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**Violence in elderly care**

**Analysis of the current state in France**

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## Introduction

As the second wave of the Covid-19 epidemic strikes Europe, the issue of violence in the care of the elderly is more topical than ever. The health crisis that we are facing is indeed undermining ethics by overturning organisations and reviving the tension between protection and freedom.

This subject is all the more acute as the majority of injuries suffered by older people are caused by those close to them : family members, relatives or professional workers. This phenomenon has been highlighted relatively recently. The first signs of concern date back to the 1970s in the United States. In the 1980s, studies were carried out, particularly in Anglo-Saxon and Northern European countries. It was not until the early 1990s that the problem of this particular victimisation of older people was clearly identified in France. Violence in the elderly care embraces a complex reality. First of all, it is distinguished by the great diversity of behaviours it encompasses. In 1987, the Council of Europe, in the report of the Committee "Violence within the Family", stated that "violence is characterised by any act or omission committed by a person if it affects the life, physical or mental integrity or freedom of another person or seriously compromises the development of his or her personality and/or harms his or her financial security". The Secretary-General's report "Abuse of older persons", submitted in 2002 to the United Nations, states that "violence against vulnerable persons refers to any violent act that results, or is likely to result, in physical, sexual or psychological harm; it may include threats, neglect, exploitation, coercion or arbitrary deprivation of liberty, whether in public or private life".

The Council of Europe extended its definition in 1992 with a classification which illustrates the diversity of the acts covered and which has inspired most subsequent classifications of violence against older people.

- physical violence: beatings, burns, tying up, abrupt care without information or preparation, failure to meet demands for physiological needs, sexual violence, murder, including euthanasia ;
- psychological or moral violence: disrespectful or devaluing language, lack of consideration, blackmail, abuse of authority, infantile behaviors, non-respect of intimacy, paradoxical injunctions ;
- material and financial violence : theft, demands for tips, various swindles, unsuitable facilities ;
- medical or drug-related violence: lack of basic care, lack of information on treatments or cares, abuse of sedative or neuroleptic treatment, lack of rehabilitation cares, no consideration of pain ;
- active neglect : all forms of ill-treatment, abuse, abandonment, neglect carried out with malicious intent ;
- passive neglect: due to ignorance or inattention from the entourage ;

- deprivation or violation of rights : limitation of personal freedom, deprivation of the exercise of civil rights, deprivation of religious practice ;
- civic mistreatment : this category concerns the violation of the elementary rights of the citizen (misappropriation of power of attorney, deprivation of identity papers, confinement).

Violence in elderly care is also characterised by the particular context in which it occurs. The vulnerability of the victim and the relationship of dependence, or even trust, which unites him/her with the perpetrator are recurrent elements<sup>1</sup>.

Finally, it can be caused by individuals as well as by collective practices linked to organisational deficiencies, a lack of resources or inappropriate collective rules.

This note will not discuss violence between older persons, nor violence against family or professional carers. The asymmetrical nature of the relationship related to the particular vulnerability of the victim and her need for help is lacking in these hypotheses.

In France, violence against vulnerable elders, including in the context of support by a service or institution, is identified as badtreatment. The national policy to struggle violence against older people has therefore been built around this notion (I). French law also includes measures to prevent, reveal and punish a certain number of violent behaviours, thus providing a protective framework (II).

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<sup>1</sup> « Toronto declaration on the global prevention of elder abuse », WHO, 17 november 2002 :  
« *Elder Abuse is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person. It can be of various forms: physical, psychological/emotional, sexual, financial or simply reflect intentional or unintentional neglect.* »

## I. National policy on fighting violence in elderly care

Since the early 2000s, France has been conducting an active policy to fight against abuse and to promote welltreatment. This policy, mainly driven by the State (A), is structured around major guidelines (B).

### A) National policy actors

The policy to fight against abuse and promote welltreatment is led by the State, with the support of other actors at national and local level.

#### 1. The State

The main driver of anti-badtreatment policy is the State. The Ministry in charge of Solidarities and Health defines the objectives of this policy and its dedicated means<sup>2</sup>.

