THE PROTECTION OF INCAPABLE PERSONS IN THE CODE OF PERSONS AND FAMILY OF MALI.

Abstract

In contemporary legislation, every individual has, throughout his life, the legal personality whose main attribute is the legal capacity, usually defined as the ability to hold rights and obligations.
If the child from birth and even, in many laws, from its conception has the legal personality, he however has neither the will nor the intelligence necessary to run his own business.
An adult can also be from a physical or legal disability.
The inability to exercise of some adults and minors implies the intervention of one or more bodies to act for them or with them.
This article gives the position of the Code of Persons and the Family of Mali, which was adopted in December 2011 for the protection of these disabilities, sometimes with a bit of comparative law.

Keywords: Incapable persons, protection, persons, family, adult, minor, tutorship, curatorship.

Introduction

All human persons are, in principle, equal before the law. They all have the capacity to possess the various private rights and to exercise them [1]. Legally we say that they are capable. When the law limits this ability, it is called incapacity and the person is said to be "incapable" or incapacitated. For natural persons, capacity is the principle, incapacity the exception.
This ability to possess the various private rights is the result of legal personality, which is the ability of a person to hold rights and obligations [2].
The notion of personality attributes covers prerogatives of a very diverse nature and we can distinguish, among others, personality rights, individual freedoms, respect for private life, civil equality, etc. [3]
The rules relating to the exercise of the rights and obligations conferred by legal personality are known through the study of the capacity of the natural person. The capacity is the possibility offered to the holders of the rights to assert them by themselves in legal life.
The recognition of the rights and obligations of individuals and the exercise of these same rights are two different realities.
Indeed, it is common for a person to be the holder of rights but deprived of the right to exercise them. In reality, the notion of legal capacity must be clarified because, in legal vocabulary, the term "capacity" often has two different meanings; it designates, in fact, sometimes the aptitude to have rights and obligations, sometimes the aptitude to exercise alone and by oneself the various rights which one can hold. To distinguish between these two aspects of legal capacity, or rather these two degrees of capacity, French law uses the terms "capacity to enjoy" and "capacity to exercise".
The capacity to enjoy corresponds to the ability to hold rights and obligations. The inability to enjoy marks the inability to hold rights and obligations. It can never be total, because that

would imply the loss of the legal personality of the individual. There is therefore no incapacity for general enjoyment. There are only special incapacities of enjoyment, that is to say incapacities which relate to specific rights.
The prohibition to acquire one or more specific rights is therefore called incapacity of enjoyment. The incapacities of enjoyment constitute the exception and not the principle, consequences: they must be enacted by a text of law and they are of strict interpretation.
Disabilities of enjoyment can be enacted for three main reasons:
- Concern for protection: incapacities for protection;
For example: "The minimum age of marriage for the girl is 18 years old [4]"; or again: "Engagements and marriages of children have no legal effects [5]".
- Legitimate suspicion or the duty of precaution: the incapacities of suspicion;
This incapacity aims to prevent certain people from taking advantage of their professional situation to conclude transactions that are morally questionable or likely to constitute undue influence [6]. Thus, for example, it is forbidden for the tutor to buy the property of the minor, property which he is responsible for administering [7].
- The repressive aim: the inability to sanction.
This incapacity is intended to punish. This is the case, for example, when an individual is punished with civic degradation.
The incapacities of protection are enacted in favor of people who are not considered capable of enjoying certain rights, because they are considered not yet to have the necessary maturity. The legislator protects them against thoughtless commitments that they would not be able to assume; the individual is then struck, not with an incapacity for enjoyment, but with an incapacity for exercise, sometimes called incapacity for action [8].
Contrary to the incapacity of enjoyment, the incapacity of exercise is always exclusively intended to protect the person who is struck by it.
Incapacity to exercise is the fact of not being able to exercise oneself the rights which one holds. These are exercised by a legal representative. Thus, for example: the minor is represented by the parent who exercises paternal power and the adult in guardianship is represented by his guardian.
It is this last incapacity which will constitute the object of our study under the spectrum, mainly, of "Malian law" through the Code of Persons and the Family of Mali of December 30, 2011. This code, which only dates from 2011 [9], is worth considering insofar as it brings together several scattered texts in a single document [10]. This study only concerns the protection of minors and adults with physical or mental infirmity, covered in Book VI of the said code.
We will first distinguish the protection of minors (I) and secondly that of adults for physical or moral infirmity (II).

I. Protection of minors

A minor is a person of either sex who has not yet reached the age of 18. Any minor is struck with an incapacity to exercise [11]. Not being struck with an incapacity for enjoyment, the minor is able to inherit from one of his parents.

Only because of his incapacity to exercise he will not be able to assert by himself the rights which he holds as a result of this inheritance. In particular, he cannot sue for disputes relating to this inheritance if his right is contested.
But since the minor is the holder of rights, his rights must be able to be defended when an infringement is made on them. Several texts also provide for what some authors have called remedies for the incapacity of minors. These make it possible to create institutions to compensate for the lack of capacity of minors.

1.1. Remedies for the incapacity of minors

The minor is struck with an incapacity to exercise but the rights which belong to him must not however suffer from it. The opposite would indeed result in the reversal of the goal envisaged by the legislator against the minor.
This is how the palliatives were found to the incapacity of the minor. The main thing is representation. Through representation, an individual acts in the name and on behalf of the minor.
However, there are certain acts which are essentially personal in nature and therefore cannot be performed by a third party. For example, it is inconceivable that an individual contracts marriage for the minor. For these categories of acts, it is necessary to resort to the procedure of authorization prior to its realization and necessary for its validity.
Emancipation, on the other hand, is a procedure that gives a minor the capacity of an adult. These two institutions constitute exceptional remedies for the incapacity of the minor.
Whether it is a matter of representation, authorization or emancipation, the protection of minors is an obsession of the legislator, an obsession whose consequence is that the persons authorized to represent a minor or to give their authorization are drawn on the flap.
On the other hand, even when emancipated, the minor does not possess the full capacity of an adult. This is why commercial capacity is a restriction or an exception to the emancipation of the minor. Even if he is emancipated, he cannot be a merchant [12].
In this part we study on the one hand judicial administration and on the other hand guardianship.

1.1.1. Representation

Because the minor is inexperienced, the law requires him to have a representative who will act in his place and name. But this representation can often pose a problem insofar as the personal nature of certain acts requires that they be performed by minors but under the authorization of the persons who exercise parental authority over them.
Two mechanisms of representation have been devised by legislators: legal administration and guardianship. But the aim being the protection of the minor in both hypotheses, the rules which dominate one and the other of these two institutions often converge.

1.1.1.1. Legal administration

The legal administration, it should be emphasized right away, concerns only the property of the minor. There will therefore only be legal administration when the minor is the owner of the property.

