



# UKRAINE'S LEGAL CAPACITY REGIME: FAILING PEOPLE WITH DISABILITIES



## **Ukraine's Legal Capacity Regime: Failing People with Disabilities**

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# Summary Report

This report analyzes Ukraine’s legal capacity regime in light of its obligations under Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Legal capacity is the power to make personal life, health care, and financial/property decisions with legal consequences. Being able to exercise legal capacity is foundational to autonomy, dignity, and full participation in society. Legal capacity regimes are made up of the laws and policies which govern who can exercise legal capacity and on what basis.

Background research for this report was undertaken by Fight for Right (FFR) Ukraine in collaboration with the New Society Institute (Canada). The aims were to assess the extent to which Ukrainian law, policy, and practice comply with the equality standard established by the CRPD, and to identify directions for reform that would enable all persons with disabilities to exercise legal capacity on an equal basis with others.

## I. Key Concepts for an Inclusive Legal Capacity Regime

The report defines core terms— including *legal capacity*, *civil capacity*, *decision-making capability*, *supported decision-making*, and the *duty to accommodate*. Internationally, legal capacity includes both the right to have rights and the right to exercise them. Ukraine’s guardianship-based, medical model substitutes decisions for the person; the CRPD standard centers will and preferences, recognizing legal capacity exercised independently with supports or interdependently through supported decision-making arrangements.

The “decision-making capability” approach to legal capacity is contrasted with the mainstream medical model approaches which require a person to demonstrate cognitive capacity to independently make personal life, health care, and financial/property decisions. The UN Committee on the Rights of Persons with Disabilities have determined that these approaches discriminate on the basis of disability.

In contrast, the decision-making capability approach presumes that people can exercise legal capacity either:

- ***independently***, with decision-making supports that may be needed for this purpose (e.g., communication assistance, planning and community navigation support, advocacy support); or,
- ***interdependently***, for people with more significant intellectual, cognitive, and psychosocial disabilities who may require decision-making supporters to interpret their will and preferences as the basis of making decisions, and for which supported decision-making is arranged with trusted supporters.

## **II. Research Framework and Methodology**

Using the Legal Capacity Inclusion Lens (LCIL), a CRPD-grounded tool, the study coded provisions from key Ukrainian laws and policies and scored them across 171 measures in five domains. Two levels were assessed:

- Adoption (has Ukraine embraced the decision-making capability approach conceptually?) and
- Implementation (are institutional mechanisms, supports, and safeguards in place to make it real?).

The “Adoption Index” provides assessment measures for seven key features of a fully inclusive decision-making capability approach to legal capacity, against which Ukraine’s legal capacity regime is assessed for its inclusivity of people with disabilities. These measures are:

### **1. *Inclusive test of legal capacity***

Legal provisions recognize that a person can meet the cognitive requirements of a legally valid decision either independently or, if unable even with support because they have a significant intellectual, cognitive and/or psychosocial disability, they can meet the requirements interdependently. For this purpose, it recognizes interpretive and communication supports from others, guided by a person’s will and preferences.

### **2. *Recognition of supports for legal capacity***

Legal provisions recognize a full range of supports that may be required for exercising legal capacity independently or interdependently.

### **3. *Supported decision making arrangements***

Legal provisions enable persons to make supported decision-making agreements for exercising legal capacity independently or interdependently.

**4. *Government obligation for ensuring access to decision-making support***

Legal provisions recognize a government obligation to ensure access to decision-making supports a person may require to exercise legal capacity independently or interdependently.

**5. *Mandatory exploration of decision-making support***

Legal provisions mandate exploration of options to meet decision-making support needs at all points where decision-making capability is questioned and/or needs to be enhanced.

**6. *Duty of third parties to accommodate persons in decision-making processes***

Legal provisions recognize the duty of all parties to accommodate persons in decision-making processes related to the exercise of their legal capacity, either independently or interdependently.

**7. *Justified restrictive measures and regular review***

Legal provisions ensure that restrictive measures are a last resort only after all support options have been exhausted; that they have complementary efforts to establish decision-making supports so that any restrictions can be vacated as soon as possible; and that they subject to regular review by a competent authority to assess whether the benefits outweigh the harms and that the need for such restrictions continues to be justified.

Provisions from 37 sources of law (see examples in overview of Ukraine's legal capacity regime below) were coded and scored against the seven measures on a four-point scale from "not at all" to "fully" compliant. These results form the empirical foundation for the report's findings and reform directions.

### **III. The Problem: Legal Capacity Exclusion**

As of 2025, tens of thousands of adults in Ukraine remain under guardianship, stripped of civil, political, and economic rights. Guardianship often lasts for life and is rarely reviewed, despite legislative amendments requiring periodic reconsideration. Courts rely on psychiatric diagnoses rather than on individuals' will, preferences, or access to support.

Social stigma reinforces this exclusion: banks, notaries, and service providers routinely deny services to persons with disabilities unless a guardian is present. Data on the number of people deprived or restored of legal capacity is fragmented and incomplete, with over 27,000 adults under guardianship and negligible restoration rates. This entrenched system of deprivation - “civil death” - constitutes a structural form of discrimination contrary to Ukraine’s constitutional and international obligations.

#### **IV. Equality: The Policy Goal**

The principle of equality before the law—the foundation of Article 12—is the benchmark against which Ukraine’s regime is assessed. Equality requires not only that all persons *have* rights, but that they can *exercise* them.

The CRPD, the European Convention on Human Rights, and EU law all oblige Ukraine to replace guardianship and deprivation and the cognitive/functional approach to legal capacity on which it is based. The alternative is the decision-making capability approach to legal capacity. This approach recognizes a person’s will and preferences as the basis of legal capacity, as recognized under the CRPD, and assures equality through maximizing supports and enabling supported decision-making where this is required for people with more significant disabilities.

However, Ukraine’s laws and the inaccurate national translation of Article 12 weaken the concept of legal capacity, reducing it to a passive state of “having rights” rather than the active exercise of rights or the capacity to act. The UN Committee’s General Comment No. 1 clarifies that legal capacity is inalienable, cannot be denied based on cognitive or psychosocial disability, and that states must provide decision-making supports and safeguards that respect a person’s will and preferences.

In sum, Ukraine’s current guardianship system violates the equality right and must be replaced by a framework grounded in the decision-making capability approach to legal capacity, with supported decision-making and accessible supports across all areas of life.

#### **V. Overview of Ukraine’s Legal Capacity Regime**

Ukraine’s legal capacity regime is shaped by a broad and fragmented set of laws spanning civil, procedural, social protection, health, and sector-specific domains. Core instruments such as the Civil Code and Civil Procedure Code govern restriction, deprivation, and restoration of civil capacity, while the Family Code, Law on Psychiatric Care, and Law on Social Services regulate decision-making in family life, health care,

and social support settings. Other legislation—covering banking, notarial practice, administrative procedures, and elections—adds further capacity tests that affect people’s ability to manage finances, enter contracts, access services, or participate in public life. Cabinet resolutions and judicial practice are also important instruments. Collectively, these instruments regulate how and when individuals can be deprived of or restricted in legal capacity but do not recognize decision-making supports as a legal right.

Together, these intersecting laws illustrate how legal capacity is regulated across many areas, creating multiple points where people with disabilities may face limitations or exclusion.

Responsibility for implementation of measures related to legal capacity lies primarily with the Ministry of Social Policy, National Social Service, and guardianship authorities at local levels. Social services remain limited, under-funded, and dependent on guardians’ applications, effectively excluding people deprived of capacity from initiating access themselves. Recent pilots of community-based services (“money follows the person”) have not yet extended to decision-making supports. The current regime therefore lacks both legal and institutional mechanisms needed to achieve equality in the exercise of legal capacity.

## **VI. Analysis of Results**

The analysis reveals a profound gap between Ukraine’s formal commitments under the UN Convention on the Rights of Persons with Disabilities (CRPD) and the actual operation of its legal capacity regime. While some provisions mention support and accommodation, these remain largely declarative and unenforced.

Table 1 reports on how well existing features of the approach to legal capacity in Ukraine’s legal capacity regime measure up to the requirements of a fully inclusive, CRPD-compliant approach. With an “Adoption Index” score of only 26% the data are clear: the regime is seriously failing people with disabilities. This is largely due to the fact that legal capacity continues to be defined primarily through cognitive or functional tests that exclude persons with intellectual, cognitive or psychosocial disabilities. References to supported decision-making exist in principle but are undermined by exclusionary capacity tests and the absence of public investment in and assurance of decision-making supports.

## Effectiveness in Adopting an Inclusive Approach

Element of Legal Capacity Approach	Number of Provisions Assessed	Average Score
1. Capacity tests and requirements	31	.68
2. Decision-making supports	18	1.00
3. Supported decision making	11	.91
4. Government requirement for support	9	.56
5. Exploring support alternatives	6	1.00
6. Duty to accommodate	12	.83
7. Review of Restrictive Measures	58	.74
<b>Ukraine Legal Capacity Regime: “Adoption Index” (Composite Score)</b>	145	.78 (26%)

At the implementation level, the situation is even weaker. The “Implementation Index” score of only 6 percent indicates that there are virtually no operational mechanisms or institutional mandates to make supports and accommodations available in practice. People who need support are therefore effectively denied the ability to exercise legal capacity.

Judicial practice entrenches these barriers. Courts continue to apply the medical model of disability, relying on psychiatric diagnoses as grounds for deprivation of capacity and rarely considering support alternatives or hearing directly from the individual. Restoration of rights is rare, despite emerging guidance from the Supreme Court and the European Court of Human Rights.

Comparative evidence from Australia, Peru, and Bulgaria demonstrates that reform is achievable when countries move from guardianship and cognitive testing toward universal legal capacity supported by structured decision-making mechanisms. These experiences underscore that successful reform must combine legislative change with investment in community-based supports, judicial and professional education, and strong involvement of persons with disabilities.

Overall, the findings position Ukraine at a critical juncture: bridging the gap between commitment and reality requires not minor legislative amendments but a systemic transformation in how legal capacity is defined, supported, and safeguarded.

## **VII. Findings and Implications**

The LCIL analysis revealed six systemic weaknesses in Ukraine’s legal capacity framework:

1. Disability-based tests of capacity rooted in the medical model.
2. Limited or no access to decision-making supports.
3. No formal recognition of supported decision-making arrangements.
4. Insufficient safeguards against abuse and exploitation.
5. Weak or inaccessible appeal and review mechanisms.
6. Failure to shift from substituted to supported decision-making.

These interlocking deficiencies show that while Ukraine has formally recognized CRPD principles, it has not yet built the institutional machinery to implement them. Reform therefore requires coordinated legislative change, institutional restructuring, and the development of community-based decision-making support systems.

## **VIII. Directions for Reform**

To comply with Article 12 and close the adoption–implementation gap, Ukraine should pursue reform across five pillars:

### **1. Legislative Reform**

- Abolish deprivation of civil capacity and repeal guardianship provisions that substitute decision-making.
- Embed the decision-making capability approach in all relevant laws through:
  - An inclusive legal capacity test recognizing both independent and interdependent exercise of rights.
  - Legal recognition of decision-making supports and supported decision-making arrangements.
  - A state duty to ensure access to supports and accommodations.
  - A requirement to explore supports before any restrictive measure.
  - Regular review and justification of restrictions.
- Correct the official translation of the CRPD to reflect “legal personality” and the active enjoyment of rights.

### **2. Institutional Reform**

- Establish an inter-ministerial Legal Capacity Reform Working Group, co-led by the Ministry of Social Policy, Ministry of Justice, and National Social Service, with participation from disability and human-rights organizations.
- Undertake a comprehensive analysis of legislative gaps to develop priorities and an agenda for reform.
- Develop standards, safeguards, and oversight mechanisms for supported decision-making.
- Ensure regular judicial review of all capacity decisions with the person's participation and guarantee free legal aid in such proceedings.

### **3. Service Reform**

- Build a national network of community-based decision-making support services, including NGOs and local providers.
- Enable these services to assist in person-directed planning, advocacy, communication supports, and interpretation of will and preferences.
- Introduce community-level monitoring and safeguarding mechanisms to prevent neglect and abuse.

### **4. Capacity-Building and Professional Training**

- Begin immediately to deliver training for judges and court officials to eliminate bias and promote recognition of supports and supported decision-making for people with more significant disabilities, under current law. As law reform proceeds, upgrade training materials and opportunities to keep judges and officials abreast of new developments.
- Extend education programs for social-service, health, and legal professionals on will-and-preference-based approaches.
- Fund pilot projects as learning laboratories for supported decision-making models and scale-up based on evidence.

### **5. Data, Research, and Monitoring**

- Establish a national registry integrating data from courts, social services, and health institutions on legal capacity cases and reviews.
- Mandate annual public reporting by the Ministry of Justice and National Social Service.
- Use these data to inform policy adjustments and measure progress toward full equality in the exercise of legal capacity.

Ukraine's current legal capacity regime remains rooted in substitution and guardianship, contrary to its human rights commitments. Achieving compliance with Article 12 of the CRPD requires a systemic transformation—from a regime that removes autonomy to

one that recognizes, supports, and safeguards each person's capacity to act. The recommendations set out in this report provide a roadmap for legislative, institutional, and social reform to ensure that all persons with disabilities in Ukraine can exercise their legal capacity on an equal basis with others.

# Introduction

This is a report on the law and policy regime regulating legal capacity in Ukraine. It results from a critical analysis of various legal provisions in Ukraine's laws regulating the exercise of legal capacity. It identifies key gaps in Ukraine's compliance with its obligations to ensure that people with disabilities can enjoy and exercise legal capacity on an equal basis with others. *These rights and obligations are recognized in Article 12 of the United Nations' Convention on the Rights of Persons with Disabilities CRPD* which Ukraine ratified in 2010. Based on this analysis, the report outlines needed directions for reform.

Legal capacity is a fundamental category of law on which the ability of every person to exercise their rights and freedoms depends. The issue of legal capacity is crucial in the discourse on the implementation of a human rights-based approach to understanding disability and, accordingly, the development of national policy based on the UN Convention on the Rights of Persons with Disabilities (hereinafter referred to as the Convention).

Article 12 of the Convention establishes the obligation of the state to recognize the right of every person to legal capacity in all spheres of public life without discrimination. To date, compliance with this article has been one of the most difficult challenges for the States Parties to the Convention. Ukraine is no exception, because despite consistent comments from the UN Committee on the Rights of Persons with Disabilities, it is in reforming approaches to understanding and legally enshrining legal capacity in Ukraine that the least change has taken place.

## **A. Background and Rationale for the Study**

The issue of legal capacity and its inseparability from every person with a disability is crucial for the realization of rights and freedoms and for living on an equal footing in society. It is precisely the lack of reform in approaches to understanding the importance and content of legal capacity that fully demonstrates the conflict between traditional and outdated models of guardianship and the modern human rights approach required by the Convention. After all, Article 12, as will be explained in the next section, clearly focuses the attention of States Parties on the unconditional recognition of the legal capacity of every person with a disability and the creation of opportunities for its realization in all areas of public life. Among other things, this means moving away from guardianship and substitute decision-making and towards supported decision-making, which will also be discussed in the following sections of this report.

For Ukraine, and for the non-governmental organization Fight for Right, this topic is of particular importance for several reasons. First, it is precisely the lack of progress in reforming approaches to recognizing legal capacity and building a support system for decision-making that Ukraine has not made any progress despite repeated comments from the UN Committee on the Rights of Persons with Disabilities. Second, maintaining the current regime of guardianship and substitution in decision-making leads to restrictions on the realization of other rights and freedoms, in particular the rights to live independently in the community, participate in political and public life, access justice, etc. Thirdly, in the context of Ukraine's European integration, reforming legal capacity and recognizing the rights and freedoms of every person with a disability is an urgent condition for bringing national legislation closer to EU standards, as the Convention has been ratified by the EU and is part of the *acquis*.

It should also be emphasized that Ukraine has adopted several strategic documents in the field of deinstitutionalization of services for adults with disabilities and older persons. In particular, [the Strategy](#) for Reforming Psychoneurological and Other Residential Institutions and Deinstitutionalising Care for Persons with Disabilities and Older Persons (hereinafter referred to as the Strategy) sets out the tasks of gradually closing residential institutions, developing a network of services in communities, ensuring the right to independent living, and creating conditions for decision-making support. These tasks are directly related to the reform of legal capacity, and the importance of parallel reform of the regulatory framework for legal capacity, along with the development of services at the community level, is explored and justified in the following sections of the report.

## **B. Purpose of the Study**

The study assessed the current regime of legal capacity restrictions in Ukraine, its key gaps and inconsistencies with international standards, international documents ratified by Ukraine, in particular the UN Convention on the Rights of Persons with Disabilities and the Convention on Fundamental Rights and Freedoms, and the practice of the European Court of Human Rights. Legal provisions were assessed using the **Legal Capacity Inclusion Lens (LCIL)**, developed by the New Society Institute, based in Canada to assess the inclusiveness of national legal systems. The LCIL assessment indicators are based on Article 12 of the CRPD (see [LCIL Data model](#) for indicators and measures in the LCIL).

The purpose of this report is not only to identify inconsistencies between Ukrainian law and international standards, but also to develop recommendations for further reform.

Fight For Right advocates for the abolition of guardianship and substituted decision-making. Modern and European Ukraine must immediately begin to build a system of support for decision-making and introduce approaches that will guarantee real equality, autonomy, and dignity for all persons with disabilities in Ukraine. After all, this is not an abstract requirement of international documents, but an obligation that we must fulfill for Ukrainian citizens to successfully implement the Strategy.

## C. Overview of the Report

This report presents a comprehensive analysis of Ukraine's legal capacity regime and its alignment with the equality standard set out in Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD). The study is structured across seven main sections, moving from conceptual foundations to concrete directions for reform.

- **Section I – Key Concepts** defines the central terms used throughout the study, including *legal capacity*, *decision-making capability*, and *supported decision-making*. It introduces the human rights-based approach to legal capacity grounded in equality, autonomy, and access to decision-making supports.
- **Section II – Research Framework and Methodology** outlines the study's objectives, methods, and analytical tools—particularly the Legal Capacity Inclusion Lens (LCIL)—used to assess Ukraine's laws and policies for compliance with the CRPD standard.
- **Section III – The Problem: Legal Capacity Exclusion** examines the scale and nature of exclusion under the current guardianship system, drawing on available data and highlighting systemic barriers that prevent people with disabilities from exercising their rights.
- **Section IV – Equality: The Policy Goal** sets out equality as the core policy goal, grounding Ukraine's legal capacity reform in Article 12 of the CRPD and requiring a shift from guardianship to supports that enable autonomous, rights-based decision-making.
- **Section V – Overview of the Legal Capacity Regime in Ukraine** describes the structure of current laws, policies, and service systems governing legal capacity, identifying the institutional arrangements and practices that sustain substitution in decision-making.
- **Section VI – Analysis of Results** presents the findings of the LCIL assessment, showing how far Ukraine has adopted and implemented the decision-making capability approach and identifying critical gaps in law, policy, and institutional practice.
- **Section VII – Findings and Implications** interprets these results in light of Ukraine's equality obligations and draws together insights on the systemic changes needed to transition from guardianship to supported decision-making.

- **Section VIII – Directions for Reform** sets out concrete legislative, policy, and institutional reforms required to achieve equality in the exercise of legal capacity, including the abolition of deprivation of civil capacity and the creation of community-based decision-making supports.

Together, these sections provide an integrated analysis and roadmap for aligning Ukraine’s legal capacity regime with international human rights standards and advancing equality for all persons with disabilities.

# I. Key Concepts for an inclusive legal capacity regime

To analyze the current legal capacity regime in Ukraine, it is important to define key terms and concepts from the outset. This will avoid confusion and immediately set the framework for further research. Below is an explanation of the key terms used in the report, as well as the meaning of the concept of legal capacity in international and national contexts and their differences. Understanding this difference is critical to understanding the depth of the need to reform existing policies and legislation in Ukraine in accordance with the Convention standard.

## A. Legal capacity

[The Convention](#) on the Rights of Persons with Disabilities (CRPD) does not define the term legal capacity; instead, to understand it, one must refer to [General Comment No. 1](#) of the UN Committee on the Rights of Persons with Disabilities. The fact that this was the Committee's first general comment on the articles of the Convention also points to the importance of understanding not only the term itself, but also the broader concept of legal capacity in order to ensure understanding of the Convention and, accordingly, the ability of UN member states to transpose the Convention into their own national legislation and comply with its provisions.

In paragraph 12 of General Comment No. 1, the UN Committee on the Rights of Persons with Disabilities defines legal capacity as a concept that includes two main interrelated components:

1. Legal standing is the capacity to be a holder of rights, i.e., the right to be recognized before the law.
2. Legal agency is the ability to exercise one's rights, i.e., to act within the legal framework, enter contracts, and make legally significant decisions.

Original text (para. 12)<sup>1</sup> :

*Legal capacity includes the capacity to be both a holder of rights and an actor under the law. Legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system. Legal capacity to act under the law recognizes that person as*

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<sup>1</sup> General Comment No. 1 of the UN Committee on the Rights of Persons with Disabilities does not have an official Ukrainian translation; here and below, the English original text and the translation prepared by the Fight for Right team are used for analysis

*an agent with the power to engage in transactions and create, modify, or end legal relationships.*

This definition indicates that:

- The concept of legal capacity encompasses both the ability to be a holder (bearer) of rights – legal capacity – and the ability to act in the legal sphere – legal capacity to act. These two elements are indivisible. Recognition of legal standing without legal agency (or vice versa) is contrary to the Convention.
- The legal capacity of the owner (bearer) of rights provides a person with full protection of his or her rights by the legal system (in the state).
- Legal capacity recognizes a person as a subject who has the power (authority) to enter legal relationships, conclude agreements, modify or terminate them.

In accordance with these key elements of the concept of legal personality, the Committee emphasizes that ensuring it is crucial for building a system that complies with the spirit and letter of the Convention, because:

- Legal standing is the basis that ensures that every person has rights and freedoms on an equal footing with others (e.g., property rights, freedom of movement).
- Legal agency is the ability to exercise rights and freedoms through certain actions (e.g., signing contracts, managing finances, voting).
- In its general comment, the Committee emphasizes that both elements are indivisible and mandatory parts of the concept of legal capacity and that compliance with Article 12 of the Convention is impossible without creating conditions for every person with a disability to exercise all these elements on an equal basis with other persons without disabilities.

The translation of the concept of legal capacity as simply “legal capacity” in the Ukrainian context narrows its meaning to a “passive” form – the existence of human rights and freedoms. Every person has rights and freedoms from birth, and they cannot be taken away. However, the organization and functioning of legal systems in different countries create obstacles and make it impossible to exercise (realize) these rights and freedoms in practice on an equal basis for different people. The second element of the

concept of legal capacity refers precisely to "active" participation – the real opportunity to exercise rights and freedoms.

Thus, legal capacity in international law means both the right to "have rights" and the right to "exercise rights" in all areas of life. For this report, FFR uses the term legal personality to translate legal capacity and, accordingly, in those parts of the report that describe the standard under Article 12 of the Convention.

Ukrainian legislation currently distinguishes between:

- **Legal capacity** — [the ability to have civil rights and obligations \(Article 25 of the Civil Code of Ukraine\)](#). It arises from the moment of birth and ceases upon death.
- **Civil capacity** — the ability to acquire and exercise civil rights, create obligations for oneself, and fulfill them (Article 30 of the Civil Code of Ukraine).

In practice, this distinction has led to:

1. An incorrect translation of the Convention on the Rights of Persons with Disabilities into Ukrainian, where legal capacity is translated as legal capacity.
2. The establishment in national law of a regime of complete or partial deprivation of civil capacity through court decisions. This approach is incompatible with the Convention, as it deprives a person of the opportunity to exercise their rights and freedoms, even if they formally retain legal standing.

Below and in the following sections, when citing and analyzing the provisions of national policy and legislation, the following terms are used consistently:

- legal capacity, as defined in the Civil Code of Ukraine (hereinafter referred to as the CC)
- legal capacity, partial restriction of legal capacity, deprivation of civil legal capacity – terms used by the CC, as well as the Civil Procedure Code of Ukraine (hereinafter referred to as the CPC) and other normative acts.

We use the term “legal capacity” throughout this report to encompass both the capacity to have rights, and the capacity to act, consistent with the definition of the legal capacity by the UN Committee on the Rights of Persons with Disabilities.

## **B. “Legal regime” regulating legal capacity**

The “legal regime” regulating legal capacity refers to the set of laws and policies which regulate who can exercise what types of decisions, under what conditions. Based on research assessing the functions of a wide range of laws regulating legal capacity in

different jurisdictions, Michael Bach and Lana Kerzner identify five main functions or domains of legal capacity regimes as follows:<sup>2</sup>

- **Scope of participation** – Any regime decides who can exercise legal capacity, and on what basis. The regime defines the ‘eligibility’ criteria for exercising legal capacity.
- **Decision Making Supports** – Any regime defines the scope of decision-making supports that will be available to persons to exercise legal capacity, who is responsible for identifying, funding, and delivering those supports, and the eligibility for accessing them. It may be that in a particular jurisdiction there is no recognition of decision-making supports. Effectively the scope of decision-making support is zero in that jurisdiction – it does not recognize or provide decision-making supports to exercise legal capacity.
- **Duty to Accommodate** – A regime defines, or not, the scope of the duty to accommodate persons in exercising legal capacity.
- **Range of planning tools** – This is another feature of legal regimes regulating legal capacity. Most regimes provide for powers of attorney, or some advance planning tool for health care consent. Increasingly, jurisdictions are providing for supported decision-making agreements in some form, for some people (depending on the scope of participation recognized in that regime). Assessing this dimension of a legal regime focuses on the range of planning tools available, and the extent to which persons, regardless of disability, can be supported to create and use them.
- **Scope for Balancing Right to Equality** – Finally, legal regimes strike a particular balance between recognizing who can exercise legal capacity on what basis, the extent of equality and non-discrimination, and other rights a person must be free from abuse and neglect. In most jurisdictions, this balance tips in the direction of ‘protecting’ people at the expense of their autonomy and freedom to exercise legal capacity.

A “regimes” approach to legal capacity has been used to examine legal capacity law provisions in a number of jurisdictions, recognizing that in any regime, there is a vast network of provisions and rules across many legal instruments which regulate legal

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<sup>2</sup> “Legal capacity regimes” was formulated as the unit of analysis for assessing compliance of a jurisdiction with standards and requirements of Article 12 of the CRPD. For a discussion of this concept, and as applied in the Canadian context, see Michael Bach and Lana Kerzner, *Failing at the Gateways to Legal Capacity: Assessing Equality for People with Disabilities in Canada’s Legal Capacity Regimes* (Toronto: New Society Institute, 2025).

capacity. A recent study looking at legal capacity reforms in countries around the world, characterized a regimes research approach this way:

*Together, this multiplicity of norms, provisions, and rules regulate the exercise of legal capacity in a wide range of settings – for example, in making health care decisions or exercising personal care decisions in a long-term care facility, in financial decisions, in contracting goods and services, in transacting in labour and housing markets, in pursuing justice – for instance, appearing before a tribunal to appeal a decision, meeting capacity requirements to be a witness or stand trial or file a complaint about the violation of one’s rights, and in political participation such as exercising the right to vote. Accordingly, the processes of legal capacity reform require a comprehensive view, with attention not only to historical, social and legal contexts, but also to the vast regulatory regime in any particular jurisdiction and the array of institutional arrangements which permeate it.<sup>3</sup>*

### **C. Equality before the law**

The concept of equality in relation to legal capacity is enshrined in Article 12 of the Convention and is key to understanding legal capacity. Article 12(1) states that all persons have the right to recognition of their legal capacity. This means universality and equality of rights, regardless of disability or any other characteristic of a person. This provision does not create "new" rights but confirms that rights and freedoms already belong to everyone.

For Ukraine, compliance with Article 12 of the Convention primarily means the need to abandon discriminatory provisions of the Civil Code of Ukraine and the practice of depriving a person of civil capacity based on psychosocial or intellectual disability. Legal capacity and deinstitutionalization are inextricably linked, because without full recognition and the ability to exercise legal capacity by every person with a disability, it is not possible to live independently in communities and ultimately close institutions.

The deinstitutionalization strategy and action plan currently set [the](#) following [goals](#):

- eliminating the preconditions and causes that lead to violations of the rights of persons with disabilities and older persons;
- social and economic integration of persons with disabilities and older persons;
- developing a system of social and other services in communities for persons with disabilities and older persons that will promote their independent living in the community and prevent institutionalisation.

