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Mistrust

Verified 26 janvier 2021 - Directorate of Legal and Administrative Information (Prime Minister), Ministry of Justice

Abuse of trust is characterised by the misappropriation of funds or property belonging to others contrary to what was agreed with its owner. The procedure to be initiated depends on the status of the perpetrator.

General case

What's that about?

Case of breach of trust

There is an abuse of trust when a person takes a piece of property from his victim. This property can be a sum of money, a commodity, a check... This is the case, for example, if an accountant diverts a sum of money entrusted by a client for an investment.

This is also the case for computer data: for example, if a salesperson takes a client file from their company to use in their new job.

In order for the breach of trust to be recognised, it is necessary to prove that the good:

- has been misappropriated
- or was not returned within the time limit set.

 **Please note :** No criminal proceedings may be brought for breach of trust between spouses or between children and parents (family immunity). On the other hand, the author can be prosecuted if he has misappropriated an object or a property essential to everyday life (identity card, bank card, residence permit...) and the victim is his spouse, parent or child.

Difference with theft, fraud and abuse of weakness

- Abuse of trust differs from **fraud** (<https://www.service-public.fr/particuliers/vosdroits/F1520?lang=en>). When there is a breach of trust, there is no initial fraud. The author of the facts possesses **a real right** on the property concerned. There is fraud if the author **make** that he has a right to the property (for example, if the perpetrator withdraws money from the victim's account with a false power of attorney).
- Abuse of trust differs from **flight** (<https://www.service-public.fr/particuliers/vosdroits/F1523?lang=en>). In case of breach of trust, the victim **voluntarily** the property to the author of the facts or **allowed** to the author to dispose of this property. There is theft if the property was taken by the perpetrator **without consent** and **without voluntary** of the victim.
- Abuse of trust is also distinct from abuse of weakness. In the case of abuse of weakness, the perpetrator takes advantage of the weakness of a victim to do an act whose consequences she does not measure. Weakness is defined, for example, by the age, disability or pregnancy of a person.

Victim's Recourse

Criminal complaint

Victim can **file** (<https://www.service-public.fr/particuliers/vosdroits/F1435?lang=en>) for breach of trust.

The complaint must be filed within 6 years of the discovery of the facts. The date of discovery is the date on which the victim has the evidence to establish the misappropriation of his property (for example, when he calls his bank and finds that the money is not on his account).

However, it is not possible to file a complaint more than 12 years after the event, even if it is discovered late.

On site

You must go to a police station or the police force of your choice.

Who shall I contact

- **Police**  (<http://www.interieur.gouv.fr/Contact/Contacter-une-brigade-de-gendarmerie-ou-un-commissariat-de-police>)

The police or gendarmerie are obliged to register the complaint.

The complaint is then transmitted to the public prosecutor to decide on the follow-up (investigation, classification without further action...).

If you don't know the author of the facts, you can complete a pre-complaint online before you move.

You will then get an appointment and the police or gendarmes will already have the elements of your complaint when you arrive.

Online Pre-Complaint

Ministry of the Interior

Go to
online service 
(<https://www.pre-plainte-en-ligne.gouv.fr/>)

By mail

You can file a complaint directly with the public prosecutor. We need to send free paper letter (<https://www.service-public.fr/particuliers/vosdroits/R11469?lang=en>) the court of the place of the offence or the place of domicile of the offender.

The letter shall specify:

- ▶ Civil status and full contact information (address and telephone number) of the complainant
- ▶ Detailed account of the facts, date and place of the offence
- ▶ Supposed author's name if you know him (otherwise, the complaint will be filed against X)
- ▶ Names and addresses of potential witnesses to the offence
- ▶ Description and provisional or final estimate of the injury
- ▶ Evidence: medical certificates, work stoppages, various invoices, findings
- ▶ Willingness to become a civil party

File a complaint with the public prosecutor

Directorate of Legal and Administrative Information (Dila) - Prime Minister

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(https://www.service-public.fr/simulateur/calcul/Porter_plainte)

Who shall I contact

- ▶ Court or Proximity Court  (<https://www.justice.fr/recherche/annuaires>)

You can send your complaint by registered letter or by simple letter. You can also file your complaint directly at the court reception. In all cases, you will receive a receipt as soon as the public prosecutor's office has registered your complaint.

 **FYI** : If the victim is under the supervision of a guardian, he or she may lodge a complaint alone or with the assistance of the guardian. If the victim is under guardianship, it is the guardian who makes the complaint on his behalf.

Compensation for injury

The victim may also request compensation (<https://www.service-public.fr/particuliers/vosdroits/N19679?lang=en>). To do so, the party must be a civil party at the time of filing the complaint or during the proceedings, and this until the hearing.

The victim can claim as compensation:

- ▶ the amount of the price of the diverted property,
- ▶ damages to cover the costs incurred in the proceedings, the costs incurred in the deprivation of the object and the moral damage.

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Other actions

If the perpetrator has power (<https://www.service-public.fr/particuliers/vosdroits/F1474?lang=en>), the victim can stop it.

It can also opposition to transfers (<https://www.service-public.fr/particuliers/vosdroits/F2384?lang=en>) for the benefit of the perpetrator. However, it is not possible to request a blocking credit card (<https://www.service-public.fr/particuliers/vosdroits/F2428?lang=en>) or checks (<https://www.service-public.fr/particuliers/vosdroits/F2409?lang=en>).

