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# NEW MEASURES TO PROTECT THE ADULT. CHALLENGES FOR LAWYERS AND FORENSIC DOCTORS

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**Abstract:** A decision of the Constitutional Court, which declared the unconstitutionality of art. 164 of the Civil Code, which regulated the protection measure of placing under interdiction, offered the lawmaker the opportunity to rethink the protection measures of the natural person that involve restricting or increasing one's capacity of exercise. The new regulation proposed by Law no. 140/2022 brings with it both protection measures to which people with intellectual or psychosocial disabilities can appeal in the conventional means - legal aid and the warrant of protection - as well as protection measures for people who are found to have a deterioration of the mental faculties – legal advice and special guardianship - the establishment of which is given to the competence of the court with the amendment that the court is free to choose the measure of protection that best corresponds to the vulnerable person's concrete needs, being able to configure its content so that the measure of protection to be adequate to the circumstances in which the person finds oneself and the restriction of own freedom to be proportional to the severity of the effects that this deterioration of the mental faculties of the vulnerable person causes to that person's psychological abilities.
**Keywords:** legal aid; legal advice; special guardianship.

## 1. Introduction

As it is already known, a decision of the Constitutional Court, adopted in the summer of 2020, aroused interest in both the legal and forensic world, due to the fact that it reconsidered compliance with the constitutional requirements of the legal provisions that regulated the interdiction of the adult person, legal provisions that existed for decades in the Romanian legislative landscape and whose compliance with the fundamental law of the country was not seriously questioned until that moment.

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by which, admitted the exception of unconstitutionality of the provisions of art. 164 paragraph (1) of the Civil Code, according to which "the person who does not have the necessary discernment to take care of the interests his, due to alienation or mental debility, will be placed under judicial interdiction".

In essence, without repeating the reasoning and arguments of the Constitutional Court, today we can state that the decision of unconstitutionality was based mainly on two aspects.

It is about Decision no. 601 of July 16, 2020[1], where, with unanimity of votes, the Constitutional Court admitted the exception of the unconstitutionality of the provisions of art. 164 paragraph (1) of the Civil Code, according to which "the person who does not have the necessary discernment to take care of own interests, due to alienation or mental debility, will be placed under judicial interdiction"[2].

In essence, without repeating the reasoning and arguments of the Constitutional Court, today we can state that the decision of unconstitutionality relied mainly on two aspects:

- on the non-compliance of the internal regulation of placing under judicial interdiction with the international norms of more recent date [3], regarding the protection of the physical person with disabilities, which are part of the national law having even an over-constitutional rank [4];
- on the fact that domestic law addresses the issue of the adult's capacity to exercise in "black and white", without allowing the national judge to adapt the protective measure depending on the severity and the concrete consequences that a certain mental disability produced on the natural person and without allowing the court to order only a restriction of that person's capacity of exercise, adapted to the severity with which that person's mental competences were affected, own concrete needs and the concrete danger which the natural person or that person's heritage was exposed to.

## 2. New regulation proposed by the Law no. 142/2022

Recently, however, the Law no. 142/2022 [5] entered into force, which brings with it a series of new protection measures, capable of re-establishing the internal regulation regarding the protection of the natural person having altered mental competencies, in order to be in accordance with the principles established at an international level, but also with the constitutional requirements.

A first remark that must be made, after reading the above-mentioned normative act, is that, here, after whole decades, we will no longer have in the space of objective law the institution of natural person's "placement under interdiction", under this phrase, the lawmaker renouncing on this terminology which, in any case, did not seem appropriate and was rather likely to generate confusion among citizens on the practical effects that this measure generated [6]. This is because, although the

measure affects only the natural person's capacity of exercise, i.e., the right to conclude contracts and other important legal acts alone, in its secular resonance, the "interdiction" creates, for some, the false impression that it implicitly generates a limitation of the person's mobility or a restriction of this person's ways of expression.

