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THE NEW ROMANIAN LEGISLATION REGARDING SOME MEASURES OF PROTECTION FOR PEOPLE WITH INTELLECTUAL AND PSYCHOSOCIAL DISABILITIES – ETHICAL ASPECTS AND IMPLEMENTATION CONTROVERSIES

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Abstract

The new Romanian legislation regarding some measures of protection for people with intellectual and psychosocial disabilities was aimed at combating social exclusion and discrimination, and encouraging the active participation of these categories of people in civil and socioeconomic life. This is not only a benefit, but also a fundamental change in the provision of medical evidence, essential for courts in the establishment of a specific measure of protection for a specific individual with intellectual or psychosocial disabilities, which entails discussions of pros and cons.

This presentation proposes a review of the problems raised when analyzing the cases in which the application of protective measures for people with intellectual and psychosocial disabilities is requested, starting from the old legal regulations of "putting under interdiction" and continuing with the current regulation regarding the establishment of "judicial counseling" and "special tutelage". It also outlines future possible developments of the medical evaluation activity in this field.

In this analysis, the authors present conclusions drawn from a comparison between the previous Psychiatric Medicolegal Expertise Reports and the current Medical and Psychological Assessment Reports of people with intellectual and psychosocial disabilities.

To add, a study conducted at the Ilfov Medical Service in 2000 regarding the expertise of placing under interdiction provides a global image of the cases in which the establishment of protective measures was requested (analysis by sex, age, types of pathologies, persons who requested such measures, types of conclusions of psychiatric medicolegal expertise, difficulties encountered, etc.).

The pluses and minuses of the new legislation in the field, the ethical aspects and the difficulties or obstacles that may arise in current practice when carrying out the medical and psychological reports required by law are analyzed through the lens of the experience of the medicolegal network that has been carrying out this expertise until now.

Keywords: new legislation, people with intellectual and psychosocial disabilities, implementation difficulties, ethics aspects

Introduction

The exception of unconstitutionality of the provisions of art. 164 paragraph (1) of the Civil Code (exception raised in file no. 2244/277/2014 of the Buzău Court – Civil Section I was allowed by Decision no. 601 of July 16, 2020, pronounced by the Romanian Constitutional Court in file no. 695D/2017. The decision was published in the Monitorul Oficial al României, Part I, no. 88 of January 27, 2021 (Constitutional Court of Romania, 2020).

The content of article 164, paragraph (1) of the Civil Code which was declared unconstitutional was the following: "A person who does not have the necessary discernment to take care of his interests, due to alienation or mental debility, will be placed under judicial interdiction." (Romanian Parliament, 2009).

From the date decision no. 601/July 16, 2020 was published (January 27, 2021), the legislator did not intervene in terms of its transposition into legislation within the 45-day period provided by art. 147 paragraph (1) in the Constitution of Romania. So, that decision was followed by a legislative vacuum, suspending the article declared unconstitutional. It was only on May 17, 2022 when Law no. 140 regarding some protection measures for people with intellectual and psychosocial disabilities and the modification and completion of some normative acts was issued and it was published in the Monitorul Oficial al României, Part I, no. 500 from May 20, 2022 (Romanian Parliament, 2022). Six months later, the Ministry of Health (No. 3,423 of November 11, 2022) and Ministry of Labor and Social Solidarity (No. 2128 of November 16, 2022) issued Order No. 3423/2128/2022 regarding the approval of the methodology and the medical and psychological evaluation report of persons with intellectual and psychosocial disabilities in the context of the disposition, extension, replacement or raising of the protective measures. It was published in the Official Monitor of Romania, Part I, no. 1128 of November 23, 2022 (Ministry of Health and Ministry of Labor and Social Solidarity, 2022).

This legislative process lasted two years and four months, a long period of normative vacuum in which courts were faced with real difficulties in solving cases with the object of "placement under interdiction," as the way to go about it in Romania was non-unitary. During this period, this situation of deregulation had as victims even those whom the law presumed to be deprived of protection and whom it had to protect.

