

MOLDOVA STATE UNIVERSITY
FACULTY OF LAW
DOCTORAL SCHOOL OF LEGAL SCIENCES

In the capacity of manuscript
C.Z.U.: 347.926:347.95(043.2)

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**THE PROCEDURE FOR THE ESTABLISHMENT, RENEWAL, AND
REVOCATION OF JUDICIAL PROTECTION MEASURES**

Specialty 553.03 – CIVIL PROCEDURAL LAW

Summary of the doctoral thesis

CHIȘINĂU, 2026

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The doctoral dissertation and its abstract may be consulted at the National Library of the Republic of Moldova, the Library of Moldova State University, and on the website of the National Agency for Quality Assurance in Education and Research (www.anacec.md).

The abstract was distributed on 01.02.2026

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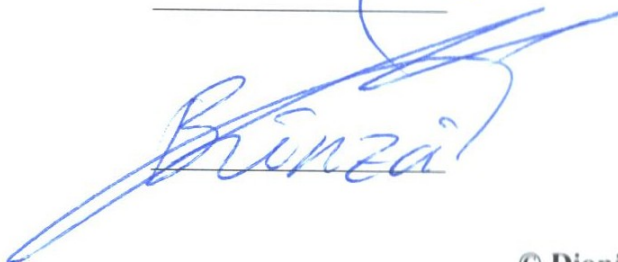
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CONCEPTUAL FRAMEWORK OF THE RESEARCH

Relevance and Significance of the Research Topic. Pursuant to Article 51 of the Constitution of the Republic of Moldova, the State is under an obligation to protect persons who, as a result of a mental illness or a physical, mental, or psychological impairment, are unable to fully understand their actions or express their will. Judicial protection measures are intended to ensure proportionate protection of such persons while preserving, to the greatest extent possible, their legal capacity to act.

The importance of the present research derives from its complex and original nature, whereas its relevance stems from the conceptual innovations introduced into civil procedure through the establishment of the procedure governing judicial protection measures. Furthermore, when adopting the procedure for the establishment, renewal, and revocation of judicial protection measures, the legislator failed to fully take into account the fundamental concepts and principles of civil procedure. In several respects, the regulation of this procedure contradicts the basic concepts of civil procedural law. Moreover, certain provisions governing the procedure are ambiguous and require clarification or legislative amendment. This is particularly evident with regard to the persons referred to in Article 94¹ of the Civil Code, to whom the law grants certain procedural rights while failing to define either their procedural legal status or the manner in which they are to be involved in the proceedings. Consequently, the procedure concerning judicial protection measures raises significant questions both as to its legal nature and as to the specific features governing the examination of such cases.

The relevance of the research topic is further demonstrated by the steady increase in the number of applications submitted to the courts seeking the establishment, renewal, or revocation of judicial protection measures.

Although the procedure concerning protection measures in general, and the procedure for the establishment, renewal, and revocation of judicial protection measures in particular, has existed for more than nine years, and although the number of cases examined under this procedure has continuously increased, the subject has attracted only limited attention within the national academic community. Accordingly, the relevance of the present research lies primarily in the need to enrich the doctrinal framework relating to the procedure for the establishment, renewal, and revocation of judicial protection measures.

The importance and timeliness of the research also derive from the necessity of conducting a comprehensive and multidisciplinary study of the procedure governing the establishment,

¹ Codul civil al Republicii Moldova. Publicat în Monitorul Oficial al Republicii Moldova din 22-06-2002 Nr. 82-86, art. 94

renewal, and revocation of judicial protection measures. Such a study will facilitate a better understanding of this procedure by courts, guardianship authorities, legal practitioners, and litigants alike, thereby contributing to a more effective protection of the rights and legitimate interests of all participants involved in proceedings concerning judicial protection measures.

Scientific Problem and Its Resolution. Neither the national nor the international legal doctrine provides a uniform conceptual approach to the subject under consideration. Accordingly, this dissertation, entitled *The Procedure for the Establishment, Renewal, and Revocation of Judicial Protection Measures*, seeks to fill the gap in comprehensive scholarly research in this field, which constitutes one of the principal objectives of the present study.

*The scientific problem addressed by this research consists in **elucidating** the conceptual framework of the legal nature of the procedure for the establishment, renewal, and revocation of judicial protection measures, determining the place of this procedure within the system of civil procedural law, and identifying the specific features of the examination of such cases, **this has led to** the clarification of the legal nature of the procedure for the establishment, renewal, and revocation of judicial protection measures, as well as of the rules of civil procedure applicable to the adjudication of these cases, **thereby creating** a theoretical foundation for the effective application of procedural law governing judicial protection measures.*

Aim of the Dissertation. The aim of this dissertation is to conduct a comprehensive theoretical and practical scientific study of the procedure for the establishment, renewal, and revocation of judicial protection measures and of its specific features, in order to identify the fundamental concepts governing this procedure, as well as to formulate *de lege ferenda* proposals intended to harmonize the procedure with the fundamental principles and concepts of civil procedure and to improve its legislative framework.

To achieve this aim, the following research objectives have been established: 1) To determine whether proceedings concerning the establishment, renewal, or revocation of judicial protection measures are contentious or non-contentious in nature; 2) To determine the legal nature of the procedure concerning protection measures in general, and of the procedure for the establishment, renewal, and revocation of judicial protection measures in particular, as well as their place within the system of civil procedural proceedings; 3) To identify and analyse the prerequisites and conditions governing the exercise of the right to initiate proceedings concerning the establishment, renewal, and revocation of judicial protection measures; 4) To identify and examine the procedural particularities of the adjudication of cases concerning the establishment, renewal, or revocation of judicial protection measures at each procedural stage; 5) To determine the legal regime and specific characteristics of the measure provided for in Article 92(2) of the

Civil Code concerning the establishment of provisional protection during the pendency of proceedings for the appointment of a guardian or curator; 6) To examine judicial practice relating to cases concerning the establishment, renewal, and revocation of judicial protection measures in order to identify issues relating to the interpretation and application of procedural legislation, assess the directions of future judicial practice, and formulate proposals for its further development; 7) To formulate *de lege ferenda* proposals aimed at harmonizing the procedure under examination with the fundamental principles and concepts of civil procedure and improving the legal framework governing the establishment, renewal, and revocation of judicial protection measures.

Research Hypothesis. The research is based on the general hypothesis that the procedure for the establishment, renewal, and revocation of judicial protection measures requires further improvement in order to ensure more effective protection of the rights and legitimate interests of vulnerable persons and to ensure its proper conceptual classification within the system of civil procedural proceedings.

The research is further based on the following specific hypotheses: 1) Depending on the circumstances of each case, proceedings concerning the establishment, renewal, or revocation of judicial protection measures may be contentious, non-contentious, or quasi-contentious in nature; 2) Proceedings concerning protection measures in general, and proceedings for the establishment, renewal, or revocation of judicial protection measures in particular, do not properly belong within the framework of special proceedings; 3) In carrying out any procedural act within proceedings concerning the establishment, renewal, or revocation of judicial protection measures, both the court and all other participants must be guided by the best interests of the vulnerable person; 4) Within proceedings concerning the establishment, renewal, and revocation of judicial protection measures, the court performs not merely a supervisory role but an active one, being under an obligation to take all necessary measures to ensure that the proceedings effectively protect the interests of the vulnerable person.

Research Methodology and Justification of the Research Methods. Given the specific nature and complexity of the subject under investigation, the research was conducted using a combination of complementary research methods, including the historical-legal method, the comparative legal method, the dialectical method, the legal-practical method, the statistical method, the prospective method, and methods of logical analysis.

The normative basis of the research comprised the Constitution of the Republic of Moldova, the Civil Procedure Code, the Civil Code, as well as other legislative and subordinate normative acts relevant to the subject under examination. In addition, the legislation of several

foreign jurisdictions—including Romania, Latvia, France, England, Belgium, Germany, Norway, Denmark, and the Russian Federation—was analysed, together with the relevant international treaties and conventions. Furthermore, the research examined the relevant national and international case law in this field.

Theoretical Importance and Practical Value of the Dissertation. The theoretical significance of this dissertation lies in its comprehensive and multidimensional analysis of the procedure for the establishment, renewal, and revocation of judicial protection measures. The study also raises, as a matter of principle, the question of whether proceedings concerning the establishment, renewal, and revocation of judicial protection measures should be regarded as contentious or non-contentious, while substantiating the existence of a new conceptual approach in this field. On this basis, the legal nature of the procedure has been determined.

These scientific issues have not previously been the subject of comprehensive research in Moldovan legal doctrine. Consequently, this dissertation is intended to serve as a starting point for future scholarly studies addressing these matters, fostering academic debate and contributing to the further development of legal doctrine and legal science.

