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‘Steunpunt bewindvoering’ (Support Centre for conservatorship), Belgium

Part I - Legal analysis of the Support Centre for Conservatorship in Belgium

Background

In 2020, the justices of the peace, the legal profession and the healthcare and welfare sector in West Flanders jointly established a provincial steering group to address challenges relating to conservatorship. This multidisciplinary initiative led to the creation of the Support Centre for Conservatorship ("The Centre"), which was officially launched on 11 January 2022 by the Minister of Justice. The Centre functions as a contact point for questions, complaints and suggestions concerning conservatorship and provides information, support and referrals to a wide range of stakeholders. Initially operating in West Flanders, the initiative was progressively expanded to other judicial districts, including Antwerp, Leuven, East Flanders and Limburg, and is now active across most of the Flemish region. Through its multidisciplinary structure, the Centre also identifies structural issues in the conservatorship system and formulates recommendations for policy and practice. This brief report aims to provide a legal analysis of the Centre, acknowledging it as a groundbreaking initiative to tackle the challenges of conservatorship in an ageing society.

Methodology

The methodology used in this legal analysis is based on doctrinal and normative legal research. This includes a review of academic literature on conservatorship, the Belgian legal framework, and relevant European and international human rights instruments, as well as relevant case law. Normative analysis is used to interpret the existing legal framework and assess its coherence in light of the tensions between autonomy and protection. The analysis is further informed by insights from an interview conducted on 27 March with Leo Vulsteke (Chair of the Justices of the Peace of West Flanders), Eveline Vandamme (court clerk), and Nico Bendels (chief clerk), which provided practical perspectives on the functioning of the Centre.

Outline of Analysis

The analysis proceeds in six sections. Section 1 examines the challenges of conservatorship, focusing on tensions between protection and fundamental rights. Section 2 outlines the Belgian legal framework. Section 3 situates conservatorship within the European human rights context. Section 4 analyses the Centre as a multidisciplinary response. Section 5 links the project to theories of justice. Section 6 concludes by arguing for the model's replication in other European jurisdictions.

1. The Challenges of conservatorship

Conservatorship, the legal mechanism by which a court appoints a representative to manage the affairs of a person deemed unable to do so themselves, is one of the most far-reaching protective measures a justice system can impose. In Belgium alone, approximately 140,000 people are currently subject to such a measure, a number that continues to rise in line with an ageing population and increasing recognition of cognitive and psychiatric

vulnerability.[1] This evolution reflects broader European demographic projections, according to which the proportion of people aged 65 and over will continue to expand significantly.[2]

Beyond demographic necessity, the practical relevance of conservatorship is also illustrated by the growing demand for accessible information. The Centre's website, for instance, recorded 22,908 visits, including 16,803 unique visitors, while the FAQ section alone was consulted 6,886 times.[3] These figures highlight the importance of transparency and public understanding in this field. In a legal domain that directly affects fundamental rights and personal autonomy, access to clear and reliable information is essential to ensure both trust and effective use of protective measures.

While conservatorship is designed as a protective instrument, its operation frequently produces outcomes that stand in tension with the very rights it aims to safeguard. At a fundamental rights level, conservatorship conflicts with several core protections. The right to private and family life enshrined in Article 8 of the European Convention on Human Rights ("ECHR"), the right to personal integrity under Article 3 of the EU Charter of fundamental Rights, and Article 12 of the UN Convention on the Rights of Persons with Disabilities, which calls for supported rather than substituted decision-making. These principles point toward legal protection that maximises rather than displaces individual autonomy. Substituted decision-making, by contrast, transfers legal agency entirely to a third party, rendering the protected person voiceless within the very process designed to protect them.

Conservatorship raises a number of complex social issues that extend far beyond its strictly legal framework. As highlighted by the Centre, this protective measure often generates tensions among all those involved:

- **Frustration**: A conservatorship is often accompanied by tensions and frustrations. After all, the protected person and his/her environment can experience this protection measure as very drastic, precisely because it affects the protected person's decision making power. In theory: conservatorship is not a punishment but a support system aiming at the maximisation of the capacities of the protected person and empowerment within a legal framework. In reality: it can feel like punishment.[4]
- **Division**: Conservatorship also creates a form of division, as it brings multiple actors - such as the justice of the peace, lawyers, family members, and healthcare or welfare professionals - into the protected person's daily life, each holding their own perspective on that person's situation. This plurality of viewpoints can lead to tensions and conflicting priorities, making it difficult to reach a clear, unified decision about what is best for the protected person.

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[1] Steunpunt Bewindvoering, 'Application Form — Crystal Scales of Justice Prize 2025 Edition' CEPEJ (2025) 2. *(Application submitted to the European Commission for the Efficiency of Justice.)*

[2] During the period from 2025 to 2100, the share of the population of working age is expected to decline, while older people will probably account for an increasing share of the total population: those aged 65 years and over will account for 32.5% of the EU's population by 2100, compared with 22.0% in 2025. Eurostat, 'Population Structure and Ageing' (Statistics Explained) https://ec.europa.eu/eurostat accessed 24 March 2026. *(Online data codes: demo_pjanind; proj_23ndbi.)*

[3] Internal reporting, Support Centre for Conservatorship. (Precise online source unavailable; figures provided by the Centre.)

[4] A V Barnard, 'Conservatorships: Coercion without Care or Control' (2025) 24(2) *Contexts* 42.

- **Vulnerability**: A vulnerable group of people get even more vulnerable by taking away their judicial capacity to act themselves. Individuals placed under protection are already in a fragile situation, and restricting their legal capacity may further reduce their ability to act independently. This raises concerns about overprotection and the risk of excluding individuals from decisions that affect their own lives.
- **Accessibility**: Accessibility to information on conservatorship faces significant obstacles, such as difficulties using electronic identification in hospitals and navigating procedures for protected persons, families, and social services for instance. A problem that is faced in all countries in the modern era unfortunately.[5] This leads to disinformation, increased conflict, and dissatisfaction among those involved.

As one Belgian family conservator described it, the process felt like hitting an administrative wall,[6] a sentiment that speaks not to individual failure but to a systemic gap between the law's protective intentions and its human reality. It is precisely this gap that the Centre was created to address.

