

Protection of Persons with Intellectual and Psychosocial Disabilities through Legal Counseling and Special Guardianship. The Conditions for Establishing These Measures

Lecturer **Ramona DUMINICĂ**¹

Abstract

By Law no 140/2022 regarding some protection measures for persons with intellectual and psychosocial disabilities and the modification and completion of some normative acts, the Romanian legislator responded to the need for regulation in the field of protection of persons, bringing the provisions of civil legislation into agreement with the Decision no 601/2020 of the Constitutional Court of Romania. Through this Decision, the Constitutional Court declared unconstitutional art 164 of the Civil Code which stated the institution of placing under prohibition the mentally retarded or mentally alienated natural person. The Court showed in its reasoning that this institution was not accompanied by sufficient guarantees to ensure respect for fundamental human rights and freedoms, as they are enshrined in the Romanian Constitution and interpreted by reference to international treaties, in this case the Convention on the Rights of people with disabilities. Starting from the actuality and particular practical relevance of the newly created mechanism for the protection of individuals with intellectual and psychosocial disabilities, this article proposes an overview of the new measures, emphasizing in particular the distinction between the types of measures that make up the new protection system and analysis of the conditions under which they can be disposed. The study is not intended to be an exhaustive one but aims to identify the general lines in the matter, at the same time raising the question of whether the new provisions really constitute real legislative progress in the matter of civil legislation applicable to individuals.

Keywords: Law no. 140/2022, protection of adults with intellectual and psychosocial disabilities, legal advice, special guardianship.

JEL Classification: K15, K38

1. Introductory considerations

More than ten years after the entry into force of the New Civil Code, we are witnessing a major, necessary and long-awaited reformation of the civil legislation dedicated to natural persons, as a result of the declaration of unconstitutionality of art. 164 of the Civil Code by Constitutional Court Decision no. 601/2020 of July 16, 2020.

In its form prior to the declaration of unconstitutionality, art. 164 of the Civil Code regulated the substantive conditions of the institution of judicial interdiction, and the formal conditions were enshrined by the Civil Procedure Code by art. 924-930. These legal provisions basically take over the old provisions of the Family Code (art. 142-151), from Decree no. 31/1954 regarding individuals and legal entities and from Decree no. 32/1954 for the implementation of the Family Code and the Decree regarding individuals and legal entities.

Over time, in the specialized literature, the judicial ban has been defined as a "measure to protect the natural person lacking the necessary discernment to take care of his interests, due to alienation or mental debility, which is ordered by the court and consists in depriving the protected person of exercise capacity and establishing guardianship"².

In order to be able to order the banning of a natural person, it was necessary and sufficient that the following substantive conditions resulting from art. 164 of the Civil Code³:

- the person in question must lack discernment;
- the cause of the lack of discernment is alienation or mental debility;
- the lack of discernment does not allow the person to take care of his interests.

By art. 211 of Law 71/2011 on the implementation of the Civil Code, the notions of "mental

¹ Ramona Duminičă - Faculty of Economic Sciences and Law, University of Pitesti, Romania, ramona.duminica@upit.ro.

² Eugen Chelaru, *Drept civil. Persoanele, în reglementarea NCC*, Ed. CH. Beck, Bucharest, 2020, p. 173.

³ Eugen Chelaru, *op. cit.*, p. 178; Gh. Beleiu, *Drept Civil român. Introducere în dreptul civil. Subiectele dreptului civil*, Ed. Universul Juridic, Edition revised and edited by M. Nicolae and P. Trușcă, Bucharest, 2001, p. 304; Ovidiu Ungureanu, Cornelia Munteanu, *Drept civil. Persoanele, în reglementarea noului Cod civil*, 3rd ed., Ed. Hamangiu, Bucharest, 2015, p. 244; Ioan Ciochină-Barbu, Cristian Jora, *Drept civil. Persoanele*, Ed. Prouniversitaria, Bucharest, 2020, p. 168 et seq.

alienation" and "mental debility" were defined, respectively as "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". At that time, the definition was considered a progress in the field of regulation of this institution, aiming to achieve a consensus between traditional legal notions and medical sciences.

The most important effect of being placed under judicial prohibition consisted in the lack of capacity to exercise the forbidden, and as a consequence of the lack of capacity to exercise the person in question, the guardianship of the prohibited was established⁴.

