

PROTECTION OF PEOPLE VULNERABLE

What is a vulnerable person?

A vulnerable person is a person among whom the **faculties have been altered by a disease, a handicap or an accident** who is not able to fully defend its interests.

These people may be protected by a **legal protection measure** pronounced by a judge. The judge may **designate another person to help protect its interests**. The efficient judge is the one responsible for guardianship orders.

The protection must be less restrictive as possible, **and in priority be exerted by the family or close people**.

Who have the ability to protect a vulnerable person?

Only certain people may seize the judge responsible for guardianship orders:

- The person to be protected, or the one living in couple with (marriage, spousal recognition, spouse).
- Member of its family, close relative having stable narrow relationship
- The person's already exerting a legal protection measure
- The Public Prosecutor makes its request either on its own initiative or from the request of a third party (for example: a doctor, a health facility director, social worker)

What is the court protection?

The court protection is a short time legal protection measure that allows an adult to be represented to perform certain specified acts.

The one under court protection **keeps the right to perform all life civil acts, except those given to a special trustee**.

The one under court protection **cannot divorce by mutual agreement or accepted**.

The court protection allows to deny certain acts against the adult interests, that he would have passed during the court protection, whether cancelling them, or correcting them.

It applies to persons of full age requiring:

- **A temporary representation:** an adult suffering from a temporary disability (coma, skull trauma)
- **A representation on certain acts:** an adult in need of representation for certain specified acts.

- **A lasting representation:** an adult whose faculties are durably reached and who needs an immediate protection during the request instruction for the purpose of setting up a more protective measure (guardianship or trusteeship).

The court protection may be made by **a medical statement from the Public Prosecutor:**

- whether by the person's doctor, enclosed with the psychiatrist assent,
- whether by the health facility doctor where the person is.

The **custody of justice may be pronounced by the judge responsible for guardianship orders.**

The judge may **designate one or several special trustees to perform accurate acts**, of which the protection of the person makes necessary. It is, for example, a bank placement use, a house sale...

The judge chooses the **special trustee, in priority among the relatives.**

The court protection **cannot exceed 1 year, one time renewed** by the judge responsible for guardianship orders.

Caution: In accordance with the conditions laid down in the 1249 article of the Code of civil procedure, no possible appeal because the court protection does not change the rights of the person concerned.

What is the trusteeship?

The trusteeship is a legal measure to protect an adult who **needs to be advised or controlled in some of civil life acts.**

A person protected by the trusteeship **makes its own decision about itself if conditions are goods** (ex: job change, relocation, personal relationships).

However must obtain the curator authorization, or in default the judge one, to get married, and for all decision about the main residence.

Must be assisted to conclude a solidarity civil pact or to perform the disposal acts and donations.

Different level of trusteeship exist:

- **Simple trusteeship:** the person performs the acts of current management but must be assisted by the curator for the most important acts.
- **Reinforced trusteeship:** the curator touches the person resources but settle its expenses on an account in the name of this one.
- **Settled trusteeship:** The judge lists the acts the person can do alone or not.

The judge **nominates one or several curators.**

The judge fixes the time of guardianship. Initially for 5 years or 10 years in case of faculties' alteration **obviously not likely to experience any improvement** according to the science acquired data (law n°2015-177 February 16, 2015).

At the end of this first period, the measure may be renewed, whether for the same time or longer (article 442 of the civil code).

What is the guardianship?

The guardianship is a legal measure made to protect an adult **who needs to be represented in a row in the life civil acts** (change of the mental faculties or physical one making unable to express its will).

A legal guardian represents him in the life civil acts. The judge may list, at all time, the acts of the person can do alone or not, case by case.

The guardian may **take the necessary protection measures not to jeopardize, because of his behavior, the adult will put himself in.** He keeps the judge informed.

The adult under protection **must have the judge authorization or the family counseling** for the marriage or spouse recognition, the acts of disposal and donations, the main residence and the will.

The judge **nominates one or several guardians.** In some case, the judge can **nominate a family counseling**, who chooses the guardian, a subrogated guardian and where applicable a specially appointed guardian.

The judge fixes the time. It **cannot last more than 5 years or 10 years, in case of the faculties' alteration obviously not likely to experience any improvement** according to the science acquired data.

Whatever the measure is, the judge can modify it and especially, alleviate it at all time (examples: shorten the fixed time, raise the decisions number that the adult can do alone, change the legal representative).

When does the protection measure end?

The measure may end:

- At all time if the judge decides it is not necessary anymore, at the adult request or all authorized person to put somebody into the care of a guardian, the judge ruling after medical opinion.
- When the date is expired, if no renewal requested,
- If another protection measure is pronounced replacing

PROCEDURE

Saisine du juge des tutelles

Referral to court from the judge responsible for guardianship orders.

To seize this judge, it is necessary to apply for legal remedy:

Tribunal d'Instance de Cayenne
Juge des tutelles
14 rue Lallouette
97300 Cayenne

The application must be signed by the applicant and include:

- The medical certificate mentioning the faculties' alteration of the person,
- The person identity to protect and its birth certificate
- The applicant identity and all document that prove its link with the adult to protect,
- Statement of detailed facts that require this protection,
- The identity and contact details of family and friends,
- **The request form cerfa n°15424*01**
https://www.formulaires.modernisation.gouv.fr/gf/cerfa_15424.do

To obtain this medical certificate so wanted, it is necessary to seek a physician on a list established by the Public Prosecutor. The cost of this medical certificate is 160 euros (*enclosed the list of the physicians under oath*).

The judge responsible for guardianship orders will establish if the vulnerable person needs the protection measure and, if yes, under which protection regime the vulnerable person must be placed, according to the one faculties' alteration.

The judge hears the adult to protect (if possible) and examine the request. He can hear whoever wants to be heard, and their possible lawyers, as well as all the persons whom statement seems necessary. The judge will choose **in priority, a relative or a close friend to represent** the vulnerable person. If impossible, the judge will name a professional, called '**legal proxy to protect the adults**'.

The representative of people vulnerable must be **held accountable for the contract execution** to the one protected and to the judge too.

Request for reconsideration

Before the end of the measure, all person authorized to request the opening of the legal measure may submit a request for reconsideration to the judge responsible for guardianship orders.

Apply for legal remedy to the judge: *New consideration for the legal protection measure of the adult Cerfa n°14919*01:*
https://www.formulaires.modernisation.gouv.fr/gf/cerfa_14919.do