Thus, for almost two years and four months, the activities of prosecutors' offices and courts, as well as the activity of psychiatric medico-legal expertise commissions in cases of interdiction, were carried out unevenly, inconstantly, and randomly, the most diverse practices being applied by the Romanian courts, prosecutors' offices, and medico-legal institutions.

Finally, after this long awaiting period, the Romanian Parliament, considering its obligation to agree with the provisions found to be unconstitutional with the Decision of the Constitutional Court no. 601/2020 and with the provisions of the Romanian Constitution, makes a large-scale legislative intervention in the matter of civil law protection measures that people with intellectual and psychosocial disabilities can benefit from. This contributes to important changes, both in common law legislation and in special legislation, creating new legal instruments in the matter and establishing a new methodology for examining people with intellectual and psychosocial disabilities, in which medico-legal institutions are no longer found.

The law amending the Civil Code (Law no. 140 of 17 May 2022 on some protective measures for people with intellectual and psychosocial disabilities and the amendment and completion of some normative acts) remedied the deficiencies noted by the Romanian Constitutional Court and adapted the national regulation to the requirements of the Convention on the rights of persons with disabilities (adopted in New York by the United Nations General Assembly on December 13, 2006, opened for signature on March 30, 2007 and signed by Romania on September 26, 2007, ratified by Romania through Law no. 221/2010, published in the Official Monitor of Romania, Part I, No. 792 on November 26, 2010, with subsequent amendments) (Romanian Parliament, 2022; United Nations, 2006; United Nations. International Act, 2010; Romanian Parliament, 2010).

Thus, according to the new legislation, Article 106 paragraph (2) of the Civil Code shows that "the protection of the adult takes place by establishing the measure of judicial

counseling or special tutelage, or of the trusteeship or of another measure provided by law.” The new regulation offers the essential guarantees required by the Romanian Constitutional Court for the benefit of the protected, as follows:

1. The establishment of a gradual system for the disposition of protective measures (table 1),
2. The establishment of certain periods during which protective measures may be arranged and extended (table 2),
3. Setting up rules regarding the periodic reassessment of the chosen protection regime or the possibility of permanent adaptation (individualization) by the tutelage court of the protection measure according to the concrete circumstances in which the protected person finds itself (table 3) (Romanian Parliament, 2022).

Table no. 1

1. Gradual system	
The old legislation	The new legislation
	<p>I. Assistance in performing legal acts. The adult person who, due to an intellectual or psychosocial disability, needs support to take care of himself, manage his patrimony, and generally exercise his rights and civil liberties, can request the notary to appoint an assistant, under the terms of the Law on Notaries and Notarial Activity No. 36/1995, republished, with subsequent amendments.</p> <p>The assistant is authorized to act as an intermediary between the person who receives assistance and third parties and is presumed to act with the consent of the adult person in providing assistance, may transmit and receive information on their behalf, and may communicate to third parties decisions, according to the preferences and wishes expressed by the person for whom he provides support.</p> <p>The person designated as an assistant does not sign legal documents on behalf of the adult, nor does he approve the documents that he signs on his own.</p>
	<p>II. Judicial counseling is necessary if the deterioration of a person's mental faculties is partial, and it thus requiring continuous counseling in exercising his rights and freedoms.</p> <p>The establishment of legal advice can only be done if adequate protection of protected persons cannot be ensured by the establishment of assistance for the performance of legal acts.</p> <p>The measure is only aimed at the legal dimension of the life of a person in a situation of diminished cognitive capacities, with the purpose of helping them understand and critically analyze the meaning of documents they signs.</p>
Placement under judicial interdiction	<p>III. Special tutelage is necessary if the deterioration of a person's mental faculties is total and, as the case may be permanent, it requires representation when exercising their rights and freedoms.</p> <p>The establishment of a special tutelage can only be done if adequate protection of the protected person cannot be ensured by the establishment of assistance for the performance of legal acts or judicial counseling.</p> <p>Thus, the tutor appointed by the court becomes the legal representative of the incapacitated person, who takes care not only of the person, his state of health, and his assets, but is the only one who can perform legal acts in the name and on behalf of the protected person.</p> <p>Special tutelage should only be taken into consideration as a last resort measure.</p>

