

THE REFORM OF THE PROTECTION OF INDIVIDUALS WITH INTELLECTUAL AND PSYCHOSOCIAL DISABILITIES IN ROMANIA, PART OF THE EUROPEAN REFORM

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***Abstract:** In recent decades, people with intellectual and psychosocial disabilities have been the focus of international conventions. At the level of national legislation, we discover the tendency to replace outdated and often degrading regulations with new, modern rules. This transition was not without problems, however. The article presents the historical evolution of personal protection in Romania and a comparative analysis of the current regulation with that of some European states.*

***Keywords:** intellectual and psychosocial disabilities, guardianship, psychiatric involuntary treatment.*

INTRODUCTION

After the year 2000, an extensive process of modernization of the legislation regarding people with intellectual and psychosocial disabilities took place in Romania. In 2002, a new law on mental health and the protection of people with mental disorders was adopted. In the same decade has been adopted Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities (Onica Chipea, 2018:184). Also, these categories of people benefit from tax exemptions in the fiscal legislation (Cîrmaciu, 2017:19). After that, in 2011, a new Civil Code came into force that also referred to the protection of individuals with intellectual and psychosocial disabilities. However, these normative acts did not comply with the standards imposed by the international conventions to which Romania is a party, especially those of the European Convention on Human Rights and the Convention on the Rights of Persons with Disabilities. This led to the declaration of unconstitutionality of some legal texts and a reform of the institutions regarding to the protection of these persons.

The Romanian Civil Code underwent important changes following the entry into force of Law no. 140/2022. This regulation represents the culmination of the change of perspective regarding the protection of the person with intellectual and psychosocial disabilities, but it is the result of a slow evolution and over a long period of time evolution that was the result of the change of perspective on the problem of these categories of people. In order to understand the progress of the analyzed institution, we will present both its historical evolution and the current regulation in the various European states.

HISTORICAL EVOLUTION OF PERSONAL PROTECTION IN ROMANIA

We believe that in order to understand the stage of the institution's evolution, it is necessary to follow its historical evolution. In principle, the protection of people with intellectual and psychosocial disabilities pursued two goals: ensuring a medical treatment that would prevent the deterioration of their health status and protecting them from concluding acts that could have harmed them. Over time, an extremely diverse terminology was used in the legislation that also provided clues as to how society viewed these people

The procedure of placing the person under legal guardianship provided by the Civil Code from 1864, aimed at depriving the person of capacity. Already under the rule of the Civil Code, it was understood that this serious limitation of civil capacity must be thoroughly justified: "in order to be able to place under guardianship and declare incapable a person with weakened mental faculties, this serious weakening of mental faculties must constitute the habitual state, causing great difficulty to be established, even for physicians. If this habitual state does not exist, then one cannot forbid a person; individual freedom must be respected, which justice defends even against medical expertise" (Plastara, N.A.:486). The Romanian Civil Code, faithful to the French Civil Code from which it was inspired, followed the rules established by it: "the lack of development or the alteration of the intellectual faculties must be very serious; if imbecility is only weakness of mind, if madness is only mania, there is no reason to pronounce the legal guardianship" (Planiol, 1920:617).

For a long time, the protection of the natural person through the court ban was regulated in the Family Code (Title III – Protection of those lacking capacity, those with limited capacity and other persons). According to art. 142 of the Family Code, the one who did not have the discernment to take care of his interests, due to mental alienation or mental weakness, could be placed under legal guardianship (*interdicție judecătorească*) which was instituted by the court for an indefinite period and led to the deprivation of the person's legal capacity and the institution of guardianship.

Before the 1989 revolution, the "protection" of people with mental disorders was ensured by *Decree no. 313/1980 on the assistance of dangerous mental patients*. The law distinguished between two categories of people suffering from mental illnesses - "*non-dangerous mentally ill*" and "*dangerously mentally ill*" and established distinct protection measures for the two categories. As we can see, the pejorative terminology suggests the way in which the Romanian legislator understood to protect these categories of persons. The non-dangerous mentally ill were protected by placing them under judicial interdiction and the institution of guardianship. As for dangerous mental patients and dangerous drug addicts, they could be required to receive outpatient medical treatment (without hospitalization) or compulsory medical treatment in hospital conditions. Those who, through their manifestations, endanger their own or others' life, health, bodily integrity, important material values, or repeatedly and seriously disturb work or life conditions, in the family or society, were considered "dangerous mentally ill" (art. 2 of Decree No. 313/1980).