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The administration of the minor's property is qualified as "legal" not only because it is provided for by the texts, but also it takes place without the intervention of the judge.
This is explained by the fact that the legal administration of the property of the minor is carried out by its biological authors (father and mother). It is situated within the framework of the exercise of paternal power (also called parental authority). It is normal indeed that the parents of a minor ensure at the same time as his education, his custody, the administration of his property.
However, the devolution of the legal administration, the role of the legal administrator and the end of this situation obey rules on which it is advisable to linger.

1.1.1.1.1. Devolution of legal administration

The question here is who is the administrator of the child's property?
The aim being the protection of the minor, the legislators thought that the authors of the child were the best able to fulfill this function. Also in the majority of cases we find formulas similar to that of article 300 of the Senegalese family code for which "the person who exercises paternal power is the legal administrator of the property of the unemancipated minor…". It means that:
- during the marriage and during the lifetime of the spouses, is the legal administrator of the property of the minor resulting from the marriage: the father in his capacity as head of the family or the father with the assistance of the mother in countries which have substituted the notion of authority parental to that of paternal power like Togo [13];
- for legitimate children and unless otherwise decided by the judge, the mother will be the sole administrator of the property of her minor child;
- in the event of total or partial forfeiture of the father of the rights of paternal power;
- in the event that the father can no longer express his will due to his incapacity, his absence, and his remoteness or for any other reason;
- in the event of condemnation of the father for abandonment of family;
- in the event of the death of the father.
Article 277, paragraph 3 of the Family Code of Senegal adds that "if the spouses live apart, without this separation having been legally pronounced or established, the judge of peace may, in the interest of the child and on request of the mother or the public prosecutor, entrust the mother with the exercise of parental power. This decision ceases to have effect by the reunion of the spouses, legal separation or divorce.
Such a provision should have the effect of transferring legal administration of the minor's property to the mother. By the flood of consequences that this entails, there is reason to think that the request should only succeed under certain conditions likely to be specified by the jurisprudence.
In particular, the father would have to prove to be a poor administrator of his child's property. The degree of responsibility of each of the parents in the de facto separation should only be taken into account incidentally, since the problems that arise between two spouses do not necessarily alter the ties that unite them to their offspring.
In the event of divorce or legal separation, parental authority or paternal power is generally vested in the spouse who has custody of the child. He thereby becomes administrator of the property of this one [14].

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The Gabonese civil code nevertheless provides that in this case the court may hand over the legal administration to the spouse who does not have custody of the common child or children [15].
For illegitimate children, there is legal administration of their property in the event that they have been recognized from birth by at least one of their authors. The Togolese text is clear on this since in its article 246, paragraph 1, it specifies that for a child born out of wedlock, parental authority (and its corollary legal administration) is exercised by the father and mother who has voluntarily recognized, if not recognized by one of them.
Even derogating from the rules of parental authority which impose joint administration of the child's property, paragraph 2 of the same article grants the exercise of parental authority – and therefore legal administration – to the father in the event where the child would have been recognized by its two authors.

We arrive at the same solutions with article 281 of the family code of Senegal which regulates the paternal power for the natural child whose filiation is established "from birth": the recognition, the action in search of the filiation cannot conceive only after this birth. This situation calls for some remarks.
In fact, while it is normal for the legal administration of the property of an illegitimate child to devolve on the person who recognized it at birth, this is less likely to be the case in the event that the child himself had to bring an action in search of filiation.
Certain legislations, such as the Persons and Family Code of Togo extend the rules applicable when filiation has been established in recognition to situations which arise when this same natural filiation has been established following an action seeking filiation (article 247).
We can then be surprised by this rule which makes legal administrator of the property of the minor who has not expressed his will to legally establish a bond of filiation between this minor and himself. Moreover, this rule goes against the spirit that has dominated the institution of legal administration.
In fact, we note that legal administration is a responsibility incumbent on the biological authors of a minor because we can validly consider that the blood ties that unite them are such as to guarantee good management of the latter's property. If we cannot indeed trust the father and mother of an individual, who are we going to trust? On the other hand, legal administration includes a corollary: the legal enjoyment by the legal administrator of the property under his administration until the minor has reached the majority required by law.
It is a way of rewarding the legal administrator for the various responsibilities he assumes. However, when at the origin of the establishment of a natural filiation there was an action in search of filiation (action in search of paternity or natural maternity), we find ourselves in a consented situation.
The parent in respect of whom the natural filiation is established did not want it. He did not want this legal act of filiation, otherwise he would have asked to recognize the child in question.
How can one under these conditions grant such a parent the legal administration of the property of his illegitimate child? The percentage risk for the child seems much too high here.
For adopted children, the legal administration is vested in the adopter. In case of adoption by both spouses; it is devolved to the father as is the case for legitimate children. This is the solution that results from Articles 300 and 282 of the Family Code of Senegal.
Once the legal administrator of the minor's property has been appointed, the question arises of the role he will have to play.

1.1.1.1.2. Role of the legal administrator

"The administrator shall represent the minor in civil acts, cases in which the law or usage authorizes minors to act alone [16]".
Thus the administrator can and must request the registration of a mortgage belonging to the minor, have the deeds subject to land registration published in the interest of the incapable person, have the maintenance repairs carried out necessary for the preservation of a building, etc. African legislators do not set out the conservatory acts among those that the legal administrator has the duty to perform. We must believe that it is because that is obvious.
These acts are in fact intended to preserve the minor's patrimony. To exclude them from the scope of acts permitted to legal administrators would be to call legal administration itself into question. On the other hand, acts of administration are always cited by these same African texts.

1.1.1.2. Guardianship

It happens that the minor is in a family situation which has nothing to do with the family model which presides over the rules concerning the legal administration and which is made up of the father, the mother or only one of the two, and their minor child, all in perfect mental health.
Guardianship is by definition an institution that remedies the incapacity of the minor when he is in a delicate situation. This idea explains both the rules that indicate the cases in which there is a need for the opening of guardianship and those that establish the organs of guardianship and the end of it.
The cases of opening the guardianship of a minor.
All the African texts devote long developments to guardianship.
The rules contained in these texts do not themselves contain any originality compared to the French rules, permanent models, only the circumstances which lead to the opening of a guardianship explain why the subject has been dealt with extensively by African legislators
It is in fact that it is necessary to open a guardianship only when the biological authors of a minor cannot, for one reason or another, be responsible for the legal administration of he's property.
It is then necessary to substitute for the administration of the father and mother, an institution whose role will be not only to guard and educate the minor, but also to manage his property, under the high supervision of the State protecting the interests of the minor.
However, traditional society is communal in essence and whenever it comes to entrusting a responsibility to the entire community or to a group, we can trust it.
Under these conditions, the institution of guardianship could only be welcomed with open arms by African legislators.
With regard to the hypotheses where it is necessary to open a guardianship, it is necessary to distinguish according to the minor to be protected is a legitimate or natural child; this is how the guardianship will be opened:
- for legitimate children, the father and the mother are both deceased [17], or what comes to the same thing, if they have both been totally or partially deprived of the rights of paternal power, if they can no longer both express their will due to their incapacity, absence,

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remoteness or for any other reason; in both cases they were condemned for abandonment of family.
- for natural children, if filiation is not established with respect to either of their parents [18].
- for all children, if the legal administration has been converted into guardianship or if the person who can exercise paternal power by designation of the law or delegation dies, is subject to forfeiture or is in one of the foreseen cases [19].
It follows from this affirmation that guardianship does not intervene when the minor no longer has his biological authors or when, during his lifetime, their behavior is trustworthy by conferring on them the prerogatives of a legal administrator. The multitude of control bodies proves that we are in a delicate situation.