Table no. 2

2. Precised periods of time for which protective measures can be ordered and extended	
assistance for executing legal documents	cannot exceed 2 years
judicial counseling	cannot exceed 3 years

special tutelage	cannot exceed 5 years
damage to the mental faculties of the protected person is permanent (in special cases)	cannot exceed 15 years

Table no. 3

3. Periodical reevaluation	
The guardian or the representative of the protected person is obliged to notify the tutelage court:	- whenever they find that there is data and circumstances that justify the re-evaluation of the measure - as well as at least 6 months before the expiration of the period for which it was ordered, to reevaluate it.
If the request to extend, replace or lift the protection measure is made by the person's representative or legal guardian, it is accompanied by the evaluation reports provided for in art. 938 paragraph (6)	- drawn up no later than 2 months before the date of referral to the court (Art 937 paragraph (4) Civil Procedure Code).

A number of 14 important laws were amended and supplemented as a result of Law 140 of May 17, 2022 being issued, and other changes will follow: the renumbering of the articles of the Civil Code and the Code of Civil Procedure, and the regulation by law of the organization and operation of the tutelage court.

Study regarding medico-legal psychiatric expertises for placement under interdiction carried out at the Ilfov Medico-Legal Service in 2020

In 2020, the last year medicolegal psychiatric examinations were carried out under the old legislation, Ilfov County ranked 13th out of 42 in the number of psychiatric medicolegal examinations in the country, 9th out of 42 in the number of psychiatric medicolegal examinations in civil cases, and 15th out of 42 in terms of the number of medicolegal psychiatric expertise for placement under interdiction. Therefore, the aspects found in the Ilfov Medico-Legal Service may be relevant for the situation in the entire country.

Out of the total number of medico-legal psychiatric examinations that were performed, approximately 84% were civil cases and 10% were criminal cases.

For civil cases, 57% were medicolegal psychiatric certificates, 4% were determinations of mental competence in living persons, and 39% were placing under interdiction. Currently, since psychiatric medicolegal examinations are no longer carried out in cases of placement under interdiction, the activity of the psychiatric medicolegal examination commission of the Ilfov Medico-Legal Service has decreased by 39%.

Of the placements under interdiction examinations, 63% were performed on women and 37% on men. Men were aged between 18 and 94 and women between 18 and 99. The majority was the percentage of people aged between 60 and 89 (65% of men and 75% of women). Therefore, most cases involved degenerative mental pathologies. Requests for placement under interdiction were mostly made by close relatives but also by neighbors, acquaintances, co-owners, and the municipality. The dominant mental pathology was mild, moderate, or severe mental retardation (20% of men and 13.23% of women) and different types of dementia (62.5% of men and 69.11% of women). In total, 82.4% of the cases of medicolegal psychiatric placement under interdiction are represented by mental retardation and dementia, both of which are not susceptible to healing or significant improvements that would require a change in the protection measure.

Aspects regarding the current methodology of carrying out medical and psychological reports with the purpose of establishing protective measures

Currently, the methodology for carrying out evaluations of people to establish protective measures is provided in order no. 3.423/2.128/2022 regarding the approval of the methodology of the medical and psychological assessment report of persons with intellectual and psychosocial disabilities in the context of disposition, extension, replacement, or raising of the protective measure issued by the Ministry of Health (No. 3.423 on November 11, 2022), and the Ministry of Labor and Social Solidarity (No. 2,128 of November 16, 2022) published in the Monitorul Oficial al României no. 1128 on November 23, 2022 (Ministry of Health and Ministry of Labor and Social Solidarity, 2022).

This norm has three annexes.