At the local level, the Ministry's action is relayed by :

- The **Regional Health Agencies** (Agences Régionales de Santé), which are public institutions in charge of health policy in the regions and, as such, are responsible for piloting programmes, systems and procedures in the fight against badtreatment.
- The **prefect**, who represents the State in the department and who in that capacity is responsible for the coordination of the policy to combat abuse at local level. He has a general power of control over all social and medico-social facilities in order to ensure the safety of the people.
- The **Regional Directorates for Youth, Sport and Social Cohesion**, which deal in particular with public policies on social matters and have a role in protecting vulnerable populations.

#### 2. The County Councils

County councils are territorial collectivities that are freely administered by local elected and to which the State has transferred certain powers. The county councils thus have an important steering role in the implementation of social policies for older people within their area and are the supervising authorities, alongside the Regional Health Agencies, for facilities providing elderly care.

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<sup>2</sup> The Minister of Solidarity and Health is currently Olivier Véran. A Minister Delegate in charge of autonomy, Brigitte Bourguignon has recently been nominated to lead the policy towards the elderly. It is therefore the latter who is responsible for the fight against abuse.

### **3. The 3977: a dedicated national phone number**

The 3977 is a government-funded scheme that brings together :

- A national listening platform;
- A network of local centres throughout France.

It is placed under the governance of the 3977 Federation against badtreatment, whose objective is to run and coordinate a warning system on the risks of abuse towards the elderly and adults with disabilities.

3977 aims to listen to and help callers confronted to abusive situations : victims or witnesses, at home or in institutions, professionals and supportive relatives.

### **4. The High Council for the Family, Childhood and Age**

Created by the law of 28 December 2015 regarding the adaptation of society to ageing, the high council's mission is to animate the public debate and to provide the public authorities with prospective and transversal expertise, particularly on issues related to advancing in age, the adaptation of society towards ageing and welltreatment, in an intergenerational approach.

### **5. The Commission for the fight against badtreatment and the promotion of welltreatment**

The commission for the fight against badtreatment was set up on 19 March 2018. It is a joint body of the High Council for the Family, Childhood and Age and the National Consultative Committee for People with Disabilities. It has recently published a guidance note for a global action to support the well-treatment<sup>3</sup> as part of a support for autonomy aimed at enlightening the public authorities on the issues related to abuse.

### **6. The High Authority for Health**

The High Authority for Health is also a public authority, and is responsible for drawing up procedures, references or recommendations of good professional practices against which homes and services for elders evaluate their activities. Its recommendations regularly address

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<sup>3</sup> Commission for the fight against ill-treatment and the promotion of good treatment, guidance note for a global action to support good treatment in support of autonomy, January 2019: [https://solidarites-sante.gouv.fr/IMG/pdf/190124 - rapport - lutte contre la maltraitance.pdf](https://solidarites-sante.gouv.fr/IMG/pdf/190124_-_rapport_-_lutte_contre_la_maltraitance.pdf)

the issue of welltreatment in elderly care<sup>4</sup> and aim at promoting professional practices designed to improve the quality of life of the people being cared for.

## **7. The Defender of Rights : an administrative authority**

Created in 2011, and written into the Constitution, the Human Rights Defender is an independent institution of the State whose main missions are to defend people whose rights are not respected and also to allow equal access to rights for all. Any natural or legal person may refer to it directly. Competent in matters of users' rights and the fight against discrimination, it regularly issues opinions on the badtreatment of vulnerable persons<sup>5</sup>.

### **B) The main orientations of national policy**

The State conducts a policy to struggle bad-treatment based on two main lines of action:

- Make it easier to report abuse.
- Prevent and identify the risks of abuse by supporting providers and professionals in the implementation of an active policy of well-treatment.

#### **1. Reporting bad-treatments**

Disclosure of situations of abuse is often difficult : voluntary concealment, including the part of the victim who fears reprisals or does not wish to harm a relative, underestimation or under-reporting, lack of knowledge. Reporting situations of dantreatment is therefore made easier.