The practical value of this dissertation derives from the identification and analysis of the specific characteristics of the procedure for the establishment, renewal, and revocation of judicial protection measures. Based on the findings of the research, legislative gaps, omissions, and inconsistencies within civil procedural legislation and judicial practice have been identified. Practical solutions have been proposed and substantiated to address the difficulties encountered by the courts, together with *de lege ferenda* recommendations aimed at improving the legislative framework and harmonizing it with the fundamental principles and concepts of civil procedure.

Approval of the Research Results. This dissertation was prepared and discussed within the Doctoral School of Legal and Economic Sciences of Moldova State University. The research findings were approved by the Doctoral Supervisory Committee and by the Department of Civil Procedure Law of Moldova State University. The conclusions and recommendations set forth in this dissertation have been presented in twelve scientific publications, including articles published in peer-reviewed legal journals, papers presented at scientific conferences, and contributions to a collective scholarly treatise.

Summary of the Dissertation. The structure of the dissertation is determined by the specificity and complexity of the research topic, the scientific methods employed, and the objectives pursued.

The dissertation consists of an introduction, three chapters comprising eleven subchapters, general conclusions and recommendations, a bibliography, and three appendices.

The main body of the dissertation comprises 215 pages, while the bibliography includes 196 references. The overall length of the dissertation is justified by the complexity and multidisciplinary nature of the subject under examination.

THESIS CONTENT

Chapter I – Analysis of the general state of research in the field concerning the procedure for establishing, renewing, and revoking judicial protection measures provides an examination of the current scientific status and the degree of development of the research topic under consideration, as well as of its related components, at both international and national levels.

Subchapter 1.1 entitled “**Analysis of scientific literature on the thesis topic published in the Republic of Moldova**” examines the scientific contributions published in the Republic of Moldova that are relevant to the subject matter of the present doctoral thesis.

The analysis of scientific publications addressing the thesis topic and referring to national legislation is conducted by distinguishing between two categories of scholarly works. The first category comprises publications issued prior to the entry into force of Law No. 66 of 13 April 2017, which primarily focused on the legal framework and procedural mechanisms concerning the restriction of legal capacity and the declaration of a person as legally incapacitated. The second category includes scientific works published after the entry into force of Law No. 66 of 13 April 2017, which specifically address the procedure for establishing, renewing, and revoking judicial protection measures.

With regard to the first category, a substantial contribution to the study of the procedure for restricting legal capacity and declaring a person legally incapacitated was made by V. Crețu. During the period 2008–2011, the aforementioned author published eight scientific articles in the *Journal of the National Institute of Justice*, in which he examined various procedural aspects related to cases concerning the restriction of legal capacity and the declaration of a person’s incapacity. Although the procedure for restricting legal capacity and declaring incapacity has subsequently been repealed, the analyses, theoretical approaches, and concepts developed in these studies remain relevant and applicable to the contemporary procedure for establishing, renewing, and revoking judicial protection measures.

The second category of publications concerns, directly and specifically, the **Procedure regarding protection measures**, which encompasses proceedings for the establishment, renewal, and revocation of judicial protection measures.

Among the scholarly contributions belonging to this category, the work authored by A. Prisac² is particularly noteworthy. This study was among the first academic works to examine the

² PRISAC, A. Procedura privind măsurile de ocrotire (intentarea, domeniul de aplicare și competența jurisdicțională). Conferința "Dezvoltarea cadrului juridic al Republicii Moldova în contextul necesităților de securitate și asigurarea a parcursului european" Chișinău, Moldova, 22 ianuarie 2018. P. 430-446, ISBN: 978-9975-3298-2-8

Procedure regarding protection measures. The publication provides a concise overview of the entire procedural framework governing protection measures.

Of particular interest is also the analysis of certain institutions of civil procedure from the perspective of proceedings concerning the establishment, renewal, and revocation of judicial protection measures. Thus, in his work, F. Chifa argues that the burden of proof in such cases rests with the petitioner, while also identifying the facts that must be proven³. The author's approach demonstrates that, in addition to examining the burden of proof, he also analyzes the subject matter of proof specific to this category of proceedings.

Another institution of civil procedure examined in the context of proceedings for the establishment, renewal, and revocation of judicial protection measures is addressed by I. Băcu and A. Băcu. The authors maintain that the primary role of the lawyer in such proceedings is to make every effort to preserve an interaction with the represented person based on trust and support, while simultaneously ensuring that the person adequately understands the information provided. Furthermore, the lawyer must ensure that the protection measures to be established serve the interests and well-being of the person concerned and promote, to the greatest extent possible, that person's autonomy⁴.

The analysis of scientific works published in the Republic of Moldova on the researched topic demonstrates that the procedure for establishing, renewing, and revoking judicial protection measures has been insufficiently studied, with existing research on this procedure remaining fragmentary in nature.

Subchapter 1.2 entitled **“Analysis of scientific materials on the thesis topic published abroad”** presents an overview of scientific research examining the procedure for establishing, renewing, or revoking judicial protection measures published outside the Republic of Moldova. In this regard, scientific publications from Romania, France, the United Kingdom of Great Britain and Northern Ireland, and the Russian Federation were analyzed.

Following the analysis of scientific works published abroad on the researched topic, it may be concluded that, despite the considerable challenges involved, the procedure concerning the protection of adults has received limited attention from both national and international legal

³ CHIFA, F. *Particularitățile sarcinii probațiunii în procedura specială*. În Revista Institutului Național al Justiției nr. 3 (66) din 2023. p. -41. ISSN 1857-2405

⁴ BĂCU, I., BĂCU, A. Protecția persoanelor prin intermediul măsurilor de ocrotire judiciară. În Jurnalul juridic național: teorie și practică nr. 1(46)/2021. p.43 . ISSN: 2345-1130

literature. Scholars specializing in civil procedural law generally tend to omit the study of this particular field⁵.

Chapter II – The legal and procedural framework of cases concerning the establishment, renewal, and revocation of judicial protection measures contains a theoretical and applied investigation into the existence or absence of a contentious nature in cases concerning the establishment, renewal, or revocation of judicial protection measures, the legal nature of such proceedings, as well as the prerequisites and conditions for exercising the right to initiate proceedings concerning the establishment, renewal, or revocation of judicial protection measures.

Subchapter 2.1 entitled **“The contentious/non-contentious nature of the procedure for establishing, renewing, and revoking judicial protection measures”** determines whether the procedure for establishing, renewing, and revoking judicial protection measures has a contentious or non-contentious nature.

First and foremost, the defining characteristics of contentious and non-contentious proceedings were established. In principle, the defining features of contentious proceedings arise, in particular, from the status of the subjects involved and from the existence of a legal dispute submitted for adjudication before the court. Contentious proceedings necessarily presuppose the existence of two parties, namely subjects of a disputed substantive legal relationship, pursuing opposing interests. The existence of a legal dispute represents the second defining feature of contentious proceedings, since the inability to exercise a right in a natural manner determines the necessity of applying legal remedies for the protection of persons’ rights and interests⁶. Another defining characteristic of contentious proceedings is the adversarial nature of the trial.

Although legal literature does not provide a unanimous position regarding the characteristics of non-contentious proceedings, a common feature emphasized by all legal scholars can be identified, namely the absence of a legal dispute. Another characteristic of non-contentious proceedings is the absence of parties pursuing opposing interests and being subjects of a substantive legal relationship. Non-contentious proceedings are also characterized by the limited application of the adversarial principle.

With regard to the *first characteristic*, namely the existence or non-existence of two parties that are subjects of a substantive legal relationship and pursue opposing interests, it was established that proceedings concerning the establishment, renewal, or revocation of judicial protection

⁵ JEULAND E. La nature juridique de la procédure des tutelles: pour la reconnaissance d'un lien procédural de protection. În *Revue trimestrielle de droit civil*, (2018)2, [online] [citat 29.07.2025] Disponibil: <https://www.dalloz.fr/lien?famille=revues&doctype=RTDCIV%2FCHRON%2F2018%2F0135>

⁶ BELEI, E., COJUHARI, A. et al. *Drept Procesual Civil. Partea Generală*. Lexon-Plus. Chișinău 2014 p. 31. ISBN:978-9975-4188-5-0;

measures involve two parties (the petitioner and the vulnerable person), who are subjects of the substantive protective legal relationship. However, these parties do not pursue opposing interests. The only interest that may be pursued in such proceedings is the interest and well-being of the vulnerable person. Therefore, it may be concluded that the first characteristic of contentious proceedings is not fully present in this category of cases.