A second essential aspect that we observe in the new regulation is the lawmaker's renunciation of the rigidity that characterizes this measure of protection of the natural person, establishing the possibility for the judge to order only a restriction of the natural person's capacity to exercise, in accordance with the situation concreteness and with the more accentuated or less serious degree of the consequences produced by the mental deficiency found in the person who needs protection.

Last but not least, we can also note the fact that the law expressly states or, as the case may be, implicitly proclaims, several guiding principles (inserted by the law mainly in art. 140 par. 3 – 5 of the Civil Code), principles that support the need for regulation of these protective measures and which, at the same time, will have to be considered by the competent body at the time of the concrete establishment of one of these measures, namely:

- the principle of observing the dignity of the natural person against whom the protection measure was requested, in the sense that both the judicial bodies that institute the measure and the persons appointed to ensure the protection of the person in need must ensure the confidentiality of the information about the protected person, of this person's state health, etc.
- the principle of observing the rights and freedoms of the natural person, this person's will, needs and preferences;
- the principle of safeguarding the autonomy of the natural person as a subject of law;
- the principle of subsidiarity and proportionality in the sense that the protective measure can be ordered only if required, and it must be proportional to the concrete situation in which the natural person claiming protection is found, being necessary at the same time, that the chosen protection measure be 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 this person finds himself/ herself. At the same time, the measures for the protection of the adult given in the jurisdiction of the court may only be ordered if the court considers that it is not sufficient to protect the interests of the protected person to establish the measure of assistance for the conclusion of legal acts, which can be taken by the notary public, at the request of the interested person, including the one in need;
- the principle of the temporality of the protective measure, in the sense that, regardless of the ordered measure, it will not have a perpetual character, but may be established for the shortest possible term and, in all cases, will be limited in time [7].

On the other hand, as already emphasized in the specialized literature [8], the new legislative approach rests on three pillars:
- the need for adequate protection of the vulnerable person;
- the subsidiarity of protective measures, in the sense that a measure with more severe effects on the natural person's capacity of exercise may only be ordered if another, less restrictive, protective measure would not be sufficient;
- proportionality in the sense that the protection regime is designed in such a way as to allow the choice and drafting of the content of the protection measure that best suits the needs of the vulnerable person and the circumstances in which such person finds alone.

Presenting enough similarities with the protection regime for adults under French law [9], the amendments brought by Law no. 140/2022 propose three new measures for the protection of natural persons, one of which can be ordered by the public notary [10], while the other two, having more severe consequences on the natural person's capacity of exercise are given in the material competence of the court.

It is about:

1.) the measure of the adult's assistance for the conclusion of legal acts.

It is the easiest form of protection, which is why the lawmaker established the competence of the public notary to order the establishment of this measure which can be taken for a maximum duration of 2 years against the adult who, due to an intellectual or psychosocial disability, needs support to take care of own person, manage the heritage and to exercise, in general, his/ her civil rights and freedoms, the role of the assistant being that of acting as an intermediary between the adult who benefits from assistance and third parties, person presumed to be acting with the adult's consent in providing assistance.

The essential difference between this protection measure and the other two introduced by Law no. 140/2022 in the Civil Code, is that, unlike the measures that can only be ordered by the court, in the case of the measure of adult's assistance for the conclusion of some legal acts, the appointment by the notary of the assistant does not affect the adult's capacity of exercise, and the exercise of the assistance is limited to an intermediary role, of free help, the assistant not being appointed either to conclude legal documents on behalf of the protected adult or to entrust the assistant with the legal acts that the protected person concluded alone.

