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# LEGAL CAPACITY AND HUMAN DIGNITY – CRITICAL REMARKS ON INCAPACITATION IN POLISH LAW IN A COMPARATIVE PERSPECTIVE

*Summary:* *The provisions of the Polish Civil Code concerning legal capacity, including the institution of incapacitation, similarly to other countries in the region, have not undergone major changes since their entry into force on January 1, 1965. Over the years the state of medical knowledge, the perception of various mental illnesses and dysfunctions, as well as the social role of people with disabilities have evolved radically. The systemic context – both constitutional and international (conventional) – as well as the legal state-of-play in this area in most Western European countries, including those which were the regulatory model for the Polish legislator, have also changed. Against this background, the Author advocates the need to abolish the institution of incapacitation and replace it with more nuanced and proportionate legal measures that do not interfere as profoundly with legal capacity and thus with legally protected human dignity. This request is finally being realised by the draft law on instruments for supported decision-making of December 9, 2024.*

*Keywords:* *legal capacity, intellectual disorder, intellectual disability, incapacitation*

## 1. SETTING THE SCENE – LEGAL CAPACITY AND INCAPACITATION IN POLISH LAW

Pursuant to the provisions of Art. 10, 11, 12 and 15 of the Polish Civil Code (CC), an adult (i.e. a natural person who has reached the age of eighteen[1]), who has not been placed under

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1 Noteworthy in this context is the recently discussed exception concerning the age of majority of a sixteen-year-old woman who has married upon the consent of the guardianship court. See: Art. 10 § 2 CC and Art. 10 § 1 sentence 2 of the Act of February 25, 1964 – Family and Guardianship Code (consolidated text: Journal of Laws 2023, item 2809(FC)).

guardianship, has full legal capacity (capacity for legal acts).[2] A minor who has not reached the age of thirteen and a person who is fully incapacitated does not have legal capacity, whereas a minor between thirteen and eighteen years of age and a person who is partially incapacitated has limited legal capacity (limited capacity for legal acts). Legal capacity itself can be defined as the competence to make and receive declarations of will and other similar statements, and thus – to independently perform the legal acts and to produce legal effects, in particular in the form of acquiring and disposing of rights and incurring obligations.[3]

According to Art. 13 § 1 and 2 CC, a person who has reached the age of thirteen years may be fully incapacitated if, because of mental illness, mental retardation (intellectual underdevelopment) or other mental disorder, in particular drunkenness or drug addiction, he or she is incapable of directing his or her own proceedings. For a person who is fully incapacitated a guardianship (plenary guardianship) shall be established unless he or she is still under parental authority. A legal act performed by such a person is null and void. An exception creates a category of contracts commonly concluded in minor, current day-to-day matters, which may be validated by their execution, unless entail a gross disadvantage for the person who has not legal capacity. In fact, the effects of full incapacitation are much more far-reaching than just the area of contract law; the title institution constitutes an extremely profound interference in the sphere of personal rights. A fully incapacitated person cannot act as a representative (Art. 100 CC), make a will (Art. 944 § 1 CC), enter into marriage (Art. 11 § 1 FC), acknowledge paternity (Art. 77 FC), does not have parental authority (Art. 94 § 1 and art. 96 § 2 FC), and surprisingly – rules governing contact with the family may not be imposed in respect of an adult under guardianship.[4] An incapacitated person cannot establish an employment relationship (*arg. Acontrario ex* Art. 22 § 3 of the Polish Labour Code (LC)), consent to an examination or provide other health care services, loses also his / her voting rights, the right to participate in a referendum, a citizens' legislative initiative, access to public service,[5] the ability to become a member of a cooperative, association or other corporation, etc. In practice, therefore, full incapacitation in fact comes down to one's "civil death" and threatens the social and legal exclusion of the affected person.[6]

2 For the record, it is important to point out some linguistic and translation problems appearing in this respect. English language lacks a precise terminological distinction between "passive" legal capacity ("capacity for rights"; German: "*Rechtsfähigkeit*"; Polish: "*zdolność prawna*") and "active" legal capacity ("capacity for legal acts"; German: "*Geschäftsfähigkeit*" or "*handlungsfähigeit*"; Polish: "zdolność do czynności prawnych"), i.e. categories commonly used in continental legal tradition and regulation. Notably, as will be pointed out, such a distinction may impact the implementation of international arrangements into domestic law. In this article – along with the majority use of the term in legal English – legal capacity is understood as and used to refer to the active legal capacity. See also: Council of Europe Commissioner for Human Rights, *Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities* (2012) Council of Europe, 11, <https://rm.coe.int/who-gets-to-decide-right-to-legal-capacity-for-persons-with-intellectu/16807bb0f9> accessed 19 January 2025.

3 Although legal capacity refers to the personal qualities of a person, it is a normative feature (granted by the legal system), included among the constitutive rules of civil law. See: L. Kociucki, *Zdolność do czynności prawnych osób dorosłych i jej ograniczenia*, (C.H. Beck, 2011), 130 *et seq*.; Radosław Strugała, 'Art. 11 CC' in: Edward Gniewek and Piotr Machnikowski (eds), *Kodeks cywilny. Komentarz* (C.H. Beck, 2021), side note 2.

4 See: Rzecznik Praw Obywatelskich, *Wystąpienie do Ministra Sprawiedliwości w sprawie kontaktów osoby ubezwłasnowolnionej z rodziną bądź innymi osobami bliskimi*, <https://www.sprawy-generalne.brpo.gov.pl/pdf/2011/07/678199/1710136.pdf> accessed 19 January 2025.

5 See: Art. 60, 62, Art. 127 sec. 3 of the Act of April 2, 1997 – Constitution of the Republic of Poland (Journal of Laws 1997, No. 78, item 483, as amended) and judgement of the Constitutional Tribunal of March 7, 2007, K 28/05 (OTK ZU 3A/2007, item. 24; Journal of Laws No. 47, item 319, <https://ipo.trybunal.gov.pl/ ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=K%20 28/05> accessed 19 January 2025), sec. III.5.