1.1.1.2.1. Guardianship structures and their roles

There are four structures in guardianship. The whole institution works thanks to them. Their intervention is constantly necessary. The tutelary machine was deliberately made heavier in the interest of the minor. Legislators have multiplied the formalities, the filters, in order to prevent acts passed lightly from causing damage to the minor. These structures are: the guardianship judges, the guardian, the surrogate guardian and the family council.
However, it should be specified immediately, African legislators insist on the fact that guardianship functions are organized by the State for the protection of children and that they are free. They also constitute a personal charge and are not transmitted to the heirs [20].

However, the following cannot exercise guardianship functions: minors, with the exception of fathers and mothers, incapable adults, those sentenced to corporate or infamous punishment, persons deprived of parental authority, persons subject to a ban on exercise of a tutelary office under the penal code [21].
Persons who are parties or close relatives of a party to a lawsuit instituted against the minor or involving a significant part of his or her assets must also recuse themselves.
In the end, people with notorious misconduct or those who's dishonesty, negligence or incapacity could have been observed can be excluded or removed from various supervisory positions.
May also be exempted from guardianship, who will not be able to exercise this responsibility under satisfactory conditions for the child, because of their age, their illness, their remoteness, their exceptionally absorbing occupations or a previous guardianship already heavy.
It is obvious that those who, in the course of their duties can no longer discharge them for one of the reasons provided for above, can be discharged from the duties of guardianship.
While the guardianship judge rules on the causes of dispensation or discharge of the members of the family council, he is the person who has jurisdiction for the causes of dispensation or discharge concerning the guardian or the subrogated guardian.
All these measures aim, it is obvious, to protect the minor. And this protection the people relieved of the management of his property and his custody to be drawn on the shutter.
This is also demonstrated by the choice of the guardianship judge as the pillar of the institution itself.

1.1.1.2.2. The guardianship judge

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The judge of guardianships is a magistrate whose role is to exercise general supervision over the legal administrations and the guardianships of jurisdiction [22].
Not all African countries have adopted this institution [23]. However, it has many advantages for the minor insofar as once he is appointed, his role as defined above is all the better fulfilled as the procedure in progress at his level is characterized by its rapidity.

- Who is the guardianship judge?

The functions of guardianship judge are exercised: either by a judge belonging to the district court of the minor's domicile, or by the children's judge, or failing that, by the competent judge of the minor's domicile, or in extreme cases, and considering the lack of courts and magistrates that prevails in Africa, by the sub-prefect of the place where the minor's domicile is located [24].
The choice of a magistrate among those of the minor's domicile is motivated by the fact that the very role of the guardianship judge requires that he be close to the place where the guardianship is exercised.

- The role of the guardianship judge.

"The guardianship judge exercises general supervision over the legal administrations and guardianships within his jurisdiction" [25]
African legislators give the guardianship judge the means to exercise this supervision when they provide that he may at any time summon the legal guardians or other guardianship bodies, ask them for clarification, send them observations and pronounce against them injunctions. He can also condemn to a civil fine those who, without legitimate excuse, will not have complied with his injunctions [26]
In fact, the guardianship judge is the pillar of the guardianship institution insofar as the other guardianship structures are closely dependent on him.
Indeed, it is the guardianship judge who appoints the members of the family council and provides for their replacement if changes occur in their situation. However, as we will see below, the family council plays a major role in the institution of guardianship. It even happens that he is required to choose a tutor for the minor.
On the other hand, the authorization of the guardianship judge is necessary for the accomplishment of certain acts by the guardian. The study of the guardianship bodies and the functioning of this institution will allow us to better understand the importance of the guardianship judge.

1.1.1.2.3. The tutor

The tutor is the person in charge of managing the property of the minor.
The essential difference between the tutor and the legal administrator lies in the fact that while the legal administration concerns only the property of the minor, the tutorship covers both the person of the minor and his property. The designation of the tutor and his role deserve to be understood more closely.

1.1.1.2.3.1. Designation of tutor.

The tutor can be designated by the father and mother of the minor, or by the family council.

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Indeed, "the individual right to choose a guardian belongs only to the last dying father and mother, if the latter has retained the exercise of legal administration or guardianship on the day of his death" [27].
Some laws allow the father and mother to choose a guardian by mutual agreement in the event that they should disappear simultaneously [28].
This appointment, to be valid, must be made in the form of a will, a special declaration at a notary [29]. This is therefore a manifestation of parental authority.
However, some countries require that the appointment of the guardian made under these conditions must also be approved by the family council or confirmed by the court.
If there is no testamentary tutor or the one who had been appointed does not accept or has just ceased his functions, a tutor is given to the minor by the family council, convened on occasion by the good care of the guardianship judge. However, some states give the initiative for the choice of guardian to the court and not to the family council on this occasion [30].
The initiative of the choice of guardian by the court and the family council shows how much legislators value the transparency of this institution.
However, if for one reason or another, no guardian can be appointed, the guardianship is transferred to the State, the guardianship judge appoints any person likely to fulfill the functions of guardian for the child [31]
Note the possibility for a minor to have two guardians at the same time. This can happen under two sets of assumptions.
Either because the consistency of the heritage to be administered or the dispersion of assets makes it useful to appoint several guardians. The family council is then called upon to designate a main tutor and an assistant tutor responsible for managing the property.
The need to protect the minor inevitably leads to designating one of his ascendants as guardian. It is necessary to point out the impact of matrilineal customs on the designation of the guardian [32].
Or parental authority is entrusted to a tutor who should be relieved of the management of the minor's assets. The family council is then obliged to appoint a tutor to the person and a tutor to property [33].
But this limitation of persons likely to be appointed tutor of a minor to ascendants alone is not always justified. The protection of the minor indeed requires that one can choose his tutor among the people who bear him an affection, even though these would not be part of the ascendants [34]
When he is appointed, the tutor is generally appointed throughout the duration of the tutorship, that's to say until the minor has acquired full capacity through this majority. It can nevertheless be provided for his replacement by the family council if serious circumstances require, independently of the cases of excuses, incapacity or dismissals mentioned above.
Whether he was deprived of the opening of the guardianship or replacing a deputy, the role of the guardian is always the same.

