

THE GUARDIANSHIP MANDATE – BETWEEN AUTONOMY OF WILL AND THE NEED FOR LEGAL PROTECTION

Larisa-Diana ONEA*

Abstract

The guardianship mandate is a modern legal instrument that combines respect for the autonomy of the individual with the need to ensure effective protection in situations of vulnerability. This paper analyses the legal nature of the guardianship mandate, highlighting its foundations based on autonomy of will, as well as its preventive role in anticipating future situations of incapacity. The conditions under which the mandate becomes effective, the procedures for its termination, and the formalities required for its validity are detailed, as well as its content, which defines the rights and obligations of the principal and the trustee.

Particular emphasis is placed on the execution of the guardianship mandate, involving court approval, as well as the possibility of adopting additional measures to protect the interests of the person being protected. The authorization procedure is analysed in detail, emphasizing the role of the court in ensuring the legality and proportionality of the measures. The paper also discusses the scope of the mandate and the obligations of the trustee, including its interpretation in accordance with the rules applicable to the special guardianship of adults, when the provisions are unclear or not amenable to direct interpretation.

The study highlights the advantages of the guardianship mandate as a flexible alternative to traditional guardianship measures, such as special guardianship or judicial counselling, emphasizing its preventive nature and respect for the person's anticipated wishes. The limitations of this instrument are also discussed, such as the potential risks of abuse, the need for judicial oversight, and the importance of adequate legal safeguards to protect the interests of the person under guardianship.

Finally, the article places the mandate of protection in the context of contemporary civil law, highlighting its relevance as an expression of the balance between individual freedom and state intervention for protection purposes, as well as its importance for the development of preventive and personalized mechanisms for the protection of vulnerable persons.

Keywords: guardianship mandate, disabilities, vulnerable persons, autonomy of will, notary.

1. Introduction

The guardianship mandate is part of the contemporary trend of valuing autonomy of will, allowing capable persons to organize in advance the mechanisms of protection for the eventuality of a future loss or diminution of discernment. Unlike traditional judicial guardianship measures, which intervene *ex post* and are predominantly heteronomous in nature, the guardianship mandate is based on a freely expressed personal choice regarding both the guardian and the scope of their duties.

This normative configuration reflects the paradigm shift from a paternalistic model of legal protection to a person-centered one, in which the individual's anticipated will is the main criterion for organizing the protective measure.

Although based on autonomy of will, the guardianship mandate does not operate exclusively within the logic of contractual freedom. The intervention of the guardianship court, both at the approval stage and during the execution of the mandate, introduces a dimension of judicial control intended to prevent abuse and ensure the effective protection of the principal.

Thus, the court does not automatically validate the mandate, but verifies that the legal conditions are met and that the measure is appropriate in relation to the interests of the person under protection. This overlap between private will and public control illustrates the structural tension between individual autonomy and the need for legal protection of vulnerable persons.

Compared to other forms of legal protection, the guardianship mandate has a number of relevant features: (i) it is established by the will of the person concerned, and not by a court decision; (ii) it is, in principle, subsidiary

* PhD Candidate, Faculty of Law, „Nicolae Titulescu” University of Bucharest (e-mail: onealarisadiana@gmail.com).

to the autonomy of the principal, and does not result in general incapacity; (iii) it allows for a fine-tuning of the measure to the specific needs of the person, by expressly delimiting the powers of the trustee.

However, the protection mandate does not exclude the possibility of subsequently establishing a judicial protection measure when the principal's interest so requires, which confirms its flexible and evolving nature.

2. The guardianship mandate

2.1. Autonomy of will – the basis of the guardianship mandate

In doctrine¹, it has been stated that "will is indispensable to the conclusion of a legal act, being a psychological operation that acquires legal value only through its manifestation; will combines two elements in its structure: consent and cause (purpose); therefore, there is a whole-part correlation between legal will and consent." Therefore, legal will is not only a condition of validity, but also the generating element of the existence of a civil legal act. The absence of will or its manifestation is equivalent to the non-existence of the act, even if there is a material appearance.

Thus, legal will is conceived as the generative element of civil legal acts, without which they cannot acquire legal existence, regardless of their formal or material appearance. The transformation of psychological will into legal will requires its normative qualification, achieved through conscious deliberation, freedom of decision, and externalization capable of producing legal effects.