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<sup>3</sup> See Michael Bach and Nicolas Espejo Yaksic, "Introduction," in Michael Bach and Nicolas Espejo-Yaksic, eds., *Legal Capacity, Disability and Human Rights* (Cambridge, UK: Intersentia, 2023).

However, without legislative enshrinement of legal capacity as an inalienable human right, these tasks will remain only declarative. Persons with disabilities who are currently deprived of civil capacity or whose civil capacity is limited cannot independently enter contracts, choose their place of residence, or use services in communities. Thus, reform of the current legislation is a prerequisite for successful deinstitutionalization.

#### **D. Discriminatory mainstream approaches to legal capacity**

The recognition in Article 12 of the CRPD of the right to equality in legal capacity brings into focus the current disability-based discrimination in many laws, policies and practices regulating the enjoyment and exercise of legal capacity.

The UN Committee on the Rights of Persons with Disabilities references the discriminatory features of the three predominant approaches to defining and regulating legal capacity found in laws in Ukraine and other jurisdictions. These include:

- Status approach – This approach in law to regulating and restricting legal capacity uses a status (e.g. age or ‘mental disorder’) as a condition for restricting legal capacity and is often justified in the name of protecting a person.
- Outcome approach – This approach restricts legal capacity based on the harm that may result, or is resulting, from the person’s actions or behavior. The restriction is usually only imposed where the behavior is seen to be a consequence of a diagnosed psychiatric or mental “disorder.” Mental health laws in Ukraine and elsewhere employ a combination of a status and outcome approach to justify involuntary commitment to, and/or treatment in, a psychiatric facility. These laws are based on stereotypes of people with mental health or psychosocial disabilities. In fact, the incidence of violent behaviour by people with psychosocial disabilities is less than the general population; and this group is far more likely to be victims of violence than perpetrators.
- Cognitive/Functional approach – This is the predominant approach to legal capacity in the law. It is based on having abilities to understand information and appreciate the consequences of a decision. The exercise of legal capacity is denied to those who cannot demonstrate these abilities.

In its General Comment No.1 on Article 12, the UN Committee on the Rights of persons with disabilities stated

In all of those approaches, a person's disability and/or decision-making skills are taken as legitimate grounds for denying his or her legal capacity and lowering his or her status as a person before the law. Article 12 does not permit such discriminatory denial of legal capacity, but, rather, requires that support be provided in the exercise of legal capacity.<sup>4</sup> The findings of this study demonstrate that the cognitive/functional approach to legal capacity is found in the vast majority of the capacity tests and requirements in Ukraine's legal capacity regime.

### **E. Justified restrictions on equality in the exercise of legal capacity**

While equality and non-discrimination are core human rights principles, they are not absolute.<sup>5</sup> International human rights law recognizes that, in limited circumstances, differential treatment may be justified. Any such limitation must meet a high threshold. Restrictions cannot be based on disability itself and may only be considered where there is clear evidence of serious harm, abuse, neglect, or coercion—and only after all appropriate supports to strengthen the person's decision-making capability have been fully explored and provided.

Where restrictive measures are used, they must operate within a safeguarded framework: authorities must continue working to put the needed supports in place; restrictions must be regularly reviewed and justified; and every effort must be made to restore the person's legal capacity as soon as adequate supports enable them to exercise it.

### **F. The “decision-making capability” alternative**

While the UN Committee finds the status, outcome, and cognitive/functional approaches to legal capacity to constitute disability-based discrimination, it does not provide a clear alternative that would meet equality requirements, other than to emphasize that people with disabilities should have access to supports for legal capacity and to supported decision-making arrangements.

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<sup>4</sup> UN Committee on the Rights of Persons with Disabilities, *General Comment No. 1 (2014) – Article 12: Equal Recognition Before the Law*, CRPD/C/GC/1, para. 15 (May 19, 2014), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1).

<sup>5</sup> For a discussion on justified limits on equality in legal capacity see Lana Kerzner, *Canada's Legal Capacity Laws: A Roadmap and an Equality Analysis in light of the Canadian Charter of Rights and Freedoms and the United Nations Convention on the Rights of Persons with Disabilities* (Oshawa: Institute for Research and Development on Inclusion and Society, 2021), online, . <https://irisinstitute.ca/resource/canadas-legal-capacity-laws-a-roadmap-and-an-equality-analysis-in-light-of-the-canadian-charter-of-rights-and-freedoms-and-the-united-nations-convention-on-the-rights-of-persons-with-disabilities/>; and, Sandor Gurbai, “Beyond the Pragmatic Definition? The Right to Non-discrimination of Persons with Disabilities in the Context of Coercive Interventions”, *Health and Human Rights Journal*.

Significant research has been undertaken to develop the decision-making capability approach as an alternative that would address the exclusions of the mainstream approaches, especially of people with more significant intellectual, developmental, cognitive, and mental health/psychosocial disabilities.<sup>6</sup> People in this group are not able to meet the cognitive demands of the cognitive/functional test even with communicative assistance and personal support from others. For them, the main limitation of the cognitive/functional approach is that it requires the person to effectively carry out the main steps in making decisions independently – expressing their will and preferences in ways others can understand, gathering and understanding relevant information, weighing options and appreciating consequences, communicating and carrying out a decision.

The decision-making capability approach has a different starting point because, consistent with Article 12 of the CRPD, it grounds legal capacity first and foremost in the ability to express will and preferences. This is the first step in any decision-making process: determining a person’s will and preferences as they apply in the situation. Formulating and expressing will and preferences are not primarily cognitive abilities. Rather, they are about what matters to a person, their aspirations, what they value, and their goals. All persons have a will and preferences. A main challenge for people with more significant disabilities is that often the person may communicate in ways that others have difficulty in understanding. Thus, one of their main decision-making supports is the interpretive support of another person who knows them well and can interpret their expressions as the basis for guiding the decision-making process in the circumstances.

The decision-making capability approach to legal capacity recognizes that there are different ways to carry out the steps in decision-making – either by a person who can carry them out **independently**, possibly with communicative and any other assistance the person may need. Effectively they can meet the cognitive/functional tests in legal capacity on their own, with decision-making support. Others, who are unable to do so,

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<sup>6</sup> See Michael Bach, *The “Decision Making Capability Approach” to Legal Capacity: A Disability Rights Analysis* (Oshawa: Institute for Research and Development on Inclusion and Society, 2021), online: <https://irisinstitute.ca/resource/the-decision-making-capability-approach-to-legal-capacity-a-disability-rights-analysis/>; Michael Bach and Lana Kerzner, *A New Paradigm for Protecting Autonomy and the Right to Self-Determination* (Toronto: Law Commission of Ontario, 2010), 14–15, <https://www.lco-cdo.org/wp-content/uploads/2010/11/disabilities-commissioned-paper-bach-kerzner.pdf>; and Lana Kerzner, *Canada’s Legal Capacity Laws: A Roadmap and an Equality Analysis in light of the Canadian Charter of Rights and Freedoms and the United Nations Convention on the Rights of Persons with Disabilities* (Oshawa: Institute for Research and Development on Inclusion and Society, 2021), online: <https://irisinstitute.ca/resource/canadas-legal-capacity-laws-a-roadmap-and-an-equality-analysis-in-light-of-the-canadian-charter-of-rights-and-freedoms-and-the-united-nations-convention-on-the-rights-of-persons-with-disabilities/>.

can act **interdependently** with the support of others who can interpret a person’s will and preferences and be guided by them in the subsequent steps of the decision-making process.

The approach builds on Amartya Sen’s “capabilities” approach to securing equality – which recognizes that people may require goods and services to convert their abilities into the needed capabilities to achieve valued functionings in society – like the valued function of being able to exercise legal capacity in one’s personal life, health care, and property/financial decisions. The capabilities approach has been adopted as the basis of the UN’s Human Development Index, which tracks progress in capability development across key indicators on a global basis.<sup>7</sup>

With these understandings, the decision-making capability approach to legal capacity would provide two ways for people to exercise legal capacity:

- **Independently**
  - The person demonstrates that, with supports and accommodations, they have the capacity to understand information and appreciate consequences required for a particular decision, and thus decide on their own; and,
- **Interdependently**
  - Together, the person and recognized decision-making supporters have the capacity to understand information and appreciate consequences of a decision, guided by the best interpretation of the person’s will and preferences in the circumstances.

A fully inclusive legal capacity regime would recognize in law these two ways of exercising legal capacity.

## **G. “Decision-making supports” and “supported decision-making” arrangements**

The recognition of decision-making supports is central to Article 12. They are what make it possible for many people with developmental, cognitive, and mental health/psychosocial disabilities to constitute their decision-making capabilities either independently or interdependently. Supports can be understood as any form of aid or assistance that helps an individual in carrying out the steps of a decision-making process. Based on his research, Michael Bach has identified different types of

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<sup>7</sup> For the most recent report on the Human Development Index, see United Nations Development Programme (UNDP). (2025). *Human Development Report 2025: A matter of choice: People and possibilities in the age of AI*. New York: Oxford University Press.

decision-making support for exercising legal capacity independently or interdependently, including:<sup>8</sup>

- *Planning facilitation* assists a person and their supporters in identifying decision-making priorities, the decisions that need to be made to give effect to a person's will and preferences, and decision-making supports and accommodations that are needed for a person to maintain and maximize their autonomy. It may involve creating a decision-making supports agreement and arranging to deliver other supports as required. Planning support can be provided by members of a person's circle or network, a peer, or an external planning facilitator.
- *Opportunity and relationship-building support* involves facilitating community connections and experiences for a person. The purpose is to assist them in developing and expressing their will and preferences; fostering personal relationships that offer trust, dignity, and belonging; and/or helping to develop and sustain peer support and supported decision-making networks.
- *Communication assistance* includes communication intermediaries, assistive and augmentative communication technologies, and plain language services. It can also involve assisting the person to communicate their intentions, will, and preferences at all the stages of the decision-making process.
- *Decision making supporters* are people who assist a person with a disability to conduct the various stages of the decision-making process (i.e. express will and preferences, understand information, appreciate consequences, communicate, and carry out a decision). Supporters are recognized on the basis that they have a relationship of personal knowledge about the person, mutual trust, and a commitment to assist the person in decision making.
- *Interpretive support* is provided by decision-making supporters who are designated to assist a person in interpreting their will and preferences as a basis for decision-making. Interpretive support is based on a deep understanding of the person's unique ways of communicating and the development of their will and preferences over time. Interpretive support is for individuals who have high levels of decision-making supports needs, and who often express and communicate in non-conventional ways, which many people and third parties may not be able to understand.

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<sup>8</sup> See Michael Bach, *The "Decision Making Capability Approach" to Legal Capacity: A Disability Rights Analysis* (Oshawa: Institute for Research and Development on Inclusion and Society, 2021), online: <https://irisinstitute.ca/resource/the-decision-making-capability-approach-to-legal-capacity-a-disability-rights-analysis/>, pgs. 52-53.

- *Independent advocacy* assists the person and ensures their voice is heard and respected in making and carrying out their decisions, and in working with third parties in a decision-making process.
- *Representation* is provided on behalf of a person to represent them in decision making, guided by their intentions, will, preferences. Representatives could be appointed under an advance planning document or power of attorney, a supported decision-making arrangement, a ‘personal ombudsperson’ arrangement, or an agreement to broker or navigate systems to arrange a person’s needed support services and legal relationships.
- *Administrative support* is personal assistance to help execute legal agreements, to give effect to decisions, and to help manage responsibilities that come under these agreements.

This is not an exhaustive list. It points to the kinds of support that research suggests may be needed for a person to exercise legal capacity either independently or interdependently and which must be recognized and provided for in a fully inclusive legal capacity regime.

“**Supported decision-making arrangements**” are a type of arrangement for providing decision-making supports whereby support people assist a person to understand, make, and communicate a decision, or help interpret their will and preferences and apply them to a particular decision. In these arrangements, the support relationship tends to be a long-term one and is typified by personal trust, knowledge, and commitment. There is a growing body of literature and evidence on supported decision making and how it can be designed to effectively support and include people who would not otherwise be recognized as being able to exercise legal capacity.<sup>9</sup>

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<sup>9</sup> See, for example, Christine Bigby and others, "Delivering decision making support to people with cognitive disability—What has been learned from pilot programs in Australia from 2010 to 2015" (2017) 52, no. 3 *Australian Journal of Social Issues* 222; Cathy E. Costanzo, Kristin Booth Glen, and Anna M. Krieger, "Supported Decision-Making: Lessons from Pilot Projects" (2022) 72 *Syracuse L. Rev.* 99; Jeremy Dixon and others, "Safeguarding people living with dementia: How social workers can use supported decision-making strategies to support the human rights of individuals during adult safeguarding enquiries" (2022) 52, no. 3 *The British Journal of Social Work* 1307; Mary Donnelly, "Deciding in dementia: The possibilities and limits of supported decision-making" (2019) 66 *International Journal of Law and Psychiatry* 66; Sarah Donnelly and others, "Assisted decision-making and interprofessional collaboration in the care of older people: a qualitative study exploring perceptions of barriers and facilitators in the acute hospital setting" (2021) 35, no. 6 *Journal of interprofessional care* 852; Jacinta Douglas and Christine Bigby, "Development of an evidence-based practice framework to guide decision making support for people with cognitive impairment due to acquired brain injury or intellectual disability" (2020) 42, no. 3 *Disability and rehabilitation* 434.

These types of arrangements are used to enable a person to exercise legal capacity interdependently, as described above. To be effective, these arrangements must have legal recognition as a valid way to exercise legal capacity. Safeguards must be in place to ensure that supporters remain accountable to and are guided by the person's will and preferences. Clear obligations must be established for third parties to respect supported decision-making as a way for people to exercise legal capacity who are not able to act legally independently.

In practice, supported decision-making is a model that allows people with significant intellectual, cognitive or psychosocial disabilities, who are not able to exercise legal capacity independently, to exercise their rights and freedoms with support, which may include:

- assistance in obtaining and understanding information.
- joint discussion of options and consequences of certain decisions or actions;
- assistance with formalizing decisions (e.g., by drawing up contracts);
- adaptation of rules and procedures, as well as the use of plain language by public and private institutions.

Supported decision-making is based on the principle that the will, wishes, and preferences of each person with a disability are decisive. Accordingly, the state's duty is to provide a legal framework and tools that enable every person with a disability to exercise their will, desires, and preferences on an equal basis with others, with support. This is a central requirement of the Convention, without which the implementation of a rights-based model of disability is not possible.

Substitute decision-making, on the other hand, is the model currently implemented in Ukraine—a model of guardianship and care for persons with disabilities, in which the will, desires, and preferences of the person are not central, and decisions are made by a person specially appointed by the court (a guardian or an institution where the person with a disability resides). The UN Committee on the Rights of Persons with Disabilities requires participating states, and Ukraine in particular, to abandon the use of this model of substitute decision-making, as it is a practice that violates human rights.

## **H. Accommodation in decision making**

The duty to accommodate is central to the recognition of equality rights and to a decision-making capability approach to legal capacity. It is defined in the General Comment on Article 12 as “any necessary modifications or adjustments to allow

persons with disabilities to exercise their legal capacity, unless it is a disproportionate or undue burden.” Under the CRPD, parties making legal arrangements have an obligation to modify and adjust decision-making processes accordingly. The General Comment on Article 12 suggests ways that parties can meet their obligation to accommodate persons in the exercise of legal capacity, including providing accessible information and personal assistance.<sup>10</sup> A recent report by explores what the duty to accommodate requires in the context of legal capacity. It suggests guidelines and practical steps which can be taken to accommodate persons with a range of disabilities in decision-making.<sup>11</sup>

## Summary

A clear understanding of these key terms – “legal capacity,” “legal capacity regime,” “equality,” the “decision-making capability” approach to legal capacity, the “decision-making supports,” “supported decision-making,” and “duty to accommodate” in legal capacity – is a prerequisite for building a human rights-based model of disability in Ukraine. Without this, it is impossible to adequately assess where Ukrainian legislation contradicts international standards and what changes are needed to ensure equality and dignity for every person with a disability.

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<sup>10</sup> UN Committee on the Rights of Persons with Disabilities, *General Comment No. 1 (2014) – Article 12: Equal Recognition Before the Law*, CRPD/C/GC/1, para.33, 34 (May 19, 2014), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1).

<sup>11</sup> IRIS - Institute for Research and Development on Inclusion and Society (now New Society Institute), *Accommodating People in Exercising their Right to Decide: A Practice Guide* (Oshawa, 2023), online: <https://irisinstitute.ca/resource/accommodating-people-with-disabilities-in-exercising-their-right-to-decide/>.

## **II. Research framework and methodology**

Fight for Rights Ukraine was motivated to undertake this study given the lack of progress in reforming policies and legislation governing legal capacity to address the discrimination and exclusion of people with disabilities – especially people with intellectual, cognitive, and psychosocial disabilities – in exercising choice, power and control in their lives.

Thus, FFR decided to focus its efforts on conducting a thorough analysis of the content of the legal capacity standard introduced by the UN CRPD and assessing the extent to which Ukraine’s current legal capacity regime meets this standard. Based on this analysis and drawing on lessons learned from reforming legal capacity regimes in other countries, FFR also sought to identify the main policy implications and directions for reform.

This section lays out the framework and methodology for undertaking the research to address these concerns and achieve the research goals.

### **A. Research objectives**

The study has three primary research objectives:

- Assess compliance of the Ukrainian legal capacity regime with the standards of the Convention.
- Analyze judicial practice and decisions regulating restrictions and protection of legal capacity.
- Gather lessons learned from the reform of legal capacity regimes in other countries.

### **B. Research methods**

A combination of several qualitative research methods was chosen to conduct the study, including:

- Desk research of national legislation and judicial practice and decisions
- Comparative analysis of legislative acts and the Convention standard

- Comparative analysis of normative legal acts using the “Legal Capacity Inclusion Lens” (LCIL) tool developed by the New Society Institute.
- Analysis of lessons learned from reforming legal capacity regimes in other countries

The approach used to analyze national policies and legislation included the following key steps:

- Defining the framework and tools for conducting the analysis
- Considering existing legal capacity regimes in the country and their compliance with the Convention standard (Article 12), as well as their impact on all areas of public life for each person with disabilities,
- Collecting available quantitative data and analyzing court practice,
- Assessing the actual mechanisms available to persons with disabilities to access support in making and implementing their decisions or appealing against unlawful restrictions on their legal capacity.

A comprehensive analysis requires consideration not only of legal norms, but also of institutional practices that either promote or, conversely, undermine the full realization of the rights and freedoms of every person with a disability at the national level. In this context, the task of analyzing the compliance of national policies and legislation should be carried out in terms of their compliance with the Convention and using tools that allow us to see the extent of the current regime's impact on all areas of life and offer an approach to further developing recommendations. The following tools were used for this purpose:

1. General [Comment No. 1](#) of the UN Committee on the Rights of Persons with Disabilities.
2. The Legal Capacity Inclusion Level (LCIL) assessment model developed by the New Society Institute, Canada, based on research by Michael Bach and Lana Kerzner.<sup>12</sup>

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<sup>12</sup> Background research informing the development of the Legal Capacity Inclusion Lens, as a tool for assessing compliance of legal capacity regimes is summarized in a study of the Canadian legal capacity regime. See Michael Bach and Lana Kerzner, *Failing at the Gateways to Legal Capacity: Assessing Equality for People with Disabilities in Canada's Legal Capacity Regimes* (Toronto: New Society Institute, 2025).

### C. Assessment using the Legal Capacity Inclusion Lens (LCIL)

The LCIL is a digital analytical tool that allows assessing the laws and policies in a specific jurisdiction for their compliance with the principles of equality, support, and non-discrimination in the regulation of legal capacity. The tool is based on the rights recognized in Article 12 of the CRPD principles described in General Comment No. 1 of the UN Committee on the Rights of Persons with Disabilities. The fundamental idea behind the tool is that a person's legal capacity is universal and should not be limited based on their cognitive or psychosocial characteristics. The state has a duty to develop approaches and means to support the legal capacity of every person, as opposed to the "usual" total restriction of that capacity.

In this study, the LCIL tool was used for a critical analysis of specific provisions of Ukrainian policy and legislation governing the legal capacity regime. It measures compliance of these provisions with the rights and obligations recognized in Article 12 of the Convention.

The LCIL is based on a data model which links three main levels of analysis of a legal regime regulating the exercise of legal capacity:

- **Domains** of the regime, as defined in the “Key Concepts” section above and including:
  - *Scope of participation* – who can exercise legal capacity, and on what basis
  - *Decision Making Supports* – range of supports available to persons to exercise legal capacity, who is responsible for identifying, funding, and delivering those supports, and the eligibility for accessing them
  - *Duty to Accommodate* – A regime defines, or not, the scope of the duty to accommodate persons in exercising legal capacity.
  - *Range of planning tools* – the range of planning tools available to assist a person in decision making, and the extent to which persons, regardless of disability, can be supported to create and use them.
  - *Scope for Balancing Right to Equality* – how the balance is struck between recognizing who can exercise legal capacity on what basis, the extent of equality and non-discrimination, and other rights a person must be free from abuse and neglect.

- **Indicators** of inclusiveness – In the assessment model, there are a total of 9 indicators – one or more indicators of inclusiveness of each dimension of the regime. The indicators are grounded in the UN Convention on the Rights of Persons with Disabilities, in particular article 12, which recognizes a right to equality and non-discrimination in exercising legal capacity, and access to the supports that may be required for that purpose. As well, these indicators are informed by and draw from the General Comment on article 12 issued by the UN Committee on the Rights of Persons with Disabilities to assist in interpreting and applying the Convention.
- **Measures** – The model provides a set of 36 measures across the indicators – against which provisions from sources of law or policy are assessed. The measures are used to assess specific provisions of a legal instrument on a four-point scale of inclusiveness: fully meets the measure, mostly meets the measure, partly meets the measure, or not at all meets the measure.

Using the application, researchers can assess provisions of the various sources of law which relate to those measures, and which together constitute a legal regime regulating the exercise of legal capacity in a particular jurisdiction. The full LCIL data model can be reviewed here: [LCIL Data model](#). It includes references to the sources in the CRPD on which the indicators and measures are based.

Given the specificity of its indicators and measures and its functionality in processing large amounts of data, the LCIL tool is most suitable for national research in Ukraine for three reasons:

1. The tool complies with the principles of the Convention because, unlike traditional legal analyses, the LCIL is based on the requirements of Article 12 of the Convention and General Comment No. 1, and all six indicators follow this logic.
2. The tool is structured and practical, with seven interrelated measures and the ability to do comparative analysis of large data sets.
3. The tool is based on a modern conceptual model of the decision-making capability approach to legal capacity, which recognizes human autonomy and the availability of support as the basis for the realization of legal capacity.

The application of the LCIL tool to analyze the Ukrainian regime allowed us to identify formal regulatory gaps (e.g., discriminatory wording in the Civil Code and the Code of Civil Procedure) and to see a systemic picture of the extent to which the regime complies with human rights standards.

## D. Levels of Analysis Using the Legal Capacity Inclusion Lens

As described above, the LCIL provides a structured framework for assessing the inclusiveness of a legal capacity regime in accordance with Article 12 of the CRPD. In this study, it was applied at two interrelated levels of analysis: (1) the extent to which a legal capacity regime has adopted the decision-making capability approach as its underlying model, and (2) the extent to which it has implemented this approach through the necessary legal provisions, institutional mechanisms, and policy infrastructure.

### Level 1: Adoption of the Decision-Making Capability Approach

The first level of analysis assessed whether the regime has adopted the decision-making capability approach as the basis for recognizing and regulating the exercise of legal capacity. This approach grounds legal capacity in a person's will and preferences rather than in their cognitive or functional abilities and recognizes that legal capacity may be exercised either independently or interdependently with decision-making supports.

Adoption of this approach is the primary indicator that a jurisdiction has aligned its legal capacity regime with the equality standard required by Article 12 of the CRPD.

To evaluate this, seven measures drawn from the LCIL were grouped into a "**Decision-Making Capability – Adoption Index**." Each measure represents a defining feature of the approach—such as the presence of an inclusive legal capacity test, recognition of decision-making supports and supported decision-making arrangements, government obligations to ensure access to supports, the duty of third parties to accommodate, and requirements for review and justification of restrictive measures. Together, these measures provide a composite score indicating the extent to which the decision-making capability approach is embedded in the legal capacity regime. See **Table 1** below for a discussion of each of these indicators in the Ukrainian context.

### Level 2: Implementation Infrastructure – Legal Provisions and Mechanisms

The second level of analysis assessed the broader legal and institutional machinery required to implement the decision-making capability approach in practice.

While the first level identifies whether the approach adopted in principle, the second examines whether the necessary *enabling conditions* exist to make the approach operational and effective.

This analysis incorporates the remaining 29 measures in the LCIL to assess the completeness of the regime's implementation infrastructure into what we refer to as the "**Decision-Making Capability – Implementation Index**". These measures capture the mechanisms and institutional duties that give practical effect to the approach, including:

- recognition and regulation of decision-making supports and supported decision-making arrangements;
- government obligations to arrange and finance supports;
- duties of third parties to accommodate diverse ways of decision-making;
- provision of advance planning tools that respect will and preferences; and
- safeguards that balance equality and protection from harm through reviewable, least-restrictive measures.

Taken together, these measures evaluate the extent to which a regime establishes the systems, processes, and accountabilities required to ensure that people can exercise legal capacity on an equal basis with others.

**Table 1 - Decision-Making Capability – Adoption Index - the Measures Used**

No	Inclusivity measure	Measure content	Why is this important?
1.	Inclusive "legal capacity test"	This indicator allows assessing the model underlying the approach to legal capacity in a country, whether this approach is based on a medical model and the cognitive/functional approach. It provides for determining the extent to which a decision-making capability approach is adopted – i.e., providing recognition for both independent and interdependent exercise of legal capacity. Analysis of policies and laws using this indicator shows in which areas of public life and to what extent a person is assessed based on a medical diagnosis and/or their cognitive characteristics (e.g., "inability to understand or assess consequences").	If, in the national model, legal capacity is linked to the assessment of a person's cognitive characteristics, many adults with disabilities are automatically excluded from decision-making processes concerning their own lives. The Convention requires unconditional recognition of legal capacity, regardless of such characteristics, placing an obligation on States Parties to develop services to support decision-making and participation in public life, as opposed to exclusion and disenfranchisement.
2.	Recognition of decision-making support	This indicator enables assessing whether a country's legal system recognizes the right of persons with disabilities to receive support for decision-making and implementation.	This indicator directly correlates with the supported autonomy approach – the ability to make decisions can be realized in communication with others. It is essential to assess the extent to which decision-making supports are recognized, as these are the basis for a fully inclusive regime.
3.	Supported Decision-Making Arrangements	This indicator assesses whether there are mechanisms in place to formalize different types of support and whether persons with disabilities	Formalizing models of support in decision-making and implementation (concluding contracts or agreements, availability of support providers) allows a person with a disability to function

No	Inclusivity measure	Measure content	Why is this important?
		can use them. This is a key alternative to the guardianship model.	independently and exercise their autonomy. It is also a tool for protection against abuse and discrimination.
4.	Government obligation for ensuring access to decision-making support	This indicator assesses the state's fulfillment of its obligations under Article 12 of the Convention, whether the state recognizes the obligation to ensure legal capacity as opposed to the usual model of guardianship and deprivation of rights.	Without the appropriate institutional commitment and understanding of the need for comprehensive change, any reform of the guardianship model will not create the conditions and space for every person with a disability to exercise their legal capacity in a way that suits them.
5.	Mandatory exploration of decision-making support	This indicator analyzes whether the current regime obliges various authorities and courts to analyze support needs at every stage when the question of a person with a disability's capacity to perform legal acts arises.	This prevents the deprivation of the actual opportunity to exercise legal capacity and provides decision-makers with tools to analyze support needs and engage in them to enable each person with a disability to exercise their rights and freedoms, as well as their own autonomy.
6.	Duty of third parties to accommodate persons in decision-making processes	This indicator allows us to look at the current way of organizing processes and analyze whether public authorities, courts, banks, medical institutions, educational institutions, service providers, etc. are currently obliged to adapt their processes so that persons with disabilities can act independently in situations where legally significant decisions must be made.	Even if policies or legislation formally comply with the principles of Article 12 of the Convention, persons with disabilities will not be able to exercise their legal capacity unless procedures are in place in all areas of public life and measures are taken to remove barriers.

