UNDERSTANDING THE NON-IMPLEMENTATION OF ARTICLE 12 OF THE CRPD IN BULGARIA: AN OUTLOOK ON LEGAL TRANSLATION AND TRANSPLANTATION CHALLENGES

*Doc. dr. sc. Dimitar Stoyanov**
*Izv. prof. dr. sc. Simeon Groysman***

UDK 341.231.14-056.26
https://doi.org/10.30925/zpfsr.46.3.9
Ur.: 26. prosinca 2024.
Pr.: 30. listopada 2025.
Pregledni rad

Summary

This paper examines the problems in the implementation of Bulgaria's international obligations under the Convention on the Rights of Persons with Disabilities. It offers an analysis, in the context of the origins of the basic concepts and historical development, of the legislation regarding the legal capacity of natural persons. Bulgaria's refusal to abandon its traditional legal institution of "legal incapacitation" has become a major problem for the implementation of the CRPD. The paper examines the relationship between the international and national legal frameworks and shows the divergence of views on the introduction of full legal capacity for persons with disabilities. The reasons for refusal are found in the authorities' expediting ratification without a plan for implementation; imperfect translation of the text of the Convention, and the one-sidedness of most of the analysis of the issue by academics. Proposals to break the deadlock in non-implementation of Art. 12 of the Convention in the country by taking into account international legal standards for reforming legislation in the relevant field are promulgated.

Keywords: *Convention on the Rights of Persons with Disabilities; law of persons; full legal capacity; Bulgarian legislation; implementation of international treaties.*

* Dimitar Stoyanov, Ph.D., Senior Assistant Professor, Faculty of Law of Sofia University "Saint Clement of Ohrid"; dimituris@uni-sofia.bg. ORCID: https://orcid.org/0000-0001-9080-8641.

** Simeon Groysman, Ph.D., Associate Professor, Faculty of Law of Sofia University "Saint Clement of Ohrid"; groysman@uni-sofia.bg. ORCID: https://orcid.org/0000-0002-9250-688X.
This study is financed by the European Union - NextGenerationEU, through the National Recovery and Resilience Plan of the Republic of Bulgaria, project No. BG-RRP-2.004-0008-C01, for which support the authors express their gratitude.

1 INTRODUCTION

1.1 Historical and Social Context of the Implementation of International Human Rights Instruments in Bulgaria

Contemporary challenges to human rights doctrine and the rule of law in South-East and Central Europe are, in no small part, consequences of an unfinished transition towards the adoption of an ethic that focuses on human dignity and respect for the autonomy of the other. This is particularly true in countries where, in the course of the democratic changes of the 1990s, liberal reforms were met with heightened expectations of economic progress. In that context, the newly emerging enthusiasm for the generally unknown ideology of human rights was rather a reaction against the rejected totalitarianism *and* an expression of the desire for faster westernization. However, since accession of most countries in the region to the European Union in the 2000s did not lead to the unrealistically imagined drastic change in the quality of life, there has been a rise of populism and a growing distrust of human rights rhetoric. These developments put the public's confidence in the cause of rights in general at risk. In our view, the answer to this growing trend lies, principally, in a better understanding of the problems of the implementation of human rights legislation as a general outcome of the activities of government administration, the courts, academia and the non-governmental sector. We will try to contribute to the comprehension of their interactions by analyzing the complex issues related to the human right to legal capacity in Bulgaria from the perspective of implementation of the country's commitments following its accession to the UN Convention on the Rights of Persons with Disabilities (hereinafter: CRPD).[1]

The right to legal capacity is only one element of the complex struggle for the rights of persons with mental disabilities in Bulgaria, which is notorious for both the neglect shown to the provision of psychiatric care, and systematic failure to implement the relevant recommendations of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[2] However, the concept of "legal capacity" deserves special attention because it is crucial for several reasons:

- above all, **legal incapacity significantly impacts the overall legal protection** of people with disabilities, i.e. it is important both in addressing the severe challenges faced by individuals in psychiatric institutions, and in general for all people in need of support;
- secondly, **legal incapacity in Bulgaria is a long-standing legal institute** which, as a result of conflicting views, has **effectively been frozen out of**

1 Convention on the Rights of Persons with Disabilities, United Nations, Treaty Series, Vol. 2515, p. 3.

2 The Committee remains highly critical of the lack of implementation of many of its long-standing recommendations regarding the treatment, and legal safeguards offered to patients, and conditions in psychiatric hospitals. See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Report to the Bulgarian Government on the ad hoc visit to Bulgaria, 21-31 March 2023," accessed October 2, 2024, https://rm.coe.int/1680ae4960.

any legislative change by lack of agreement as to the right way to reform it.
- thirdly, the issue at hand is important in respect of the **attitude towards human rights reform in the country as a whole**. The case study presented gives us a vivid example of the clash between "classical-conservative" and "contemporary-progressive" legal thinking. On the surface it may appear as if it were a confrontation between a pro-liberal NGO sector, pushing for the abolition of legal incapacitation and representatives of the predominating legal doctrine and case law who insist on the protective nature of the legislation as currently instituted. On a broader scale, it becomes clear that there is a tension between a human-rights based approach that guarantees every aspect of one's legal sphere, and the traditional, protection-oriented, application of State restrictive measures on people with mental disabilities.

