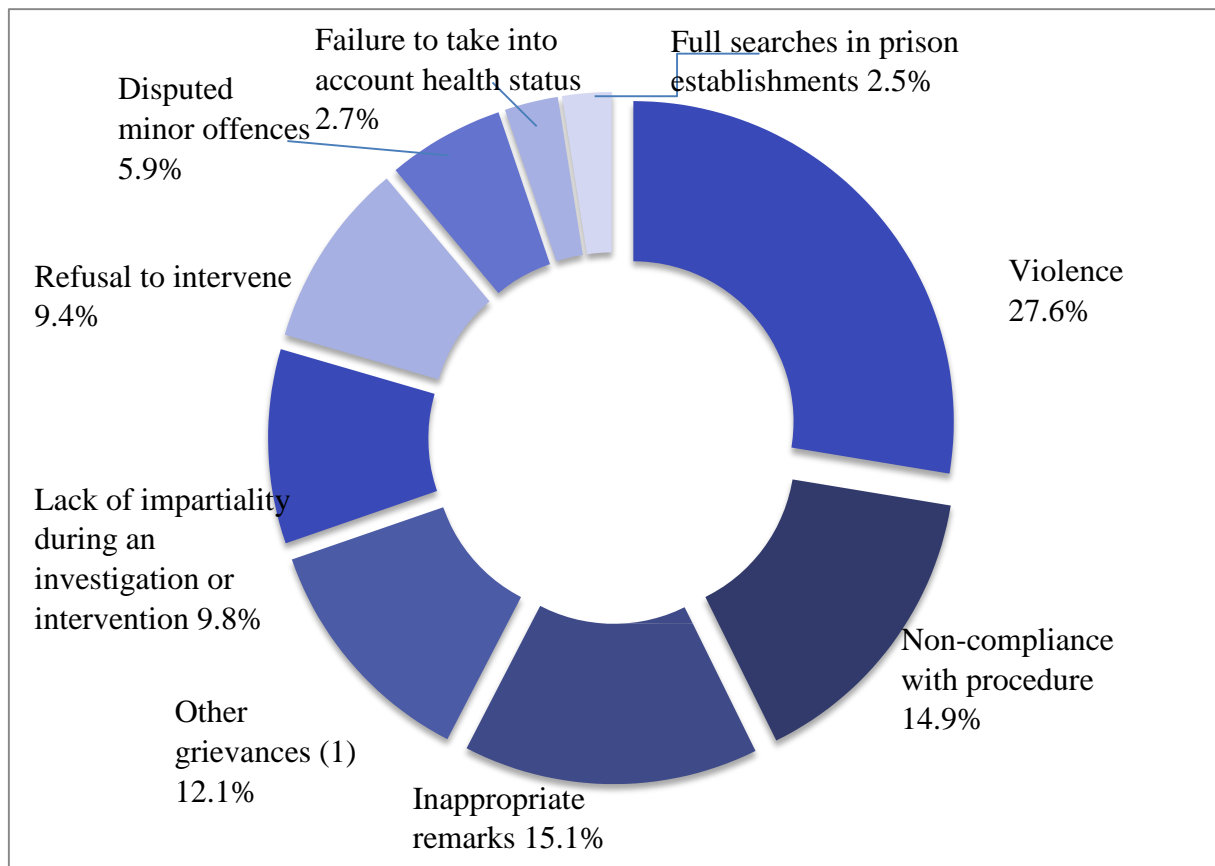
Change in No. of petitions received since 2010

	2010	2011	2012	2013	2014
<b>Petitions received</b>	185	363	485	571	702
<b>Change in No. of petitions received (n/n+1)</b>		+100%	+33,6%	+17,7%	+22,94%
<b>Petitions processed</b>	195	185	360	450	546
<b>Change in No. of petitions processed (n/n+1)</b>		-5%	+95%	+30,5%	+21,33%

Petitions received in the security ethics field

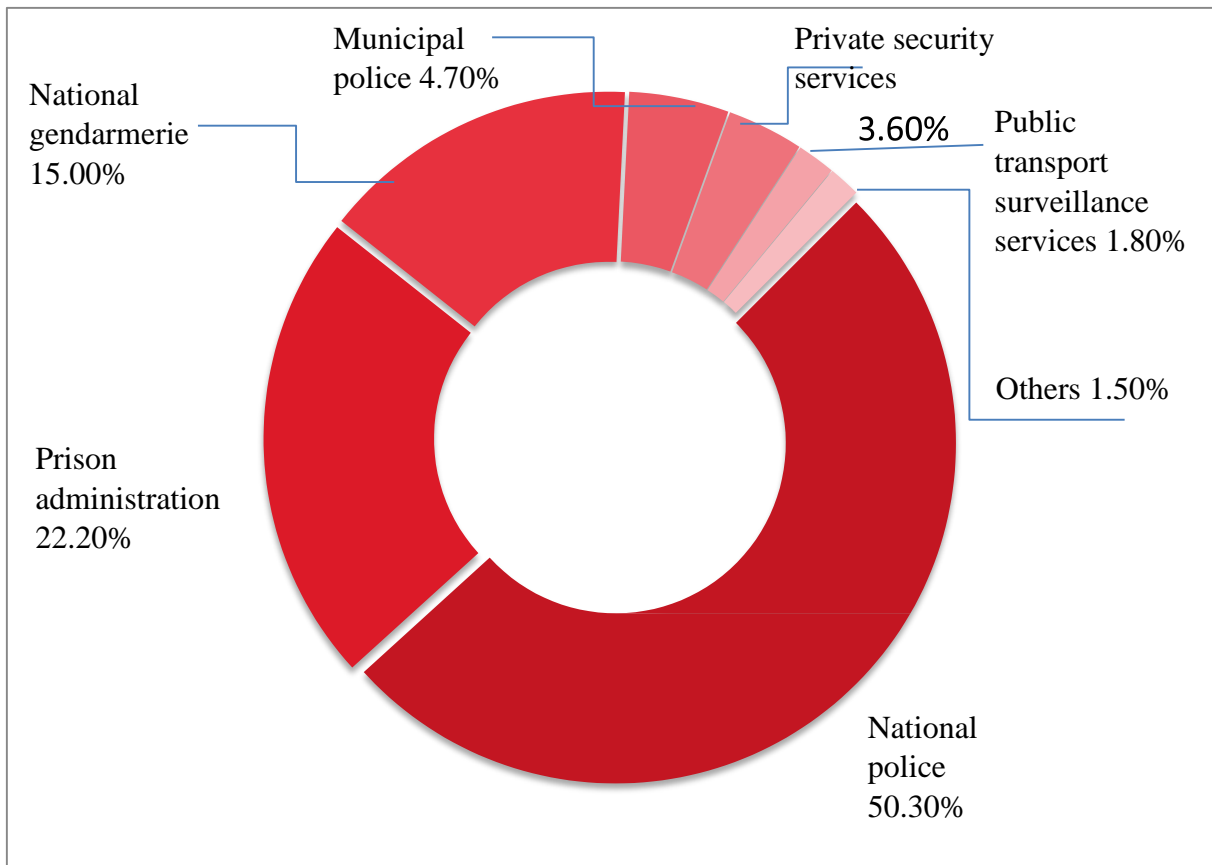


Principle grounds for complaints in 2014 (stable year-on-year figures)



1. theft, death, corruption, security pat-downs, prison disciplinary sanction

Main activities contested (figures stable year-on-year)



### ***3- Units targeted by petitions concerning maintaining order***

Overall, it appears that petitions concerning **re-establishing order**, submitted both to the CNDS and the Defender of Rights, namely concerning the use of force and weapons, accused supporting units such as crime prevention brigades (brigades anti criminalité), departmental task force units (compagnies départementales d'intervention), and departmental and national task force departments (sections départementales d'intervention et sections d'intervention).