6 In fact, the list of problems faced by people with disabilities is much longer, and they are not only local nature. See: Report of European Study, *The Specific Risks of Discrimination Against Persons in Situation of Major Dependence or With Complex Needs*,

On the other hand, according to Art. 16 § 1 and 2 CC, an adult may be partially incapacitated due to mental illness, mental retardation or other mental disorders, in particular drunkenness or drug addiction, if the person's condition does not justify full incapacitation, but assistance is needed to manage his or her affairs. A curatorship shall be established for apartially incapacitated person. Subject to the further provisions, the validity of a legal act whereby a person with limited capacity for legal acts assumes an obligation or disposes of his or her right shall be subject to the consent of his or her legal representative.[7] One of the exceptions are, again, contracts commonly concluded in minor, current day-to-day matters.

Eventually, it is necessary to point not only to the substantive legal regulation of guardianship, but also to the set of provisions of the Code of Civil Procedure (CPC) that regulate the procedural aspects of guardianship (Art. 544–560[1] CPC), which could arguably be the subject of a separate analysis.[8]

## 2. GROUNDS FOR INCAPACITATION

The grounds for incapacitation regulated in Art. 13 and 16 CC can be divided into: medical grounds (mental illness, mental retardation, other types of intellectual disorders) and social grounds (the person's inability to direct his or her own proceedings, the need for assistance to manage affairs). Crucially, both grounds shall be met cumulatively.

The catalogue of mental disorders justifying incapacitation, defined using the archaic Polish terms "mental illness" (psychotic / psychiatric disorder) and "mental retardation" (intellectual disability), is purely exemplary. In practice, reference should rather be made to the term "person with intellectual or psychosocial disabilities" or "person with a mental disorder" used in medical law,[9] or to strictly medical classifications. Typical examples of such disorders are: schizophrenia, paranoia, manic-depressive psychosis and other psychoses. In this context, special attention should be paid also to diseases of the elderly (e.g. atherosclerosis-related dementia[10] or disorders caused by senile psycho-organic syndrome)[11] as well as the explicitly mentioned alcoholism and drug addiction, which are relevant only if they lead to mental disorders.[12] Clearly, circumstances unrelated to mental health, e.g. physical limitations or dysfunc-

vol. 3, *Country Reports and Stakeholders Interviews* (Belgium 2006); <https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/inclusion-europe-inclusion-europe-3.pdf> accessed 19 January 2025.

7 In the case of a contract, such a consent can be delivered *ex post*. In contrast, a unilateral legal act performed by a partially incapacitated person is fully and irreversibly invalid (Art. 18 and 19 CC).

8 In this context, it is worth to mention important, although insufficient, changes aimed at strengthening of the procedural rights of a person under guardianship, introduced on the basis of the Act of May 9, 2007 amending the Act – Code of Civil Procedure and certain other acts (Journal of Laws No. 121, item 831) and the Act December 17, 2009 amending the Act – Code of Civil Procedure and certain other acts (Journal of Laws of 2010, No. 7, item 45), as the result of a judgement of Constitutional Tribunal.

9 See: Art. 3 point 1 of the Act of August 19, 1994, on the protection of mental health (consolidated text: Journal of Laws 2018, item 1878, as amended). See also: Leszek Kociucki, *Zdolność do czynności prawnych osób dorosłych i jej ograniczenia* (C.H. Beck, 2011), 2 *et seq*; Paweł Księżak, 'Art. 13 CC' in: Konrad Osajda (ed), *Kodeks cywilny. Komentarz* (C.H. Beck, 2021), side notes 15–16.

10 Judgement of the Supreme Court of 25 November 1976, II CR 471/76.

11 Judgement of the Supreme Court of 13 January 1975, II CR 787/74.

12 See: Judgements of the Supreme Court: of February 23 1968, II CR 32/68; of May 181972, II CR 138/72. In the literature, see e.g.: Paweł Księżak, 'Art. 13 CC' in: Konrad Osajda (ed), *Kodeks cywilny. Komentarz* (C.H. Beck, 2021), side note 20; Mateusz

tions, the way in which a person conducts his or her affairs (e.g. the wastefulness mentioned earlier) or atypical behaviour (joining a religious sect, radical change of world view, alienation, sudden disruption of family or social ties) should not be grounds for incapacitation.[13] The mental disorders analysed in this context should limit cognitive or intellectual abilities (related to decision-making). As a result – in case of full incapacitation – the person does not have the ability to discern his or her own situation, make a conscious decision and assess its consequences,[14] and in case of partial incapacitation – he or she needs assistance in managing affairs, which, contrary to incorrect practice, should be understood primarily as performing legal rather than purely factual acts.

According to the legal doctrine, an incapacitation shall be applied as an instrument of help and protection of the person with intellectual disabilities.[15] Also, Polish Supreme Court emphasises the need to examine the advisability of incapacitation in each case and for a strict interpretation of its prerequisites. Despite the above, the practice still shows serious flaws. File studies indicate that the number of incapacitated persons is increasing (from 23,000 in 1985 to almost 61,000 in 2008, 74,000 in 2012 and approximately 90,000 in 2019),[16] the same as the number of new applications (from 9.104 in 2006 to 12.983 in 2012) and the percentage of first instance court judgements in which guardianship is established.[17] Moreover, at the same time, full incapacitation, which should be the *ultima ratio* measure, statistically dominates (it is ruled ca. 9-10 times more often than partial incapacitation).[18] In addition, guardianship is often established due to the actual circumstances of the affected person's functioning (mainly physical), to facilitate the care of this person for his or her *de facto* guardians (e.g. to enable

Pilich, 'Art. 13 CC' in: Jacek Gudowski (ed), *Kodeks cywilny. Komentarz*, vol. I, part 1 (Lexis Nexis 2021), point 7; Małgorzata Serwach, 'Art. 13 CC' in: Małgorzata Pyziak-Szafnicka and Paweł Księżak (eds), *Kodeks cywilny. Komentarz* (Wolters Kluwer, 2014), 198 point 6.

13 See: Maciej Gutowski, 'Art. 13 CC' in: Maciej Gutowski (ed), *Kodeks cywilny. Komentarz*, vol. I (C.H. Beck, 2021), side note 2; Paweł Księżak, 'Art. 13 CC' in: Konrad Osajda (ed), *Kodeks cywilny. Komentarz* (C.H. Beck, 2021), side note 20; Mateusz Pilich, 'Art. 13 CC' in: Jacek Gudowski (ed), *Kodeks cywilny. Komentarz*, vol. I part 1 (Lexis Nexis 2021), point 5 and 7; Stanisława Kalus, 'Art. 13' in: Magdalena Habdas and Mariusz Fras (eds), *Komentarz do Kodeksu cywilnego* (Wolters Kluwer, 2018), 74, point 3; Stanisława Kalus, 'Opieka nad osobą całkowicie ubezwłasnowolnioną' (1989) 1033 Prace Naukowe Uniwersytetu Śląskiego w Katowicach, 51.