We notice that there is a whole series of similarities between this new institution - legal aid for the conclusion of legal acts - and the "traditional" protection measure of the adult's trusteeship, both being arranged for the support of a capable adult and, in the case of both, the institution of the measure not having an effect on the protected person's capacity of exercise. The essential delimitation between the two measures can be found in the realm of pre-existing causes that justify and allow the establishment of one or the other of them. Thus, the trusteeship, seen as an ordinary

measure of protection (art. 178 - 186 of the Civil Code), can be instituted against the capable but missing adult, absent for a period of time from home without leaving a trustee/ general administrator, or against the old or suffering from a physical infirmity or a diseased adult that does not affect the respective adult's intellectual skills. On the other hand, in the case of the measure of assistance for the conclusion of some legal acts, this can be ordered by the public notary when the need for support in the heritage patrimony is given by the existence of some intellectual or psychosocial disabilities which, although they do not take away the discernment or the intellectual competences of the person and therefore, they do not justify the taking of a protective measure with more severe consequences in terms of the capacity of exercise, nevertheless they represent sufficient premises for the person in question to receive support at the conclusion of legal acts through the establishment of this protective measure. In addition, the institution of trusteeship can be requested by a whole series of persons or institutions, starting with the concerned person and continuing with the spouse, relatives, neighbors, the civil status service, the court, the prosecutor, etc., while the protective measure of legal aid for the conclusion of legal acts can be ordered by the notary exclusively at the request of the person in question.

We also recall that the lawmaker found it appropriate to monitor the activity of the assistant appointed by the notary, establishing for that person the obligation that each year or, as the case may be, at the end of the period which he/ she was appointed for, such person is to submit a report on the task performance to the guardianship authority, institution in charge with ensuring that the assistant properly fulfills the task by reviewing the submitted reports.

Until now, from the forensic practice, it could be established that the assessment of a person's mental capacity in order to conclude an act of disposition was and is still being conducted, at the person's request for the issuance of a forensic psychiatric certificate. The purpose of this forensic work is to identify or not, volitional disorders of such a nature as to modify the possibility of manifestation with free will in terms of concluding the desired notarial deed.

The frequency of requests for a forensic psychiatric certificate is, however, heavily dependent on the requirements of notary offices, because this forensic examination is not mandatory, regardless of the age or possible intellectual or psychosocial disabilities of the signatory. In the activity of some forensic institutions, these psychiatric forensic certificates are sporadic, and in others, they are frequent, which shows a less uniform notarial practice.

Therefore, given that it is the notary who appreciates or not the usefulness of this psychiatric forensic certificate, it is unlikely that this measure to protect the persons with intellectual or psychosocial disabilities will become an endeavor initiated for the benefit of the elderly. The correlation between the psychiatric forensic

examination confirming the mental capacity in relation to the act to be concluded with that measure of protection regarding the institution of legal aid is to be found in the conclusions of the psychiatric forensic certificate in the form of a recommendation. In any case, in order to establish the measure, it is absolutely required to have the consent and even the request of the protected person.

The provisions of art. 30 of Law 17/2000 on social work for elderly people, allow the elderly to benefit, upon request, from free legal advice in order to conclude sale-purchase or donation contracts. In par. 2 of the same article, it is provided that the elderly person will be assisted, upon request or ex officio, by a representative of the guardianship authority to conclude the translation of the property deed. In spite of these regulations, the caselaw of the psychiatric forensic expertise of the deceased identifies situations in which, elderly persons, signatories of a notarial deed of sale-purchase, donation, or will, did not benefit from the assistance of the representative of the guardianship authority. Therefore, the enunciation of this person's presence was not perceived as a form of protection of the elderly, in order to act for his benefit. Although the lawmaker leaves it to the notary's discretion to establish that temporary measure of protection, our opinion is that it would be advisable to order such a measure, if an application to that effect is made, given that an elderly person, with mental competence presumed or substantiated by the expert opinion, may nevertheless submit a mild cognitive dysfunction inherent in age, falling within the legal notion of 'intellectual or psychosocial disabilities'.

This recommendation is justified by the psychiatric forensic expertise of the deceased, where the complex expert activity, based on medical and non-medical acts altogether, by the reconstitution of the psychological status at the time of concluding a legal act, does not identify enough medical elements with psychiatric forensic criterion value to substantiate for the drawing of conclusions on mental capacity at a previous moment, corresponding to the time of the conclusion of the notarial deed.