This article aims to present an overview of the processes inherent in implementation of international disability rights legislation, and thus draw theoretical hypotheses based on trends in the different uses of human rights language. Simultaneously the divergent doctrinal views, and their consequences for the future of legal incapacitation, will be explored. We will attempt to identify the alternatives available for realizing the human right to legal capacity by analyzing Art. 12 of the CRPD and the specific regulatory issues related to its application in Bulgaria.

1.2 Human Rights Language: Some Relevant Observations in the Context of the "Transplantation" of Human Rights Doctrine and International Human Rights Instruments

The extensive literature covering the CRPD and, in particular, implementation of its Art. 12, illustrates controversies about the capacity to act in the drafting of text and in the different models for implementation. Our article, however, has another purpose: it presents the story of an implementation in Bulgaria that is yet to happen. This slow national development results from a number of factors, such as: (a) the inconsistency in a State policy of hasty accession without the possible Art. 12 reservation, and the subsequent "behaviour in practice" which rejects the reform required should its principles be fully adopted; (b) a clash between radical positions of strident reformism and intransigent conservatism in the ensuing national debates; (c) specific problems in translation of the text of the Convention.

In the context of the importance placed by the Bulgarian legal system on the institution of "legal incapacity" the field of regulation under review has turned into an area that is particularly difficult to reform.

The case study presented illustrates those challenges in transforming "rights" from being political slogans (officially recognized by national elites) into functioning national laws, guaranteed by both legislature and the courts. We will demonstrate how the introduction of human rights language into analysis of legal restraint for people with mental disabilities in Bulgaria faces resistance from some representatives of Bulgarian legal doctrine. Arguments supporting the promotion of human rights for this particularly vulnerable group are confronted with those which, while ostensibly

directed in its defense, come from the more traditional position which sees legal paternalism in restrictions. The use of this new language in the context of personal law encounters a lack of relevant doctrinal support. This issue draws attention to the role of legal scholarship in the ideological formation of law. Thus, the mere establishment of this human rights language in a national legal system faces "translation" problems on at least two levels:

- firstly, there are debates about the **proper meaning and adequacy of the lingual translation** of the Convention on the Rights of Persons with Disabilities (CRPD), as we will demonstrate using the example of Bulgarian legal doctrine;
- secondly, the more general provisions of the Convention **need to find concrete application within the national legal tradition**, i.e. to be conceptually "translated" into legislation that is fit to function on the ground to be able to realize the objectives set out in that international instrument.

Similar linguistic metaphors can be found in human rights narratives that compare different "rights dialects" that offer contradictory interpretations of a "universal language".[3] For certain cultures[4] − and this is certainly true of Western culture, whether in America or Europe − a particular version of human rights language may even be seen as the "mother tongue" for the human rights discourse. This in itself runs the risk of our own understanding of "rights" being presented as universally valid.[5]

We start from the understanding that human rights language serves as a tool to disseminate international legal principles and expand those rights. This language shapes public attitudes towards guaranteeing human dignity and its associated capacities and freedoms. When relevant rights are protected for the first time or reiterated in new international instruments, this language is employed in implementing these rights in national legislation. From this perspective, those players advocating for rights, including representatives from non-governmental organizations and legal scholars, utilize the language of rights to justify the necessity for change and legal reform. In the creation of implementing legislation, this language continues to function as a vehicle for establishing new regulations that ensure the protection and realization of such rights. At the same time, various factors may impede the three-step process: (1) international justification of the new standard; (2) national debate in support of it, and efforts to promote those rights; all aimed at (3) final domestic implementation in accordance with international obligations. Concepts from the discourse of international law may encounter local misunderstandings, be essentially obscured by their being directly copied into domestic law, or even face formal contestation rooted in substantive non-acceptance. Introducing a profound reform, defined as a "conceptual change or the "paradigmatic shift" discussed below,

3 Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991), xi.