These above-mentioned social tensions are also directly reflected in the legal framework governing conservatorship, which must constantly balance protection with respect for fundamental rights:

- **Capacity limits**: There is first a risk to infringe human rights where capacity and incapacity are assessed. Legal capacity is defined as "The authority under law of a person to engage in a particular undertaking, or maintain a particular status.".[7] What is at stake here is the boundary between protection and exclusion. Declaring someone incapable, even partially, limits their ability to make personal decisions. Capacity limits therefore directly affect patrimonial freedom and sometimes fundamental rights (e.g., family life, personal integrity).
- **Autonomy/best interests**: The second immediate central tension conservatorship law lies between autonomy and best interests. Autonomy refers to the individual's right to self-determination: to make choices, even unwise ones, about one's life, body and property.[8] It is rooted in human dignity (art. 23, Belgian Constitution).[9] Best interests, by contrast, justify intervention when a person's decisions seriously endanger their welfare or patrimonial security.[10] Should the law respect a person's risky decision, or override it to prevent harm? Belgian doctrine and case law increasingly emphasise proportionality and personalisation: protection must not exceed what is strictly necessary.[11] Best interests are therefore not purely objective; they must integrate the subjective preferences of the individual, as far as possible.

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[5] D M Connors, 'Improving Adult Guardianship Procedures–Working with WINGS' (2023) 62(1) *The Judges' Journal* 18.
[6] Laurens Kindt, '12.000 West-Vlamingen zijn geen baas over eigen centen' *Krant van West-Vlaanderen* (29 March 2024) 8.
[7] 'Legal capacity' *Oxford English Dictionary* (OUP) accessed 24 March 2026.
[8] 'Autonomy' *Oxford English Dictionary* (OUP) accessed 24 March 2026.
[9] Belgian Constitution (17 February 1994).
[10] 'Best interests' *Oxford Reference* (OUP) accessed 24 March 2026.
[11] V Vanderhulst, 'Elderly Protection Measures in Belgium' in E Alofs and W Schrama (eds), *Elderly Care and Upwards Solidarity: Historical, Sociological and Legal Perspectives* (Intersentia 2020) 111.

- **Subsidiarity**: a direct assessment of the conflict between autonomy and best interest is subsidiarity. It means that judicial intervention must only occur if less restrictive measures are insufficient.[12] Subsidiarity embodies the idea that the State should intervene in private autonomy only as a last resort. This principle explains the dual system of protection: extrajudicial mandate is preferred whenever possible. Judicial protection (administration) is justified only when extrajudicial arrangements are absent, inadequate, or abused (art. 491 – 493/3, Civil code).[13] Even within judicial protection, subsidiarity operates internally: assistance is preferred over representation; partial incapacity over general incapacity; temporary measures over indefinite ones (see infra).
- **Informed consent**: similarly to subsidiarity informed consent ensures that the protected person's is facilitated to express her autonomy to the maximal extent.[14] Informed consent is especially relevant where conservatorship intersects with personal rights, particularly medical treatment and family decisions. It highlights another fundamental stake: the difference between inability to manage property and inability to decide about one's body or personal relationships. Under Belgian law, even a person under judicial protection retains capacity for strictly personal acts unless explicitly restricted (art. 492/1, al. 2, Civil code). Even when declared incapable for certain acts, a protected person may request judicial authorisation to perform specific personal acts (art. 492/4, Civil code). Moreover, medical law (notably the Act of 22 August 2002 on Patients' Rights)[15] requires informed consent for healthcare decisions. If the person lacks decision-making capacity in medical matters, a representative may intervene, but the patient's wishes must still be sought and respected as far as possible. This ensures that incapacity in one domain does not automatically erase decisional autonomy in others.
- **Judicial supervision**: last but not least, judicial supervision guarantees that all the principles are respected in the application of conservatorship. Because an administrator may exercise significant powers over a person's property and sometimes personal life, Belgian law subjects administration to strict oversight by the justice of the peace (art. 492/4, Civil code).

2. Conservatorship in Belgium

In Belgium, conservatorship falls within the jurisdiction of the justice of peace. The justice of peace is organised by proximity courts situated at the lowest level of the Belgian judicial hierarchy. It has several distinctive features (art. 590-601, Judicial Code)[16] that reflect its accessible and practical role. Proceedings are designed to be simple and close to citizens: a conciliation hearing may be initiated by an oral or written request and involves no court fees. Hearings are public, and relatives or spouses may attend. Parties frequently appear without a lawyer. Access to the court is generally straightforward, procedural formalities are limited, and

[12] 'Subsidiarity' *Oxford English Dictionary* (OUP) accessed 24 March 2026.
[13] Belgian Civil Code (13 September 1807).
[14] 'Informed consent' *Oxford English Dictionary* (OUP) accessed 24 March 2026.
[15] Act of 22 August 2002 on Patients' Rights https://www.ejustice.just.fgov.be/cgi_loi/article.pl?language=fr&lg_txt=f&type=&sort=&numac_search=&cn_search=2002082245&caller=eli&&view_numac=2002082245nl accessed 24 March 2026.
[16] Belgian Judicial Code (1 November 1970) https://www.ejustice.just.fgov.be/img_l/pdf/1967/10/10/1967101052M_F.pdf accessed 24 March 2026.

court costs are relatively low. In addition, the justice of the peace may conduct on-site visits when necessary, which reinforces its concrete and fact-based approach to disputes, including conservatorship matters.

The justice of the peace supervises conservatorship through diverse control mechanisms (art. 492/1 Civil Code). These include allowing the conservator to act in advance in certain situations, such as selling the house of the protected person; controlling the conservator's accounts on an annual basis; conducting an ongoing assessment of the protected person's capacity; and intervening through conciliation and mediation when problems arise.

Belgian adult protection law was fundamentally reformed by the Act of 17 March 2013 reforming legal incapacity regimes, which entered into force on 1 September 2014. This Act abolished the former regimes of *interdiction*, *minorité prolongée*, *conseil judiciaire* and replaced the former *administration provisoire* (art. 227, Act 17 March 2013).

Under the current legal framework, every adult in Belgium in principle enjoys full capacity to exercise rights and perform legal acts. When a person's health situation makes them unable to take care of their goods and financial assets and/or to make decisions affecting their person—such as marriage, adoption or residence—that person may be declared incapacitated (art. 488/1 Civil Code).