Medical treatment with hospitalization was instituted by a medical commission through an enforceable decision. The law provided that the legality of taking the measure was subject to the control of the prosecutor's office in whose territorial radius the hospital is located. Also, against the decision of the medical commission, an appeal could be made to the court in whose territorial radius the health facility is located. The court verifies the legality of the medical board's decision, being able to order the a medico-legal psychiatric examination and being obliged to listen to the person against whom the measure was taken (Lupan, 1999:276).

Apparently the old regulation included some guarantees of respect for the rights of the person. In reality, however, this normative act was used by the old regime to remove from public life people who had an inappropriate attitude towards the then regime. That is why, after the change of regime, the need for a real reform of the protection of disabled people appeared.

THE REFORM AT THE LEVEL OF THE EUROPEAN UNION AND THE MEMBER STATES

An important influence on Romanian legislation was the Convention on the Rights of Persons with Disabilities adopted in New York on December 13, 2006, signed by Romania on September 26, 2007 and ratified by Romania through Law no. 221/2010. According to article 12, paragraphs 2-4:

“States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

States Parties shall ensure that all measures that relate to the exercise of legal capacity provide appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests” (United Nations, 2007).

In accordance with the Convention on the Rights of Persons with Disabilities, the person's legal capacity is not confused with his mental capacity, being distinct concepts, and perceived or real limitations in mental capacity should not be used as justification for rejecting legal capacity.

The European Convention on Human Rights (ECHR) was also very influential in the elaboration of the new legislation. The Convention's main objective is to protect the individual freedom of European citizens and to control how a state can justify any limitations on freedom it imposes. The ECHR ruled, in essence, that a measure that has the effect of total incapacity must be proportional to the degree of capacity of the person concerned and adapted to his circumstances and individual needs, the mental disorder must be "of the type or the degree" that would justify such a measure, interference with a person's right to respect his private life

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constituting a violation of art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, unless it was "prescribed by law", pursued a legitimate objective and was a measure "necessary in a democratic society"

To reduce the risk of arbitrary decisions, the ECHR imposes judicial control on the limitation of rights by psychiatric involuntary treatment. Romania did not comply with this disposition in its legislation before 2022. The ECHR states that judicial control should be possible at any time and, if needed, repeatedly. Every patient should be able to access judicial review quickly. The ECHR describes in detail the patient's rights, insisting on the right to information and on the principle of restricting any limitation to liberty to the least needed to allow the necessary psychiatric treatment.

Through Recommendation no. R(99) 4 of the Committee of Ministers to Member States on the principles concerning the legal protection of incapable adults (Council of Europe, 1999), established that national legislation should, as far as possible, recognize the fact that there may be different degrees of incapacity and that incapacity may vary over time; "where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned" (Principle 6 – Proportionality).

Romania did not fully comply this disposition in his legislation before 2022 although its Constitution provided in article 20 the principle of priority of international conventions: "If there are inconsistencies between the pacts and treaties regarding fundamental human rights, to which Romania is a party, and the internal laws, the international regulations take precedence, unless the Constitution or internal laws contain more favorable provisions". Also, article 50 of the Romanian Constitution, entitled "Protection of disabled persons", recognizes the right of persons with disabilities to enjoy special protection: "The state ensures the implementation of a national policy of equal opportunities, prevention and treatment of disabilities, with a view to the effective participation of disabled people in community life, respecting the rights and duties of parents and guardians". In the interpretation of the Constitutional Court, this norm imposes on the legislator the positive obligation to regulate appropriate measures so that persons with disabilities can exercise their rights, freedoms and fundamental duties, the obligation of support and support to come to their aid (Decision 138/2019).

We must note that, although at the constitutional level the protection of persons with disabilities was guaranteed, the legislation did not respect this rule, which, as we will see, led to the finding of the unconstitutionality of some normative acts and, finally, to real legislative changes.