- Annex 1- Methodology for medical evaluation of persons with intellectual and psychosocial disabilities in the context of the disposition, extension, replacement or raising of the protection measure.
- Annex 2- Methodology for psychological evaluation of persons with intellectual and psychosocial disabilities in the context of the disposition, extension, replacement or raising of the protection measure.
- Annex 3- Medical and psychological evaluation report (Ministry of Health and Ministry of Labor and Social Solidarity, 2022).

Annexes 1 and 2 establish that: both the medical and the psychological assessment "of persons with intellectual and psychosocial disabilities in the context of the disposition, extension, replacement or raising of the protection measure can be done within the public or private health system." (Ministry of Health and Ministry of Labor and Social Solidarity, 2022).

Article 3 (1) of Annex 1 shows that: "The medical evaluation is done by the doctor from the specialty of psychiatry or, in the case of the minor, by the pediatric psychiatrist (...)". Through this text of law, the legal medicine network was excluded from carrying out these evaluations. (Ministry of Health and Ministry of Labor and Social Solidarity, 2022).

Initially, Article 2 of Annex 2 of the Order, stipulated the condition that the psychologist who performs the psychological evaluation is "registered in the Register of Psychological Experts within the College of Psychologists in Romania," a requirement that proved ineffective, because of the limited number of psychological experts and the fact that a number of counties do not have even a single psychologist who meets this criterion. Thus, on 25-08-2023, Article 2 was amended by Point 2., Article I of Order no. 2,692 of August 17, 2023, published in the Monitorul Oficial al României no. 772 of August 25, 2023, with the following content: "The psychological evaluation is carried out by a psychologist who holds a certificate of free practice in the specialist or principal professional level and who exercises the profession through one of the legal forms provided by Law no. 213/2004 regarding the exercise of the profession of psychologist with the right of free practice, the foundation, organization and the functioning of the College of Psychologists in Romania, with subsequent amendments and additions (Ministry of Health and Ministry of Labor and Social Solidarity, 2022; Ministry of Health and Ministry of Labor and Social Solidarity, 2023).

Possible dilemmas and ethical aspects in carrying out the medical and psychological evaluation report

By analyzing the texts of the new normative acts compared to the previous ones, we identified a series of debatable aspects from the point of view of the efficiency and applicability of the new legal provisions, and from the ethical point of view, with possible direct consequences on the medical and legal approach in terms of the disposition, extension, replacement, or raising of the measures for the protection of persons with intellectual and

psychosocial disabilities, which, without pretending to have exhausted them, will be listed further, some in the form of rhetorical questions.

1. There is a fragile limit between "assistance for the performing of legal documents" and "judicial counseling" regarding the assessment of the mental competence of the subject. Thus, for "assistance for the performing of legal documents" there is no need for a medical and psychological evaluation report, psychiatric medico-legal certificate or expertise, certificate from a psychiatrist regarding the person's mental status. The only requirement is the "verification by the notary of the understanding of the meaning of the request made by the adult person and of the possibility for him to express his wishes and preferences." (Romanian Parliament, 2022). We ask ourselves whether the notary has the training and competence to assess (these aspects belonging to the medical field of psychiatry and psychology).

2. The social aspects that may exist in certain cases make us ask ourselves the following questions: Can the cost of a medical and psychological evaluation report be prohibitive for certain social categories? Can this aspect be interpreted as discriminatory? Who will financially support poor families who do not have the possibility to pay the cost of such a report for the people in their families who are in need?

With this pecuniary social aspect in mind, the Ministry of Health and the Ministry of Labor and Social Solidarity issued Order no. 2,692/1,889/2023 for the amendment and completion of the Order of the Minister of Health and the Minister of Labour and Social Solidarity no. 3.423, 2.128, and 2022 regarding the approval of the methodology of the medical and psychological evaluation report of persons with intellectual and psychosocial disabilities in the context of disposition, extension, replacement, or raising of the protection measure, published in the Monitorul Oficial al României no. 772 on August 25, 2023.–The change resides in the fact that

They added two articles stipulating that medical service providers in a contractual relationship with the National Health Insurance Company do not collect amounts for the medical documents necessary for the medical and psychological evaluation and reevaluation in the context of the disposition, extension, replacement, or raising of the protective measure issued according to the field of competence following the services provided. (Ministry of Health and Ministry of Labor and Social Solidarity, 2023).