The main criticisms brought to the way of regulating the institution of placing under judicial interdiction concerned the violation of the constitutional provisions of art. 1 paragraph (3), of art. 16 para. (1) and of art. 50, as interpreted according to art. 20 para. (1) and through the prism of art. 12 of the Convention on the rights of persons with disabilities.

By Decision no. 601/2020, the Constitutional Court admitted the exception of unconstitutionality of art. 164, reasoning that "the measure of placing under judicial interdiction regulated by art. 164 paragraph (1) of the Civil Code is not accompanied by sufficient guarantees to ensure the respect of fundamental human rights and freedoms. This does not take into account the fact that there may be different degrees of incapacity nor the diversity of a person's interests, it is not ordered for a fixed period of time and is not subject to periodic review. Any measure of protection must be proportionate to the degree of capacity, be adapted to the person's life, apply for the shortest period of time, be reviewed periodically and take into account the will and preferences of people with disabilities".⁵

At the same time, the Court also noted that "when regulating a protective measure, the legislator must take into account the fact that there can be different degrees of incapacity, and mental deficiency can vary over time. The lack of mental capacity or discernment can take different forms, to for example, total/partial or reversible/irreversible, a situation that calls for the establishment of protective measures appropriate to the reality and which, however, are not found in the regulation of the judicial injunction measure (...). An inability must not lead to the loss of the exercise of all rights civil, but must be analyzed in each individual case".⁶

Therefore, it can be considered that Decision no. 601/2020 outlines its legal foundation around art. 12 ("Equal recognition before the law") and art. 5 ("Equality and non-discrimination") of the Convention on the Rights of Persons with Disabilities, ratified by our country through Law no. 221/2010⁷.

In this sense, it was shown in the recent doctrine that "Through the Decision of the Constitutional Court no. 601/2020, the UN Convention has become the star of the civil law of individuals. It is the merit of the Constitutional Court to have raised the curtain, thus causing a serious process of law reform people in Romania"⁸.

The long-awaited reform was achieved through Law no. 140/2022 regarding some protection measures for people with intellectual and psychosocial disabilities and the modification and completion of some normative acts⁹, entered into force on August 18, 2022.

⁴ For a particular impact see Ramona Ilie, Claudia Boghicevici, Camelia Daciana Stoian, *Role of social professions in the process of sustainable development of rural area. Study case*, in „Juridical Tribune -Tribuna Juridică”, Volume 8, Issue 2, June 2018, pp. 415-424.

⁵ The Constitutional Court of Romania, Decision no. 601/2020, published in the Official Gazette of Romania, Part I, no. 88 of January 27, 2021.

⁶ Ibid.

⁷ Published in the Official Gazette of Romania, Part I, no. 792 of November 26, 2010.

⁸ Marieta Avram, *Impactul Convenției O.N.U. privind drepturile persoanelor cu dizabilități asupra căsătoriei (în perspectiva modificării Codului civil)*, in “Revista Română de Drept Privat” no. 3-4/2021, pp. 234-261.

⁹ Published in the Official Gazette of Romania, Part I, no. 500 from 20 May 2022.

2. The general principles of the protection of natural persons of legal age in the context of the amendments made to the Civil Code by Law no. 140/2022

From a legal perspective, the protection of the natural person is understood as the set of legal provisions aimed at ensuring the protection of people, equally and non-discriminatory.

Protection is achieved through various means, constitutional law, administrative law, labor and social protection law, family law, etc., but also through specific civil law protection means.

We are in the presence of a complex, interdisciplinary legal institution, in which civil law has the main role¹⁰. The civil legal norms protect and guarantee the civil subjective rights of each person equally and without any discrimination, as provided with the value of fundamental principles in art. 26 and art. 30 Civil Code.

For situations when certain categories of natural persons, who either because of age, or because of physical or mental health, cannot manage their assets or protect their interests by themselves under appropriate conditions¹¹, the legislator of the Civil Code established special protection measures through the Title III Protection of the natural person (art. 104-186) from Book I and by Title IV Parental authority from Book II¹².

According to art. 105 of the Civil Code "Minors are subject to special protection measures and those who, although capable, due to old age, illness or other reasons provided by law, cannot manage their assets or defend their interests under appropriate conditions".

The protective measures are listed in art. 106 Civil Code. Thus, the protection of the minor is carried out by the parents, by the establishment of guardianship, by fostering or, as the case may be, by other special protection measures provided by law, and the protection of the adult takes place by the establishment of the measure of judicial counseling or special guardianship or guardianship or another measure provided by law.