No	Inclusivity measure	Measure content	Why is this important?
7.	Restrictive measures review and justification	The provision ensures that restrictive measures are subject to regular review by a competent authority to assess whether the benefits outweigh the harms and that the need for such restrictions continues to be justified;	There may be situations where a person is not able to act legally independently or interdependently, and all decision support options have been exhausted, and the person is in a situation where there are serious adverse effects – including neglect, abuse, or other harms to the person or others. Legal capacity restrictions may be justified, but only after all support measures have been explored and exhausted. Regular review is necessary to ensure that steps continue to be taken to get needed decision-making support arrangements in place so that a person’s legal capacity can be restored.

## E. Data entry and analysis

Provisions of various sources of law described in section IV – which together constitute Ukraine’s legal capacity regime – were entered into the LCIL database. These sources of law and their individual provisions concerning various issues of legal capacity in national law were analyzed for compliance with the measures in the LCIL, including the seven measures in decision-making capability index (as described in Table 1).

Specific provisions relating to each measure were assessed using the following scoring system:

:

- “not at all” - the provision completely contradicts the requirements of the LCIL (and the UN Convention on the Rights of Persons with Disabilities)
- “partly” - the provisions are partially compliant (there are elements of compliance, but they do not resolve the situation in favor of the autonomy of persons with disabilities)
- “mostly” - the provisions are mostly compliant (but there are certain aspects that lead to restrictions in the exercise of rights or freedoms)
- “fully” - the provision fully complies (no such provisions were found among the normative legal acts concerning legal capacity).

A scoring rubric defining what each of these scores mean in relation to each of the seven measures is provided in Appendix A. The scores were analysed to produce the results and draw together the findings of the research, upon which policy implications and several directions for reform were then considered.

Data was entered into the LCIL data application, and provisions were scored, following the procedures of the LCIL data entry guide.<sup>13</sup>

Using the decision-making capability adoption and implementation indices, we analysed the extent to which the decision-making capability approach is adopted and implemented the regime regulating legal capacity in Ukraine. Assessment of the regime against these measures reveals the extent to which the national legal system governing

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<sup>13</sup> See New Society Institute, Legal Capacity Inclusion Lens (LCIL) User Guide (Toronto: New Society Institute, April 2024).

legal capacity recognizes and guarantees the rights of persons with disabilities to exercise legal capacity on an equal basis with others in accordance with Article 12.

## Summary

The study used a structured, CRPD-based methodology to examine how Ukraine’s legal capacity regime treats people with intellectual, cognitive, and psychosocial disabilities. It had three main objectives: to assess compliance with Article 12 of the CRPD, to analyze court practice on restricting and restoring legal capacity, and to draw lessons from reforms in other countries.

Researchers combined desk review of Ukrainian laws and court decisions with comparative analysis and a detailed assessment using the Legal Capacity Inclusion Lens (LCIL), a digital tool developed by the New Society Institute. LCIL evaluates legal regimes against Article 12 and General Comment No. 1 through 36 measures grouped under five domains (scope of participation, supports, duty to accommodate, planning tools, and balancing equality with protection from harm).

The analysis was conducted at two levels:

1. **Adoption** – whether Ukrainian law has conceptually adopted the decision-making capability approach (legal capacity grounded in will and preferences, exercised independently or interdependently).
2. **Implementation** – whether concrete legal provisions, institutions, supports, and safeguards are in place to make that approach work in practice.

Relevant legal provisions were entered into the LCIL application and scored on a four-point scale from “not at all” to “fully” compliant. These scores were then used to generate the results and findings that underpin the report’s policy implications and directions for reform.

The next section turns to the problem which motivated this study – the nature and scale of legal capacity exclusion in Ukraine.

# III. The Problem: Legal Capacity Exclusion

## A. Overview

As of 2025, tens of thousands of adults in Ukraine are under guardianship and excluded from the legal field, as all decisions are made on their behalf by a guardian (usually a relative or employee of a residential facility). Guardianship deprives a person of all civil, political, economic, and social rights—they cannot vote, dispose of property, make decisions about their own life, enter marriage, etc.

There are many cases where guardianship lasts for decades. For example, a person may be deprived of civil capacity at a young age and remain in this status for life due to the lack of review. Court statistics show an extremely low percentage of decisions to restore civil capacity compared to the percentage of decisions to deprive it. Mandatory periodic review of court decisions, which was introduced by amendments only in 2019, is not applied in practice for various reasons (see the following sections for more details), the most significant of which is the lack of information and support for people deprived of legal capacity. There are known cases of courts rejecting requests for restoration of civil capacity, where the court relies solely on the established diagnosis without analyzing positive changes in the person's condition and life (improved health, finding a job, restoring relationships, etc.).

The high level of stigmatization of psychosocial and intellectual disabilities in Ukrainian society also leads to the reinforcement of the institution of guardianship, with various state, municipal, and private institutions refusing to recognize the autonomy of persons with disabilities and unreasonably requiring the presence of a guardian to make decisions on even minor legal transactions. For example, a bank may refuse to open an account for a client with cognitive impairments, citing the fact that "a guardian or legal representative is required." Notaries often refuse to certify transactions involving persons with mental disorders, directing them first to "go through the guardianship procedure." This creates de facto barriers for persons with disabilities in exercising their legal capacity, even without a formal court decision on deprivation of civil capacity.

## B. Available official data on people who have been deprived of civil capacity

During the course of this study, an attempt was made to analyze the available open data on the number of people deprived of civil capacity in Ukraine. Open data from the following sources was processed:

- State Statistics Service of Ukraine

- Ministry of Health of Ukraine
- the National Health Service of Ukraine
- National Social Service of Ukraine
- State Judicial Administration

None of the above institutions has open data showing the dynamics of changes over several years, nor does it have data on calculation methods. **Table 2** below describes the available data and statistical gaps.

**Table 2 - Legal Capacity Restriction: Available Sources and Data**

Authority	Available data (year)	Gaps
State Statistics Service of Ukraine	The Statistical Yearbook of Ukraine for 2023 contains data on the total number of persons with disabilities, broken down by groups and regions; with reference to data provided by the Ministry of Health, it also contains data on the number of persons newly recognized as disabled by disease class in 2023, with separate categories for <i>"mental and behavioral disorders"</i> and <i>"diseases of the nervous system."</i>	It does not contain indicators by gender, age, etc. It does not contain separate data on the number of persons deprived of civil capacity or those whose civil capacity is limited by court decision.
Ministry of Health of Ukraine	<a href="#">The annual report</a> on the state of health of the population of Ukraine and the epidemic situation for 2023 contains a section only on the number of persons with mental disorders due to the use of psychoactive substances.	There is no data on the number of people seeking mental health services or data on the number of people receiving such services in hospitals. It does not contain separate data on the number of persons deprived of civil capacity or those whose civil capacity is limited by court decision.
National Health Service of Ukraine	<a href="#">Dashboards</a> with statistical data from the NHSU allow data to be broken down by type of service (service package). For example, in	There is no data on the actual number of people who sought inpatient or outpatient care once or multiple times during the reporting

Authority	Available data (year)	Gaps
	<p>2025, 166,800 services were provided under the package "psychiatric assistance to adults and children in inpatient settings" and 125,200 services under the package "psychosocial and psychiatric care for adults and children, organized by mental health centers or mobile multidisciplinary teams." The NSZU system also has 3,290 healthcare providers registered in the field of "mental and psychiatric services," including 134 mental health centers and 142 inpatient service providers.</p>	<p>period. The indicator "interactions related to the package of support for persons with mental disorders" does not contain any explanations of the nature of the interactions (services received by those who seek help) or data on whether such services are received by persons whose legal capacity is limited, etc.</p>
<p>National Social Service of Ukraine</p>	<p><a href="#">The public report</a> of the head of the National Social Service on the results of its activities for 2023 contains data on the number of persons registered with guardianship and custody authorities, which is more than 27,700 adults with limited legal capacity and 1.4 thousand persons whose legal capacity is limited (as of 01.01.2023). There is a breakdown in percentages of how many of them are under the care of individuals (85%), special institutions (14%), and guardianship and custody authorities (1%).</p>	<p>There is no gender or age distribution, no data on how many of these persons have been deprived of civil legal capacity in recent years, or how many persons have applied for the restoration of civil legal capacity and have been able to do so. There is also no data on whether the National Social Service monitors service providers that offer individual support services and whether these services are provided to persons deprived of civil capacity.</p>
<p>State Judicial Administration</p>	<p>Available data on the registration, consideration, and rejection of lawsuits in 2024 in the first and appellate instances for three groups: "cases on the restriction of civil capacity," "cases on the recognition of a person as incapacitated," and "cases on the restoration of capacity." In 2024, courts of first</p>	<p>There is no data on the age or gender distribution of the persons in respect of whom decisions were taken, nor is there any data on who initiated such cases – relatives, guardianship authorities, etc.</p>

Authority	Available data (year)	Gaps
	<p>instance received 18,347 cases, of which 14,628 cases on deprivation of legal capacity, 384 on restriction of legal capacity, and 59 on restoration of legal capacity were considered. During the same period, the appellate court received 101 cases, of which 75 were considered on the recognition of incapacity, 4 on the restriction of legal capacity, and 5 on the restoration of legal capacity.</p>	

The growing scale of deprivation of legal capacity, and the entrenched disadvantage that comes with this “civil death” make clear that urgent action is needed to address this form of exclusion. This research was designed to provide a framework for identifying and assessing the factors in law which underlay this long-standing policy problem and the discrimination and disadvantage which results for people with disabilities.

**Summary**

As of 2025, tens of thousands of adults in Ukraine remain under guardianship, effectively excluded from civil life. Guardianship removes a person’s right to make any legally recognized decisions—including about property, marriage, voting, or personal care—transferring full authority to a guardian, often a relative or institutional director. In practice, guardianship decisions can last for decades with little chance of review or restoration, despite legislative amendments in 2019 requiring periodic court reconsideration. Courts continue to rely almost exclusively on psychiatric diagnoses rather than evidence of an individual’s will, preferences, or ability to decide with support.

High levels of stigma surrounding psychosocial and intellectual disabilities reinforce this exclusion. Many institutions, banks, and notaries refuse to recognize the autonomy of persons with disabilities, demanding a guardian even for routine transactions. As a result, discrimination extends far beyond the courtroom, creating de facto barriers to participation in all areas of life.

The study’s review of available data sources—across the State Statistics Service, Ministry of Health, National Health Service, National Social Service, and State Judicial Administration—reveals severe data fragmentation. No authority maintains

comprehensive or comparable statistics on how many people are deprived of or have restored legal capacity. Existing figures indicate more than **27,000 adults under guardianship**, with negligible numbers of restored rights. The judiciary's data show that new deprivation cases vastly outnumber restoration cases by hundreds to one.

This lack of reliable information conceals the real scale of legal capacity exclusion and hinders evidence-based reform. The entrenched use of guardianship and the state's failure to provide support in decision-making together constitute a continuing form of structural discrimination—one that this research aims to expose and help remedy through a framework for equality-based legal capacity reform.

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## IV. Equality: The Policy Goal

The starting point for this study is that the growing problem of legal incapacitation and exclusion of citizens with disabilities in Ukraine can only be addressed by clarifying the policy goal against which the country's legal capacity regime should be assessed. For this purpose, the policy goal of equality is the focus of the study, as recognized in Article 12 of the UN CRPD. In ratifying the CRPD, Ukraine has adopted this policy goal.

To assess the extent to which the Ukraine legal capacity regime is designed to achieve equality, the research assesses the extent to which it adopts the features of the "decision-making capability" approach to legal capacity, as that approach is described in section I of the report.

This section provides background on the goal of equality as it applies in the Ukraine legal capacity regime, and provisions in the General Comment No. 1 of the UN Committee on the Rights of Persons with Disabilities which describes the requirements for legal capacity regimes to meet the equality right recognized in Article 12.

### A. Defining Equality in the context of legal capacity

Several concepts related to equality are used in this section and throughout the report. They are summarized and defined in Table 3 below.

**Table 3 - Equality: Key Concepts**

Equality of rights	All people should have equal legal status – this means equal (the same) rights and freedoms regardless of their characteristics or the group to which they belong.
Equality before the law	This is the ability to have equal (the same) protection under the law and, accordingly, a legal regime where every person has access to justice without discrimination, including based on disability.
Legal capacity	This is the right to "have rights" and the right to "exercise rights" in all areas of life for every person, regardless of their characteristics or membership in a particular group. In this chapter, as in the rest of the report, legal capacity is used in relation to persons with disabilities.

Restriction or deprivation of legal capacity	The procedure for restricting or depriving a person of the ability to exercise their rights and freedoms on an equal basis with others and to make legally significant decisions. These are terms used by the Civil Code, as well as the Civil Procedure Code of Ukraine (hereinafter referred to as the CPC) and other normative acts.
Institutionalization	(Often involuntary) placement of a person with a disability or an elderly person in a residential care facility that the person cannot leave independently to live in the community.

Equality of rights and equality before the law are fundamental principles of international human rights law, enshrined in numerous documents, both within the UN system and at the level of the Council of Europe and the European Union.

These two principles mean that all people should have equal legal status, equal opportunities to exercise their rights and freedoms, and equal access to justice without discrimination, in particular on the grounds of disability.

States that have ratified the relevant international treaties have accordingly undertaken to guarantee equality before the law for all citizens and to eliminate all forms of systemic, structural, and de facto discrimination.

This obligation includes the duty to ensure and protect the legal capacity of all persons, including persons with disabilities, and to replace practices of deprivation of decision-making capacity and guardianship systems with procedures and approaches that support decision-making and full participation in all areas of life.

**B. Ukraine's international legal obligations**

Ukraine has ratified several international treaties that establish the state's obligations to protect human rights, including the legal capacity of persons with disabilities, primarily:

- The UN Convention on the Rights of Persons with Disabilities, according to which a system that deprives legal capacity or establishes guardianship without an effective decision-making support procedure violates Ukraine's international obligations.
- The European Convention on Human Rights (ECHR) – explaining the obligations under this document, the European Court of Human Rights (ECHR) has

repeatedly emphasized in its decisions that deprivation of legal capacity without adequate safeguards and access to restoration of rights is a violation of the ECHR (for a detailed overview of the ECHR's positions, see Chapter 3).

- European Union (EU) documents: the EU is the first intergovernmental structure to ratify the Convention separately and make it part of EU law. It has developed and approved a separate Strategy for the implementation of the Convention, thus making the provisions of the Convention a minimum standard to be observed by EU member states and to which the legislation and policies of candidate countries, such as Ukraine, must be brought into line.

### C. The context of legal capacity and its restriction in Ukraine

Even though the right to equality in legal capacity is a fundamental part of human rights and Ukraine ratified the Convention in 2009, the issue of restricting the legal capacity of persons with disabilities, in particular through the use of substitution in decision-making (the functioning of the institution of guardianship and custody), remains unresolved. National legislation allows for the deprivation or restriction of civil capacity, which deprives a person of the ability to make decisions and participate in their own or public life, and creates opportunities for abuse and forced treatment and/or institutionalization.

Nonetheless, Ukraine's national legal system has built-in obligations regarding equality, as presented in Table 4.

**Table 4 - State Obligations Recognizing Equality**

Constitution of Ukraine	<ul style="list-style-type: none"> <li>▪ Article 21: All persons are free and equal in their dignity and rights.</li> <li>▪ Article 24: Citizens have equal constitutional rights and freedoms.</li> <li>▪ Article 55: Everyone is guaranteed judicial protection of their rights and freedoms.</li> </ul>
Civil Code of Ukraine	<ul style="list-style-type: none"> <li>▪ Provides for the possibility of restriction and/or deprivation of legal capacity by court decision</li> </ul>

Law of Ukraine "On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine"	<ul style="list-style-type: none"> <li>▪ Still contains provisions that allow for the restriction and deprivation of legal capacity</li> </ul>
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Ukrainian legislation and practice regarding the restriction of legal capacity of persons with disabilities contradict both national law and the state's international obligations. The Constitution of Ukraine guarantees equality and prohibits discrimination, and ratified international treaties, in particular the Convention and the ECHR, require that legal capacity be guaranteed to all without discrimination based on disability. However, the relevant amendments to the Civil Code, the Family Code, certain laws of Ukraine, and other normative legal acts have not been developed and adopted.

**D. Ukrainian translation of Article 12 and recognized rights**

The current Ukrainian translation of the Convention has various shortcomings that significantly affect the understanding of the content of this article and, accordingly, its transposition into Ukrainian national legislation. This, in turn, reduces the scope of rights currently guaranteed by national legislation for persons with disabilities, which is a violation of the state's obligations under the Convention.

**Table 5 - Ukrainian Translation of Article 12 CRPD**

The concept of "equality before the law" (Article 12, paragraph 1)		
States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.	States Parties reaffirm that persons with disabilities, wherever they are, have the right to recognition of their legal capacity everywhere.	The original text emphasizes two concepts, "universality" and "personhood," while the Ukrainian translation narrows this focus. Moreover, after this first sentence, the term legal capacity is not used anywhere else and is subsequently translated exclusively as <i>правоздатність</i> (legal capacity).

Equality of legal capacity and legal competence in all aspects of life (Article 12, paragraph 2)		
States Parties recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.	States Parties recognize that persons with disabilities have legal capacity on an equal basis with others in all aspects of life.	The phrase “Enjoy legal capacity” implies active exercise (enforcement) of rights and freedoms, whereas the use of only the component “legal capacity” in the Ukrainian translation narrows the meaning of this clause to a declarative one: all persons have rights, but do all persons have the opportunity to exercise them?
Access to support for exercising legal capacity (Article 12, paragraph 3)		
States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.	States Parties shall take appropriate measures to provide persons with disabilities with access to the support they may require in exercising their legal capacity.	Here, a similar issue arises with regard to the narrowing of the translation to a passive understanding of legal capacity without reference to active legal capacity – having and exercising rights and freedoms.
Safeguards against abuse (Article 12, paragraph 4)		
States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall	States Parties shall ensure that all measures relating to the exercise of legal capacity provide for appropriate and effective safeguards against abuse in accordance with international human rights law. Such safeguards shall	The phrase "related to the exercise of legal capacity" does not reflect the component of active enjoyment of rights and freedoms.  The translation "These guarantees must be

<p>ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.</p>	<p>ensure that measures relating to the exercise of legal capacity are guided by respect for the rights, will, and preferences of the person, are free from conflict of interest and undue influence, are proportionate to the circumstances of the person and adapted to them, apply for the shortest time possible, and are subject to regular review by a competent, independent, and impartial authority or judicial body. These safeguards should be proportionate to the extent to which such measures affect the rights and interests of the person concerned.</p>	<p>proportionate to the extent to which such measures affect the rights and interests of that person" contains an error; the English term "affect" should be translated here as "impacts (the rights and interests of the person)".</p>
<p>Equal rights in all aspects of life (Article 12, paragraph 5)</p>		
<p>Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall</p>	<p>Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to manage their own financial affairs, and to have equal access to bank loans, mortgages, and other forms of financial credit,</p>	<p>No comments on the translation</p>

ensure that persons with disabilities are not arbitrarily deprived of their property.	and shall ensure that persons with disabilities are not arbitrarily deprived of their property.	
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**E. Key elements of the right to equal recognition before the law – explanation by the UN Committee on the Rights of Persons with Disabilities**

General comment No. 1 by the UN Committee on the Rights of Persons with Disabilities aims to explain to States Parties not only the content of the concept of the right to equality before the law, but also to describe in detail its key elements and, accordingly, to outline the obligations of States Parties to transpose these key elements into their national systems.

The General Comment begins with recognizing that neither the Convention nor Article 12 create additional rights or privileges. Rather, it reminds States Parties of the universality, equality, and indivisibility of human rights for everyone, regardless of the presence or absence of disability or other characteristics. The Committee emphasizes:

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights explicitly guarantee the right to equality before the law. Article 12 of the Convention on the Rights of Persons with Disabilities further elaborates on the content of this civil right and focuses on areas in which persons with disabilities have traditionally been denied this right.

In preparing the General Comment, the Committee proceeded from the assumption that there is still considerable misunderstanding among States parties regarding the meaning of the concept of "equality before the law" and its significance for the human rights model of disability introduced by the Convention, and that this misunderstanding of the meaning and content significantly affects the ability of persons with disabilities to exercise their rights and freedoms.

The Committee emphasizes that:

- Article 12 details the guarantee of equality before the law specifically in relation to disability and in those areas of life where persons with disabilities have traditionally been deprived of their rights.
- Article 12 specifies the obligations of States Parties and points to barriers that need to be removed immediately.
- The key reason for misunderstanding the content of Article 12 is the outdated but still persistent use by States Parties of substitution practices in decision-making as the only model of "support" they understand, which is not in line with the Convention (see also Articles 3 and 4).
- Key to understanding Article 12 and the Convention is the unconditional acceptance of the inviolability of human rights for everyone—any decision must be based on respect for dignity, personal autonomy, non-discrimination, participation in society, equal opportunities, accessibility, gender equality, and respect for the development of children with disabilities.
- The right to equal recognition before the law must be inviolable; there can be no circumstances under which a person can be completely deprived of this right.
- Ratification of the Convention obliges States Parties to review their national legislation for compliance and to amend outdated practices, namely, to refrain from depriving persons with disabilities of legal capacity and to abolish the practice of guardianship as incompatible with respect for the dignity and autonomy of each person.
- Legal capacity (both components) is a key condition for the realization of civil, political, economic, social, and cultural rights.

The Committee elaborates on the latter point by emphasizing the following areas of human life:

- The right to vote and be elected, to have a family and to marry
- The right to make decisions about one's own health and the extent of medical intervention
- Access to justice
- Issues of financial and property management.

In addition to explaining the two interrelated elements of legal capacity - the right to have rights, and the right to actively exercise and realize them - Article 12 contains other elements and components that serve as guidelines for States Parties on needed changes in law, policy and practice.

***Article 12 (paragraphs 1 and 2) – right to exercise legal capacity on an equal basis***

The General Comment emphasizes that legal capacity is an inalienable and inviolable right from which there can be no derogation, which primarily means that States Parties must ensure that every person with a disability has the opportunity to act as a full legal subject in all legal relationships. Secondly, it imposes restrictions on States Parties and prohibits them from depriving a person with a disability of legal capacity solely based on cognitive or psychosocial impairments.

Accordingly, the Committee emphasizes the need to eradicate the widespread stereotype that legal capacity is not equal to and should not be based on mental capacity. In addition, the Committee, in its consistent explanation of the individual elements of Article 12, refers to the traditional (medical and charitable understanding of disability in many societies) and condemns practices that deprive persons with disabilities of legal capacity based on cognitive or psychosocial impairments as incompatible with international human rights instruments.

***Article 12 (paragraph 3) – Access to support in exercising legal capacity***

Paragraph 3 of Article 12 recognizes that States Parties are obliged to ensure that persons with disabilities have access to support in exercising their legal capacity. States Parties shall refrain from depriving persons with disabilities of their legal capacity and shall instead provide them with the necessary support to enable them to make decisions that have legal effect.

The key elements for understanding the content of paragraph 3 are:

- States parties have a duty to provide support for the practical realization of legal capacity, but neither Article 12 nor the General Comment provides an exhaustive list of forms of support. Instead, the emphasis is on what this support should not be – it should not take the form of substituting decision-making and should not deprive a person of their agency.

- Support can not only take different forms, but must also be adapted to the needs of the individual, and both the Convention and the Committee's comments constantly remind States Parties of the diversity of the community of persons with disabilities, the need to take into account both intersectionality and the barriers that exist in every society, and to design solutions to remove such barriers accordingly.

### ***Article 12 (paragraph 4) – Safeguards against abuse***

Paragraph 4 of Article 12 defines the safeguards that must be provided in the system of support for the exercise of legal capacity. This paragraph should be considered in conjunction with the rest of Article 12 and the entire Convention. It obliges States Parties to establish appropriate and effective safeguards for the exercise of legal capacity.

The key elements of this paragraph are:

- The main criterion for an adequate support system is to ensure the will and preferences of the person, not their "best interests." The Committee emphasizes that these are not identical concepts and that considering the will in the best possible way in a particular case is of paramount importance.
- Recognizing that it is not always possible to determine a person's will, the Committee emphasizes that the "best interpretation of will and preferences" approach should prevail over the "best interests" principle.
- Any support mechanisms are not effective and compliant with the Convention if they do not provide for safeguards against abuse that are accessible and effective for persons with disabilities.

### ***Article 12 (paragraph 5) – Financial and property rights***

Persons with disabilities have traditionally been denied access to finance and property due to the prevalence of the medical model of disability. The approach that denies persons with disabilities legal capacity in financial matters must be replaced by a system of support for the exercise of legal capacity in accordance with paragraph 3 of Article 12.

The key elements of this paragraph are:

- States Parties shall guarantee equal opportunities and their practical application to all persons with disabilities in matters of ownership and disposal of property, management of finances, and access to resources, including credit or other financial services.
- Prejudices about cognitive abilities can't be a reason to limit property rights and the ability to exercise economic rights. This means that States Parties must review outdated discriminatory provisions and make changes to their laws.

## **F. Barriers that State Parties must remove to fulfill their obligations under Article 12 of the Convention**

Historically, persons with disabilities have faced restrictions on their ability to exercise their rights and freedoms, including issues related to equality before the law, leading to discrimination and isolation. The Convention requires the removal of these barriers and the introduction of decision-making support mechanisms. Demonstrating the importance of ensuring equality before the law in the context of the real possibility of exercising all rights and freedoms, the Committee's General Comment contains a separate section explaining this relationship, which should serve as a guide for States Parties in developing and implementing reforms.

The Committee emphasizes the following aspects of the interrelationship between Article 12 and other articles of the Convention (see **Table 6**)

**Table 6 - Links between Article 12 and other CRPD Articles**

<b>CRPD Article</b>	<b>Relationship to Article 12</b>
Article 5 (Equality and non-discrimination)	Depriving persons with disabilities of legal capacity (based on an assessment of their cognitive abilities) is contrary to the principle of equality before the law.
Article 6 (Women with disabilities)	Women with disabilities often face double discrimination and have less access to remedies for violations of their rights, particularly in cases of domestic violence.
Article 7 (Children with disabilities)	Children with disabilities also need mechanisms for meaningful participation in decision-making and guarantees that their wishes will be considered, while in practice their

CRPD Article	Relationship to Article 12
	<p>legal capacity is often denied due to both their age and their disability. In the context of developing effective public policies to ensure children's rights, it is important to bear this interconnection in mind.</p>
<p>Article 9 (Accessibility)</p>	<p>Ensuring accessibility must consider access to information, the use of technology, etc., as this is an important part of building effective decision-making support procedures.</p>
<p>Article 13 (Access to justice)</p>	<p>The implementation of the provisions of this article requires the removal of barriers to access judicial review and proceedings, which is particularly important in the context of reviewing many discriminatory decisions on deprivation of legal capacity in the past. Persons with disabilities should be able to be a party to legal proceedings.</p>
<p>Article 14 (Liberty and security of person)</p>	<p>Deprivation of liberty solely based on disability, like deprivation of legal capacity, is contrary to the equal right to liberty and security of person. By violating Article 12 and failing to reform the current system, Member States are also violating Article 14 of the Convention.</p>
<p>Article 15 (Freedom from torture or cruel treatment)</p>	<p>Unwanted medical interventions and forced placement in residential institutions amount to a violation of Article 15. Protection from torture or cruel treatment can be achieved by establishing a decision-making support procedure and enabling individuals to exercise their right to consent to or refuse medical interventions to avoid forced treatment.</p>
<p>Article 16 (Freedom from violence, exploitation, and abuse)</p>	<p>Situations of deprivation of legal capacity and the guardianship system pose an increased risk of violence and exploitation. Accordingly, to prevent violations, there must be an accessible mechanism for reporting violations and a mechanism for investigating them.</p>
<p>Article 17 (Protection of personal integrity)</p>	<p>Any interference with physical or mental integrity must be based on the free decision of the individual.</p>

CRPD Article	Relationship to Article 12
Article 18 (Freedom of movement and nationality)	Equal access to support in decision-making and, accordingly, consideration of the will and wishes of the person regarding changes of residence and citizenship.
Article 19 (Independent living and inclusion in the community)	Legal capacity and capacity to act (both elements of legal personality) are prerequisites for the real possibility of choosing one's place of residence and services in communities on an equal basis with others.
Article 22 (Respect for private life)	Support procedures for decision-making should provide for the protection of the confidentiality of financial, medical, and legal decisions without interference from third parties.
Article 23 (Respect for home and family)	Restrictions on legal capacity in family matters also violate the principle of equality and result in persons with disabilities being deprived of their parental rights and the right to start a family of their own choosing.
Article 27 (Employment and occupation)	Persons with disabilities should have the right to independently enter employment contracts and manage their professional decisions.
Article 28 (Adequate standard of living and social protection)	The realization of economic rights is impossible without the legal capacity of persons with disabilities. Persons deprived of legal capacity are forced to depend on social benefits and find themselves below the poverty line.
Article 29 (Participation in political and public life)	Restricting the right to vote or be elected based on disability is discriminatory and deprives persons with disabilities of the opportunity to participate actively in society.