14 See: judgements of the Supreme Court: of 17 May 2013, I CSK 122/13, IC 2016, No. 6, p. 53; of 6 September 2017, I CSK 331/17; judgement of the Appeal Court of Kraków of 25 February 2015, I Aca 1751/14.

15 See for example: Larysa Ludwiczak, *Ubezwłasnowolnienie w polskim systemie prawnym* (Lexis Nexis, 2012), 18 and further literature quoted therein. However, these references are not accompanied by any reflection on the practice of incapacitation. At the same time part of the older psychiatric literature even describes incapacitation as a "blessing" to be widely used. See: Tadeusz Bilikiewicz, *Psychiatria kliniczna* (PZWL, 1966).

16 See: Statement of the Ombudsman in a case pending before the Constitutional Court, SK 23/18, <https://www.rpo.gov.pl/sites/default/files/Stanowisko%20RPO%20dla%20TK%20w%20sprawie%20ubezw%C5%82asnowolnienia.pdf> accessed 19 January 2025.

17 See: Wydział Statystyki i Analiz Ministerstwa Sprawiedliwości, *„Ewidencja spraw o ubezwłasnowolnienie w latach 2004-2012"*, <https://bip.ms.gov.pl/pl/dzialalnosc/statystyki/statystyki-2013/download,2350,13.html> accessed 19 January 2025 It can be hypothesised that this is partly due to the lack of a detailed judicial assessment of expert opinions submitted in guardianship proceedings and objections to the quality and reliability of such opinions. See: Inga Markiewicz, Janusz Heitzman, Anna Pilszyk, 'Ubezwłasnowolnienie – instytucja nadal potrzebna?' (2016) 11(4) Psychiatria, 204.

18 See: Wydział Statystyki i Analiz Ministerstwa Sprawiedliwości *Ewidencja spraw o ubezwłasnowolnienie w sądach okręgowych – I instancja w latach 2004–2018 oraz w I półroczu 2019 r.*, <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/> accessed 19 January 2025; Open Society Institute, *„Rights of People with Intellectual Disabilities. Access to Education and Employment – Poland"*, 2005, <https://www.refworld.org/reference/countryrep/osi/2005/en/43345> accessed 19 January 2025; and Jolanta Drobot, 'Ubezwłasnowolnienie całkowite na tle rozwiązań europejskich' (2020) 1 Radca Prawny. Zeszyty Naukowe, 117.

them to manage the person's assets or to collect social security or welfare benefits). The "price" of this facilitation and overly schematic approach is paid by people with disabilities, whose capacity for legal acts is, consequently, also reduced in spheres where it is not needed or necessary. An increasingly serious problem states the applications for people with intellectual disabilities to be detained in social welfare homes against their will (which has already been the subject of two judgments by the European Court of Human Rights against Poland).[19] The results of the first qualitative study of incapacitation proceedings carried out several years after it was ruled are devastating: in almost half of the cases under review, the use of this instrument appeared to be pointless, had no positive impact on the life of the person affected and, in some cases, involved harming the person.[20]

## 3. MEDICAL AND SOCIOLOGICAL BACKGROUND

The legal regulation operating two, non-gradable measures of interference with legal capacity does not correlate with the recent developments in medical science. Not only is the terminology used in this area changing,[21] but also our knowledge of the aetiology and symptoms of mental disorders, the possibilities of their diagnosis and the methods of treatment. Closed hospital treatment or other forms of overt and far-reaching interference in the sphere of privacy of patients with mental disorders are becoming increasingly rare.[22] New diagnostic and therapeutic methods (including pharmacological ones) offer increasing opportunities not only for a nuanced approach and precise identification of the type of disorder and its effects, but also for the containment of the illness or partial return to a normal life.[23] Importantly, as we know from psychiatric practice, every illness, including mental illness, is a dynamic phenomenon of varying intensity. It is possible to have periods in which it does not disturb either the intellectual or the volitional side of the patient. The clinical picture of mental retardation (underdevelopment; but also, dementia and organic CNS damage) also varies, where the capacity for judgement and self-direction is only affected when there is significant impairment and cumulative symptoms.[24]

Consistently – although still too slowly – the social perception of people with mental disorders is changing. Instead of distance, prejudice, stigma and discrimination that were dominant until recently, attitudes of kindness, acceptance, inclusiveness and integration are

19 See judgements of the ECHR of: *Kędzior v Poland* no 45026/07 (ECHR, 16 October 2012), *K.C. v Poland* no 31199/12 (ECHR 25 November 2014).

20 See: Andrzej Góraj, 'Wpływ ubezwłasnowolnienia na losy osób ubezwłasnowolnionych' (1982) XVI Psychiatria Polska, 39–40.

21 See: *International Statistical Classification of Diseases and Related Health Problems, ICD-10* (by World Health Organization); *Diagnostic and Statistical Manual of Mental Disorders, DSM-IV* (by American Psychiatric Association). In particular, the concept of 'mental illness' is considered controversial and inadequate. See: Stanisław Pużyński, 'Choroba psychiczna – problemy z definicją oraz miejsce w diagnostyce i regulacjach prawnych' (2007) XLI Psychiatria Polska, 3.

22 See interesting examples in: Jillian Craigie, Michael Bach, Sandor Gurbai, Arlene Kanter, Scott Y.H. Kim, Oliver Lewis, Graham Morgan, 'Legal capacity, mental capacity and supperted decision making: Report from a panel event' (2019) 62 International Journal of Law and Psychiatry, 163–164.

23 See: World Health Organization, 'World Report on Disability 2011', <https://www.who.int/teams/noncommunicable-diseases/sensory-functions-disability-and-rehabilitation/world-report-on-disability> accessed 19 January 2025.

