PROTECTING THE JUDICIAL INTERDICTION UNDER THE REGULATIONS OF THE NEW CIVIL CODE

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Abstract: The present article deals with the institution of judicial interdiction having in view the perspective of the New Civil Code, which is considered a protection measure ruled regarding the people without enough discernment as to mind their own interests because of alienation or mental debility, measure which can also be taken in relation to the minors with a restricted capacity of decision. In the beginning of the paper, I have analyzed this institution with reference to the notion and the conditions whose fulfillment is required by the legislator with a view to take the measure of placing under judicial interdiction. Subsequently, I dealt with the effects of placing under judicial interdiction, respectively the person’s deprivation of capacity of decision, as well as appointing a guardian. The last question dealt with is the one of lifting the judicial interdiction, the law court being entitled to pronounce on this matter.

Key words: judicial interdiction, protection, alienation, mental debility, guardian, minor, capacity of decision, instance.

1. The notion and conditions of interdiction

The measure of judicial interdiction was regulated for those situations “when the mental status is so much altered that the normal reasoning is totally compromised, either permanently, or intermittently”[1].

In Roman law, the people deprived of discernment were placed under guardianship with a view to protecting them and their goods, but their incapacity did not have a permanent character. Thus, as long as they were lucid, the people in question reacquired their capacity to sign deals, including by themselves. The danger consisted in the fact that “the alternation between dementia and the lucid intervals is the habitual state of the mentally alienated so, if he/she signs a contract while being lucid, nothing can give clues about the illness he/she suffers from; the other contracting party cannot realize the altered mental status of the persons with whom he signs the contract (...) then he/she can commit very serious offences appearing as normal behaviour, there being impossible to deduce the alienation status from them”[1].

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Such a regulation, which takes into account all these alternations regarding the incapacity of the natural person, which would have a discontinuous character depending on the lucidity state or alienation, mental debility has, as seen above, multiple disadvantages. This is the reason why, in the old French Law, which represented an inspirational model for the Roman Civil Code, the variant of the permanent incapacity of a person affected by alienation or mental debility was considered, independently of the lucidity moments.

In accordance with the the active legislation, the judicial interdiction is the protective measure of civil law that is ruled regarding “the person who does not have the necessary judgement in order to mind his/her interests because of the alienation or mental debility”, measure which can also be taken regarding the minors with limited decisional capacity.

From the above-mentioned text it results that the legislator limitatively established three basic conditions which are to be fulfilled for a person to be placed under judicial interdiction respectively: indiscrimination of the person in question; the cause of indiscrimination to be alienation or mental debility the impossibility for the person in question to take care of his/her own interests because of the indiscrimination.

Individuals who may require placement under interdiction are provided by article 111 from the New Civil Code.

A person with full decisional capacity can designate through a unilateral document or a contract of mandate that he/she authenticates the person who is to be named curator and take care of the person and his/her goods if he/she will be placed under judicial interdiction.

Concurrently, “if the need be required and until the settlement of the petition requiring the judicial interdiction, the trusteeship board can name a special trustee in order to take care of and represent the person whose interdiction was required, as well as for the administration of his/her goods”[art.167 New Civil Code].

2. The effects of placement under judicial interdiction

A primary effect generated by the placement under judicial interdiction of a person is depriving him/her of the decisional capacity [3]. The legislator expressly provided that “a). the minor who has not reached the age of 14; b). the judicially interdicted do not have decisional capacity”.

Regarding the moment when depriving the person of decisional capacity comes into effect, this is different compared to the capacity that the person in question had at the time of his/her placement under the interdiction.

Considering the hypothesis of a minor lacking the capacity of decision, therefore younger than 14 this comes into effect when he turns 14 when, according to legal dispositions, he/she acquires restricted capacity of decision.

In the case of minors with restricted capacity of decision, therefore of an age ranging between 14 and 18, as well as in the case of individuals with full capacity of decision, “the interdiction will come into effect at the date when the court order is definitive”[ art.169 paragh.1 New Civil Code]. Regarding the third parties, the lack of capacity of decision of the person placed under interdiction can be opposed to them when all advertising formalities specified in the Code of Civil Procedure
are fulfilled apart from the situation when
the third party has been placed under interdiction in another way” [art.169
paragh.2 New Civil Code].

As an effect of being deprived of
decisional capacity, the judicial documents
performed for individuals placed under
interdiction are drawn by their legal
representatives. Those placed under
interdiction can still sign “the documents
provided by the law, the conservation
documents, as well as the provision
documents for small values, with current
character, which come into effect at the
time of their completion” [art.43 paragh.3
New Civil Code].

If the individual placed under judicial
interdiction signs another judicial
document apart from the above-mentioned,
the sanction stipulated by the legislator is
relative nullity. The documents will be
reversible even if the judgment of the
person in question at the time of their
completion could be proved.

The second effect
of placing under
judicial interdiction is naming a trustee.

This effect results especially from the
dispositions of article 170, the New Civil
Code, which concludes that “according to
the decision of placing under interdiction,
the guardianship court immediately names
a guardian for the protection of the
individual placed under judicial
interdiction”.

The rules regarding the guardianship of
the minor younger than 14 about whom
discussed in the section dedicated to
guardianship are to be applied in the case
of the guardianship of the individual
placed under judicial interdiction if the law
does not provide in different manner.

After three years from the appointment,
and for well-founded reasons, even before
this date the guardian can ask to be
replaced.

The main obligation that rests on the
guardian is to take care of the individual
placed under interdiction “in order to speed
his/her healing and to improve his/her life
conditions” [art.174 paragh.1 New Civil
Code], for which purpose the income of
the person with judicial interdiction is to
be used, and also his possessions if
necessary.

The guardianship court is the one which
decides where the person under judicial
interdiction is to be taken care of: in
his/her house or in a medical
establishment. This aspect remains to be
decided after consulting a specialist and
adapted to circumstances. Also, the
approval of the family council is needed,
and if the person under judicial interdiction
is married, his/her wife/husband’s opinion
must also be taken into account.

Regarding the minor who, at the time of
placing under interdiction was under
parental care, he/she is not going to be
provided a guardian, but he/she will
remain under parental care until he/she
becomes major.

If “the minor becomes of age while still
being under judicial interdiction, the
guardianship court provides him/her a
guardian” [art.176 paragh.2 New Civil Code].

If the minor is under guardianship at the
time of being placed under judicial
interdiction, the guardianship court is the
authority which will decide if a new
guardian must be appointed or the one who
held this position will continue to hold it.

3. Lifting the judicial interdiction

The judicial interdiction is to be lifted if
the causes which generated it cease to
exist. The court is the only one that has the
right to lift the interdiction.

A petition in this sense can be filed by
the person under judicial interdiction, by
the guardian and by the individuals and institutions mentioned in article 111 of the New Civil Code.

The effects of the decision of lifting the judicial interdiction will come into practice from the date when it becomes definitive.

The cessation of the guardian’s right of representation can be opposed only from the date when the advertising formalities provided by the Civil Procedure Code have been fulfilled, except the case in which the third parties have known this fact from another source.

References