Research conducted by the Committee and other stakeholders highlights several existing barriers that lead to violations of the right to equality before the law:

- The current system of decision-making is based on the principle of substitute participation – in many countries, including Ukraine, the decision-making process is still one of “substitute decision-making”, where decisions are made not by the person themselves, but by their appointed guardian.

- A common prerequisite for limiting legal capacity is the assessment of cognitive abilities. This approach is discriminatory and contradicts the fundamental approach to human rights (equality of rights and inalienability of rights).
- The procedure is based on substitution in decision-making (guardianship system) and does not consider the will of the person, which should be a decisive element of the decision-making support system, as required by Article 12 of the Convention. Such approaches to support have so far been implemented only in some countries around the world.
- The spread of institutionalization and compulsory treatment practices masks "the problem of the existence of people deprived of equality before the law" - because society does not see them and does not consider this a problem. Instead, the widespread forced placement of adults with disabilities in institutional and medical facilities is the result of decisions made by their guardians.

The Committee emphasizes that, in accordance with their international obligations, States Parties cannot remain in the status quo and continue to support policies, practices, and existing legislation that restrict persons with disabilities in the realization of their rights and freedoms. Article 12 is not a declaration supported by the State Party; this article requires active measures, in particular:

1. Reviewing policies and legislation and abolishing substitute decision-making procedures, instead introducing supported decision-making procedures and developing approaches that guarantee equality before the law for different persons with disabilities in different circumstances.
2. Supported decision-making procedures should be based on considering the will and preferences of the individual and should help to realize rights and freedoms in all areas of life.
3. Create an effective system of access to justice and, accordingly, realistic and accessible tools for reviewing decisions on deprivation of legal capacity.
4. Introduce training programs for various groups of professionals to support legal capacity reform, including evaluation of the effectiveness of these training programs and real access for persons with disabilities to services and support in decision-making.
5. Develop a system of protection against abuse and reporting mechanisms that can be used by persons with disabilities who face violations of their rights during decision-making support and/or during the procedure for restoring previously lost legal capacity.

Ukrainian national legislation still contains provisions that contradict the above-mentioned principles of the Convention, which will be discussed in detail in the next chapter.

In summary, the right to equality in legal capacity is clearly recognized in the UN CRPD and defined in the General Comment No. 1. Together these sources provide a solid foundation for assessing the extent to which Ukraine's legal capacity regime meets the obligations to fulfill these equality rights. The next section provides an overview of that regime.

## Summary

This section sets out **equality in legal capacity** as the core policy goal against which Ukraine's legal capacity regime is assessed. Drawing on Article 12 of the CRPD and General Comment No. 1, it defines equality not only as having the same rights (equality of rights and equality before the law), but also as having an equal and practical ability to exercise those rights—both the right to have rights and the right to act on them. In this framework, deprivation or restriction of legal capacity and institutionalization are recognized as practices that undermine equality and expose people with disabilities to abuse and exclusion.

Ukraine has ratified the CRPD, the European Convention on Human Rights, and is aligning with EU standards, all of which obligate the state to guarantee equal recognition before the law and to replace guardianship and substitute decision-making with support for decision-making. While the Constitution and some laws affirm equality and non-discrimination, the Civil Code and related legislation still permit deprivation and restriction of legal capacity, contradicting these obligations. The section also shows how inaccuracies in the Ukrainian translation of Article 12 narrow the concept of legal capacity, downplay the active exercise of rights, and contribute to weak implementation.

The section then distills key elements of Article 12 and General Comment No. 1: legal capacity is inalienable; it cannot be withdrawn based on disability or perceived mental capacity; states must provide access to support in exercising legal capacity, **embed** safeguards against abuse, and ensure equal rights in financial, family, political, and other domains. It highlights how legal capacity intersects with other CRPD rights (e.g., access to justice, liberty, freedom from violence, independent living, political participation) and identifies barriers that must be removed—substitute decision-making, capacity tests based on cognition, institutionalization, and lack of access to justice. The section concludes that the CRPD and General Comment No. 1 provide a clear standard and benchmark for assessing whether Ukraine's current legal capacity regime fulfills its equality obligations, setting the stage for the detailed analysis that follows.



# V. Overview of the Legal Capacity Regime in Ukraine

## A. Key terms defining the legal capacity regime

In addition to those already described above, this chapter uses the following terms, some of which are defined in national legislation (see table below)

- Legal capacity - This is [the ability to have civil rights and obligations \(Article 25 of the Civil Code of Ukraine\)](#). It arises from the moment of birth and ceases upon death.
- Civil capacity - This is the ability of a person to acquire and exercise civil rights, create obligations for themselves, and fulfill them through their actions (Article 30 of the Civil Code of Ukraine).
- Decision-making capability approach to legal capacity – This is the model that allows people with intellectual or psychosocial disabilities to exercise their rights and freedoms in respect of legal capacity, with support. Such support may include:
  - Exercising legal capacity independently, or independently, with supports as may be needed
  - Interpretive support for expressing will and preferences as the ground of legal capacity.
  - Assistance in obtaining and understanding information;
  - Joint discussion of options and consequences of certain decisions or actions;
  - Assistance with formalizing decisions (e.g., concluding contracts);
  - Adapting rules and procedures, as well as using plain language on the part of public and private institutions.
- Substitution in decision-making – The current model of guardianship and care for persons with disabilities in Ukraine, in which the will, desires, and preferences of the person are not central, and decisions are made by a person specially appointed by the court (a guardian or an institution where the person with a disability resides).

## B. The current regime for regulating legal capacity in national law

As part of the study of national policies and legislation, an analysis was conducted of key regulatory and legal acts (RLAs) governing civil capacity, guardianship, care, social services, health care, and other related areas that regulate the exercise of legal capacity and which affect the realization of the rights of persons with psychosocial or intellectual disabilities in Ukraine. These acts were grouped and analyzed by type, reflecting different levels of regulation. Together, they define the core sources of law constituting Ukraine's legal capacity regime.

**Table 7 - Sources of Law Regulating Ukraine's Legal Capacity Regime**

<p>Laws of Ukraine (12 legal acts)</p>	<p>This group includes acts that have the highest legal force and define the foundations of legal capacity, healthcare, and social protection in the country:</p> <ul style="list-style-type: none"> <li>▪ Constitution of Ukraine</li> <li>▪ Civil Code of Ukraine</li> <li>▪ Civil Procedure Code of Ukraine</li> <li>▪ Code of Administrative Procedure of Ukraine</li> <li>▪ Family Code of Ukraine</li> <li>▪ Law "On Psychiatric Care"</li> <li>▪ Law "On Social Services"</li> <li>▪ Law "On the Fundamentals of Social Protection of Persons with Disabilities"</li> <li>▪ Law "On Rehabilitation of Persons with Disabilities in Ukraine"</li> <li>▪ Law "On the Protection of Children"</li> <li>▪ Law "On Local Self-Government"</li> <li>▪ Law "On Free Legal Aid"</li> </ul>
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<p>Subordinate regulatory legal acts (10 SLAs)</p>	<p>This category includes resolutions of the Cabinet of Ministers and orders of ministries that detail the procedures for restricting/depriving legal capacity, the procedure for providing services, the organization of guardianship, etc.:</p> <ul style="list-style-type: none"> <li>▪ Resolution of the Cabinet of Ministers No. 559 of 2020</li> <li>▪ Order of the Ministry of Health No. 12 of 2001</li> <li>▪ "Assessment of daily functioning" (Resolution of the Cabinet of Ministers)</li> <li>▪ Procedures for the provision of psychiatric care</li> <li>▪ Standards for social services</li> <li>▪ Regulations on guardianship councils and others</li> </ul>
<p>Other documents affecting policy (2 sources)</p>	<ul style="list-style-type: none"> <li>▪ Methodological recommendations of guardianship authorities</li> <li>▪ Ministry of Justice clarification on the procedure for establishing incapacity</li> </ul>
<p>Court practice</p>	<p>The study included:</p> <ul style="list-style-type: none"> <li>▪ Selected typical wording in court rulings on decisions of incapacity</li> <li>▪ Analysis of court decisions on the restoration of legal capacity</li> <li>▪ Summary of the Supreme Court's judicial practice (Supreme Court information notice)</li> <li>▪ Decisions of the Constitutional Court of Ukraine on the restriction of rights based on a decision on deprivation of legal capacity</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Selected aspects of ECHR decisions concerning legal capacity issues</li> <li>▪ Statistics on cases received by courts of first and appellate instance in 2024</li> </ul>
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**C. How the service system functions in accordance with the legal capacity regime**

Given that compliance with Article 12 of the Convention requires the state to ensure the availability of decision-making support mechanisms, it is important to consider how supports and services are currently organized what impact this has on the realization of the rights of persons with disabilities.

The current system defines key roles of social protection bodies, which are responsible for assessing individual needs, offering services appropriate to the person's circumstances, and informing the person and their family about available options and how to access them.

The social protection system consists of:

- The Ministry of Social Policy, Family, and Unity of Ukraine, which determines state policy in the field of social services, develops standards for the provision of social services (such as supported living standards) and funding norms. Local executive bodies – these are the departments/offices of social protection of the population of regional and local state administrations or communities, which directly organize the provision of social services. They accept applications from citizens, assess the need for social services, and make decisions on the provision of a particular service. According to the Law of Ukraine "On Social Services," the assessment of needs is carried out by social workers, who, if necessary, can involve psychologists, rehabilitation specialists, doctors, etc.
- The National Social Service of Ukraine (NSSU) is responsible for monitoring the quality of social services and the activities of service providers, as well as providing methodological support.
- In the field of guardianship and care, the guardianship and care authorities are responsible – these are usually the executive bodies of local councils. Their duty is to identify persons in need of care, appoint guardians, and monitor their

activities. In fact, guardianship authorities do not have the mandate to provide alternative support to individuals; their function is traditionally limited to appointing a substitute decision-maker, rather than organizing support in decision-making.

Existing social services are financed by several sources. Basic social services are financed from local budgets (as part of social protection expenditures), often with subsidies from the state budget for the implementation of state programs. The Law on Social Services stipulates that services may be provided free of charge, for a fee, or with differentiated payment depending on the recipient's income and the category of service. For example, single people with Group I disabilities and low incomes receive services free of charge, while people with relatively higher incomes may pay part or all the cost of services according to the tariffs. [The Procedure](#) for the Provision of Social Services to Persons with Disabilities and Elderly Persons Suffering from Mental Disorders No. 576 of 2019 explicitly states that social services, in particular supported living, may be provided free of charge or for a fee, depending on the circumstances of the person. The specific amount of payment and benefits is determined based on the methodology of the Ministry of Social Policy and the decisions of local councils. Inpatient facilities are financed by the state and local budgets.<sup>14</sup>

In recent years, a competitive selection approach has been introduced for non-state service providers with budget reimbursement (this can be loosely described as a piloting of the social order model). This should allow for the procurement of services from public and charitable organizations. Currently, such pilots mainly cover day care, supported living, and rehabilitation services. The percentage of available pilots and providers is relatively low compared to the percentage of users who may need services. Individualized funding, or the "money follows the person" model is still in the pilot stage. Within the government's pilot programs supported by international donor organizations, it is not possible to test and purchase services outside the current list of social services and approved state standards. The lion's share of the budget is allocated to pensions, one-time financial assistance, and the maintenance of institutions<sup>15</sup>, while funding for services in communities remains insufficient.

Another important gap is the regulation of access to social services. The general procedure for access is regulated by criteria established by social services legislation.

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<sup>14</sup> For more information on the types of residential facilities, sources of funding, and services provided there, see [the analytical study](#) by Fight for Right, *The value of the system over the value of the person: the economics of boarding schools in Ukraine* (Kyiv: Fight for Right, 2025), online: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ffr.org.ua/wp-content/uploads/2025/08/Analitychne-doslidzhennya.-TSinnist-systemy-ponad-tsinnistyu-lyudyny-ekonomika-internativ-v-Ukrayini.pdf>.

<sup>15</sup> Ibid.

Persons in difficult life circumstances (this term covers disability, old age, illness, absence of parents, substance abuse, etc.) are entitled to social services. A person with a disability is automatically considered eligible for social services. However, in practice, an application is required—the person or their legal representative must submit an application to the unit responsible for social protection. Next, a needs assessment is conducted to determine what services are needed (e.g., day care, supported living, rehabilitation, etc.). It is important to note that for persons deprived of legal capacity by a court, only a guardian can submit an application. This creates a barrier: if the guardian does not initiate the process of obtaining services, the person themselves has no procedural opportunity to request them. After the assessment, the authorized body decides whether to provide the service or refuse it. The selection criteria include the presence of indications (health status, lack of outside help, etc.) and the absence of contraindications (for example, aggressive behavior may be grounds for refusing assisted living services in the community).

Currently, the state is trying to unify approaches: a comprehensive assessment of a person's rehabilitation and care needs has been introduced through a functional assessment (in accordance with the ICF – International Classification of Functioning). For example, the introduction of an assessment of daily functioning aims to identify what support a person needs and direct them to the appropriate services (see [Resolution No. 1338 of 2024](#) on certain issues of introducing an assessment of a person's daily functioning).

However, this procedure does not address the issue of determining the need for support in decision-making. The social services system in Ukraine does not have the authority and was not created to determine decision-making support needs or provide related services.

Thus, the regime for legal capacity appears structurally incapacitated to deliver on the goal of achieving equality in the exercise of legal capacity, because achieving that goal requires that persons with disabilities are able to access the decision-making supports they need to exercise legal capacity. Achieving equality will require both the legal regime and the service delivery system to enable people to exercise legal capacity independently with decision-making supports as needed, or interdependently through supported decision-making arrangements.

## **Summary**

This section explains how Ukraine's laws and services currently regulate legal capacity and why the regime is not designed to support equality in practice. National law distinguishes between legal capacity (the ability to have rights) and civil capacity (the

ability to exercise those rights through one's own actions). In reality, Ukraine relies on a substitution in decision-making model—guardianship—rather than a decision-making capability approach that would allow people with intellectual or psychosocial disabilities to exercise legal capacity with support (e.g., help to understand information, express will and preferences, or formalize decisions).

The legal capacity regime is spread across a wide range of instruments: the Constitution, Civil and Civil Procedure Codes, sectoral laws (on social services, psychiatric care, disability protection, free legal aid, etc.), subordinate regulations (e.g., on guardianship, social service standards, psychiatric procedures), and court practice, including Constitutional Court and ECHR-related decisions. Together, these sources define when and how people can be deprived of or restricted in civil capacity and how guardianship is organized, but they do not establish a right to decision-making support or supported decision-making arrangements.

On the service side, responsibility is centred in the Ministry of Social Policy, local social protection bodies, the National Social Service, and guardianship authorities. Social services are financed mainly from state and local budgets, with limited pilots for non-state providers and “money follows the person” models. Access to services requires an application—often only a guardian can apply if a person is deprived of legal capacity—creating a structural barrier. New tools such as functional assessments aim to identify care needs, but they do not address support in decision-making. As a result, the current legal and service systems are structurally unable to deliver equality in the exercise of legal capacity, because they still treat guardianship and substitute decision-making as the default, rather than ensuring that people can exercise legal capacity independently with supports or interdependently through supported decision-making.

## **VI. Analysis of Results**

The research framework presented in section II identified the three main research objectives for this study:

- Assess compliance of the Ukrainian legal capacity regime with the standards of the Convention.
- Analyze judicial practice and decisions regulating restrictions and protection of legal capacity.

- Gather lessons learned from the reform of legal personality regimes in other countries.

This section reports on the research results in relation to each of these objectives.

## **A. Compliance of the Ukrainian legal capacity regime with the standards of the CRPD**

As indicated in the research framework, the study assessed Ukraine's legal capacity regime at two levels at two interrelated levels:

- **Level 1: Adoption of the decision-making capability approach**

The **Decision-Making Capability Index** is composed of seven core measures and assesses the extent to which a jurisdiction's legal capacity regime has adopted the *decision-making capability approach* as its underlying model. As noted above in **Table 1**, the seven core measures or features of the decision-making capability approach to legal capacity are:

- ***Inclusive "legal capacity test"*** – recognizing independent and interdependent ways to exercise legal capacity, and a person's will and preferences as the ground of legal capacity
- ***Recognition of decision-making support*** – encompassing a full range of decision-making supports, including interpretive support for persons who exercise legal capacity interdependently
- ***Supported Decision-Making Arrangements*** – providing for people to appoint supporters to assist in making decisions or, where people are not able to make appointments, opportunity for supporters to apply for appointment to assist a person in making decisions interdependently.
- ***Government obligation for ensuring access*** to decision-making support – either through direct provision of decision-making supports (i.e., planning and navigation support), or through resourcing community-based organizations to provide this assistance.
- ***Mandatory exploration of decision-making supports*** – which requires third parties, including government services, health care providers, and financial institutions, to take all reasonable steps to explore and arrange options before imposing restrictions on legal capacity.

- ***Duty of third parties to accommodate*** persons in decision-making processes – which establishes an obligation on third parties to identify and address any barriers in decision-making process.
- ***Restrictive measures review and justification*** – which requires review of any restrictive measures to ensure that they are only imposed as a last resort after all reasonable steps to explore and arrange supports, and that ongoing steps are taken to develop needed decision-making supports so that any such restrictions can be removed.

High scores at this level signify that the regime grounds legal capacity in a person’s will and preferences and recognizes both independent and interdependent ways of exercising legal capacity. Low scores indicate that the regime continues to rely primarily on the cognitive/functional model, which equates legal capacity with mental capacity and results in exclusion and discrimination based on disability.

- **Level 2: Implementation of the decision-making capability approach**

The second level assesses how far the regime has progressed in implementing this approach through concrete legal and institutional mechanisms.

Using the remaining 29 LCIL measures, the analysis also examined the presence in Ukraine’s legal capacity regime of provisions that enable supported decision-making, mandate government responsibility to provide supports, establish duties to accommodate, authorize planning tools, and ensure safeguards against unjustified restrictions.

By distinguishing these two levels, the results show not only whether the *decision-making capability approach* has been adopted in principle, but also whether it has been operationalized through the required legal provisions and institutional infrastructure.

Results across both levels reveal where Ukraine is making progress toward equality in the exercise of legal capacity, and where gaps remain between commitment to the approach and the systems needed to realize it in practice.

- **Data collected and analysed**

Using the LCIL, researchers identified 37 sources of law of Ukraine, including the Constitution and the Civil Code of Ukraine, which have legal provisions related to securing equality in legal capacity. **Table 8** identifies the sources of law included in the assessment.

**Table 8 – Assessed Sources of Law Constituting Ukraine’s Legal Capacity Regime**

No	Country	Source
1	Ukraine	CASE OF WINTERWERP v. THE NETHERLANDS (Application no. 6301/73)
2	Ukraine	Constitution of Ukraine
3	Ukraine	Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Commissioner for Human Rights
4	Ukraine	Decision of the Dolynskiy District Court of Ivano-Frankivsk region in case 350/939/24 dated 10.10.2024
5	Ukraine	Decision of the Holosiivskiy District Court of Kyiv in case 752/18270/23 dated 01.07.2024
6	Ukraine	Decision of the Horodyschensky District Court of the Cherkasy Region dated May 24, 2019 in case No. 691/335/19
7	Ukraine	DECISION OF THE PRESIDENCY OF THE KIROVOGRAD REGIONAL COURT 04.10.2000
8	Ukraine	Decision of the Volodar-Volynskiy District Court of Zhytomyr Region dated November 15, 2021 in case No. 276/838/19
9	Ukraine	Decision of the Zolotonosha City District Court of the Cherkasy Region dated February 4, 2022 in case No. 695/3685/18
10	Ukraine	ECHR CASE OF NATALIYA MIKHAYLENKO v. UKRAINE (Application no. 49069/11)
11	Ukraine	Law of Ukraine "On Compulsory State Pension Insurance"
12	Ukraine	Law of Ukraine "On the Rehabilitation of Persons with Disabilities in Ukraine"
13	Ukraine	Law of Ukraine "On social services"
14	Ukraine	Law of Ukraine "On State Social Aid to the Persons not Entitled to a Pension and to Persons with Disabilities"
15	Ukraine	Law of Ukraine "On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine"
16	Ukraine	Order of the Ministry of Social Policy of Ukraine On the Approval of the Classification of Social Services
17	Ukraine	Resolution of the Cabinet of Ministers of Ukraine On the Approval of the Procedure for the Provision of Social Services to Persons with Disabilities and Older Persons Suffering from Mental Disorders
18	Ukraine	On approval of the State Standard for Social Rehabilitation of Persons with Intellectual and Mental Disorders
19	Ukraine	State Standard of the Social Service of Supported Living for Older Persons and Persons with Disabilities
20	Ukraine	PLENUM OF THE SUPREME COURT OF UKRAINE RESOLUTION On Judicial Practice in Cases Concerning the Recognition of a Citizen as Having Limited Legal Capacity or as Incapable
21	Ukraine	Order of the Ministry of Social Policy of Ukraine On the Approval of the Rules on Guardianship and Custodianship

No	Country	Source
22	Ukraine	Resolution of the Cabinet of Ministers of Ukraine On the Organization of the Provision of Social Services
23	Ukraine	Resolution of the Cabinet of Ministers of Ukraine On Certain Issues of Introducing the Assessment of an Individual's Daily Functioning
24	Ukraine	Resolution of the Supreme Court dated 20.01.2022 in case 752/24219/20
25	Ukraine	Resolution of the Supreme Court dated 28.02.2024 in case No. 372/3474/21
26	Ukraine	Resolution of the Supreme Court composed of the panel of judges of the Second Judicial Chamber of the Civil Court of Cassation dated January 13, 2021
27	Ukraine	Resolution of the Supreme Court composed of the panel of judges of the Third Judicial Chamber of the Civil Court of Cassation dated 04/10/2021 in case
28	Ukraine	Resolution of the Supreme Court dated 11.11.2020 № 554/1475/18
29	Ukraine	Resolution of the Supreme Court dated 15.04.2020 № 550/1201/16
30	Ukraine	Resolution of the Supreme Court dated 21.08.2024 № 201/1531/23
31	Ukraine	Resolution of the Supreme Court dated 29.03.2021 № 184/858/19
32	Ukraine	Resolution of the Cabinet of Ministers of Ukraine Certain Issues of Implementing a Pilot Project on the Provision of Social Services for Internally Displaced Older Persons and Persons with Disabilities — Residential Care and Supported Living — Based on the “Money Follows the Person” Principle
33	Ukraine	The Civil Code of Ukraine
34	Ukraine	The Civil Procedural Code of Ukraine
35	Ukraine	The Code of administrative procedure of Ukraine
36	Ukraine	The Family Code of Ukraine
37	Ukraine	The Law of Ukraine On Psychiatric Aid

**Table 9** references the number of provisions selected from these sources and how they were analyzed.

Often one legal provision in a source of law was relevant to more than one measure in the LCIL and consequently was coded and scored separately for each of the respective measures.

**Table 9 – Number of Provisions Included and Assessed**

Count Type	Data count of provisions scored	Data count of unique sources of law for these provisions	Data count of unique provisions found in these sources
<p>1. <b>Adoption</b> of decision-making capability approach:</p> <ul style="list-style-type: none"> <li>▪ as measured by the <b>Decision-making Capability Adoption Index</b> (DMC-AI) – provides a score of the extent to which the main features of the decision-making capability approach are adopted in the legal capacity regime</li> <li>▪ assesses all scorings of a DMC foundational provision and provides a composite (average) score (the DMC-AI)</li> </ul>	145	18	85
<p>2. <b>Implementation</b> of the decision-making capability approach</p> <ul style="list-style-type: none"> <li>▪ as measured by <b>Decision-making Capability Implementation Index</b> (DMC-II) – provides a score of the extent to which institutional mechanisms and arrangements are in place to operationalize and implement the decision-making capability approach across the legal capacity regime (including the foundational provisions adopting the approach, and as reflected in the LCIL’s 36 measures).</li> <li>▪ assesses scorings of all provisions in the Legal Capacity Inclusion Lens and provides a composite (average) score</li> </ul>	1,836	37	171

\*Data Count refers to the number of sources, provisions, or coded instances assessed using the LCIL. Some “unique provisions” were scored against more than one measure because the provision included features or references relevant to more than one measure (i.e., a test of capacity incorporating a reference to support for decision-making). Hence, there is a higher data count of provisions scored than unique provisions.

The text and legal source of 145 scored provisions (85 unique provisions) which are included in the “Adoption Index” by how they are scored as “not at all,” “partly,” “mostly,” or “fully” meeting the measure [are available here – \[provide link\]](#)

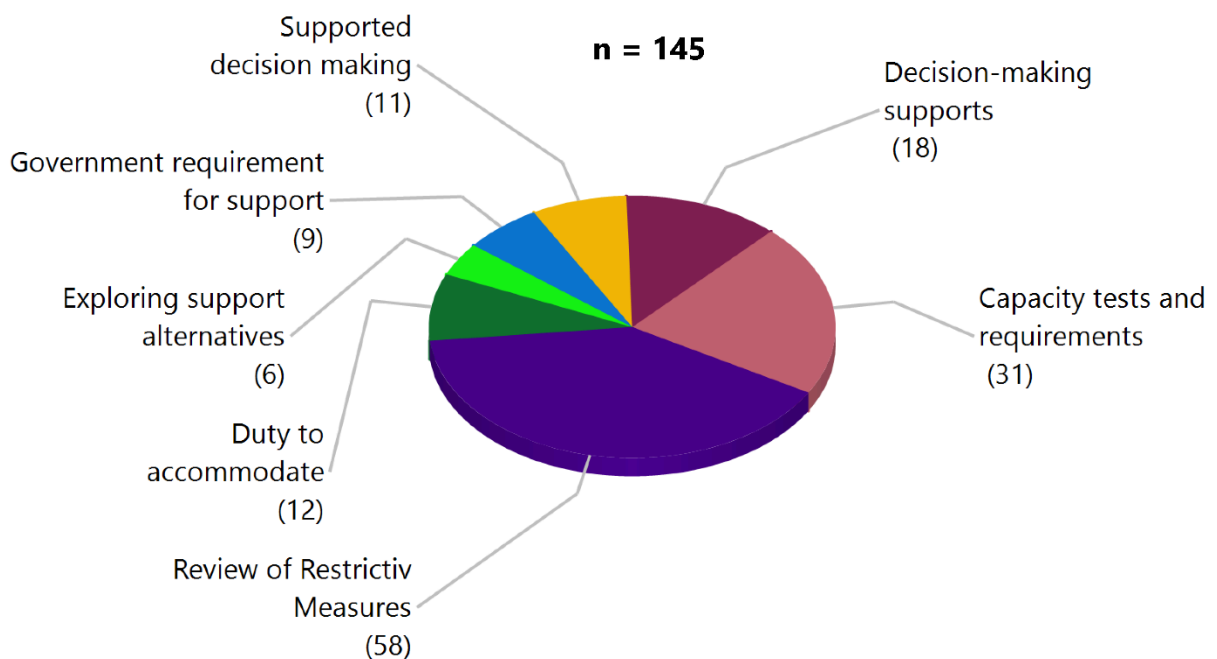
The text and legal source of 171 unique provisions under the 37 sources of law, which were scored and included in the “Implementation Index” [are available here – \[provide link\]](#)

The results of the analysis of 1) adopting, and 2) implementing the decision-making capability approach, are presented below.

### 1. Adoption of the decision-making capability approach

A total of 85 provisions from the laws reviewed relate to the approach to legal capacity adopted in Ukraine’s legal capacity regime. Because some provisions apply to more than one measure of the Decision-Making Capability Adoption Index, these provisions were scored a total of 145 times across the seven measures. The distribution of these scores is shown in Figure 1.