Penalty

General case

Abuse of trust is punishable by 5 years in prison and 375,000 € fine.

➔ **FYI** : If the author of the facts is a notary, a bailiff... he faces up to 10 years in prison and €1 500 000 fine.

The accomplice faces the same penalty as the perpetrator of the breach of trust.

Vulnerable

the sentences may be up to 7 years in prison and €750 000 a fine if

- the victim is a vulnerable person due to age, illness or pregnancy...
- and the author of the facts is a corporate executive, a banker...

The accomplice faces the same penalty as the perpetrator of the breach of trust.

Social or Humanitarian Association

the sentences may be up to 7 years in prison and €750 000 a fine if

- the victim is a social or humanitarian association
- and the author of the facts is a corporate executive, a banker...

The accomplice faces the same penalty as the perpetrator of the breach of trust.

Curator or Guardian

What's that about?

Case of breach of trust

There is a breach of trust if a trustee or guardian takes advantage of his rights to divert the property of his victim to his benefit.

In order for the breach of trust to be recognised, the property must therefore have been diverted from its intended use.

➔ **FYI** : there is an abuse of trust even if the offending guardian or curator is from the victim's family.

Difference with scam and abuse of weakness

Abuse of trust differs from **fraud** (<https://www.service-public.fr/particuliers/vosdroits/F1520?lang=en>). When there is a breach of trust, there is no initial fraud. The author of the facts **real** the right to manage the victim's money as a guardian or strengthened curator.

On the other hand, fraud occurs if the perpetrator is **simple curator** (<https://www.service-public.fr/particuliers/vosdroits/F2094?lang=en>), but makes the bank believe that it has the rights of **tutor** (<https://www.service-public.fr/particuliers/vosdroits/F2120?lang=en>) by presenting a false document. A mere trustee is not entitled to collect the income of the protected major.

Abuse of trust is also distinct from abuse of weakness. In the case of abuse of weakness, the perpetrator takes advantage of the weakness of a victim to do an act whose consequences she does not measure. Weakness is defined, for example, by the age, disability or pregnancy of a person.

Appeal

Criminal complaint

A major under the curatorship can lodge a complaint alone.

A relative of the victim or the **substitute curator or subrogate tutor** (<https://www.service-public.fr/particuliers/vosdroits/F10507?lang=en>), if there is one, can report acts of breach of trust against the curator or guardian.

The complaint must be filed within 6 years of the discovery of the facts. The date of discovery of the facts is the date on which the victim's relative has the information to establish the diversion of the property. For example, when the relative calls the bank and finds that the money is not in the victim's account.

However, it is not possible to file a complaint more than 12 years after the event, even if it is discovered late.

On site

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The complaint is then transmitted to the public prosecutor to decide on the follow-up (investigation, classification without further action...).

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The letter shall specify:

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You can send your complaint by registered letter or by simple letter. You can also file your complaint directly at the court reception. In all cases, you will receive a receipt as soon as the public prosecutor's office has registered your complaint.

Compensation for injury

The adult under the guardianship, the victim, can claim compensation for his injury.

The substitute curator or guardian may also request the [compensation \(https://www.service-public.fr/particuliers/vosdroits/N19679?lang=en\)](https://www.service-public.fr/particuliers/vosdroits/N19679?lang=en) the curator or guardian. Compensation will be paid to the protected major.

The victim can claim as compensation:

- the amount of the price of the diverted property,
- and damages to cover the costs incurred in the proceedings, the costs incurred in the deprivation of the object and the moral damage

Other actions

A person close to the protected adult, the subrogate curator or guardian [may \(https://www.service-public.fr/particuliers/vosdroits/F10507?lang=en\)](https://www.service-public.fr/particuliers/vosdroits/F10507?lang=en) the judge of the guardians to terminate the mandate of the wrongful guardian or curator.

The subrogate can also alert the victim's bank to [block transfers](https://www.service-public.fr/particuliers/vosdroits/F2384?lang=en) for the benefit of the perpetrator. However, it is not possible to request a [bank card blocking](https://www.service-public.fr/particuliers/vosdroits/F2428?lang=en) or [checks](https://www.service-public.fr/particuliers/vosdroits/F2409?lang=en).

 **FYI** : a report to the authorities must also be made in case of [abuse of older persons](https://www.service-public.fr/particuliers/vosdroits/F861?lang=en).

Penalty

Abuse of trust in a vulnerable person is punishable by:

- 7 years in prison
- and €750 000 fine.

The accomplice is subject to the same penalty as the perpetrator.

Statute and miscellaneous references

- Penal Code: Articles 314-1 to 314-4 [↗](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165334?etatTexte=VIGUEUR&etatTexte=VIGUEUR_DIFF#LEGISCTA000006165334)
Penalties
- Code of Criminal Procedure: Article 15-3 [↗](https://www.legifrance.gouv.fr/codes/id/LEGIARTI000038311441)
Complaint
- Penal Code: Articles 311-12 and 311-13 [↗](https://www.legifrance.gouv.fr/codes/id/LEGIARTI000042193493)
Family Immunity
- Code of Criminal Procedure: Article 8 [↗](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000034099781)
Limitation period
- Code of Criminal Procedure: Article 9-1 [↗](https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071154&idArticle=LEGIARTI000034098591)
Limitation period