Arising as an incidental factor is the difference in training of these units, and in acquisition of the doctrine of maintaining order, and also the differing legal systems governing their action (maintaining order for specialist units, ordinary law for non-specialist units).

Concerning preventive actions associated with **maintaining order**, the Defender of Rights does not possess accurate information, as it has not yet received all of the proceedings brought.

### ***4- Reflection by the Defender of Rights in the field of maintaining order***

The Defender of Rights wished to address the field of maintaining order by going beyond the mere handling of petitions.

Accordingly, representatives of the Defender of Rights visited the National Training Centre for Gendarmerie Forces (French acronym: CNEFG)<sup>1</sup>, in Saint Astier in December 2014 to attend a symposium on maintaining order<sup>2</sup> and to participate in exercises for maintaining and re-establishing order. The Defender of Rights and his Secretary General were also present at Saint Astier.

The Defender of Rights also organised an international meeting, taking place on 23 March 2015, with its counterparts within the Independent Police Complaints' Authorities' Network, the subject of which was "Democratic Crowd Management" (which the members of this committee of enquiry were invited to attend).

This provided an opportunity for both formal and informal discussions on the subject with law enforcement agents, researchers and representatives of law enforcement oversight bodies.

### **Independent Police Complaints' Authorities' Network (IPCAN)**

The Defender of Rights, one of whose missions is to ensure respect for security ethics, was behind the initiative to launch the "Independent Police Complaints' Authorities' Network" (IPCAN), which includes more than ten of its international counterparts. Of the four institutions that preceded the Defender of Rights, the National Commission on Security Ethics (French acronym: CNDS) was the only one not to have a network of European or international colleagues.

One of the advances of the Defender of Rights has been the creation of new partnerships on the one hand with its foreign counterparts, and on the other hand with competent international institutions.

Accordingly, a number of links have been forged since 2012 with counterparts of the Defender of Rights in the security ethics field (e.g. in Belgium, Spain and the Netherlands).

Also, the Defender of Rights has taken the initiative of setting up a network of European and International counterparts, IPCAN, which first convened on 27 and 28 May 2013 in Paris. This saw ten of its counterparts in the security ethics field meet for a seminar concerning the role of independent bodies in the security ethics field. The objective of the meeting was also to discuss areas of common interest: alternative means of resolving disputes between citizens and law enforcement agencies, disciplinary sanctions, pat-downs, body searches and the use of intermediate weapons.

The Defender of Rights organised a second meeting of IPCAN on **23 March 2015**, in Paris, the subject of which was "Democratic Crowd Management". The meeting was also opened up to many practitioners, law enforcement agents, specialists in maintaining and re-establishing order, both French and European, representatives of the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE), alongside researchers in the field. More than 85 participants came together to hear presentations by representatives of French and European law enforcement agents and of the IPCAN network, which were discussed alongside the main subject of the meeting.

---

<sup>1</sup> This centre's role is chiefly to train officers and sub-officers of the Gendarmerie in re-establishing order and professional policing, and of civil servants from other government departments and representatives of foreign security forces.

<sup>2</sup> CNEFG Seminar "Maintaining Order: Liberty under Constraint", 16 Dec. 2014.

Petitions concerning potential security ethics failings during demonstrations resulted in specific recommendations being made by the oversight bodies in attendance, such as: reducing the use of the “pincer movement” or “kettling” (an encircling or fencing-off technique), particularly in Denmark; the legal landscape governing the use of intermediate weapons (pepper-spray, particularly in Denmark, water cannons in the United Kingdom, etc.); the drafting of a report of the circumstances each time weapons are used, so that agents can be identified.

At the European level, a representative of the European Court of Human Rights (ECHR) highlighted the concerns of this institution such as, on the one hand, lack of training and knowledge regarding the use of weapons by law enforcement agents, and on the other hand, difficulties in identifying the agents accused. She went on to state that although the case law of the ECHR is not yet uniform in the matter, standards concerning the necessary and proportionate use of force by law enforcement agencies, and the independence of the authorities investigating acts by law enforcement agencies (court and/or government authorities) from the police must be complied with.

As a reminder, the IPCAN network is composed of international peer organisations from 11 countries working in the security ethics field: The Defender of Rights (France), the Independent Police Complaints Commission (England and Wales), the Comité P (Belgium), the Independent Police Complaints Authority (Denmark), the Defensor del Pueblo (Spain), the Chancellor of Justice (Estonia), the Garda Síochána Ombudsman Commission (Ireland), the Ethics Commissioner (Switzerland), the Ethics Commissioner (Québec), the Parliamentary Ombudsman (Finland), the Independent Police Complaints Board (Hungary), the Public Defender of Rights (Slovakia), the Ombudsman (Sweden) and two other UK institutions, the Police Investigations and Review Commissioner (Scotland) and the Police Ombudsman for Northern Ireland (Northern Ireland).

Lastly, the Defender of Rights also issued a **report on three intermediate weapons**, in May 2013<sup>3</sup>, setting out certain recommendations on maintaining order, and is currently preparing a new general recommendation one year on from this report (May 2015).

## **I- ISSUES CONCERNING PREVENTIVE ACTIONS BY LAW ENFORCEMENT AGENCIES**

The Defender of Rights recently issued what was considered a landmark decision concerning the 14 July ceremonies in Paris and set out a number of recommendations to provide greater respect for the rights of participants in this event (1).

More broadly, in petitions previously handled and especially those currently being handled, the Defender of Rights has observed several other types of practices that violate freedom of movement and/or freedom of expression (2).

Finally, in addition to these issues there arises that of the adequacy of the preventive resources employed in relation to the genuine risk of a breach of the peace by the participants in a movement (3).