There is a reporting obligation on social and medico-social homes and services<sup>6</sup>. They must report to the competent administrative authority (Regional Health Agency and/or county council) :

- any serious dysfunction in the management or organisation of the facility likely to affect the care of users, their support or the respect of their rights, or

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<sup>4</sup> Well-treatment: definition and benchmarks for implementation, 2008: : [https://www.has-sante.fr/upload/docs/application/pdf/2018-03/reco\\_bientraitance.pdf](https://www.has-sante.fr/upload/docs/application/pdf/2018-03/reco_bientraitance.pdf); Quality of Life Programme in EHPAD (4 strands), 2012: [https://www.has-sante.fr/jcms/c\\_2835485/fr/programme-qualite-de-vie-en-ehpad](https://www.has-sante.fr/jcms/c_2835485/fr/programme-qualite-de-vie-en-ehpad)

<sup>5</sup> Defender of Rights, Recommendations on the respect of the rights of vulnerable elderly people before and after their stay in specialised institutions, 19 June 2013; Opinion No. 18-24 of 11 October 2018 on institutional violence in the fields of childhood and old age.

<sup>6</sup> Art. L. 331-8-1 and R. 331-8 and s. of the CASF.

- any event that has the effect of threatening or compromising their health, safety or physical and moral well-being.

A referent in the fight against abuse is appointed within each Regional Health Agency. The most serious events must be transmitted to the central authority via a dedicated and secure information system to establish a quantitative and qualitative analysis of the reports thus collected, in order to improve knowledge of the phenomenon and the preventive actions to be taken.

## **2. Preventing and identifying risks of bad-treatment**

Inspections and controls are regularly carried out in the facilities by the authority that issued the authorization (Regional Health Agency and/or County Council) and also by the Prefect because of his general power to control the structures. These inspections may take place either following complaints from users or reports, or as part of inspection programmes to identify risks of abuse implemented by the State.

Where the health, safety or physical or moral well-being of the persons received or cared for is threatened or compromised, the supervisory authority shall require the manager to rectify the situation within a period of time which it shall determine. If this injunction is not complied with, the administration may appoint a provisional administrator or even decide to suspend or terminate the activity of the facility.

The development and promotion of a culture of treating people well within social and medico-social homes and services is also encouraged with the support of the High Authority for Health.

## **II. The protective legal framework against violence in the support of older people**

The rules governing the activities of homes and services for the elderly are primarily intended to prevent violence against the persons they care for (A). There are also penal measures which make it possible to punish violent behaviours and facilitate their disclosure (B). Finally, certain civil regulations make it possible to limit financial abuses (C).



## A) Specific protection of older persons supported by care homes and services

Since the 2000s, the legal framework for the activity of social and medico-social homes and services has been strengthened to respond to the problems of violence. The rights of individuals have been clarified and tools to guarantee their effective exercise have been created. The quality of the services provided by the facilities is also regularly assessed.

### 1. A reminder of the fundamental rights of users

The law enumerates six rights that must be specially guaranteed to the persons given their situation of vulnerability<sup>7</sup>. The enumeration of these rights aims to prevent abusive practices and more generally to promote the citizenship of the users :

- Right to respect of dignity, integrity, privacy, intimacy, security and the right to come and go freely.
- Right to free choice between the adapted services offered either as part of a home service or as part of admission to a specialised residence.
- Right to high-quality individualised care and support that promotes development, autonomy and insertion, adapted to age and needs, respecting informed consent, which must be systematically sought when the person is capable of expressing his or her will and participating in the decision.
- The user's right to confidentiality of information concerning him/her.
- Right to information.
- Right of the user to participate directly or with the help of his/her legal representative in the design and implementation of the hosting and support project that concerns him/her.

### 2. Tools to ensure the effective exercise of users' fundamental rights

- The **welcome booklet** : a welcome booklet to which the Charter of Rights and Freedoms of the person welcomed and the operating regulations are appended is systematically given to the person.
- **The Charter of Human Rights and Freedoms of the hosted person**<sup>8</sup>: it details the rights of users and the principles that should govern their support while respecting their

<sup>7</sup> Art. L. 311-3 of the CASF.

<sup>8</sup> [https://solidarites-sante.gouv.fr/IMG/pdf/EXE\\_A4\\_ACCUEIL.pdf](https://solidarites-sante.gouv.fr/IMG/pdf/EXE_A4_ACCUEIL.pdf)

freedom and dignity. In addition to being handed over with the welcome booklet, it must be displayed in the facility.