**Figure 1 - Decision-making Capability – Adoption Index: Number of Provisions Scored**

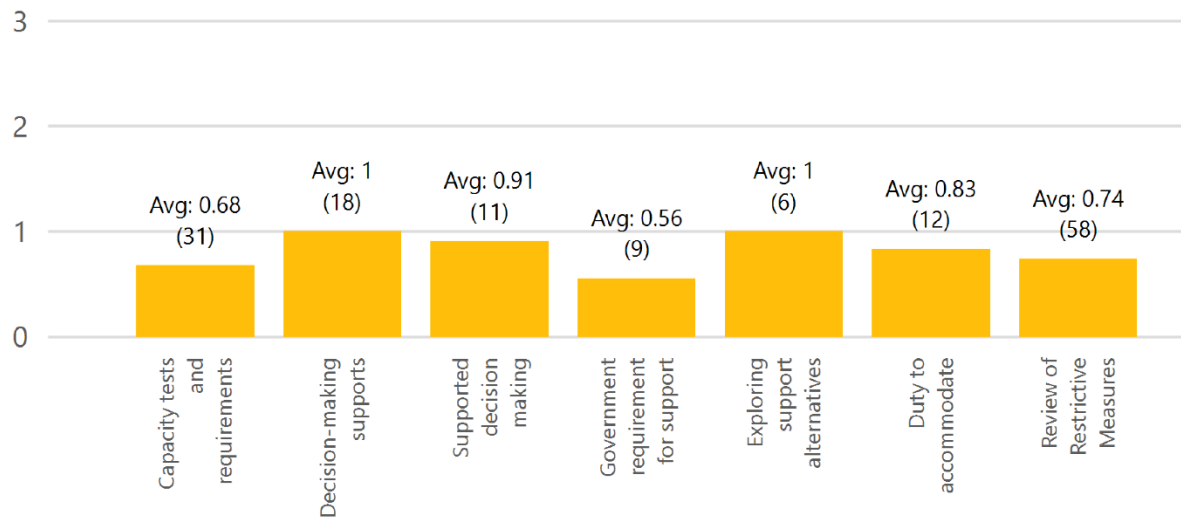


The number of provisions scored for each measure of the DMC adoption index, from across the 18 sources of law included (as listed in Table 8), are presented in “()” brackets.

Figure 2 shows the average scores of the provisions for each of these seven measures, out of a maximum score of 3, where:

- “0” = “not at all” meets the measure
- “1” = “partly” meets the measure
- “2” = “mostly” meets the measure
- “3” = “fully” meets the measure.

**Figure 2 - Decision-making Capability - Adoption Index: Scores by Measure**



**n = 145**

**Table 10** presents the scores by each measure of the index, along with the overall composite score. For each of the seven measures, the right column presents the number of provisions receiving a score of “0,” “1,” “2,” or “3,” the total number (Num) of provisions scored against the measure, and the average (Avg) score.

The composite score, or average score across all provisions, .78/3 or 26%. This low score indicates a significant gap in adopting the key features of the decision-making capability approach into Ukraine’s legal capacity regime. A few highlights from these results include:

- The two lowest scores relate to the ‘capacity tests and requirements’ and ‘government support’ in accessing needed decision-making supports. This can help to explain increasing numbers of people losing or being restricted in their legal capacity. Predominant capacity tests adopted in the regime require a person to meet cognitive/functional tests, with little to no government assistance available to assist people in meeting support needs.
- While there is relatively greater recognition of decision-making supports in general, and some recognition of supported decision-making arrangements, these are either not being implemented – with little government action to enable access – or are not available to people to demonstrate and exercise legal capacity because the capacity tests are so exclusionary. People are unable to get through the legal capacity gateway in the first place.
- Similarly, the relatively higher scores for duty to accommodate, exploration of alternatives, and review of restrictive measures, operate in a context where the threshold for demonstrating capacity systematically excludes people with more significant cognitive and functional support needs.

**Table 10 - Decision-making Capability Adoption Index - Composite Score**

<b>Element of Legal Capacity Approach</b>	<b>Number of Provisions Assessed</b>	<b>Average Score</b>
<b>Capacity tests and requirements</b>	31	.68
<b>Decision-making supports</b>	18	1.00
<b>Supported decision making</b>	11	.91
<b>Government requirement for support</b>	9	.56
<b>Exploring support alternatives</b>	6	1.00
<b>Duty to accommodate</b>	12	.83

<b>Review of Restrictive Measures</b>	58	.74
<b>Ukraine Legal Capacity Regime: “Adoption Index” (Composite Score)</b>	145	.78 (26%)

Overall, the results indicate that the decision-making capability approach to legal capacity is far from being adopted in Ukraine’s legal capacity regime. A key barrier is the approach recognized in law to defining and measuring capacity, which relies on outmoded cognitive/functional requirements for a person to exercise legal capacity independently. This discriminatory test sets a bar too high for many people to meet. Adding access to supported decision making and recognition of supports only for those who meet this outmoded and discriminatory test, only reinforces the structural exclusion of Ukraine’s legal capacity regime.

## 2. Implementing the decision-making capability approach

**Table 11** presents the analysis of results for the Decision-making Capability – Implementation Index. This index measures the extent to which the mechanisms and institutional arrangements are in place to implement the decision-making capability approach across the legal capacity regime.

It is constructed in the same manner as **Table 10** above, for the DMC Adoption Index. It includes all 36 measures of the Legal Capacity Inclusion Lens.

The table indicates a total of 171 provisions from the 37 sources of law reviewed relate to implementing the decision-making capability approach in Ukraine’s legal capacity regime (the Implementation Index incorporates the measures for the Adoption Index). Because some provisions apply to more than one measure of the DMC Implementation Index, these provisions were scored a total of 1,836 times across the thirty-six measures, as presented in **Table 11**.

The table shows the average scores of provisions that relate to each measure, as well as an average score for each of the 5 main dimensions of the legal capacity regime – the scope of participation, recognition of supports, including supported decision-making arrangements, the duty to accommodate, the range of planning tools available, and the scope for balancing the right to equality with rights to be free from harm, abuse, and neglect.

**Table 11 - Assessment of Ukraine's Legal Capacity Regime - All Measures**

	All			
	0	1	2	3
<b>Overall Composite Index</b>	1450	306	40	40
	<b>Num</b>			<b>Avg</b>
	1836			0.3
<b>Scope of Participation</b>	0	1	2	3
	268	116	12	8
	<b>Num</b>			<b>Avg</b>
	404			0.4
<b>1.1 People with disabilities enjoy and exercise legal capacity on an equal basis</b>	0	1	2	3
	127	69	9	7
	<b>Num</b>			<b>Avg</b>
	212			0.5
1.1.1 Provisions fully guard against restricting or excluding people, based on a disability diagnosis or status, from enjoying or exercising legal capacity.	0	1	2	3
	72	39	6	4
	<b>Num</b>			<b>Avg</b>
	121			0.5
1.1.2 Provisions regulating the exercise of legal capacity do not have an adverse effect on the exercise and enjoyment of legal capacity by people with disabilities	0	1	2	3
	55	30	3	3
	<b>Num</b>			<b>Avg</b>
	91			0.5
<b>1.2 A person's will and preferences ground the legal recognition for a person to enjoy and exercise legal capacity</b>	0	1	2	3
	55	18	2	1
	<b>Num</b>			<b>Avg</b>
	76			0.3
1.2.1 The provision recognizes that the exercise of legal capacity is grounded upon a person's will and preferences	0	1	2	3
	55	18	2	1
	<b>Num</b>			<b>Avg</b>
	76			0.3
<b>1.3 The legal regime recognizes that persons may exercise legal capacity independently or interdependently and may use a range of decision-making supports to do so</b>	0	1	2	3
	86	29	1	0
	<b>Num</b>			<b>Avg</b>
	116			0.3
1.3.1 The provision recognizes a full range of supports that may be required for exercising legal capacity independently or interdependently	0	1	2	3
	45	25	1	0
	<b>Num</b>			<b>Avg</b>
	71			0.4
1.3.2 The provision recognizes the principle of best interpretation of a person's will and preferences where interpretive support is required	0	1	2	3
	41	4	0	0
	<b>Num</b>			<b>Avg</b>
	45			0.1

	All			
	0	1	2	3
<b>Decision-Making Supports</b>	638	60	7	32
	<b>Num</b>			<b>Avg</b>
	737			0.2
<b>2.1 All persons, without discrimination based on disability are authorized to make, change and terminate decision-making support arrangements and agreements that enable them to exercise legal capacity independently or</b>	453	38	1	31
	<b>Num</b>			<b>Avg</b>
	523			0.3
2.1.1 The provision enables persons to make supported decision-making agreements for exercising legal capacity independently or interdependently	55	12	0	1
	<b>Num</b>			<b>Avg</b>
	68			0.2
2.1.2 The provision enables decision-making supporters to be appointed where a person is unable to make these appointments on their own	44	0	0	0
	<b>Num</b>			<b>Avg</b>
	44			0.0
2.1.3 The provision recognizes duties of decision-making supporters to respect, enhance and maximize autonomy where legal capacity is exercised independently	43	0	1	0
	<b>Num</b>			<b>Avg</b>
	44			0.0
2.1.4 The provision explicitly recognizes duties of decision-making supporters to respect, enhance and maximize autonomy where legal capacity is exercised interdependently	45	1	0	1
	<b>Num</b>			<b>Avg</b>
	47			0.1
2.1.5 The provision provides liability protection for decision-making supporters to the extent they meet their obligations	40	0	0	0
	<b>Num</b>			<b>Avg</b>
	40			0.0
2.1.6 The provisions establishes mechanisms for changing and terminating supported decision-making agreements	40	0	0	1
	<b>Num</b>			<b>Avg</b>
	41			0.1
2.1.7.1 Provision for making complaints that decision-making supporters are not fulfilling their obligations	38	4	0	8
	<b>Num</b>			<b>Avg</b>
	50			0.6
2.1.7.2 Provision for evaluating concerns and investigating where necessary	35	6	0	9
	<b>Num</b>			<b>Avg</b>
	50			0.7
2.1.7.3 Provision for remedying any issues that arise (e.g., appointing monitors, providing additional supports)	40	9	0	0
	<b>Num</b>			<b>Avg</b>
	49			0.2
2.1.7.4 Provision for appeals and disputes resolutions with respect to concerns reported, investigations and remedies	35	6	0	11
	<b>Num</b>			<b>Avg</b>
	52			0.8

2.1.8 The provision offers liability protection for honoring decisions made with decision-making supports, and decisions where a person refuses supports which they may not require to exercise legal capacity	0 38	1 0	2 0	3 0	<b>Num</b> 38	<b>Avg</b> 0.0
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	All					
	0	1	2	3		
<b>2.2 Decision-making supporters or representatives legally authorized under supported decision-making arrangements have a right to all information and documents to which the person is entitled</b>	37	2	0	1	<b>Num</b> 40	<b>Avg</b> 0.1
2.2.1 The provision enables access by decision-making supporters to personal information and records, related to the supporter's area of authority under the relevant support agreement or arrangement	37	2	0	1	<b>Num</b> 40	<b>Avg</b> 0.1
<b>2.3 Access to needed decision-making supports is guaranteed, and processes are mandated to assist a person in arranging them, including at any point where a person may have independent or interdependent decision-making</b>	148	20	6	0	<b>Num</b> 174	<b>Avg</b> 0.2
2.3.1 The provision recognizes a government obligation to ensure access to decision-making supports a person may require to exercise legal capacity	52	11	4	0	<b>Num</b> 67	<b>Avg</b> 0.3
2.3.2 The provision mandates exploration of options to meet decision-making support needs at all points where decision-making capability is questioned and/or needs to be enhanced	53	9	1	0	<b>Num</b> 63	<b>Avg</b> 0.2
2.3.3 Provision for accessible and fair complaints and enforcement mechanisms to remedy lack of access to decision-making supports a person may require to exercise legal capacity	43	0	1	0	<b>Num</b> 44	<b>Avg</b> 0.0
<b>Duty to Accommodate</b>	117	14	2	0	<b>Num</b> 133	<b>Avg</b> 0.1
<b>3.1 Parties have a duty accommodate a person in exercising legal capacity either independently or interdependently</b>	117	14	2	0	<b>Num</b> 133	<b>Avg</b> 0.1
3.1.1 Provision recognizes the duty of all parties to accommodate persons in decision-making processes related to the exercise of their legal capacity, either independently or interdependently	56	11	2	0	<b>Num</b> 69	<b>Avg</b> 0.2
3.1.2 Provision gives guidance on how to accommodate persons in exercising legal capacity either independently or interdependently	45	1	0	0	<b>Num</b> 46	<b>Avg</b> 0.0
3.1.3 Provision for accessible and fair complaints and enforcement mechanisms to remedy lack of accommodation in exercising legal capacity independently or interdependently	16	2	0	0	<b>Num</b> 18	<b>Avg</b> 0.1

	All			
	0	1	2	3
<b>Range of Planning Tools</b>	190	0	3	0
	<b>Num</b>		<b>Avg</b>	0.0
<b>4.1 All persons are authorized to make plans to guide their decision making in the future, and such plans can specify:</b> <b>a) the decisions to be made, b) instructions to guide decision making, c) those who will assist a person in making</b>	190	0	3	0
	<b>Num</b>		<b>Avg</b>	0.0
4.1.1.1 Provision authorizes advance planning documents – for personal care and life decisions – which a person makes independently	44	0	1	0
	<b>Num</b>		<b>Avg</b>	0.0
4.1.1.2 Provision authorizes advance planning documents – for health care decisions – which a person makes independently	44	0	1	0
	<b>Num</b>		<b>Avg</b>	0.0
4.1.1.3 Provision authorizes advance planning documents – for financial/property decisions – which a person makes independently	44	0	1	0
	<b>Num</b>		<b>Avg</b>	0.0
4.1.1.4 Provision authorizes the appointment of persons to represent a person in decision making, under supported decision making agreements	43	0	0	0
	<b>Num</b>		<b>Avg</b>	0.0
4.1.2 Provision ensures that the instructions a person specifies in their future planning documents cannot be over-ridden except where a) doing so would not be consistent with acting on an equal basis or b) doing so would violate best interpretation of a person's will and preferences.	15	0	0	0
	<b>Num</b>		<b>Avg</b>	0.0
<b>Scope for Balancing Right to Equality</b>	237	116	16	0
	<b>Num</b>		<b>Avg</b>	0.4
<b>5.1 Where a person is not able to act legally independently and is in a situation that is causing or could cause serious harm, any measure to restrict their exercise of legal capacity, or to require them to use supports to make decisions,</b>	237	116	16	0
	<b>Num</b>		<b>Avg</b>	0.4
5.1.1 Provisions for restricting the exercise of legal capacity by a person who is not able to act legally independently in a situation that is causing serious harm, ensure as follows:	0	0	0	0
	<b>Num</b>		<b>Avg</b>	NA
5.1.1.1 The provision ensures that restrictive measures are applied only as a last resort, and after all reasonable steps to ensure access to needed decision-making supports have failed	32	17	0	0
	<b>Num</b>		<b>Avg</b>	0.3
5.1.1.2 The provision ensures that any restrictive measures are the least restrictive in the circumstances	32	12	0	0
	<b>Num</b>		<b>Avg</b>	0.3

5.1.1.3 The provision ensures that any restrictive measures are proportional and tailored to the person's circumstances;	0	1	2	3
	31	9	0	0
	<b>Num</b>		<b>Avg</b>	
	40		0.2	

	All					
5.1.1.4 The provision ensures that any restrictive measure is applied for only as long as is necessary to address or prevent the serious harm;	0 30	1 9	2 0	3 0	<b>Num</b> 39	<b>Avg</b> 0.2
5.1.1.5 The provision ensures that restrictive measures are subject to regular review by a competent authority to assess whether the benefits outweigh the harms and that the need for such restrictions continues to be justified;	0 38	1 54	2 0	3 0	<b>Num</b> 92	<b>Avg</b> 0.6
5.1.1.6 The provision ensures that imposition of restrictive measures is combined with steps to establish decision-making supports and maximize independent or interdependent exercise of legal capacity as soon as practically possible;	0 29	1 4	2 0	3 0	<b>Num</b> 33	<b>Avg</b> 0.1
5.1.1.7 The provision ensures decision-making supports may be monitored as may be needed under the circumstances;	0 23	1 1	2 0	3 0	<b>Num</b> 24	<b>Avg</b> 0.0
5.1.1.8 The provision ensures that imposition of restrictive measures is subject to appeal through accessible and timely appeals enforcement mechanisms	0 22	1 10	2 16	3 0	<b>Num</b> 48	<b>Avg</b> 0.9

The table shows that on average, Ukraine's legal capacity regime scores just .2 out of 3, or a score of only 6% in adopting and implementing the decision-making capability approach (which, as discussed, is the approach best able to secure the requirements of Article 12 of the CRPD to achieve equality in exercising legal capacity). This very low score demonstrates an immense gap to fill in ensuring provisions are in place so that people with disabilities can exercise legal capacity on an equal basis with others, with the decision-making supports they require for that purpose.

The difference between the score of 26% for adopting the decision-making capability approach, and the score of only 6% for implementing the approach is instructive. There is some progress in creating the foundations for adopting the decision-making capability approach. However, the 6% score on implementation signals that there is almost no machinery and institutional capacity to make the supports and accommodations needed for an inclusive legal capacity regime available to all.

## **B. Law enforcement practice**

A second aspect of the research was examining the process of deprivation and restriction of civil capacity in the context of judicial practice. Since Soviet times, the only safeguard against arbitrariness in decisions on the restriction or deprivation of civil capacity, as well as its possible restoration, has been the court.

This section compiles and analyzes a range of court decisions related to restriction of legal capacity in order to assess the extent to which:

- court procedures and practice operate as a safeguard to protect equality in legal capacity;
- the court analyzes the individual decision support needs of a person as opposed to using a medical model that equates capacity with a diagnosis;
- steps are being taken to restore legal and civil capacity in specific situations.

The research examined:

- main trends in judicial practice in Ukraine
- problems arising in the processes of deprivation and restoration of legal capacity;

- the influence of the practice of the European Court of Human Rights (ECHR) on the development of the practice of national courts; and,
- the main barriers to ensuring legal capacity through the national court system.

Contemporary Ukrainian judicial practice in relation to the regulation of legal capacity originates from [Resolution](#) No. 3 of the Plenum of the Supreme Court (Soviet) of Ukraine of March 28, 1972, "On Judicial Practice in Cases of Recognizing a Citizen as Limitedly Capable or Incapable." Despite its obsolescence (the last revision was in 1998), this document is still applied by national courts. Its focus is on judges' strict adherence to the medical model — the presence of chronic mental disorder or alcoholism/drug addiction — as grounds for deprivation of civil capacity.

The resolution does not mention anything about considering the individual condition or wishes of the person in question, assessing possible alternatives, etc. Moreover, this approach legitimizes the indefinite deprivation of civil capacity, allowing for its restoration only if a new SME is appointed by the court:

*In cases concerning the restoration of legal capacity, it is mandatory to conduct a forensic psychiatric examination, which is appointed by a judge's ruling. A citizen may be restored to legal capacity only if there is a conclusion from a forensic psychiatric examination that their health has significantly improved or that they have recovered.*

This contradicts Article 12 of the Convention, which requires regular review of any restrictive measures and provision of adequate support to persons with disabilities.

An analysis of both the number and content of Ukrainian court decisions shows that deprivation of civil legal capacity remains a common practice, applied in thousands of cases each year. When making decisions, courts mostly rely exclusively on the conclusions of forensic psychiatric examinations, where the key issue is "the ability of a person to understand the significance of their actions and control them." Often, court decisions simply state the presence of a mental disorder and automatically grant the application for incapacitation without requiring evidence that other means of supporting the person or providing them with services have been exhausted: *"the person suffers from a chronic mental disorder, in connection with which... they are subject to being declared incapacitated."* Courts of [first](#) instance still refer to this Resolution of the Plenum of the Supreme Court of Ukraine No. 3 of 1972 and automatically side with incapacitation if there is a medical diagnosis, without seeking alternatives.

In case No. 569/4466/23 (decision of 30 November 2023), the court of first instance appointed an expert examination with a direct question about the "justification for declaring a person legally incompetent":

*the subject of proof in this category of cases is: the presence of a chronic, persistent mental disorder; facts confirming that the citizen is not able to understand the meaning of their actions and control them; the causal link between the mental disorder and the citizen's inability to understand the meaning of their actions and control them; the citizen reaching the age established by law, in relation to whom the question of determining their incapacity is being raised; other circumstances; the conclusion of a forensic psychiatric examination; certificates from a medical institution; certificates of registration with a psychiatric institution; an extract from the medical history;*

The higher courts referred the case back for retrial, and the Supreme Court issued [a separate clarification](#) that the conclusion of the SME is sufficient evidence in these "special cases," thus allowing the courts to ignore all other possible evidence and the will of the person on whom the decision is being made. Furthermore, in analyzing this case and establishing requirements for the consideration of similar cases, in terms of the right to a fair trial, the Supreme Court defines this right as the right of the guardian, not the person on whom the decision is being made, who, according to the Convention, should be at the center of the process:

*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which will decide on the dispute concerning his civil rights and obligations (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms).*

*The collection of evidence in civil cases is not the duty of the court, except in cases established by this Code. The court has the right to collect evidence relating to the subject matter of the dispute on its own initiative only in cases where this is necessary to protect minors or persons who have been declared by the court to be legally incompetent or whose legal capacity is limited, as well as in other cases provided for by this Code (Part 2 of Article 13 of the Code of Civil Procedure of Ukraine).*

*The legislator has defined at the level of procedural law the peculiarities related to the consideration of cases of separate proceedings. These peculiarities are manifested in the fact that when considering cases, the provisions on adversarial proceedings (Article 12 of the Code of Civil Procedure of Ukraine) and the limits of judicial review (Article 13 of the Code of Civil Procedure of Ukraine) do not apply. In cases of separate proceedings, the legislator has given the court the*

*opportunity to request the necessary evidence on its own initiative. Only in certain cases has the legislator established the need to submit, together with the application, evidence confirming the circumstances set out in the application (for example, in Part 2 of Article 318 of the Code of Civil Procedure of Ukraine).*

*Part 3 of Article 297 of the Code of Civil Procedure of Ukraine does not contain a requirement to submit evidence confirming the circumstances set out in the application together with the application for recognition of an individual as legally incompetent.*

This again supports the continued use of the medical model exclusively by the courts in 2023 and beyond. The courts automatically rely on the conclusions of forensic psychiatric examinations. If experts diagnose *"inability to understand the significance of actions and/or control them,"* the court usually decides to deprive the person of civil capacity without investigating the possibility that, with certain support, the person could make decisions. For example, in [case](#) No. 372/3474/21 of February 28, 2024, the Supreme Court left a person with intellectual disabilities under guardianship, despite the fact that it had been proven that they were capable of independently conducting everyday affairs with minimal support, no less restrictive measures (partial civil capacity or support in decision-making) were even considered by the court. In this case, the Supreme Court similarly refers not to the rights of the person in respect of whom the protective decision is made, but to the rights of their relatives to file or not to file a complaint, and relies solely on the fact that cases concerning the deprivation and restoration of civil capacity are special cases, in which decisions are made in accordance with the letter of the Civil Code and the Code of Civil Procedure:

**109.** *The Supreme Court's ruling of May 17, 2021, in case No. 636/398/19 states that, according to the provisions of part one of Article 39 of the Civil Code of Ukraine, a natural person may be declared legally incompetent by a court if, as a result of a chronic, persistent mental disorder, they are unable to understand the significance of their actions and/or control them. The content of this provision should be interpreted as meaning that the court has the right, but is not obliged, to declare a natural person legally incompetent. Part two of Article 39 of the Civil Code of Ukraine stipulates that the procedure for declaring an individual legally incompetent is established by the Code of Civil Procedure of Ukraine. In accordance with Article 239 of the Code of Civil Procedure of Ukraine, if there is sufficient evidence of a mental disorder in an individual, the court shall order a forensic psychiatric examination to determine their mental state. The purpose of a forensic psychiatric examination is to determine the presence or absence of a mental disorder that could affect a person's awareness of their actions and control over them.*

**129.** *The panel of judges reiterates that incapacitated persons are a special category of people (natural persons) who cannot independently exercise their property and personal non-property rights, perform their duties, and bear legal responsibility for their actions at their own discretion. The state has a duty to ensure the protection and exercise of the rights of incapacitated persons and to create conditions for the satisfaction of their needs.*

An analysis of court decisions also shows that courts rarely involve persons with disabilities themselves in proceedings concerning decisions on the restriction of civil capacity – it is not uncommon for decisions to be made *in absentia*, despite [the clarification](#) from the Supreme Court on October 16, 2020. This deprives the person of the right to a fair trial and the opportunity to express their wishes and interests. There are only a few [exceptions](#) when courts not only hear the person themselves at the hearing, but also indicate that this right must be guaranteed:

*According to part three of Article 25 of the Law of Ukraine "On Psychiatric Care" (in the version in force at the time of filing the application and consideration of the case by the court of first instance), persons receiving psychiatric care have the right to participate in court hearings in person, to express their opinion on the conclusions of psychiatrists in court hearings when deciding on issues related to the provision of psychiatric care and the restriction of their rights in this regard.*

*Thus, a person who is the subject of separate proceedings for recognition of incapacity has the right to participate in the hearing of the case and to a fair trial. In particular, such a person must be notified of the proceedings, their rights must be explained to them, and they must have the opportunity to obtain free legal assistance and participate in court hearings if they desire. Even if there are real, proven concerns about the danger of this person's direct participation in the proceedings for other people or for themselves, the court should at least have visual contact with this person, and preferably interview them (if necessary, remotely, via videoconference). If, at the time of the trial, the person is deprived of liberty as a mentally ill person, the court must verify the legality of the grounds for the deprivation of liberty of such a person in order to guarantee the human rights to liberty and a fair trial.*

*The European Court of Human Rights, in its judgment of March 27, 2008, in the case of Shchukurov v. Russia (application No. 44009/05), noted that by deciding a case on the incapacity of a person solely on the basis of written evidence, without seeing or hearing the person, the court violated their right to a fair trial, as provided for in Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms.*

Cases of restoration of civil capacity are extremely rare. Until 2018, in most cases, guardianship was established for life, and there is still no regulatory requirement to review these "old" decisions or to consider evidence other than the SME's conclusion that the person's condition and decision-making capacity have improved (). In [case](#) No. 276/838/19 of December 16, 2021, the court relied solely on the conclusion of the SME and disregarded the arguments of the guardian, who pointed to an improvement in the person's condition:

*According to part one of Article 42 of the Civil Code of Ukraine, upon the application of a guardian or guardianship and custody authority, the court shall restore the civil capacity of a natural person who has been declared incapacitated, and terminate guardianship if it is established that, as a result of recovery or significant improvement in their mental state, they have regained the ability to understand the significance of their actions and control them.*

*Part four of Article 300 of the Civil Procedure Code of Ukraine provides that the revocation of a court decision recognizing an individual as incapacitated and the restoration of the civil capacity of an individual who has been recognized as incapacitated in the event of her recovery or significant improvement in her mental state, shall be carried out by a court decision on the basis of the relevant conclusion of a forensic psychiatric examination at the request of the guardian, family members, guardianship and custody authority, or the person herself who has been declared incapacitated.*

*According to the rules of part one of Article 298 of the Code of Civil Procedure of Ukraine, if there is sufficient evidence of a mental disorder in a natural person, the court shall appoint a forensic psychiatric examination to establish their mental state.*

*Thus, a citizen may be restored to legal capacity only if there is a conclusion of a forensic psychiatric examination about a significant improvement in their health or recovery.*

*This conclusion was reached by the Supreme Court in its ruling of January 13, 2021, in case No. 756/6851/18 (proceedings No. 61-18754c819).*

*According to conclusion No. 1 of January 4, 2021, conducted in the case by experts of the Kyiv City Center for Forensic Psychiatric Examination of Inpatient Forensic Psychiatric Examination, PERSON\_3 currently shows signs of paranoid schizophrenia, mixed type defect (according to ICD-10, code F20.5). Due to his mental state, he is unable to understand the significance of his actions and control them.*

*Under the circumstances, since the forensic psychiatric examination did not confirm the recovery or significant improvement in the mental state of PERSON\_3, who had previously been declared legally incompetent by a court decision, the court of first instance, with which the court of appeal agreed, came*

*to a reasonable conclusion that there were no grounds for granting PERSON\_1's application and restoring PERSON\_3's civil capacity.*

In recent [decisions](#) of the Supreme Court, there has been a tendency to expand procedural guarantees for persons whose civil capacity is being considered.

- In case No. 209/2893/22 (decision of 25 December 2024), the Court emphasized that the court must first determine the legal capacity of the applicant and only then decide on the merits of the case. This means that the circle of persons who have the right to initiate proceedings for deprivation of civil capacity cannot be arbitrarily expanded.
- In case No. 306/1802/21 (decision of 23 October 2024), the Court established that the mandatory participation of the person and their lawyer in the proceedings is a necessary condition from 3 August 2023. This rule is intended to ensure that even persons deprived of civil capacity have a real opportunity to be heard in court.

