

# The Impact of Legislative Reform on the Protection Measures for Adults with Mental Disabilities in Romania

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*The protection of adults with mental health issues remains a constant topic of discussion on the international community's agenda. Efforts are being made to identify appropriate measures that ensure real legal protection for individuals who, at some point, experience total or partial deterioration of their mental faculties. In this context, the Romanian legislator has sought to align with modern protection standards for vulnerable adults. In 2022, Romania underwent a significant legislative reform regarding the protection measures for adults with mental disabilities, through the adoption of Law No. 140/2022 on certain protection measures for persons with intellectual and psychosocial disabilities, as well as the amendment and completion of several legal acts. As a result, national protective measures have been restructured. The traditional placement under interdiction, which was previously the sole measure that could be imposed by Romanian courts, has been replaced by a wide range of alternative measures, applicable depending on the degree of mental deterioration of the individual in need of protection. Currently, a judge may order judicial counselling or special guardianship. Through this study, we aim to analyse whether the Romanian state has succeeded in creating a protection system tailored to the needs of adults with mental health issues. We will investigate the impact of recent legislative changes in Romania in this field, particularly the transition from law in theory to law in practice. We will also conduct an examination of Romanian case law relevant to this matter, identifying any potential shortcomings in the new regulations.*

**Keywords:** Protective measure; Mental disabilities; Vulnerable adult; Legislative reform.

## Introduction

Currently, the deterioration of mental health among adult individuals is a sensitive and highly topical subject at the international level, one for which efforts are being made to identify appropriate means to ensure adequate legal protection for those who have become vulnerable. Once mental illness sets in, on one hand, the person in question needs to be protected from their own recklessness, as well as from third parties who might be tempted to exploit their condition. Moreover, implementing protective measures for those with mental health conditions also serves as a safeguard for others, shielding them from entering into legal acts that might later be annulled due to the lack of legal capacity on one side.

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To support this special category - adults with impaired mental faculties - the international community has developed various legal mechanisms meant to guarantee their exercise of fundamental rights and freedoms on an equal footing with others.

In this regard, it's important to highlight the main international instrument designed to strengthen protective measures: the *Convention on the Rights of Persons with Disabilities*, which stipulates that all individuals, including those with psychological disabilities<sup>1</sup>, must not be restricted in their ability to participate freely and equally in society. Article 12, point 1 of the Convention explicitly provides that “*States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.*”

Considered a key reference in this field, the Convention on the Rights of Persons with Disabilities was ratified by Romania through the adoption of Law no. 221 on November 11, 2010<sup>2</sup>.

Equally, the European legislator has been actively involved in developing tools to achieve the primary objective of protecting adults with mental health issues. European law has laid the groundwork for a support-oriented system that prioritises the autonomy of the patient, ensuring social inclusion and dignified treatment.

Under the Council of Europe, we find several relevant human rights treaties, such as the *European Convention on Human Rights*<sup>3</sup>, the *European Social Charter*<sup>4</sup>, the *Convention on Human Rights and Biomedicine*<sup>5</sup>, and the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*<sup>6</sup>.

Additionally, the European Union has also taken part in efforts to guarantee the rights and freedoms of individuals with psychological disabilities through the adoption of the *Charter of Fundamental Rights of the European Union*<sup>7</sup> and the implementation of several programs.

As for Romania's particular situation, it is worth noting that the national legislative policy is one of openness toward international and European legislation, aiming to adopt modern, dynamic standards that address the needs of vulnerable individuals. However, what absolutely needs improvement is the speed with which this legislative adoption is carried out.

Unfortunately, in the area of adult protection measures, Romania did not immediately comply with the obligation to create effective safeguards to genuinely support those suffering from mental illness. Before emerging from this state of inertia, it received several condemnations from the European Court of Human Rights. For instance, in the case of the *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*<sup>8</sup>, the Romanian state was urged to implement appropriate measures to support individuals with psychological disabilities in exercising their rights - especially their right to alert authorities regarding matters related to health or treatment.

<sup>1</sup>Convention on the Rights of Persons with Disabilities.

<sup>2</sup>Law no. 221 of November 11, 2010 for the ratification of the Convention on the Rights of Persons with Disabilities.

<sup>3</sup>[https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG).

