

4th WCAG – Thursday, 09/15/2016 – 11.00/12.30

Panel 6 Qualification of Professional Appointed « Betreuer » (Court-appointed Legal Representatives) – Pierre BOUTTIER, France

Ladies en gentlemen,

First I want to congratulate the organizing team of this event. Many thanks too to have invited me for an oral presentation of training in the name of french guardianship. As many frenchies, I don't speak much english, so I hope you'll forgive my lack of practice.

1. French context

Since 2009, France has made mandatory training for professional guardians, in the wake of a large reform of legal capacities and guardian processes.

In doing so, the french government intended to :

1st : To ensure people with disabilities will be provided basic rights that they would be able to exercise

2nd : To provide high quality service. The authorities have organised an official formation for professional guardians, whom are court appointed only when there's no family able to exercise the measure.

3rd : To prevent over possible abuses, that can occur while managing with the rights or financial matters of the wards.

This compulsory training is still a major issue for our professional organization.

Indeed, I must say, as president of french organisation of non-profit status professional guardians, that there is no profession without formation or training.

A professional guardian must show a stream of specific knowledges and know-hows.

The goal pursued by the french government wasn't to build a new profession, but just do what would allow it, to put an end on media and families critics about the legal protection of people, especially those seen as vulnerable.

It only aimed to guarantee a high quality of service from professionals. In fact, the french model finds its origins in both traditional & familial care and charity organizations programmes. It shows that the guardianship system was primarily based on voluntary work.

This explains why french society and authorities don't support profession recognizing : if volunteers and closest friends or relatives can do the job, what kind of specific qualification a professional can need ? Of course, authorities also fear that recognized professionals need more resources and a higher cost for adult guardianship. But are we to promote a low-cost guardianship for the most deficient or vulnerable people ? !

The french practice is still too much based on full guardianship, and yet a new legal framework which provides a social and a support practice. The french society encourages both people's rights to self-determination and the absolute security and standardization of legal acts and methods to manage the finances of persons with disabilities. Of course, trying to secure someone's behaviour or someone's finances and contracts goes against the idea of self determination and self government. The principle of autonomy is to be sometimes wrong, to sometimes make mistakes.

2. Guardian's qualifications in France

The basic training content has been elaborated 8 years ago by a large panel of state

employees, representative organisations and professional guardians. Then, this content is not far away from what guardians need in their professional work. This training includes four main fields :

- 2 technical fields :
 - 1st A legal field : civil law and human rights, social rights of persons with disabilities ;
 - 2nd A management field : budget and administrative management, financial investments, tax systems, consumer legislation...
- 1 social work field : knowledges about disabilities, mental deficiency, mental disorders, helping relationship, technics to enhance decision making support, social emergency...
- 1 field « core guardian's activities » : Court appointing, relationships with judges, court officers, attorneys... ; analysis of practice, ethics

It lasts 300 hours for almost 10 months : It's a very ambitious training.

These fields look adapted to professional needs and wishes : in fact, our profession require both large technical knowledges and expertises, but also many know-hows.

However, the french government considered this compulsory training for professionals of guardianship as the end of the story. But we are at the beginning of the story. This training can only stand as the minimum required for such difficult jobs :

- The state administration is absent from organisation, boards and panels of this specific training : each high school teaches classes as it wants or thinks good. At the end of it, there are different kind training in France and lacks of monitoring.
- Passing the final exams at the end of the training session only gives access to licensing.....It would better allow the delivery of a college degree : this is not actually the case.

- There's a lack of continuous training. Indeed, a basic tutoring is essential but a career needs formation all along. The required skills are so various, so technical, evolving so rapidly, that guardians are asked to be adapted !

So, in summary, specific training for guardians is essential : there's no real profession, there's no professionals without specific training. Also, an only basic training without recognizing is not good enough : that's the whole difference between a job, some tasks which can be exercised by family or volunteers and a full profession. You can be a specialized financial or administrative management, a social worker, an usual court appointed, a lawyer, but a professional guardian is all that at the same time... but any of this ! He is specific and his functions are specific. So, what kind of qualifications can provide the necessary and special skills to professionals of legal representation or support ?

3. What kind of qualifications needed for professional guardians and legal « Betreuer » ?

Technical skills are essential but do not form the core of our profession : it cannot only be defined as a form a global substitute for persons with disabilities. A lawyer or a manager won't be skilled enough to occupy guardians functions. Guardian can't be only an expert.

It is quite easy to act on behalf of someone but it's a whole different matter to support someone to act by himself.

It is almost impossible to represent someone on personal matters. How can I be guardian of a person who can express desires or can make decisions by himself ?

The only way out is to gather the person's will and preferences, to ensure her ability to self expression and self determination, to give the person tools to express desires or to consent, to help her carry her own choices or, if necessary, be her

spokesperson.

So, professional guardians need different approaches than the only representation of persons with mental impairment.

The essence of guardian's support resides, to my mind, in a legal requirement of french guardianship reform :

Civil Code, art.457-1 *The person protected receives from the person in charge of his protection, under terms and conditions adapted to his condition and without prejudice to the information that third parties are bound to provide him under the law, any and all information on his personal situation, on the concerned acts, their utility, their degree of urgency, their effects, and the consequences of a refusal on his part.*

Information is the best way to restore someone's capacity. Formulating and describing a situation already empowers the person to understand, decide and act for and by herself. It is the best way to act without any substitute.

From our point of view, substitute must always be subsidiary to any other solution : it's only when the person can't express any choice, any opinion, any will, that the guardian is legitimate to substitute the ward, according to his or her previous preferences. In France, we call it *the principle of subsidiarity*, which always has to guide our action in order to ensure as much as possible the person's fullest capacity.

Such an approach requires of course a minimum kinds of qualifications :

- Evaluation of abilities
- Evaluation of the adaptability of the measure of protection
- Competency of interviews, technics of language and communication
- Large knowledge on mental, psychic, demential disorders and disabilities

Thank you very much