

MEASURES TO PROTECT VULNERABLE PARTIES ACCORDING TO THE ROMANIAN CIVIL LAW

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Abstract

This paper investigates the legal mechanisms established under Romanian Civil Law to safeguard vulnerable parties, with particular focus on their evolution, scope, and practical effects. The analysis begins with an overview of the historical development of protective institutions, followed by a comparative examination of special guardianship and judicial counseling. The study further addresses the substantive and procedural conditions for instituting these measures, as well as their impact on legal capacity and the validity of legal acts concluded by the protected individual. Consideration is also given to the judicial procedure applicable to their establishment.

Keywords: Romanian Civil Law, special guardianship, judicial counseling, legal capacity, protective measures.

1. Introduction

According to the Convention on the Rights of Persons with Disabilities², States Parties are encouraged to provide measures that support persons with disabilities in exercising their legal capacity [UNCRPD. Section 12]. In Romania, this international framework serves as the foundation for adult protection measures, which are designed to assist individuals in managing their personal and financial affairs while respecting their autonomy and dignity. The Romanian Civil Code³ regulates two important measures for the protection of adults: judicial counseling and special guardianship. Romanian civil law traditionally justified restrictions on legal capacity by reference to patrimonial security. However, modern human rights instruments emphasize autonomy and inclusion. Over time, the legal framework governing these institutions has been subject to criticism, which prompted the legislator to revise the relevant provisions. The establishment of such measures is carried out exclusively in the best interest of the individual. In deciding upon their application, the guardianship court considers, among other aspects, the individual's ability to exercise rights and fulfill obligations, while also ensuring guarantees for the respect of dignity, will, needs, preferences, autonomy, and fundamental rights and freedoms.

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² Convention on the Rights of Persons with Disabilities, adopted on 12 December 2006, entered into force on 3 May 2008, published in the Official Gazette of Romania, No. 792 of November 26, 2010, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>, (downloaded: 29 January 2026.)

³ Romanian Civil Code, <https://legislatie.just.ro/public/detaliidocument/175630>, (downloaded: 29 January 2026.)

The legal framework governing protective measures through judicial counseling and special guardianship is set forth in Section 164–177 of the Romanian Civil Code, which regulate the substantive conditions, and in Section 936–943 of the Romanian Code of Civil Procedure, which establish the procedural requirements.

2. Historical evolution of institutions

According to the New Civil Code: *“A person who lacks the necessary discernment to take care of his or her interests, due to alienation or mental weakness, shall be placed under judicial interdiction”* [CC. Section 164 (1)]. This article was taken over from the old regulation, [Family Code of 1954. Section 142], which regulated the institution of placing under judicial interdiction. Thus, the authors of the New Civil Code took over the old regulation without correlating it with the international conventions to which Romania had become a party in the meantime.

That is the reason why the Constitutional Court was notified of an exception of unconstitutionality, and by Decision no. 601⁴ of July 16, 2020, the provisions of art. 164 paragraph (1) of the Civil Code were declared unconstitutional. The landmark Decision declared that *“judicial interdiction, as previously regulated, infringes upon human dignity and fails to respect the principle of proportionality.”* The Constitutional Court correctly pointed out in its Decision several arguments according to which the legal text is unconstitutional. First of all, the legal text does not recognize the different degrees of capacity of persons who lack discernment and the procedure does not allow the individualization of the measure for each person. The measure of placing under judicial interdiction does not offer sufficient guarantees to ensure respect for fundamental rights. Judicial interdiction is not in accordance with the Constitution and the treaties to which Romania is a party. Also, it is not ordered for a determined period of time and it is not reviewed periodically. In response, the legislature adopted Law no. 140/2022⁵, introducing a set of protective measures for persons with intellectual and psychosocial disabilities aligned with international human rights standards. These measures include assistance in concluding legal acts, judicial counseling, special guardianship, curatorship and protection mandate. In this study we will discuss judicial counseling, special guardianship. Section 164 of the New Civil Code in its current form, after the legislative changes that have occurred, mentions that: *„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 the formation or expression of his will may 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.”*

It follows, therefore, from the wording of this legal text that the legislator introduces two measures for the protection of the adult – which are judicial counseling and special guardianship,

⁴ Decision of the Romanian Constitutional Court No. 601/2020, published in the Official Gazette of Romania, Part I, No. 88 of January 27, 2021, https://www.ccr.ro/wp-content/uploads/2021/01/Decizie_601_2020.pdf, (downloaded: 29 January 2026.)