24 See: Robert Pudło, 'Ubezwłasnowolnienie – doktryna, wątpliwości, alternatywy' (2012) 3(9) Psychiatria po Dyplomie.

increasingly common. This is certainly influenced by certain social patterns, but also by the prevalence and context in which we encounter the phenomenon. As estimated by the World Health Organization just two decades ago, some 450 million people worldwide suffer from mental and nervous disorders and psychosocial problems (such as alcoholism and drug addiction). Depressive disorders have become the scourge of the 21st century, and in rapidly ageing European societies, mental disorders caused by old age are becoming a serious legal and welfare problem. With the prevalence of mental disorders – including those that do not involve interference with a person's legal capacity – there is increasing public understanding and empathy for this phenomenon. There is also a growing recognition of the need to support rather than exclude people with various types of disabilities, which is the true measure of a society's civilisational development. As advocate Michael Bach and Lana Kerzner, the question is no longer: does a person have the mental capacity to exercise his or her legal capacity? The question is instead: what types of support are required for the person to exercise his or her legal capacity? This is a profound shift I the law of legal capacity.[25]

## 4. CONSTITUTIONAL AND INTERNATIONAL CONTEXT

In systemic terms, the provisions of the Civil Code embody (or rather should embody) the values guaranteed by Art. 30, Art. 31 sec. 1, Art. 32 and Art. 47 of the Polish Constitution.[26] These values include inalienable and inherent human dignity and freedom, the rights to equal treatment, as well as the right to privacy, understood, inter alia, as the right to self-determination and to decide about one's personal life, resulting from human autonomy. The indicated constitutional context impacts the assessment of the relevant statutory regulation. The Constitution prescribes considering the developmental nature of a person's personality and his or her personal qualifications for shaping his or her own legal situation. The introduction of statutory restrictions that affect the possibility of a person's self-realization as substantially free and endowed with inherent dignity should be supported by sufficiently momentous arguments related to the need to protect and support that person, rather than primarily by the protection of the rights and freedoms of other persons and the security of turnover (Art. 31 sec. 3 of the Constitution). On this basis the need for extremely cautious use of the institution of incapacitation in a court practice and deeper changes in this area has already been brought to the political and legal discussion agenda by the Polish Constitutional Tribunal in the judge-

25 See: Michael Bach, Lana Kerzner, 'A New Paradigm for Protecting Autonomy and the Right to Legal Capacity. Advancing Substantive Equality for Persons with Disabilities through Law, Policy and Practice' (2010) Law Commission of Ontario, 58; <https://www.lco-cdo.org/wp-content/uploads/2010/11/disabilities-commissioned-paper-bach-kerzner.pdf> accessed 19 January 2025.

26 The Act of April 2, 1997 – Constitution of the Republic of Poland (Journal of Laws 1997, No. 78, item 483, as amended). In this respect see: Małgorzata Balwicka-Szczyrba, Anna Sylwestrzak, 'Instytucja ubezwłasnowolnienia w perspektywie unormowań Konstytucji RP oraz konwencji ONZ o prawach osób niepełnosprawnych' (2018) XL Gdańskie Studia Prawnicze, 154–157.

ments of March 7, 2007 (K 28/05)[27] and November 6, 2007 (U 8/05)[28] and the Ombudsman in a statement presented in the case pending before the Constitutional Tribunal (SK 23/18).[29]

The provisions of Art. 10 et seq. CC also relate to international law and the concepts introduced therein, including dignity, inalienable rights and freedoms of the human person or the right to respect for private and family life,[30] the rights of children[31] or persons with disabilities. In this last aspect, the relevant regulations include in particular the UN Convention on the Rights of Persons with Disabilities, drawn up in New York on December 13, 2006,[32] Recommendation No. R(99)4 of the Committee of Ministers of the Council of Europe of February 23, 1999 on principles concerning the legal protection of adults with disabilities and Recommendation No. (2006)5 of the Committee of Ministers of the Council of Europe of April 5, 2006 – Action plan to promote the rights and full participation of persons with disabilities in society: enhancing the quality of life of persons with disabilities in Europe 2006–2015. In the European context it is necessary to mention the role of the jurisprudence of the European Court of Human Rights, which has repeatedly challenged the redundancy, indefiniteness and discriminatory nature of incapacitation, especially in the context of the right to a court limitations or influence on public rights of the person affected by incapacitation proceedings.[33] Although the European Convention on Human Rights does not exclude an incapacitation as such, the European Court of Human Rights established that the existence of a mental disorder, even a serious one, cannot be the sole reason to justify depravation of legal capacity. Such a reason can be only mental disorder of a certain "kind of degree".

Of fundamental importance in the context of the situation of adults with mental or intellectual disabilities is Convention on the Rights of Persons with Disabilities, which emphasises the importance of the individual autonomy of persons with disabilities and their independ-

27 OTK ZU 3A/2007, item. 24; Journal of Laws No. 47, item 319; available also at: <https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=K%2028/05> accessed 19 January 2025.

28 Journal of Laws No. 211, item 1548. The circumstances of this case are peculiar: the regulation under review by the Tribunal required for granting of a social pension to a mentally disabled person the attendance of a legal representative or the request the appointment of such a representative by the pension authority (what had to be preceded by incapacitation).

29 See: Statement of the Ombudsman in a case pending before the Constitutional Court, SK 23/18, <https://www.rpo.gov.pl/sites/default/files/Stanowisko%20RPO%20dla%20TK%20w%20sprawie%20ubezw%C5%82asnowolnienia.pdf> accessed 19 January 2025.

30 See: Art. 1(3) of the UN Convention and Art. 1 of the Universal Declaration of Human Rights, the Preamble to the International Covenant on Civil and Political Rights adopted on December 16, 1966, the Preamble to the International Covenant on Economic, Social and Cultural Rights adopted on December 16, 1966, Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms adopted on November 4, 1950, the Preamble and Art. 1 of the Charter of Fundamental Rights of the European Union (of the European Union C 303 of December 12, 2007, p. 1). See: Anna Bruce, Christine Burke, Joshua Castellino, Theresia Degener, Padraic Kenna, Ursula Kilkelly, Shivaun Quinlivan, Gerard Quinn, in: Gerard Quinn, Theresia Degener (ed.), 'Human Rights and Disability. The current use and future potential of United Nations human rights instruments in the context of disability, United Nations, Bew York – Geneva (2002).

31 See: the UN Convention of the Rights of the Child, drawn up in New York on November 20, 1989 (Journal of Laws No. 120, item 526).