These decisions can be seen as a step towards meeting the standards of the CRC, but they remain the exception rather than the rule.

The European Court of Human Rights has a practice of dealing with cases related to the restriction of legal capacity and the involuntary detention of persons in psychiatric institutions. The most famous precedents are:

- [Shtukaturov v. Russia \(2008\)](#) – The Court emphasized that a person deprived of civil capacity must have the right to apply to the court for a review of their status.
- [Stanev v. Bulgaria \(2012\)](#) – The Court found that deprivation of legal capacity and placement in a social institution without the person's consent constituted a violation of Articles 5 and 6 of the Convention.

In the case of [Natalia Mikhalenko v. Ukraine \(2013\)](#), the ECHR drew Ukraine's attention to several key aspects that constituted a violation of Article 6(1) of the Convention:

- Ukrainian legislation (at the time of the complaint) deprived the applicant of the possibility to independently apply for the restoration of her civil capacity. Only the guardian or the guardianship authority had this right, which effectively left the applicant without procedural guarantees.
- The Court emphasized that Ukrainian law did not provide for a mechanism for periodic judicial review of decisions depriving a person of civil capacity, which meant that such decisions were indefinite even in cases where the person's health improved.

- It drew attention to the practice in other Council of Europe member states and to the change in consensus regarding the right to independently apply to the court.
- The court also noted that the authorities in Ukraine had failed to ensure proper supervision of the guardian's actions and had not taken measures to protect the applicant's interests.

Although the practice and approaches of the ECHR should serve as a guide for national courts, both in cases against Ukraine and against other countries, Ukrainian courts are largely unable to see beyond the medical model.

In summary, the main barriers to the restoration of civil capacity within the current court procedure remain, including:

1. The dominance of the medical model of understanding disability and decision-making based solely on the conclusion of the SME, without considering any social factors, community or family support;
2. Despite changes in legislation, guardianship remains de facto indefinite, there is no obligation to review decisions made before 2018, the obligation to review decisions made after 2018 every two years is neglected, and the number of decisions to restore civil capacity is thousands of times smaller than the number of decisions to deprive it;
3. The widespread practice remains in force: the guardians of persons who have been in the boarding school system for years are the directors of institutions who neglect their obligation to review decisions on deprivation of civil capacity;
4. Although the Supreme Court has repeatedly emphasized the role of representation (a lawyer for a person deprived of civil capacity) in recent years, this representation is largely absent, as is the widespread practice of making decisions on deprivation or refusal to restore civil capacity in the absence of the person themselves;
5. The courts do not raise the question of the possibility of support, adaptation, or alternative measures to deprivation of civil capacity.

These findings are consistent with the results of the assessment of the legal capacity regime using the Legal Capacity Inclusion Lens. The mandates for court procedure to adopt a decision-making capability approach to legal capacity – including recognizing will and preferences as the ground of legal capacity and ensuring consideration of decision-making supports and the duty to accommodate – are simply not in place. Nor is the judicial route to restoring a violated right is not effective or accessible for most persons deprived of civil capacity.

Overcoming these barriers will primarily involve not only changing regulatory requirements, but also significantly increasing educational and informational activities

and materials aimed primarily at overcoming the stigma of psychosocial and intellectual disabilities among judges and other legal professionals.

### **C. Lessons for Ukraine from reforming legal capacity regimes and approaches in selected countries**

A third aspect of the research was examining lessons learned from other jurisdictions for addressing barriers identified in Ukraine's legal capacity regime. This is an important step in developing a model or approaches to reform in Ukraine. The overview below does not claim to be exhaustive, as such a thorough analysis requires not only desk research but also communication with practitioners, in addition to considering the differences in conditions between other countries and Ukraine.

This overview focuses on three key questions:

- 1) how the reform began (political and legal preconditions)
- 2) what specific changes to the legislation were introduced (whether the institution of guardianship was abolished, how decision-making support mechanisms were regulated, what safeguards were applied), to what extent the new approaches are consistent with the principles and requirements of Article 12 of the Convention,
- 3) and what lessons from this experience could be useful for Ukraine.

The analysis included:

- whether the reform ensures full recognition of legal capacity for all persons, regardless of psychosocial or intellectual disability,
- whether legal and practical mechanisms have been established that allow individuals to receive support in making decisions in various life situations without losing their legal capacity,
- what support models have been introduced and how effective and accessible they are,
- what role civil society and persons with disabilities play in promoting and implementing the reform,
- what difficulties arose in the process of implementing changes.

This focused and structured approach made it possible to process a significant amount of analytical material on the stages of reform in several selected countries and to prepare concise descriptions focusing primarily on how to adapt the lessons learned to Ukrainian conditions.

For this desk analysis, three countries were selected that are at very different stages of implementing reforms of legal capacity regimes and have faced different challenges in the process. These are Australia, Peru, and Bulgaria. All three countries have chosen different approaches to implementing the provisions of Article 12 of the Convention, and therefore their paths reveal different risks associated with reforming traditional guardianship systems. Studying and analyzing such diverse experiences helps not only to focus on the technical and legal aspects of designing and implementing legal capacity reform, but also to analyze the social processes and political and institutional context in which changes are implemented and to predict their possible impact, which is particularly relevant in a changing environment. This structured approach allows not only to assess the compliance of individual reforms with international standards, but also to adapt best practices to Ukrainian conditions.

## **1. Australia**

Australia, like many other countries, had a built-in model of substitution in decision-making (a guardianship model based on medical assessment of disability) at the time of signing and ratifying the Convention. Even though Australia was one of the leading countries in the creation of the Convention, advocating for its adoption at the UN level and becoming one of the first countries to ratify the Convention, changes within the country, particularly regarding approaches to recognizing legal capacity for all persons with disabilities, were quite slow and non-linear. It was only in 2014 that the specially created Australian Law Reform Commission published [a report](#) entitled Equality, Capacity and Disability in Commonwealth Laws, which analyzed Australia's guardianship system at the time and proposed a number of solutions for the transition from substitute decision-making to supported decision-making.

In 2013, the government launched pilot projects to support decision-making in two states. These pilots involved volunteers and "supporters" who helped with decision-making. The results were evaluated in both states and feedback was provided. In 2013, the UN Committee on the Rights of Persons with Disabilities noted in its concluding observations that the country was "slow" to move away from the guardianship model and that there had been no progress in complying with Article 12 of the Convention. At the same time, the Committee considered many individual complaints of violations of the Convention from Australians with disabilities, including

regarding restrictions on legal capacity<sup>16</sup>. The Committee's key requirement in its decisions on these complaints was to develop national legislation that would enable support in decision-making.

By 2020, the Australian government had launched pilot projects in several other states. In addition to government funding, they were supported by local NGOs and the academic community. At the same time (2013–2020), the development of legal mechanisms began that would allow the use of decision-making support as an alternative to deprivation of legal capacity and the appointment of a guardian. A model for evaluating results and mechanisms for protection against abuse (monitoring, transparent reporting, review of decisions, etc.) was also developed. The next step in the reform should be to update all legislation (in particular, the abolition of the Guardianship Acts), as well as to work on combining decision-making support and independent living in the community (as required by Article 19 of the Convention) and, accordingly, to focus on the development of various support services in communities.

Currently, the model of support in decision-making being developed by Australia provides for the following services:

- translation of information into an understandable form;
- assistance in communication;
- explanation of legal or financial consequences;
- emotional or psychological support;
- the availability of support agreements;
- mechanisms for monitoring, transparency, and protection against abuse.

Despite the absence of changes to legislation at the national level and the complete rejection of the guardianship model, there have been changes to the legal regulation of regimes in states that have conducted pilot projects. For example, the Supported Decision-Making Act in South Australia (2013) allows such practices in the field of healthcare and at the level of private decisions.

### ***Lessons from the Australian experience for Ukraine***

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<sup>16</sup> The Committee's decision and concluding observations are available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&CountryID=9](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&CountryID=9)

- a) Australia has demonstrated the effectiveness of pilot projects as the first stage of implementing a paradigm shift, involving persons with disabilities, their families, assistants, lawyers, and judges. Ukraine can take this as an example for:
- creating decision-making support centers;
  - training specialists who understand the approaches of the Convention;
  - developing educational programs for lawyers and judges to prevent deprivation of legal capacity and/or encourage the review of past decisions and the restoration of rights.
- b) Amending the national legislative framework is a prerequisite for global change – in the Ukrainian context, without amendments to the Civil Code and other regulatory acts, decision-making support will have no legal force. The first step could be to introduce decision-making support as in Australia in specific areas, such as healthcare and services. Accordingly, Ukraine should begin work on enshrining the right to decision-making support and creating mechanisms to monitor the activities of assistants. An important step, as Australian experience shows, is the abolition of the institution of guardianship to avoid creating a situation where two systems exist in parallel.
- c) One of the critical lessons is the importance of parallel development of a protection system – safeguards in the support system that protect people from abuse. These include transparency and external oversight, auditing the actions of assistants, the right and procedure to change assistants, feedback channels and reporting of violations, etc.
- d) Australia has found that gradual changes in legislation, even at the local level, require investment in building understanding and support in communities. which means, at a minimum, working to develop support services at the local level, developing approaches to personal assistant services, and finding technical solutions to support communication (apps, video conferencing, etc.).

## **2. Peru**

The reform of legal capacity in Peru began quite late, although the country ratified the Convention in 2000. It took about 10 years of advocacy efforts by CSOs and the community of persons with disabilities to begin the movement to abolish the institution of guardianship. The key impetus was the adoption of Law No. 1384 in 2018, which radically changed the approach to determining legal capacity.

Until 2018, Peru had a system of interdiction — a legal mechanism that allowed the court to completely deprive a person of the ability to make any legal decisions, which contradicted the content of Article 12 of the Convention. In 2018, a decision-making

support system (apoyos y salvaguardias) was introduced. The law introduced a provision that all persons, regardless of their psychosocial or intellectual condition, have legal capacity from birth and cannot be deprived of it.

The law provides that:

- The person with a disability chooses who provides support (an individual or an institution);
- The support agreement may be formalized through a court or a notary, depending on the situation;
- Support should not replace the person but rather help them to exercise their will in situations where legally significant decisions must be made.

Protective mechanisms introduced by the law

- All support agreements must be transparent, subject to review, and may be revoked by the person at any time.
- There is a mechanism to protect against abuse.

### ***Lessons from Peru's experience for Ukraine***

- a) Peru's experience shows that it is possible to abolish the institution of guardianship and consistently introduce decision-making support into legislation without causing legal collapse. The key lesson is the realization that any model must be centered on the individual and their autonomy.
- b) The introduction of decision-making support should include the development of mechanisms for implementing its components. Peru's experience shows a step-by-step algorithm: define the concept of an "assistant" and the limits of his/her responsibilities, establish the legal form of support, for example, a contract or declaration and the method of its execution, through the courts or a notary, introduce a protection mechanism – who reviews decisions, how often, supervisory powers, and transparency.
- c) An important driver of reform in Peru was the civil society sector, which actively involved the community of people with psychosocial disabilities in the development of solutions, helped build trust in institutions, and conducted information campaigns. The Ukrainian civil society sector is capable and, provided that resources are available, can implement similar initiatives.

### 3. Bulgaria

Bulgaria, like all post-Soviet countries, continued to support a system of substitution in decision-making (partial or complete deprivation of civil capacity) and had an institution of guardianship rooted in legislation. However, unlike Australia, the impetus for change was not the ratification of the Convention or an active independent living advocacy movement within the country, but a series of decisions by the European Court of Human Rights. In particular, this was the case of [Stanev v. Bulgaria \(2012\)](#), where the court ruled that the placement of a person in an institution without their consent violated Article 5 of the ECHR (the right to liberty) and that the deprivation of legal capacity was discriminatory. The civil society movement in Bulgaria managed to launch a discussion on the need for change at the parliamentary level, but without any real changes until the mid-2010s. Only at the end of this period was a bill introduced that proposed a gradual abandonment of the institution of guardianship — reducing the areas in which a person could be deprived of legal capacity, introducing certain elements of support in decision-making, and a mechanism for reviewing guardianship decisions. However, this was not a step towards the abolition of guardianship, but, as argued by lawyers and the community of people with disabilities, merely a softening of it.

Two key shortcomings of the proposed solution remain:

- The lack of a clear decision-making support mechanism (voluntary choice of support, priority of the person's will, procedures for reviewing and/or revoking decisions, etc.);
- A significant number of barriers that still exist at the level of normative legal acts, in particular the lack of rights to choose, conclude contracts, complete loss of property rights, etc. In addition, the possibility of appointing a guardian by the court even against the will of the person remains.

#### ***Lessons from Bulgaria's experience for Ukraine***

- a) Ukraine, like Bulgaria, is a state party to the ECHR and already has cases
- b) concerning the restriction of civil capacity, in particular the decision in [the case of Natalia Mikhailenko v. Ukraine](#) on the impossibility of appealing against a decision to deprive a person of civil capacity, the decision in [the case of Gorbatyuk v. Ukraine](#) also concerning problems of access to court, and there are also a number of decisions concerning compulsory psychiatric treatment and deprivation of liberty. ECHR decisions should be used as leverage on parliament and the government to initiate change.

- c) The changes should primarily include reforming the institution of guardianship and creating mechanisms to support decision-making in all areas of life. Bulgaria's experience shows that cosmetic changes do not work. Bulgaria tried to change the word "guardianship" to "assistance" without making any substantive changes to its approaches that would comply with the Convention. It is not worth "modernising" the current model by giving it a new name.
- d) The participation of civil society is crucial. Bulgaria is promoting its changes by involving not only CSOs representing people with disabilities, but also the broader human rights community, international organizations and structures, lawyers, etc.
- e) For Ukraine, Bulgaria's experience is valuable primarily in order not to repeat mistakes and waste time.

## **Summary of results**

The analysis reveals a profound gap between Ukraine's formal commitments to the principles of the UN Convention on the Rights of Persons with Disabilities (CRPD) and the actual operation of its legal capacity regime. While some legislative provisions reference support and accommodation in decision-making, these remain largely declarative.

At the conceptual level, Ukraine's laws show limited adoption of the decision-making capability approach. The overall score of 26 percent on the Adoption Index indicates that legal capacity continues to be defined primarily through cognitive or functional tests that exclude persons with intellectual or psychosocial disabilities from exercising rights on an equal basis with others. Recognition of supported decision-making exists only in principle and is undermined by exclusionary capacity tests and a lack of accessible government supports.

At the implementation level, results are even more stark. The Implementation Index score of 6 percent demonstrates that there are almost no operational mechanisms—no institutional mandates, funding frameworks, or safeguards—to make decision-making support and accommodations available in practice. This means that people who require support remain effectively barred from the exercise of legal capacity.

Judicial practice reinforces these systemic gaps. Courts overwhelmingly apply the medical model of disability, relying on psychiatric diagnoses as grounds for deprivation of legal capacity, often without hearing from the individual concerned or considering support alternatives. Restoration of capacity remains rare, and procedural rights are routinely denied, despite evolving guidance from the Supreme Court and the European Court of Human Rights.

Comparative lessons from Australia, Peru, and Bulgaria show that reform is possible but requires a decisive shift from guardianship and reliance on cognitive capacity assessment toward recognition of universal legal capacity and provision of structured decision-making supports. Successful reform depends on combining legal change with investment in community-based supports, education of judges and professionals, and active participation of persons with disabilities and civil society.

The findings make clear that Ukraine stands at a critical juncture. Bridging the gap between commitment and implementation will require more than technical legislative amendments—it calls for a systemic transformation of how legal capacity is understood, supported, and safeguarded.

The next section identifies the policy implications of these results: priority directions for reforming laws, institutions, and practices; mechanisms for building decision-making support systems; and strategies to align Ukraine’s legal capacity framework with the equality and inclusion standards of Article 12 of the CRPD.

## VII. Findings and Implications

While Section V presented the quantitative results of the study—showing how far Ukraine’s legal capacity regime has adopted and implemented the decision-making capability (DMC) approach—this section interprets those results. It examines what the data reveal about the underlying structure of Ukraine’s legal and institutional framework and the conditions that continue to block realization of equal legal capacity in practice.

Drawing on the composite scores, legislative analysis, and review of judicial and comparative evidence, this section identifies six interrelated areas of systemic weakness:

- A. **Disability-based tests of legal capacity** that continue to equate legal capacity with cognitive or functional ability, contrary to Article 12 of the CRPD.
- B. **Limited to no access to support in decision-making**, reflecting the absence of government obligation or infrastructure to provide assistance in exercising rights.
- C. **Lack of access to supported decision-making arrangements**, meaning no formal legal recognition of mechanisms that enable interdependent decision-making.
- D. **Absence of adequate safeguards against abuse**, leaving persons under guardianship without meaningful monitoring, reporting, or remedies.
- E. **Lacking appeal and review mechanisms related to legal capacity**, which makes restoration of rights dependent on guardians and not the person concerned.
- F. **No shift from substituted to supported decision-making**, showing that guardianship and substitute decision-making remain the dominant paradigm.

Together, these findings illuminate the core implementation gap: Ukraine has begun to acknowledge the principles of the CRPD in law but has not yet built the institutional machinery to make those principles real. Addressing this gap requires not only legislative amendment but also deep structural change—redefining capacity in human-rights terms, developing accessible supports, and embedding safeguards across all sectors of law and policy.

### A. Disability-based tests of legal capacity

A key consideration in the research was to determine whether national legislation recognizes the full legal capacity of all persons with disabilities, without exceptions or exclusions based on the mere fact of disability, especially psychosocial or intellectual

disability. This is the basis of Article 12 of the Convention, which obliges states to recognize that:

*“persons with disabilities have legal capacity on an equal basis with others in all aspects of life.”*

Accordingly, national norms that allow for the deprivation or restriction of legal capacity solely based on mental or intellectual impairment are in direct contradiction with Article 12. Ukraine’s Civil Code and related instruments continue to define legal capacity through the ability to “understand and control one’s actions,” a medicalized standard that excludes persons with psychosocial or intellectual disabilities. This subsection analyzes how these provisions entrench discrimination and contradict the presumption of legal capacity required under Article

Articles of the Civil Code of Ukraine that provide for the possibility and procedure for restricting or depriving a person of civil capacity due to the presence of psychosocial disability are presented in **Table 12** below:

**Table 12 - Civil Code Articles Providing for Restricting or Denying Legal Capacity**

Article of Civil Code of Ukraine	Provision text
Article 36 Restriction of civil capacity of a natural person	1. A court may restrict the civil capacity of a natural person if they suffer from a mental disorder that significantly affects their ability to understand the significance of their actions and/or control them.
Article 37 Legal consequences of restricting the civil capacity of a natural person	1. A natural person whose civil capacity is restricted shall be placed under guardianship. 2. A natural person whose civil capacity is restricted may independently perform only minor everyday legal transactions. 3. Transactions involving the disposal of property and other transactions that go beyond minor everyday transactions shall be performed by a person whose civil capacity is limited, with the consent of their guardian.  The refusal of a guardian to give consent to the performance of legal acts that go beyond minor everyday matters may be appealed by a person whose civil capacity is limited to the

Article of Civil Code of Ukraine	Provision text
	<p>guardianship and trusteeship authority or the court.</p> <p>...</p>
<p>Article 38. Restoration of civil capacity of a natural person whose civil capacity was limited</p>	<p>1. In the event of the recovery of a natural person whose civil capacity has been restricted, or such an improvement in their mental state that has fully restored their ability to understand the significance of their actions and/or control them, the court shall restore their civil capacity.</p> <p>...</p>
<p>Article 39. Recognition of an individual as legally incompetent</p>	<p>1. A natural person may be recognized by the court as incapacitated if, because of a chronic, persistent mental disorder, they are unable to understand the significance of their actions and/or control them.</p> <p>2. The procedure for recognizing a natural person as legally incompetent is established by <a href="#">the Civil Procedure Code of Ukraine</a>.</p> <p>3. If the court refuses to satisfy the application for declaring a person legally incompetent and it is established that the claim was made in bad faith without sufficient grounds, the natural person who has suffered moral damage because of such actions has the right to demand compensation from the applicant.</p>
<p>Article 40. Moment of declaring a natural person legally incompetent</p>	<p>1. A natural person shall be declared legally incompetent from the moment the court decision on this matter comes into legal force.</p> <p>2. If the recognition of the invalidity of a marriage, contract, or other legal transaction depends on the time of the onset of incapacity, the court, taking into account the conclusion of a forensic psychiatric examination and other evidence regarding the mental state of the person, may determine in its decision the date from which the person is recognized as incapacitated.</p>

Article of Civil Code of Ukraine	Provision text
Article 41. Legal consequences of recognizing a natural person as legally incompetent	<ol style="list-style-type: none"> <li>1. Guardianship shall be established over an incapacitated natural person.</li> <li>2. An incapacitated natural person shall not have the right to perform any legal transaction.</li> <li>3. Transactions on behalf of and in the interests of an incapacitated natural person shall be performed by his or her guardian.</li> <li>4. The guardian shall be liable for damage caused by an incapacitated natural person (<a href="#">Article 1184</a> of this Code).</li> </ol>
Article 42. Restoration of civil capacity of a natural person who has been declared incapacitated	<ol style="list-style-type: none"> <li>1. At the request of the guardian or the guardianship and trusteeship authority, the court shall restore the civil capacity of a natural person who has been declared incapacitated and terminate guardianship if it is established that, as a result of recovery or significant improvement in their mental state, they have regained the ability to understand the significance of their actions and control them.</li> </ol>

Articles 55–77, “Rules on Guardianship and Custody,” also explain the stages of implementing these restrictions in practice.

The Civil Procedure Code (CPC) details the procedure for recognizing a person as incapacitated or partially incapacitated and does so from the perspective of the medical model of disability – the “Chapter on Separate Proceedings” of the CPC requires a mandatory forensic psychiatric examination (Articles 295–296) in cases concerning legal capacity, this means that the decisive evidence is the medical diagnosis.

The opinion or wishes of the person are often not included in the case file, and their participation in the court hearing may be formal. In addition, the court may consider the case in the presence of only a representative if the person has been placed in compulsory treatment. The rules of the Code of Civil Procedure do not oblige the court to explore the possibility of supportive measures – on the contrary, the judge is guided by the expert opinion on *the inability* to make decisions independently. After establishing guardianship, the Code of Civil Procedure provides for the court to determine the term of guardianship, but not more than two years (paragraph 6 of Article 299 of the Code of Civil Procedure). In practice, such decisions are not automatically reviewed every two

years. This means that a person may remain under guardianship for an indefinite period without a real review of the decision, which does not comply with the requirement of the Convention that all measures relating to legal capacity must be proportionate, temporary, and subject to regular review.

How these provisions are non-compliant with Article 12 of the Convention:

- These provisions of the Civil Code allow for the restriction or deprivation of legal capacity solely based on a medical diagnosis (the conclusion of a forensic medical examination);
- None of the above articles recognizes the presumption of full legal capacity of persons with psychosocial or intellectual disabilities;
- After a person's legal capacity is undermined, they are not offered any alternative solutions or support in decision-making; instead, all decision-making powers are automatically transferred to a guardian or guardianship authority. There is no provision for assessing a person's individual decision-making abilities with support or for procedures for implementing such support;
- This procedure for deprivation of legal capacity amounts to discriminatory exclusion based on health status and/or disability, which is contrary to the Convention;
- Neither the Civil Code nor the Civil Procedure Code of Ukraine provide guarantees to ensure the principle of non-discrimination during individual assessment, either by the SME or by the court, which is a direct violation of the principle of equal recognition before the law.
- They do not provide for any possibility of support in decision-making.
- Such practices perpetuate a medical model that does not recognize the right to autonomy and agency of persons with disabilities.

The practical application of the "legal capacity test," which is enshrined in national legislation in Ukraine, means that people with psychosocial or intellectual disabilities are often deprived of their civil capacity by court decision solely based on a medical diagnosis.

Thus, analysis of the first measure – inclusive legal capacity test – shows the entrenchment of the medical model of disability. It results in a system creating a system

for excluding people with psychosocial and intellectual disabilities from exercising and enjoying legal capacity on an equal basis, which contradicts the state's obligations under the Convention.

The provisions of Ukraine's legal capacity regime also evidence adverse effect discrimination – norms that do not formally refer to disability but have a discriminatory effect on persons with disabilities. These may be rules that disproportionately restrict this group, even if their language is "neutral." For example,

- Article 30 “Civil Capacity of a Natural Person” (Civil Code) stipulates that civil capacity is acquired upon reaching the age of majority, but at the same time allows for its restriction/deprivation "in cases established by law."
- Article 41 “Legal consequences of declaring a natural person legally incompetent” stipulates that a person deprived of legal capacity is not liable for damage caused and transfers this liability to a guardian or guardianship institution.

Although these provisions do not mention health status or disability, they have discriminatory consequences – they allow for exclusion (deprivation of legal capacity) based on mental state or cognitive functions and reinforce the presumption of incompetence and inability to make decisions and take responsibility. These provisions also do not contain references to mechanisms for individual assessment of a person's capacity and needs before deciding on the support they need (there are no such provisions in either the Civil Code or the Code of Civil Procedure).

An analysis of the provisions of the Constitution of Ukraine, which does not explicitly establish restrictions related to disability, shows the negative impact of neutral provisions, since the Constitution does not explicitly establish safeguards against the exclusion of persons with disabilities from various aspects of public life. Separately, Article 70 of the Constitution explicitly deprives persons deprived of civil capacity by court decision of their voting rights, without requiring consideration of support for the exercise of their voting rights.

## **B. Limited to no access to support in decision-making**

Despite nominal references to “individual needs” in social-service legislation, there are no operational provisions ensuring that people can obtain assistance to understand information, express will and preferences, or navigate decisions. The following analysis shows how this absence leaves persons who require support effectively barred from exercising rights.

The Law of Ukraine "On Social Services" defines a list of social services that can be provided, including to persons with disabilities who need support. However, this law does not contain provisions on support in decision-making or the obligation to offer such services as an alternative to guardianship. The law lacks a mechanism that would link the social services system to the procedure for restricting legal capacity—that is, there is no requirement that, before establishing guardianship, the competent authorities attempt to engage available social services to support the person in independent living and decision-making. As a result, even if there are examples of supported living or assistance services in the community, the court may not be aware of them and may not take them into account. Thus, the Law of Ukraine "On Social Services" does not comply with the Convention standard on legal capacity and does not require the investigation of available support services before deciding to restrict human rights.

The 2019 version of the Law of Ukraine "On Social Services" declared a transition to the provision of social services based on an assessment of the individual needs of the recipient. The principles of social service provision (Article 12) mention, in particular, the principles of respect for dignity, non-discrimination, focus on the best interests of the recipient, and an individual approach. In theory, these principles could partially support the implementation of decision-making support in the future—for example, respect for dignity and an individual approach imply that people should be helped to make their own decisions. Other provisions of the law on social services lack specificity: Article 16 refers to the assessment of individual needs, Article 19 refers to the voluntary provision of services and the informed consent of the recipient, but nowhere does it specify **how** a recipient with a disability who has difficulty making decisions can receive support in giving consent or choosing a service. There are no provisions requiring social service providers to organize assistance in explaining information or making decisions. In addition, the law does not introduce a separate type of service called "decision-making support."

The current standard for social services "supported living for older people and people with disabilities" (approved [by a resolution](#) of the Cabinet of Ministers) says that this service helps people learn independent living skills and supports them in making everyday decisions. Sections of this standard (e.g., "II. General approaches to the organization and provision of services," "III. Determination of individual needs," "IV. Development of an individual plan," "VIII. Content of social services") contain provisions whereby service recipients **are involved** in making decisions about their lives (choosing support goals, planning services, etc.). Similarly, the standard for social rehabilitation services for persons with intellectual and mental disabilities (approved by [a resolution](#) of the Cabinet of Ministers) contains principles and content of services that provide for the development of maximum autonomy and participation in decision-making by the recipient. However, these standards are more like methodological documents for social workers than legal provisions; they do not create a legally significant status of

“decision-making assistant.” In addition, the lack of funding and systematic implementation of these services means that access to them is very limited in practice.

### **C. Lack of access to supported decision-making arrangements**

The Convention states that every person has the right to legal capacity and to support in its exercise. This means that a person must have actual access to a decision-making support mechanism. However, as the analysis shows, the approach that dominates in Ukraine is substitution in decision-making (guardianship).

Supported decision-making has not been introduced in Ukrainian law. This section reviews existing norms, identifies gaps, and demonstrates how the continued reliance on guardianship eliminates recognition of interdependent forms of decision-making.