Therefore, in the context of the new regulations, the opportunity for an elderly person, who shows "intellectual or psychosocial disabilities" generated precisely by old age, to be protected by a third person, designated by the elderly person and with that person's consent, is emerging, a person whom the relationship should be based on trust with. The appeal of vulnerable people to this protection measure will depend, however, on the degree of information of the citizen, on the manner in which the authorities will kindly inform the addressees of the law about this procedure and what are the requirements to be able to benefit from this measure. Last but not least, the family and those close to people with some intellectual or psychosocial disabilities will be the ones who will have to undertake the moral obligation to explain to the vulnerable person the advantages of such a protective measure.

On the other hand, from a legal perspective, the practical usefulness of this protective measure is, at least at first sight, questionable. The imposition of the measure of

assistance does not deprive the protected person of the capacity to act, so that this person will be able to conclude legal acts in a valid manner, from the perspective of the civil capacity to act, without consulting the assistant appointed by the notary and without the lack of this consultation affecting in any way the validity of the legal act thus concluded. Of course, the legal provisions governing the flaws of consent and their effects (error, fraud, violence, injury) will remain fully applicable.

In other words, as we have noticed, legal aid is granted exclusively at the request of the person in need and is granted free of charge by the assistant, who must give consent to the appointment and can renounce the received assignment at any time. Therefore, since the establishment of the assistant presupposes an agreement of will between the one who will be assisted in the future and the assistant appointed by the notary, and this measure does not produce any effect on the capacity of exercise, we do not identify the reasons why a person in need, who could always consult free of charge with a relative or other close person, for the conclusion of any legal act, would have the interest to request that this person be officially appointed by a notary, if this appointment anyway does not produce any concrete legal effect in regarding the protection of own person and heritage, nor on own civil capacity.

2.) the measure of protection of the legal advice, as well as the measure of protection of the adult's special guardianship, are the main novelties introduced in the Civil Code by article 7 of the Law no. 140/2022, being regulated in article 164 et seq. Civil Code, instead of the former institution of 'placing under interdiction' of an adult.

The required terms to be met for their disposition are somewhat common, the law establishing in article 164 of the Civil Code, that either of the two protection measures can be ordered towards an adult if:

- it is established that the adult cannot take care of own interests alone;
- this impossibility of managing one's own interests is caused by a deterioration of the mental faculties [11];
- the deterioration of the mental faculties, which may be temporary or permanent, partial or total, must be established following a medical and psychosocial evaluation;
- it is established that, due to these deficiencies of the mental faculties, the person concerned needs support in the establishment or expression of own legal will;
- the taking of the measure of protection (legal advice or special guardianship, as the case may be), is required for the concerned person to be able to exercise the civil capacity, on an equal basis with the other persons.

A first distinction, apparently quite clear, between the two institutions, we find in terms of the generic effects produced by the protection measure chosen by the court: a) legal advice has the immediate effect of restricting the adult's capacity to exercise, with the specific consequences regulated by Article 41(2) and (3) of the Civil Code, respectively:

- the legal acts of the person with a limited capacity of exercise are concluded by that person, with the parents' consent or, as the case may be, the guardian, and in the cases provided by law, with the opinion of the family council, if any, and the authorization of the guardianship court, specifying that, for the validity of the act, consent, approval or authorization must be given, at the latest, at the moment of concluding the act;
- the person with a limited capacity of exercise can still make alone acts of preservation, acts of administration that do not prejudice the concerned person, acts of acceptance of an inheritance or acceptance of liberalities without encumbrances, as well as acts of disposition of small value, of a current nature and which are executed on the date of their conclusion.

However, unlike the situation of the minor between 14 and 18 years of age who acquires ope legis the limited exercise capacity and its common law legal regime, in the case of the adult, the restricted exercise capacity can undergo adjustments because in accordance with the provisions of art. 41 par. 3 final sentence, in conjunction with art. 168 par. 4 of the Civil Code, just as in the case of the adult's special guardianship, and in the case where the court orders the establishment of the judicial advice measure, it will establish, depending on the protected person's degree of autonomy and that person's specific needs, the categories of acts for which approval of the person's acts is required or, as the case may be, it will be able to establish that the measure of protection refers only to the protected person or only to that person's assets.