3. Can there be situations of professional malfunction? Can there be professional mistakes, insufficient experience in the specialty, slips from ethics and professional deontology in the performance of medical and psychological evaluation reports "to order" (public but also private system; evaluations performed by a person and not by a commission)?

4. Is it difficult for prosecutors' offices, courts, and individuals to find specialists? (psychiatrists and psychologists willing to carry out these reports, but especially specialists in pediatric psychiatry, in the case of minors, as there are very few such specialists).

5. What are the consequences of not regulating the territorialization for making these reports?

Due to the lack of specialists willing to carry out these tasks in a certain county or the preference for certain specialists, they will be carried out at a distance from the person's place of residence. This raises problems related to the transport of people who need to be evaluated (many times people are difficult to be transported or could even be untransportable), which could lead to additional costs.

6. What effects can the lack of regulation have on the number of reports allowed for a person?

A person could be evaluated by several psychiatrists / psychologists, until the "desired result" is obtained (without these specialists knowing that another has made a report on the

same case (in the medico-legal system, inter-institutional checks are carried out and it is regulated the territorialization). Additionally, different specialists working on the same case can provide different conclusions.

7. It may be difficult to obtain medical documents from the psychiatrist/psychologist in different medical institutions where the person was admitted/assessed in the past (by invoking the confidentiality of medical data) (for the preparation of medico-legal documents, there is an obligation by law to make these documents available). In addition, there may be difficulty in obtaining the case file, which is essential in recommending the protective measure (sometimes there is a problem with obtaining the file even for legal medicine institutions, although a clear legal basis stipulates the obligation to make the case file available for carrying out psychiatric medico-legal expertise) (Ministry of Justice and Ministry of Health, 2000).

8. Do medical and psychological reports drawn up by only one specialist (one psychiatrist, one psychologist) and not by a commission offer a guarantee of neutrality? Presumably, a commission has mutual control between its members, there is a higher degree of security of the medical act through debates within the group, exchange of ideas, and different professional opinions, which is not valid in the case of issuing a single individual opinion (not fined by anyone) in an matter of great professional, legal, and social responsibility, with extremely important legal, social, pecuniary, consequences. It should be noted that in other medico-social fields, evaluations are done in commissions and we can give the following examples: The medical expertise of work capacity recovery commissions are made up of 9-13 members, the Pension and social insurance commissions regarding the classification of disability in case of contesting the decision issued by the social insurance expert doctor have several members, the Commissions for the assessment of adults with disabilities within the Complex Assessment Service for adults with disabilities, within the general directions of social assistance and child protection county, respectively, and the local sectors of Bucharest municipality are made up of five members. Moreover, in a legal issue with the particularly important consequences shown above, we consider that the evaluation should be made in the commission.

There is a logical fracture due to the fact that, in a field that requires the assessment of medical aspects related to important civil legal implications, a situation that requires deep knowledge of legal aspects (courts and prosecutor's offices request to individualize what type of legal acts can the respective person do or not) the medico-legal institution was practically taken out of the equation even if there are specialists trained precisely in the sense of making such pertinent assessments based on the knowledge of both medical and legal problems, who work currently with the medical and legal concepts in the field of "causality" (relationship, causality report, causes, effects, conditions, circumstances, triggering factors, accelerators, etc.), extremely useful concepts to relate scientifically argued a certain mental pathology with a certain right, civil obligation or notary act to be drawn up (Government of Romania, 2000; Romanian Parliament, 2001, 2004).

9. The assessments regarding the "degree of incapacity" which are required by law expect the definition of incapacity (Incapacity to...?) but also the drawing of scales regarding the degrees of incapacity, which, at the present time, do not exist.