1.1.1.2.3.2. The role of the tutor.

As soon as he takes office, the tutor is required to draw up an inventory of the minor's property.
This inventory must be filed with the registry of the competent court in matters of guardianship. It lists all the movable and immovable property of the minor as well as the

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sums due to him. If the minor owes something to the tutor, the latter must, on pain of forfeiture, declare it in the inventory.

Otherwise, he can no longer claim payment. Any breach of this obligation not only engages the responsibility of the tutor for all sentences that may be pronounced for the benefit of the minor, but also authorizes the minor to prove the circumstances and the value of his property by any means, even by common fame [35].

It goes without saying that if the state of the minor's property changes during the guardianship, additional inventories must be appended to the first.

The rule that has just been stated is further justified by the protection of the property of the minor: the court must be informed of the state of the property of the minor on the day the tutor takes up his duties in order to be able to judge better afterward his management.

In general, "to the tutor belong the custody of the minor, the care of his education and the management of his property". He therefore has power not only over the person of the minor, but also over his property. But to carry it out, what financial means will the tutor have?

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The terms of the personal and family code of Burundi which take up a general idea contained in other African texts have the merit of being concise and will therefore be quoted here in preference to the texts. They say in particular the following: "the guardian is required to provide for the maintenance and education of his ward, taking into account the property and personal income of the latter.

If the pupil has no personal assets and income, his upkeep and education are the responsibility of the guardian, who must provide for them in accordance with his resources [36].

However, the very conditions that preside over the opening of any guardianship lead to subjecting a large part of the acts relating to the custody, education and management of the minor's property to the control of the other guardianship bodies. Thus, for example, the guardian cannot have the minor travel for more than three months outside the State where he is domiciled [37]. In the same vein, and with regard to the management of the minor's assets, if conservatory acts and acts of administration can be carried out without difficulty by him, acts of disposal and those likely to encumber the heritage of the ward can only be performed by the tutor with prior authorization. This authorization must emanate, depending on the case, from the guardianship judge or the family council [38]. It also covers acts such as:

The renunciation of a succession or the pure and simple acceptance thereof;

The acceptance of a gift or a particular bequest encumbered with a charge;

The division of property belonging jointly to the minor;

The exercise in demand or in defense of actions relating to extra-patrimonial rights;

The acquiescence to a request brought against the minor for the other actions;

The transaction in the name of the minor etc. [39].

Indeed, the tutor is subject to the obligation to submit to this magistrate each year a provisional account of his management accompanied by all the supporting documents. In addition, within three months following the end of the guardianship, a final account will be given either to the minor who has become an adult, or to his heirs.

A minor who has reached adulthood can only approve the guardianship account one month after the guardian has given it to him, against receipt, with the supporting documents. Any approval made before this deadline is void.
Likewise, any agreement made between the pupil who has become an adult or emancipated and the person who has been his guardian is null and void if the said agreement has the effect of exempting the latter in whole and in part from his obligation to render an account.
The report thus rendered gives rise to disputes in civil matters.
Even when there has been approval of the account, this does not prejudice the actions or responsibilities which may belong to the ward against the guardian or the other guardianship bodies [40].
As for the prescription of actions against the guardian or the guardianship bodies relating to the facts of the guardianship, it is five years in some countries (Senegal, Togo, Gabon). This period runs depending on the country, either from the day the guardianship ends, or from the majority of the pupil and applies just as well to the deputy guardian.

1.1.1.2.4. The Surrogate gardian

The surrogate guardian is an individual whose role is to monitor the guardian and immediately inform the guardianship judge of any faults he observes in its management. Any breach of this obligation engages his personal liability [41].
From this definition, one can validly consider that the institution of surrogate guardian duplicates the guardianship bodies already in charge of the supervision of the guardian such as the guardianship judge and the family council. In other words, the surrogate guardian will only weigh down and complete the already heavy and complex machine that guardianship constitutes. It is probably for this reason that some laws do not mention it anywhere [42].

Others, certainly inspired by the same motives, only make the appointment of a surrogate guardian obligatory when the minor has property [43].
The deputy tutor is appointed by the family council, preferably from among its members, in a different line than the tutor himself. His functions cease in principle at the same time as that of the tutor.
But it should be noted immediately that the surrogate guardian is not in the pay of the guardian. The proof is that the latter cannot ask for his dismissal, nor even vote in the family council convened for this purpose. Much more; because he must confine himself to his role of overseer, the substitute tutor does not replace the tutor if the latter dies, becomes incapacitated or abandons the tutorship.
His role is then reduced to bringing about the appointment of a new tutor within one month. At most he can represent the tutor when the interests of the latter are in opposition to the minor [44].
On the other hand, the surrogate guardian should not be confused with the representative of the parents. The latter is designated by the father and mother or guardian of the minor, among the parents, allies or acquaintances as an agent to assist in all civil acts or in those exhaustively listed by them.
This situation prevails when the minor resides far from the persons in charge of his custody. The particularity here comes from the fact that not only can the legal representative appointed under these conditions see his mandate withdrawn at any time by him or those who gave it without any other form of process; but even then he has no account to render to those who designated him.

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When he commits a fault in his mission of supervising the tutor, his responsibility may be engaged.
The limitation periods are the same as for the guardian.

1.1.1.2.5. The family council.

The family council is the collegial supervisory body. It is certainly from this character that he draws his strength: the most important decisions cannot, in fact, be taken without his authorization.
However, as its members, whose number varies between two and six depending on the legislation, are chosen by the guardianship judge, it is still the judge who has the last word. However, it should be noted that some countries do not make it compulsory to constitute a family council [45].
As these same countries also make no mention of the surrogate guardian, the guardianship bodies are reduced to the sole guardian and the court. It's a bit light and too "Western" as a decision.
Contrary to Rwanda, our country, faithful to its traditions, not only made the constitution of the family council compulsory but also increased the number of these members [46].
The members of the family council are chosen by the guardianship judge from among the parents and allies of the father and mother of the minor, avoiding leaving one of the two lines without representation and taking into account the interest shown by these parents or allies in the child person. While it is true that the judge can also include in this body a third party who has an interest in the child, this does not prevent the family council from recalling the traditional customary assemblies and that, as such, it should not have been excluded from these laws. It turns out that a decision taken by mutual agreement between the guardian and the family council takes on an authority that is worth its weight in gold and which, if one is in traditional African society, has even a weight greater than that taken by the father alone.
The role of the family council is essentially to designate the tutor and the surrogate tutor makes himself felt. He also provides for their replacement. His authorization is also necessary for the validity of the deeds of disposal and those encumbering the assets of the minor.
To fulfill this mission, he must be summoned by the guardianship judge either ex officio or at the request of the guardian, of the deputy guardian, of at least two of his members or of the minor aged at least eighteen years.
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The members of the family council are required to personally attend the meetings. They can only be represented by a relative or ally of the father or mother who does not participate in his own name in the council.
The absence not justified by a legitimate excuse of one of the members of the council makes it liable to a penalty of fine.