<sup>4</sup><https://rm.coe.int/168007cf93>

<sup>5</sup><https://rm.coe.int/168007cf98>

<sup>6</sup><https://rm.coe.int/16806dbaa3>

<sup>7</sup><https://eur-lex.europa.eu/legal-content/en/txt/html/?uri=celex:12012p/txt>

<sup>8</sup>Judgment of 17 July 2014.

Finally, in 2022, Law no. 140/2022 was adopted regarding certain protective measures for persons with intellectual and psychosocial disabilities, as well as for the amendment and completion of certain normative acts<sup>9</sup>. This marked the long-awaited legislative reform aligning Romania with international developments.

On this occasion, the national framework for protective measures was restructured: the traditional interdiction measure - which had previously been the only option a Romanian court could impose - was replaced with a broader range of alternative measures. These can now be applied based on the degree of mental impairment of the individual to be protected. Currently, depending on the best interest of the protected person, Romanian judges can order either *judicial counselling* or *special guardianship*.

Additionally, as a result of the legislative amendments, Article 104 paragraph 3 of the Civil Code<sup>10</sup> now explicitly provides that: “*Protective measures for adults and decisions regarding their person shall ensure the respect of their dignity, rights and freedoms, their will, needs and preferences, as well as the safeguarding of their autonomy.*”

Therefore, national law has changed the general conditions for adopting protective measures, with the key innovation being a heightened focus on the individual receiving legal protection-ensuring their treatment is equal to that of others.

This study aims to examine whether the protection system implemented in Romania is adapted to the needs of Romanian adults with mental health issues. To answer this question, we will assess the impact of recent legislative changes in this area, specifically how the new legal framework for protective measures has been put into practice. The research will begin with an overview of general aspects concerning protective measures, followed by a critical analysis of relevant doctrinal sources, and conclude with an examination of Romanian case law to identify potential shortcomings in the new legislation.

## Literature Review

Before diving into these aspects, it is crucial to understand the context in which the Romanian legislator restructured protective measures in 2022.

Previously, *placing a person under legal interdiction* was the sole protective measure imposed by a court for an adult deemed to be in a state of insanity or mental debility, regardless of the severity of the mental deterioration. This measure was unjust, especially for individuals whose psychological impairment was only partial.

Despite numerous opportunities for reform, this outdated protective measure persisted, leaving adults with mental health challenges without adequate protection of their fundamental rights and freedoms. We point this out because Romania ratified the Convention on the Rights of Persons with Disabilities in 2010, adopted a new Civil Code in 2011, was condemned by the European Court of Human Rights in 2014 in the *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* case, and had the legal provision regarding interdiction declared unconstitutional in

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<sup>9</sup>Law no. 287/2009 on the Civil Code.

<sup>10</sup>Chirica (2012).

2020. Clearly, the reform was delayed by over 12 years and was prompted by external pressures.

Chirica<sup>11</sup> had long anticipated the need for reform, arguing that “*our regulation is outdated and ignores long-standing criticism of legal interdiction measures present in other countries (e.g., France since the late 1960s), or the broader scope of protective measures in other states (e.g., Italy), not to mention countries whose legislation contains flexible systems tailored to the specific condition of each vulnerable adult.*”

In other words, legal professionals sought progress in protective measures, inspired by models from other European nations - where courts could order *individualised protection* that considers the level of mental impairment and the protected person’s specific needs.

We agree with the position expressed in the literature that “*the essential issue necessitating legal reform was the respect for the dignity of the individual subject to such measures, and the need to ensure they are not socially stigmatised by the protection applied or by the content of those measures.*”<sup>12</sup>

Adults with mental health issues now, more than ever, require *robust guarantees* to exercise their rights, fulfil their responsibilities, maintain autonomy, and receive support in reporting any violations of their rights.

Thus, by Decision no. 601/2020, the Constitutional Court of Romania<sup>13</sup> declared unconstitutional the former Article 164(1) of the Civil Code, which governed the legal institution of interdiction. The main reasons cited by the Constitutional Court were that the article violated, on one hand, Articles 1(3), 16(1), and 50 of the Romanian Constitution, and on the other hand, Article 12 of the Convention on the Rights of Persons with Disabilities. The measure was deemed necessary because it lacked *proportionality* between the protective action that could be imposed and the degree of psychological impairment of the vulnerable adult. It was found that the interdiction measure was *not adapted to the individual's life*, lacked a *reasonable periodic review system*, and applied for *an indefinite duration* rather than the shortest possible time.