As described above, supported decision-making is an arrangement in which a person with a more significant intellectual, cognitive, or psychosocial disability, who is unable to make decisions legally independently, makes decisions interdependently with the help of a trusted person when needed. In contrast to guardianship or care (where decisions are made for the person), this arrangement allows the person to remain the central subject of the process, ensuring their right to exercise legal capacity with the support of trusted persons.

The introduction of supports for decision-making, either independently or interdependently, and of supported decision-making arrangements, is needed to replace the guardianship model. This is critical for the observance of human rights, as this is the only way to guarantee respect for the dignity, autonomy, and inclusion in social processes of every person with a disability.

Currently, there are no specific mechanisms for decision-making support or supported decision-making at the level of normative legal acts in Ukraine. Article 78 of the Civil Code of Ukraine, "Providing assistance to a legally capable individual in exercising their rights and fulfilling their obligations," creates the institution of an assistant for persons with physical disabilities, but this does not apply to persons with psychosocial or intellectual disabilities, is not related to the preservation of legal capacity, and does not contain clear procedures for protection from influence, coercion, or abuse.

The provisions of Chapter 6, "Guardianship and Care," of the Civil Code do not contain any mention that a person who has been appointed a guardian or guardianship authority:

- Can influence the choice of guardian, choose independently or refuse a specific guardian, etc.
- It has real and effective mechanisms for reporting abuse
- Has protection regarding the consideration of their own opinion or wishes at the level of the guardian's defined duty to discuss and agree on decisions regarding the person's life with the person themselves

It should be emphasized that the Civil Code contains the concept of *limited legal capacity* (when a person remains partially capable of acting, but a guardian is appointed over them), see Article 36. However, this option currently applies only to persons with substance use challenges and is not actually used for persons with psychosocial or intellectual disabilities. The courts usually completely deprive these persons of their civil capacity. The Civil Code does not provide for any procedure for concluding supported decision-making agreements or appointing assistants at the request of the person concerned, and therefore the current version of the Civil Code is not compatible with the requirements of the Convention.

Sectoral laws relating to persons with disabilities also do not contain provisions on supported decision-making as a legal instrument. The Law of Ukraine "On Psychiatric Care" regulates the provision of psychiatric services and contains guarantees of patients' rights (the right to informed consent – Article 9, the rights of persons with mental disorders – Articles 13–16, the right to legal protection – Article 20). However, in practice, if a person is deprived of civil capacity, the decision on their hospitalization or treatment is made by a guardian without considering the opinion of the person themselves. The law allows for *compulsory* (without the patient's consent) hospitalization (Articles 14–15, 17) by decision of a court or medical commission. The decision is made solely based on the criterion of danger or inability to make decisions independently. The law does not mention **support** in making decisions about treatment; there is no mechanism for involving a consultant who would help a person understand their condition and make a choice in favor of one decision or another, so a person is deprived of subjectivity and autonomy in medical decisions.

Thus, Ukraine's regulatory framework currently does not provide for supported decision-making mechanisms. No law explicitly recognizes the possibility for a person with a disability to choose an assistant/trusted person to help them make decisions while retaining full legal capacity.

## **D. Absence of adequate safeguards against abuse**

Without independent oversight, reporting obligations, or review procedures, the guardianship system exposes persons under protection to neglect and exploitation. This subsection examines legislative and institutional deficiencies in monitoring and accountability mechanisms that should prevent abuse.

The Convention establishes an obligation for states to build support systems in such a way that all interventions in a person's autonomy and influence on the restriction of their rights and freedoms are:

- clearly regulated,
- minimized,
- temporary and subject to clear review deadlines
- provide mechanisms to prevent abuse, exploitation, or neglect of the interests of persons with disabilities.

However, the system established in Ukraine is characterized by the absence of these elements, as the Civil Code does not establish an obligation for guardians or guardianship and custody authorities to develop and communicate plans, report on the support provided, ask the person about his or her wishes and needs, etc. There is no procedure for independent monitoring or evaluation of the guardian's actions<sup>17</sup>, and there is no obligation or procedure for involving the person themselves in the decision-making process. Articles 60-64 of the Civil Code, which regulate the appointment, powers, and removal of guardians, do not specify the obligations to report on the actual implementation of these obligations and to involve the person themselves in decision-making. There is no mechanism for the effective protection of a person under guardianship from violations of rights, exploitation, abuse, negligence, or disregard for their will. The legislative act analyzed does not mention persons deprived of legal capacity in terms of their needs, desires, and will.

## **E. Lacking appeal and review mechanisms related to legal capacity**

Procedural guarantees for review or restoration of legal capacity remain minimal. Current law allows only guardians or authorities—not the affected person—to initiate

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<sup>17</sup> An analysis of the National Service Agency's reports for 2023-2024 shows that the assessment or verification of the work of caregivers of individuals is not within the focus of this agency's work.

review, and judicial backlogs further delay access to justice. The analysis below traces how these structural barriers violate Articles 12 and 13 of the CRPD.

The Convention requires the state to create an effective protection mechanism so that every person with a disability has the right to independently apply to the court for a review of their status, decisions on the restriction or deprivation of legal capacity, as well as any decisions made regarding that person. However, Article 42 of the Civil Code stipulates that only a guardian or guardianship authority may initiate the restoration of civil capacity. Accordingly, a person deprived of civil capacity cannot independently apply to the court. The Ministry of Justice of Ukraine takes a similar position in its explanations<sup>18</sup> :

*After recovery or significant improvement in mental health, when a person regains the ability to understand the meaning of their actions and control them, the guardian or guardianship authority submits an application to the court. In this way, the person regains their civil capacity.*

Following the 2017 reform, the law establishes an obligation to review decisions on deprivation of civil capacity every two years, but in practice this rule is not enforced for several reasons:

- There is no mechanism for monitoring the actions of guardians or guardianship authorities who are required to submit for review;
- For reinstatement, a forensic medical examination (FME) must be conducted; after 2022, the waiting list for such an examination is 50-100 applicants per institution<sup>19</sup> ;
- The Civil Procedure Code of Ukraine (Chapter 2. Court consideration of cases on the restriction of civil capacity of a natural person, recognition of a natural person as incapacitated, and restoration of civil capacity of a natural person) does not contain an obligation to review decisions on deprivation of civil capacity made before 2017, which effectively makes them indefinite and deprives a significant number of people of even this minimal chance of restoring civil capacity<sup>20</sup> .

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<sup>18</sup> [https://court.gov.ua/press/news/1676849/?utm\\_source=chatgpt.com](https://court.gov.ua/press/news/1676849/?utm_source=chatgpt.com)

<sup>19</sup> According to the FFR study, requests were sent to all SME institutions.

<sup>20</sup> See more, for example, in the NAU article

[https://unba.org.ua/news/9973-obmezheniya-ta-ponovlennya-diezdatnosti-naau-proponue-usunuti-progal-ini.html#:~:text=%D0%A9%D0%BE%D0%B4%D0%BE%20%D1%81%D1%82%D1%80%D0%BE%D0%BA%D1%83%20%D0%B4%D1%96%D1%97%20%D1%80%D1%96%D1%88%D0%B5%D0%BD%D0%BD%D1%8F%20%D0%BF%D1%80%D0%BE.300%20%D0%A6%D0%9F%D0%9A\).](https://unba.org.ua/news/9973-obmezheniya-ta-ponovlennya-diezdatnosti-naau-proponue-usunuti-progal-ini.html#:~:text=%D0%A9%D0%BE%D0%B4%D0%BE%20%D1%81%D1%82%D1%80%D0%BE%D0%BA%D1%83%20%D0%B4%D1%96%D1%97%20%D1%80%D1%96%D1%88%D0%B5%D0%BD%D0%BD%D1%8F%20%D0%BF%D1%80%D0%BE.300%20%D0%A6%D0%9F%D0%9A).)

The Law of Ukraine "On Psychiatric Care" establishes the possibility of applying compulsory medical measures and involuntary hospitalization of persons with mental disorders by court decision. The procedure requires the hospital to apply to the court within 24 hours of the admission of a person who objects to treatment. The initial court decision authorises compulsory treatment for a specified period (usually up to six months), after which the healthcare facility must either discharge the patient or apply to the court for an extension of compulsory treatment. Thus, the law provides for periodic review of the validity of a person's compulsory stay in hospital: further extension is possible only by a new court decision.

However, these guarantees apply only to cases where the patient is officially considered to be opposed to hospitalization. If the person is legally incapacitated, their consent to treatment is replaced by the consent of their guardian. This approach has been criticized, particularly in [the case of \*Shchukurov v. Russia\*](#), where the ECHR found that placing a person deprived of civil capacity in a psychiatric hospital solely on the basis of a guardian's decision without judicial review violates the right to liberty and security of person (Article 5 of the Convention). In Ukraine, steps have been taken since 2017 to address this gap. In particular, in 2016, in [a case](#) concerning the constitutionality of certain provisions of the law on psychiatric care, the Constitutional Court of Ukraine recognized that the absence of a judicial procedure for the hospitalization of persons deprived of legal capacity constitutes discrimination. As a result, amendments were made to the Law of Ukraine "On Psychiatric Care." Now, if a guardian agrees to hospitalization but the person themselves objects, such a case is considered compulsory hospitalization, which requires court approval. However, [the UN Monitoring Report](#) found that despite these changes, in practice it is very difficult to appeal against compulsory treatment, and the procedure for periodic review of the decision on compulsory treatment and its legality does not work.

[The rules](#) of guardianship and care, approved in 1999, regulate the procedure for appointing guardians, their duties, and control over their activities. These rules did not establish specific terms for reviewing guardianship, but obliged guardianship authorities to supervise the living conditions of wards and the actions of guardians. In practice, however, guardianship authorities did not systematically review the appropriateness of continuing guardianship unless there were signs of abuse or unless the guardian himself raised the issue of terminating guardianship. In 2020, the government amended these Rules to bring them into line with the updated Code of Civil Procedure – now guardianship authorities must keep track of the validity of decisions on the deprivation of civil capacity and inform guardians in advance of the need to apply to the court for the continuation of guardianship or the automatic restoration of civil capacity.

In addition, the law [allows](#) not only a relative or other natural person to be appointed as guardian, but in some cases also a legal entity, such as a residential care facility. In

practice, directors of residential institutions often take on guardianship of people placed in institutions if the latter have no relatives or if their relatives refuse to perform this role. This creates a conflict of interest: the head of the institution simultaneously controls the person's living conditions and is their legal representative. The law does not provide for automatic external review of such cases, although guardianship councils are formally required to monitor the actions of such guardians. As a result, many persons with disabilities in psychoneurological residential care facilities<sup>21</sup>, where the director is the guardian, remain in isolation for an indefinite period without any real possibility of initiating a review of their status.

Another problem is the length and complexity of the procedures for reviewing guardianship decisions. The periodic review, introduced in 2017, was intended to guarantee that this process would not be indefinite, but it has proven difficult to implement.

The burden on guardians has increased significantly. Relatives who perform this function, in particular parents of people with disabilities since childhood, complain that they are forced to deal with bureaucratic procedures almost constantly: after the initial decision is made, they must start preparing for its review in 1–1.5 years (collecting new medical certificates, undergoing psychiatric examinations again, preparing a lawsuit).

According to surveys, the full cycle of review in court takes at least 5–8 months, i.e., almost a third of the two-year guardianship period. The costs of medical examinations and SME conclusions are significant, and after 2022, the waiting period for such a conclusion has increased significantly due to the workload of expert institutions and a shortage of specialists.

The law does not provide compensation for these costs or remuneration for the guardianship itself (although formally, the Civil Code contains a provision on possible state assistance to guardians, the mechanism for this has not been developed). As a result, a significant proportion of potential guardians are not interested in performing their duties conscientiously or in taking on guardianship at all.

Thus, the state of Ukraine violates the right of persons deprived of civil capacity to access justice, making them dependent on the will and interests of guardians and custodians, thereby violating not only Article 12 of the Convention, but also other provisions, in particular Article 13 – Access to Justice.

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<sup>21</sup> According to the Ministry of Social Policy, as of 2020, 14,596 persons deprived of legal capacity lived in residential institutions (psychoneurological boarding schools, etc.), figures from [the report](#) "The Rights of Persons with Psychosocial and Intellectual Disabilities in Ukraine" by the UN Monitoring Mission in Ukraine, 2022.

## F. No shift from substituted to supported decision-making

Despite limited reforms in 2017, Ukraine's regime still operates on a substitution model in which guardians make decisions *for* persons deemed incapacitated. This section synthesizes the evidence showing the persistence of this paradigm and its incompatibility with international human-rights standards.

Analysis of current provisions constituting Ukraine's legal capacity regime shows that that substitution in decision-making is still deeply rooted in the current system. The regime is primarily focused on restricting or depriving a person of autonomy and transferring any decisions to a guardian or guardianship authority, based on a medical model of disability as reflected in the regime's tests for legal capacity. The state has not assumed any obligation to develop a system of support in decision-making or any elements of such an approach. Article 41 of the Civil Code categorically establishes that the guardian acts on behalf of the person.

<sup>2223</sup>According to the interpretation of the UN Committee on the Rights of Persons with Disabilities, this approach is incompatible with the state's obligations under Article 12, a position the Committee reiterated to Ukraine in its Concluding Observations in 2024, as presented below:

### *Equality before the law (Article 12)*

24. *The Committee notes with concern that the reforms on the legal capacity of persons with disabilities adopted by the State party in 2017 are insufficient and not in line with the Convention. In particular, it is concerned that:*

- (a) The deprivation of legal capacity of persons with intellectual and/or psychosocial disabilities is still permitted;*
- (b) Persons with disabilities have legal capacity only in relation to procedures related to the deprivation of their legal capacity;*

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FUKR%2FCO%2F2-3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FUKR%2FCO%2F2-3&Lang=en)

<sup>23</sup> Unofficial translation, from here

<https://naiu.org.ua/archives/news/komitet-oon-z-prav-osib-z-invalidnistyu-nadav-ukrayini-rekomendatsiyi-s-tosovno-zabezpechennya-prav-lyudej-z-invalidnistyu-z-urahuvannjam-mizhnarodnyh-standartiv>

- (c) *The selective use and assessment of forensic psychiatric examinations in cases related to deprivation and restoration of legal capacity;*
  - (d) *The fact that court decisions to restore the legal capacity of persons with disabilities remain extremely rare, and there is no procedure for reviewing decisions on deprivation of legal capacity made before 2017;*
  - (e) *The fact that access to free legal aid for persons with intellectual and/or psychosocial disabilities is still limited on the basis of a violation.*
25. *The Committee recommends that the State party:*
- (a) *Repeal all laws and practices that substitute decision-making and deny full legal capacity to persons with disabilities, and introduce decision-making support mechanisms;*
  - (b) *Recognize the full legal and procedural capacity of persons with disabilities to access the courts on all matters, not only those relating to the restoration of their civil capacity;*
  - (c) *Disseminate information among persons with disabilities about their right to appeal decisions that deprive them of their civil capacity, including through campaigns in long-term care facilities;*
  - (d) *Ensure that the two-year time limit for deprivation of civil capacity is respected in practice by long-term care institutions and courts;*
  - (e) *Introduce a procedure for reviewing and appealing decisions on deprivation of legal capacity made before 2017;*
  - (f) *Amend its legal framework to recognize the right to appoint an independent expert or third-party expert in cases of deprivation and restoration of civil capacity, as well as in any other legal proceedings related to the rights of persons with disabilities.*

Outside the Civil Code, there are a significant number of regulations that directly or indirectly restrict the exercise of legal capacity for persons with psychosocial and intellectual disabilities. Such restrictions cover access to justice, voting rights, property transactions, financial decisions, the right to marriage, parenthood, medical decisions, and participation in public life. The table below summarizes the key restrictions (non-exhaustive list).

**Table 13 - How Different Sources of Law Restrict or Deny Legal Capacity**

Source of Law	How it Restricts or Denies Legal Capacity based on Disability
Family Code of Ukraine	Prohibits persons deprived of civil capacity from marrying or adopting children. This approach is based on a medical model of disability and deprives a group of people of their right to private and family life.
Labor Code of Ukraine (LCU)	Contains provisions that allow employers to terminate employment contracts or refuse to hire persons deprived of civil capacity by a court, which creates systemic discrimination, as it completely deprives a person of the right to work and, accordingly, to live independently.
Law of Ukraine "On Psychiatric Care"	It contains provisions that allow decisions on hospitalization and treatment to be made without the consent of the person if they are deprived of civil capacity, which opens the door to arbitrary interference in private life and ill-treatment. The ECHR's position on such arbitrary restrictions of liberty, including in cases against Ukraine, is extremely clear: guardianship (deprivation of civil capacity) is not a basis for legitimizing deprivation of liberty. Compulsory treatment must not only have a clear legal basis, but also be necessary and proportionate, with procedural guarantees and controls, and allow the person to appeal for a review. See, in particular, the judgments in the cases of <a href="#">Akopian v. Ukraine</a> and <a href="#">Kaganovsky v. Ukraine</a> .
The Law of Ukraine "On Banks and Banking Activities" and financial regulations	Contain provisions that restrict the right of a person deprived of civil capacity to manage bank accounts or enter financial transactions, thereby depriving them of financial autonomy.

<p>The Law of Ukraine "On Elections of People's Deputies of Ukraine" and other electoral laws, including the Constitution of Ukraine.</p>	<p>Establish that persons deprived of civil capacity by a court do not have the right to vote and cannot be elected. This provision contradicts Article 29 of the ICCPR and the practice of the ECHR (in particular, see the case <a href="#">of Alajos Kiss v. Hungary</a>, which emphasizes that general and automatic restrictions on electoral rights on the basis of disability are discriminatory).</p>
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Restrictions on the legal capacity of persons with disabilities in these and other legislative acts have a snowball effect, as the decision to deprive a person of civil capacity automatically leads to their exclusion from all areas of life. Accordingly, the absence of mechanisms in national legislation for adopting and implementing the decision-making capability approach to legal capacity, with its priority on recognizing independent and interdependent decision-making with needed supports, effectively excludes many persons with disabilities from the legal field. For example:

- Civic and political participation: Electoral laws deprive tens of thousands of people with psychosocial and intellectual disabilities of their right to vote.
- Economic activity: The provisions of the Labor Code and financial legislation block access to work, entrepreneurship, and management of personal property.
- Family life: The Family Code restricts the right to marriage, parenthood, and guardianship of children.
- Medical decisions: The law on psychiatric care effectively nullifies a person's right to informed consent.
- Access to justice: The Criminal Procedure Code and the Civil Procedure Code make it difficult or impossible to participate in court proceedings without a guardian.

**Summary**

The legal capacity regime in Ukraine is structured in such a way that:

- A medical criterion is used – "mental disorder" is grounds for deprivation of rights;

- There is no provision for individual assessment and adaptation for decision-making;
- In most cases, there are no mechanisms for appealing decisions made on behalf of the person;
- Automatic restriction of rights in all areas of a person's life is triggered after a single court decision to restrict or deprive them of civil capacity.

This leads to the systemic legal, economic, social, and cultural isolation of people with psychosocial and/or intellectual disabilities, as they lose not only their legal status but also the roles that are familiar and accessible to everyone else—voter, employee, father or mother, member of the community, etc. Being deprived of the opportunity to work leads to financial dependence, and the lack of control over funds leads to abuse and loss of planning skills. The guardianship system in residential institutions creates risks of exploitation, illegal alienation of property, and lifelong institutionalization. This list of violations could be extended to all areas of public life, but the conclusion is the same: the current legal regime of legal capacity in Ukraine violates the requirements of the Convention and the ECHR.

The cumulative picture emerging from this analysis is one of partial adoption but systemic non-implementation. Ukraine's legal framework still denies many persons with disabilities the effective means to act, decide, and be recognized as rights-holders on an equal basis with others. Translating commitment into practice will require coordinated reform across legislation, institutions, and professional culture.

The next section - Section VII: Directions for Reform – builds directly on these findings. It outlines the priority legal and policy measures needed to close the adoption-implementation gap, establish a functioning decision-making support system, and align Ukraine's legal capacity regime with the equality and inclusion standards of Article 12 of the CRPD.

## VIII. Directions for Reform

The analysis in Sections V and VI demonstrates that Ukraine’s current legal capacity regime and guardianship system remain incompatible with Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD). The persistence of the medical model, the absence of decision-making supports, and the indefinite nature of guardianship decisions together constitute systemic violations of human rights—especially rights to personal autonomy, dignity, liberty, and equal recognition before the law.

To bring Ukraine into compliance with the CRPD and advance the national deinstitutionalization strategy, reform must proceed on five interrelated fronts.

### 1. Legislative Reform: Abolish Substitution and Embed the Decision-Making Capability Approach

#### 1.1 Abolish deprivation of civil capacity.

- Repeal legislative provisions allowing courts to deprive or restrict civil capacity based on disability or psychiatric diagnosis.
- Guarantee legal capacity to all adults on an equal basis, irrespective of disability or decision-making ability.

#### 1.2 Adopt the decision-making capability approach in law.

- Introduce an inclusive test of legal capacity, recognizing both independent and interdependent ways of exercising rights.
- Legally recognize decision-making supports and supported decision-making arrangements as valid modes of exercising legal capacity.
- Create a government obligation to ensure access to decision-making supports.
- Require mandatory exploration of supports before any restrictive measure is imposed.
- Establish a duty of third parties (courts, service providers, financial institutions) to accommodate diverse ways of decision-making.
- Provide for regular review and justification of any restrictive measures, with a presumption of restoration of capacity.

#### 1.3 Correct terminology in national legislation.

- Revise the official Ukrainian translation of the CRPD so that “legal capacity” is rendered as “legal personality.”
- Ensure consistent use of this terminology across all laws and policies to affirm both the *right to have rights* and the *right to exercise them*.

## **2. Institutional Reform: Build a National Framework for Supported Decision-Making**

### **2.1 Establish a legal capacity reform mandate.**

- Create an inter-ministerial Legal Capacity Reform Working Group, co-led by the Ministry of Social Policy, Ministry of Justice, and the National Social Service of Ukraine, in partnership with national disability and human-rights organizations.
  - Undertake a comprehensive analysis of legislative gaps to develop priorities and an agenda for reform.

### **2.2 Develop enabling regulations and standards.**

- Define roles, qualifications, and accountability mechanisms for decision-making supporters.
- Adopt standards for monitoring, safeguarding, and responding to abuse within supported decision-making relationships.

### **2.3 Ensure regular judicial review and legal aid.**

- Mandate periodic review of each person's legal status, with their direct participation.
- Guarantee free legal aid for persons subject to capacity proceedings, ensuring access to justice and restoration of rights.

## **3. Service Reform: Create a Network of Community-Based Supports**

### **3.1 Develop community decision-making support services.**

- Resource a network of NGOs and community organizations to act as *points of response* for arranging supports.
- Provide assistance in person-directed planning, advocacy, interpretive support, communication assistance, and administrative help.

### **3.2 Support third parties and courts.**

- Enable service providers and judicial officers to request community teams to explore and arrange supports before considering restriction.

### **3.3 Implement monitoring and safeguarding functions.**

- Introduce independent community-level oversight to prevent neglect and abuse of persons using decision-making supports.

## **4. Capacity-Building and Professional Training**

### **4.1 Judicial and legal sector training.**

- Design and deliver short-term training for judges, prosecutors, and court officials to counter systemic bias and promote recognition of supported decision-making within existing law.

### **4.2 Cross-sector education.**

- Train social-service providers, medical professionals, and local authorities on the principles of will, preference, and supported autonomy.

### **4.3 Pilot projects as learning laboratories.**

- Fund pilot initiatives to demonstrate supported decision-making models in communities, evaluate their outcomes, and build professional competence for scale-up.

## **5. Data, Research, and Monitoring**

### **5.1 Establish a national legal capacity registry.**

- Integrate data from courts, social services, and health institutions to track numbers of persons under guardianship, reviews conducted and restored rights.

### **5.2 Mandate annual public reporting.**

- Require the National Social Service and Ministry of Justice to publish disaggregated statistics and analyses on legal capacity cases.

### **5.3 Use evidence to inform reform.**

- Employ these data to assess progress, identify barriers, and guide policy adjustments in collaboration with civil-society experts.

## **Summary**

Reform of Ukraine's legal capacity regime must dismantle the substitution model and replace it with a supported-decision-making system grounded in equality, autonomy, and community inclusion. Legislative change, institutional coordination, service development, judicial education, and reliable data are mutually reinforcing elements of a single transformation pathway. Together, they will move Ukraine from nominal recognition of Article 12 to its genuine realization in the daily lives of citizens with disabilities.

## Conclusion

The analysis presented in this report demonstrates that Ukraine's current legal capacity regime remains deeply misaligned with its international human rights obligations under Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD). Despite formal recognition of the Convention's principles and several recent policy initiatives—such as the national deinstitutionalization strategy—the legal, institutional, and service systems that regulate decision-making in Ukraine continue to operate on the basis of substitution rather than support.

Ukraine has not yet adopted the decision-making capability approach as the foundation of its legal framework. The law continues to define capacity through cognitive or functional tests that exclude persons with intellectual, cognitive, and psychosocial disabilities from full participation in civil, political, and social life. While references to support and accommodation appear in legislative texts, they remain declarative and unenforced, lacking any institutional or financial infrastructure to make them meaningful in practice.

At the implementation level, the gap is even wider. The absence of clear state obligations, funding mechanisms, and safeguards has resulted in a regime where decision-making supports do not exist, and people who need them remain effectively barred from exercising their rights. The judiciary reinforces this exclusion by relying on psychiatric evidence and the medical model of disability when deciding on guardianship, rarely considering an individual's will and preferences or exploring alternatives to deprivation of capacity.

The consequences are far-reaching. Tens of thousands of adults remain under guardianship – some for decades – without review or possibility of restoration. Access to justice, property, marriage, family life, and community living are all restricted. Data on these practices are fragmented, concealing the true scale of exclusion and hindering reform planning. Without reforms, and in the current context of an increasing proportion of persons with disabilities, tens of thousands more will also lose their equal right to legal capacity.

At the same time, international and comparative experience shows that transformation is possible. Jurisdictions such as Australia, Peru, and Bulgaria demonstrate that moving from guardianship to supported decision-making requires not only legislative reform but also institutional coordination, judicial education, investment in community-based supports, and participation of persons with disabilities and their representative organizations.

Ukraine's reform path must therefore be comprehensive and systemic. The five pillars of reform identified in this report—legislative change, institutional coordination, community-based services, capacity-building, and data and monitoring systems—form a coherent roadmap for compliance with Article 12 and for realizing equality before the law. Implementing these measures would align Ukraine's legal capacity regime with modern human rights standards and create the necessary foundation for deinstitutionalization, social inclusion, and democratic participation.

In essence, the challenge before Ukraine is not merely legal but cultural: to replace a paradigm of protection and control with one of recognition, support, and respect for autonomy. Ensuring that every person can act, decide, and be recognized as a rights-holder is both a human rights imperative and a measure of social progress. By embracing this transformation, Ukraine can move from formal commitment to genuine implementation—realizing equality in the exercise of legal capacity for all its citizens.