The externalization of will represents the moment of rupture between internal intention and legal order, since only manifested will is capable of entering the civil circuit and generating legal relationships. It has been emphasized that "the process of forming and expressing legal will is closely linked to the inner workings of the individual, involving 'deliberation, the power of man to plan, organize, carry out, and control his activities, the power to overcome obstacles encountered, perseverance, and mobilization commensurate with the demands imposed.'"².

Referring to legal will necessarily involves analyzing the principles that structure its functioning in civil law, among which the principle of real will and the principle of freedom of will, an expression of autonomy of will, stand out.

Regarding the principle of freedom of will or the principle of autonomy of will, in doctrine³ it has been emphasized that: "the parties are free to conclude any legal acts and to determine their content, within the limits imposed by law, public order, and morality (Art. 1169 of the Civil Code, which, under the marginal heading of "freedom to contract," refers to contracts, but, on the basis of Art. 1325 of the Civil Code, also applies to unilateral legal acts)."

The application of the principle of real will is particularly relevant in the area of guardianship mandate, a legal institution based essentially on the recognition of a person's authentic will, expressed at a time when they have unimpaired discernment. Unlike traditional guardianship measures, which are based on the determination of a current incapacity and the substitution of the person's will by a third party, the guardianship mandate is based on the actual, prior, and freely expressed will of the principal. In this context, any dissonance between a person's internal will and their subsequent actions, occurring in a state of vulnerability or diminished discernment, cannot lead to the removal of the effectiveness of the anticipated will. On the contrary, the real will, as expressed through the guardianship mandate, is called upon to prevail over an altered or impossible to form current will, precisely in consideration of its initial authenticity and fullness.

The guardianship mandate therefore operates a controlled reversal of the classic relationship between actual will and present will, giving priority to the legal will expressed ex ante, as an expression of the person's autonomy of will and self-determination. In this configuration, the principle of real will is no longer related to an opposition between internal intention and declaration of will, but to the contrast between the authentic will formed in a context of full capacity and subsequent manifestations lacking discernment.

Therefore, the guardianship mandate can be qualified as a legal mechanism for preserving the real will over time, designed to ensure the continuity of the fundamental choices of the person beyond the loss of their

¹ Gabriel Boroj, Carla Alexandra Anghelescu, Ioana Nicolae, *Fișe de drept civil Ediția a 8-a, revizuită și adăugită*, Hamangiu Publishing House, Bucharest, 2024, p. 106.

² Matefi Roxana, Nicolae Ioana, *Autonomia de voință și limitele sale de fond și formal*, Dreptul Magazine no 12, 2017, p. 1.

³ Gabriel Boroj, Carla Alexandra Anghelescu, Ioana Nicolae, *Fișe de drept civil Ediția a 8-a, revizuită și adăugită*, Hamangiu Publishing House, Bucharest, 2024, p. 107.

capacity to express a current legal will. This normative solution reflects the legislator's choice for legal protection based on respect for the authentic will of the individual, rather than its substitution by a presumed or externally imposed will.

2.2. Legal concept and characteristics

A guardianship mandate is a legal act whereby a person with full legal capacity, as well as an adult who benefits from juridical counselling, appoints a representative for situations in which they would no longer be able to take care of themselves or manage their assets (Art. 166 para. (2) and Art. 2029¹ para. (1) of the Civil Code). Also, a particular case is represented by the mandate granted by the parent with full legal capacity who exercises parental authority over his or her minor child or who is the guardian of his or her adult child under special guardianship, as well as by relatives up to and including the second degree who exercise guardianship over the minor or protected adult, with the purpose of caring for them, such as in the event that the principal dies or is no longer able to perform their guardianship duties (Art. 114 para. (6) of the Civil Code).

From a legal perspective, the mandate may be gratuitous or onerous, unilateral or bilateral, intuitu personae in nature, a solemn contract, and subject to a condition suspensive.

2.3. Conclusion of the guardianship mandate

The guardianship mandate may be concluded by certain persons, both as principal and as agent, under the conditions established by law. As principals, persons with full legal capacity, as well as adults who benefit from judicial counselling, may conclude a guardianship mandate, provided that the consent of the legal guardian and the authorisation of the guardianship court are obtained (Art. 166 para. (2) and Art. 2029¹ para. (1) of the Civil Code).