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The sanction is explained by the fact that this assembly can only deliberate if half of its members are present or represented. Otherwise, the judge may adjourn the session or, if there is an emergency, take the decision himself.
The deliberations of the family council can be canceled for fraud, fraud or omission of a substantial formality. The action is exercised here by the guardian, the judge of guardianships, one of the members of the family council and by the pupil within one year from his majority or his emancipation. In other words, they are enforceable by themselves.
It should be emphasized here that the meetings of the family council are not public and that third parties can obtain dispatch of the deliberations only with the authorization of the guardianship judge. When the decision has not been taken unanimously, everyone's opinion is mentioned [47]. This provision certainly makes it possible to establish the shares of responsibility when a decision of the family council causes prejudice to the minor and when the latter, at the end of the guardianship, requests compensation.

1.1.1.2.6. The end of guardianship.

Guardianship ends with the emancipation, majority or death of the minor [48]. The reappearance of the missing or absent parent can also lead, in certain legislations, to the end of guardianship [49].
When the minor acquires full capacity, his tutor is required to put him in possession of his property and give him a final account of the tutorship.
The responsibility of each of the guardianship bodies can then be engaged by the minor under the conditions that we have seen above in relation to each of them.
The end of the minor's tutorship may mean that the minor has become an adult. The majority therefore constitutes one of the remedies for the minor's incapacity. But there are others which have been found and which, while excluding hypotheses of representation, nevertheless make it possible to compensate for the minor's incapacity. We then see the minor at the head of his business. How is it possible?

1.1.2. Other remedies for the minor's incapacity.

The minor is struck with an incapacity to exercise. If representation is a means of mitigating this incapacity insofar as a person acts in the name and on behalf of the incapable person, the fact remains that certain acts are so personal that it is impossible to let a third party act on behalf of the person concerned.
For this, the legislator has provided hypotheses where the minor can act himself provided that he is authorized or assisted by the appropriate person. Going even further, even the legislator considered that one could give to a minor endowed with a certain faculty of discernment, the capacity that normally only the majority would have been conferred on him. Emancipation makes it possible to achieve this result.

1.1.2.1. Authorization and assistance.

The eminently personal nature of certain acts makes it impossible for a third party to perform them. For this reason, the law authorizes the minor to pass them provided that he is authorized to do so by the person exercising parental authority over him. Thus, a minor,

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having the age required by law, can contract marriage on condition that he has the consent of the person who exercises parental authority over him [50].
This authorization is given either by an authentic deed, or by the consent of the adult when the deed is concluded.
Just as when the authorization is necessary for him to accomplish a given act, the incapable person remains at the head of his affairs when the law requires him to be assisted. Only does not constitute authorization.
Indeed, while the authorization is a consent given in advance, in one go, to an operation, the assistance requires a continuous contribution to the act and is achieved by giving advices and exercising controls.
This difference is made clear by article 606 CCiv which provides with regard to the minor's employment contract that: "From the age of sixteen, the minor concludes his employment contract and breaks it with the assistance of his legal representative ".
It is indeed difficult to imagine how, in a question as personal as the employment contract, one can have the authorization of a person to break it.
But if we see in assistance an institution whose purpose is to enlighten the incapable person on the procedure to follow, at the same time as giving more weight to what he achieves, we understand why the minor of sixteen years here needs to be assisted.
The distinction between authorization and assistance is even clearer in article 607 of the Civil Code of Gabon, in particular in its paragraph 1 which states: "when the minor has exceeded the age of sixteen, he may, assisted by a lawyer, bring an action for compensation for the damage suffered by him as a result of offenses committed against his person or his property by a third party".
The authorization and the assistance which make it possible to place the minor at the head of his affairs already brings us closer to the situation where he is declared capable before he has reached the age of majority: emancipation.

1.1.2.2. Emancipation.

In this part we will define the notion of emancipation and then the effects that can result from this emancipation.

- The definition of emancipation:

It can be defined as being a procedure which makes it possible to give a minor the capacity of an adult. This is why the lexicon defines it as a "legal act by which a minor acquires full capacity to exercise and is thereby assimilated to an adult" [51].
The fact that the emancipated minor acquires full legal capacity means that the minor can, in principle, assert himself the rights of which he is the holder. The age at which a minor can be emancipated is fixed by law. We cannot in fact allow the granting of this capacity to a minor whose faculty of discernment still leaves something to be desired.
This is why this age varies between sixteen and eighteen years.
However, the procedure to be followed to make a minor emancipated is not the same everywhere, while the effects of emancipation are identical.

- The effects of emancipation.

Overall, the emancipated minor is capable like an adult in all acts of civil life.
This means first of all that he ceases to be under the authority of his father and mother. Consequently, they are not automatically responsible, in their sole capacity as father or mother, for the damage that the minor may cause to others after his emancipation.

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However, to marry or give himself up for adoption, the emancipated minor must obtain the authorization of his authors. In other words, even when he is supposed to have the capacity of an adult, the minor must still, for certain acts, seek the authorization of his parents. The reason for this state of affairs lies in the fact that the legislator intends to protect minors until they have reached the age of majority. This concern, if it guides the rules relating to the remedies for the minor's incapacity, has also inspired those concerning the sanctions relating to the violation of these rules.
After the establishment of all these institutions, one then wonders what their functions will be.

1.2. The functions of these remedies for the incapacity of minors.

The goal of all remedies for the incapacity of minors is either the safety of the minor's person or the safety of his or her property.

1.2.1. The security of the person of the minor.

By security of the person of the minor, it is necessary here to understand the protection which surrounds him. This protection of the person of the minor is ensured by those who hold parental authority. Parental authority is intended to protect the child in his safety, health and morality [52]. To achieve this, the law recognizes certain prerogatives for holders of parental authority.

1.2.1.1. Holders of parental authority.

The civil code of 1804 had entrusted to the father of the family all his powers with regard to his minor children.
But the law of June 4, 1970 substituted the concept of parental authority for that of paternal power. Parental authority belongs to the child's father and mother. This means that the fundamental difference between paternal power and parental authority lies quite simply in the fact that in the first institution all the powers belong to the sole father of the family over his children, while in the second these same powers over the children are shared between father and mother.
However, it is necessary to distinguish between ownership and the exercise of parental authority. They can sometimes be dissociated.
With regard to the legitimate child, parental authority is exercised by both parents in common if they are married (Article 372 paragraph 1 of the Civil Code).
In principle, the divorce or legal separation of the parents does not put an end to this joint exercise of authority. However, the judge will fix the residence of the child with one or the other of his two parents. If one of the father and mother dies or temporarily or permanently loses the exercise of authority, it devolves entirely to the other (article 373paragraph 1 of the civil code).
With regard to an illegitimate child, when his filiation is only established with regard to one of his two parents, the latter exercises parental authority alone. If filiation is established with regard to both parents, parental authority is exercised in principle by the mother.
However, it is exercised jointly by both parents if they make a joint declaration before the chief clerk of the court (article 374 al 1 and 2 of the civil code).