Protection of adults is organised around two regimes: (1) Extrajudicial protection (arts 489–490/2 Civil Code) is based on a mandate granted by a capable adult for future incapacity, registered to remain valid and limited to property management. It operates without judicial intervention unless the justice of the peace intervenes where necessary. (2) Judicial protection (arts 491–493/3 Civil Code) applies where this is insufficient. The justice of the peace appoints an administrator and determines the scope of incapacity. Protection may concern property and/or personal rights, through assistance or representation, guided by the principle of proportionality.

3. Conservatorship in Europe

In the Council of Europe system, the protection of legally incapable persons is clearly a matter for the States, not for a European legislator.

However, while States remain competent, they must exercise that competence in compliance with the Convention. The European Court of Human Rights has made this clear in several landmark cases. In ***Shtukaturov v. Russia* (2008)**[17] and ***Stanev v. Bulgaria* (2012)**,[18] the Court held that national incapacity regimes must respect procedural guarantees (art. 6, ECHR), personal autonomy and therefore proportionality (art. 8, ECHR).[19]

- **Rights of the child (art. 8, ECHR)**: Conservatorship does not apply only to adults. Protective regimes also concern minors, particularly where parental authority cannot be exercised (e.g. death, incapacity, or deprivation of parental authority). In all such situations, the child's best interests must be a primary consideration.
- **Right to non-discrimination (art. 14, ECHR):** Conservatorship regimes must avoid discrimination on the basis of disability, age, or mental condition. Protection must

[17] *Shtukaturov v Russia* (App no 44009/05) (ECtHR, 27 March 2008).
[18] *Stanev v Bulgaria* App no 36760/06 (ECtHR, 17 January 2012).
[19] European Convention on Human Rights (4 November 1950).

therefore be enabling rather than exclusionary. A regime that automatically removes legal capacity based solely on diagnosis would risk discriminatory treatment.

- **Right to respect for private and family life (art. 8, ECHR):** The right to respect for private and family life is the central substantive guarantee in the field of conservatorship. Legal capacity is an essential dimension of personal autonomy: it determines whether a person may choose their residence, enter into relationships, or structure their family life. The European Court of Human Rights consistently considers restrictions on legal capacity to constitute an interference with private life. Such interference is only permissible if it is prescribed by law, pursues a legitimate aim (such as the protection of health or the rights of others), and is necessary and proportionate.
- **Right to marry (art. 12, ECHR):** Marriage is considered a strictly personal act requiring genuine and free consent. The European Court of Human Rights has made clear that blanket restrictions based solely on incapacity status are incompatible with the Convention. States may verify whether a person understands the nature and consequences of marriage, but they cannot impose automatic exclusions. This right illustrates the broader tension within conservatorship between protective intervention and respect for intimate personal autonomy.
- **Right to property (art. 1 Protocol No. 1, ECHR):** Conservatorship frequently entails the transfer of management powers over assets to an administrator. This directly interferes with the peaceful enjoyment of possessions. The inability to dispose freely of one's property, to conclude contracts, or to manage investments constitutes a restriction of economic autonomy. Under the Convention system, such interference must be lawful, pursue a legitimate aim, and remain proportionate.
- **Right to a fair trial and effective remedy (art. 6, ECHR):** Because conservatorship restricts civil capacity, it necessarily affects "civil rights and obligations" within the meaning of Article 6 ECHR. The person concerned must therefore have access to court, be heard personally, receive a reasoned judgment, and benefit from equality of arms. Without procedural safeguards, capacity restrictions would risk arbitrariness and would undermine legitimacy.

4. The multi-disciplinary added value of the Centre response

The Centre represents a structural response to the failures identified in Section 1. Its core innovation lies not in reforming the legal framework of conservatorship itself, but in building a collaborative infrastructure around it, one that improves communication, reduces conflict, and generates systemic knowledge from individual cases.

The Centre operates through a three-tier architecture: (1) a secretariat handles first-line intake, providing information and routing queries to the appropriate body; (2) a multidisciplinary commission composed of judges, lawyers, and welfare sector representatives, addresses more complex cases through periodic consultation with alternating presidency, ensuring no single profession dominates the deliberative process and; (3) a steering group addresses structural bottlenecks and maintains contact with external factors including the Ministry of Justice and the welfare sector. This architecture embodies what public administration theory describes as *networked governance*: a model in which legitimacy is

distributed across actors rather than concentrated in a single institutional authority, and in which coordination replaces hierarchy as the primary mechanism of decision-making.[20]

The multidisciplinary character of the Commission produces a form of institutional learning that neither the court nor the welfare sector could achieve independently. The 2024 annual report documents a particularly telling asymmetry: the healthcare and welfare sector frequently contacted the Centre not because of specific legal problems, but because they were simply unaware of what a justice of the peace could do in problem situations, and felt a threshold barrier to approaching the court directly.[21]

The Centre's added value is therefore one which birdges gaps between different sectors; informing welfare organisations about judicial powers while simultaneously giving judges insight into social care realities. Better informed judges, equipped with a richer picture of the protected person's social context, are better positioned to make proportionate and tailored decisions. This represents a genuine, if indirect, contribution to the quality of justice.

From a sociological perspective, the Centre's relational architecture also has the potential to de-stigmatising effects of institutional processing. Conservatorship frequently feels like punishment even when legally framed as protection. The opacity of the process, the inaccessibility of information, and the absence of meaningful channels for raising concerns all contribute to an experience of being processed rather than supported. By providing accessible information in plain language, creating human points of contact and treating complaints as legitimate rather than disruptive, the Centre reduces the stigmatising character of the conservatorship experience.

It is important, however, not to overstate this point. The Centre does not increase direct social care worker involvement in individual cases, nor does it provide rehabilitation in any clinical sense. Its contribution is communicative and relational rather than therapeutic: it improves the experience of navigating a system that remains structurally unchanged.

The Centre's bottom-up policy escalation function further distinguishes it from a simple information service.