*The second characteristic examined concerns the existence or absence of a legal dispute in proceedings for the establishment, renewal, or revocation of judicial protection measures. In this regard, M.M. Nenashev rightfully defines a legal dispute as **a contradiction of the will of two parties**, objectively expressed, consisting of a legal claim submitted by one party (the claimant), which is opposed by the legal position of the second party (the respondent), thereby preventing the actual satisfaction of the submitted claim⁷.*

At the outset, it should be emphasized that a legal dispute is absent where the application for the establishment, renewal, or revocation of judicial protection measures is submitted by the vulnerable person in respect of themselves. It is not possible for a contradiction of wills to exist within the same person. Where the application is submitted by the persons referred to in points b), c), d), and e) of Article 94(1) of the Civil Code, it is necessary to determine whether the three defining characteristics of a legal dispute outlined above are present. Proceedings concerning the establishment, renewal, or revocation of judicial protection measures are not entirely foreign to the characteristic elements of a legal dispute. However, given their specific nature and the diversity of possible factual scenarios, the existence of a legal dispute must be determined depending on the level of discernment of the person subject to the protection measure. Thus, two of the three characteristics of a legal dispute, namely the second characteristic (the existence of a legal claim made by the petitioner against the vulnerable person) and the third characteristic (the existence of a legal position expressed by the vulnerable person opposing the petitioner's claim), are also applicable to these types of proceedings. As regards the first characteristic of a legal dispute, namely the existence of an objectively expressed contradiction of wills between two parties, its presence in proceedings concerning the establishment, renewal, or revocation of judicial protection measures depends on the level of discernment of the person subject to such measures.

Accordingly, where the vulnerable person understands the petitioner's request for the establishment of a protection measure and is able, to some extent, to express their will regarding that request, the existence of a legal dispute may be established. In such circumstances, all three

⁷ НЕНАШЕВ, М. Спор о праве и его место в гражданском процессе. Диссертация на соискание ученой степени кандидата юридических наук. Саратов 2011, р. 46. Disponibil: <https://www.dissercat.com/content/spor-o-prave-i-ego-mesto-v-grazhdanskom-protsesse>

defining characteristics of a legal dispute are present. In other cases, where the vulnerable person is unable to understand and express their will regarding the application submitted by the petitioner, a full legal dispute does not exist, as there is no contradiction or conflict of wills. Nevertheless, the presence of the other two characteristics of a legal dispute cannot be disregarded, namely the existence of a legal claim submitted by the petitioner, opposed by a legal position of the second party (the addressee), which prevents the factual satisfaction of the submitted claim. Therefore, in such circumstances, what exists is a **quasi-dispute**.

The third characteristic examined concerns the full applicability of the adversarial principle. Article 305 of the Code of Civil Procedure provides that, *upon the request of any interested person or ex officio, the court may order, by a procedural ruling, that the examination of an application initiating proceedings concerning a protection measure be conducted on an adversarial basis*⁸. In such a case, the provisions of Article 280(3) shall not apply. This provision establishes that the court may order that the examination of the case be conducted in an adversarial manner. Therefore, it may be observed that the legislator treats the adversarial examination of cases falling under the procedure concerning protection measures as an exception to the general rule. This implies that, as a general principle, such cases are not examined on an adversarial basis. We consider such an approach to be erroneous, as it contradicts the United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006.

Therefore, although the aforementioned provision stipulates that the court “may order” such a measure, we consider that the court should, in every case, conduct the examination of proceedings concerning protection measures on an adversarial basis. This reasoning is based on the effects and consequences that a judicial decision rendered within proceedings concerning protection measures may produce. Furthermore, Articles 308 and 308¹ of the Code of Civil Procedure establish the mandatory hearing of the person in respect of whom the establishment of judicial protection measures is requested. The hearing of the person concerned undoubtedly represents a characteristic element of the adversarial principle in civil proceedings. Likewise, Article 306 of the Code of Civil Procedure establishes the mandatory participation of a lawyer, whether chosen by the person concerned or appointed *ex officio* by the court, to represent the interests of the vulnerable person. Consequently, the court will inevitably have to consider the opinion of both the vulnerable person and their lawyer regarding any procedural measure or action that is to be undertaken. In light of the above, it may be concluded that applications examined under the procedure concerning protection measures must always be conducted on an adversarial

⁸ Codul de procedură civilă al Republicii Moldova. Publicat în Monitorul Oficial al Republicii Moldova nr. 285-294, din 03.08.2018

basis; otherwise, the person's right to a fair trial would be infringed. With regard to the limits of application of the adversarial principle in such proceedings, it is concluded that this principle must be applied in full. This conclusion is dictated by the guarantees and requirements of the United Nations Convention on the Rights of Persons with Disabilities, which impose the obligation to allow participants in proceedings to discuss and challenge any factual or legal elements arising during the proceedings.

Following the analysis of proceedings concerning the establishment, renewal, or revocation of judicial protection measures from the perspective of the characteristics of contentious and non-contentious proceedings, it may be concluded that this procedure does not meet the requirements for being classified as fully contentious, however, it cannot be included among cases examined under non-contentious proceedings either. The first obstacle preventing the classification of the aforementioned proceedings as non-contentious is the full applicability of the adversarial principle. At the same time, their non-contentious nature is also excluded by the fact that a legal dispute may arise within the proceedings examined.

Accordingly, it is considered that proceedings concerning the establishment, renewal, or revocation of judicial protection measures may, depending on the circumstances submitted for judicial examination, possess either a purely contentious or a non-contentious nature. However, in the majority of cases, such proceedings have a **quasi-contentious nature**, incorporating characteristics of both contentious and non-contentious proceedings.

The absence of a non-contentious nature of this type of proceedings is also confirmed by the case law of the European Court of Human Rights⁹. Thus, in its case law, the Court has established that Article 6 of the Convention does not apply to non-contentious proceedings¹⁰. Consequently, applications alleging a violation of Article 6 in the context of non-contentious proceedings are declared inadmissible by the Court. However, with regard to cases involving the deprivation or limitation of the legal capacity of persons suffering from mental disorders, the Court frequently examines such cases under Article 8 of the Convention, in conjunction with Articles 5 and 6. Therefore, from the perspective of the right to a fair trial, the Court examines cases concerning the application of judicial protection measures¹¹. Accordingly, regardless of the

⁹ Convenția Europeană pentru apărarea Drepturilor Omului și a Libertăților Fundamentale. [online] [citat 08.08.2025] Disponibilă: https://www.echr.coe.int/documents/d/echr/convention_ron;

¹⁰ Decizia CtEDO din 24.08.2010 în cauza ALAVERDYAN c. ARMENIEI, Cererea nr. 4523/04. par. 35 [online] [citat 16.04.2026] Disponibil: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-100411%22%5D%7D>;

¹¹ Hotărârea CtEDO din 13.10.2009 în cauza SALONTAJI-DROBNJAK c. SERBIEI, Cererea nr. 36500/05. [online] [citat 16.04.2026] Disponibil: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-94985%22%5D%7D>

classification provided by national legislation, the European Court of Human Rights does not consider this category of proceedings to fall within the scope of non-contentious proceedings.

Subchapter 2.2 – The legal nature of proceedings concerning the establishment, renewal, and revocation of judicial protection measures. Proceedings concerning the establishment, renewal, or revocation of judicial protection measures are examined within the framework of the procedure regarding protection measures. Therefore, the determination of the legal nature of proceedings concerning the establishment, renewal, or revocation of judicial protection measures must be analyzed from the perspective of the legal nature of the procedure regarding protection measures as a whole.

When examining the legal nature of the procedure regarding protection measures for adults from a legislative perspective, two situations may be identified. The first concerns cases where the legislator expressly classifies this type of procedure as non-contentious, while the second refers to situations where the legislator has not established the legal nature of such proceedings. Thus, the legislation of the Republic of Moldova initially classified the procedure regarding protection measures as a non-contentious procedure, this approach having been inherited from the legislation of the Moldavian Soviet Socialist Republic. Similar situations may be found in other states that were formerly part of the Soviet Union, such as Latvia, Ukraine, Kazakhstan, the Russian Federation, and others, where proceedings concerning protection measures are classified as non-contentious proceedings. Such cases are examined according to the rules of Special Procedure, which is incompatible with the existence of a legal dispute falling within the jurisdiction of the courts.

In the legislation of other states, such as Romania and France, this type of proceedings is classified neither as contentious nor as non-contentious. In these jurisdictions, the classification of proceedings concerning protection measures as contentious or non-contentious is established through judicial practice and, respectively, through legal doctrine.