32 Journal of Laws of 2012, item 1169.

33 See judgements of the ECHR: *Shtukaturov v Russia* no 44009/05 (ECHR, 27 March 2008); *Salontaji-Drobnjak v Serbia* no 36500/05 (ECHR, 13 October 2009); *Glor v Switzerland* no 13444/04 (ECHR, 30 April 2009); *Alajos Kiss v Hungary* no 38832/06 (ECHR, 20 May 2010); *X and Y v. Croatia* no 5193/09 (ECHR, 3 November 2011); *Stanev v Bulgaria*, no 36760/06 (ECHR, 17 January 2012); *Sykora v Czech Republic* no 23419/07 (ECHR, 22 November 2012). See also: Maciej Domański, 'Ubezwłasnowolnienie w prawie polskim a wybrane standardy międzynarodowej ochrony praw człowieka' (2004) 17 Prawo w Działaniu. Sprawy Cywilne, 12–16.

ence, including the right to make their own choices.[34] In particular, Art. 12 of the CRPD, which requires States Parties to recognize the legal capacity of persons with disabilities (paragraph 2),[35] to create a system of support for these persons (paragraph 3) in such a way as to ensure that their wishes and preferences are taken into account (paragraph 4), and to guarantee the right to own and inherit property, to control their own financial affairs and to have access to various forms of credit (paragraph 5). Protection instruments should be applied with respect for the rights of the person concerned, prevent conflicts of interest, be proportionate and appropriate to the circumstances, be applied in the shortest possible time and be subject to review by a competent and impartial authority or judiciary. The result should be to replace a substitute decision-making model with a supported decision-making model. Poland has ratified the Convention, but has made an interpretative remark,[36] according to which: "The Republic of Poland declares that it interprets Art. 12 of the Convention to permit the use of incapacitation, in the circumstances and in the manner prescribed by domestic law, as a measure referred to in Art. 12(4) when, as a result of mental illness, mental retardation or other mental disorder, a person is incapable of directing his or her own proceedings." However, as aptly regarded in the literature, an inadmissible reservation within the meaning of the Vienna Convention[37] on the grounds that it is contrary to the purpose of the Convention.

## 5. EUROPEAN WAY FORWARD

Over the past dozen or so years, under the influence of medical, sociological and psychological developments, the impact of the concept of human rights, as well as demographic changes, the solutions adopted in the analysed scope in leading European legal systems have undergone profound changes. They have resulted in the complete abandonment (for example in Germany, Austria, France, Sweden or Netherlands)[38] or radical reduction of the use of the institution of incapacitation and significant changes in the system of support and legal guardianship over adults. Further reforms are being discussed in countries such as: Czech Republic,

34 See: Amita Dhanda, 'Legal capacity in the disability rights convention: stranglehold of the past or lodestar for the future?', 34 Syracuse Journal of International Law and Commerce (2006–2007), 429–462; Michael Bach, 'The right to legal capacity under the UN Convention on the rights of persons with disabilities: Key concepts and directions from law reform, Toronto, Institute for Research and Development on Inclusion and Society (2009), 2–24; 28. Lucy Series, 'Disability and human rights', in: Nick Watson and Simo Vehmas (eds), Routledge Handbook of Disability Studies, Routledge Taylor & Francis Group (2020), 72–84.

35 This particular provision uses the term 'legal capacity', which in the Polish version of the Convention has been translated literally and reductively (as passive legal capacity, e.g. "*zdolność prawna*"), thus underpinning the debatable claim that Poland has correctly transposed the Convention into the domestic legal order.

36 Journal of Laws 2012, item 1170.

37 Vienna Convention on the Law of Treaties of May 23, 1969 (Journal of Laws 1990, No. 74, item 439). See in particular: Art. 2(1) (d) and Art. 19(c) of the Convention. Paweł Księżak, 'Art. 12 CC' in: Konrad Osajda (ed), *Kodeks cywilny. Komentarz* (C.H. Beck, 2021), side note 7. See also Dorota Pudzianowska (ed), *Prawa osób z niepełnosprawnością intelektualną lub psychiczną w świetle międzynarodowych instrumentów ochrony praw człowieka* (Wolters Kluwer, 2014), with valuable contributions of Anna Błaszczak, Adam Bodnar, Ryszard Chruściak, Anna Rakowska-Trela, Robert Rybski, Małgorzata Szeroczyńska, Anna Śledzińska-Simon, Monika Zima-Parjaszewska, Kamil Zaradkiewicz.

38 See: Jolanta Drobot, 'Ubezwłasnowolnienie całkowite na tle rozwiązań europejskich' (2020) 1 Radca Prawny. Zeszyty Naukowe, 122–125.

France, Hungary, Ireland, Portugal, Slovakia and Slovenia. Norway and Sweden are reviewing their legislation in respect of compulsory psychiatric treatment and care.[39]

German law (§ 104 BGB)[40] stipulates that a person lacks capacity for legal acts (German: *Geschäftsunfähig ist*) if he or she: (1) has not attained the age of 7 years or (2) is in a state of pathological (morbid) disorder of mental activity that precludes free will, unless it is temporary. As late as 1992, the institution of incapacitation was abolished and replaced by the concept of so-called natural incapacity, which can only apply to a certain range of actions (German: *partielle Geschägtsunfähigkeit*).[41] A guardian (German: *Betreuer*) is appointed for an adult who, due to illness or disability of whatever kind, is unable to manage his or her affairs in whole or in part, and who, within the scope of the duties entrusted to him or her, is his or her legal representative. However, this does not per se deprive a person of legal capacity (see § 1814 BGB *et seq*.).[42] The appointment of a guardian can only take place if it is necessary and the scope of his or her tasks is determined in each case by the court (§ 1814 sec. 3, § 1815 sec. 1 BGB). When appointing a guardian, the wishes of the person for whom the guardian is appointed should be taken into account as far as possible (§ 1816 BGB).[43]

Austrian law, following amendments in 2007, 2013 and 2018, adopts a presumption of capacity for legal acts (German: *Geschäftsfähigkeit*) for adults (Art. 865 § 1 ABGB).[44] The Austrian legislator denies legal capacity to children up to the age of 7, while for adults it provides for the possibility of appointing a guardian attorney (German: Vorsorgebevollmächtigten) or a representative (elected, statutory or judicial; German: *gewählte, gesezliche, gerichtliche Erwachsenenvertereter*). Appointment of such an attorney or representative does not, however, in principle, affect the scope of the legal capacity of the person being replaced (§ 242 (1) sentence 2 in medio ABGB). The court may adopt such measures exceptionally, only if it is necessary to avoid serious and substantial danger to the represented person. Their establishment is entered in a special central register (*Österreichischen zentralen Vertretunsverzeichnis*; ÖZVV).