⁵ Law No. 140/2022 on protection measures for persons with intellectual and psychosocial disabilities, published in the Official Gazette of Romania, No. 500 of May 20, 2022, <https://legislatie.just.ro/Public/DetaliiDocumentAfis/255575>, (downloaded: 29 January 2026.)

assuming that, as a result of a medical or psychosocial evaluation, it turns out that his mental faculties are affected, which makes it impossible for him to manage his own interests.

3. Differences between special guardianship and judicial counselling

A person may benefit from judicial counseling if the impairment of his mental faculties is partial and it is necessary to be advised continuously in the exercise of his rights and freedoms [CC. Section 164 (2)].

Also, a person may benefit from special guardianship if the impairment of his mental faculties is total and, where appropriate, permanent and it is necessary to be represented continuously in the exercise of his rights and freedoms [CC. Section 164 (4)].

At first glance, the definitions of the two measures seem very similar, but there are several differences⁶ between them.

The first difference refers to the severity of impairment of mental faculties, so as judicial counseling will be ordered if the impairment of mental faculties is partial, while special guardianship will be ordered if the impairment is total and, sometimes, permanent.

The duration of the measure is expressly limited. Judicial counseling can be ordered for a maximum period of 3 years, while special guardianship can be ordered for 5 years, with the possibility of extending the period to 15 years.

Regarding to the civil capacity of the legal entity, persons protected by the measure of judicial counseling may be part of the administrative bodies of the non-profit legal entity.

The person under judicial counseling has limited capacity to exercise, but preserved for certain acts, but in case of a person under special guardianship, the capacity is completely lacking.

4. Legal conditions for the establishment of the measures

There are a few conditions that must be fulfilled in order to establish these protective measures.

At the outset, the measure must be established only in the interest of the person. It must be taken into account the person's ability to exercise their rights and fulfill their obligations. The measure has to respect the person's dignity, rights and freedoms, will, needs and preferences. Protective measures must be ordered only in case of necessity for the shortest term possible. It must be proportional and individualized based on several factors. Finally, the measures are ordered only if the guardianship court considers that the establishment of the assistance measure for concluding legal acts is not sufficient to defend the interests of the protected person.⁷

⁶ MATEFI, Roxana: *Comparative look at judicial counseling and special guardianship – measures to protect individuals*. <https://revista.universuljuridic.ro/privire-comparativa-asupra-consilierii-judiciare-si-tutelei-speciale-masuri-de-ocrotire-persoanei-fizice/>, (downloaded: 3 September 2025.)

⁷ BOROI, Gabriel, ANGHELESCU, Carla-Alexandra, NICOLAE Ioana: *Civil law sheets. The general part. Persons. The family. The main real rights*. Hamangiu Publishing, Bucharest, 2024, 420.

5. Court authorization for legal acts

Court authorization acts as a safeguard against abuse. The guardianship court evaluates not only the substantive fairness of the proposed act but also its necessity and proportionality. In cases of conflict of interest, the court may appoint a special curator: *“the court may designate a special curator to represent the interests of the protected person”* [Law No. 140 of 2022. Section 22]. This reflects comparative models: in France, the Civil Code requires judicial authorization for significant acts under tutorship, while in Germany, the *Betreuung* system emphasizes judicial supervision.