The analysis of the legal nature of the procedure regarding protection measures for adults from the perspective of the legislation of common law jurisdictions is also relevant to this research. In England and Wales, the principal legislation governing judicial protection measures is the Mental Capacity Act 2005¹², which established a specialized court, namely the Court of Protection, operating under its own procedural rules (The Court of Protection Rules)¹³. Accordingly, based on

¹² Mental Capacity Act 2005. [online] [citat 12.08.2025] Disponibil: <https://www.legislation.gov.uk/ukpga/2005/9/contents>

¹³ The Court of Protection Rules 2017. Pct. 1.2. [online] [citat 27.08.2025] Disponibil: <https://www.judiciary.uk/wp-content/uploads/2017/11/court-of-protection-rules-2017-final-20171123-2.pdf> ;

the legislation and judicial practice of England and Wales, cases concerning protection measures are examined under a special procedure, which is generally non-contentious; however, the judge may decide that the case should be examined under contentious proceedings. The examination of a case under contentious proceedings depends on the existence of a legal dispute, the nature of the matter under examination, as well as the existence of an objection or response from the vulnerable person.

With regard to legal literature, E. Jeuland has correctly noted that, despite the considerable challenges involved, the procedure concerning the protection of adults has received limited attention from legal doctrine¹⁴. As regards the issue of the legal nature of the procedure concerning protection measures, this subject has been even less explored in academic literature.

Predominantly, legal literature characterizes the procedure concerning protection measures as a non-contentious procedure, relying on the absence of a legal dispute in this type of proceedings¹⁵. It should nevertheless be noted that the respective authors generally express this view without conducting an in-depth analysis of the matter.

Drawing on English legislation and examining the activity of the Court of Protection and the nature of its “work”, authors A. Ruck Keene, N. Kane, S. Kim, and G. Owen observe that the vast majority of such decisions are non-contentious and will be adopted without a hearing. Following the amendments introduced in 2011, these decisions are frequently taken by a so-called authorized judicial officer (an administrative officer). It is highly unlikely that such decisions will result in a written judgment, as the court will simply approve the relevant order submitted before it.

Although legal literature predominantly argues that proceedings concerning protection measures are of a non-contentious nature, there are also scholars who firmly maintain that such proceedings inherently involve a legal dispute and should therefore be classified as contentious proceedings¹⁶.

A different concept regarding the legal nature of proceedings concerning protection measures is presented by Professor E. Jeuland, who argues that this procedure belongs neither to

¹⁴ JEULAND, E. La nature juridique de la procédure des tutelles: pour la reconnaissance d'un lien procédural de protection. În *Revue trimestrielle de droit civil*, (2018)2, p. 271. [online] [citat 29.08.2025] Disponibil: <https://www.dalloz.fr/lien?famille=revues&doctype=RTDCIV%2FCHRON%2F2018%2F0135>;

¹⁵ RAOUL-CORMEIL G. Nature juridique de la procédure devant le juge des tutelles. În *Actualité juridique Famille* nr. 3 martie 2014. p. 148 ISSN: 1630-2206; ДОМАНСКАЯ, М. Правовая природа дел об изменении правового статуса физического лица в гражданском процессуальном праве Украины. În *Legea și Viața* nr. 2/2 (266) din 2014. p. 77, ISSN 1810-309X; ЧЕЧОТ, Д. Неисковые производства. Москва: Из. “Юридическое Литература”. 1973. p. 137; ТРЕУШНИКОВ, М., ГРИШИН, И., и др. Гражданский процесс Учебник для юридических вузов. Москва: Новый Юрист, 1998, p. 319-322. ISBN:5-7969-0044-7;

¹⁶ КРЕЦУ, В. *Правовая сущность дел об отмене ограничения дееспособности лица и признание лица дееспособным*. În *Revista Institutului Național al Justiției* nr. 2 din 2011. p. 42, ISSN 1857-2405

non-contentious proceedings nor to contentious proceedings, but rather represents a **procedural relationship of protection** (*lien procédural de protection*)¹⁷. In support of his concept, the author criticizes the classification of proceedings concerning protection measures as purely non-contentious proceedings. He considers that non-contentious proceedings, as such, are insufficient to explain the specific nature of proceedings concerning protection measures.

According to E. Jeuland, proceedings concerning protection measures constitute a procedural relationship of protection, representing a continuous and active legal-procedural relationship established between the court, the protected person, the guardian, and other interested persons, with the purpose of ensuring respect for the rights, freedoms, and dignity of a vulnerable person who, due to a mental illness or a physical, mental, or psychological impairment, is unable to fully understand their actions or express their will.

After examining comparative law aspects, as well as legal literature concerning the legal nature of proceedings related to protection measures, the present research aims to determine the legal nature of the procedure regarding protection measures in general and, in particular, the procedure for establishing, renewing, and revoking judicial protection measures, as well as its place within the system of civil procedural categories in the Republic of Moldova.

Based on the analysis presented in the previous subchapter, it may be concluded that the procedure regarding protection measures possesses all the characteristics of Special Procedure, with the exception of one essential feature, namely the absence of a substantive legal dispute falling within the jurisdiction of the court.

As may be observed from the provisions of Article 302(1)(d) and (e) of the Code of Civil Procedure, within the procedure regarding protection measures, challenges may be brought against decisions of family councils and guardianship authorities, as well as against the occurrence of the effects of a protection mandate in the future. The aforementioned proceedings undoubtedly have a classical contentious nature, as they involve the resolution of a legal dispute.

Regarding the cases provided under points b), c), and f) of Article 302(1) of the Code of Civil Procedure, these are examined according to the rules established for the procedure concerning the establishment, renewal, and revocation of judicial protection measures provided under point a) of Article 302(1) of the Code of Civil Procedure. As previously indicated, proceedings concerning the establishment, renewal, and revocation of judicial protection measures, as well as cases provided under points b), c), and f) of Article 302(1) of the Code of

¹⁷ JEULAND E. *La nature juridique de la procédure des tutelles: pour la reconnaissance d'un lien procédural de protection*. În *Revue trimestrielle de droit civil*, (2018)2, p. 274. [online] [citat 29.08.2025] Disponibil: <https://www.dalloz.fr/lien?famille=revues&doctype=RTDCIV%2FCHRON%2F2018%2F0135>

Civil Procedure, may, depending on the circumstances of the case, be contentious, quasi-contentious, or non-contentious in nature.

Therefore, considering that Special Procedure, pursuant to Article 280(3) of the Code of Civil Procedure, is incompatible with the existence of a legal dispute falling within the jurisdiction of the court, and that the procedure regarding protection measures includes both proceedings involving legal disputes and proceedings that may, depending on the circumstances, be contentious or quasi-contentious, it may be concluded that this procedure does not belong within the scope of Special Procedure.

In this regard, it should be emphasized that the provisions of Article 305 of the Code of Civil Procedure do not in any way remove the sanction established by Article 280(3) of the Code of Civil Procedure in cases where the existence of a legal dispute is established in proceedings concerning protection measures.

First, it should be noted that Article 305 of the Code of Civil Procedure refers solely to the conduct of proceedings on an adversarial basis and not to the existence of a legal dispute. The conduct of proceedings on an adversarial basis cannot be equated with the concept of a legal dispute. In the previous subchapter, it was demonstrated that the adversarial principle is also applicable within non-contentious proceedings. Therefore, the identification of a legal dispute in proceedings concerning protection measures does not fall within the scope of Article 305 of the Code of Civil Procedure.

If we refer specifically to the procedure for establishing, renewing, and revoking judicial protection measures, it may be concluded that this procedure also does not belong within the framework of Special Procedure. The first argument supporting this position is that these proceedings form part of the procedure regarding protection measures. Consequently, such proceedings have the same legal nature as the procedure regarding protection measures as a whole.

At the same time, we consider that proceedings concerning the establishment, renewal, and revocation of judicial protection measures cannot be separated from the procedure regarding protection measures. All proceedings provided under Article 302(1) of the Code of Civil Procedure, which are examined within the procedure regarding protection measures, form part of the protection mechanism designed for vulnerable persons. The separation of these proceedings would undermine this mechanism and would operate to the detriment of vulnerable persons.

Another argument supporting this position is that proceedings examined within this procedure may, depending on the circumstances of the case, have a contentious or quasi-contentious nature, where a legal dispute or, as the case may be, a quasi-dispute exists. However, Special Procedure is incompatible with the existence of a legal dispute, even where such a dispute

has a quasi-contentious character. Therefore, the examination of applications for the establishment, renewal, and revocation of judicial protection measures under the rules of Special Procedure distorts the essence of Special Procedure, which is a non-contentious form of procedure. Moreover, the examination of a dispute within Special Procedure distorts the very functioning mechanism of civil proceedings.