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Parental authority will also be exercised jointly by both parents if they both recognized the child before it reached the age of one year and if they live together at the time of the concomitant recognition or the second recognition [53]. The government wants to change this rule by removing the condition of living together. Thus parental authority will be exercised jointly, once the filiation of the child is established with regard to both parents.
In all cases, the family court judge can modify the conditions for exercising parental authority, including if the reform is successful, in the case of the two exceptions above. The one of the two parents who does not exercise parental authority benefits, except for a serious reason, from a right of visit. The judge may also grant him a right of supervision.
With regard to a child who has been the subject of a full adoption, the conditions for exercising parental authority are the same as with regard to a legitimate child.
With regard to a child who has been the subject of a simple adoption, parental authority is exercised by the adopter.
With regard to minors who are not protected by parental authority, guardianship aims to replace it. This protective regime concerns both the person of the minor and his property.

1.2.1.2. The prerogatives of parental authority.

It is not only about power but about authority, that is to say a set of rights and duties conferred on both parents to protect the child. Article 371-2paragraph 2 of the Civil Code specifies that they have the right and duty of care, supervision and education with regard to it.
Custody is a concept that was officially abolished by the Malhuret law of July 22, 1987.
However, the fact remains that parents have the power and even the duty to keep their minor child with them [54].
Surveillance gives parents the right to control the child's relationships, to prohibit him from certain activities, to oppose his leaving the territory, to authorize medical treatment or surgical interventions, etc. It implies the duty to ensure the safety of the minor but also the duty to ensure that the child does not harm third parties.
The education of the child must be ensured by his parents. It concerns learning which is compulsory. It also concerns artistic and religious knowledge as well as sports and leisure activities.
In view of the various provisions relating, for example, to the guardianship of a minor, we conclude that the security of the person of the minor has always been at the center of the concerns of legislators.
Thus, for example, "the family council regulates the general conditions for the upkeep and education of the child, taking into account the will that the father and mother may have expressed on this subject" [55].
It follows from this provision that the family council, which is one of the guardianship bodies, plays a determining role in the protection of the person of the minor. This protection of the minor concerns his upkeep and education. Consequently, the maintenance and education of a child constitute essential elements of the protection of the person of the minor.
The protection of the person of the minor is carried out by the representation of the minor in the acts of civil life.
"The tutor takes care of the person of the minor and represents him in all civil acts, except in cases in which the law or usage authorizes the minor to act alone" [56].

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It happens that the minor can find himself in a family situation which has nothing to do with the family model which governs the rules concerning the legal administration, hence the need for guardianship which is an institution which remedies the incapacity of the minor when the latter finds himself in a delicate situation.

1.2.2. The security of the minor's property.

The protection of the person of the minor is not the only area, it also concerns the property of the said minor. This protection of the property of the minor is even the basis of several relative provisions in this matter.
The administration of the property of the minor child is an attribute of parental authority. However, the law institutes a special system of protection when the minor is not protected by parental authority.
It is important here to refer to the legislative provisions on the protection of the property of the minor. Thus we will successively recall these institutions which are among others: pure and simple legal administration, legal administration under judicial control, guardianship with the assistance of the family council.

1.2.2.1 Pure and simple legal administration:

Pure and simple legal administration concerns the minor whose father and mother jointly exercise parental authority. Since the law of December 23, 1985, both parents are the legal administrators of the property of their minor child.
Each of the parents has the power to carry out acts of conservation and acts of administration alone. On the other hand, acts of disposition require the consent of both parents. In disagreement, the guardianship judge settles the parental conflict. In addition, certain serious acts, such as a loan or the over-the-counter sale of a building, require the authorization of the guardianship judge.
Legal administration under judicial control: legal administration under judicial control where the parents do not exercise parental authority jointly or where only one parent has parental authority.
The parent who exercises parental authority is the sole administrator of the property of his minor child. This parent can carry out acts of conservation and administration. Acts of disposal must be authorized by the guardianship judge.

1.2.2.2. Guardianship.

Guardianship is a measure of protection which concerns a minor over whom no parent exercises parental authority.
As previously mentioned, the minor may find himself in a family situation which does not govern the rules concerning legal administration. If legal administration is an attribute of parental authority and is exercised by the father and mother of the child, it often happens that these two people are deprived of the exercise of these attributes. In this case, then, an institution is needed to compensate for this lack of exercise of parental authority by the biological parents of the minor.
Thus recourse is had to the institution of guardianship to remedy this situation.

The most common and least serious acts are performed by the guardian, under the supervision of the surrogate guardian. The most serious decisions are taken by the family council, chaired by the guardianship judge and made up of family members or people interested in the child. The guardianship judge exercises control and watches over the interests of the minor.

II- Protection of adults for physical or moral infirmity

Since minors are not the only incompetents, legislators have also leaned on the side of certain adults taking into account certain factors.
This legislative bias in favor of certain adults is important in several respects.
Depending on the case, the incapacity of certain adults is based on the desire to protect them or, on the contrary, on the deficiency they inspire. In either case, it is always a matter of an incapacity to exercise which, depending on the case, is general or special.
In this part we will first analyze the remedies for the incapacity of adults (section 1) and then the role of the remedies for the incapacity of adults (section 2).

2.1. Remedies for the incapacity of adults.

A person of full age is declared by law to be fully capable because the law considers that he is capable of discernment or endowed with a certain maturity. Only certain alterations of mental faculties can occur in this adult, bringing him then to a degree of discernment which is below the average. In this case, the African legislators considered that it was necessary to declare the adult to assert his own rights.
The remedies for this incapacity obviously vary according to the degree of infirmity of the person of full age. But all of them testify to the desire to protect the intellectually impaired adult.
With a view to this protection of incapable adults, several protection regimes have been organized. This is how we find in particular: adults interned and placed under the protection of justice (paragraph 1) and adults under guardianship and those under curatorship or with legal counsel (paragraph 2).

2.1.1. Internment or placement under the protection of justice.

Some States provide, for interned adults, to place them under the protection of justice for the administration of their property. The study of the persons concerned and of the legal regime of this protection deserves to be addressed.

2.1.1.1. Protected persons.

Here the question arises as to which person should be interned?
Under certain legislative provisions, very serious causes are required to place a person under the protection of justice.
If article 345 of the family code of Senegal suggests that it is a question of the insane, article 323 of the code of persons and family of Togo and article 709 of persons family code of our countries lean in the same direction by explaining that placement under the protection of justice can be carried out for certain adults when their "... mental faculties are altered by

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illness, infirmity or weakening due to age", and even those whose "...lasting impairment of bodily faculties prevents the expression of will" when these people need protection in civilian life.
After determining the people who can be placed under the protection of justice, we will discuss the various appropriate regimes in this area.