---

<sup>3</sup> Report on three types of intermediate uses of force, May 2013 (in French): [http://www.defenseurdesdroits.fr/sites/default/files/upload/rapport\\_deontologie\\_sur\\_trois\\_moyens\\_de\\_force\\_intermediaire\\_2.pdf](http://www.defenseurdesdroits.fr/sites/default/files/upload/rapport_deontologie_sur_trois_moyens_de_force_intermediaire_2.pdf)

***1- Decision MDS 2014-159 (24 Nov. 2014): prohibition of carrying of protest signs and access to the 14 July 2013 ceremonies<sup>4</sup>***

This decision particularly concerned the circumstances under which a person attending a military procession on 14 July 2013 was subjected to an identity check and was made to take down her flocked fabric flag bearing the logo of the “Manif pour tous” (Demonstration for all) movement.

*The Facts*

Ms X arrived at the avenue des Champs Elysée on 14 July 2013, to attend the procession. Having passed through security checks, the plaintiff found a place for herself in one of the supervised areas alongside the avenue and waved flags bearing the “Manif pour tous” logo as the President passed by. A first flag was taken from her hands by a law enforcement agent and a second was put away by the plaintiff into the pushchair in which her baby was seated. Some moments later, a police superintendent approached her to conduct an administrative search of her pushchair, outside the security cordon. The superintendent in question took the second flag and the plaintiff went back through the security cordon.

*Investigation by the Defender of Rights*

When heard by staff of the Defender of Rights, the police superintendent stated that he had acted in line with a memo concerning the 14 July ceremony issued by the Public Order and Traffic Directorate (Direction de l’ordre public et de la circulation - DOPC) of the Police Prefecture. Under the terms of this memo, among the items prohibited within security areas were “banners, signs and any other type of protest media”. The police superintendent accordingly confirmed that any person carrying any kind of protest media was not allowed in the secured area.

The Defender of Rights took the view that, taking into account the high level of protection granted to freedom of opinion and assembly, particularly through the case law of the ECHR, such a blanket prohibition is a disproportionate curtailment of the exercising of the aforementioned freedoms in relation to the objective of guarding against the occurrence of a breach of the peace during the procession. This disproportionality resulted from the absence of any objective assessment of the individual potential of each protest sign to cause a serious, proven breach of the peace that could not be contained by rigorously adapted measures.

The Defender of Rights was, furthermore, concerned by another instruction set out in the same memo which required law enforcement officers to “Detect, exclude and report all persons entering a controlled area [...] who appear suspicious [or] appear not to be in possession of their full mental faculties”. The Defender of Rights pointed out the danger that this very broad and extremely vague wording poses for citizens, particularly those with a disability.

*Recommendations*

---

<sup>4</sup> <http://www.defenseurdesdroits.fr/decisions/ddd/MDS-2014-159.pdf>



Specifically, the Defender of Rights recommended dispensing with the blanket prohibition on the holding of “banners, signs and any other type of protest media” by the public present within controlled areas during the 14th July military procession.

It also recommended removal of the instruction applying to the 14 July military procession requiring law enforcement agencies to “Detect, exclude and report all persons entering a controlled area [...] who appear suspicious [or] appear not to be in possession of their full mental faculties”.

Furthermore, it recommended that the Interior Minister clarify the types of bag searches that law enforcement officers are required to conduct upon entry to secured areas particularly so as to ensure that the law surrounding the searching of personal effects in public places is known and observed by all personnel, together with the procedure for the return of items taken during security controls for access to controlled areas, the latter of which must imperatively be brought to the attention of the public.

Finally, it recommended that the Interior Minister should ensure that reminding personnel of the law governing identity checks is made mandatory when they are being readied to play a security role in the 14 July procession.

Thus far, the Defender of Rights has not received any response to the recommendations submitted to the Interior Minister.

## ***2- Preventive measures liable to infringe upon freedom of expression and/or of movement***

On a general note, the Defender of Rights has observed, in relation to petitions dealt with or currently being dealt with, the practice of preventive arrest and deprivation or restriction of liberty, with the **goal of preventing an individual from attending a demonstration.**

These measures appear to take various forms:

- the individual is dissuaded through a home visit from attending a demonstration (petition dealt with by the Defender of Rights concerning a protest demo against a presidential visit);
- the individual is arrested and then taken away, the official reason being to conduct an identity check or verification;
- the individual is detained at the exact time of the demonstration, to prevent him or her from attending.

There is no legal framework in France for such operations.

**Comparative approach:** In countries in which administrative arrests are authorised (Germany and Belgium), such operations are very strictly governed by law. Accordingly, in Belgium, the individual would have to be in possession of a weapon, equipped to use it against law enforcement agents and about to go to the demonstration.

### Preventive interventions prior to an official visit

Presidential or ministerial visits are sensitive occasions, particularly in view of the images broadcast and their impact on society. As a result, the authorities sometimes seek to prevent or conceal all social protest during such visits.

For example, in **decision 2013-274** of 28 January 2014<sup>5</sup>, the plaintiff had first of all been arrested and held at a police station in 2008, during a presidential visit and had then been subjected to a home visit on a Sunday morning in 2010, by a gendarme, to make sure that the individual was at home and would not go to the place where the President of the Republic would be in the afternoon. The gendarme gave an erroneous reason for the visit, citing the pretext that he was visiting the plaintiff concerning a speeding offence.

The Defender of Rights takes the view that this visit had no basis in law and recommended that its observations be passed on to the Major who had come to the plaintiff's home. This was acted upon.

### Preventive arrests for the purpose of non-local identity checks or verifications

Investigations conducted by the Defender of Rights concerning cases of certain demonstrations by the “Manif pour tous” collective tend to demonstrate that law enforcement agents have sometimes misused judicial tools allowing them to temporarily deprive an individual of liberty, in violation of the legal framework governing their use, which is nonetheless clearly defined.

This is, for example, true in the case of the **identity verification procedure** that allows law enforcement agents to take individuals to police stations if they are unable to prove their identity during a check, for a duration that may not exceed four hours. During the demonstrations in Paris in 2013, this procedure appears to have been used in a manner that deviated from its primary purpose on a number of occasions.

Certain cases currently being processed in fact appear to demonstrate that individuals have been arrested on these grounds, even though they were carrying ID or where they had not been asked to provide ID (which they were carrying).

Also, in a case dealt with by the Defender of Rights<sup>6</sup>, the plaintiff, a trade union member, was deprived of his liberty for four hours at the gendarme station under the fallacious pretext of an identity verification (when he was in possession of his ID), during the time the President of the Republic visited Allier.

Added to this is the practice of “non-local identity checks” that have already been observed concerning migrants in Calais by the Defender of Rights, consisting in arresting individuals to take them to the police station in order to verify their identity, without first having carried out an identity check. The purpose of such checks appears to be to discourage migrants from remaining in Calais and the surrounding areas.