## **Appendix A –**

# **Scoring Rubric for the Decision- Making Capability Adoption and Implementation Indices**

	Dimension		Indicator	Measure code	Measure	Scoring Rubric			
						Score Fully	Score Mostly	Score Partly	Score Not at All
1.	Scope of Participation	1.1	People with disabilities enjoy and exercise legal capacity on an equal basis	1.1.1	<p>Provisions fully guard against restricting or excluding people, based on a disability diagnosis or status, from enjoying or exercising legal capacity.</p>	<p><b>Presumption of capacity:</b> The provision reflects a presumption that people can exercise legal capacity independently with decision-making support as may be needed, and only if unable to act legally independently with support after all reasonable efforts, that they can act legally interdependently.</p> <p><b>Test of capacity:</b> The provision recognizes that a person can meet the cognitive requirements of a legally valid decision either independently or, if unable even with support because they have a significant intellectual, cognitive and/or psychosocial disability, they can</p>	<p><b>Presumption of capacity:</b> The provision makes clear that a person’s form of communication or need for assistance cannot be used as reason to deny recognition of capacity. It “mostly” rather than “fully” meets the measure because it establishes a limit on efforts to accommodate and support and does not explicitly recognize interdependent decision making.</p> <p><b>Test of capacity:</b> The provision incorporates the cognitive “understand and appreciate” test of capacity to make legally valid decisions, and recognizes supports to meet this test. A</p>	<p><b>Presumption of capacity:</b> The provision reflects the standard presumption of capacity – all persons are presumed capable, where capable means the ability to understand information related to a decision and to appreciate reasonably foreseeable consequences. It only partly meets the measure, because it is based on the cognitive test of capacity and does not recognize decision-making supports or accommodations.</p> <p><b>Test of capacity:</b> The provision reflects the cognitive “understand and appreciate” test of capacity to make</p>	<p><b>Presumption of capacity:</b> The provision systematically excludes by characterizing some people as not capable based on an intellectual, cognitive or psychosocial disability – e.g., a “mental disorder.” It is a status-based approach to determining cognitive capacity.</p> <p><b>Test of capacity:</b> The provision equates capacity to act with mental capacity and/or specifies requirements for understanding and appreciation. It does not recognize supports to meet the test, even for legal independence.</p>

	Dimension		Indicator	Measure code	Measure	Scoring Rubric			
						Score Fully	Score Mostly	Score Partly	Score Not at All
						meet the requirements interdependently. For this purpose, it recognizes interpretive and communication supports from others, guided by a person's will and preferences.	reading of the provision could suggest a more expansive recognition of support that would enable a person to exercise legal capacity interdependently.	legally valid decisions. It recognizes decision-making supports to meet the test.	
				1.1.2	Provisions regulating the exercise of legal capacity, which are disability neutral on their face, do not have an adverse effect on the exercise and enjoyment of legal capacity by people with disabilities	The provision restricts the exercise of legal capacity only on an equal basis, and explicitly recognizes that independent and interdependent decision making are both valid exercises of legal capacity.	The provision restricts the exercise of legal capacity but explicitly recognizes the validity of independent decision making with support; and could be interpreted to recognize the validity of interdependent decision making	The provision restricts the exercise of legal capacity but only recognizes the validity of independent decision making with support	The provision could result in adverse impact on people with disabilities who may require any support to exercise legal capacity
		1.2	A person's will and preferences ground the legal recognition for a person to enjoy and exercise legal capacity	1.2.1	The provision recognizes that the exercise of legal capacity is grounded upon a person's will and preferences	The provision explicitly recognizes that capacity is grounded on expressions of will and preferences, does not require meeting a cognitive test, and provides scope for recognizing interpretive	The provision explicitly recognizes will and preferences as the ground of legal capacity to act legally independently, and could be interpreted to recognize will and preferences as the ground of legal	The provision recognizes will and preferences as the ground of legal capacity to act legally independently, or as a component of the recognition and exercise of legal capacity	There are no provisions recognizing will or preferences as the ground of legal capacity

	Dimension	Indicator	Measure code	Measure	Scoring Rubric				
					Score Fully	Score Mostly	Score Partly	Score Not at All	
					supports for those who exercise legal capacity interdependently	capacity to act interdependently			
		<b>1.3</b>	The legal regime recognizes that persons may exercise legal capacity independently or interdependently and may use a range of decision-making supports to do so						
				<b>1.3.1</b>	The provision recognizes a full range of supports that may be required for exercising legal capacity independently or interdependently	The provision recognizes supports that may be used to make decisions. A reading of the provision could suggest a more expansive recognition of supports that would enable a person to exercise legal capacity interdependently	The provision recognizes supports for exercising legal capacity independently with support as might be needed for that purpose	The provision authorizes a decision to restrict a person's legal agency or impose substitute decision making based on a finding of incapacity, but does not recognize or consider any decision-making supports that might be used to enhance capacity or limit restriction	
				<b>1.3.2</b>	The provision recognizes the principle of best interpretation of a person's will and preferences where interpretive support is required	The provision explicitly recognizes the principle of best interpretation of a person's will and preferences where interpretive support is required	The provision could be interpreted to recognize the principle of best interpretation of will and preferences in situations where a person requires interpretive support, but does not explicitly recognize this principle	The provision recognizes that interpretive supports could assist a person in exercising legal capacity independently.	There are no provisions recognizing interpretive supports or the principle of best interpretation.
<b>2.</b>	<b>Decision-Making Supports</b>	<b>2.1</b>	All persons, without discrimination based on disability	<b>2.1.1</b>	The provision enables persons to make supported decision-making	Provisions enable people to make supported decision-making	Provisions enable the making of supported decision-making	Provisions establish procedures only for people who meet the understand	There are no provisions for making, changing or revoking supported

Dimension	Indicator	Measure code	Measure	Scoring Rubric			
				Score Fully	Score Mostly	Score Partly	Score Not at All
	are authorized to make, change and terminate decision-making support arrangements and agreements that enable them to exercise legal capacity independently or interdependently.		agreements for exercising legal capacity independently or interdependently	arrangements for exercising legal capacity independently or interdependently, and recognize: 1) different ways for people to signal those who will be their supporters in a supported decision-making arrangement, when they are not able to independently appoint them; 2) that when acting legally interdependently, the decisions remain those of the person; and 3) that supporters must be guided by the person's will and preferences	arrangements for people who can act legally independently or interdependently. However, they do not ensure that supporters will be selected based on the person's wishes or trusting relationships	and appreciate test to make, change or revoke supported decision making arrangements (i.e., for people who can independently make a supported decision- making arrangement)	decision-making arrangements that are legally recognized or accommodated in decision-making processes with third parties
		2.1.2	The provision enables decision-making supporters to be appointed where a person is unable to make these appointments on their own	The provision enables decision-making supporters to be appointed where a person is unable to make these appointments on their own, and these appointments	The provision enables appointment of decision-making supporters where a person is unable to make these appointments, but does not require the appointment to be	The provision enables appointment of decision making supporters to act in a supported or co-decision-making or substitute decision making capacity, as	Provisions for appointing supporters make no allowance for court-appointed supporters where a person may not be able to meet the test for making appointments; or,

	Dimension		Indicator	Measure code	Measure	Scoring Rubric			
						Score Fully	Score Mostly	Score Partly	Score Not at All
						reflect the wishes of the person to the best that this can be determined, including that there is a relationship of personal trust, knowledge, and commitment.	guided by the person.	directed by the authority making the appointment and/or at the discretion of the supporter	there are no provisions for appointing supporters
				2.1.3	The provision recognizes duties of decision-making supporters to respect, enhance and maximize autonomy where legal capacity is exercised independently	The provision lays out the duties of supporters, including to be guided by the will and preferences and decisions of the person	The provision lays out the duties of supporters to respect and support the autonomy of the person, but does not require that they be guided by the will, preferences and decisions of the person	The provision specifies duties of supporters to assist a person, but does not require they promote the autonomy of the person	The provision specifies no duties of supporters; or, there are no provisions recognizing decision-making supporters
				2.1.4	The provision explicitly recognizes duties of decision-making supporters to respect, enhance and maximize autonomy where legal capacity is exercised interdependently	The provision recognizes the duties of supporters to respect and enhance autonomy including through providing interpretive supports as required, and to be guided by the principle of best interpretation of a person's will and preferences	The provision recognizes the duty of supporters to assist a person in exercising legal capacity independently, and could be read to include provision of interpretive support (i.e., communication assistance) to exercise legal capacity interdependently	The provision recognizes the duties of supporters to provide interpretive support as might be needed for a person to exercise legal capacity independently	The provision specifies no duties of supporters; or, there are no provisions recognizing decision-making supporters

	Dimension	Indicator	Measure code	Measure	Scoring Rubric			
					Score Fully	Score Mostly	Score Partly	Score Not at All
			2.1.5	The provision provides liability protection for decision-making supporters to the extent they meet their obligations.	The provision provides liability protection for decision-making supporters to the extent they meet their obligations for both independent and interdependent decision-making contexts	The provision provides liability protection for decision-making supporters to the extent they meet their obligations for both independent decision-making contexts and could be interpreted to apply to interdependent decision-making contexts	The provision provides liability protection for decision-making supporters to the extent they meet their obligations only for independent decision-making contexts	There are no provisions protecting liability of decision-making supporters
			2.1.6	The provision establishes mechanisms for changing and terminating supported decision-making agreements	The provision establishes mechanisms for changing and terminating supported decision-making agreements for both independent and interdependent exercise of legal capacity	The provision establishes mechanisms for changing and terminating supported decision-making agreements for independent exercise of legal capacity, and could be read to enable changes and terminations for people exercising capacity interdependently	The provision establishes mechanisms for changing and terminating supported decision-making agreements only for independent exercise of legal capacity	The provision recognizes that people may rely on decision-making supporters. However, it does not establish any procedures for those persons to make, change or revoke supported decision making arrangements that would be legally recognized or accommodated in decision making processes with third parties; or, there are no provisions for supported

	Dimension		Indicator	Measure code	Measure	Scoring Rubric			
						Score Fully	Score Mostly	Score Partly	Score Not at All
									decision-making arrangements
				2.1.7	Provisions mandate procedures for accessible and timely interventions where there is concern that decision-making supporters may not be fulfilling their obligations in supporting a person to exercise legal capacity, including:				
				2.1.7.1	Provision for making complaints that decision-making supporters are not fulfilling their obligations	The provision establishes a fair and accessible complaints procedure for both independent and interdependent support arrangements	The provision establishes a fair and accessible complaints procedure for independent support arrangements and could be read to include interdependent arrangements	The provision establishes a fair and accessible complaints procedure for independent support arrangements only	There are no provisions to make complaints or register concerns about decision-making supporters or arrangements
				2.1.7.2	Provision for evaluating concerns and investigating where necessary	The provision establishes procedures for evaluating concerns and investigating where necessary in relation to both independent and interdependent arrangements	The provision establishes procedures for evaluating concerns and investigating where necessary in relation to independent and could be read to include	The provision establishes procedures for evaluating concerns and investigating where necessary in relation only to independent arrangements	There are no provision for evaluating concerns or investigating complaints related to supported decision making arrangements

	Dimension		Indicator	Measure code	Measure	Scoring Rubric			
						Score Fully	Score Mostly	Score Partly	Score Not at All
							interdependent arrangements		
				2.1.7.3	Provision for remedying any issues that arise (e.g., appointing monitors, providing additional supports)	The provision establishes remedies to address concerns that may arise (e.g., appointing monitors, providing additional supports) for both independent and interdependent decision-making support arrangements	The provision establishes remedies to address concerns that may arise (e.g., appointing monitors, providing additional supports) for independent arrangements and could be read to address concerns for interdependent decision-making support arrangements as well	The provision establishes remedies to address concerns that may arise (e.g., appointing monitors, providing additional supports) only for independent decision-making support arrangements	There are no provisions for remedying concerns with respect to independent or interdependent decision-making support arrangements
				2.1.7.4	Provision for appeals and disputes resolutions with respect to concerns reported, investigations and remedies.	The provision establishes fair and accessible mechanisms for appeals and disputes resolutions for both independent and interdependent decision-making support arrangements	The provision establishes fair and accessible mechanisms for appeals and disputes resolutions for both independent decision-making support arrangements and could be read to include interdependent arrangements	The provision establishes fair and accessible mechanisms for appeals and disputes resolutions only for independent decision-making support arrangements	There are no provisions for appeals and disputes resolutions with respect to matters concerning independent or interdependent decision-making support arrangements.
				2.1.8	The provision offers liability protection for honoring decisions	The provision provides liability protection for third	The provision provides liability protection for third	The provision provides liability protection for third	There are no provisions for protecting liability of

Dimension	Indicator	Measure code	Measure	Scoring Rubric			
				Score Fully	Score Mostly	Score Partly	Score Not at All
			made with decision-making supports, and decisions where a person refuses supports which they may not require to exercise legal capacity	parties who honour decisions made through supported decision-making arrangements for both independent and interdependent exercise of legal capacity	parties who honour decisions made through supported decision-making arrangements for independent exercise of legal capacity; and it could be read to provide liability protection for decisions made through supported decision making for interdependent exercise of legal capacity	parties who honour decisions made through supported decision-making arrangements only for independent exercise of legal capacity only.	third parties in making legal agreements with persons who use supported decision-making to exercise legal capacity either independently or interdependently; or, there are no provisions for supported decision-making arrangements
	2.2 Decision-making supporters or representatives legally authorized under supported decision-making arrangements have a right to all information and documents to which the person is entitled	2.2.1	The provision enables access by decision-making supporters to personal information and records, related to the supporter's area of authority under the relevant support agreement or arrangement	The provision enables decision-making supporters in supported decision-making arrangements for both independent and interdependent exercise of legal capacity to access personal information and records, related to the supporter's authorized area of assistance	The provision enables decision-making supporters in supported decision making arrangements for independent interdependent exercise of legal capacity to access personal information and records, related to the supporter's authorized area of assistance, and could be read to enable this for supporters in interdependent	The provision enables decision-making supporters in supported decision-making arrangements only for independent exercise of legal capacity to access personal information and records, related to the supporter's authorized area of assistance	The provisions for supported decision-making arrangements do not explicitly provide for supporters to access personal information and records of the person being supported; or, there are no provisions for supported decision-making arrangements

	Dimension	Indicator	Measure code	Measure	Scoring Rubric			
					Score Fully	Score Mostly	Score Partly	Score Not at All
						arrangements as well		
			2.3.1	The provision recognizes a government obligation to ensure access to decision-making supports a person may require to exercise legal capacity	The provision establishes an entitlement to decision-making supports that may be required to exercise legal capacity independently or interdependently and to the assistance to arrange them. Further, that this entitlement is activated at any point that the person's legal capacity to act is questioned by a public or private party.	The provision requires that where a person's legal capacity to act is in question a government authority can be engaged to assist a person in arranging the supports needed to act legally independently or interdependently; and/or the provision recognizes an entitlement to support to act legally independently	The provision requires that where a person's legal capacity to act is in question, a government authority can be engaged to assist a person in arranging the supports needed to act legally independently	The provision authorizes restricting a person's legal capacity or imposing substitute decision making based on a finding of incapacity, but does not mandate a government authority to provide those decision-making supports or assist in arranging them, which might be used to enhance capacity or limit restriction
			2.3.2	The provision mandates exploration of options to meet decision-making support needs at all points where decision-making capability is questioned and/or needs to be enhanced.	The provision establishes mandatory requirements to proactively explore options for decision-making supports to act legally independently or interdependently, at	The provision requires that at those points where a person's legal capacity to act is in question, there be a consideration of decision-making supports that a person may need to act legally	The provision requires that at those points where a person's legal capacity to act is in question, there be a consideration of decision-making supports that a person may need to exercise legal	The provision establishes that a person can be declared legally incapable, or that a third party can act on a declaration or claim of a person's legal incapacity, without any consideration of the

	Dimension		Indicator	Measure code	Measure	Scoring Rubric			
						Score Fully	Score Mostly	Score Partly	Score Not at All
						those points where a person's legal capacity to act is in question	independently or interdependently, guided by the principle of the least intrusive arrangement	capacity independently, guided by the principle of the least intrusive arrangement	person's decision-making support needs
				2.3.3	Provision for accessible and fair complaints and enforcement mechanisms to remedy lack of access to decision-making supports a person may require to exercise legal capacity	The provision establishes fair and accessible complaints and enforcement mechanisms to remedy a person's lack of access to needed decision-making supports to exercise legal capacity either independently or interdependently	The provision establishes fair and accessible complaints and enforcement mechanisms to remedy a person's lack of access to needed decision-making supports to exercise legal capacity independently, and could be interpreted to apply to exercising legal capacity interdependently.	The provision establishes fair and accessible complaints and enforcement mechanisms to remedy a person's lack of access to needed decision-making supports only for exercising legal capacity interdependently	There are no provisions for complaints and enforcement mechanisms to remedy a person's lack of access to needed decision-making supports
3.	Duty to Accommodate	3.1	Parties have a duty to accommodate a person in exercising legal capacity either independently or interdependently	3.1.1	Provision recognizes the duty of all parties to accommodate persons in decision-making processes related to the exercise of their legal capacity, either independently or interdependently	The provision recognizes a duty to accommodate persons in legally regulated decision-making processes without discrimination based on disability, and that people may exercise their legal capacity	The provision recognizes a duty to accommodate persons in legally regulated decision-making processes without discrimination based on disability, and that people may exercise their legal capacity	The provision recognizes only a duty to accommodate persons to act legally independently with supports as may be needed for that purpose	The provision establishes that a determination of a person's incapacity to act based on disability can be used as defense in refusing to accommodate a person in legally regulated decision-making
				3.1.2	Provision gives guidance on how to				

	Dimension		Indicator	Measure code	Measure	Scoring Rubric			
						Score Fully	Score Mostly	Score Partly	Score Not at All
					accommodate persons in exercising legal capacity either independently or interdependently	independently or interdependently with decision-making supports. The provision also recognizes the applicability of all human rights laws to the exercise of legal capacity	independently or interdependently with decision-making supports		processes; or, there are no provisions explicitly recognizing a duty to accommodate in the exercise of legal capacity
				3.1.3	Provision for accessible and fair complaints and enforcement mechanisms to remedy lack of accommodation in exercising legal capacity independently or interdependently.	The provision establishes fair and accessible complaints and enforcement mechanisms to remedy a person's lack of accommodation in exercising legal capacity independently or interdependently	The provision establishes fair and accessible complaints and enforcement mechanisms to remedy a person's lack of accommodation in exercising legal capacity independently, and could be read to apply to situations where a person exercises capacity interdependently	The provision establishes fair and accessible complaints and enforcement mechanisms to remedy a person's lack of accommodation only where they exercise legal capacity independently	The provision for complaints and enforcement mechanisms to remedy a person's lack of accommodation does not provide for addressing barriers in exercising legal capacity independently or interdependently; or, there are no provisions for such mechanisms
4.	Range of Planning Tools	4.1	All persons are authorized to make plans to guide their decision making in the future, and such plans can	4.1.1	Provision gives legal recognition and authority to a full range of tools to make plans for future decision making, consistent with the				

Dimension	Indicator	Measure code	Measure	Scoring Rubric			
				Score Fully	Score Mostly	Score Partly	Score Not at All
	specify: a) the decisions to be made, b) instructions to guide decision making, c) those who will assist a person in making decisions, and/or d) those who may make decisions on a person's behalf		right to make decisions on an equal basis with others. Options for future planning include:				
		4.1.1.1	Provision authorizes advance planning documents - for personal care and life decisions - which a person can make independently or interdependently	The provision authorizes advance planning documents - for personal care and life decisions - which a person makes independently or interdependently	The provision authorizes advance planning documents - for personal care and life decisions - which a person can make independently, but could be read to apply also where a person exercises legal capacity interdependently	The provision authorizes advance planning documents - for personal care and life decisions - only where a person can make them legally independently	There is no provision for authorizing advance planning documents - for personal care and life decisions - which a person makes independently or interdependently
		4.1.1.2	Provision authorizes advance planning documents - for health care decisions - which a person makes independently or interdependently	The provision authorizes advance planning documents - for health care decisions - which a person makes independently or interdependently	The provision authorizes advance planning documents - for health care decisions - which a person can make independently, but could be read to apply also where a person exercises legal capacity interdependently	The provision authorizes advance planning documents - for health care decisions - only where a person can make them legally independently	There is no provision authorizing advance planning documents - for health care decisions - which a person makes independently or interdependently
		4.1.1.3	Provision authorizes advance planning documents - for financial/property decisions - which a person makes	The provision authorizes advance planning documents - for financial/property decisions - which a	The provision authorizes advance planning documents - for financial/property decisions - which a	The provision authorizes advance planning documents - for financial/property decisions - only	There is no provision authorizing advance planning documents - for financial/property decisions - which a

	Dimension	Indicator	Measure code	Measure	Scoring Rubric			
					Score Fully	Score Mostly	Score Partly	Score Not at All
				independently or interdependently	person makes independently or interdependently	person can make independently, but could be read to apply also where a person exercises legal capacity interdependently	where a person can make them legally independently	person makes independently or interdependently
			4.1.1.4	Provision authorizes the appointment of persons to represent a person in decision making, under supported decision-making agreements.	The provision authorizes the appointment of persons to represent a person in decision making, under supported decision-making agreements for independent and interdependent exercise of legal capacity	The provision authorizes the appointment of persons to represent a person in decision making, under supported decision-making agreements for independent exercise of legal capacity and could be read to authorize appointments of persons to represent a person under supported decision-making agreements for interdependent exercise of legal capacity	The provision authorizes the appointment of persons to represent a person in decision making, under supported decision-making agreements for independent exercise of legal capacity only	The provisions for supported decision-making arrangements do not provide for supporters to be appointed to represent a person in decision making for either independent or interdependent exercise of legal capacity; or, there are no provisions for appointing persons for this purpose
			4.1.2	Provision ensures that the instructions a person specifies in their future planning documents cannot be over-riden except	The provision ensures that for future planning documents made through both independent and	The provision ensures that for future planning documents made through independent	The provision ensures that only for future planning documents made through independent	The provision enables the instructions a person specifies in their future planning documents to be

	Dimension	Indicator	Measure code	Measure	Scoring Rubric			
					Score Fully	Score Mostly	Score Partly	Score Not at All
				where a) doing so would not be consistent with acting on an equal basis or b) doing so would violate best interpretation of a person's will and preferences in the circumstances	interdependent supported decision-making arrangements, the instructions they specify cannot be over-ridden except where acting on them would a) not be consistent with acting on an equal basis or b) violate the best interpretation of a person's will and preferences in the circumstances	supported decision-making arrangements, the instructions they specify cannot be over-ridden except where acting on them would a) not be consistent with acting on an equal basis or b) violate the best interpretation of a person's will and preferences in the circumstances. The provision could be read to apply to future planning documents made through interdependent supported decision-making arrangements as well.	supported decision-making arrangements, the instructions they specify cannot be over-ridden except where acting on them would a) not be consistent with acting on an equal basis or b) violate the best interpretation of a person's will and preferences in the circumstances	over-ridden; or, there are no provisions for future planning documents
5.	<b>Scope for Balancing Right to Equality</b>	5.1	Where a person is in a situation that is causing or could cause serious harm, any measure to restrict their exercise of legal capacity, or to require them to use supports to	5.1.1	Provisions for restricting the exercise of legal capacity in a situation that is causing, or could cause, serious harm, ensure as follows:			

Dimension	Indicator	Measure code	Measure	Scoring Rubric			
				Score Fully	Score Mostly	Score Partly	Score Not at All
	make decisions, can be imposed only after a full and fair process to assess the need for restrictions and reasonable alternatives under the circumstances	5.1.1.1	The provision ensures that restrictive measures are applied only as a last resort, and after all reasonable steps to ensure access to needed decision-making supports have failed	The provision ensures that restrictive measures are applied only as a last resort, and after all reasonable steps to ensure access to needed decision-making supports have failed for either independent or interdependent decision-making support arrangements	The provision ensures that restrictive measures are applied only as a last resort, and after all reasonable steps to ensure access to needed decision-making supports have failed for independent decision-making support arrangements and could be read to apply to interdependent support arrangements as well	The provision ensures that restrictive measures are applied only as a last resort, and after all reasonable steps to ensure access to needed decision-making supports have failed for independent decision-making support arrangements only	The provision does not ensure that restrictive measures are applied only as a last resort, and after all reasonable steps to ensure access to needed decision-making supports have failed, either independent or interdependent decision-making support arrangements
		5.1.1.2	The provision ensures that any restrictive measures are the least restrictive in the circumstances	The provision ensures that any restrictive measures are the least restrictive in the circumstances for either independent or interdependent decision-making support arrangements	The provision ensures that any restrictive measures are the least restrictive in the circumstances for independent decision-making support arrangements and could be read to apply to interdependent support arrangements as well	The provision ensures that any restrictive measures are the least restrictive in the circumstances for independent decision-making support arrangements only	The provision does not ensure that any restrictive measures are the least restrictive in the circumstances, for either independent or interdependent decision-making support arrangements

	Dimension		Indicator	Measure code	Measure	Scoring Rubric			
						Score Fully	Score Mostly	Score Partly	Score Not at All
				5.1.1.3	The provision ensures that any restrictive measures are proportional and tailored to the person's circumstances;	The provision ensures that any restrictive measures are proportional and tailored to the person's circumstances for either independent or interdependent decision-making support arrangements	The provision ensures that any restrictive measures are proportional and tailored to the person's circumstances for independent decision-making support arrangements and could be read to apply to interdependent support arrangements as well	The provision ensures that any restrictive measures are proportional and tailored to the person's circumstances for independent decision-making support arrangements only	The provision does not ensure that any restrictive measures are proportional and tailored to the person's circumstances, for either independent or interdependent decision-making support arrangements
				5.1.1.4	The provision ensures that any restrictive measure is applied for only as long as is necessary to address or prevent the serious harm;	The provision ensures that any restrictive measure is applied for only as long as is necessary to address or prevent the serious harm for either independent or interdependent decision-making support arrangements	The provision ensures that any restrictive measure is applied for only as long as is necessary to address or prevent the serious harm for independent decision-making support arrangements and could be read to apply to interdependent support arrangements as well	The provision ensures that any restrictive measure is applied for only as long as is necessary to address or prevent the serious harm for independent decision-making support arrangements only	The provision does not ensure that any restrictive measure is applied for only as long as is necessary to address or prevent the serious harm, for either independent or interdependent decision-making support arrangements

Dimension	Indicator	Measure code	Measure	Scoring Rubric			
				Score Fully	Score Mostly	Score Partly	Score Not at All
		5.1.1.5	The provision ensures that restrictive measures are subject to regular review by a competent authority to assess whether the benefits outweigh the harms and that the need for such restrictions continues to be justified;	The provision ensures that restrictive measures are subject to regular review by a competent authority to assess whether the benefits outweigh the harms and that the need for such restrictions continues to be justified, for either independent or interdependent decision-making support arrangements	The provision ensures that restrictive measures are subject to regular review by a competent authority to assess whether the benefits outweigh the harms and that the need for such restrictions continues to be justified, for independent decision-making support arrangements and could be read to apply to interdependent support arrangements as well	The provision ensures that restrictive measures are subject to regular review by a competent authority to assess whether the benefits outweigh the harms and that the need for such restrictions continues to be justified, for independent decision-making support arrangements only	The provision does not ensure that restrictive measures are subject to regular review by a competent authority to assess whether the benefits outweigh the harms and that the need for such restrictions continues to be justified, for either independent or interdependent decision-making support arrangements
		5.1.1.6	The provision ensures that imposition of restrictive measures are combined with steps to establish decision-making supports and restore legal capacity as soon as practically possible;	The provision ensures that imposition of restrictive measures are combined with steps to establish decision-making supports and restore legal capacity as soon as practically possible, for either independent or interdependent	The provision ensures that imposition of restrictive measures are combined with steps to establish decision-making supports and restore legal capacity as soon as practically possible, for independent decision making	The provision ensures that imposition of restrictive measures are combined with steps to establish decision-making supports and restore legal capacity as soon as practically possible, for independent	The provision ensures that imposition of restrictive measures are combined with steps to establish decision-making supports and restore legal capacity as soon as practically possible;

	Dimension		Indicator	Measure code	Measure	Scoring Rubric			
						Score Fully	Score Mostly	Score Partly	Score Not at All
						decision making support arrangements	support arrangements and could be read to apply to interdependent support arrangements as well	decision making support arrangements only	
				5.1.1.7	The provision ensures decision-making supports may be monitored as may be needed under the circumstances;	The provision ensures decision-making supports may be monitored as may be needed under the circumstances, for either independent or interdependent decision making support arrangements	The provision ensures decision-making supports may be monitored as may be needed under the circumstances, for independent decision making support arrangements and could be read to apply to interdependent support arrangements as well	The provision ensures decision-making supports may be monitored as may be needed under the circumstances, for independent decision making support arrangements only	The provision does not ensure decision-making supports may be monitored as may be needed under the circumstances, for either independent or interdependent decision making support arrangements
				5.1.1.8	The provision ensures that imposition of restrictive measures are subject to appeal through accessible and timely appeals and enforcement mechanisms.	The provision ensures that imposition of restrictive measures are subject to appeal through accessible and timely appeals and enforcement mechanisms, for	The provision ensures that imposition of restrictive measures are subject to appeal through accessible and timely appeals and enforcement mechanisms, for independent	The provision ensures that imposition of restrictive measures are subject to appeal through accessible and timely appeals and enforcement mechanisms, for	The provision does not ensure that imposition of restrictive measures are subject to appeal through accessible and timely appeals and enforcement mechanisms, for either independent

	Dimension		Indicator	Measure code	Measure	<i>Scoring Rubric</i>			
						Score Fully	Score Mostly	Score Partly	Score Not at All
						either independent or interdependent decision making support arrangements	decision making support arrangements and could be read to apply to interdependent support arrangements as well	independent decision making support arrangements only	or interdependent decision making support arrangements

# Endnotes