Additionally, the constitutional judges noted that there were *no proper safeguards* to ensure the observance of all fundamental rights and freedoms of the protected person, and that in practice, *unjustified intrusions* on personal autonomy occurred.

For these reasons, some Romanian authors<sup>14</sup> rightly stated that “*it is the Constitutional Court’s merit to have lifted the curtain, thereby triggering a serious reform of the rights of individuals in Romania.*”

Prior to the adoption of the new law, the academic community played an active role by offering personal opinions on the draft regulation. Some experts advocated that “*protection measures for persons with disabilities should be flexible, not mechanical and uniform, allowing the guardianship court to choose the appropriate form not only based on the person’s medical condition and potential fluctuations in their illness, but also based on their financial and personal situation.*”

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<sup>11</sup>Chirica (2012).

<sup>12</sup>Popescu (2022).

<sup>13</sup>[https://www.ccr.ro/wp-content/uploads/2021/01/Decizie\\_601\\_2020.pdf](https://www.ccr.ro/wp-content/uploads/2021/01/Decizie_601_2020.pdf).

<sup>14</sup>Avram (2021).

Following this moment, the Romanian state adopted Law no. 140 of 2022, an innovative measure in the area of protection for persons with intellectual and psychosocial disabilities, along with amendments to other regulations.

This law established a new support-oriented protection system, whereby the judge could order either *judicial counselling* or *special guardianship*, tailored to the severity of the person's mental impairment - as indicated by medical documents - and their specific needs.

Essentially, during the judicial process, the court is required to gather relevant and conclusive evidence, request medical expert opinions, and hear both the ill person and other parties involved in the case to form a reasoned opinion on whether a specific protective measure should be instituted.

A major innovation filling the prior legislative gap is the *explicit regulation of judicial counselling*<sup>15</sup>, which grants the vulnerable adult a limited legal capacity. Before this change, *any adult with mental health problems, regardless of the severity, was declared fully incapacitated*, losing all legal capacity. Thus, in keeping with the European vision of protection, which is centred on the individual's needs and based on medical evaluation, the judge may now order judicial counselling in cases where partial deterioration of mental faculties is found.

Conversely, when the deterioration of mental faculties is total and possibly permanent, and the patient requires continuous representation by a guardian in order to participate in civil life, the court will order protection through *special guardianship*. In principle, this measure has replaced the former interdiction procedure, which is now reserved only for exceptional cases where no less restrictive protective measure is sufficient.

In this context, another welcome innovation concerns the judicial procedure: Article 937 paragraph 3 of the Code of Civil Procedure<sup>16</sup> introduces an exception to the principle of party disposition. This means the court now has the legal authority to impose a protective measure *different* from the one requested by the claimant. The legislator's intention was to ensure that the protective measure applied to a person with mental health issues is *optimal*—guaranteeing care, maintaining autonomy, and fostering recovery. Thus, a legal exception was created allowing the court to independently determine and apply a more appropriate protective measure, even if it differs from what the parties requested.

Moving forward, national legal specialised literature<sup>17</sup> has rightly argued that “*after decades of isolation and exclusion under a radical and paternalistic approach, persons with mental disabilities are now brought to the public's attention through a set of measures that help them express autonomy and receive only the necessary support, under the supervision of guardianship courts and in cooperation with social workers, doctors, psychologists, family, and the community they belong to.*”

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<sup>15</sup>The subject matter of the new legal institution – the measure of protection of judicial counselling is represented by art. 164 paragraph 2 Civil Code “A person may benefit from judicial counseling if the deterioration of his mental faculties is partial and it is necessary to be continuously advised in the exercise of his rights and freedoms”.

<sup>16</sup>Law no. 134/2010.

<sup>17</sup>Andrei, Batu, Beligante, Constantinovici, Filote-Lovu, Frentiu, Moise, Sadic & Tec (2023) at 24.

For these reasons, doctrine has broadly concluded that this legislative reform is a “*positive step*”<sup>18</sup> as it responds to the real needs of this special category of vulnerable adults.