Through its dedicated working groups on banking sector and digital exclusion, established after recommendations to government went largely unanswered in 2023, the Centre has begun to engage directly with the structural barriers that prevent the conservatorship framework from functioning as the law intends.[22]

5. From "cure" to "care": Linking the project to theories of justice

The Centre model can be analysed through the lens of established theories of justice. This type of analysis is very relevant in the context of legal innovation, as it allows the initiative to be situated within a broader normative framework, clarifying its added value and providing a theoretical justification for its potential replication in other jurisdictions. This section therefore analyses the model through the lens of capabilities justice and relational justice. Among the various possible frameworks, capabilities justice and relational justice have been

[20] Erik-Hans Klijn and Joop Koppenjan, 'Governance Network Theory: Past, Present and Future' (2012) 40(4) Policy and Politics 187, 194.
[21] Steunpunt Bewindvoering, *Jaarverslag Steunpunt Bewindvoering 2024* (2024) 21.
[22] Steunpunt Bewindvoering, 'Application Form — Crystal Scales of Justice Prize 2025 Edition'CEPEJ (2025) 6.

selected because they most closely capture the core features and objectives of the Centre's operation. This section therefore analyses the model through the lens of these two approaches.

A theoretical fit for the Centre is *capabilities justice*. The capabilities approach holds that justice is not satisfied merely by the formal possession of rights, but requires that individuals have the real, practical ability to exercise those rights in their daily lives.[23] The Centre responds directly to this gap. A protected person who formally retains certain legal rights but cannot access their pension online, cannot authenticate themselves at a hospital, and cannot understand the annual reporting process imposed on their conservator, is experiencing a capabilities failure rather than a rights failure in the strict sense. The Centre's provision of accessible information, plain language guidance, and human points of contact are all interventions aimed at restoring practical capability rather than formal entitlement.

The model also engages meaningfully with *relational justice*, which holds that justice for vulnerable persons cannot be achieved through frameworks built on the assumption of independent, autonomous individuals.[24] Autonomy is not an individual property but a socially constituted capacity, shaped by the quality of relationships and institutional structures surrounding a person.[25] The Centre's three-tier architecture, by fostering ongoing communication between judges, lawyers, and welfare workers, builds the kind of relational infrastructure that relational justice theory identifies as a precondition for meaningful autonomy.

6. Conclusion: The case for replication in Europe

As the founders of the Centre explains: "In other European states too, the proximity courts, the legal profession and the healthcare and welfare sector can join forces to form a point of contact for people who have questions, complaints and suggestions about a judicial protection measure."[26]

This statement reflects the broader conclusion of this analysis. Conservatorship systems across Europe are characterised by recurring tensions between autonomy and protection, legal capacity and vulnerability, and formal rights and their practical exercise. As discussed, these challenges manifest in practice through frustration, fragmentation and limited accessibility, revealing a structural gap between legal frameworks and lived experience.

Although conservatorship remains a national competence, it operates within a shared international legal context, including the EU Charter of Fundamental Rights and the UN Convention on the Rights of Persons with Disabilities, which emphasise autonomy, proportionality and effective participation. Yet these principles risk remaining theoretical where individuals lack the practical means to exercise their rights.

The Support Centre for Conservatorship offers a response to this gap through a model of ***networked governance***, fostering cooperation between judicial, legal and welfare actors. At the same time, it reflects key insights from ***capabilities justice***, by enhancing the real ability to exercise rights, and ***relational justice***, by recognising that autonomy is shaped through

[23] Amartya Sen, *Development as Freedom* (OUP 1999); Martha C Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011).
[24] Jonathan Herring, *Caring and the Law* (Hart Publishing 2013)
[25] Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (OUP 2011).
[26] Support Centre for Conservatorship, 'Presentation ENCJ' (4 April 2024).

relationships and institutional support. In the view of Leo Vulsteke, the initiative is built on core principles that directly address these systemic issues: *"The key words are 'bottom-up,' 'proximity justice,' and 'multidisciplinarity.'"* The present analysis has shown that the added value of the model lies not only in these foundational principles, but also in its capacity to **translate fundamental rights into practice**, **reduce fragmentation between actors**, and **make the system more accessible to those it is meant to protect**.

Part II – Research work on the possible implementation of the Belgian Centre in other contexts

Part II builds on the Belgian analysis by testing the transferability of the Centre model in two deliberately contrasting legal environments: France and Australia. France is selected as a "twin" jurisdiction, sharing with Belgium a civil law tradition, a structured system of judicial protection, and a strong emphasis on principles such as proportionality and subsidiarity. At the same time, its highly formalised and legalistic institutional culture raises important questions about how an informal, bottom-up and multidisciplinary initiative such as the Centre could be integrated without a clear legal basis. By contrast, Australia represents a more complex and fragmented context, marked by a federal structure and multiple state-based guardianship regimes, each one with its institutional arrangements and reform dynamics. We hope this diversity creates a relevant testing ground for the model's adaptability across differing legislative frameworks.

Case Study I: France

Pursuant to Article 425 of the French Civil Code, *"any person who is unable to safeguard their own interests due to a medically established impairment, either of their mental faculties or of their physical faculties preventing the expression of their will, may benefit from a legal protection measure (...)"*. In addition to relatives of the protected adult, reports may also be made by professionals from the social sector or the medical field, who often find themselves unable to propose an appropriate solution to the person's situation, particularly when the individual refuses the care or assistance offered. Judicial guardians responsible for the protection of adults emphasise the importance that judges attach to medical certificates and to the search for a protection measure proportionate to the needs of the individual concerned. The person is generally heard by the judge before the protection measure is ordered, unless their health condition is incompatible with such a hearing (Article 432 of the Civil Code).

1. How the current French system works

Legal protection for individuals and support for families constitute major priorities of French public policy. Health vulnerability, old age, and economic or social difficulties can weaken individuals regardless of their life trajectory or socio-economic environment.

In France, five types of legal protection measures exist. However, 99.4% of the measures currently in force consist of *curatorship* (curatelle), *guardianship* (tutelle), and *family authorisation* (habilitation familiale)[27].

Curatorship is an assistance measure for important acts, such as the sale of property. The protected person retains autonomy in managing everyday matters but receives assistance for acts of disposal and may even be represented in the case of enhanced curatorship. Guardianship, by contrast, is a continuous representation measure covering acts of civil life when the individual is no longer able to safeguard their interests independently. Finally, family

[27] Ministère de la justice, SSER, *Près d'une personne sur dix bénéficie d'une mesure de protection juridique après 90 ans* (Infostat Justice n° 197, septembre 2024) https://www.justice.gouv.fr/sites/default/files/2024-10/Infostat%20197_cor.pdf accessed 31 March 2026.

authorisation allows a relative to be designated by a judge to represent the incapable person, offering a more flexible arrangement than guardianship.