The new Civil Code entered into force on October 1, 2011, took over the rules regarding the court ban from the Family Code. According to art. 164 paragraph 1, "*The person who does not have the necessary discernment to take care of his own interests, due to alienation or mental disorder, will be placed under legal guardianship*". "In the meaning of the Civil Code, as well as the civil legislation in force, the expressions mental alienation or mental debility mean a mental illness or a mental handicap that determines the mental incompetence of the person to act

critically and predictively regarding the social-legal consequences that may arise from the exercise of civil rights and obligations" (art. 211 of Law 71/2011 for the implementation of the Civil Code). The one who was placed under judicial interdiction could not conclude any juridical acts, neither *inter vivos* nor *mortis causa* (Popa, 2012:83).

In 2020, the exception of unconstitutionality of article 164 paragraph 1 of the Civil Code was invoked before the Constitutional Court of Romania and the Constitutional Court declared the text of the law as unconstitutional by Decision no. 601/2020. The Court considered that in the Civil Code, absolute values are used in the sense that any potential impairment of mental capacity, regardless of its degree, can lead to people being deprived of civil capacity (...) Thus, any partial/total, permanent/temporary limitation of mental capacity can inexorably lead to the loss of exercise capacity and the limitation of civil capacity, without the possibility that such a situation can be avoided through necessary support measures. It follows that there is a paradigmatic dissonance between the Convention on the Rights of Persons with Disabilities and the Civil Code regarding the protective measures that must be taken regarding persons with disabilities, the former being placed in the sphere of support measures and operating with intermediate values, and the latter placing itself in a regime of substitution and absolute values, refusing intermediate solutions.

After the declaration of unconstitutionality of article 164 paragraph 1 of the Civil Code, it ceased to be applicable. For a long period, until the entry into force of Law no. 140/2022, no other means of protection for individuals with intellectual and psychosocial disabilities with regulated in the Romanian legislation. It was a difficult time for courts who were deprived of the necessary tools to protect these people from entering into legal acts that would have prejudiced them. As it was noted, "every day new valences appear that require a quick solution, in the spirit of the law, thus ensuring the trust of natural and legal persons in the role of law in society and at the same time a new attitude towards the rule of law, of the state of right, which one must" (Drăgoi et al., 2018:3).

At the same time, the trials that Romania had at the European Court of Human Rights proved the fragility of the legal regulation. In the decision of October 12, 2021 in the case of RD and IMD v. Romania (application 35402/2014), the ECHR, ruled, unanimously, that there was a violation of article 5 paragraph 1 (the right to freedom and safety) of the European Convention of Human Rights, as well as a violation of art. 8 (the right to respect for private life).

The case concerned the involuntary admission of the applicants to a psychiatric hospital in order to compel them to undergo medical treatment, as well as the obligation to undergo such treatment. The Court noted that the relevant medico-legal psychiatric reports on the applicants were drawn up on 4 October 2011, more than three years before the measure ordering their placement in a psychiatric hospital. In the Tribunal's view, the lack of a recent medical assessment was sufficient to conclude that the applicants' placement was not lawful under the Convention. Furthermore, the lack of detailed reasoning in the domestic court's judgments ordering their detention did not allow it to be sufficiently established that the applicants posed a risk to themselves or others, in particular because of their psychiatric condition.

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The Court considered that, although the measure in dispute indeed had a legal basis in Romanian law, the lack of sufficient guarantees against forced drug treatment had deprived the applicants of the minimum degree of protection to which they were entitled in a democratic society. Since the 2000s, there has been an extensive legislative reform at the level of numerous states regarding the system of protection of natural persons with disabilities. Thus, in **France**, the Civil Code was amended by Law n°2007-308 of March 5, 2007. The new Civil Code entered into force on March 15, 2009. "Measures for the protection of adults" are regulated in Title XI entitled "On the state of majority and on the adult protected by law" from Book I - "On persons" are regulated (chapter II, art. 425 – 494-12). According to article 425, any person who is unable to provide for his or her interests alone due to a medically proven alteration of either his mental faculties or his bodily faculties such as to prevent the expression of his will may benefit from a measure of legal protection provided for in this chapter. Unless otherwise provided, the measure is intended to protect both the person and their property interests. It can, however, be expressly limited to one of these two missions.

French law provides for three categories of persons of full age lacking legal capacity. The first covers “persons of full age under judicial protection” (*personne placée sous sauvegarde de justice*), who only require temporary protection in the conduct of their civil affairs or representation in the performance of specific acts (Article 433 of the Civil Code). The person placed under judicial protection retains the exercise of his rights. However, it cannot, under penalty of nullity, carry out an act for which a special representative has been appointed.