## Methodology

To address the research question, we used a series of legal scientific research methods, including the **historical**, **analytical**, **logical**, **quantitative**, and **comparative** methods.

The **historical method** was employed to highlight the evolution of protective measures for legally competent adults in Romania, tracing the shift from interdiction to alternative measures such as judicial ling or special guardianship. To assess the 2022 reform’s impact, we examined the key context that led to its adoption, alongside relevant European and international standards that informed Romanian legislation.

The **analytical method** proved useful for a detailed examination of the most valuable doctrinal works and recent studies in the field. This helped identify expert opinions issued before Law no. 140/2022 was adopted—many advocating reform—and those that emerged after its implementation, highlighting certain shortcomings.

The **logical method** was applied throughout the study to clearly formulate ideas related to the conditions under which protection measures are imposed. Logical tools and structures helped ensure coherent, well-founded conclusions.

The **quantitative method** was used to organise the legal texts and systematise relevant national case law.

Finally, the **comparative method** was effective in highlighting differences among the various protective measures a court can impose for adults with mental health conditions.

## Discussion

The adoption of a new legal framework in Romania for adults with intellectual and psychosocial disabilities marked the beginning of a significant new phase. Clearly, only through actual case management could the effectiveness of the reconfigured legal mechanisms be evaluated - specifically, whether they are truly able to support individuals with mental illness and allow them to live within the community with dignity and autonomy.

Before examining the case law that has since emerged, it's important to briefly highlight the main changes introduced by Law no. 140/2022 regarding the protection of adults with mental health challenges. As previously noted, the key innovation is the introduction of protection measures tailored to the degree of incapacity, applied for a *defined period* and *subject to periodic review* - aspects missing in the previous interdiction system.

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<sup>18</sup>Rosu & Stanila (2022).

Another significant provision found in the transitional rules was the requirement to *re-examine all existing interdiction measures* that had been ordered by final court judgments, within three years.

Courts were required to initiate a special judicial procedure *ex officio* to replace the interdiction either with *judicial counselling*, *special guardianship*, or to remove the protective measure altogether if the legal grounds no longer existed.

Regarding ongoing cases, the same transitional provisions stipulated that if a case was still pending before the court trial (court), it would be retried. If it had already reached the appellate stage (trial), the case would be immediately sent back to the trial court for retrial, with all previous judgments considered fully nullified.

However, challenges soon arose in practice during the resolution of these re-examination cases. Under the new legal framework, such re-examination required both a psychological and a psychiatric evaluation conducted by medical professionals. A key issue was who should bear the cost of these services, given that the request was not initiated by a specific person. Often, individuals with mental health issues come from families with limited financial means, and since the judicial process could not move forward without these evaluations, guardians or family members had to cover the costs in the early stages. Eventually, a solution was found: evaluations could be conducted within hospitals or forensic medicine institutes without extra costs.

Another issue yet to be solved relates to situations where the patient is unable to leave their home. How can proper medical evaluations be conducted under these circumstances? Again, families and guardians have found themselves having to pay for specialised transportation. Due to the length of the process and lack of a clear methodology, medical professionals are generally unable to visit the patient's home. Currently, efforts are still being made to identify a cost-free solution that allows evaluations to be conducted properly without financial burden on those involved.

Additionally, judicial options were debated in cases where there was a conflict between medical reports - for example, if the psychologist recommended *judicial counselling* while the psychiatrist favoured *special guardianship*.

In our opinion, if in a civil case concerning the application of a protective measure, the court receives differing opinions regarding the degree of mental impairment of a person, it will either request a new medical evaluation or will justifiably reject the conclusions of a particular medical expert report, delivering a ruling based on the information perceived through its own senses following the direct hearing of the patient.

We consider that the judge is not obliged to automatically accept the conclusions of expert reports conducted by medical specialists; rather, these means of evidence must be critically analysed alongside the other evidence presented in the case.

Regarding this aspect, we agree with the opinion expressed in the specialised literature<sup>19</sup> to the effect that: "*whether the conclusions of the expert report are accepted or not, the court must provide reasoning for its position, and if contradictory expert reports have been presented, it must either justifiably accept one or justifiably dismiss both, but under no circumstances may it draw conclusions from both*".