Given that our study addresses legal advice and special guardianship, in the following we will analyze the principles that constitute the general basis of these measures.

The new protection system created in the matter by Law no. 140/2022 is based on a series of basic rules, such as: the necessity of the measures taken, subsidiarity, proportionality, equality and non-discrimination, naturally complementing the principle according to which any measure to protect the natural person is established only in his interest.

These guidelines derive from the provisions of art. 104 Civil Code, as amended by art. 7 point 11 of Law 140/2022, which has the marginal name of "general conditions", but also from the set of regulations dedicated to the protection of the person. Although the legislator uses the term conditions, as far as we are concerned, we consider that we are not only in the presence of simple conditions, but in front of some basic ideas of a nature to guide the interpretation and application of the norms related to the protection of the person. For this reason, we will prefer the term principles.

Taking any measure to protect the adult natural person is possible, as follows from the aforementioned provisions, in compliance with the following general principles:

a. *Any measure of protection of the natural person is established only in his interest* (art. 104 par. 1 Civil Code). This rule is the basis of all regulations in the field of personal protection. The main purpose of any such measures is to guarantee the interest of the person to develop physically and intellectually, to ensure the necessary conditions for professional training, for his health, for increasing the quality of life, for his advice or representation, on a case-by-case basis, at the conclusion of legal acts, etc. The same interest must be the basis of the administration of the assets of the protected persons¹³.

b. *The principle of equality and non-discrimination in taking any protective measure.* Any

¹⁰ Dumitru Lupulescu, Ana-Maria Lupulescu, *Subiectele dreptului civil*, Ed. Universul Juridic, Bucharest, 2017, p. 227.

¹¹ For developments, see: Aida Diana Dumitrescu, *Titlurile de valoare. Comentarii ale dispozițiilor Noului Cod Civil*, Ed. C.H.Beck, Bucharest, 2012, p. 51, 65, 90 et seq.

¹² As amended and supplemented by Law no. 140/2022 regarding some protection measures for people with intellectual and psychosocial disabilities and the modification and completion of some normative acts.

¹³ Dumitru Lupulescu, Ana-Maria Lupulescu, *op. cit.*, p. 228.

measure to protect the natural person must take into account the possibility for him to exercise his rights and fulfill his obligations regarding the person and his assets, as provided by art. 104 para. 2 of the Civil Code, equally and non-discriminatory.

c. *The principle of respecting the dignity of the protected person, his rights and freedoms, his will, needs and preferences, as well as safeguarding his autonomy* (art. 104 para. 3 Civil Code). From a principle of life, as Ulpian saw dignity in *Digeste Honeste vivere*, to live in dignity (Ulpian, *Digeste*, 1,1,10), continuing with Kant's imperative that "man and in general every rational being it exists as an end in itself, not only as a means, which one will or another can use as it pleases (...)"¹⁴, enjoying such dignity, nowadays it is elevated to the rank of "primordial right of the human being", constituting the basis for the affirmation of all other individual rights. As it was shown in the specialized literature, dignity is difficult to define because it has as its object generic notions that are impossible to clarify. The purpose of this concept is, first of all, of a functional nature, in the sense that it aspires to protect man against everything that constitutes the denial of his being.¹⁵ Thus, taking any protective measure must guarantee the possibility of the person to act freely in order to develop his personality, and the state has the obligation to regulate a legislative framework that ensures respect for the individual, the full expression of his personality, rights and freedoms¹⁶, of equal opportunities, with the final result being respect for human dignity.

d. *The principle of the need to take the measure* (art. 104 par. 4 Civil Code). According to this principle, any measure to protect the major will be ordered only in case of necessity, with the aim of adequately protecting the person in a vulnerable situation.

e. *The principle according to which any measure to protect the minor will be ordered for the shortest possible term* (art. 104 par. 4 Civil Code). An application of this principle is made by the legislator through art. 168 para. (2) and para. 3 of the Civil Code which establishes the maximum terms for which the measure of judicial advice can be taken, respectively the measure of special guardianship. The establishment of judicial counseling can be ordered for a period that cannot exceed 3 years, and the establishment of special guardianship can be ordered for a period that cannot exceed 5 years. However, if the damage to the protected person's mental faculties is permanent, the court may order the extension of the special guardianship measure for a longer period, which cannot exceed 15 years. We appreciate, along with other authors¹⁷, that this last thesis of art. is deficient. 168 para. 3 of the Civil Code since it does not appear how the persons with "permanent and total" mental disability will be protected after the expiry of this maximum term of 15 years in the hypothesis in which the conditions provided by law for the establishment of the measure of special guardianship continue to exist.