Furthermore, concerning **administrative police identity checks** carried out pursuant to Article 78-2, paragraph 4 of the Criminal Procedural Code (otherwise known as “preventive identity checks”, it should be kept in mind that despite the flexibility offered by this type of check, which may be conducted regardless of the behaviour of any individual in order to

---

<sup>5</sup> <http://www.defenseurdesdroits.fr/decisions/ddd/MDS-2013-274.pdf>

<sup>6</sup> Petition No. 10-012194: this petition was lodged on the basis of Article 33 of the Organic Law concerning the Defender of Rights (res judicata), following an investigation by the IGGN, and furthermore concerning the judgement by the Correctional Court of Clermont-Ferrand which convicted a captain and a colonel with a four-month suspended prison sentence and a EUR 1,000 fine for arbitrary deprivation of liberty. Criminal and disciplinary designations were in fact identical.

prevent a breach of the peace, the Court of Cassation systematically monitors the existence of serious elements constituting a risk of a breach of the peace at the time and at the location where the identity check was carried out. However, certain matters, either currently being dealt with or previously dealt with, appear to reveal a failure to uphold this requirement.

In two petitions currently being handled, the Court of Instance of Paris ordered the ending of holding arrested persons in custody and specifically found that the identity checks conducted, after which the individuals were arrested, had been unjustified.

In this regard, the Defender of Rights continued its reflection following a working group that convened in 2014 on the issue of the **drafting of Article 78-2 of the Criminal Procedural Code** concerning requisitions by the public prosecutor and also preventive checks.

Deprivation of liberty at a demonstration - Surrounding of demonstrators, known as “caging” or “kettling”

In petitions submitted to the Defender of Rights, operations known as “caging” and “kettling” in EU human rights law have also been cited:

- consisting in subjecting a group of individuals located in a public area to confinement and isolation for an unlimited period of time

This technique was clearly used at certain demonstrations held by La manif pour tous and at another demonstration (organised by the Ligue des droits de l’homme (LDH) (“Human Rights League”).

For example, in one petition currently being handled, a demonstrator complained that she had been encircled by police officers and held in the street, along with other demonstrators who had come during a visit by Manuel Valls to Asnières, for over three hours on 28 January 2013. A decision concerning this matter will be issued by the Defender of Rights in the near future.

In another petition currently being investigated, the group “les mères veilleuses” petitioned the Defender of Rights concerning the circumstances under which some sixty mothers were deprived of liberty for between 2 and 3 hours at a meeting near the Family Affairs Ministry on 9 December 2013.

This technique is not taught in training establishments, according to exchanges between the Defender of Rights and gendarmes and police officers. The deprivation or curtailment of liberty that this constitutes also has no basis in law and is not provided for under any instrument, as far as the Defender of Rights is aware.

The European Court of Human Rights has already ruled on this issue on one occasion, in 2012<sup>7</sup>.

The ECHR concluded that under the very specific circumstances of the matter in question (assembly of over 1,500 demonstrators, over half of whom were violent, in the centre of London), the keeping of several hundred demonstrators within a cordon for ten hours had been made necessary to prevent serious harm to individuals and property and that it did not constitute deprivation of liberty. This ruling, which was the object of a number of criticisms

---

<sup>7</sup> ECHR, Austin and Others v. United Kingdom, 15 March 2012.

and three dissenting opinions within the ECHR, was also linked to the fact that the United Kingdom had not ratified Protocol No. 4 to the European Convention on the Protection of Human Rights and Fundamental Freedoms, concerning freedom of movement. The ECHR has not authorised this practice absolutely.

**Comparative approach:** In other countries, particularly Norway and the United Kingdom, the kettling technique has also been used by law enforcement agencies.

### ***3- Assessment by the authorities of the risk of a breach of the peace***

From the matters that have been dealt with or that are currently being dealt with by the Defender of Rights, there arises the question of the proportionality of measures taken by the authorities and implemented by law enforcement agencies in relation to the risk of a breach of the peace posed by the persons present.

The Defender of Rights has received numerous complaints criticising operations used to maintain order that were useless or excessive particularly in view of the absence of any breach of the peace during peaceful demonstrations, such as the meetings of the “Veilleurs” or “mères veilleuses” collective, which grew out of the challenge to the extension of marriage to same-sex couples.

Concerning the “Veilleurs” or “mères veilleuses”, in one of the petitions currently being handled, a manifestly disproportionate measure was used in view of the low number of persons and the very low level of danger posed: less than ten women, in their sixties, reading texts and holding candles, with no obvious intent to cause a breach of the peace or public safety other than by their presence on the street (a public road where they were not even blocking traffic).

## **II- PROBLEMS LINKED TO RE-ESTABLISHING ORDER**

Having set out the context within which the Defender of Rights intervenes in these types of petitions and the manner in which it handles such petitions (1), we shall not address recurrent problems that the Defender of Rights has identified in the issuance of its decisions and also in the petitions that it is currently handling: the use of intermediate weapons (2), and the question of truthfulness in the writing of reports and statements concerning the use of force (3).

### ***1- Nature of intervention by the Defender of Rights***

Since the Defender of Rights was created, and before it the CNDS, a not inconsiderable number of petitions have been and continue to be brought in which law enforcement agencies have intervened in demonstrations where a certain level of conflict has been reached, and the breach of the peace has been such that they have resorted to the use of force and the power of arrest to re-establish order. The particular facts set out in the petitions brought before the CNDS and the Defender of Rights occurred both within the context of organised, well-managed demonstrations, or on the fringes of these, and also in spontaneous assemblies or urban violence, or occupations of property.

As with maintaining order, plaintiffs often complain to the Defender of Rights of a lack of proportion and nuance in the use of force by police officers and gendarmes during operations to maintain order. Whether what are used are, for example, less-lethal launchers, sting

grenades, or tear gas jets, the use of force is always a delicate matter during operations to maintain order due to the risks that these types of weapons - termed intermediate - may pose to demonstrators.

In relation to the re-establishing of order, the Defender of Rights examines the circumstances surrounding an incident brought before it in the light of the obligations of law enforcement officers to use force in a manner that is necessary and proportionate in view of the circumstances. Otherwise put, it verifies that the use of force was not excessive in relation to the goal to be attained. The principle of necessity of the use of force is highlighted specifically in the Code of Ethics applicable to police officers and gendarmes (Interior Security Code, Art. R. 434-18)<sup>8</sup>.

In conducting its investigations, the Defender of Rights takes into account the context in which law enforcement agents intervene, and the factors to which they are exposed on the ground in terms of uprisings or violence. Accordingly, in the majority of cases, it seeks to hear all of the parties involved, be these plaintiffs, witnesses, or law enforcement agents, both commissioned and non-commissioned.

## ***2- Use of intermediate weapons***

The Defender of Rights and its predecessor, the CNDS, have received some fifteen petitions concerning circumstances surrounding the use of force to re-establish order.