Under Swiss law, the capacity to act (German: *Handlungsfähigkeit*, French: *capacité civile active*) is possessed by a person who is of full age and capable of discernment (judgement; German: *wer urteilsfähig ist*), so a one who, due to age, mental disability, mental disorder, alcohol intoxication or a similar condition, is not deprived of the capacity to act rationally (arts. 13 and 14 ZGB).[45] Pursuant to Art. 17 of the ZGB, persons incapable of discernment, minors and

39 See: Council of Europe Commissioner for Human Rights, '*Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities*', (2012) Council of Europe, 10; <https://rm.coe.int/who-gets-to-decide-right-to-legal-capacity-for-persons-with-intellectu/16807bb0f9> accessed 19 January 2025.

40 The Act of August 18, 1896 – German Civil Code (German: *Bürgerliches Gesetzbuch*; BGBl. 2002, Teil I, p. 42), last amended by the law of October 10, 2024, hereinafter: BGB.

41 See: Karl Larenz, Manfred. Wolf, *Allgemeiner Teil des Bürgerlichen Rechts* (München 1997), 485; Dieter Medicus, *Allegmeiner Teil des BGB. Ein Lehrbuch* (Heidelberg, C.F. Müller 2002), 213.

42 See: Uli Hellmann, 'Selbstbestimmungsrecht, rechtliche Betreuung, Handlungsfähigkeit und Geschäfts(un)fähigkeit – wie passt das zusammen?', (2004) 4 Verbandsdienst der Lebenshilfe, 174–181.

43 See also: Małgorzata Poczyńska, 'Ubezwłasnowolnienie i alternatywne formy pomocy w realizowaniu zdolności do czynności prawnych osób z niepełnosprawnością intelektualną, w regulacjach międzynarodowych oraz w prawie obcym, na przykładzie Estonii, Niemiec, Szwecji, Wielkiej Brytanii i Kanady (stanu Manitoba)' in: K. Kędziora (ed), *Jeśli nie ubezwłasnowolnienie, to co? Prawne formy wsparcia osób z niepełnosprawnością intelektualną* (PTPA 2012), 45–48.

44 Austrian Civil Code (*Allgemeines b*ürgerliches *Gesetzbuch*) introduced by the imperial patent of June 1, 1811 (JGS 1811, No. 946), last amended by the law of September 9, 2021 (BGBl. Teil I 2021, No. 175).

45 The Act of December 10, 1907 – Swiss Civil Code (*Schweizerisches Zivilgesetzbuch;* BBl. 1907 VI 589).

persons under full guardianship (German: *Personen unter umfassenderen Beistandschaft*) do not have capacity to act (see also section 398(1)-(3) ZGB). Importantly, the capacity for discernment is relative: it is assessed in relation to a specific transaction and person. Under Swiss law, in addition to (1) persons with unlimited capacity to act and unimpaired capacity to discern, a distinction is therefore made between (2) persons incapable of acting and discernment (see Art. 17 ZGB, cited above), (3) persons incapable of acting but with adequate discernment (German: *urteilsfähige handlungsunfähige Personen*; art. 19 ZGB) and (4) persons with limited capacity to act (German: *beschränkte Handlungsfähigkeit*), e.g. persons for whom a guardianship has been established (German: *Bestand*; art. 19d, art. 391 para. 1 and art. 394 *et seq.* ZGB) in one of the forms which provide for such an effect on capacity to act. Unlike in the case of a so-called assisted guardianship (German: *Begleitbeistandschaft*; Art. 393 ZGB), such a ruling is possible in the case of a so-called substitute guardianship (German: *Vertretungsbeistandschaft*; Art. 394 and 395 ZGB); by force of law, the capacity of the ward is limited if a so-called participatory guardianship (German: *Mitwirkungsbeistandschaft*; Art. 396 ZGB) is established.

French law (Art. 1146 CCiv)[46] provides that the capacity to contract, extended by the doctrine also to other legal acts, is not possessed by (1) minors "not emancipated" (franc. *les mineurs non émancipés*) (Art. 414, Art. 144–145 and Art. 476–478 CCiv), and (2) protected adults (French: *les personnes protégées; les majeurs protégés*), so the persons who, due to a medically confirmed mental or physical impairment preventing the expression of their will, are unable to take care of their interests (Art. 425 CCiv). French law provides for three types of measures set up for a maximum of 5 years (and possibly renewed) to ensure the protection of adults: judicial protection (franc. *la sauvegarde de justice*), guardianship (French: *la curatelle*) and custody (*la tutelle*). The rationale behind this differentiation is to adapt the protection measure adequately and flexibly to the needs of the person concerned.[47] Moreover, these measures can be modified at any time.[48] The extension of judicial protection (Art. 433-439 CCiv) can only take place if the interests of the adult person cannot be safeguarded by another, less restrictive instrument (e.g., those regulated by Art. 217, 219, 1426 and 1429 CCiv), in compliance with the principles of proportionality and individualization (see Art. 428-430 CCiv) and in a manner that promotes the autonomy of the person (Art. 415 CCiv). If an individual who is incapable of acting independently needs assistance during the proceedings or in the performance of a specific act, the court may apply the so-called provisional remedies, in particular the appointment of a substitute (Art. 433, 437 CCiv). If such a person, for the reasons indicated in Art. 425 CCiv, requires permanent assistance or control in the performance of "important acts of civil life", he or she may be placed under guardianship; and if he or she should be permanently represented in such acts, he or she may be placed under guardianship (Art. 440 CCiv).

An interesting example is Georgia, where the legislative changes were stimulated by the Constitutional Court which in its judgment of 8th October 2014 (No 2/4/532,533) held that

46 French Civil Code (*Code civil*) introduced by the Act of 21 March 1804 on the unification of civil laws into a single body (Bulletin des lois de la République française, Series 3, No. B. 354, No. 3677, p. 696), last amended by Ordonnance No. 2021-1192 of 15 September 2021. (JORF No 0216 of 16 September 2021).

47 See: Jolanta Drobot, 'Ubezwłasnowolnienie całkowite na tle rozwiązań europejskich' (2020) 1 Radca Prawny. Zeszyty Naukowe, 124.