f. *The principle of proportionality of taking the measure* (art. 104 par. 4 Civil Code). This rule refers to the fact that any measure of protection of the minor must be proportionate and individualized depending on the degree of alteration of the mental faculties, as well as the needs of the protected person and the circumstances in which he finds himself (art. 104 paragraph 4 of the Civil Code). Applying this principle, the legislator provides by art. 168 para. (4) of the Civil Code that the court of guardianship establishes through the decision by which judicial counseling or special guardianship was instituted, depending on the degree of autonomy of the protected person and his specific needs, the categories of acts for which approval of his acts or, as the case may be, his representation is necessary. The court can order that the protection measure even concern only one category of documents. Also, the court can order that the protection measure refers only to the person of the

¹⁴ Immanuel Kant, *Critica rațiunii practice*, translated by Nicolae Bagdasar, 2nd ed., Universal Enciclopedic Gold, Bucharest, 2010, p. 238.

¹⁵ Ovidiu Ungureanu, Cornelia Munteanu, *Reflecții în legătură cu dreptul la demnitate în concepția Codului civil*, „Dreptul” no. 9 /2014, pp. 11-12.

¹⁶ For a presentation of the real and progressive danger of curtailing certain rights, see: Aida Diana Dumitrescu, Mara Ioan, *Particularități teoretice și practice în legătură cu aplicarea prevederilor Decretului-Legea nr.118 din 30 martie 1990 privind acordarea unor drepturi persoanelor persecutate din motive politice de dictatura instaurată cu începere de la 6 martie 1945, precum și celor deportate în străinătate ori constituite prizonieri*, „Revista Studia Jurisprudenția” no. 4 /2011, pp. 111-112.

¹⁷ Eugen Chelaru, *Reform of the system for the protection of adults. Special guardianship*, „Proceedings of the International Conference European Union's History, Culture and Citizenship”, Ed. CH. Beck, Bucharest, 2022, p. 75.

protected person or only to his assets.

g. *The principle of subsidiarity of protective measures* (art. 104 par. 5 Civil Code). According to this principle, the court will be able to order a measure to protect the minor only if it considers that another measure is not sufficient to protect the interests of the person in question, such as: establishing the measure of assistance for the conclusion of legal acts, applying the rules of law common in the matter of representation, of those relating to the rights and obligations of the spouses or the approval of a protection mandate concluded by the person in question.

h. *The principle according to which the procedures related to protective measures are carried out under the control of the state, represented by the guardianship and family court* (art. 107 para. 1 Civil Code). The competence to resolve requests for the institution of judicial counseling or special guardianship belongs to the guardianship court at the domicile of the protected person (art. 936 Code of Civil Procedure).

The procedure for ordering, extending, replacing or lifting a protective measure is regulated by the provisions of the Code of Civil Procedure - Law 134/2010, Book VI Special Procedures, Title II Procedure for establishing judicial advice or special guardianship. Approval of the protection mandate¹⁸ (art. 936-9437).

i. *The principle of speedy resolution of claims related to the protection of the natural person.* According to art. 107 para. 2 Civil Code in all cases, the guardianship court resolves these requests immediately.

3. The substantive conditions for the establishment of judicial advice or special guardianship

Beyond the principles presented above that are the basis for taking any measure to protect the natural person of age, in the case of judicial advice or special guardianship, a series of specific conditions must also be met in order to be able to order one of the two protection measures. These requirements are derived from the provisions of art. 164 Civil Code, suggestively named "Conditions".

According to art. 164 para. 1 Civil Code "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 the 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".

Analyzing the cited legal provision, we note and welcome the abandonment of the "judicial injunction" measure, which is replaced by two alternative protection measures, namely judicial counseling and special guardianship that can be ordered against the person who, due to the deterioration of mental faculties, has need support in forming or expressing his will.

It can be observed that the legislator has also abandoned the use of the terms alienation and mental debility, these being replaced by the notion of "damage to the mental faculties", "a notion of a nature to offer guarantees to the persons against whom these measures must be ordered, in the sense of a correct assessment from a medical and social point of view of the cause that determines the need to take protective measures"¹⁹.