Considering the recurrence of certain issues concerning the use of two non-lethal launcher models (Flash-Ball superpro® and 40/46 non-lethal launcher), and conducted electrical weapons such as the Taser x26®, the Defender of Rights decided, in 2013, to write and make public a report on these three intermediate weapons<sup>9</sup>.

This report contains numerous recommendations, emerging from the decisions taken and from a comparison of the regulations governing the use of these weapons by the police and the Gendarmerie. Some of the recommendations concern the maintaining of order.

The Defender of Rights is aware that the new regulations governing the use of these three weapons applicable both to police forces and the Gendarmerie (issued on 2 September 2014), have failed to take into account certain recommendations that it considers essential and will be making a new general recommendation public on in this area in May 2015.

### Use of Taser x26®

---

<sup>8</sup> Internal Security Code, Art. R. 434-18 "Use of force": "A police officer or gendarme may use force, in the manner specified by the law, only where necessary, and in a manner that is in proportion to the objective sought, or the seriousness of the threat, as applicable.

He or she may use weapons only when absolutely necessary and in line with the legislative stipulations applicable to his or her rank".

<sup>9</sup> Report on three types of intermediate uses of force, May 2013 (in French):

[http://www.defenseurdesdroits.fr/sites/default/files/upload/rapport\\_deontologie\\_sur\\_trois\\_moyens\\_de\\_force\\_intermediaire\\_2.pdf](http://www.defenseurdesdroits.fr/sites/default/files/upload/rapport_deontologie_sur_trois_moyens_de_force_intermediaire_2.pdf)

The Defender of Rights has never been petitioned on the use of the Taser x26® within the context of maintaining order, although the CNDS received one such petition concerning use by agents of a crime prevention squad, on the fringes of a demonstration<sup>10</sup>.

The Defender of Rights wishes to reiterate that the use of conducted electrical weapons is now prohibited for police forces and the Gendarmerie, for maintaining order in formed units. On the other hand, it is still permitted for use by reinforcement units in the making of arrests.

Although the Defender of Rights plans to make its position known in the near future concerning new regulations for the use of this weapon, it wishes to express its concern immediately concerning the fact that the conducted electrical weapons currently procured are now limited, either wholly or partially, to those weapons not fitted with audiovisual recording capabilities. This development is supposedly linked to the poor quality of the recordings made, to frequent equipment malfunctions (entailing lengthy repair times), and to the very low number of requests for these recordings by investigating departments and judicial authorities.

Although it is true that there is considerable scope for improving upon the quality of these recordings (and high-definition models do in fact exist), in the cases brought before the Defender of Rights, an examination of the videos has made it possible either to exonerate agents or support a finding that the use of the weapon was excessive. Simply consulting record-time data, or examining the positioning of the confetti-like AFID tags, did not suffice in order to determine the context of an intervention. In cases in which the weapon was not fitted with such a device, it was not possible to accurately determine the conditions under which it was used.

However, the obligation to have an audiovisual record of the use of the Taser x26® stems from the weapon's effects, and from its classification by the European Union<sup>11</sup> under matériel liable to cause, cruel, inhumane or degrading treatment.

In a State governed by the rule of law, it does not seem acceptable to curtail the rights and guarantees of a citizen on grounds related not to public order, but rather to the physical malfunctioning of a weapon or to budgetary imperatives.

Usage of the two less-lethal launcher models

As a reminder, the two less-lethal launcher models that the police and the Gendarmerie are equipped with are the Flash-Ball superpro® 40/44 and the 40/46 less-lethal launcher.

The Flash-Ball superpro® 40/44, a manual launcher does not have an digital sight, has a normal distance of use of 7 to 12 metres and a smooth barrel.

The manufacturer itself acknowledges the inaccuracy of this weapon, i.e. a shot grouping of between thirty and forty centimetres at a distance of 10-12 meters, which is the normal distance of use. This weapon is not made available to riot police units and only certain mobile gendarme squads are in possession of it.

---

<sup>10</sup> CNDS Opinion No. 2005-72, dated 10 July 2006, report 2006.

<sup>11</sup> Council Regulation (EC) No. 1236/2005 dated 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, Annex III.

The 40/46 less-lethal launcher is a shoulder weapon, with digital sight and a longer range. It is carried by riot police units and mobile gendarmes.

Nonetheless, it should be kept in mind that the majority of cases handled by the Defender of Rights, or currently being handled in relation to the use of these weapons concern non-specialist units intervening to maintain order.

The Defender of Rights wishes to share its concerns surrounding the use of the Flash-Ball and the characteristics of the weapon itself.

Taking into account the inaccurate shot trajectories of the Flash-Ball superpro®, making theoretical instructions for use of no use, and other the other hand, the serious and irreversible nature of the manifestly inevitable collateral damage that they cause, the Defender of Rights and its predecessor, the CNDS, have **recommended that the Flash-Ball superpro® not be used on public streets** (where demonstrators are moving), **other than in very exceptional cases** which ought to be very strictly defined.

It is in fact unrealistic to imagine that during a demonstration, particularly where signs of tension begin to emerge, demonstrators will remain immobile. The risk is therefore high that the balls that the Flash-Ball superpro® launches would hit a moving target with all of the dramatic consequences that this can entail in view of the inaccurate nature of the weapon.

The characteristics of this weapon, and the risks that it raises led the Defender of Rights to question the Interior Minister on the **legitimacy of continued carrying of the Flash-Ball superpro®**. In a letter dated 2 May 2014, the Minister responded that trials of short-range weapons, that could be used with the 40/46 less-lethal launcher, were underway, following the conclusions of a working group steered by the Inspectorate General of the National Police Force.

The aim was for these weapons to replace the Flash-Ball superpro®. However, to date, the Defender of Rights has not been informed of the scheduling of the progressive withdrawal of this weapon from law enforcement agencies, even though continuing to carry the Flash-Ball superpro® is a potential source of tension and of challenges to the actions of security forces.

As long as the Flash-Ball superpro® continues to be carried, the Defender of Rights reiterates its recommendation not to use this weapon during demonstrations on public streets (where demonstrators are in movement), other than in very exceptional cases which ought to be very strictly defined. It was most interested to learn of the current Bill seeking to establish a moratorium on the use and sale of class four weapons, and to prohibit their use by the police or the Gendarmerie against crowds or demonstrations.

Finally, the Defender of Rights wishes to point out that the **inaccuracy of this weapon ought to be clearly stated in the instructions for use**, so that agents always keep in mind the collateral risk of harming a person other than the intended target.

#### Other intermediate weapons

The Defender of Rights is also petitioned concerning other weapons that are frequently used during demonstrations, namely tear gas and various types of grenade.

In a case that concerned the use of tear gas on demonstrators assembled in the form of a sit-in on the tracks of the Cévènes tourist train, it was found that the gendarme had used the weapon

in an unsanctioned and disproportionate manner, consisting in spraying the gas into the face, repeatedly, when no violence was perpetrated and no warning had been given. Although certain demonstrators were more aggressive than others, the majority, including those targeted by the tear gas, were calm, passive, elderly persons.