The Act of 5 March 2007, which entered into force on 1 January 2009[28], comprehensively reformed the system for the protection of vulnerable individuals. The reform refocused the system on persons suffering from an impairment of their personal faculties—either mental or physical in nature, preventing the expression of their will—and who are therefore unable to safeguard their interests. It thus aimed to restore the full effectiveness of the principles of necessity, subsidiarity, and proportionality, which must guide the decisions of guardianship judges.

The reform also affirmed the principle of personal autonomy. Regardless of the protection regime, the protected adult remains responsible for decisions concerning their own person and must give consent. The judge may nevertheless adapt this principle according to the individual's condition and may provide for assistance or representation by the person responsible for the protection measure.

Guardianship activity is governed not only by the Civil Code but also, since 2009, by provisions of the Social Action and Families Code, which address professionalisation, accreditation, planning, oversight, and funding. These provisions aim to better regulate guardianship activities and structure the supply of services according to territorial needs.

In order to reduce systematic recourse to the courts in matters concerning the protection of vulnerable individuals and to encourage family-based care arrangements, the legislator created a new protection measure with simplified formalities: family authorisation, introduced by ordinance in 2015[29]. This family mandate, granted by a judge to a relative, allows the latter to represent the protected person either for specific acts carried out in their name or more generally, while easing the administrative burden placed on families. Only direct ascendants or descendants, siblings, or the spouse, partner, or civil partner of the individual may request such a measure.

More recently, the 2019[30] reform further strengthened the autonomy of protected persons by allowing them to marry, enter into a civil partnership, or divorce without prior judicial authorisation, and by restoring the right to vote to adults under guardianship. The law also created a new form of protection: family authorisation for assistance purposes.

2. A need for system reform

In France, 21.8% of the population was aged over 65 in 2025[31]. By 2070, this proportion is expected to reach 28.7% of the population.[32]

Among the most frequently used protection measures, the median age for the opening of a curatorship is 61 years, 83 years for guardianship, and 85 years for family authorisation[33].

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[28] *Loi n° 2007-308 du 5 mars 2007 portant réforme de la protection juridique des majeurs* (France) https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000430707 accessed 11 March 2026.

[29] *Ordonnance n° 2015-1288 du 15 octobre 2015 portant simplification et modernisation du droit de la famille* (France) https://www.legifrance.gouv.fr/loda/id/JORFTEXT000031319729 accessed 11 March 2026.

[30] *Loi n° 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice* (France) https://www.legifrance.gouv.fr/loda/id/JORFTEXT000038261631 accessed 11 March 2026.

[31] Insee, *Population par âge – projections de population 2013–2070 (scénario central)* https://www.insee.fr/fr/statistiques/4277619?sommaire=4318291 accessed 13 March 2026.

[32] *ibid*.

[33] Ministère de la justice, SSER, *Près d'une personne sur dix bénéficie d'une mesure de protection juridique après 90 ans* (Infostat Justice n° 197, septembre 2024) (source: Répertoire général civil) https://www.justice.gouv.fr/sites/default/files/2024-10/Infostat%20197_cor.pdf accessed 13 March 2026.

For the purposes of this study, it is therefore particularly relevant to analyse the growing need for protection measures among the elderly population in order to assess the potential contribution that the Centre could make in France.

Demographic projections indicate that the annual number of protection measures opened will rise from 107,000 in 2024 to 175,000 by 2070, representing an increase of 64%[34]. This development is primarily driven by the growing share of individuals aged 75 and over in the population, which is expected to increase from 10% to 18%, as well as by other demographic changes such as rising life expectancy at older ages.

This situation raises several challenges. The management of legal protection measures in France is currently under strain due to the growing number of vulnerable individuals associated with population ageing[35]. With more than 712,000 protected adults at the end of 2023, the system faces a surge in demand, territorial disparities, and a shortage of professional judicial guardians.

According to a recent study commissioned by the General Directorate for Social Cohesion (DGCS), individuals benefiting from protection measures in France are experiencing a deterioration in both their living conditions and the support mechanisms available to them.

Several factors help explain this situation. Family tensions are frequent, particularly regarding financial matters, and may complicate the management of protection measures. Access to healthcare, especially psychiatric care, is increasingly problematic due to the gradual disengagement of specialised services. Housing represents another major challenge: securing suitable accommodation often proves extremely difficult, with some individuals living in precarious or even undignified conditions.

Judicial guardians express concern about an increasing workload, the growing complexity of their responsibilities, and the insufficient recognition of their professional role. A lack of coordination with other actors in the social and medico-social sectors further undermines the effectiveness of support measures. At the same time, families responsible for protection measures report a significant need for information, training, and guidance in order to fulfil their responsibilities properly.

In response to these issues, several recommendations can be formulated, including improving access to healthcare—particularly mental healthcare—strengthening cooperation between local actors, developing educational and training tools for professionals as well as families and guardians, simplifying administrative documents, and promoting better coordination between general law mechanisms and specialised support structures. A coordinated, inclusive, and intersectoral territorial approach based on shared population responsibility would be desirable.

3. Current responses in France

In response to family tensions, age-related dependency among protected adults, and the lack of adherence of protected individuals to the protection measure imposed upon them, a specialised unit has been created to provide rapid and tailored responses to complex situations and prevent disruptions in care pathways.

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[34] Ministère de la justice, ‘Mesures de protection juridique : deux tiers d’ouvertures supplémentaires d’ici 2070’ (23 September 2025) https://www.justice.gouv.fr/documentation/etudes-et-statistiques/mesures-protection-juridique-deux-tiers-douvertures-supplementaires-dici-2070 accessed 13 March 2026.

[35] DGCS/ANCREAI, *Étude relative à la population des majeurs protégés : profils, parcours et évolutions* (Mai 2025) https://solidarites.gouv.fr/sites/solidarite/files/2025-10/Etude-majeurs-proteges-Profils-parcours-evolutions-ANCREA-mai2025.pdf accessed 13 March 2026.

