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Abuse of weakness

Verified 06 mars 2020 - Directorate of Legal and Administrative Information (Prime Minister), Ministry of Justice

Abuse of weakness is the fact that a person takes advantage of the ignorance or physical or mental weakness of another person, to make him subscribe to a contract unsuited to his needs. This is the case, for example, of a convenience store operator abusing an elderly person to accept an exorbitant estimate. The victim may lodge a complaint to obtain the conviction of the perpetrator. It may also obtain the cancelation of the contract.

Definition

Abuse of weakness occurs when a person takes advantage of another person's vulnerability to cause him to do something contrary to his interest. The perpetrator is aware of the weakness and ignorance of his victim. Vulnerability may be due to age, illness, physical or mental disability. This could be a minor, an elderly or disabled person, a pregnant woman...

The perpetrator may also exert severe and repeated pressure to manipulate the victim in such a way as to alter his or her judgment.

Abuse of weakness cases

- Commercial solicitations, for example, abusive and repeated telephone solicitations, home solicitations, are abuses of weakness when they are directed at particularly vulnerable people. The same applies to transactions made in places not suitable for sale (parking, hotel..).
- This is also the case for sales at too low prices or where the needs do not exist, for example the sale of an Internet subscription to a person who does not have a computer or the transactions concluded in the emergency when the victim has not had time to draw up an estimate (e.g. lock blocked, car or heating down, faulty appliances..).
- Can be considered a victim of abuse, the person suffering psychological or psychological pressure under the influence of sects or sectarian movements or a third party (a neighbor, a friend, a family member..).
- Donations without consideration (remittances, transfers, checks, payment by credit card, bank withdrawals of large and unusual sums) are abuses of weakness when made by particularly vulnerable people. The same applies to unjustified proxies (most often bank proxies).
- Abstaining from an act may be a case of abuse of weakness (for example, being induced not to refuse a loss-making estate).

Difference with abuse of trust

Abuse of weakness should not be equated with [breach of trust](https://www.service-public.fr/particuliers/vosdroits/F1515?lang=en) (<https://www.service-public.fr/particuliers/vosdroits/F1515?lang=en>).

- In the abuse of trust the perpetrator diverts the property or funds of the victim who has placed his trust in him
- In the case of abuse of weakness, the perpetrator takes advantage of the vulnerability of the person in order to lead him to sign a contract contrary to his interest or to refrain from an act which may be seriously prejudicial to him.

Victim conditions

It does not measure the scope of its commitment and does not know the consequences of its actions. She is unable to cope with the pressure because of her fragility.

This weakness may be due to one of the following

- Age: for example, an elderly person who does not measure the financial consequences of his commitment or a minor who undertakes a contract without having legal capacity
- Physical or intellectual disability (physical or mental disability, illness)
- Durable or temporary depressive state, economic situation, psychological state, isolation, separation..
- Lack of knowledge of the language, which may lead to a lack of knowledge of the value of money
- Low level of education

Recourse of the victim

The victim has civil and/or criminal remedies.

The victim must prove that the abuse by the perpetrator and its consequences were intentional. It must also prove its vulnerability. Procedures and remedies will depend on the status of the perpetrator and the victim and the offenses committed.

Cancelation of contract

The contract may be canceled for breach of consent.

Cancelation of a home sale for abuse of weakness can be requested.



Request cancellation of a home sale for abuse of weakness

National Institute of Consumer Affairs (INC)

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(<https://www.inc-conso.fr/content/un-demarcheur-domicile-venu-une-grande-quantite-de-linge-de-maison-votre-grand-mere-vous>)

It is the person who asks for the annulment of the act who must show proof of the abuse of weakness by any means. This may include, for example, the production of a medical certificate indicating the vulnerability of the victim and his or her lack of discernment at the time of the engagement.

The victim may request the cancellation of the fraudulent contract. It may request the return of the sums of money which have been taken from it. It may also request **compensation for damage** (<https://www.service-public.fr/particuliers/vosdroits/F1422?lang=en>).

For the adult protected by a protection measure (guardianship), the act may be canceled or reduced.

The deadline prescription the invalidity period shall be 5 years for the victim, starting from the contested act.

If the victim has died, the action may be brought by his or her heirs, subject to certain conditions.

If the victim is a minor, the period of 5 years shall run from the age of majority.

For the protected adult, the starting point of the prescription is 5 years from the judgment.

Complain

The victim can **file** (<https://www.service-public.fr/particuliers/vosdroits/F1435?lang=en>) for abuse of weakness.