The second category concerns persons of full age under supervision orders (*curatélaires*) who are not unable to act alone but require constant assistance or supervision in the conduct of important civil affairs where it has been established that judicial protection cannot provide sufficient protection (Article 440 (1) and 3 of the Civil Code). Supervision can take two different forms, namely standard and enhanced. While standard supervision is the ordinary-law mechanism commonly used, a court may at any time order enhance supervision. The latter arrangement differs in that only the supervisor receives the supervisee’s income in an account opened in the latter’s name. The supervisee personally settles his or her expenditures to third persons. The supervisor is required to draw up an annual accountancy report (Article 472 of the Civil Code). Lastly, persons who require constant representation in the conduct of civil affairs may be placed under guardianship orders (*la tutelle*) if it is established that neither judicial protection nor supervision will provide sufficient protection (Article 440 (3) and (4) of the Civil Code). The judge establishes the length of the period of supervision or guardianship orders, which cannot exceed five years, save for exceptional cases (Article 441 of the Civil Code).

This protective measure can be ordered by a court only if strictly necessary and where no other legal means or less stringent measures are practicable (Article 428 of the Civil Code). The measure is structured and customised in accordance with the degree of impairment of the individual’s personal faculties (Article 428 (2) of the Civil Code). Applications for a protective measure must, under threat of inadmissibility, be accompanied by a detailed certificate prepared

by a medical officer who is selected from a list drawn up by the State Prosecutor (Article 431 (1) of the Civil Code). The person concerned is heard by the judge (Article 432 of the Civil Code).

On 27 September 2013 France enacted a new mental health law regarding psychiatric involuntary treatment. It is the fourth French mental health law on this matter. This new French mental health law is an attempt to find a balance between the protection of patients' rights and the need for treatment. The law confirmed the role of the judge and strengthened the legal procedures. It represents a new step in psychiatric involuntary treatment in France. One of its main characteristics is to introduce the Judge for Liberties and Detention in the control of treatment without the patient's consent, shifting to judicial power what was previously an administrative power. Indeed, it gives to the judge the task of checking if the limitations on individual liberties imposed by the psychiatric involuntary treatment are well adapted to and commensurate with the patient's therapeutic needs (Senon et al., 2016:13-15).

Despite this modern regulation and in accordance with the European Convention on Human Rights (ECHR), situations still arise that call into question the effective protection of these persons. In the Case of Delecalle v. France - 25 October 2018, the applicant alleged a violation of Article 12 of the Convention. He complained that he had been denied the right to marry on the grounds that his marriage had been subject to the authorisation of his supervisor or the guardianship judge. On 23 June 2009 the guardianship judge of the District Court of the 15th Administrative District of Paris placed the applicant, who was then seventy-two years of age, under enhanced protective supervision (*curatelle renforcée*) for five years. The report drawn up by a neuropsychiatrist whom the applicant had consulted, had ruled out any form of dementia but had confirmed a slight cognitive impairment and some psychological fragility and vulnerability, rendering a protective measure necessary in view of the extent of the applicant's personal assets. The applicant requested his supervisor's authorisation to marry M.S., a friend whom he had known since 1996 and who had become his partner in 2008. They informed her of the importance which they attached to the religious dimension of marriage. On 17 December 2009 the supervisor refused to authorise the marriage on the grounds that she had only known the applicant for a few months and that she therefore lacked the necessary background to authorise a wedding. In order to get permission to marry, he applied to the guardianship judge. On 24 June 2010 the guardianship judge dismissed the applicant's request. Without pronouncing on the religious dimension mentioned by the applicant, she concluded that the planned marriage as it stood was not in the applicant's interests.

The European Court of Human Rights holds that there has been no violation of Article 12 of the Convention. The Convention institutions have accepted that limitations on the right to marry laid down in the national laws may comprise formal rules, but also substantive provisions based on generally recognised considerations of public interest, in particular concerning capacity. Persons under supervision are not deprived of the right to marry. On the other hand, their right to marry is subject to prior authorisation, owing to the restriction on their legal capacity, which is one of the substantive grounds whose relevance is acknowledged by case-law. It is true that some restrictions are laid down. However, the Court observed that those restrictions

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are properly regulated, with remedies under which restrictions on the right to marry can be subjected to judicial review, in the framework of adversarial proceedings.