Established in 2021 following a call for projects from the Regional Directorate for Economy, Employment, Labour and Solidarity (DREETS) and the Departmental Council, with the support of the Regional Health Agency (ARS) and the Territorial Mental Health Project (PTSM), the initiative is led by case managers—usually trained social workers or specialised educators.

Their mission is to support complex situations through an inclusive approach aimed at strengthening the agency of the individuals concerned. They also provide support to judicial guardians dealing with such cases, organise social coordination committees to ensure the alignment of procedures, and maintain a network of institutional partners serving the individuals concerned.

Nevertheless, this initiative has not fully met expectations. Many judicial guardians believe that partners involved alongside them have only a limited understanding of their responsibilities. This lack of knowledge extends to the different types of protection measures, with frequent confusion between guardianship and curatorship. Such misunderstandings complicate cooperation and hinder the adequate protection of vulnerable adults.

Judicial guardians therefore emphasise the urgent need for greater professional recognition and improved working conditions. The workload is often considered excessive due to the large number of protection measures assigned to each guardian, making effective support towards autonomy difficult. The situation becomes even more complex when the protected adult is socially isolated, leaving the guardian solely responsible for multiple responsibilities.

Communication difficulties with institutional partners also constitute a major obstacle, particularly with organisations responsible for granting rights or financial support, often due to delays or a lack of responses. Challenges have also been identified in cooperation with departmental services, particularly regarding the monitoring of young adults leaving child protection services, partly due to high staff turnover.

Moreover, the current system does not allow judicial professionals to maintain sustained relationships with protected adults and their relatives. The frequency of in-person meetings varies widely and often decreases over time, with face-to-face contact sometimes reduced to a minimum of once per year.

Among protected adults who have family support (78% of cases), judicial professionals maintain limited contact with relatives (49% of cases), and such relationships may even be problematic in 15% of situations.

Family members who themselves act as guardians often report difficulties related to insufficient information and communication regarding their responsibilities. When seeking administrative or legal information, families frequently do not know whom to contact. They also regret the limited interaction with guardianship judges and the lack of responses to their questions.

In light of the urgency and the structural weaknesses of the French system, the Centre may offer a potential solution.

4. Implementation of the Centre in France

The Centre is an informal and multidisciplinary partnership designed to provide information and support to all individuals concerned by judicial protection measures for persons deemed incapable of managing their property or personal affairs due to age, illness, or disability.

The population of protected adults remains poorly understood in France. Their characteristics, needs, and evolving situations are not always clearly identified, which complicates the effective allocation of support resources. Judicial guardians report increasingly deteriorated situations at the moment when protection measures are ordered.

For instance, a recent study shows that 15% of protected adults experienced a revision of their protection measure during 2023.[36]

The main missions of the Centre include the creation of a central point of contact enabling actors involved in judicial protection to obtain answers to their questions or complaints and to share suggestions via a dedicated website.

The initiative also provides practical advice and directs users to the appropriate institutions. In addition, it offers opportunities to participate in study days and contribute to academic publications, such as the practical guide on the Central Register for the Protection of Persons (CRBP).

The Centre addresses many of the challenges faced by the French system by reducing the pressure placed on judges through the handling of basic information requests. Courts can therefore focus on the strictly legal aspects of the protection of vulnerable individuals.

Furthermore, the initiative brings together judges, lawyers, and healthcare professionals in order to develop comprehensive and cross-sectoral solutions. Most importantly, the centre adopts an objective approach to systemic dysfunctions, identifying structural shortcomings and reporting them to policymakers. Its model is based on cooperation between three pillars of the justice system: the judiciary, the legal profession, and the healthcare sector, a form of cooperation that remains insufficiently developed in the French system[37].

5. Criticisms regarding the viability of the solution

Despite its potential benefits, the Centre as a solution faces several significant challenges. First, the centre does not currently possess an independent legal status, which limits its authority to formulate official recommendations. Given the highly hierarchical nature of French administrative structures, it will be necessary to provide the centre with a clear legal framework. One possible option would be to grant it the status of an association governed by the French Law of 1 July 1901, thereby establishing it as an independent institute dedicated to cooperation in judicial protection matters.

Such a structure would reflect its role in serving the public interest while also maintaining institutional independence from the judicial system, which already faces budgetary constraints.

Funding is another issue that must be addressed, as the initiative currently operates without a dedicated budget and relies largely on volunteer contributions and occasional funding, for example from bar associations or courts to support the website.

Finally, institutional resistance may arise from established actors such as the judiciary or the legal profession, particularly since the model originates from another European country rather than from domestic institutional cooperation. For this reason, the implementation of the initiative should be gradual in order to ensure the active participation of all stakeholders involved in the protection system, including Judges of Protection Litigation (JCP), court clerks,

[36] *ibid.*

[37] *'Avocats-magistrats : les vraies raisons de la discorde'* (*Les Echos*, 2017) https://www.lesechos.fr/2017/02/avocats-magistrats-les-vraies-raisons-de-la-discorde-1114334 accessed 17 March 2026.

Judicial Guardians for the Protection of Adults (MJPM), and existing family guardian support associations.

Case Study II: Australia

Australia is a federal system, which similarly to Belgium has three levels of government, the Federal, State/Territory and Local government. The equivalent regime to conservatorship law is guardianship laws, legislated at the state level. This section considers the Victorian, Queensland and New South Wales jurisdictions, and the feasibility and utility of implementing a support centre similar to the Centre. Whilst all three states have websites with information available and contacts for enquiries, they would all benefit from integrating the more targeted and multi-disciplinary approach of the Centre into their resources. If the New South Wales (NSW) Law Reform Commission's recommendation of reforming the *Guardianship Act 1987* (NSW) is implemented this will require re-education to the public, and would be an ideal time to implement a support centre similar to the Belgian Centre.

1. Victoria

In Victoria guardianship laws are governed by the *Guardianship and Administration Act 2019.* This act allows the Victorian Civil and Administrative Tribunal (VCAT) to make Guardianship and Administration orders.