6. Procedural assistance and access to justice

Access to justice is a fundamental right under both the European Convention on Human Rights (ECHR) and Romanian law. Article 6 ECHR states: *“Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal.”*⁸ Vulnerable parties may receive legal aid, exemptions from court fees, and court-appointed counsel. Romanian civil procedure also allows suspension of proceedings pending the appointment of a guardian. The ECtHR stressed in *Stanev v. Bulgaria* that *“the denial of procedural safeguards amounted to a violation of Article 6 of the Convention.”*⁹

7. Remedies against contractual abuse

Civil law also provides remedies against exploitative contracts: *“lesion exists when, at the time of contract conclusion, there is a manifest disproportion between the parties’ obligations.”* [CC. Section 1221]. In addition, contracts concluded under error, fraud, or duress may be annulled for vitiated consent, further protecting vulnerable parties from abuse.

8. A brief comparative European perspective

Comparative insights illustrate broader European trends. 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.¹⁰

⁸ European Convention on Human Rights, Article 6, https://www.echr.coe.int/documents/d/echr/convention_ENG, (downloaded: 29 January 2026).

⁹ ECtHR, *Stanev v. Bulgaria*, Judgment of 17 January 2012, no. 36760/06, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-108690%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-108690%22]}), (downloaded: 29 January 2026.)

¹⁰ MOROZAN, Florina Florentina: *The Reform of the Protection of Individuals with Intellectual and Psychosocial Disabilities in Romania, Part of the European Reform. Agora International Journal of Juridical Sciences*, Vol. 17, 2023/2, 71, <https://doi.org/10.15837/aijjs.v17i2.6469>, (downloaded: 30 September 2025.)

The German law of *Betreuung* and the recent law reform, in power since 2023, emphasizes proportionality and individualized judicial supervision [German Civil Code. Section 1896]. *Rechtliche Betreuung* (Legal Caretaking) as a rule does not affect legal capacity of the persons concerned. They also have full legal capacity in court proceedings. Access to court is very simple.¹¹ Moreover, Germany's current adult guardianship laws were developed with full awareness of the crimes and discriminations committed against people with disabilities during the Nazi period of 1933-1945. The probate judge plays a central role under current law.¹²

Originally, the Italian Civil Code (in which Article 404 and the following articles regulate what are defined as “protective measures”) provided for only two instruments: interdiction and incapacitation. Law No. 6/2004 introduced the institution of support administration (*amministrazione di sostegno*), conceived as a more flexible and appropriate protection mechanism compared to interdiction and incapacitation, which entail the total or partial loss of an individual's legal capacity.¹³ Romanian reforms echo these trends, reflecting a broader European shift from substitution to supported decision-making.

9. Conclusions

In conclusion, the Romanian legal framework for protecting vulnerable adults has evolved significantly, moving from rigid restrictions on legal capacity toward more flexible, individualized measures that respect autonomy, dignity, and human rights. Judicial counseling and special guardianship, as regulated by the Civil Code and further refined by Law no. 140/2022, exemplify this modern approach, ensuring that assistance is provided only when necessary and in a manner proportional to the individual's needs. These procedural measures are essential not only for upholding the rule of law, but also for building public confidence in the fairness of civil justice.

Comparative European perspectives, particularly from Germany and Italy, highlight a shared trend toward supported decision-making and enhanced judicial oversight, reinforcing the importance of balancing protection with the preservation of legal capacity. Ultimately, Romania's current system reflects both international human rights standards and practical safeguards, aiming to empower vulnerable parties while providing effective protection against abuse.

¹¹ MAMMERI-LATZEL Maria: *From Guardianship to supported decision-making in Germany*. in World Congress Adult Support and Care (2024), <https://www.guardianship.org/wp-content/uploads/Libro-Programa-2024.pdf>, (downloaded: 29 January 2026.)

¹² Guardianship by Country: Resource for Second World Congress on Adult Guardianship, <https://www.international-guardianship.com/guardianship.htm>, (downloaded: 29 January 2026.)

¹³ VIEZZOLI, Manuela: *The Potential Challenges of Support Administration*. <https://unipd-centrodirittumani.it/en/topics/the-potential-challenges-of-support-administration>, (downloaded: 29 January 2026.)