Regarding *judicial advice*, para. 2 and para. 3 of art. 164 Civil Code provide that "A person may benefit from judicial counseling if the deterioration of his mental faculties is partial and it is necessary to be counseled continuously in the exercise of his rights and freedoms. The establishment of legal advice can only be done if adequate protection of the protected person cannot be ensured by the establishment of assistance for the conclusion of legal acts".

Therefore, starting from the text of art. 164 Civil Code para. 1, para. 2 and para. 3 we can

¹⁸ As amended and supplemented by Law no. 140/2022 regarding some protection measures for people with intellectual and psychosocial disabilities and the modification and completion of some normative acts.

¹⁹ Codruța Guzei-Mangu, *Despre reformarea regimului juridic privind ocrotirea persoanei fizice ca urmare a Deciziei Curții Constituționale nr. 601/2020*, „Analele Universității de Vest din Timișoara - Seria Drept” no. 2/2021, pp. 133-147.

define judicial counseling as an intermediate measure to protect the natural person who, due to a partial deterioration of the mental faculties, needs support in the formation or expression of his will, a measure instituted by court and which may attract the restriction of the capacity to exercise of the person, individually, from case to case.

From the interpretation of these provisions, it follows that in order to be able to order the measure of judicial advice, the following substantive conditions must be met cumulatively:

1. the person is unable to take care of his own interests;
2. the cause of this impossibility is the partial deterioration of his mental faculties;
3. there is a need for the person to be continuously advised in the exercise of his rights and freedoms, under conditions of equality with other persons;
4. adequate protection of the person in question cannot be ensured by establishing assistance for the conclusion of legal acts.

Regarding *the special guardianship of the major*, art. 164 by para. 4 and para. 5 Civil Code establishes that "A person can benefit from special guardianship if the deterioration of his mental faculties is total and, as the case may be, permanent and it is necessary to be continuously represented in the exercise of his rights and freedoms. The establishment of special guardianship can only be done if adequate protection of the protected person cannot be ensured by the establishment of assistance for the conclusion of legal acts or judicial advice".

Consequently, the special guardianship represents an extraordinary measure of protection for a natural person who, due to a total, and as the case may be, permanent damage to the mental faculties, needs support in the formation or expression of his will, a measure instituted by court and which can the person in question lacks exercise capacity, on an individual basis, on a case-by-case basis.

The basic conditions necessary and sufficient to be able to order this measure to protect the natural person are:

1. the person is unable to take care of his own interests;
2. the cause of this impossibility is the total, and as the case may be, permanent deterioration of his mental faculties.

Regarding this requirement, art. 164 para. 1 Civil Code is necessary to be corroborated with art. 168 para. 4 Civil Code, so from their interpretation, we can appreciate that the measure of special guardianship can be instituted not only if the person's decision-making power is totally absent, but also when it exists, but it is affected so seriously that judicial counseling would be insufficient to protect the person in question. Our main argument is that para. 4 of art. 168 Civil Code mentions that depending on the degree of autonomy of the protected person and his specific needs, the guardianship court can allow the protected person, including through special guardianship, to conclude certain legal acts on his own.

In the same sense, it was argued in the specialized literature that "there is not in all cases an identity between the total deterioration of the mental faculties of the protected person and the total lack of discernment, which constitutes one of the essential differences from the measure of placing under a judicial ban"²⁰.

1. there is a need for the person to be continuously represented in the exercise of his rights and freedoms, under conditions of equality with other persons;
2. adequate protection of the person in question cannot be ensured by establishing assistance for the conclusion of legal acts or judicial advice.

Minors with limited exercise capacity can also benefit from the measure of special guardianship. However, as provided in para. 6 of art. 164 Civil Code, when the guardianship court assesses that the protection of the person can be achieved by the institution of curatorship or by placing him under judicial counselling, this measure can be ordered one year before the date of turning 18 and begins to produce effects of on this date.

We note that unlike judicial counseling, which is an intermediate measure of protection, the measure of special guardianship is an extraordinary measure that can be ordered as a last measure for

²⁰ Eugen Chelaru, *op. cit.*, p. 74.

the protection of the person, being the only situation in which the court can completely lack the capacity to exercise the person respective physical, case by case. Our point of view is also based on the provisions of art. 43 Civil Code, in its current version²¹ which includes the person who benefits from the measure of special guardianship in the category of persons lacking legal capacity, together with the minor who has not reached the age of 14.