The new **Hungarian Civil Code**. The recodification process of the Hungarian civil law began in 1998 and it resulted in a new Hungarian Civil Code, namely Act No. V of 2013 (HCC) which entered into force on 15 March 2014. The previous Hungarian civil law distinguished three categories of legal competency: full legal competency, limited capacity and legal incompetency. Legal incompetency and limited capacity could have been a result of two possible factors: age of the person (minors under 14 years of age were legally incompetent, while minors between 14-18 years of age were considered persons with limited capacity) and the court could have placed him or her under conservatorship or guardianship. Putting someone under guardianship and totally limiting his legal competency, declaring him incompetent was a very powerful instrument in the hand of judges. The new Civil Code arranges the entire Hungarian civil law into a consolidated structure, integrating regulations already present in separate acts.

The new Civil Code regulates the protection of the person in Book II entitled “Individual as a subject of law”, Part II, Title V “Limitation of adults' capacity to act”. The code distinguishes between partially limited capacity to act and no capacity to act. As a general rule, every person is capable of acting if his capacity to act is not limited by the Civil Code or a court ruling.

“An adult shall have partially limited capacity to act if placed by the court under guardianship (*cselekvőképességet részlegesen korlátozó gondnokság*) to that effect. The court shall place an adult under guardianship partially limiting his capacity to act if, due to his mental disorder, his ability required to take care of his own affairs is, permanently or in a temporarily recurring manner, significantly reduced, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under guardianship is justified with regard to specified categories of affairs” (HCC 2:19 §). The court judgment that partially limits the capacity to act must define the groups of cases under which the ability of the person under guardianship to act is limited (Kriston, 2016:29).

“An adult shall have no capacity to act if placed by the court under guardianship fully limiting his capacity to act (*cselekvőképességet teljesen korlátozó gondnokság*). The court shall place an adult under guardianship fully limiting his capacity to act if, due to his mental disorder, he permanently and completely lacks the ability required to take care of his own affairs, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under guardianship is justified. The court shall be allowed to limit the capacity to act in full if the protection of the rights of the person concerned cannot be ensured by means that do not affect his capacity to act or by partial limitation of his capacity to act” (HCC 2:21. §).

The court appoints a forensic psychiatric expert to examine the defendant's state of mind; within the framework of this, in order to carry out the investigation, he can be ordered to be placed in an inpatient hospital for a maximum of thirty days. In its ruling, the court also provides for a mandatory review of guardianship, which must be initiated *ex officio* by the guardianship

authority after a maximum of five years in the case of a partial restriction of the capacity to act, and a maximum of ten years in the case of a total restriction.

Both types of competency limitations are *ultima ratio* instruments and courts must evaluate whether other instruments would serve the interests of the person better without limiting his competency. These other instruments may be partial limitations on full legal competency only in selected cases and activities as the new Code allows judges to put somebody under guardianship only in selected cases rather than in all cases with general scope. Another instrument to completely avoid any limitations on one's legal competency is advocated decision-making without prejudice to legal competency. Where a person of legal age is in need of assistance due to the partial loss of his or her discretionary ability in certain matters, the guardian authority shall appoint an advocate upon his or her request with a view to avoiding conservatorship invoking limited legal capacity (Fezer, 2014).

In the Czech Republic, a new Civil Code came into force through Law No. 89/2012 and is in force since January 1, 2014 (CCC). The limitations of the civil capacity and the means of protection of the natural person are provided in Title II dedicated to Persons, Part II - Individuals. "In anticipation of its own incapacity to act can legally express the will of man, that his affairs were managed in a certain way, or in order to manage a person or a person to become his guardian" (§ 38 CCC). The Czech Civil Code also regulates the assistance in decision making: "if a person needs help in decision making, because in his mental disorder that causes difficulties, though not be limited in incapacitation, he can negotiate with the proponent of providing support, proponents may be more" (§ 45 CCC). The Code also allows tot the adult with mental disorder that has no other representative, in a legal act, to be represent by its descendant, ancestor, sibling, spouse or partner who lived before the emergence of representation in the same household for at least three years (§ 49).

