

# 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 paragraph.2 New Civil Code].

As an effect of being deprived of decisional capacity, the judicial documents perfected 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 paragraph.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 paragraph.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 paragraph.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

1. *The New Civil Code.*
2. Boroi, G.: *Civil Law. General part. Individuals.*, 3rd Edition revised and enlarged. Bucuresti. Hamangiu Publishing House, 2008.
3. Nicolae, I. *Instituţii ale dreptului familiei.* Bucureşti. Editura Hamangiu, 2009.
4. Poenaru, E.: *Civil Law. General theory. Individuals.* Lugoj. Dacia Publishing House, Europa Nova, 2001.