Another difference we identify between the two measures concerns the conditions under which they can be taken. While in the case of judicial counseling the deterioration of the mental faculties of the person whose protection is sought is partial and it is only necessary to be continuously advised in the exercise of his rights and freedoms, we emphasize that in the case of special guardianship the deterioration is total or seriously affected, and as the case may be, permanent, as it is necessary for the person to be represented continuously.

On the other hand, regardless of whether we refer to judicial counseling or special guardianship, in the case of both, it is required that taking the protective measure is necessary for the exercise of his civil capacity, under conditions of equality and non-discrimination with other persons, based on the general principles of the protection of the natural person stated in art. 104 and art. 107 Civil Code.

For the implementation and to prevent the difficulties that may arise in the application of the provisions related to these protective measures, "*The methodology of medical and psychological assessment of persons with intellectual and psychosocial disabilities in the context of the disposition, extension, replacement or lifting of the protection measure*" is to be adopted.

Taking into account the fact that the degree of deterioration of the mental faculties is established following the medical and psychosocial evaluation and that this is the essential element on the basis of which the court will opt for a certain measure of protection, the adoption of such rules was a necessity.

In art. 2 of the Methodology project²², the objectives pursued through the medical evaluation of people with intellectual disabilities are enshrined, respectively:

- a) Establishing the assessed person's ability to make informed decisions, both simple and complex;
- b) Appreciation of the degree of autonomy and his ability to take care of himself;
- c) Estimation of the need and manner of assistance in everyday life;
- d) Establishing prognostic elements regarding the need for medical monitoring, the need for legal, psychological, social or other assistance.

With regard to the drafting of the psychological report on the assessment of psychosocial disability in order to establish the exercise capacity, it is stated in the draft Methodology that its drafting must comply with the standards imposed on any scientifically based psychological assessment and must provide solid information and arguments, which are useful in making decisions regarding protective measures for people with psychosocial disabilities. It is also mandatory to include both in the Conclusions of the Medical Assessment Report of the person with intellectual disabilities, but also in the Conclusions of the Psychological Assessment Report in the context of the disposition, extension, replacement or lifting of the protective measure, information regarding the nature and degree of severity of the mental condition and its foreseeable evolution, the extent of his needs and the other circumstances in which he is found, as well as mentions regarding the necessity and opportunity of establishing a protective measure.

4. Conclusions

By the way in which the legislator understood to regulate the conditions under which the two protective measures can be ordered, judicial counseling and special guardianship, we appreciate that

²¹ Art. 43 Civil Code "(1) Apart from other cases provided by law, they do not have the capacity to exercise: a) the minor who has not reached the age of 14; b) the one who benefits from the measure of special guardianship".

²² The document is available online at <https://www.juridice.ro/803269/metodologia-de-evaluare-medicala-si-psihologica-a-persoanelor-cu-dizabilitati-intelectuale-si-psihosociale-privind-masurile-de-ocrotire-proiect.html>, accessed on 11.11.2022.

the development of a new system of protection of the adult person, depending on the severity of the alteration of his mental faculties, was successful, of the degree of autonomy of the protected person and his specific needs, under conditions of equality with the other subjects of law and with respect for dignity and other fundamental rights and freedoms²³. Therefore, the recommendations of the Constitutional Court were applied and the national provisions in the matter were brought into line with the fundamental law and the provisions of the International Convention on the Rights of Persons with Disabilities.

We are definitely in the presence of real progress in the matter, but we cannot fail to point out that there are also some shortcomings of the new regulations²⁴. The absence of an express reference regarding the exercise capacity of the protected person, the fact that the notion of discernment appears only in the part dedicated to the regulation of legal acts that the person under special guardianship concludes by himself, without such a mention when the conditions for establishing of the protection measure, as well as the use of a new notion, that of "damage to the mental faculties", without it being clarified, are elements likely to create some confusion in the application of these new provisions.