2.1.1.2. Legal regime.

By legal regime, we mean all the legal measures put in place to protect adults who are incapacitated.
Among these legal measures, it is necessary to distinguish here according to whether the adult is interned or not.
In the event that the adult is interned, as soon as he is hospitalized, the director of the establishment draws up an inventory of the property that the patient had with him on his admission and informs the official curator within forty-eight hours.
The latter draws up a complete and detailed inventory of all the patient's property within one month, and informs the judge of guardianships to whom he sends a copy. In general, it is the curator who administers the property of the patient and he must make use of his powers to ease the patient's fate and accelerate his recovery.
However, if the curator must, in the exercise of his functions, taking into account in particular the dispersion of the assets, to be represented by an agent, he remains responsible for the management of the latter [57].
When the adult has not been interned, at the request of any interested person, the guardianship judge appoints an agent responsible for administering the property of the incapable person, confirming, if necessary, the choice which would have could be done by the patient.
As this regime is not applied or known to all countries, these people will then be placed under guardianship or curatorship.

2.1.2. Guardianship or curatorship.

While the placement of an adult under the protection of justice is a measure adopted by only certain States (including Togo, Mali and Senegal), the placing under guardianship of adults is known to all. Only the conditions of this guardianship vary from one country to another while the effects of guardianship are the same everywhere.

2.1.2.1. Conditions for placing an adult under guardianship.

Guardianship arises when an adult whose faculties are impaired by illness, infirmity or impairment due to age, needs to be represented on a continuous basis in acts of civil life.
Guardianship does not duplicate the placement of the adult under the protection of justice because on the one hand, it does not concern adults whose lasting alteration of bodily faculties prevents the expression of will [58]; on the other hand, it only intervenes when the intellectually handicapped adult needs to be represented on a continuous basis in the acts of civil life. It will therefore certainly be adults at the head of many assets that should be managed for a fairly long period or presumed to be such.

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Guardianship is pronounced by the judge of guardianships, at the request of the person who needs to be protected, his spouse [59], his descendants, his ascendants, his brothers and sisters, the curator or the public prosecutor. It can also be opened ex officio by the judge. Other relatives, allies, friends can only give notice to the judge of the cause which would justify guardianship.
The same applies to the attending physician or the director of the establishment where the person of full age is treated.
The motion presented to the judge must state the reasons for the application for guardianship and be accompanied by supporting documents for the alleged facts. Then this file is communicated to the public prosecutor who proceeds to an investigation on the object of the request as well as a medical expertise on the state of the patient.
In all cases, the judgment can only be pronounced after the judge has personally heard the person whose guardianship is requested, by transporting to him even if the need arises.
In addition, the judge can only pronounce the opening of a guardianship if the alteration of the mental or bodily faculties of the patient has been noted by a specialist doctor chosen by the public prosecutor [60].
We can therefore see that the legislator knowingly multiplies the formalities, requests and expertise to ensure the seriousness of the final decision. This is served on the applicant and the person concerned and notified to the public prosecutor.

2.1.2.2. Adults under curatorship or with legal counsel.

Here we will study the notion of curatorship (a) and finally the effects of this curatorship (b).

- The concept of curatorship:

According to the provisions of article 365 of the code of persons and of the family of Senegal and 740 of the code of persons and of the family of Mali "curatorship is a measure of protection which makes it possible to assist an adult who needs 'to be supervised or advised in acts of civil life'. This measure of protection adapts to a degree of incapacity lower than that of guardianship. As it happens that some adults without having lost their intellectual faculties nevertheless deserve to be protected because they have behaviors that are likely to harm them. In this specific case, reference is made to the prodigal and the feeble-minded. Certain legislations such as the code of persons and the family of our country Mali in its article 740 adds to the prodigals and the feeble-minded the adults who by their idleness and their intemperance expose themselves to falling into need or compromise the fulfillment of their family obligations. Thus the legislator intervenes to appoint a curator, also called a judicial council, in order to assist these individuals in the accomplishment of certain acts.

- The effects of guardianship:

By answering the question of knowing why the curatorship, we are immediately immersed in the effects linked to this measure of protection. Curatorship is a measure that will then limit the capacity of the person placed under curatorship. This limit results in the appointment of a curator to assist, control or advice the incapable adult in acts of civil life. It also results in the determination of certain acts by the legislator that the adult cannot pass without the assistance of his curator. Thus, certain legislations such as those of Burundi and Rwanda provide a list of acts that adults must perform with the assistance of their curator. According to them, a person of full age under curatorship or provided with a judicial adviser may not plead, compromise, receive movable capital and discharge it, alienate or encumber property with mortgages without the assistance of his curator [61].

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It follows from the foregoing that a person of full age placed under curatorship must not perform acts alone that the curator cannot perform without authorization.
Finally we will detail the functions of remedies in the service of incapacitated adults.

2.2. The role of remedies in the incapacity of adults.

The roles played by the various remedies for the incapacity of adults are twofold. In the first degree it is the protection of adults themselves while in the second degree it is the protection of the property of the adult. Even if these two interests are independent, they do not remain inseparable.

2.2.1. Safeguarding the interests of society.

With regard to the doctrinal definition on the incapacity of suspicion, we can affirm that the protection or the safeguard of the interest of the company occupies a place of choice in the installation of the systems of protection of the incapable.
Life in society inevitably leads to very complex relationships between the components of this society. The major not being an individual who lives in autarchy, must maintain relationships of a very diverse nature with the other components of the said society and vice versa.
During this relationship, it would be important for this company, whose operation is based on legal principles or rules, to take his interests into account.
The incapacity for suspicion developed by the doctrine is a key concept in safeguarding the interests of society. Striking minors with an incapacity to exercise results from a lack of necessary discernment. One can then ask the question if, however, minors are the only ones to be deprived of this faculty of discernment.
By answering in the negative of course, we can say that alongside these minors, there are other categories of people who lack this faculty of discernment. These include the insane or certain convicts. These should not be fully capable, that is to say, they should not be placed on the same footing as the others.
It is therefore easy to understand that the effects of a full capacity granted to them would risk being catastrophic not only for them but also for the society in which they would practice. This fear of catastrophe also leads to the incapacitation of certain convicts because of the nature of the offense committed by them.
In the same vein, the protection of society's interests is explained by the complexity of the rules governing incapacity.
If we refer for example to this provision "anyone who causes harm to others under the influence of a mental disorder, is no less obliged" [62], we suddenly see the social insecurity which around its components. This situation is incompatible with social peace. Legal rules are necessarily in force for the strengthening of a modern society.
In the preliminary chapter of the general provisions of Title IV of adults protected by law, the protection or safeguarding of the interests of society has been sufficiently explained [63]
Safeguarding society's interests in the protection of certain adults does not only take place at the civil level. In criminal matters, if we refer to incapacities and disqualifications, these constitute a safeguard of the interests of society par excellence. They are security measures,

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following criminal convictions, the purpose of which is to prevent the persons who are subject to them from fulfilling civic, civil or family functions [64]

2.2.2. Safeguarding the interest of the adult.

Beyond even the protection of the interests of society, we can affirm that the protection of the property of the adult occupies a place of choice in this protection. It should be noted that this protection does not come out of nowhere. Thus the Persons and Family Code of Mali has provided in Title IV for adults protected by law.