Limitation of capacity may be made only in the interests of man, which concerned, after his views and with full recognition of his rights and his personal uniqueness. It must be carefully taken into account the extent and degree of disability a person to take care of their own affairs. Limit the legal capacity of man can only be threatened if he would otherwise not be enough and serious harm to its interests due to the milder and less restrictive measures (§ 55 CCC). The court may restrict the legal capacity in connection with the subject matter for the time necessary for its execution, or otherwise designated for some time, but no longer than three years, the legal effects of the expiry of limitation expire. An extension of this time limit is possible but not for longer than one year (§ 59).

CHANGES IN ROMANIAN LEGISLATION

The provisions of the Civil Code regarding the enforcement capacity underwent important changes in 2022 following the entry into force of *Law no. 140/2022 regarding some protection measures for people with intellectual and psychosocial disabilities and the modification and completion of some normative acts* (Law 140/2022). The new regulation replaced the institution of the judicial ban which, previously, was declared unconstitutional by Decision no. 601/2020 of

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the Constitutional Court of Romania. The measure of legal guardianships was replaced, in some cases, with judicial counseling and special guardianship. The law also regulated the assistance in concluding legal acts. In the new regulation, the Civil Code establishes a series of essential guarantees regulated for the benefit of the protected: the establishment of a gradual system, in steps, of ordering protection measures, of certain periods of time for which the measures can be ordered, respectively extended, the configuration some rules regarding the periodic reassessment of the chosen protection regime or the possibility of adaptation by the guardianship court of the protection measure depending on the concrete circumstances in which the protected person finds himself (Diaconescu et al., 2022:126).

According to article 164 paragraph 1 Civil Code, amended by Law no 140/2022, *“the adult who cannot take care of his own interests due to a temporary or permanent, partial or total impairment of his mental faculties, established following medical and psychosocial assessment, and who needs support in forming or expressing his will can benefit from judicial counseling or special guardianship, if taking this measure is necessary for the exercise of his civil capacity, under conditions of equality with other persons”*.

A person can benefit from special guardianship (*tutelă specială*) if the deterioration of his mental faculties is total and, possibly permanent and it is necessary to be continuously represented in the exercise of his rights and freedoms; The institution of special guardianship is ordered for a period that cannot exceed 5 years. However, if the damage to the protected person's mental faculties is permanent, the court can order the extension of the special guardianship measure for a longer period, which cannot exceed 15 years (art. 168 paragraph 3 Civil Code).

A person can benefit from judicial counseling (*consiliere judiciară*) if the deterioration of his mental faculties is partial and it is necessary to be continuously counseled in the exercise of his rights and freedoms. The institution of judicial counseling can only be done if an adequate protection of the protected person cannot be ensured by the institution of assistance for the conclusion of legal acts (art. 164 paragraph 2 and 3 Civil Code) In the new regulation, the duration for which protective measures can be taken was also limited: The institution of judicial counseling is ordered for a period that cannot exceed 3 years (art. 168 paragraph 2 Civil Code). However, it is possible to renew the measure.

The settlement of the request for the institution of a protective measure is made according to the provisions of the Code of Civil Procedure (article 936 – 943). The procedure particularly insists on medical and psychological evaluation, limits the possibility of involuntary hospitalization to no more than 20 days; the process is carried out with the mandatory participation of the prosecutor and the ill person is heard by the court (Miheș et al., 2020). We mention that the court has the possibility of adapting the protection measure depending on the concrete circumstances in which the protected person finds himself. In this sense, art. 937 paragraph 3 of the Civil Procedure Code provides that *“the guardianship court is not bound by the object of the request and may institute, under the law, a protective measure different from the one requested”*.

Law 140/2022 also regulates assistance for the conclusion of legal acts: “The adult who, due to an intellectual or psychosocial disability, needs support to take care of his person, manage his patrimony and to exercise, in general, civil rights and liberties may request the public notary to appoint an assistant, under the conditions of the Law of Public Notaries and Notarial Activity no. 36/1995, republished, with subsequent amendments, for a maximum duration of 2 years” (article 1).

Regarding the legal guardianships (*interdicția judecătorească*) established before the publication of the Constitutional Court decision, their situation is regulated by art. 20 of Law no. 140/2022. The text of the law instituted the duty of the courts to re-examine, *ex officio*, the measures of judicial prohibition, within 3 years from the date of entry into force of Law no. 140/2022. The courts will either replace the legal guardianship with one of the means of protection provided by Law no. 140/2022 or lift the guardianship. Until the court rulings become final, those under judicial interdiction are considered, with full right, in terms of their condition and capacity, as persons for whom special guardianship has been instituted.