Bibliography

1. Aida Diana Dumitrescu, Mara Ioan, *Particularități teoretice și practice în legătură cu aplicarea prevederilor Decretului-Legea nr. 118 din 30 martie 1990 privind acordarea unor drepturi persoanelor persecutate din motive politice de dictatura instaurată cu începere de la 6 martie 1945, precum și celor deportate în străinătate ori constituite prizonieri*, „Revista Studia Jurisprudenția” no. 4/2011, pp. 111-112.
2. Aida Diana Dumitrescu, *Titlurile de valoare. Comentarii ale dispozițiilor Noului Cod Civil*, Ed. C.H.Beck, Bucharest, 2012.
3. Civil Code (Law no. 287/2009), revised September 2022.
4. Codruța Guzei-Mangu, *Despre reformarea regimului juridic privind ocrotirea persoanei fizice ca urmare a Deciziei Curții Constituționale nr. 601/2020*, „Analele Universității de Vest din Timișoara - Seria Drept” no. 2/2021.
5. Dumitru Lupulescu, Ana-Maria Lupulescu, *Subiectele dreptului civil*, Ed. Universul Juridic, Bucharest, 2017.
6. Eugen Chelaru, *Drept civil. Persoanele, în reglementarea NCC*, Ed. CH. Beck, Bucharest, 2020.
7. Eugen Chelaru, *Reform of the system for the protection of adults. Special guardianship*, „Proceedings of the International Conference European Union’s History, Culture and Citizenship”, Ed. CH. Beck, Bucharest, 2022.
8. Fiona Morrissey, *The United Nations Convention on the Rights of Persons with Disabilities: A New Approach to Decision-Making in Mental Health Law*, „European Journal of Health Law”, vol. 19, no. 5, 2012, p. 423–440.
9. Gheorghe Beleiu, *Drept Civil român. Introducere în dreptul civil. Subiectele dreptului civil*, Ed. Universul Juridic, Edition revised and edited by M. Nicolae and P. Trușcă, Bucharest, 2001.
10. Immanuel Kant, *Critica rațiunii practice*, translated by Nicolae Bagdasar, 2nd ed., Universal Enciclopedic Gold, Bucharest, 2010.
11. Ioan Ciochină- Barbu, Cristian Jora, *Drept civil. Persoanele*, Ed. Prouniversitaria, Bucharest, 2020.
12. Law no. 140/2022 regarding some protection measures for people with intellectual and psychosocial disabilities and the modification and completion of some normative acts, published in the Official Gazette of Romania, Part I, no. 500 from 20 May 2022.
13. Law no. 221/2010 for the ratification of the Convention on the Rights of Persons with Disabilities, adopted in New York by the United Nations General Assembly on December 13, 2006, opened for signature on March 30, 2007 and signed by Romania on September 26, 2007, published in the Official Gazette, Part I no. 792 of November 26, 2010, with subsequent amendments.
14. Leslie Salzman, *Guardianship for Persons with Mental Illness — A Legal and Appropriate Alternative?*, „Saint Louis University Journal of Health Law & Policy”, vol. 4, issue 2, 2011, pp. 279-330.
15. Marieta Avram, *Impactul Convenției O.N.U. privind drepturile persoanelor cu dizabilități asupra căsătoriei (în perspectiva modificării Codului civil)*, in “Revista Română de Drept Privat” no. 3-4/2021.
16. Ovidiu Ungureanu, Cornelia Munteanu, *Drept civil. Persoanele, în reglementarea noului Cod civil*, 3rd ed., Ed. Hamangiu, Bucharest, 2015.
17. Ovidiu Ungureanu, Cornelia Munteanu, *Reflecții în legătură cu dreptul la demnitate în concepția Codului civil*, „Dreptul” no. 9 /2014.
18. Ramona Ilie, Claudia Boghicevici, Camelia Daciana Stoian, *Role of social professions in the process of*

²³ See Leslie Salzman, *Guardianship for Persons with Mental Illness — A Legal and Appropriate Alternative?*, „Saint Louis University Journal of Health Law & Policy”, vol. 4, issue 2, 2011, pp. 279-330.

²⁴ Fiona Morrissey, *The United Nations Convention on the Rights of Persons with Disabilities: A New Approach to Decision-Making in Mental Health Law*, „European Journal of Health Law”, vol. 19, no. 5, 2012, p. 423–440.

sustainable development of rural area. Study case, in „Juridical Tribune -Tribuna Juridică”, Volume 8, Issue 2, June 2018, pp. 415-424.

19. The Constitutional Court of Romania, Decision no. 601/2020, published in the Official Gazette of Romania, Part I, no. 88 of January 27, 2021.