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<sup>19</sup> Ciobanu, Briciuo & Dinu (2013) at 312.

With regard to the analysis of Romanian judicial practice, our investigation<sup>20</sup> has revealed that in the last three years there have been no cases on record before national courts requesting the lifting of protective measures previously instituted for an adult with mental disabilities due to their recovery. This observation is thought-provoking, raising the question of whether the legislative reform introduced through Law no. 140/2022 merely led to a *formal improvement* in the situation of vulnerable individuals.

One of the main criticisms of the previous legislation was precisely the *indefinite nature* of the imposed measure - once in place, it effectively amounted to a kind of “civil death”<sup>21</sup> for the protected person, as the measure was rarely, if ever, lifted.

A review of recent national case law reveals that in cases involving either the reexamination of existing interdiction<sup>22</sup> orders or the need to institute a new protective measure, **most outcomes favoured the adoption of special guardianship**<sup>23</sup> for its maximum allowed duration - namely, up to 5 years.

Furthermore, under the new provision in **Article 168(3), final sentence of the Civil Code**, “*if the deterioration of the protected person’s mental faculties is permanent, the court may extend the special guardianship measure for a longer period, not exceeding 15 years.*”

In other words, we emphasise that these cases involving individuals with mental health issues must be approached with great care, as there is a risk that a person’s condition may appear improved on paper only. A superficial analysis might lead to ordering the most restrictive protective measure - special guardianship - for the full term, followed by its extension to the maximum duration. This would essentially replicate the most heavily criticised aspect of the former interdiction regime: *the unjust deprivation of the legal capacity of a vulnerable adult for an indefinite period*.

However, we believe that this risk is now reduced, given that the law has explicitly introduced the obligation to *reassess* the protective measure whenever there are relevant updates about the protected person’s health status, and at the latest, before the initially imposed period expires.

Thus, **the protected person’s situation must now be reviewed periodically by the court**, ensuring the measure remains suitable to their individual’s condition.

## Conclusion

In our view, the adoption of Law no. 140/2022 regarding certain protective measures for persons with intellectual and psychosocial disabilities, and for the amendment and completion of various normative acts, represents a significant step forward in Romania’s implementation of a modern protection system for adults with mental health conditions. Undoubtedly, like any legislation, it remains open to

<sup>20</sup>The research of national jurisprudence was carried out through the platform <https://www.rejust.ro/>.

<sup>21</sup>Andrei, Batu, Beligante, Constantinovici, Filote-Lovu, Frentiu, Moise, Sadic & Tec (2023) at 24.

<sup>22</sup>See judgment no. 3834/2025 of 10.06.2025 and Decision no. 260/2025 of 04.03.2025.

<sup>23</sup>In this regard see judgment 3477/2025 of 04.06.2025, judgment 3626/2025 of 03.06.2025, judgment 1204/2025 of 03.06.2025, judgment 1363/2025 of 30.05.2025 and Decision no. 1113/2025 of 16.05.2025.

improvement - especially as legal norms must continually adapt to the evolving needs of vulnerable adults.

Even though the Romanian legislator delayed amending the law in this field, we believe that the legislative reform - centred around guaranteeing the rights of adults with mental impairments - was urgently needed and has significantly improved both the regulations themselves and the mechanisms for their implementation.

In this way, Romania achieved an effective legal realignment modelled on international standards. The legislative changes addressed a major gap by formally recognizing *limited legal capacity* for adults, bringing greater clarity to the legal framework and resolving several doctrinal and jurisprudential controversies.

For a long time, Romanian legislation maintained as its sole protective measure the substitution of rights through legal interdiction, which infringed on the rights of individuals with partial mental disabilities. However, following the experience of other countries and in response to both questions and situations arising from national practice, a new approach was attempted.

To better protect the rights of persons with disabilities, two new protective measures were introduced—judicial counselling and special guardianship—which are considered support measures. An analysis of national case law suggests that these new protective measures do not seem to pose significant issues at present, but only time will tell whether the Romanian judicial system will need further adaptation in this area.

In conclusion, we consider the legislative reform concerning protective measures for adults with mental disabilities in Romania to be *timely and appropriate*, as it has addressed crucial legislative gaps in protecting the rights and dignity of Romanian adults with mental health challenges.

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