The psychiatric involuntary treatment is currently regulated by Law no. 487/2002 of Mental Health and the Protection of People with Mental Disorders. The regulation of Decree 313/1980 was replaced by a modern regulation and a change of perspective. The change starts with the terminology; the pejorative, degrading notions used by the Decree have been replaced by a new terminology: “*person with mental disorders*” and “*person with serious mental disorders*”. Art. 5 of Law no. 487/2002, defines the notions: a person with mental disorders is understood as “a person with mental imbalance or insufficient mental development or dependent on psychoactive substances, whose manifestations fall within the diagnostic criteria in force for psychiatric practice”; a person with serious mental disorders means a person with mental disorders who is unable to understand the meaning and consequences of his behavior, so that he requires immediate psychiatric help. The serious mental disorder thus affects the very discernment of the person: he is unable to understand the meaning and consequences of his behavior. The great merit of Law no. 487/2002 was that, for the first time in Romanian legislation, it dedicated a section on the rights of people with mental disorders.

In its initial form, the law had numerous deficiencies: we were only dealing with an administrative protection, ordered by the medical authority, the court having attributions in the disposition of these measures, rather than in the resolution of possible complaints. The involuntary internal decision was notified only to the prosecutor's office (not the court) and was subject to review by the prosecutor's office. As we note, the court has no role in verifying the legality of the measure before it is instituted; the court could only resolve the referral of the patient dissatisfied with the involuntary hospitalization decision.

Following numerous amendments, the law acquired a modern form that guarantees respect for the rights of the involuntarily interned person. The institution of compulsory medical treatment is subject, in all cases, to the control of the court.

Admission to a psychiatric unit is done only for medical reasons, meaning diagnostic and treatment procedures (Article 49 paragraph 1 of the Law). The involuntary hospitalization

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procedure, as a rule, goes through 3 stages: the involuntary hospitalization proposal made by the psychiatrist, the hospitalization decision made by a committee of doctors and the confirmation of the decision by the court. The request for involuntary admission of a person may be made by the family doctor or the specialist psychiatrist, the person's family, the representatives of the local public administration, the representatives of the police, the gendarmerie or the fire brigade, as well as by the prosecutor. we appreciate that the request must be made in good faith (Mihăilă, 2020:186). The medical commission that made the decision to admit the patient has the obligation to re-examine the patients at most once a month and whenever necessary depending on their condition.

CONCLUSIONS

From the analysis of international regulations, we observe the current existence of a clear normative framework, established by the European Convention on Human Rights and the Convention on the Rights of Persons with Disabilities and other regulations, intended to standardize national legislations.

Following the benchmarks drawn by the international conventions, the European Union states have modernized their legislation in such a way as to offer adequate guarantees for the protection of the rights of persons with disabilities. In the analyzed legislations we can discover the same constants. Thus, we discover the intention of adopting intermediate solutions, adapted to the particular situation of each person, depending on the degree of total or partial damage, permanent or temporary. On the other hand, the legislation aims for the protective measures to be proportionate, adapted to the person's situation and to be applied for the shortest possible period. Also, the limitation of the time interval for which the measure can be taken appears as a constant in all the analyzed legislations and an important guarantee of respecting the freedom of the person.

As we could see, the new Romanian Civil Code establishes a series of essential guarantees regulated for the benefit of the protected. The previous legal guardianship has been replaced with gradual, flexible means of protection and the guardianship court has the possibility of adaptation of the protection measure depending on the concrete circumstances in which the protected person finds himself. Any legislation is perfectible. The concern of the Romanian legislator for the analyzed issue still exists. The proof is represented by the numerous legislative changes; the last amendment to Law no. 487/2002 intervened on March 30, 2023.

I believe that the possibility of the guardianship court to order that the protection measure only concern certain categories of legal acts (Article 168 paragraph 4 of the Romanian Civil Code) requires greater attention from the point of view of those who will conclude legal acts with such categories of people. Also, a more flexible way of thinking, detached from the old patterns, is needed in terms of approaching legal relations with individual with intellectual and psychosocial disabilities.

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