In the particular situation mentioned above, governed by Article 114(6) of the Civil Code, the guardianship mandate is concluded, as principal, by the parent with full legal capacity who exercises parental authority over his or her minor child or who is the guardian of his or her adult child for whom special guardianship has been established, as well as by relatives up to and including the second degree who are guardians of the minor or, as the case may be, of the adult under special guardianship. In this case, the minor or adult for whom special guardianship has been established is the beneficiary of the guardianship contract, in accordance with the provisions of Article 114(6) of the Civil Code, in conjunction with Articles 943¹ and 943⁴ of the Code of Civil Procedure.

As a trustee, persons who have the capacity to conclude the acts necessary to ensure the protection of the principal, the administration, in whole or in part, of his or her property and, in general, his or her moral and material well-being (Art. 2009 para. (2) of the Civil Code) may be appointed. By way of exception, persons who are in one of the cases of incompatibility provided for in Article 113 of the Civil Code and who, consequently, could not be appointed as guardians may not act as representatives (Article 2029¹(2) of the Civil Code). The capacity of the trustee is assessed both at the time of concluding the guardianship mandate contract and at the time of its approval by the guardianship court, in accordance with the law.

The purpose of the guardianship mandate is to conclude acts intended to ensure, in the event of the principal's inability to care for themselves or manage their property, the protection of their person, the administration, in whole or in part, of their property, and, in general, their moral and material well-being (Art. 2009 para. (2) Civil Code). The purpose of the guardianship mandate is not exclusively to conclude legal acts relating to property, but also to allow the principal to regulate in advance their living conditions after the onset of incapacity, to establish rules regarding their care, and to designate the person to whom the trustee is required to report at least once every three years.

Formally, the guardianship mandate can only be concluded by means of a notarized document (Art. 2029¹ para. (3) of the Civil Code), therefore the guardianship mandate is, in all cases, a solemn legal act, requiring authentic form *ad validitatem*. In this regard, the question arises as to whether the provisions of Article 2013 para. (1) final sentence of the Civil Code concerning the tacit acceptance of the mandate by its execution apply in the case of a guardianship mandate, more specifically whether the express consent of the trustee is necessary for its valid conclusion. In doctrine, it has been considered that "the general provisions relating to the mandate of representation shall also apply to the guardianship mandate, insofar as they are compatible with its specific nature, including those relating to the acceptance of the act by the trustee, the principal being entitled even to

keep the illness from which he suffers secret, if he so wishes. In this case, the mandate shall be accepted by the very request that he shall address to the court, requesting the approval of the mandate, as soon as he learns of its existence."⁴ (translated by the autor)

It is important to note that the guardianship mandate is immediately entered by the notary public in the Registrul Național de Evidență a Măsurilor de Sprijin și Ocrotire / National Register of Support and Guardianship Measures (RNEMSO), together with other relevant legal documents, in order to ensure the recording and monitoring of legal protection measures for the person under guardianship. In accordance with the methodological rules adopted by the Union through the Executive Office, the following shall be entered in this register: the application for the appointment of the assistant, the decisions to postpone or admit/reject the appointment, the statements of the assisted person regarding the revocation of the assistant, the statements of the assistant regarding the waiver of assistance, the documents confirming the performance of the assistance task, the guardianship mandate, as well as the agreement or document appointing the guardian, with the exception of last wills and testaments.⁵

2.4. Contents of the guardianship mandate

According to Article 2029² of the Civil Code, the guardianship mandate may include provisions regarding the principal's wishes concerning his or her care and living conditions after the onset of incapacity, the designation of the person to whom the trustee is required to report, and the frequency of this obligation, which may not exceed a period of three years. If the principal has not indicated such a person, the appointment of that person shall be made by the guardianship court when approving the mandate.

It can be argued that the list of elements provided for in Article 2029² of the Civil Code is illustrative and not exhaustive, in accordance with the purpose of the mandate of protection as an anticipatory protection mechanism, centered on the autonomy of the principal's will. In this sense, the mandate could also include other clauses intended to detail the manner in which the trustee's powers are exercised, criteria for making personal or patrimonial decisions, or rules regarding relations with third parties, to the extent that these do not contravene mandatory legal provisions and public order.

At the same time, the regulation of the reporting obligation and the possibility of appointing a person other than the guardianship court constitute guarantees designed to ensure transparency in the exercise of the mandate and to prevent possible abuses, contributing to the balance between the freedom to configure the mandate and the need for effective supervision.