In the case involving the death of a young man in Sivens, there of course arises the issue of resorting to the use of stun grenades by mobile gendarmes, these weapons having subsequently been withdrawn from use. Questions also arise as to the conditions under which scatter grenades are used, for example, in the case of a petition that reported the use of a grenade thrown into a caravan, which a young woman grabbed in order to throw it back.

**Comparative approach:** The majority of other EU countries with which the Defender of Rights is in contact, do not carry all of the intermediate weapons that French law enforcement forces carry. Far from it, in fact. For example, Belgian and German police forces make considerable use of water canons, which keep demonstrators seeking to confront law enforcement officers at a distance, and can even push them back due to the power of the water jet. The German police force does not use tear gas, taking the view that non-aggressive and non-violent persons could be unduly subjected to its effects.

At the more general level, concerning EU human rights law, the ECHR takes the view that it is important to provide security forces with means of intervention other than fire arms. Accordingly, in an old ruling, in the specific context of a region placed under a state of emergency, it found it incomprehensible and unacceptable that gendarmes did not carry non-lethal weapons and were obliged to use a very powerful weapon<sup>12</sup>. The ECHR placed the utmost importance on regulating recourse to the use of force, particularly in the case of demonstrations, irrespective of the weapons used. For example, it convicted Turkey for not having issued any specific regulations or directives concerning the use of non-lethal weapons during demonstrations<sup>13</sup>.

### ***3- Procedural documentation of the use of force and truthfulness in the writing of reports***

One recurring problem that has emerged in the cases that the Defender of Rights or the CNDS have had cause to examine has been the **lack of thoroughness in the writing of procedural reports where there has been a use of force**. This is even more problematic in the context of demonstrations in which the parties are numerous, which can make it difficult or even impossible to subsequently determine who shot a weapon, for example.

The use of weapons falls under the control of an agent's hierarchical superior, who must be provided with a report on the circumstances that led to the use of force together with the legal framework governing its use. In particular, each agent must fill out the documents making it possible to assess each shot taken, its efficacy and its consequences.

In a number of cases, the Defender of Rights recommended that disciplinary proceedings be instated against members of the police force for dishonesty, since they had failed to document or had inaccurately documented the use of force.

---

<sup>12</sup> ECHR, *Gulec v. Turkey*, 27 July 1998.

<sup>13</sup> ECHR, *Ataykaya v. Turkey*, No. 50275/08, 22 July 2014.



For example, in one case (**decision No. 2013-34, 21 May 2013**<sup>14</sup>), the Defender of Rights had been petitioned concerning the circumstances under which a plaintiff had been seriously wounded by a Flash-Ball superpro® ball during an intervention to maintain order on 28 November 2010 in Paris, whilst he was on the roof of a building that police officers had been tasked with evacuating. At the start of the investigation it was not possible to determine with certainty who had shot the Flash-Ball superpro®, even though there is no doubt that this weapon was the cause of the injuries of the plaintiff. During the court investigation, none of the police officers who had used this type of weapon during the intervention acknowledged having been the shooter. Nevertheless, it was found that one of the officers armed with this weapon during the litigious intervention had not completed a truthful report of his use of the weapon, as for the ten shots fired, the ten forms completed were found to be photocopies which in no way constituted a truthful report on the use of the weapon.

The CNDS has also pointed out this failing in a number of cases. In one case involving the intervention of several police units called to a so-called sensitive neighbourhood where a group of youths was located, the members of a dog unit made false statements on the situation to justify the use of the Flash-Ball superpro®<sup>15</sup>.

Although this may appear to be a minor concern, the fact remains that the lack of a truthful report is liable to discredit all of the statements made by an officer who is relating the manner in which he or she made use of force during an intervention. Moreover, this makes it incontestably more difficult to carry out a posteriori oversight of the circumstances under which force has been used.

### III- SOME OTHER QUESTIONS

These concern both questions passed on by the Commission, and issues that the Defender of Rights is currently reflecting upon.

#### *1- Effectiveness of investigations and court actions in cases associated with maintaining order*

This question concerns the more general issue of difficulties intrinsic to the processing of petitions and court investigations pertaining to the maintaining and re-establishing of order and their outcomes. However, other types of remedy are open to individuals who have been subject to what they consider to be an excessive use of force.

#### Difficulties encountered in the processing of petitions concerning the maintenance and re-establishing of order

Where France is concerned, maintaining order has often been assessed as **being political in nature**. This explains why the role of order-giver is discharged by the **civil authorities**, generally prefects. It would appear, for example, that in certain cases, currently being dealt with or already dealt with, law enforcement agents did not decide to make use of preventive arrests or weapons alone.

For example, the Defender of Rights has come across orders that appeared to be unsanctioned or disproportionate (preventive arrest of persons liable to attend a demonstration, instructions

---

<sup>14</sup> <http://www.defenseurdesdroits.fr/decisions/ddd/MDS-2013-34.pdf>

<sup>15</sup> CNDS, Opinion No. 2009-135, 20 April 2011.

given to law enforcement agencies for the 14 July procession seeking to prohibit the presence of banners, a prefect announcing recourse to the use of force to have a group of ten old ladies, holding only signs and candles, forcibly removed from a public street).

Sometimes, this unorthodox approach to maintaining order is coupled with a **difficulty in obtaining certain documents, or in establishing a chain of command**. This difficulty is encountered particularly in relation to what are termed “preventive” actions by law enforcement agencies.

Sometimes there is a **dispute as to whether or not an order was given**. This is very much the problem with oral instructions, which has been found to be the case in other fields, (such as not to contact the public prosecutor after such and such a time in the evening to release somebody from custody). Although it is generally possible trace a radio conversation between two law enforcement agents, certain conversations are not held via radio. It would therefore be appropriate for all orders given concerning the conducting of an operation to maintain order, and any subsequent changes thereto, to be made in writing, however briefly, so that the chain of responsibility can be determined in the event of a subsequent complaint.

**Comparative approach:** In other countries, such as the UK, the US and Belgium, the civil authorities are not decision-makers in setting out the strategy to be implemented in order to maintain order. The police authorities obviously do liaise with local civil authorities, in order to consult with them, but decision-making competence and the resulting responsibility remains entirely with the police.

#### Outcome of judicial investigations

A further particularity of petitions concerning operations to maintain order concerns the outcome of judicial investigations. It has often been observed that, in both criminal and civil law, **sanctions have tended to focus on the person who carried out an order**, whether this was to detain a demonstrator or to resort to the use of force. The person directly responsible hierarchically, who issues the order to use a weapon, and the authority deciding on the general course of action, are not always investigated.