- **Residence contract** : a residence contract must be concluded between the user and the host facility. Otherwise, an individual care document is created. These documents define the objectives and nature of the support, and detail the list and nature of the services offered, as well as their cost.
- **The qualified person** : The person accommodated or his/her legal representative may have recourse to a qualified person to help him/her assert his/her rights.
- **The trusted person**: any person can appoint a trusted person.
  - She can be consulted in case the person concerned has difficulties in knowing and understanding his/her rights.
  - She can accompany the person through the process and attend medical interviews in order to help him/her in the decisions to be made.
  - When entering the care home, the future resident has the possibility of being accompanied by the trusted person during the interview prior to the signing of the residence contract.
- **The social life council** : its objective is to involve the client in the operation of the care home. It gives an opinion on any question concerning the operation of the facility. The social life council is mandatory in nursing homes. The services may set up other forms of participation such as surveys of the people being cared for.
- **The residence or service project** : it defines the objectives of the facility in terms of quality of services and must include a discussion about the principles of intervention by professional carers.

### 3. The quality assessment system

Social and medico-social homes and services undertake, from one side, an internal evaluation process of their activities and the quality of the services they provide, particularly with regard to the procedures, references and recommendations for good professional practices drawn up by the High Authority for Health. The results of the assessments are communicated to the authority that issued the authorization.

They also have their activities and the quality of the services they provide evaluated by an approved external body.

These assessments must be carried out on a regular basis in accordance with a regulatory schedule.

Evaluation has a role in identifying dysfunctions in the support of individuals. As a result, failure to comply with the deadlines for external evaluation leads to priority administrative control and prohibits any tacit renewal of the authorization. The results of the external evaluations also enable Regional Health Agencies to identify and track down facilities that are dysfunctional or at risk of dysfunction that could compromise the health, safety or well-being of the people they accommodate.

## **B) Protection by the penal law : the repression of violent behaviour and the facilitation of its disclosure**

The purpose of criminal law is to protect society and its members. As such, it pays particular attention to the repression of violence, especially against individuals considered vulnerable.

The criminal law first of all adopts a broad definition of the offence of deliberate violence. It then established a protective status for vulnerable victims.

### **1. A broad definition of voluntary violences**

The definition of intentional violence in criminal law covers a broad spectrum of behaviour which, in theory, makes it possible to punish a large proportion of abuse committed in the context of care for the elderly.

Are in principle punishable all acts of aggression that violate an individual's physical integrity, from the slightest violence (a simple slap or jostle) to more serious violence resulting in damage or even death.

The offence of deliberate violence also punishes psychological violence when it is likely to cause serious emotion to the victim : threatening attitudes, verbal violence, bullying.

### **2. A protective status for vulnerable people**

In the Criminal Code, special protection is afforded to "a person whose particular vulnerability, due to age, illness, infirmity, physical or mental disability or state of pregnancy, is apparent or known by the offender".

a) Aggravating circumstance linked to the particular vulnerability of the victim

The act of committing an offence against a vulnerable person is punished more severely. The punishment of many offences is increased, such as murder, acts of torture and barbarism, rape, poisoning and administration of harmful substances, wilful violence, swindling, theft, extortion or breach of trust.

b) The particular repression of violent and abusive behaviour towards vulnerable people

Some behaviours are directly incriminated because they are directed against vulnerable individuals. The vulnerability of the victim is here a prerequisite for the offence, without which the behaviour would escape punishment. Are thus repressed :

- The abuse of weakness, which is the abuse of the situation of weakness of a person who is particularly vulnerable because of age, illness, infirmity, physical or mental deficiency or state of pregnancy to lead him or her to an act or abstention that is seriously prejudicial to him or her<sup>9</sup>.
- The usual violence against a particularly vulnerable person<sup>10</sup>.
- The abandonment of a person who is unable to protect himself or herself<sup>11</sup>.
- Subjecting a person, whose vulnerability or state of dependency is apparent or known to the perpetrator, to conditions of work or accommodation incompatible with human dignity<sup>12</sup>.

c) The facilitation of the disclosure of violence against vulnerable people

The Penal Code encourages the reporting of abuse of vulnerable persons.

Anyone who has knowledge of deprivation, bad-treatment or sexual abuse against a vulnerable person who fails to inform the judicial or administrative authorities of such deprivation, bad-treatment or abuse is punishable by 3 years' imprisonment and a fine of €45,000<sup>13</sup>. This obligation only works in practice with regard to persons who are not subject to professional secrecy.