If she is a minor, the complaint will be filed by her legal representative

If the victim is a protected adult, it is the guardian who lodges a complaint on his behalf or the victim assisted by his or her guardian.

On site

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

Who shall I contact

- **Office or Force**  (<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 follow-up...).

If you do not know the author of the facts, you can fill out a pre-complaint online before moving.

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 lodge 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 offense or the place of residence of the offender.

The letter must include the following:

- Civil status and full contact information (address and telephone number) of the complainant
- Detailed account of the facts, date and place of the offense
- Assumed author's name if you know him (otherwise the complaint will be filed against X)
- Names and addresses of potential witnesses to the offense
- Description and provisional or final injury estimate

- Evidence: medical certificates, work stoppages, various invoices, findings
- Willingness to take part in civil proceedings



Make a complaint to the public prosecutor

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

Go to
document template [↗](https://www.service-public.fr/simulateur/calcul/Porter_plainte)
(https://www.service-public.fr/simulateur/calcul/Porter_plainte)

Who shall I contact

- [Court of Justice or Proximity](https://www.justice.fr/recherche/annuaires) [↗](https://www.justice.fr/recherche/annuaires) (<https://www.justice.fr/recherche/annuaires>)

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

The complaint must be filed within 6 years of the discovery of the facts. If the acts are repeated, it is the last act committed that will make the delay run. In the event of a late discovery of this offense, if the offense has been concealed, the period may not exceed 12 years from the date of the facts.

Penalties incurred

Abuse of weakness can be punished with 3 years in prison and a fine of €375,000.. It may be accompanied by a prohibition to practice if the offense occurred in the exercise of a profession,

If the abuse of weakness is not proven, the facts can be characterized as deceptive business practice, which can be punished with 2 years in prison and a fine of €300,000..

Statute and miscelanious references

- Penal Code: Articles 223-15-2 to 223-15-4 [↗](https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006165293/) (<https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006165293/>)
Fraudulent abuse of ignorance or weakness
- Code of Criminal Procedure: Article 15(3) [↗](https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000038311441&cidTexte=LEGITEXT000006071154) (<https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000038311441&cidTexte=LEGITEXT000006071154>)
Complaint
- Code of Criminal Procedure: Article 8 [↗](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000034099781) (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) (<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071154&idArticle=LEGIARTI000034098591>)
Limitation period
- Civil Code: rule 414-1 [↗](https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006427977&cidTexte=LEGITEXT000006070721) (<https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006427977&cidTexte=LEGITEXT000006070721>)
General provision on the validity of an act
- Civil Code: Rule 464 [↗](https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006427773&cidTexte=LEGITEXT000006070721) (<https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006427773&cidTexte=LEGITEXT000006070721>)
Regularity of acts of protected persons
- Civil Code: Articles 901 to 911 [↗](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006136540&cidTexte=LEGITEXT000006070721) (<http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006136540&cidTexte=LEGITEXT000006070721>)
Ability to dispose or receive by gift between living or by will.
- Civil Code: rule 2224 [↗](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000019016471) (https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000019016471)
Civil procedure
- Civil Code: Articles 1145 to 1152 [↗](https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032008380&cidTexte=LEGITEXT000006070721) (<https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032008380&cidTexte=LEGITEXT000006070721>)
Postponement of limitation (Rule 1152)
- Consumer Code: Articles L121-8 to L121-10 [↗](https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032227280&cidTexte=LEGITEXT000006069565) (<https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032227280&cidTexte=LEGITEXT000006069565>)
Banned commercial practices
- Consumer Code: Article L122-8 [↗](https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000028748844&cidTexte=LEGITEXT000006069565) (<https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000028748844&cidTexte=LEGITEXT000006069565>)
Illicit commercial practices
- Consumer Code: Article L132-13 [↗](https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032227087&cidTexte=LEGITEXT000006069565) (<https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032227087&cidTexte=LEGITEXT000006069565>)
Civil sanctions
- Consumer Code: Articles L132-14 to L132-15 [↗](https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032227875&cidTexte=LEGITEXT000006069565) (<https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032227875&cidTexte=LEGITEXT000006069565>)
Criminal sanctions
- Consumer Code: Articles L132-17 to L132-18 [↗](https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032227073&cidTexte=LEGITEXT000006069565) (<https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000032227073&cidTexte=LEGITEXT000006069565>)

For more information, please contact

- **Abuse of weakness** [↗](https://www.inc-conso.fr/content/labus-de-faiblesse) (<https://www.inc-conso.fr/content/labus-de-faiblesse>)
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