10. Assessments of the reversibility/irreversibility of incapacity can be extremely subjective. It is known that such forecasts in medicine, and even more so in psychiatry, are relative; there is a particularity of evolution of each individual depending on a multitude of unpredictable factors. At most, a theoretical answer can be given: "under the conditions of adequate treatment, compliance with the treatment and depending on the particular reactivity of the body, X-type conditions can be reversible" but, in most cases, it can be appreciated that

"condition Y is usually irreversible without being able to certainly specify the reversibility in the present case".

11. Perspective assessments of mental competence do not have solid scientific criteria. It is risky to prejudge the mental competence of a person in the future related to the performance of hypothetical notarial acts. The evolution of mental disorders over time is unpredictable and depends on a multitude of factors, as I have shown.

Drawing up a notarial act with prior examination of the person's mental health as close as possible to the moment of its signing (the current Psychiatric Medico-Legal Certificate) guarantees that the notarial act is drawn up with free will, consented, and knowing exactly the mental status of the person at the time of drawing up the act (Ministry of Justice and Ministry of Health, 2000).

The following conclusions could be drawn:

"The named XY currently does not have general mental competence, following that, in the event of the future performing of some notarial acts or exercising of some civil rights, the named XY should be examined by a psychiatric medico-legal commission shortly before the performing of the notarial act for the evaluation of the special mental competence at that moment, strictly in relationship to the performing of a certain (that) notarial act."

12. There may be difficulties in obtaining the consent of the examined person, mandatory by law (in medico-legal practice, consent regarding the performance of expertise, findings, and other medico-legal works is taken by law by the criminal investigators or the court that requests the medico-legal examination).

13. There may be technical difficulties in drafting medical and psychological reports. The model presented in Annex 3 of Order 3,423/2022 provides for a single report completed and signed by both a psychiatrist and psychologist. It is not specified if they are part of the same institution or if one can be from the public system and the other from the private system. What happens if the opinions of the two are contrary (both must individually make a proposal regarding the protection measure they consider appropriate for the case)?

14. The lack of legal regulations regarding the archiving of documents in the case of medical and psychological reports (archiving period, document regime, access to the archive, conditions, etc.) can lead to the loss of some essential documents for subsequent evaluations of patients.

15. Does the psychologist benefit from the licensed psychological tests provided in Annex 2 of Order 3,423/2022? Tests that measure cognitive ability (intelligence/cognitive impairment), dimensions of psychopathological disorders, dimensions of the affected personality, quality of life, and general functionality are imposed by methodological norms. Each of the above items must be specified: "Name of the test/Scores obtained/Significance" and the tests must be licensed (Ministry of Health and Ministry of Labor and Social Solidarity, 2022).

16.–Do psychologists take responsibility of appearing before the court in cases where they will be requested to do so according to Order 3.423/2.128/2022 which stipulates: "I also declare that I am qualified to testify regarding the specific functional capabilities addressed in this report and I am prepared to make a statement of my qualifications to the court, by written statement or personal appearance, if required to do so."? (Ministry of Health and Ministry of Labor and Social Solidarity, 2022).

17. What will happen in a situation in which a person to whom the measure of judicial counseling or special tutelage has been applied is approached by a medico-legal institution/is brought by the relatives to request a Psychiatric Medico-Legal Certificate for the performance of a notarial act, and the psychiatric medico-legal expertise commission is not aware of the fact that the person is under a protective measure or this fact is not brought to their attention

by the examined person or the owners (although the law requires the protective measure to be recorded on the ID card)?

In the present situation, there may be a variant in which the Commission considers that the person is mentally competent and can draw up and sign the notarial act, which diverges from the medical and psychological evaluation report (currently required by law and drawn up by a psychiatrist and psychologist). There is a possible litigation in which the Commission, psychiatrist, or psychologist can be sued by one of the parties (which is considered prejudiced by one or the other of the two decisions).

Legal arguments of the involvement of legal medicine institutions in the medical evaluation of the need to establish some protection measures for people with intellectual and psycho-social disabilities.