A Guardianship order confers on the guardian a power to make decisions about personal matters in relation to the represented person that are specified in the order, the power to sign and do anything that is necessary to give effect to this and the power to undertake legal proceedings if specified in the order.[38] An Administration Order confers on the administrator a power to make decisions about financial matters in relation to the represented person specified in the order.[39]

To make such an order, the Tribunal must be satisfied, amongst other criteria, that because of the proposed represented person's disability they do not have the decision-making capacity in relation the personal matter in relation to which the order is sought for a guardianship, or the financial matter in relation to which the order is sought for an administration matter.[40] In this context disability is defined to include neurological impairment, intellectual impairment, mental disorder, brain injury, physical disability or dementia.[41]

1.1. Safeguards

There are a variety of safeguards put in place to protect the rights of subjects to a guardianship or administrative order. In the first instance, there are a variety of factors VCAT need to consider before determining whether an order should be made out.[42]

Once an order has been made, guardians and administrators are subject to a range of duties including acting in accordance with the general principles set out in sections 8 and 9 such as giving effect to the represented person's preferences where possible, acting as an advocate for the represented person, encouraging and assisting the represented person to develop their decision-making capacity in relation to personal or financial matters depending

[38] *Guardianship and Administration Act 2019* (Vic) s 38.
[39] ibid s 46.
[40] ibid s 30.
[41] ibid s 3(1).
[42] ibid 31.

on the order, acting in such a way so to protect the represented person from neglect, abuse or exploitation, acting honestly, diligently and in good faith, exercising reasonable skill and care, not using the position for profit, avoiding acting if there is or may be a conflict of interest, and refraining from disclosing confidential information gained as a guardian unless authorised to do so.[43]

Furthermore, the legislative scheme creates the role of a Public Advocate, whose powers include investigating any complaint or allegation that a person is under inappropriate guardianship, is being exploited or abused or is in need of guardianship, or to engage a registered company or auditor to carry out an inspection or an audit.[44]

1.2. Challenges

In Victoria one challenge has been managing the increasing number of people living in the community who lose their capacity through the onset of dementia or an acquired brain injury,[45] and striking a balance between recognising the rights of people with a disability to make their own decision and ensuring that there are some effective mechanisms for protection when protection is needed. While some advocates and organisations emphasise that a person's will and preferences should be given priority in all but very limited circumstances, others are concerned with the barriers to protective action by the VCAT or a guardian or administrator should not be so high as to render such action unavailable when it is needed, despite a represented person's will and preferences.[46]

1.3. Appropriateness of Implementing a Support Centre

The Office of the Public Advocate (OPA) is the closest thing to a 'support centre' that Victoria has. They set out the rights of people being represented on their website, and offer individual advocacy to people who have no other advocacy option, as well as an advice service over the phone.[47] Their website confirms that they are supported by around 100 staff and more than 650 volunteers, and they offer frequent online information sessions, including generally monthly sessions on guardianship and administration. It also states that they offer career opportunities for people with a range of professional backgrounds including 'health, social work, legal, community, disability and research sectors', suggesting that this involves a multidisciplinary approach similar to the one of The Belgian Centre, although without apparent involvement of VCAT members, who play the equivalent role of the Justice of Peace in Belgium. Th OPA's services could be built upon, by greater inclusion or input from the legal experts who are making decisions regarding guardianship and administrative orders.

2. Queensland

In Queensland guardianship laws are primarily governed by the *Guardianship and Administration Act 2000,* which similarly to the Victorian Act sets out its purpose to strike an appropriate balance between the right of an adult with impaired capacity to the greatest possible degree of autonomy in decision-making, and the adult's right to adequate and appropriate support for decision-making.[48]

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[43] ibid ss 41, 55.
[44] Ibid s 16.
[45] Victoria, *Parliamentary Debates*, Legislative Assembly, 19 December 2018 (Jill Hennessy, ALP).
[46] ibid.
[47] Office of the Public Advocate, 'Safeguarding people with disability and mental illness' <https://www.publicadvocate.vic.gov.au/opa-s-work/information-sessions?start=8> accessed 11 March 2026.
[48] *Guardianship and Administration Act 2000* (Qld) s 6.

The Queensland Civil and Administrative Tribunal (QCAT) may appoint a guardian for a personal matter or an administrator for a financial matter if the tribunal is satisfied that the adult has impaired capacity for that matter, and there is a need for a decision in relation to the matter or the adult is likely to do something in relation to the matter that involves, or is likely to involve, unreasonable risk to the adult's health, welfare or property; and without an appointment the adult's needs will not be adequately met or their interests will not be adequately protected.[49]

2.1. Safeguards & Challenges

Guardians and administrators must uphold general principles including the presuming the capacity of the represented person, upholding their human rights and fundamental freedoms, maintaining their existing supportive relationships, cultural and linguistic environment and values, respecting their privacy, liberty and security, maximising their participation in decision-making and doing so in a way that promotes and safeguards and is least restrictive of their rights, interests and opportunities.[50] Whistleblowers are protected if they disclose information to an official that shows a represented person has been the subject of neglect, exploitation or abuse.[51]

The *Public Advocate* has the statutory function of promoting and protecting the rights of adults with impaired capacity, promoting the protection of the adults from neglect, exploitation or abuse, encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy, promoting the provision of services and facilities for the adults, and monitoring and reviewing the delivery of services and facilities to adults.[52] However, it is not the function of the public advocate to investigate a complaint or allegation that concerns a particular adult with impaired capacity for a matter.[53] Nonetheless, this falls within the remit of the Public Guardian, a distinct agency.[54]

The *Public Guardian Act 2014* establishes the *Public Guardian*, an agency that promotes and protects the rights and interests of adults with impaired capacity as well as certain children.[55] Additionally, their obligations include acting honestly and with reasonable diligence,[56] acting as required by terms of tribunal order,[57] and avoiding conflict transactions without authorisation.[58] The types of challenges that arise are likely to be similar to those faced in Australia.