2.5. Execution of the guardianship mandate. Approval by the court. Additional measures

The execution of the guardianship mandate is subject to the cumulative fulfillment of the conditions set forth in Article 2029¹(4) of the Civil Code, namely the onset of deterioration of the principal's mental faculties, as determined on the basis of medical and psychological evaluation reports, as well as the approval of the mandate by the court at the request of the trustee appointed by contract.

When approving the mandate, the guardianship court may order, in order to prevent serious harm to the principal, any measure necessary to protect the principal's person, representation in the exercise of civil rights and freedoms, or administration of property (Art. 2029¹ para. (5) of the Civil Code). At the same time, the act by which the principal previously entrusted the administration of his property to another person continues to have effect, unless the guardianship court orders its revocation for valid reasons. (Art. 2029¹ para. (6) of the Civil Code).

In the event that the guardianship mandate does not sufficiently ensure the care of the principal or the administration of his or her property, the guardianship court may order, either during the approval procedure or subsequently, the establishment of a guardianship measure to supplement the mandate (Art. 2029⁵ para. (1) sentence I of the Civil Code). In such a situation, the legislator establishes a preference for appointing the representative as guardian (Art. 2029⁵ para. (1) final sentence of the Civil Code). If the trustee does not also acquire the status of guardian, he or she continues to exercise the mandate and is required to draw up, upon

⁴ Cristian Codrin Botu in Rodica Constantinovici (coordinator), *Ocrotirea majorului – Reforma legislativă realizată prin Legea nr. 140/2022*, Solomon Publishing House, Bucharest, 2023, p. 200-201.

⁵ For more details on the obligation to register with RNEMSO and the list of documents concerned, see Iulia Bogos, Veronica Stan, *Registrul Național de Evidență a Măsurilor de Sprijin și Ocrotire (R.N.E.M.S.O.) – cel mai nou Registru național notarial*, Universul Juridic Premium 5 din 2025, p. 4.

request and at least annually, a report to be submitted to the guardian of the principal, and, upon termination of the mandate, to render account to the latter as well (Art. 2029⁵ para. (2) of the Civil Code).

It can be said that the mechanism for executing the guardianship mandate reflects a careful balance between respecting the autonomy of the principal and the need for effective judicial intervention for the purpose of protecting them. Making the effects of the mandate conditional on both a medical finding of incapacity and the approval of the guardianship court gives this instrument a preventive but controlled character, reducing the risk of premature or abusive activation.

At the same time, the court's ability to supplement the mandate by establishing a protective measure demonstrates that the protective mandate is not designed as a rigid mechanism, but as an adaptable one, capable of being adjusted according to the specific needs of the protected person. The preference given to the trustee for appointment as guardian contributes to the continuity of protection and respect for the anticipated will of the mandate, without, however, excluding the judicial control necessary in situations where the interest of the mandate so requires.

2.6. Procedure for approving the guardianship mandate

The approval of the guardianship mandate is subject to a non-contentious judicial procedure of a particular nature (*sui generis*). The purpose of this procedure is to establish a legal protection measure, a category which, according to Article 527 of the Civil Procedure Code, includes, by way of example, court authorizations and legal supervision or insurance measures. The specific nature of the approach lies in the fact that its purpose is not to resolve a dispute or to establish a right in opposition to another person, but rather to adopt a protective measure.

From a procedural point of view, Art. 536 para. (2) of the Civil Procedure Code refers, as a matter of priority, to the provisions of Articles 943¹–943⁷ of the Civil Procedure Code and, in addition, to the general rules on non-contentious matters laid down in Articles 527–535 of the Civil Procedure Code, insofar as the special rules do not regulate certain aspects. At the same time, according to Article 536(1) of the Civil Procedure Code, these provisions may be supplemented, where necessary, with rules specific to contentious proceedings, but only to the extent that they are compatible with the non-contentious nature of the application.⁶

Therefore, the request for approval of the guardianship mandate falls within the jurisdiction of the guardianship court in whose district the principal or, as the case may be, the beneficiary of the guardianship mandate resides (Article 943¹ of the Civil Code).