4 André R. Monteiro, *Ethics of Human Rights* (New York: Springer, 2014), 332.

5 Glendon, *Rights Talk*, 47, where the author notes, "our current rights discourse may seem to be our mother tongue."

requires, in the words of the researchers, a dialogue between proponents of the old and new approaches: s*ince the ego is inevitably involved between proponents of opposing positions, an easier route is to initiate robust dialogue between persons on the same side of belief system*.[6]

2 CRPD AND DEBATES SURROUNDING UNIVERSAL LEGAL CAPACITY

The gradual evolution of UN instruments protecting the rights of persons with disabilities began as early as 1971 with the Declaration on the Rights of Mentally Retarded Persons. The Declaration on the Rights of Persons with Disabilities of 1975[7] was a more developed, though non-binding, document that focused on the issue at hand and whose ideas eventually has led to the current stage of protection embodied in the CRPD. Its adoption in 2006 was a turning point in the expansion of their legal protection.

The CRPD embraced the idea that safeguards for legal personhood should be strengthened by emphasizing legal capacity, particularly *in re* the ability to independently perform acts that produce legal consequences. This change in approach is linked to the explicit recognition of disability as an "evolving concept" in Recital (e) of the Convention Preamble. This states that *disability results from the interaction between persons with impairments and attitudinal and environmental barriers*. Thus, societal barriers *hinder full and effective participation in society on an equal basis with others*, and regulatory reforms can affect the social change needed to remove obstacles to personal autonomy. Overcoming the isolated social role of people with disabilities requires eliminating their legal isolation, which the legal impossibility of independent action encourages. Art. 12 of the CRPD establishes the key principle of "equality before the law." To fully understand its meaning, it must be interpreted in the context of Art. 6 of the Universal Declaration of Human Rights (1948), which avers the "right to be recognized before the law," and Art. 16 of the International Covenant on Civil and Political Rights, which asserts the "right to recognition everywhere as a person before the law". Art. 12 of the CRPD was designed as a continuation of these fundamental principles, specifically addressing the rights of people with disabilities.

The Convention sparked heated doctrinal discussions among many negotiating parties. Some national representatives, including Russia and China, claiming to clarify the notion of "legal capacity," proposed the inclusion of a footnote defining its meaning. However, the proposal sought to limit the scope of legal capacity to "the capacity to hold and bear rights" − in other words, restricting it to legal personality and excluding the "capacity to act". This purported "clarification" was firmly rejected by the Drafting Committee.[8] However, the absence of a clear counter-definition,

6 Amita Dhanda, "Conversations between the Proponents of the New Paradigm of Legal Capacity," *International Journal of Law in Context* 13, no. 1 (2017): 87.

7 United Nations General Assembly, Declaration on the Rights of Persons with Disabilities, A/RES/3447 of December 9, 1975.

8 Lisa Series, and Anna Nilsson, "Article 12 CRPD: Equal Recognition before the Law," in *The*

combined with discrepancies in the official United Nations language translations, left room for argument against the obligation of States to guarantee the right to autonomous action.

As a result of these disputes, a few Contracting Parties submitted interpretative declarations upon ratifying the CRPD, stating that they would interpret Art. 12 as allowing substitute decision-making.[9] Despite these controversies, the final text of the CRPD achieved the intended change within the "paradigm shift" framework by placing legal capacity at the core of all individual freedoms.[10]

The CRPD does not mention "substitute decision-making", effectively disqualifying it as a legitimate option for legislative regulation. The drafters clearly intended to establish universal legal capacity, irrespective of the presence of mental or physical disability. Some critics argue that this new legal approach may be seen as unexpected or hasty, potentially leading to adverse consequences.[11] A key issue arising from this new formulation of equal recognition is how to align existing guardianship and substitute decision-making laws across different legal systems. The inclusion of an explicit reservation regarding Art. 12 could, at least theoretically, allow for the preservation of limited legal capacity, as seen in the approach adopted by the Russian Federation. In contrast, Bulgaria, the focus of this study, ratified the Convention without any relevant reservations. Nonetheless, debates have emerged, with some criticizing the delayed implementation of Art. 12 or protesting against the potential abolition of limited legal capacity.

The opening paragraph of Art. 12 asserts that the recognition of legal personhood is a prerequisite for individual autonomy. This establishes a non-discrimination rule, ensuring that all individuals, regardless of disability, receive equal legal recognition of their personhood.[12] Some critics of the "paradigm shift" argue that "legal capacity" is too abstract a concept to have a uniform meaning and that its ambiguity complicates efforts by national legislators to align their laws with the Convention. Others reject the new approach, asserting that no changes to national laws are necessary.[13] These disputes led to the first General Comment on the Convention,[14] issued during the Eleventh Session of the UN Committee on the Rights of Persons with Disabilities

UN Convention on the Rights of Persons with Disabilities: A Commentary, eds. Ilias Bantekas, Michael Ashley Stein, and Dimitris Anastasiou (Oxford: Oxford University Press, 2018), 346.