2.2. Appropriateness of Implementing a Support Centre

The Office of Public Guardian (OPG) is the closest thing to a 'support centre' that Queensland has. Their website has an 'education and resources' page which includes online resources and regular free webinars, fact sheets, brochures and other suggested organisations

[49] ibid s 12.
[50] ibid, see s 11B. One exception under s 34(2) is that an administrator appointed under s 12A is not required to apply certain general principles.
[51] ibid s 247.
[52] ibid s 209.
[53] ibid s 209.
[54] Queensland Government Department of Justice, 'Role of different guardianship system agencies' <https://www.justice.qld.gov.au/public-advocate/about-the-public-advocate/what-the-public-advocate-does/role-of-different-guardianship-system-agencies> accessed 11 March 2026; *Public Guardian Act 2014* (Qld) s 19.
[55] *Public Guardian Act 2014* (Qld) s 5.
[56] ibid s 35.
[57] ibid s 36.
[58] ibid s 37.

that may be able to assist.[59] They also have a 'contact us' page where people can send enquiries, including interpreter services, or where an investigation into alleged abuse or neglect can be requested. It appears from the website that the OPG offer careers to guardians, community visitors, legal officers, investigation officers and roles in policy, human resources, information technology, communication and community education, finance, data and business analytics, and administration including working at the contact centre.[60] Whilst this is a relatively broad range, the OPG could also benefit from integrating a further multidisciplinary approach into their work, for example by seeking involvement from QCAT members and healthcare workers.

3. New South Wales

In New South Wales guardianship laws are governed by the *Guardianship Act 1987* (NSW). The Act allows the Guardianship Division of the NSW Civil and Administrative Tribunal to make guardianship orders or financial management orders for those who have a decision-making disability.[61] For the purposes of the act, a person with a disability is a person who is intellectually, physically, psychologically or sensorily disabled, who is of advanced age, who is a mentally ill person within the meaning of the *Mental Health Act 2007* (NSW) or who is otherwise disabled, and who, by virtue of that fact, is restricted in one or more major life activities to such an extent that he or she requires supervision or social habitation.[62]

3.1. Safeguards

The general principles set out in the *Guardianship Act 1987* emphasise that it is the duty of everyone exercising functions under the Act with respect to persons who have disabilities to give paramount consideration to the welfare and interests of such person, to restrict their freedom to decide and act as little as possible, to encourage them to live a normal life and to take their views into consideration.[63]

A person also shall not be appointed as a guardian unless the Tribunal is satisfied that the personality of the proposed guardianship is generally compatible with that of the person under guardianship, there is no undue conflict between the interests of the proposed guardian and those of the person under guardianship, and the proposed guardian is both willing and able to exercise the functions conferred or imposed by the proposed guardianship order.[64]

New South Wales has a Public Guardian. Their website includes 'easy read resources' such as factsheets including some translated versions and contact details for the NSW Trustee and Guardian, although this is broader than the Public Guardian itself, which may make it more challenging to get tailored information within a reasonable timeframe. It does not offer webinars like those offered by the OPA or OPG.

3.2. Challenges faced

The NSW Law Reform Commission's final report on their review of the *Guardianship Act 1987* found that while the legislation was a modern and far-reaching piece of legislation at the time of its enactment, a combination of factors including the increasing aged population with dementia and new acceptance of the need for the rights of people in need of decision-making assistance to have their wishes respect so far as possible, reflected by the terms of the

[59] See Office of the Public Guardian, 'Protecting the rights and interests of adults who cannot make decisions for themselves, and children in care' <https://www.publicguardian.qld.gov.au/> accessed 11 March 2026.
[60] Ibid.
[61] *Guardianship Act 1987* (NSW) ss 14, 25E.
[62] ibid s 3(2).
[63] ibid s 4.
[64] ibid, see s 17.

UN Convention on the Rights of Persons with Disabilities to which Australia is a party, means that the Act is no longer fit for purpose.[65]

3.3. Appropriateness of Implementing a Support Centre

The resources provided on the Public Guardian website are not as comprehensive as those provided in Queensland or Victoria, suggesting that the need for a support centre may be even greater in NSW. Most hearings in the Tribunal are comprised of three members including one lawyer, a professional member with experience in treatment and assessment of persons with decision-making disabilities, and a community member who usually has lived experience of disability.[66] This arguably suggests that NSW would be receptive to a multidisciplinary approach in such a centre.

Furthermore, the Law Reform Commission has suggested that NSW should have a new Assisted Decision-Making Act which would replace the *Guardianship Act* and enduring power of attorney provisions in the *Power of Attorney Act 2003.*[67] Whilst no new legislation has been implemented at this stage, in 2023 the NSW Government committed to setting up a working group to advise the government on reform of the *Guardianship Act.*[68] The NSW Law Reform Commission has acknowledged that the fundamental shift in thinking involved in the new act would require substantial education and training of all participants in the system.

It is likely that a support centre similar to the Belgian Centre would be supported, as the Australian Law Reform Commission has identified that a key safeguard to protect people from abuse and neglect is to provide guidance and training for those people, their supporters and representatives, and the departments and agencies interacting with them.[69] Furthermore, submissions to the NSW Law Reform Commission drew attention to the need for community education about assisted decision-making, and about the human rights of people with disabilities. Some submissions emphasised the need to provide education for people with disability in order to enhance their decision-making skills.[70]

Furthermore, the NSW Law Reform Commission suggested that the Public Guardian has a limited educative function. As such, they have suggested that a new independent statutory position known as the Public Advocate should be created to advocate for people in need of decision-making assistance, by mediating decision-making disputes, providing information, advice and assistance about decision-making and investigating cases of potential abuse, neglect and exploitation.[71] Relevantly, one of the functions of the Public Advocate would be to undertake systemic advocacy for people in need of decision-making assistance through educating the community and public agencies about the decision-making framework and the role of family and friends.[72] If such an entity were created this would potentially displace the need for a support centre, however as discussed in the Victorian and Queensland contexts, inspiration could be drawn from the Belgian Centre's multidisciplinary approach in the running of the Public Advocate.

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[65] New South Wales Law Reform Commission, *Review of the Guardianship Act 1987* (Report No 145, May 2018).
[66] NSW Civil and Administrative Tribunal, 'Guardianship Division' <https://ncat.nsw.gov.au/how-ncat-works/ncat-divisions-and-appeal-panel/guardianship-division.html> accessed 11 March 2026.
[67] New South Wales Law Reform Commission, *Review of the Guardianship Act 1987* (145, May 2018) [0.14].
[68] The Council for Intellectual Disability, 'A message to the NSW Guardianship law reform working group from people with lived experience' <https://cid.org.au/resource/guardianship-reform-video/> accessed 11 March 2026.
[69] ibid [4.42].
[70] ibid [4.44].
[71] ibid [0.108]-[0.109].
[72] ibid [4.46.].

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