48 See: Virginie Larribau-Terneyre, *Droit Civil: Introduction, Bien, Personnes, Famille* (Dalloz 2018), 587.

the inflexible system of guardianship regulated in the Civil Code and the Code of Civil Procedure violates the constitutional guarantees of personal autonomy, equality and access to court.[49] The Court obliged the legislature to introduce a completely new system of legal protection of persons with mental disabilities based on three principles: flexibility, proportionality and maintenance of legal capacity of individuals to a maximum possible extent. The reform of the Georgian Civil Code entered into force in June 2015. The new laws replaced the institution of guardianship with flexible and individualized system of support. Unlike in guardianship, the role of supporter is not to take actions on behalf of supported person, but just to provide him/her assistance in certain spheres of life. Both those spheres as well as the scope of the assistance have to be specified by the courts, taking into account individual needs of persons under support. The complete substitution of the person's will with the will of supporter (substitute decision making) is permissible only in exceptional cases.[50]

## 6. WIND OF CHANGE?

The strength of so-called path dependence in the area analysed is evidenced by the fact that in the so-called Green Paper on the future codification of Polish Civil Law published in 2006 it was suggested to eliminate only partial incapacitation, while leaving full incapacitation in existence.[51] Under persuasive criticism, in 2012-2015 the Civil Law Codification Committee[52] prepared the assumptions of a draft bill to amend the Civil, Family and Civil Procedure Code.[53] The project provided for a comprehensive reform of the support system for people with mental or intellectual disabilities, based on the principles of non-discrimination, inclusiveness and support rather than exclusion of such persons. It assumed: (1) making the scope of legal capacity, in principle, dependent only on age, (2) abandoning the institution of incapacitation and guardianship (or custody) in its current form, and (3) replacing it with support adapted to the individual needs of a person with disabilities. The mechanism involved adjudicating, in a single proceeding and always for a fixed period, the establishment of a guardianship and determining its impact on the mentee's independence by choosing one of the following options: (a) an assisted guardianship, with a purely supportive function; (b) a guardianship with concurrent representation, which involves authorising the guardian to represent the mentee

49 See: Marcin Szwed, 'Likwidacja konstrukcji ubezwłasnowolnienia w Gruzji po wyroku Sądu Konstytucyjnego z 8 października 2014 r.' (2017) 1 Przegląd Legislacyjny, 65–83.

50 See: Art. 12-16 of the Act of June 26, 1997 – Civil Code of Georgia (Parliamentary Gazette, 31, July 24, 1997).

51 See: Green Paper "Optimal Vision of the Civil Code in the Republic of Poland", Civil Law Codification Commission of the Minister of Justice, Warsawa 2006, <http://bip.ms.gov.pl/kkpc/zielona_ksiega.pdf> accessed 19 January 2025 and Monika Zima-Parjaszewska, 'Ubezwłasnowolnienie w świetle Konstytucji RP oraz Konwencji o prawach osób z niepełnosprawnościami' Polskie Towarzystwo Prawa Antydyskryminacyjnego, <https://ptpa.org.pl/site/assets/files/1028/ekspertyza_osi_-_ubezwlasnowolnienie.pdf> accessed 19 January 2025), 17.

52 Hereinafter referred to as: CLCC.

53 See: Komisja Kodyfikacyjna Prawa Cywilnego, Projekt założeń nowelizacji Kodeksu cywilnego, Kodeksu postępowania cywilnego, Kodeksu rodzinnego i opiekuńczego i innych ustaw w zakresie zdolności do czynności prawnych osób z niepełnosprawnością psychiczną, <https://bip.ms.gov.pl/Data/Files/_public/kkpc/projekty-na-stroniems/1-zalozenia-v--2-0-22-03-2013-do-dprc.doc> accessed 19 January 2025; Piotr Machnikowski, 'Instytucja opieki nad pełnoletnim w pracach Komisji Kodyfikacyjnej Prawa Cywilnego w latach 2012–2015' (2019) 4 Państwo i Prawo, 135 *et seq*; Marta Pasieka-Kuzara, 'Bliski koniec instytucji ubezwłasnowolnienia?' (2021) 2 Transformacje Prawa Prywatnego, 95–98.

in a designated area; (c) a guardianship with co-determination competence and the requirement for the guardian's consent or confirmation of certain types of transactions concluded by the mentee, and only exceptionally (d) a guardianship with an exclusive representation by the guardian in a designated matters. In addition, it was proposed to introduce, known, inter alia, in German, Swiss or English law, the institution of a guardianship power of attorney, granted by an adult in full mental capacity, and including the authority to perform certain actions on his or her behalf in the event of future mental disorders.[54]

Unfortunately, before the above assumptions were finalised in the bill and sent to the Parliament, the CLCC was dissolved by the Minister of Justice in 2015. For almost 8 years, the issue of support mechanisms for people with disabilities disappeared from the governmental and parliamentary agenda. However, after the change of government majority and the re-establishment of the CLCC in 2024, the work abandoned so far has been resumed, hopefully with positive results.[55] The result of the work is draft Law on instruments for supported decision-making of December 9, 2024.[56]

Like the previous draft of the CLCC, the draft of 9 December 2024 also implies the repeal of the institutions of incapacitation, guardianship and curatorship in its previous form. The provisions of Article 12 CC and Articles 544–560[1] CPC are to be repealed, Articles 12, 15, 16, 18 and 19 CC are to be amended accordingly, and new Articles $16^{1}$, $18^{1}$ and $109^{10}$-$109^{18}$ CC are to be added. The institutions mentioned above will be replaced by the figure of a "representative curator" – appointed by the court for an adult in need of support to the extent that he or she is unable to perceive and assess reality or manage his or her own behaviour, and a "supporting curator" – appointed for a person in need of actual support in managing his or her affairs. In doing so, the new curatorship formula is extremely flexible – depending on the circumstances, a representative curator may be appointed to the handling of: (a) a specific case, (b) a specific type of case or (c) all the affairs of the supported person (drafted Art. 16 § 2 CC). The court also determines the scope of matters that may be performed: (a) by the representative curator on behalf of the supported person or (b) by the supported person only with the curator's consent; it may also determine (c) the amount of transactions that the supported person may perform independently. For a number of vitally important legal acts carried out by a representative curator (e.g. the disposal or encumbrance of real estate, the disposal or alteration of a right serving the housing needs of the supported person, the placement of the person in a social welfare home or a care and treatment facility), the bill also stipulates the need for court authorisation. In comparison with the current legislation, it is notable that the draft law only operates on the criteria of "discernment" (self-determination), "capacity to manage one's own behaviour" and "capacity to manage one's own affairs", without making any reference to the causes of this condition, the assessment of which is in fact the domain of medical law (and is likely to evolve with the development of medicine). The draft law repeatedly emphasises also the need to take into account preferences and views, previously expressed wishes and to protect the

54 See: Piotr Machnikowski, 'Pełnomocnictwo opiekuńcze w pracach Komisji Kodyfikacyjnej Prawa Cywilnego w latach 2012–2015' (2016) 5 Rejent, 50 *et seq*.