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<sup>9</sup> Art. 223-15-2 of the Penal Code.

<sup>10</sup> Art. 222-14 of the Penal Code.

<sup>11</sup> Art. 223-3 of the Penal Code.

<sup>12</sup> Art. 225-14 of the Penal Code.

<sup>13</sup> Art. 434-3 of the Penal Code.

Violation of professional secrecy for those who are bound by it is in principle punishable under criminal law. However, the vulnerability of the victim means that the obligation of secrecy can be waived and opens up the possibility for the professional to reveal bad-treatment<sup>14</sup>.

## **B) Civil law protection against financial abuse: special disabilities**

The Civil Code dates back to 1804 and was drawn up according to an archetype : the good father, in order to ensure legal security and stability of contracts. Individuals are thus presumed capable and assume the consequences of their actions. If this presumption breaks down due to a mental disorder coupled with a need for protection, the person is then placed under a legal protection regime (guardianship, curatorship, safeguarding justice). There are relatively few intermediate provisions to protect persons who are simply vulnerable without being unfit.

French civil law does not yet allow the cancellation of contracts or gratuitous acts for abuse of weakness<sup>15</sup>. It does, however, have a mechanism to prevent certain abuses from financial nature : special disabilities.

The legislator fears that in some circumstances a person may take advantage of his dominant position to obtain particularly advantageous acts from another. It therefore attaches to acts obtained in such circumstances a presumption of captation that automatically leads to their nullity. The consequence is a temporary incapacity of the persons concerned, both the author of the act and the beneficiary.

The legal presumption of captation applies to four situations:

### **1. In case of last illness**

The Civil Code prohibits physicians, pharmacists, medical auxiliaries and ministers of cult from receiving a liberality (donation or legacy) from the people they treated during their last illness<sup>16</sup>.

### **2. In the case of residential accommodation or home support with a service**

The persons who own, manage, administer or employ a facility cannot benefit from wills or donations from the persons being cared for<sup>17</sup>. This also applies to volunteers.

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<sup>14</sup> Art. 226-14 of the Penal Code.

<sup>15</sup> The legislator has recently extended the scope of the defect of violence to include cases of exploitation of a situation of dependence. It is, however, the exploitation of a party's economic situation in order to obtain an excessive advantage that is targeted (art. 1143 of the Civil Code).

<sup>16</sup> Art. 909 of the Civil Code.

<sup>17</sup> Art. L. 116-4 of the Code of Social Action and Families.

### **3. In case of psychiatric treatments**

It is prohibited, under penalty of nullity, for any person holding an office or employment in an institution providing psychiatric care to acquire property or transfer a right belonging to a person admitted to the institution or to lease the dwelling occupied by that person prior to his admission to the institution<sup>18</sup>.

### **4. In the event of placement under a protective regime**

Judicial representatives for the protection of major persons and the persons in whose name they exercise their functions cannot benefit from a liberality on the part of the protected person, whatever the date is<sup>19</sup>.

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<sup>18</sup> Art. L. 3211-5-1 of the Public Health Code.

<sup>19</sup> Art. 909, para. 2, of the Civil Code.

## **Conclusion**

The French legal framework provides only partial protection. Violence in the care of the elderly covers a wide variety of acts and omissions, some of which do not correspond to any legal qualification. While there is generally a penal and disciplinary response for individual malicious acts, it is much more difficult to apprehend and deal with all acts or omissions resulting from individual ignorance or incompetence, or organisational deficiencies and inappropriate collective rules. The reduction of violence in elderly care cannot of course be based on the legal system alone and implies a more global strategy to combat it. In its guidance note for 2019<sup>20</sup>, the Commission for Combating Abuse and Promoting Well-treatment identifies two priorities:

- The first priority in the fight against bad-treatment is to empower supported people, by making them and their families aware of their rights and capacities.
- The second priority is to train and raise the awareness of the circle of "carers", or give them the means to act.

In addition to the development of guidelines and recommendations for good practices, and a regular evaluation process, training plays a fundamental role in bringing this change of vision and promoting non-violent and qualitative support for older people.

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<sup>20</sup> Prev.