Consequently, "when the mental faculties are altered by illness, infirmity or impairment due to age, the interests of the person are provided for by one of the regimes provided for in this chapter" [65].

This provision outlines the causes that trigger the opening of protection for the property of the person of full age. The analysis of the causes set out in this legislative provision clearly shows that protection is worth a weight in gold.

However, it should be noted that the protections applicable at this level depend on the regimes provided for in this area. These different regimes have small nuances between them.

Among these regimes, there is the safeguard of justice, guardianship and curatorship.

Firstly, with regard to safeguarding justice, this measure emphasizes the necessity or the need to protect adults. Thus, "the adult who, for one of the reasons provided for in article 709, needs to be protected in the acts of civil life, can be placed under the protection of justice" [66].

Next, guardianship places more emphasis on the representation of concerned adult. This representation must be continuous. It is for this reason that article 720 of the Persons and Family Code of Mali provides for this purpose that "a guardianship is opened when the adult, for one of the causes provided for in article 709 above, needs to be represented in a continuous way in the acts of the civil life".

Finally, curatorship speaks of control and advice of an adult in civil life acts. This protective measure can result from different situations.

They can intervene either following an illness or following immoderate behavior of the incapable person. To become familiar with the causes of curatorship of an adult, it is important to refer to article 740 of Persons and Family Code of Mali which provides: "an adult who, for one of the causes provided for in article 709, without being unable to act himself, needs advice or control in the acts of civil life, can be placed under a system of curatorship".

A person of full age who, by his prodigality, his intemperance or his idleness exposes himself to find himself in need or compromises the fulfillment of his family obligations, may likewise be placed under the system of curatorship.

It follows from this provision that even an adult who behaves in such a way as to jeopardize the interests of his family deserves to be placed under a protection regime, hence the idea of curatorship.

Conclusion

Thus through the various disabilities mentioned above and the remedies for these disabilities; the individual , whatever his family, economic and legal situation, must psychologically put himself at ease simply because of the existence of a legal arsenal of legislative provisions which rigorously or effectively protect not only his property but also his person .
This indicates that people who are incapacitated, namely minors and certain adults, were subjects of concern. But nowadays, with the protection measures put in force by the various legislations, we can affirm that even incapacitated these people properly enjoy their rights as if nothing had happened.
When we refer for example to the remedies for incapacity: whether it is a question of the representation of authorization or emancipation, the protection of minors constitutes a fixed idea of the legislator and even almost an obsession in the sense that the people called upon to represent a given minor or to give their authorization are singled out. In other words, it is not given to anyone the prerogatives for the protection of a minor.
Which means that the study of remedies for the incapacity of minors really shows that the protection of minors inspires legislators throughout, as do the penalties for violating the rules relating to the incapacity of minors.
As far as certain adults are concerned, the protection granted to them sufficiently proves how much legislators are concerned about the situation of these intellectually impaired people. This protection could even be analyzed as a logical continuation or a kind of continuity of the protection of minors for the simple reason that even once the person becomes of age, it is still not out of the possibility of seeing themselves for one or other reason under protective supervision.
But it should be noted that the theory of abuse of rights amounts to saying that the exercise of a right ceases to be legitimate and constitutes a fault, when it can have no other purpose than to cause another shame.
It has sometimes been proposed to go further, to consider as abusive, illicit, even in the absence of intent to harm, of malicious intent, any exercise of a right for purposes other than those for which this right has been granted to the individual, the sole purpose of diverting the right from its social function would be an abuse. This would be another conception of subjective right: the right to social function confers on the individual not in his selfish interest, but to give him the means to render service to the community. There are rights that can easily be built on this model: thus, parental authority, which today is designed for the needs of the child and his education, rather than in the interest of the father and mother. Others lend themselves less to it, such as the right of property, although we have often spoken, in modern doctrine, of property as a social function.
One wonders whether the theory of abuse of rights has a general domain. It seems that certain rights are discretionary, that their exercise can never be criticized under pretext.
In this specific case, could it be said that this theory of abuse of rights constitutes nowadays an exception to the limits of the exercise of the attributes attached to legal personality?
Difficult to decide since we cannot set limits on the exercise of rights while granting discretionary powers to certain people and who are by definition immune to criticism.

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11. Article 273 of Code of family of Senegal.
12. Article 487 of the French civil code.
13. Articles 259 and 260 of the Persons and Family Code of Togo.
14. Article 278 paragraph 1 of the Family Code of Senegal.
15. Article 519, paragraph 2 of the said code.
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34. This is the case of Burundi: Article 307 of the Persons and Family Code.
35. Article 324 paragraph 3 and 4 of the Family Code of Senegal.

36. Article 314 paragraph 2 and 3 of the Individuals and Family Code of Burundi.
37. Article 257 of the Civil Code of Rwanda.
38. Article 300 of the Persons and Family Code.
39. Article 300 of the Persons and Family Code of Togo.
40. Articles 332,333 and 334 of the Family Code of Senegal.
41. Article 318 paragraph 2 of the Family Code of Senegal.
42. like Burundi and Rwanda for example
43. Article 601 of the Civil Code of Gabon.
44. Article 318 paragraph 3 of the Family Code of Senegal.
45. Article 256 of the Civil Code of Rwanda.
46. Article 653 paragraph 1 of the code of reliable persons of the family of Mali.
47. Article 542 to 549 of the civil code of Gabon.
48. Article 331 of the Family Code of Senegal.
49. Article 331 of the Individuals and Family Code of Burundi.
50. Article 109 of the Family Code of Senegal.
51. Lexicon of legal terms, Paris. Dalloz 3rd edition, 1974. P.144
52. Article 371-2 of the French civil code.
53. Article 372 paragraph 2 of the civil code.
54. Article 371-3 of the civil code.
55. Article 629 of the Persons and Family Code of Mali.
56. Article 630 paragraph 1 of the Individuals and Family Code of Mali.
57. Article 325 of the Persons and Family Code of Togo.
58. Article 530 al1 "contrario" of the Senegalese Family Code.
59. Unless the community of life has ceased between the two spouses.
60. Article 332 of the Persons and Family Code of Togo.
61. Article 374 of the Individuals and Family Code of Burundi.
62. Article 708 of the Persons and Family Code of Mali.
63. Articles 706 to 713 of the Persons and Family Code of Mali.
64. Glossary of legal terms. Dalloz, 14th edition. Page 311.
65. Article 709 al.1 of the Individuals and Family Code of Mali.
66. Article 713 of the Persons and Family Code of Mali.

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