The fact that proceedings concerning the establishment, renewal, and revocation of judicial protection measures may be non-contentious (when the application is submitted by the vulnerable person themselves) does not constitute sufficient grounds for considering that this procedure may be examined under Special Procedure without affecting its essence. Such a situation represents rather an exception, whereas the general rule is that the application for the establishment, renewal, or revocation of judicial protection measures is submitted by another person.

Nevertheless, the procedure regarding protection measures in general, and the procedure for establishing, renewing, and revoking judicial protection measures in particular, cannot be classified as purely contentious proceedings, such as ordinary civil action proceedings, because, as demonstrated above, proceedings examined within the procedure regarding protection measures may, depending on the circumstances, also be non-contentious.

At the same time, we consider that the procedure regarding protection measures is closer in nature to contentious proceedings than to non-contentious proceedings. The primary purpose of this procedure is the protection of the vulnerable person. The requirements and guarantees inherent in contentious proceedings (particularly those provided by Article 6 §1 of the European Convention on Human Rights) ensure broader and more effective protection of the rights of vulnerable persons.

Therefore, the analysis and research conducted have enabled us to conclude that the procedure regarding protection measures, both in general and the procedure for establishing, renewing, and revoking judicial protection measures in particular, represents a **multifaceted procedure**, which, depending on the type of case examined and the specific circumstances, may be contentious, quasi-contentious, or non-contentious.

Furthermore, it has been established that the procedure regarding protection measures does not belong within the framework of Special Procedure and requires reconceptualization, including within the structure of civil procedural law. Based on the arguments presented above, we conclude that the procedure regarding protection measures deserves an independent place within the system of civil procedural law. Consequently, we propose relocating Chapter XXVIII before Special Procedure, as a distinct type of civil procedure.

Accordingly, we propose, *de lege ferenda*, the exclusion of the procedure regarding protection measures from the Special Procedure section of the Civil Procedure Code of the Republic of Moldova by repealing Chapter XXVIII of the Code of Civil Procedure. At the same time, we propose supplementing Title II of the Code of Civil Procedure with a new section B5 entitled “**B5. PROCEDURE REGARDING PROTECTION MEASURES**”, which should include Chapter XXII⁵ entitled “**CHAPTER XXII⁵. PROCEDURE REGARDING PROTECTION MEASURES**”.

The proposed section should contain the provisions currently included in Chapter XXVIII, as well as additional provisions proposed within this doctoral thesis.

Furthermore, in determining the legal nature of the procedure regarding protection measures, we have conceptualized the notion of a **protective legal relationship**, defining it as a system of social relations, both substantive and procedural, regulated by law and intended to create a mechanism for protecting a person who, due to a mental illness or a physical, mental, or psychological impairment, is unable to fully understand their actions or express their will, namely, the vulnerable person.

Unlike an ordinary legal relationship, in the case of a protective legal relationship, we consider that the emphasis shifts from the social relationship itself, namely the legal fact giving rise to it, toward the subject of the legal relationship. The entire protective legal relationship is essentially structured around the vulnerable person, who requires protection. It may be observed that the entire national and international regulatory framework concerning the protection of vulnerable persons is centered on the vulnerable person as the essential element of the legal relationship.

Subchapter 2.3. examines the **Prerequisites and Conditions for Exercising the Right to Institute Proceedings** concerning the establishment, renewal, and revocation of judicial protective measures.

With respect to the prerequisites and conditions governing the exercise of the right to institute civil proceedings, it should be emphasized that this issue, while predominantly theoretical in nature, has significant practical implications.

The exercise of the right to institute proceedings for the establishment, renewal, or revocation of judicial protective measures is subject to the fulfilment of the following prerequisites: the legal admissibility of judicial examination, within civil proceedings, of an application for the establishment, renewal, or revocation of judicial protective measures; the applicant's legal capacity to hold civil rights and obligations; the existence of the applicant's statutory right to submit an application for the establishment, renewal, or revocation of judicial

protective measures; and the absence of a final and binding judicial decision rendered in the same civil matter. The absence of any one of these prerequisites constitutes grounds for refusing to accept the application for the establishment, renewal, or revocation of judicial protective measures¹⁸.

In addition to the above-mentioned prerequisites, the exercise of the right to institute such proceedings is conditional upon compliance with the following requirements: observance of the applicable rules of jurisdiction; the applicant's possession of full legal capacity to act; due execution of the application by the applicant's signature; the existence of proper authority where the application is submitted by a representative; the absence of pending proceedings before the same or another court involving the same parties, the same subject matter, and the same legal grounds; and compliance of the application with the formal requirements prescribed by law.

Accordingly, the legislation in force establishes specific rules governing each of the prerequisites and conditions for exercising the right to institute proceedings in cases concerning the establishment, renewal, and revocation of judicial protective measures. These specific rules stem directly from the particular nature and legal characteristics of proceedings relating to judicial protective measures¹⁹.

Chapter III – Particularities of Adjudicating Cases Concerning the Establishment, Renewal, and Revocation of Judicial Protective Measures provides a comprehensive analysis of the specific procedural features governing the examination of cases relating to the establishment, renewal, and revocation of judicial protective measures.

Subchapter 3.1. examines the jurisdictional particularities of courts in adjudicating cases concerning the establishment, renewal, and revocation of judicial protective measures.

Proceedings concerning the establishment, renewal, and revocation of judicial protective measures fall within the exclusive jurisdiction of the courts. Civil procedural legislation establishes an alternative territorial jurisdiction for proceedings concerning the establishment of judicial protective measures, conferring jurisdiction upon the courts of first instance at the domicile or temporary residence of the vulnerable person or at the location of the healthcare or social care institution where that person resides.

With regard to proceedings concerning the renewal and revocation of judicial protective measures, as well as proceedings for the establishment of such measures where the person

¹⁸ **BRÎNZĂ, D.** Premisele realizării dreptului de intentare a cauzei privind instituirea, reînnoirea și revocarea măsurilor de ocrotire judiciară. În *Studia Universitatis Moldaviae* nr. 3 (173) din 2024. p.120-127. ISSN: 1814-3199

¹⁹ **BRÎNZĂ D.** Condițiile realizării dreptului de intentare a cauzei civile privind instituirea, reînnoirea și revocarea măsurilor de ocrotire judiciară. În *Studia Universitatis Moldaviae* nr. 3 (178) din 2024. p.23-27. ISSN: 1814-3199

concerned has previously concluded and had authorized an advance protection mandate, jurisdiction lies not only with the courts of first instance at the domicile or temporary residence of the vulnerable person or at the location of the healthcare or social care institution where that person resides, but also with the courts at the domicile or temporary residence of the person entrusted with the protective measure, as well as the domicile of the proxy appointed under the advance protection mandate.

At the international level, the principal instrument governing international jurisdiction in proceedings concerning the establishment of judicial protective measures involving a foreign element is the **Hague Convention of 13 January 2000 on the International Protection of Adults** (hereinafter, the **HCCH 2000 Convention**). The Republic of Moldova is not a Contracting Party to this Convention; consequently, its provisions are not applicable within the territory of the Republic of Moldova. Nevertheless, given the Convention's fundamental importance in European private international law, it cannot be overlooked in the present study.

The HCCH 2000 Convention establishes alternative jurisdictional grounds and, more importantly, provides a comprehensive framework for the recognition of decisions concerning judicial protective measures, as well as for cooperation between the competent authorities of the Contracting States in matters relating to the implementation of such measures.

In our view, the accession of the Republic of Moldova to the HCCH 2000 Convention and the implementation of its provisions are both necessary and appropriate. This is particularly important in light of the Republic of Moldova's aspiration to accede to the European Union, whose legislative framework in this area is largely founded upon the principles and mechanisms established by the HCCH 2000 Convention.

*Subchapter 3.2. entitled **Participants in Proceedings Concerning the Establishment, Renewal, and Revocation of Judicial Protective Measures***, identifies the participants in proceedings concerning the establishment, renewal, and revocation of judicial protective measures and examines their procedural status. Accordingly, the participants in these proceedings are: the applicant; the person in respect of whom the establishment, renewal, or revocation of a judicial protective measure is sought (the **vulnerable person**); and the persons referred to in Article 94 of the Civil Code (the **interested persons**).

An important aspect of the procedural status of both the applicant and the vulnerable person is that, acting in accordance with the best interests of the vulnerable person, the court will not permit the applicant to withdraw the application, nor will it accept the vulnerable person's acknowledgment of the application, applying Article 60(5) of the Code of Civil Procedure for this purpose. In exercising its discretionary powers under Article 60(5) of the Code of Civil Procedure,

the court must take into account both the letter and the spirit of the law, particularly Article 12 of the United Nations Convention on the Rights of Persons with Disabilities, as well as the national legislation governing judicial protective measures.