In such a hypothesis, we will have a protected person with a partially restricted capacity for exercise, because according to art. 168 par. 5 Civil Code, if the guardianship court proceeds to establish the legal acts for which the consent of the legal guardian is required, the protective measure of legal advice will not affect the ability of the protected person to conclude the legal acts for which the court has determined that no consent is required.

b) the special guardianship of an adult or a minor between 14 and 18 years of age has the immediate effect of losing his capacity for exercise, following the rigors established by art. 43 par. 2 – 4 of the Civil Code, according to which:
- for those who do not have legal capacity, legal acts are concluded, on their behalf, by their legal representatives, under the terms provided by law;
- the person without legal capacity can, however, conclude alone the specific acts provided for by the law, acts of preservation, as well as the disposition acts of small value, of a current nature, which are executed at the time of their conclusion.

In addition, in the case of a minor who has not reached the age of 14 and who, according to the law, does not have the capacity to exercise, this one is subject to the above rules set out by virtue of the law, in the case of the adult or minor between 14 and 18 years of age, against whom the measure of protection of the special

guardianship is taken, the lack of capacity of exercise is nuanced because, in the light of the same legal provisions mentioned above (Art. 168 par. 4 of the Civil Code), by the decision by which the special guardianship was established, the guardianship court establishes, depending on the degree of autonomy of the protected person and its specific needs, the categories of acts for which representation is required, being also able to order that the protection measure refers only to the person protected or only to the respective person's assets.

Just as in the case of legal advice, for the guardianship of the adult or the minor between 14 and 18 years of age, if the court will expressly rule in the judgment the categories of legal acts that can be concluded on behalf of the protected only by the representative (with or without consent of the guardianship court, as the case may be), we will have a partial inability to exercise, targeting exclusively those categories of legal acts. Such a conclusion emerges from the reading of the same art. 168 par. 5 of the Civil Code, according to which, in the event that the guardianship court proceeds to establish the legal acts for which representation of the protected person is required, the measure of special guardianship will not affect the ability of the protected person to conclude the legal acts for which the court has established that no representation required.

We should add to these novelty peculiarities that both measures are limited in time and can be ordered for a fixed term, even in cases where the mental deficiency of the one who claims protection, takes the most severe form and is considered to be permanent and irremediable in relation to the advances of today's medical sciences. Thus, according to art.168 par.2 and 3 of the Civil Code:

- legal advice may be instituted for a period not exceeding 3 years;
- the special guardianship may be ordered for a maximum period of 5 years, and if the deterioration of the mental faculties of the protected person is permanent, the measure may be extended by the court for a longer period, but not exceeding 15 years.

However, regardless of the duration of the measure, the termination of the causes that caused the taking of the protection measure, also allows the protected person to request the court to order the termination of the measure. Given the temporary and protective nature of the two measures – legal advice and special guardianship - the law stipulates the obligation for the guardian or the legal representative of the protected person to notify the guardianship court whenever they find that there are data and circumstances that justify the reassessment of the measure (either in the sense of replacing it with another measure or in the sense of its termination - s.n.), as well as at least 6 months before the expiry of the period which it was ordered for, in order to reassess it, the guardianship authority being entrusted by the lawmaker to verify the fulfillment of this legal obligation and to refer the matter to the guardianship court itself, if the guardian/ legal representative fails to fulfill the

undertaken duty, the court being able to order, after reassessing the situation of the protected person, the extension, replacement or lifting of the measure.

Therefore, from the above, it follows that the guardianship court, based on the evidence administered in the case, including the forensic report drawn up by the forensic doctor, will have:

- to identify the degree of deterioration of the mental faculties of the vulnerable person who needs protection;
- to establish which of the two measures must be ordered, in relation to the degree of impairment of the person's mental faculties;
- to establish the timeframe for which the chosen measure must be ordered;
- to identify the legal acts for the conclusion of which, as the case may be, the legal guardian's consent (in the case of legal advice) or the representation of the protected person (in the case of special guardianship) is required.