In terms of territorial jurisdiction, the current regulation enshrined in Article 943¹ of the Civil Procedure Code establishes a derogation from both the general rule in contentious matters – *actor sequitur forum rei*, provided for in Article 107(1) of the Civil Procedure Code – and from the special protective rule contained in Article 114(1) of the Civil Procedure Code. This derogation also departs from the logic of Article 528(2) of the Civil Procedure Code, according to which, in non-contentious matters, jurisdiction is determined by reference to the rules applicable to contentious requests.

Since requests for the approval of guardianship fall within the scope of measures for the protection of individuals, the application of Article 114(1) of the Civil Procedure Code, a provision established precisely in consideration of the interests of the person under guardianship, would have been justified. Such a solution would have allowed jurisdiction to be determined based on the domicile or residence of the principal or beneficiary, which is relevant in practice, given that the persons resorting to such measures are often elderly or affected by health problems, and the actual place of care may differ from the formal domicile.⁷

Furthermore, a change of domicile during the proceedings does not affect the jurisdiction of the court already seised, which remains competent to hear the case, in accordance with the general rules on the stability of jurisdiction.

The right to bring proceedings lies exclusively with the trustee appointed by contract, the application being accompanied by the documents provided for in Article 943² of the Civil Procedure Code, namely a copy of the guardianship mandate contract, the medical and psychological assessment reports of the principal or the

⁶ For a comprehensive examination of the legal regime applicable to the approval of guardianship mandates, see Teodor Bodoasca, Natalia Saharov, *Contribuții la studiul reglementarilor legale referitoare la încuviințare și revocarea mandatului de ocrotire*, Universul Juridic Premium 7 from 2023, p. 2.

⁷ For a detailed analysis of the territorial jurisdiction regime in the matter of granting guardianship mandates, as well as for the arguments de lege ferenda formulated in doctrine, see Teodor Bodoasca, Natalia Saharov, *Contribuții la studiul reglementarilor legale referitoare la încuviințare și revocarea mandatului de ocrotire*, Universul Juridic Premium 7 from 2023, p. 2.

beneficiary of the mandate, drawn up no more than two months prior to the referral to the court, as well as, where applicable, the report of the healthcare institution where the principal is hospitalized. In the case governed by Article 114(6) of the Civil Code, the application must also be accompanied by the principal's death certificate or evidence of his inability to perform his guardianship duties, as well as a copy of the decision establishing special guardianship.

Upon receipt of the request, the court shall order its communication, together with the attached documents, to the principal or, as the case may be, to the beneficiary of the guardianship mandate and to the prosecutor, as well as a copy to a member of the family of the principal and to the person designated by contract before whom the agent is to fulfill his or her obligation to render account.

At the same time, the court shall verify, by consulting the National Notarial Register provided for in Article 2033 of the Civil Code, whether the mandate has been revoked or whether the trustee has resigned from it, requesting the notary public who drew up the contract to send a certified copy of the contract.

Throughout the proceedings, the court may order provisional measures imposed by the interests of the principal or the beneficiary of the mandate, including the appointment of a special curator, a position to which the trustee appointed by contract is given priority (Art. 943³ of the Civil Procedure Code).

The request shall be settled in a closed session, with the principal or, as the case may be, the beneficiary of the mandate and the trustee being summoned at short notice, as well as with the participation of the prosecutor (Art. 943⁴(1) and (2) of the Civil Procedure Code). The court has the obligation to hear the principal or the beneficiary, asking them questions aimed at assessing the necessity and appropriateness of granting the mandate. The hearing shall be conducted, if it is in the interest of the person concerned, at their home, at the place where they are cared for, or at a place deemed appropriate, in the presence, where appropriate, of a trusted person (Art. 941 para. (3)-(4) and Art. 943⁴ para. (3) of the Civil Procedure Code). Throughout the proceedings, the principal or beneficiary of the mandate shall be informed, in a manner appropriate to their condition, of the progress of the proceedings and of any measures taken in relation to their person or property (Art. 940 para. (7) and Art. 943⁴ para. (5) of the Code of Civil Procedure).

In conclusion, the court shall grant the request for approval of the guardianship mandate if the legal conditions are met, or reject it, in which case the special guardianship established for the duration of the proceedings shall cease by operation of law (Art. 943⁴ para. (6) and Art. 943⁶ para. (2) of the Civil Procedure Code). The decision is subject only to appeal, with no right of cassation in this matter (Art. 943⁵ of the Civil Procedure Code). After the admission decision becomes final, the court shall immediately communicate its operative part, in a certified copy, to the institutions referred to in Article 941 of the Civil Procedure Code, as well as to the notary public who authenticated the guardianship mandate (Article 943⁶(1) of the Civil Procedure Code).