Indeed, the legislation provides that a vulnerable person enjoys legal capacity on an equal basis with others in all aspects of social life. At the same time, it also requires that a person in need of protection receive such protection, including through judicial protective measures, which must be proportionate to the person's circumstances and consistent with that person's wishes and preferences. In order to determine whether a person requires protection, the court must examine the case in its entirety and, following deliberation, determine whether judicial protective measures are necessary in the circumstances of the case.

Subchapter 3.3. contains an in-depth analysis of the procedural particularities associated with the stages and phases of civil proceedings in cases concerning the establishment, renewal, and revocation of judicial protective measures.

An application for the establishment, renewal, or revocation of judicial protective measures must comply with the requirements of Article 307 of the Code of Civil Procedure, as well as Articles 166 and 167 thereof, taking into account the specific nature of this category of proceedings. The application must be accompanied by a report of an out-of-court psychiatric assessment issued no more than two months before the date of filing the application. The absence of such a report does not constitute grounds for refusing to admit the application; however, it requires the court to order a court-appointed psychiatric assessment of the vulnerable person. At the same time, the current legislation does not establish specific requirements regarding the content of court-appointed or out-of-court psychiatric assessment reports prepared for the purpose of establishing judicial protective measures. This legislative gap should be addressed through judicial practice until an appropriate legislative framework is adopted.

During the preparatory stage of proceedings concerning the establishment, renewal, and revocation of judicial protective measures, the court must undertake all procedural steps necessary to ensure the effective determination of the merits of the case within a reasonable and foreseeable time. In particular, the judge must ensure that all persons referred to in Article 94(1) of the Civil Code have been identified and joined to the proceedings. Likewise, the judge must ensure that the vulnerable person is represented by legal counsel, whether privately retained or appointed under the state-guaranteed legal aid system.

A distinctive feature of the preparatory stage in proceedings concerning the establishment, renewal, and revocation of judicial protective measures is the taking of evidence. In this respect, the court assumes an active role and is empowered to collect evidence **ex officio**, including by

ordering psychiatric or other expert examinations, directing the preparation of social assessments and social inquiry reports, requiring individuals and institutions to produce documentary evidence, and taking any other evidentiary measures necessary for the proper determination of the case.

Both during the preparatory stage and during the hearing on the merits, the court may, by interlocutory order and upon the application of any participant in the proceedings, impose **interim protective measures** for the duration of the proceedings concerning the establishment of guardianship or curatorship, as provided for in Article 97(2) of the Civil Code. In particular, this study concludes that:

- Such measures do **not** constitute interim measures securing the claim. The purpose of interim measures securing the claim is to prevent the future judgment from becoming impossible or excessively difficult to enforce. By contrast, the measure provided for in Article 97(2) of the Civil Code is intended to provide immediate protection to the vulnerable person during the pendency of proceedings for the establishment of guardianship or curatorship and to prevent the loss or impairment of a substantive civil right. Consequently, the failure to impose the measure provided for in Article 97(2) does not prevent the subsequent enforcement of the judgment establishing the judicial protective measure.²⁰
- The interim protection provided under Article 97(2) of the Civil Code constitutes a temporary protective measure of a procedural nature, exceptional and derogatory in character, specific to proceedings concerning the establishment of judicial protective measures in the form of guardianship or curatorship. Its purpose is to safeguard the vulnerable person and that person's rights throughout the pendency of the proceedings by preserving and protecting the person's rights and legitimate interests. It is likewise intended to prevent the risk of infringement or loss of the vulnerable person's rights. Furthermore, this study proposes, *de lege ferenda*, that Chapter XXVIII, Section 1 of the Code of Civil Procedure be supplemented by a new Article 307¹, entitled "**Application of Interim Protective Measures**," specifically regulating this procedural mechanism.

The hearing stage in proceedings concerning the establishment, renewal, and revocation of judicial protective measures is characterized by several procedural particularities. Such proceedings are conducted in closed session, a rule justified by the need to protect the private sphere of the vulnerable person's life, including the confidentiality of medical information.

²⁰ BRÎNZĂ, D. Aplicarea ocrotirii provizorii – măsură de protecție procesual civilă în cadrul procedurii de instituire a măsurilor de ocrotire judiciare. În *Studia Universitatis Moldaviae (Seria Științe Sociale)* nr. 8(158)/2022. p. 188-189. ISSN: 1814-3199

The failure of the applicant or the applicant's legal representative to appear at the hearing does not preclude the court from proceeding with the examination of the case. Guided by the best interests of the vulnerable person and pursuant to Article 206(2) of the Code of Civil Procedure, the court may hear the case in the applicant's absence. Likewise, the absence of the vulnerable person does not prevent the examination of the case; however, the court is required to hear the vulnerable person at the place where that person is located. By contrast, the absence of the vulnerable person's lawyer requires the hearing to be adjourned, and repeated failure to appear obliges the court to request that the coordinator of the territorial office of the National Council for State-Guaranteed Legal Aid appoint another lawyer to represent the vulnerable person.

The determination of the relevant facts of the case should be based on the application of four cumulative assessments: *the diagnostic test* - establishing the existence of a mental disorder or a physical, mental, or psychological impairment; *the functional test* - establishing that the vulnerable person is unable fully to understand the consequences of his or her actions or to express his or her will; *the necessity test* - establishing that the person cannot be adequately protected through less restrictive legal mechanisms; and *the best interests test* - establishing the vulnerable person's wishes, preferences, and interests.

A judgment rendered in proceedings concerning the establishment, renewal, or revocation of judicial protective measures must be lawful, well-founded, precise, comprehensive, and unconditional. The court is empowered to order the application of a judicial protective measure different from that requested by the applicant or by any other participant in the proceedings. This reflects the court's active role, which is justified by the need to ensure that the protective measure imposed is proportionate to the person's circumstances and consistent with that person's wishes and preferences. Furthermore, the court is required to determine whether the vulnerable person's right to vote should be maintained or withdrawn.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The research undertaken confirms both the significance and the contemporary relevance of the subject under examination. The analyses conducted and the findings reached have enabled the achievement of the overall aim of the study and the fulfilment of the research objectives established at the outset.

The theoretical and practical value of this dissertation, as well as its contribution to the development of legal scholarship, legislation, and judicial practice, lies in the fact that its findings are intended to systematize and improve both the legislative framework and the application of legal rules governing this field. Accordingly, this doctoral thesis constitutes a comprehensive theoretical and practical study of the procedure governing the establishment, renewal, and revocation of judicial protective measures and of its distinctive procedural features. The research identifies the fundamental concepts underlying the procedure and advances a number of *de lege ferenda* proposals aimed at improving the existing legislative framework governing proceedings concerning the establishment, renewal, and revocation of judicial protective measures.

In light of the research conducted, a number of theoretical and practical conclusions may be formulated, reflecting both the principal findings of the study and the extent to which the research objectives outlined in the Introduction have been achieved.

1) An analysis of this category of proceedings in the light of the defining characteristics of contentious and non-contentious civil procedures demonstrates that, depending upon the circumstances of the particular case, proceedings concerning the establishment, renewal, and revocation of judicial protective measures may be either contentious or non-contentious. Nevertheless, in the majority of cases, the procedural framework does not satisfy all the characteristics of fully contentious proceedings, while neither does it fall entirely within the category of non-contentious proceedings. Consequently, it is concluded that this category of proceedings is predominantly **quasi-contentious**, combining procedural characteristics typical of both contentious and non-contentious civil proceedings.

2) Proceedings relating to protective measures in general, and proceedings concerning the establishment, renewal, and revocation of judicial protective measures in particular, constitute a **multifaceted procedural framework** which, depending on the nature and circumstances of the individual case, may assume a contentious, quasi-contentious, or non-contentious character. It follows that the Procedure Relating to Protective Measures should not remain within the framework of Special Proceedings. Rather, it should be recognized as a distinct form of civil procedure within the system of civil procedural law. Accordingly, this study concludes that

Chapter XXVIII of the Code of Civil Procedure should be relocated so as to precede the section regulating Special Proceedings, thereby establishing proceedings relating to protective measures as an autonomous category of civil proceedings. Such legislative reform would facilitate a more effective adjudication of these cases and would permit the application, where appropriate, of procedural mechanisms traditionally associated with contentious proceedings.