Regarding an individual who has made unsanctioned use of a weapon in order to re-establish order, the Defender of Rights has not collected the outcomes of all of the criminal proceedings brought, as it has not been petitioned concerning all of the cases in which this grievance is evoked. It may nonetheless be noted that when there are criminal proceedings, the most serious sentence handed down appears to be a suspended prison term.

This was the case in two matters that recently went to court and which were also handled by the Defender of Rights in which an individual had suffered permanent serious injury following the use of a less-lethal launcher.

In **decision No. 2011-246** (3 July 2012)<sup>16</sup>, the Defender of Rights was petitioned concerning the circumstances under which a young boy, age 9, was seriously injured in the eye by a Flash-Ball superpro® shot by a gendarme, on 7 October 2011, in Longoni (Mayotte). The Defender of Rights found that the weapon had not been used in accordance with the regulations governing its use, and that it had not been in legitimate self-defence.

---

<sup>16</sup> [http://www.defenseurdesdroits.fr/decisions/ddd/decision\\_mds-2011-246.pdf](http://www.defenseurdesdroits.fr/decisions/ddd/decision_mds-2011-246.pdf)

The gendarme received an official warning and last month, the Court of Assizes of Mamoudzou recently convicted him with a two-year suspended prison sentence for violence resulting in serious injury and permanent maiming of a 15-year old minor.

In decision No. 2010-142 (7 Feb. 2012)<sup>17</sup>, the Defender of Rights was petitioned concerning the circumstances surrounding the facial injury of a 16-year old adolescent by a shot fired from a 40/46 less-lethal launcher, on 14 October 2010, in front of an upper secondary school where around one hundred young people were gathered, as part of a protest against pension reform. It emerged that the police officers, contrary to their statements, were not fending off a rain of projectiles at the time the shot was fired, that they were not surrounded and, moreover, that the young man who received the 40/46 less-lethal launcher shot was moving a rubbish bin, not preparing to launch a projectile against the police officers. Consequently, the Defender of Rights recommended that disciplinary proceedings be instated against the officer who had fired the 40/46 less-lethal launcher and his hierarchical superior who had taken the view that the situation allowed for the use of this weapon. The Correctional Court of Bobigny convicted the officer for aggravated wilful violent conduct, false testimony and use of falsified documents, with a one-year suspended prison sentence, a two year prohibition on the carrying of weapons and a one-year suspension of duties.

It should be remembered that, according to the European Court of Human Rights, national courts must not, under any circumstances, be found to have been prepared to allow serious harm to go unpunished, for example by handing down minimal or derisory suspended sentences to the officers responsible without ordering any disciplinary sanctions or limiting themselves to the charge of negligence without taking into account the life-threatening nature of the act, for example. By the same token, the mere awarding of damages and interest fails to meet the compulsory investigation requirement. The Court pointed out the dissuasive power that the criminal law system must wield in order to be effective in preventing human rights violations<sup>18</sup>.

#### Other forms of remedy

A number of other forms of remedy are available to a victim of an act by a law enforcement agent. A distinction must be drawn between administrative and judicial police operations as this determines which court is competent to hear an action seeking reparation for harm occasioned<sup>19</sup>.

#### *Proceedings before a judicial judge*

Proceedings before a judicial judge for misconduct in the justice system governed by Article L. 141-1 of the Code on Judicial Organisation, may proceed provided that **wilful misconduct** can be demonstrated, where the victim was the target of a judicial police operation (conversely, where third parties to a judicial police operation are concerned, the case law allows the liability of the State to be invoked for risk). It must be asked whether such a requirement meets the criteria for effective remedy. This is a question that the Defender of

---

<sup>17</sup> [http://www.defenseurdesdroits.fr/sites/default/files/upload/decision\\_mds\\_2010-142.pdf](http://www.defenseurdesdroits.fr/sites/default/files/upload/decision_mds_2010-142.pdf)

<sup>18</sup> ECHR, Nikolova and Velitchkova v. Bulgaria, No. 7888/03, 20 December 2007 and Oneryildiz v. Turkey, Grand Chamber, No. 48939/99, 30 November 2004.

<sup>19</sup> See circular NOR INT/D/07/00055/C issued by the Interior Minister on 4 May 2007

Rights put to the Paris Appeal Court concerning an action brought against identity checks said to have involved ethnic profiling.

#### *Proceedings before an administrative judge*

Alongside the general system for challenging the State by demonstrating misconduct, one further avenue is currently being explored by some plaintiffs: i.e. invoking no-fault administrative liability on the part of the State, primarily through two types of actions.

The first is an action to invoke State liability due to **harm resulting from gatherings and measures taken by the public authorities to re-establish order** (Article L. 211-10 of the Internal Security Code<sup>20</sup>).

In a case that was heard in December 2013 by the Administrative Court of Paris concerning the injury of a demonstrator after a Flash-Ball superpro® was fired, the Court acknowledged the State's liability, in view of the harm arising from the offences committed during gatherings, or assemblies, or measures taken by the public authorities to re-establish order<sup>21</sup>.

Also, a no-fault liability system exists for **special risks created by the use of weapons by law enforcement agencies against third parties**<sup>22</sup>. The Conseil d'Etat stipulated that where victims of the usage of these weapons are persons targeted by a police operation, the liability of the government is engaged where negligence can be demonstrated<sup>23</sup>.

Although the Conseil d'Etat applied this case law ruling strictly to firearms, an Administrative Court very recently applied it to harm resulting from a shot from a Flash-Ball superpro®. Indeed, the Administrative Court of Nice found that the Flash-Ball superpro®, in view of its inaccuracy and its power, should be seen as involving exceptional risk for persons and property<sup>24</sup>.

Therefore, the issue of government liability concerning the use of force, particularly the Flash-ball, will certainly arise more frequently in the future.

#### Reminder of EU standards concerning effectiveness of an investigation

The ECHR imposes positive obligations on States concerning investigation. In cases where State agents have resorted to the use of force, the purpose of the obligation to investigate is to ensure that State agents or bodies involved are made accountable for deaths and/or maltreatment for which they are liable.

For an investigation to be deemed effective, it must uphold a number of essential principles, including independence of the investigating authorities: the persons responsible for the inquiry and those carrying out the investigation must be independent of those parties involved

---

<sup>20</sup> CSI, Art. L. 211-10: "The civil liability of the State is engaged when damage and harm are occasioned as a result of crimes and offences committed, through the use of force or violence, by gatherings or assemblies, whether armed or unarmed, either against persons or property. It may bring an action for indemnification against a commune where the liability of the latter is found to be engaged".

<sup>21</sup> TA (Admin. Court) Paris, 17 Dec. 2013, 1202762.

<sup>22</sup> EC, 24 June 1949, No. 87335 Lecomte and Daramy.

<sup>23</sup> EC, sect., 27 July. 1951, *Dame Aubergé and Sieur Dumont*.