## 4. Conclusions

It is quite obvious as possible that the forensic doctor's opinion, regarding the degree of deterioration of the mental functions of the vulnerable person who requires protection, will be the starting point for the judge in choosing the appropriate protection measure and in identifying the types of legal acts at the conclusion of which the protected person will have to be represented or, as the case may be, the types of legal documents at the conclusion of which the protected person will need the consent of the guardian in order for them to be validly concluded.

It is appropriate to mention here that, in the past, a distinct category of psychiatric forensic expertise carried out in files having as object the interdiction, were the situations in which the elderly were institutionalized by relatives in private residential centers, as well as the situations in which the reasons for the request for interdiction were represented by the person's degree of disability classification. Without considering the cases diagnosed with severe forms of dementia, we can specify that not infrequently, institutionalization was generated mainly by physical disabilities of the elderly, to which light or medium cognitive deterioration was associated, insufficient, however, to demonstrate their mental incompetence.

On the other hand, when classifying in the degree of disability on the basis of medical-psychosocial criteria, we would point out that it is a measure to protect the person with mental or mental disabilities, but that classification in the degree of disability does not necessarily imply the mental incompetence of the person who, among other benefits, also acquires a monthly allowance.

This explains the lawmaker's current approach who saw fit to regulate the measure of legal advice as an intermediate or less severe protection measure. In the context of the above, it is important to point out that this measure of legal advice comes to cover those hypotheses in which there are some persons who, having been diagnosed

with mental disorders, who benefit from a degree of mental or psychological disability, and for whom, the psychiatric forensic examination for the issue of a psychiatric forensic certificate, requested for the conclusion of an act of disposition, finds, at the time of said examination, volitional disorders of such a nature as to modify the possibility of free will manifestation in terms of the conclusion of the desired notarial deed, but the symptomatology of the condition, the compliance with treatment, the periods of remission, are not able to demonstrate mental incompetence in the sense of loss of the capacity of exercise.

Precisely for this reason, the current regulation that allows the judge to choose between the measure of legal advice, which implies a restriction of the adult's capacity of exercise, and the special guardianship, which involves the capacity of exercise loss, corresponds better to the need to adapt the protection measure to the vulnerable person's concrete needs. This, all the more so since, in the case of both measures, the court has the possibility to configure the concrete content of both protective measures, being able to establish the categories of documents for which the approval of the documents is required or, as the case may be, its representation, as well as, being able to rule that the measure of protection refers only to the protected person or only to that person's assets. However, for such a finality, the court will have to play an active role and capitalize on all the evidentiary elements that can serve it to choose the right protective measure, as well as to precisely establish its content. In this respect, the opinions and observations of the expert committee, in this case of the forensic doctor, in the forensic psychiatric expert report, will have a decisive role, without minimizing the other evidentiary elements that may be of a nature to edify the court regarding the vulnerable person's specific state of health, as well as to the required method of protection.

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8. *** Constitutional Court, Decision no. 601/16 July 2020, published in the Official Gazette of Romania, Part I, no. 88/27 January 2021.
9. *** Law no. 142 of 17 May 2022 on protection measures for persons with intellectual and psychosocial disabilities and on the amendment and completion of some normative acts, in the Official Gazette of Romania, Part I, no. 500 of 20 May 2022.

**Notes:**

[1] The decision no.601/16 July 2020 of the Constitutional Court was drafted quite late and was published only after half a year, in the Official Gazette no.88/27 January 2021.

[2] The content of the norm was similar to the previous regulations. Thus, art. 142 of the former Family Code (currently repealed with the entry into force of the new Civil Code - October 1, 2011), provided that "he who does not have discernment to take care of his interests, due to mental alienation or mental debility, will be placed under judicial prohibition". The same content, but with an archaic expression, specific to the language of the era in which it was drafted, previously also existed in the Civil Code from 1864, which, in art. 435, spoke of the adult who is "in a habitual state of imbecility, slyness or insanity of anger" (C. Hamangiu, I Rosetii-Bălănescu, Al. Băicoianu, Tratat de drept civil român – Treaty of Romanian Civil Law, vol.I, Publishing House All, Bucharest 1998, p.458.).