3) The research identifies and examines the procedural particularities governing proceedings concerning the establishment, renewal, and revocation of judicial protective measures at each procedural stage. The principal findings are as follows:

- In this category of proceedings, the court performs an active procedural role. The law authorizes the court, **ex officio**, to undertake all procedural acts necessary to ensure a comprehensive, thorough, and effective examination of the case. This active role is particularly evident in the taking of evidence, including the ordering of expert examinations, directing social assessments and social inquiry reports, requiring individuals and institutions to produce documentary evidence, and undertaking any other evidentiary measures necessary for the proper resolution of the case. Furthermore, the court is empowered to order the application of a judicial protective measure different from that requested by the applicant or any other participant in the proceedings.
- In carrying out any procedural act, both the participants in the proceedings and the court must be guided by the best interests of the vulnerable person. This principle encompasses two fundamental requirements: 1) preserving the vulnerable person's legal capacity to the greatest extent possible; and 2) ensuring that any judicial protective measure imposed is proportionate to the person's circumstances and consistent with that person's wishes, beliefs, values, and preferences.
- Acting in accordance with the best interests of the vulnerable person, the court will not permit the applicant to withdraw the application, nor will it accept any acknowledgment of the application by the vulnerable person, pursuant to Article 60(5) of the Code of Civil Procedure. In exercising its discretionary powers under that provision, the court must have regard not only to the wording of the law but also to its underlying purpose, particularly Article 12 of the United Nations Convention on the Rights of Persons with Disabilities and the relevant national legislation governing judicial protective measures. While the legislation guarantees that vulnerable persons enjoy legal capacity on an equal basis with others in all aspects of life, it also recognizes that individuals requiring protection must receive such protection through measures that are proportionate to their circumstances and respectful of their wishes and preferences. Consequently, before determining whether

judicial protective measures should be imposed, the court must examine all the circumstances of the case in their entirety and, following deliberation, determine whether the vulnerable person requires judicial protection and, if so, the measure that best corresponds to that person's individual circumstances.

4) The research establishes the legal regime and legal nature of the measure provided for in Article 97(2) of the Civil Code, namely the imposition of **interim protection** for the duration of proceedings concerning the establishment of guardianship or curatorship. More specifically, it concludes that this measure constitutes an **interim protective measure** of a procedural nature, exceptional and derogatory in character, specific exclusively to proceedings for the establishment of judicial protective measures in the form of guardianship or curatorship. Its purpose is to provide immediate protection to the vulnerable person and to safeguard that person's rights throughout the pendency of the proceedings by preserving the vulnerable person's rights and legitimate interests. In addition, the measure is intended to prevent the risk of infringement or loss of the vulnerable person's rights pending the final determination of the case.

5) The study also examined judicial practice relating to proceedings concerning the establishment, renewal, and revocation of judicial protective measures in order to identify issues arising from the interpretation and application of procedural legislation, assess current trends in judicial practice, and formulate proposals for its future development. The analysis demonstrates that courts only rarely engage in a thorough examination of the national and international legal framework governing judicial protective measures. Instead, such cases are generally adjudicated according to the procedural rules applicable to special proceedings, without the court exercising the active procedural role envisaged by the legislation. As a result, these cases are often examined in a superficial manner.

Evidence of this approach is reflected in the content of judicial decisions. In the majority of cases, courts simply grant the protective measure requested by the applicant—most commonly guardianship—and confer full powers upon the appointed guardian, without tailoring the protective measure to the individual circumstances and needs of the vulnerable person. Furthermore, judicial practice reveals that courts frequently fail to give due consideration to the **best interests of the vulnerable person**, notwithstanding that this constitutes the fundamental principle governing such proceedings. Consequently, situations continue to arise in which courts permit the applicant to withdraw the application or strike the case from the docket solely because the applicant failed to appear at the hearing, notwithstanding the specific nature and public-interest dimension of proceedings concerning judicial protective measures.

Iată traducerea textului tău în limba engleză, adaptată terminologiei juridice specifice (în special pentru sistemul de drept civil din Republica Moldova):

At the same time, based on the findings of the conducted study and mindful of their impact on the legal framework and judicial practice, with a view to improving and organizing the legislation in this field, we submit the following *lege ferenda* proposals:

1. To exclude the Procedure on protection measures from the Special Procedure section of the Civil Procedure Code (CPC) of the Republic of Moldova by repealing Chapter XXVIII of the CPC. Concurrently, we propose that Title II of the CPC be supplemented with a new section B5, structured as follows: "*B5. PROCEDURE ON PROTECTION MEASURES, which shall contain Chapter XXII5 PROCEDURE ON PROTECTION MEASURES*". We propose that this designated section include the rules currently provided for in Chapter XXVIII, as well as the provisions we will propose throughout this paper.
2. Art. 95 para. (1) and art. 104 para. (4) of the Civil Code *should include the persons entrusted with the protection among those who are entitled to file an application for the renewal and an application for the revocation of judicial protection measures.*
3. To amend art. 55 of the CPC as follows: "*The following are considered participants in the trial: the parties, third parties (intervenienții), the prosecutor, the petitioners, the persons who, in accordance with art. 7 para. (2), art. 73 and 74, are empowered to submit applications to the court in defense of the rights, freedoms, and legitimate interests of other persons or who intervene in the trial to submit conclusions in defense of the rights of other persons, as well as the interested persons in cases concerning the application of protection measures in domestic violence cases, in cases concerning protection measures, and in special procedure cases.*"
4. Supplementing art. 302 of the CPC with a new paragraph, namely para. (4), with the following content: "*The judge shall refuse to accept the application to initiate proceedings regarding protection measures if it is filed by a person to whom the law does not delegate the right to petition the court for this purpose.*"
5. To supplement Chapter XXVIII of Title II of the CPC with a new rule that will read as follows: "*The court shall not allow the withdrawal of the application for the establishment, renewal, or revocation of judicial protection measures.*"
6. Substituting the phrase "*natural person*" (*persoană fizică*) in Chapter XXVIII of Title II of the CPC with the phrase "*vulnerable person*".

7. Supplementing para. (1) of art. 308⁷ of the CPC with a new clause stating: *"The adjudication of cases under the procedure on protection measures shall be carried out with the mandatory participation of the representative of the guardianship authority."*
8. Supplementing art. 308⁷ of the CPC with a new paragraph, namely para. (3), which shall read as follows: *"The failure to appear of the petitioner or of the interested persons indicated in art. 94 of the Civil Code and of their representatives, legally notified of the place, date, and time of the hearing, shall not prevent the examination of the case. The failure to appear of the vulnerable person, legally notified of the place, date, and time of the hearing, shall not prevent the examination of the case; however, the court must obligatorily interview the vulnerable person in the manner established by art. 308 and 308¹."*
9. Supplementing art. 306 of the CPC with a new paragraph, namely para. (5), which shall read as follows: *"The adjudication of cases under the procedure on protection measures shall be carried out with the mandatory participation of the vulnerable person's lawyer. The failure of the vulnerable person's lawyer to appear without a valid reason shall lead to the postponement of the court hearing. In case of a repeated failure to appear without a valid reason by the vulnerable person's lawyer, or if the reasons are deemed groundless by the court, the court shall request the coordinator of the territorial office of the National Council for State Guaranteed Legal Aid to designate another lawyer."*

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ADNOTARE

BRÎNZĂ Dionis, „Procedura de instituire, reînnoire și revocare a măsurilor de ocrotire judiciare”. Teză de doctor în drept. Chișinău, 2026

Structura tezei: Teza conține: adnotare (în trei limbi), lista abrevierilor, introducere, trei capitole, concluzii generale și recomandări, lista bibliografiei consultate din 196 de surse, și trei anexe, 215 de pagini de text de bază. Rezultatele obținute sunt publicate în 12 lucrări științifice.

Cuvinte-cheie: măsuri de ocrotire judiciare, petiționar, persoană vulnerabilă, interes superior, cvasi contencios, expertiză judiciară/extrajudiciară psihiatrică etc.

Scopul lucrării: constă în efectuarea unei cercetări științifice complexe teoretico-practice a procedurii de instituire, reînnoire și revocare a măsurilor de ocrotire judiciare și a particularităților acesteia, pentru a stabili conceptele de bază a procedurii cercetate, precum și înaintarea unor propuneri *de lege ferenda* care să conducă la ordonarea și perfecționarea cadrului legal al procedurii vizate.

Obiectivele cercetării: determinarea existenței sau inexistenței caracterului contencios și naturii juridice al cauzelor de instituire, reînnoire sau revocare a măsurilor de ocrotire judiciare; identificarea și analizarea premiselor și condițiilor de realizare a dreptului de intentare a respectivelor cauze; stabilirea și cercetarea particularităților de examinare a acestui tip de cauze, în dependență de fazele procesuale; examinarea practicii judiciare pe cauzele date; elaborarea propunerilor *de lege ferenda* pentru ordonarea și perfecționarea legislației procesuale.