55 See: <https://www.gov.pl/web/sprawiedliwosc/zespoly-problemowe-komisji-kodyfikacyjnej-prawa-cywilnego> accessed 19 January 2025 and <https://www.rp.pl/prawnicy/art40768801-marek-safjan-nowy-kodeks-jest-koniecznoscia-czy-zajmie-sie-tym-komisja> accessed 19 January 2025.

56 See: <https://legislacja.gov.pl/projekt/12392502> accessed 19 January 2025.

interests of the supported person, as well as to preserve the proportionality and adequacy of the legal remedies applied (see, inter alia, Art. 2, 11, Art. 12(1), Art. 16 of the draft law, as well as drafted Art. $605^{6}$ CPC). This endeavour also has an institutional dimension. An alternative to the court-appointed supporting curator is to be the so-called legal assistant, i.e. a person who performs such activities on the basis of an agreement with the assisted person (Articles 4-10 of the draft). On the other hand, an priority alternative to representative curatorship (see draft Art. $109^{16}$ § 2 CC) is to be a registered power of attorney – established by an adult person for the future, in the event that due to his/her health he/she is not able to manage his/her own affairs, with a broad scope prescribed by the law. A registered power of attorney is to be established in the form of a notarial deed and entered in the Register of Powers of Attorney maintained by the National Notary Council (drafted Art. $109^{10}$ CC). The powers of a registered proxy come in force at the moment the notary draws up a protocol of certification of the registered power of attorney, on the basis of current medical certificates from two psychiatric or neurological specialists confirming that, due to his or her state of health, the principal is unable to manage his or her own affairs.

## 7. CONCLUSIONS

The precedent considerations lead to the conclusion that both the shape of statutory solutions governing the legal position of persons with intellectual or psychosocial disabilities (including some diseases of old age), and their interpretation in judicial practice, should pursue the following objectives: protection and support of such persons, inclusiveness, subsidiarity and proportionality.[57] The institution of incapacitation in its current form (especially full incapacitation and plenary guardianship) does not fulfil these postulates.[58] The Polish relevant regulation is archaic in language and incompatible with circumstances, social changes and the current state of medical knowledge. Above all, however, incapacitation is flawed by its exclusionary and stigmatising nature, disproportionality and ineffectiveness.[59] This institution should be replaced by a system of regulations that create for persons with intellectual disabilities conditions for development and increase their scope for self-determination, to the extent of individual capabilities.

In the light of the above, the prepared assumptions of the amendments to the Polish codes (CC, FC and CPC) providing as a rule supported decision-making mechanisms should be implemented as soon as possible. Constitutional and international regulations as well as conclu-

57 Against the backdrop of incapacitation, see: the Supreme Court in the resolution of September 28, 2016, III CZP 38/16 and judgement of September 6, 2017, I CSK 331/17. However, the demands expressed therein are extremely rarely implemented in jurisprudential practice.

58 See: Council of Europe Commissioner for Human Rights, „Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities", Council of Europe, April 2012, p. 7 (The Commissioner's for Human Rights recommendations) <https://rm.coe.int/who-gets-to-decide-right-to-legal-capacity-for-persons-with-intellectu/16807bb0f9> accessed 19 January 2025.

59 See in particular: Helsinki Foundation for Human Rights, *Incapacitation under constitutional and international standards for human rights protection* (20180; Maciej Domański, '*Ubezwłasnowolnienie w prawie polskim a wybrane standardy międzynarodowej ochrony praw człowieka*' (2004) 17 Prawo w Działaniu, 7 *et seq*.; L. Kociucki, *Zdolność do czynności prawnych osób dorosłych i jej ograniczenia* (C.H. Beck, 2011), 249 *et seq*.

sions of comparative legal analyses leave no doubt in this respect. Polish civil law, while trying to keep up with changing social relations, cannot mentally remain stuck in the 19th century at such a sensitive point for human personality. This request is finally being realised by the draft law on instruments for supported decision-making of December 9, 2024. Notwithstanding the discussion of the details, the general direction of change that underlies this project should be considered correct and consistent with the constitutional and international standards indicated in the article. The same postulate can be applied to the other countries having the same cultural and legal background.

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# PRAVNA SPOSOBNOST I LJUDSKO DOSTOJANSTVO – KRITIČKI OSVRT NA LIŠAVANJE POSLOVNE SPOSOBNOSTI U POLJSKOM PRAVU IZ KOMPARATIVNE PERSPEKTIVE

**Sažetak**

Odredbe poljskog Građanskog zakonika o pravnoj sposobnosti, uključujući i institut lišavanja poslovne sposobnosti, slično kao i u drugim zemljama u regiji, nisu doživjele veće promjene od njegova stupanja na snagu 1. siječnja 1965. Tijekom godina medicinsko znanje, percepcija različitih mentalnih bolesti i poremećaja, kao i društvena uloga osoba s invaliditetom, znatno su se promijenili. Promijenio se i sustavni kontekst – i ustavni i međunarodni (konvencijski) – kao i pravno stanje u ovom području u većini zapadnoeuropskih zemalja, uključujući i one koje su poljskom zakonodavcu poslužile kao regulatorni uzor. U tom kontekstu, autor zagovara potrebu ukidanja instituta lišavanja poslovne sposobnosti i njegovu zamjenu uravnoteženijim i proporcionalnijim pravnim mjerama koje ne zadiru toliko duboko u pravnu sposobnost, a time ni i u pravno zaštićeno ljudsko dostojanstvo. Ovaj se zahtjev konačno ostvaruje prijedlogom Zakona o sredstvima za podržano donošenje odluka od 9. prosinca 2024.

*Ključne riječi:* *pravna sposobnost, intelektualni poremećaj, intelektualne teškoće, lišavanje poslovne sposobnosti*

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