<sup>24</sup> TA (Admin. Court) Nice, 28 Oct. 2014, No. 1217943/3-1.

in the events and must be impartial. This not only means that there must be no hierarchical or institutional connection but that there must also be independence in practice.

In this regard, the ECHR took the view that the independence of the Public Prosecutor, overseer of the investigation, could not be challenged on the sole ground that the police officers involved were under his orders, even though it would have been preferable for the investigation to be supervised by another prosecutor, if the degree of independence is sufficiently large and if the possibility exists for oversight by an independent tribunal.

Concerning the **procedural compliance of investigations undertaken by internal inspectorates**, in a recent case against France, the ECHR adjudged that the services of the Inspectorate General of the National Gendarmerie (IGGN) possess sufficient independence since the IGGN has national competence, independent of the formed units that make up the Gendarmerie, and possesses its own chain of command<sup>25</sup>.

The ECHR has also previously adjudged that, within the context of an investigation concerning an allegation of unlawful homicide committed by an agent of the State, seeking expert appraisal from a law enforcement agency having specific competence but which belongs to the same corps as the person involved, does not make it automatically incompatible with the requirement for it to be impartial<sup>26</sup>. The system currently in place in France therefore seems able to comply with EU requirements, except as regards the degree and the nature of the sanctions imposed.

## *2- Relations between the Defender of Rights and internal oversight bodies*

### Assessment of internal oversight bodies of law enforcement agencies

In the majority of cases that have involved serious harm to a plaintiff especially in the case of bodily harm, or damage to property, the Defender of Rights intervenes after an investigation has already been carried out by an internal oversight body. Although the quality of investigations conducted by the Inspectorate General of the National Police Force (IGPN) and the Inspectorate General of the National Gendarmerie (IGGN) does not call for any particular observations, it sometimes observes lacunae and even approximations in certain investigations entrusted to local civil servants. The criteria for allocation from central bodies to local personnel are still not well understood.

Similarly, despite several requests, the Defender of Rights has not received information concerning the number of sanctions imposed, and their adequacy in relation to the acts sanctioned.

### *Non-uniform nature of criteria used to allocate investigations to central inspectorates or local satellite departments*

There is no transparency in the criteria used to choose between a central inspectorate (IGPN or IGGN) and a local department, sometimes termed an “audit and discipline” department, that reports to a departmental public safety directorate. Therefore, when a citizen directly petitions an inspectorate or the Procurator of the Republic, the choice of body that will actually conduct the investigation – the central inspectorate or a local satellite department –

---

<sup>25</sup> ECHR, Guerdner and Others v. France, 17 April 2014, req. No. 68780/10.

<sup>26</sup> ECHR, Giuliani and Gaggio v. Italy, 24 March 2011, req. No. 2348/02.

seems to vary, depending on the remit and the nature of the acts, without the criteria used to make this choice being known. In the interests of transparency and uniformity, it would be appropriate to clarify what these allocation criteria are.

#### *Lack of data on sanctions and the nature of the sanctioned acts*

On a number of occasions and to no avail, the Defender of Rights has requested specific data on the adequacy of the sanctions imposed in relation to the sanctioned acts. The response it received was that these figures were not collected centrally, either by inspectorates or by the Interior Minister. However, the Defender of Rights takes the view that in the interests of transparency, it is essential that the acts for which police officers and gendarmes are sanctioned and the seriousness of the sanction imposed in relation to the nature of the acts be made known.

The Defender of Rights finds it regrettable that this information has still not been made available to it.

#### Relations between the Defender of Rights and oversight bodies

Relations between the Defender of Rights and oversight bodies, generally speaking the inspectorate generals of the agents investigated, are excellent

#### *Very good cooperation by inspectorates with the investigations of the Defender of Rights*

The IGPN and the IGGN are regularly consulted by the Defender of Rights to pass on reports by law enforcement or military personnel (either witnesses or the accused), copies of administrative documents, copies of audiovisual recordings and general instructions. All summons for hearings, of which there are around 150 each year, are also centralised by inspectorates who pass them on to the persons summonsed in their assigned locations. The passing on of information therefore runs very smoothly and allows the Defender of Rights to conduct its investigations under the right conditions.

The response times and availability of parties summonsed by the Defender of Rights are very satisfactory.

#### *Productive partnerships between the Defender of Rights and the inspectorates and more generally with the directorates general*

Since the Decree of 28 August 2013 concerning the missions and organisation of the Inspectorate General of the National Police Force<sup>27</sup>, which led to far-reaching reform of the IGPN (particularly by allowing for the direct submission of petitions), the Defender of Rights has been a member of the steering committee of this institution. It was therefore involved in some of this work and is able to propose avenues for more in-depth reflection.

Because it believes firmly in participation in its work by the bodies being investigated, the Defender of Rights regularly involves them, either by appointing certain of their representatives as members of working groups (for example on identity checks), or by inviting them to give presentations during seminars (for example on maintaining order, in

---

<sup>27</sup> Decree No. 2013-784, OJ 30 August.

March 2015), or by attending hearings (for example on identity checks, home visits in the presence of children, or manifest public drunkenness).

More broadly, the Defender of Rights is involved in the training of agents, as the Defender of Rights personally, his deputy in the field of security ethics and his agents give presentations to students undergoing training: superintendents, officers, community police officers, etc.

However, there is no joint investigatory team bringing together agents of the Defender of Rights and internal inspectorate agents.

**Comparative approach:** In Belgium there is a partnership between internal and external oversight bodies dealing with operations to maintain order. Accordingly, Comité P and internal inspectorate agents are present at sensitive demonstrations, and are identified as such, and are able to observe and receive complaints and record the grievances of demonstrators

### *3- Use of video during operations to maintain and re-establish order*

The recording of images, whether by demonstrators or by law enforcement agencies, is naturally very useful for investigations concerning the actions of both demonstrators and law enforcement agents.

The Defender of Rights has had cause to lament the fact that demonstrators or journalists filming the actions of law enforcement agencies were subjected to the use of force, or to confiscation of the images taken, in violation of the memorandum issued by the Interior Minister<sup>28</sup>.

The capturing of images by law enforcement agencies ought to be developed, as is already the case in other countries. Germany and Belgium, for example, use trucks, often mounted with water cannons, on which are fitted cameras that allow several angles of view of the demonstration to be recorded.

In France, mobile gendarme squads are being equipped with GoPro cameras, which appears to be a very positive development.

Usage of video could also certainly be useful for the intelligence services and to locate, identify and arrest trouble-makers at the end of a demonstration or shortly thereafter.

---

<sup>28</sup> Circ. DGPN, 23 December 2008, concerning the recording and potential dissemination of the images and speech of police officers in the discharging of their duties. See, for example, decision MDS-2013-77 by the Defender of Rights, dated 19 November 2013 <http://www.defenseurdesdroits.fr/decisions/ddd/MDS-2013-77.pdf>