It can be concluded that the procedure for approving the guardianship mandate is structured as a jurisdictional mechanism in which rigorous judicial control is intended to compensate for the principal's lack of capacity without nullifying their previously expressed autonomy of will. The court's obligation to hear the principal or beneficiary, to keep them informed, and to take provisional measures reflects a clear focus on protecting the individual, in accordance with the requirements of the right to dignity and self-determination.

2.7. Scope of the mandate. Obligations

In the event that the scope of the guardianship mandate is unclear or open to interpretation, the trustee has the obligation to interpret and exercise it in accordance with the rules applicable to the special guardianship of adults, in accordance with Article 2029⁴ of the Civil Code.

2.7.1. Obligations of the trustee

The trustee appointed by the guardianship mandate contract has the following legal obligations:

- The obligation to request approval of the mandate – the trustee has the duty to notify the competent guardianship court for approval of the mandate, under the conditions of Art. 2029¹ para. (4) of the Civil Code. This obligation is a condition for the effectiveness of the mandate, as the court exercises control over its legality and appropriateness in relation to the interests of the principal.
- Obligation to exercise the mandate exclusively in the interests of the principal and with respect for his dignity – In order to ensure the moral and material well-being of the principal, the agent is obliged: (i)

to take any decision regarding the execution of the mandate exclusively in the interests of the principal; (ii) to respect and protect the dignity, rights, and freedoms of the principal; (iii) take into account the principal's wishes, needs, and preferences; (iv) safeguard, as far as possible, the autonomy of the mandate. In this regard, the provisions of Art. 174 para. (1) and (2) of the Civil Code regarding the obligations of the guardian apply accordingly to the trustee, according to Art. 20293 of the Civil Code.

According to Art. 174 para. (1) and (2) of the Civil Code, applicable *mutatis mutandis*:

- The trustee is required to care for the principal in order to: accelerate healing, restore or maintain autonomy, improve living conditions, and ensure moral and material well-being. In fulfilling this obligation, the trustee shall take into account the principal's condition, abilities, degree of incapacity, and all the specific circumstances in which he or she finds himself or herself. For this purpose, the principal's income and, if necessary, all of his or her assets may be used. However, family heirlooms, personal items, and assets that are indispensable to the principal or intended for his or her care shall remain at his or her disposal, under the care of the trustee.

- (In exercising the mandate, the trustee has the following specific duties: a) to give priority to the wishes, preferences, and needs of the principal, to provide the necessary support for the formation and expression of the principal's wishes, and to encourage the principal to exercise his or her rights and fulfill his or her obligations independently, to the extent possible; b) to cooperate with the principal and respect his or her privacy and dignity; c) to ensure, where possible, that the principal is informed and explained, in a manner appropriate to his or her condition, all acts and facts that may affect him or her, their usefulness and urgency, as well as the consequences of a possible refusal to conclude them; d) take all necessary measures to protect and realize the rights of the principal; e) cooperate with natural or legal persons who have legal responsibilities in the care of the principal; f) maintain, as far as possible, a personal relationship with the principal; g) in the cases provided by law, to take the necessary steps to prepare medical and psychological assessment reports on the principal and to notify the guardianship court.

Therefore, the list reflects the modern orientation of civil law towards protecting the autonomy and will of the protected person.

- **Obligation to report** – the trustee is obliged to report at the intervals established by the principal in the contract, the interval between these dates not exceeding 3 years, to the person designated by the principal or, in their absence, to the person indicated by the guardianship court when approving the mandate, in accordance with Art. 20292 para. (2) of the Civil Code.

- **Obligations in relation to the principal's tutor** – if the agent does not also act as tutor, he or she has the obligation: to continue to perform the mandate, to draw up, upon request and at least once a year, a report to be submitted to the principal's tutor, and, upon termination of the mandate, to render account to the guardian as well, in accordance with Art. 20295 para. (2) of the Civil Code.

- **Obligation to inventory the principal's assets** – if the trustee is responsible for managing the principal's assets, they are required to inventory them. According to Art. 20296 para. (1) of the Civil Code, within 10 days of the approval of the mandate by the guardianship court, the trustee shall draw up an inventory of the principal's assets, a copy of which shall be sent to the guardianship court and to the person designated to receive the report, pursuant to Article 20292 para. (2) of the Civil Code. The provisions of Articles 820-822 of the Civil Code shall also apply, unless the parties have provided otherwise in the contract.