Noutatea și originalitatea științifică: rezultă din faptul că, procedura de instituire, reînnoire și revocare a măsurilor de ocrotire judiciare, este un ”fenomen” instituțional nou în sistemul de drept național, ceea ce denotă lipsa studierii acesteia, iar lucrările existente ce abordează această temă sunt epizodale, ci nu constituie un studiu fundamental și amănunțit asupra materiei. Noutatea și originalitatea științifică tezei rezultă și din elaborarea unei noi abordări cu privire la natura juridică a respectivei proceduri, precum și prin propunerile de ordonare și perfecționare a cadrului legal în acest domeniu.

Rezultatele obținute care contribuie la soluționarea problemei științifice importante rezidă în elucidarea cadrului conceptual al naturii juridice a procedurii de instituire, reînnoire și revocare a măsurilor de ocrotire judiciare, locului acestei proceduri în sistemul dreptului procesual civil, și a particularităților de examinarea acestor cauze, fapt care a condus la clarificarea naturii juridice a procedurii cercetate și a regulilor de procedură civilă aplicabile la examinarea acestor cauze, fiind respectiv creată baza teoretică pentru aplicarea eficientă a normelor de drept procedural în materia procedurii privind măsurile de ocrotire.

Semnificația teoretică: în doctrina procesual-civilă națională, pentru prima dată, a fost realizată o cercetare complexă privind procedura de instituire, reînnoire și revocare a măsurilor de ocrotire judiciare, cu implicații profunde asupra naturii juridice a esenței și specificului de examinare a procedurii vizate.

Valoarea aplicativă a lucrării: Concluziile și recomandările elaborate pot fi utilizate de legiuitor în procesul de ordonare și perfecționare a cadrului legal. La fel, rezultatele obținute vor putea oferi soluții utile avocaților, judecătorilor și altor participanți în cadrul procesului de instituire, reînnoire și revocare a măsurii de ocrotire judiciare.

Implementarea rezultatelor științifice: Rezultatele științifice ale prezentului studiu au fost expuse în cadrul conferințelor naționale și internaționale și reviste de specialitate, fiind utile atât pentru cercetătorii științifici, cât și în activitatea practică în domeniul judiciar.

АННОТАЦИЯ

БРЫНЗЭ Дионис, „Процедура установления, возобновления и отмены мер судебной охраны”. Диссертация на соискание ученой степени доктора права. Кишинев, 2026г.

Структура диссертации: Диссертация содержит: аннотацию (на трех языках), список сокращений, введение, три главы, общие выводы и рекомендации, библиографический список, составленный на основе 196 источников, и три приложения, 215 страниц основного текста. Полученные результаты опубликованы в 12 научных работах.

Ключевые слова: меры судебной охраны, заявитель, уязвимое лицо, высший интерес, квазиспорный, судебная/внесудебная психиатрическая экспертиза и т.д.

Цель исследования: состоит в проведении комплексного теоретико-практического научного исследования данной процедуры, и её особенностей для определения основных концепций исследуемой процедуры, а также представления предложений *de lege ferenda* с целью упорядочения и совершенствования правовой базы данного процесса.

Задачи исследования: определение наличия или отсутствия спорного характера и правовой природы дел об установлении, возобновления или отмены мер судебной охраны; и анализ предпосылок и условий реализации права на возбуждение соответствующих дел; установление особенностей рассмотрения данных дел в зависимости от процессуальных стадий; изучение судебной практики по данным делам; разработка предложений *de lege ferenda* для упорядочения и совершенствования процессуального законодательства.

Новизна и научная оригинальность: обусловлена тем, что процедура установления, возобновления и отмены мер судебной охраны представляет собой новое институциональное «явление» в национальной правовой системе, что свидетельствует о недостатке ее изучения, а существующие работы, посвященные этой теме, носят эпизодический характер, но не представляют собой фундаментального и всестороннего исследования вопроса. Научная новизна и оригинальность диссертации также обусловлены разработкой нового подхода к правовой природе этой процедуры, а также предложениями по упорядочению и совершенствованию правовой базы в этой области.

Полученные результаты, способствующие решению важной научной проблемы, заключаются в уточнении концептуальных основ правовой природы процедуры установления, возобновления и отмены мер судебной охраны, места этой процедуры в системе гражданского процессуального права, а также особенностей рассмотрения данных дел, что привело к разъяснению правовой природы исследуемой процедуры, а также норм гражданского процессуального права, применимых при рассмотрении этих дел, соответственно, создав теоретическую основу для эффективного применения норм процессуального права в вопросах процедуры, касающейся мер охраны.

Теоретическая значимость: в национальной доктрине гражданского процессуального права впервые было проведено комплексное исследование процедуры установления, возобновления и отмены мер судебной охраны, имеющее глубокие последствия для правовой природы, сути и специфики рассмотрения этой процедуры.

Прикладная ценность: Разработанные рекомендации могут быть использованы законодателем в процессе упорядочения и совершенствования правовой базы. Полученные результаты также могут предоставить полезные решения адвокатам, судьям и другим участникам процесса установления, возобновления и отмены мер судебной охраны.

Внедрение научных результатов: Научные результаты данного исследования были представлены на национальных и международных конференциях, а также в специализированных изданиях, и оказались полезными как для научных работников, так и для практической работы в судебной сфере.

ANNOTATION

BRÎNZĂ Dionis, „Procedure for the establishment, renewal and revocation of judicial protection measures”. Doctor of Laws Thesis. Chişinău, 2026

The structure of the thesis: The thesis contains: annotations (in three languages), a list of abbreviations, an introduction, three chapters, general conclusions and recommendations, a bibliography of 196 sources, and three annexes, 215 pages of basic text. The obtained results have been published in 12 scientific papers.

Keywords: judicial protection measures, petitioner, vulnerable person, best interest, quasi-contentious, judicial/extrajudicial psychiatric expertise, etc.

The purpose of the thesis: is to conduct a comprehensive theoretical and practical scientific research of the procedure for the establishment, renewal and revocation of judicial protection measures and its particularities, in order to define the fundamental concepts of the researched procedure, as well as to submit *de lege ferenda* proposals aimed at systematizing and improving the legal framework of the respective procedure.

Research objectives: determining the existence or non-existence of the contentious character, and of the legal nature of the cases concerning the establishment, renewal and revocation of judicial protection measures; identifying and analyzing the premises and conditions for exercising the right to initiate such proceedings; establishing and researching the particularities of the examination of this type of cases, depending on the procedural stages; examining judicial practice in these cases; elaborating *de lege ferenda* proposals for the systematization and improvement of procedural legislation.

Scientific novelty and originality: derive from the fact that the procedure for establishing, renewing and revoking judicial protection measures is a new institutional "phenomenon" in the national legal system, which denotes the lack of studies, existing works that address this topic and are episodic on the fundamental matter announced. The scientific novelty and originality of the thesis also results from the development of a new approach regarding the legal nature of the respective procedure, as well as through proposals for ordering and improving the legal framework in this field.

The results obtained, which contribute to solving the important scientific problem, consist in elucidating the conceptual framework of the legal nature of the procedure for the establishment, renewal and revocation of judicial protection measures, its place within the system of civil procedural law, and the specific features of examining such cases, which led to the clarification of the legal nature of the researched procedure and of the rules of civil procedure applicable to the examination of these cases, thereby creating the theoretical basis for the effective application of procedural law norms in the field of procedures concerning protection measures.

Theoretical significance: in the national civil procedural doctrine, for the first time, comprehensive research has been carried out on the procedure for establishing, renewing and revoking judicial protection measures, with profound implications for the legal nature, essence and specific features of examining this procedure.

Applicative value of the thesis: The conclusions and recommendations elaborated may be used by the legislator in the process of systematizing and improving the legal framework. Likewise, the results obtained may provide useful solutions for lawyers, judges and other participants in the process of establishing, renewing and revoking judicial protection measures.

Implementation of scientific results: The scientific results of the present study have been presented at national and international conferences and in specialized journals, being useful both for scientific researchers and for practical activity in the judicial field.

BRÎNZĂ DIONIS

**THE PROCEDURE FOR THE ESTABLISHMENT, RENEWAL,
AND REVOCATION OF JUDICIAL PROTECTION MEASURES**

Specialty 553.03 – CIVIL PROCEDURAL LAW

Summary of the doctoral thesis

Approved for printing: 02.09.2026

Formatul hârtiei: 60x84 1/16

Offset paper. Offset printing.

Number of printed copies: 25 ex

Printing sheets: 2,4

Order nr. 76/26