[3] It is about the Convention on the Rights of Persons with Disabilities, ratified by Law nr. 221/2010 on ratification of the Convention on the Rights of Persons with Disabilities, adopted in New York by the General Assembly of the United Nations on December 13, 2006, opened for signature on March 30, 2007, and signed by Romania on September 26, 2007, published in the Official Gazette of Romania, Part I, no. 792 of November 26, 2010.

[4] We recall here that, according to Article 20 of the Constitution, entitled "International Treaties on Human Rights":
"(1) The constitutional provisions regarding the citizens' rights and freedoms shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to.
(2) If there are inconsistencies between the covenants and treaties regarding the fundamental human rights, to which Romania is a party, and the internal laws, international regulations shall take precedence, unless the Constitution or the internal laws contain more favorable provisions"."
Also, according to art.148 par.2 of the Romanian Constitution, entitled "Integration into the European Union",
„Following the accession, the provisions of the constituent treaties of the European Union, as well as the other binding Community regulations, shall prevail over the contrary provisions of the internal laws, in compliance with the provisions of the Act of Accession".
[5] Law no.142 of May 17, 2022, on certain protection measures for people with intellectual and psychosocial disabilities and amending and supplementing some normative acts, was published in the Official Gazette of Romania no.500 of May 20, 2022, and entered into force 90 days after the date of its publication, i.e., on the date of August 18, 2022.
[6] As it can be deduced, in the lawmaker's view, the measure of the adult's special guardianship is today's correspondent/equivalent of the "prohibition" from the previous legislation, an aspect that emerges both from the effects that the measure produces (loss of the capacity to exercise), as well as from the transitional provisions of the law, in particular art. 20 paragraph 3 of Law no. 140/2022 according to which "until the judgments pronounced according to paragraph 2 remain final, the protective measures provided by the new law - s.n.), those under judicial prohibition are considered, rightfully, in terms of their condition and capacity, as persons for whom special guardianship has been established".
[7] Thus, according to art. 168 paragraphs 2 and 3 of the new Civil Code, as amended by art. I point 26 of Law no. 140/2022:
a. (2) The institution of legal advice is ordered for a period that cannot exceed 3 years.
b. (3) 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 may order the extension of the special guardianship measure for a longer period, which cannot exceed 15 years.
[8] For this, see Ș. Diaconescu, P.Vasilescu, Introducere în Dreptul Civil – Introduction to Civil Law, vol. I, Publishing House Hamangiu, Bucharest 2022, p.125-126.
[9] For details, see Ph. Malaurie, L.Aynès, Les Personnes, La protection des mineurs et des majeurs, 5th edition, Ed. Defrenois, Paris 2010, p.290-291 (apud. Ș. Diaconescu, P. Vasilescu, cited work, p.128, footnote 2).
[10] The legal provisions also regulate a fourth form of protection, voluntary and contractual, that of the protection mandate (Art.20291 – 202910 Civil Code) which, however, has the nature of a contract, being the fruit of the will of the person with full capacity of exercise who conventionally mandates another person for the situation in which he/ she would no longer be able to take care of this person or to manage own assets. Even if this protective measure becomes actual only after the forensic doctor certifies the intervention of

deterioration of the mental faculties of the principal and the approval of the guardianship court, the protective measure retains its contractual nature, the scope and content of the mandate being established by contract specifying that, in case of ambiguity regarding the extent of the protection mandate, the trustee must interpret it according to the rules regarding the special guardianship of the adult.

[11] We find that the lawmaker abandoned the previous inappropriate phrases "mental alienation" and "mental debility" which the doctrine, rightly stated, represent two expressions that "make a legal career of over 60 years without merit" (See in this regard, Ş.Diaconescu, P.Vasilescu, cited work, p.142 note 2).