At the same time, according to Article 2029⁶(2) of the Civil Code, the guardianship court seized with a request for revocation of the mandate may request the trustee to submit an updated inventory of the principal's assets.

- **Other obligations** – the trustee also has all the other obligations provided for in Article 2017-2024 of the Civil Code, to the extent that they are compatible with the legal regime of the guardianship mandate.

2.7.2. Obligations of the principal

Unless otherwise stipulated in the contract, the trustee is authorized to perform, for his own benefit, the obligations incumbent upon the principal under Articles 2025-2027 of the Civil Code, namely: the principal's

obligation to bear all expenses necessary for the performance of the mandate, the obligation to compensate the trustee for damages suffered in the performance of the mandate, and the obligation to pay the remuneration due to the agent. This authorization results from the provisions of Article 2029⁸ of the Civil Code. Therefore, the rule is supplementary in nature, and the parties may derogate from this rule by agreement.

With regard to legal acts concluded by the principal, according to legal provisions, they are subject to distinct rules, depending on the moment of their conclusion in relation to the approval of the guardianship mandate:

- Legal acts concluded prior to the approval of the guardianship mandate may be annulled or the obligations arising therefrom may be reduced only to the extent that, at the time of their conclusion, the lack of discernment of the principal was notorious or known to the other party, according to Art. 20297 para. (1) of the Civil Code.
- Legal acts concluded after the approval of the guardianship mandate and which are incompatible with its clauses cannot be annulled, nor can the obligations arising therefrom be reduced, unless the principal has suffered damage, in accordance with Article 20297(2) of the Civil Code.

Therefore, the legal provisions establish differentiated protection for the principal, intended to ensure a balance between the security of legal relationships and the need to protect vulnerable persons.

2.8. Termination of the guardianship mandate as a result of regaining legal capacity

If the causes that led to the approval of the guardianship mandate have ceased to exist, the trustee is obliged to immediately notify the guardianship court in order to establish the termination of the contract, as a result of the principal regaining their capacity to exercise their rights.

If the principal is hospitalized or cared for in a healthcare institution, the same obligation to notify also applies to that institution, according to Article 2029⁹(1) of the Civil Code.

The guardianship mandate ceases to have effect from the date on which the guardianship court finds that the contract has been terminated as a result of the principal regaining capacity to exercise their rights, in accordance with Article 2029⁹ para. (2) of the Civil Code.

2.9. Revocation of the guardianship mandate by the trustee who has regained capacity, resignation and replacement of the trustee

After the mandate has been approved by the guardianship court, the trustee may not renounce the execution of his mandate except in strict compliance with the conditions provided by law, according to Art. 202910 para. (1) sentence I of the Civil Code. Therefore, revocation operates as a manifestation of the principal's regained autonomy and is not subject to any conditions of form or justification.

After the mandate has been approved by the guardianship court, the trustee may not renounce the execution of his mandate except in strict compliance with the conditions provided for in the delegation, according to Art. 2029¹⁰ para. (1) sentence I of the Civil Code. Thus, resignation is permitted only if the trustee: (i) replaces himself with another person in the execution of the mandate, to the extent that the principal has expressly authorized him to do so; or (ii) requests the guardianship court to establish a protective measure with regard to the principal. Any contractual clause that would allow the trustee to renounce in violation of these conditions is unwritten, according to Art. 2029¹⁰ para. (1) final sentence of the Civil Code.

The person replacing the trustee is required to immediately inform the guardianship court of the substitution, in accordance with Article 2029¹⁰(2) of the Civil Code. Thus, the restrictive regime of renunciation reflects the protective function of the guardianship mandate and the need to ensure the continuity of the measure to protect the principal.

The renunciation of the mandate is not permitted in the case of a mandate for the administration of the principal's estate, as the mandate is intended to ensure the continuity of the administration of the principal's estate.

3. Comparative law perspectives

The French Civil Code regulates the mandate for future protection (*mandat de protection future*), an institution that was one of the sources of inspiration for the Romanian regulation. The institution is regulated in the French Civil Code, in Articles 477–488.