The arguments provided by the law regarding the involvement of legal medical institutions in the medical evaluation of the need to establish protective measures for people with intellectual and psychosocial disabilities are multiple and obvious (Ministry of Justice and Ministry of Health, 2000; Government of Romania, 2000; The Romanian Parliament, 2001, 2004).

Thus, Ordinance no. 1 of January 20, 2000 regarding the organization of the activity and functioning of legal medicine institutions (applicable from February 1, 2014) approved by Law 459/2001 (published in the Monitorul Oficial al României no. 418 of 27.07.2001) provides in Chapter I General Provisions, in Article 1, the following: "The activity of legal medicine, an integral part of medical assistance, consists in carrying out expertise, examinations, findings, laboratory tests and other medico-legal works on living persons, (...) in order to establish the truth in cases regarding (...) or in other situations provided by law, (...)." and in Article 2 paragraph (1), that "The activity of legal medicine provides evidence of a scientific nature to criminal investigation bodies, courts, as well as at the request of interested persons, in the settlement of cases (...), civil (...), contributing by specific means, provided by law, to establish the truth." (Government of Romania, 2000; The Romanian Parliament, 2001, 2004).

Procedural norms regarding the performance of expertise and findings and other medicolegal works (Monitorul Oficial al României no. 459 of 19.09.2000), approved by the Joint Order of the Ministry of Justice (no. 1134/C/25.05.2000), and Ministry of Health (no. 2554/04.04.2000) is regulated in art. 26-33 "The medico-legal finding and expertise relating to living persons," stating in Article 26: "The medico-legal finding and expertise relating to living persons, carried out at the request of judicial bodies, consist of clinical and complementary examinations (...) and others, which may have as their object: (...) e) ascertainment of mental capacity (Ministry of Justice and Ministry of Health, 2000).

Also, Article 27 shows that (1) the expert commission is mandatorily established in cases where the law expressly provides for this, as well as when the object is: a) the evaluation of a person's mental capacities, to establish the necessary elements for the assessment (...) of civil responsibility; (...). (4) The medico-legal psychiatric examination is carried out only for a certain (...) circumstance, with the main objective being the establishment of the mental capacities at the time (...) of exercising a right, of the mental capacities at the time of the examination (...) (Ministry of Justice and Ministry of Health, 2000).

Moreover, Article 211 of Law 71/2011 for the implementation of Law no. 287/2009 on the Civil Code speaks of "the mental incompetence of the person to act critically and predictively regarding the social-legal consequences that may arise from the exercise of rights and civil obligations." which correlates with the terminology from the specific medicolegal normative acts shown above (Romanian Parliament, 2011).

Conclusions

The old methodology within the psychiatric medico-legal expertise (commissions made up of a forensic doctor and two psychiatrists, with the active participation of the psychologist) covered the need for impartiality (commission made up of three members), medical knowledge translated into legal requirements (forensic doctor in the commission), knowledge of a strict psychiatric and psychological specialty with the possibility of correct and clinically and paraclinically documented nosological classifications, but also of assessing the evolution, prognosis, therapeutic efficiency (psychiatrists on the committee and psychologists who perform exhaustive psychological examinations in the case), rigor (imposed on the specifics of the methodology for the preparation of medico-legal documents, the circuit of documents, archiving for an unlimited period), expression in a language desired and expected by legal institutions that handle such civil cases (language characteristic of the forms in the medico-legal documents for which forensic doctors are trained), reasonable costs, accessibility to all social categories.

According to Article 24 of Law No. 140/2022, the National Authority for the Protection of the Rights of Persons with Disabilities and the Superior Council of Magistracy will have to draw up, upon completion of a period of three years from the entry into force of this law, reports, including the assessment of its impact, as well as, if necessary, to formulate proposals for improving the legislation in the matter. We hope for active and accurate monitoring of the implementation of this law with the notification of inadvertences, which are not few, and of the debatable aspects of the conception and applicability of the law.

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