According to Article 477 of this code, any adult or emancipated minor who is not under guardianship may appoint, by mandate, one or more persons to represent them in the event that, in one of the situations provided for in Article 425, they are no longer able to manage their own interests.⁸

Thus, under French law, the mandate is an expression of an anticipated will and only comes into force after incapacity has been established, under judicial supervision. The particularity of the French model lies in its emphasis on proportionality control and the mandatee's obligation to strictly respect the interests and wishes previously expressed by the mandator. Unlike *curatelle* or *tutelle*, the mandate does not affect the principal's legal capacity. Even after activation, the principal retains his or her rights and the ability to enter into legal acts within the limits of his or her remaining capacity. The principal may specify the exact areas of action of the agent (e.g., personal assistance, administration of property, or both).

Under German law, advance protection is achieved through *Vorsorgevollmacht*⁹ (power of attorney for care), which allows a person to appoint a representative in the event of loss of capacity. The German system favors conventional solutions, with the court intervening if protection through power of attorney proves insufficient. The mandate may cover financial, legal, and health matters; the designated person may make decisions regarding expenses, bank accounts, or even the granting/refusal of medical consent, within the limits expressly provided for in the document. In practice, if there is disagreement between the representative and the medical professional regarding the principal's wishes, the guardianship court (*Betreuungsgericht*) is involved.

Compared to the guardianship mandate under Romanian law: (i) both institutions are manifestations of anticipated autonomy of will, offering individuals the possibility to appoint a trusted representative for the event of future incapacity. The main difference lies in the level of judicial control and the preliminary formalities: (i) in Germany, the *Vorsorgevollmacht* takes effect without prior judicial validation, although there may be subsequent control; (ii) the Romanian guardianship mandate requires the approval of the guardianship court in order to be effective. The German model places a strong emphasis on immediate effectiveness and avoiding the establishment of guardianship, while the Romanian regime gives a more pronounced role to the guardianship court as supervisor of the protective measure.

The Civil Code of Québec establishes the protection mandate (*mandat donné en prévision de l'incapacité*) as a central instrument for the protection of adults, placing particular emphasis on respect for autonomy and the adaptation of measures to changes in the person's condition. The court validates the mandate, but seeks to maintain as much residual autonomy as possible for the principal, even after the measure has been activated. The principal may confer powers on the mandatary relating to: the care of the person (decisions relating to health, living conditions, residence, personal care); the administration of property (management of assets, conclusion of legal acts, representation in relations with third parties); or both categories, depending on the option expressed. The Civil Code of Québec allows for an extremely flexible configuration of the mandate, with the principal being able to: appoint several agents with distinct powers; establish detailed rules for the exercise of the mandate; introduce control and reporting mechanisms.¹⁰

A convergence can be observed among the systems analyzed in the direction of recognizing advance directives as a central element of legal protection, with differences arising mainly in the intensity of judicial control and the degree of flexibility granted to the representative.

4. Conclusions

The guardianship mandate lies at the intersection between contractual freedom and legal protection, representing a normative solution that strikes a balance between self-determination and legal solidarity. However, its effectiveness depends on how it is applied in practice, on the rigor of judicial oversight, and on the trustee assuming their role not as a substitute for the ward's will, but as a facilitator of it.

⁸ For a detailed comparative analysis of French regulation of the future protection mandate, see Roxana Matefi, *Mandatul de ocrotire în legislația română și cea franceză – Privire comparativă*, *Universul Juridic Premium* 9 from 2023, p. 3.

⁹ See more at <https://www.justiz.nrw/BS/lebenslagen/familie/Betreungsverfahren/vorsorgevollmacht>.

¹⁰ See more at https://cdn-contenu.quebec.ca/cdn-contenu/curateur-public/pdf/dep_mandat.pdf.

The regulation of guardianship is compatible with the principles enshrined in the UN Convention on the Rights of Persons with Disabilities, in particular Article 12, which promotes the recognition of the legal capacity of persons with disabilities based on a system of support in decision-making, rather than completely substituting their will.

The guardianship mandate is not just a technical alternative to traditional guardianship measures, but a paradigm shift in Romanian civil law. It reflects the transition from a model of substitute protection to a participatory one, in which the vulnerable person remains, as far as possible, an active subject of their own decisions.

By combining autonomy of will with proportionate judicial control, the guardianship mandate is emerging as a legal instrument that meets constitutional and conventional requirements.

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