9 Among them are Australia, Canada, the Netherlands, Poland, Estonia, Norway, Egypt and Singapore. Series and Nilsson, "Article 12 CRPD," 347.

10 Cf. Marissabell Škorić, "The Twenty-First Century: The Beginning of a New Era in the Protection of Human Rights of Persons with Mental Health Disabilities," *Pravni Vjesnik* 36, no. 1 (2020): 32.

11 Cf. Matthé Scholten, and Jacov Gather, "Adverse Consequences of Article 12 of the UN Convention on the Rights of Persons with Disabilities for Persons with Mental Disabilities and an Alternative Way Forward," *Journal of Medical Ethics* 44 (2018): 226.

12 Series and Nilsson, "Article 12 CRPD," 348.

13 Cf. Scholten and Gather, "Adverse Consequences of Article 12," 229.

14 United Nations, "General Comment No. 1, Article 12: Equal Recognition before the Law," Office of the High Commissioner for Human Rights, accessed February 17, 2024, https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1. (hereinafter: General Comment).

(March 31 – April 11, 2014). That focuses exclusively on Art. 12 of the CRPD, pointing to a "general misunderstanding" among some national legislators, who failed to grasp that "the human rights-based model of disability implies a shift from substitute decision-making to supported decision-making."

The 2014 General Comment is the authoritative interpretation of Art. 12 of the CRPD, affirming that its para. 2 recognizes that persons with disabilities have legal capacity on an equal basis with others in all aspects of life. Those drafting it clarified that "legal capacity" includes both the ability to hold rights and duties (legal standing) and the ability to exercise these autonomously (legal agency).[15] In contrast, "mental capacity" refers to an individual's decision-making abilities, which naturally vary. The Committee emphasized that deficits in mental capacity should not limit, or revoke, legal capacity, effectively challenging and rejecting the substitute decision-making system.[16] Thus, legal capacity is stated as an "inherent right accorded to all individuals," encompassing both legal standing and legal agency.

3 DEVELOPMENTS IN BULGARIAN NATIONAL LAW ON DEPRIVATION OF CAPACITY AND THE CURRENT DEBATE

3.1 Historical Dimensions of the Problematic Regulatory Framework

Modern Bulgarian law on legal incapacitation originates from the late 19th century. It was then that the principles of the Napoleonic Code were incorporated into the private law of the Principality of Bulgaria. This legal transplantation was indirect, evolving through the medium of the Italian *Codice civile* of 1865. In 1907, with the enactment of the Law of Persons,[17] guardianship was introduced as the sole legal facility for individuals with mental disability. This effectively deprived them of their legal capacity. The 1907 Act was replaced in 1949 by the Law on Persons and Family,[18] which remains in force today and retains the features of the substitute decision-making system.

The term "prohibition" (запрещение, zapreshtenie [zəprɛˈʃtʲɛniɛ]) was used to translate the Italian *interdizione* and French *interdiction*. This persists as an enduring element in the language of the Bulgarian law on persons. The specific word has never been actively used in Bulgarian everyday language, being relevant only within the legal discourse on disability and incapacitation. The term continues to carry the implication of prohibiting a person from acting independently due to a "lack of volitional and reasoning capacity". This is a linguistic phenomenon that exemplifies a formal concept "set apart from the language of the street," as described by Mellinkoff. Unlike typical legal language, however, this term does not convey any sense of "solemnity, mystery, or dignity".[19] According to one commentator, on the contrary,

15 Article 12, p. 3, para. 13. of General Comment No. 1.
16 Article 12, p. 3, paras. 13-14 of General Comment No. 1
17 Law of Persons, [Bulgarian] State Gazette, no. 273 of December 17, 1907, repealed in 1949.
18 Law on Persons and Family, [Bulgarian] State Gazette, no. 182/49.
19 David Mellinkoff, *The Language of Law* (Boston: Little, Brown and Company, 1963), 19.

the word “prohibition” bears the imprint of a “medieval, inquisitorial, fear-inspiring language”.[20] By defining them as “prohibited,” people with mental health problems are stripped of dignity. The stigma imposed by such discriminatory language further obstructs qualitative assessment of decisions made by individuals with mental disabilities.[21] Thus, the concept of “prohibiting someone from acting” lies at the core of social exclusion, enforced through a range of measures that categorically divide individuals into those deemed either capable or incapable of making decisions.

3.2 Current Bulgarian Legislation and the “Paradigm Shift”

Currently, Bulgaria remains one of the few countries without a civil code. Therefore, the regulation of personal status of natural persons, relevant to the subject of this article, is provided in a separate legislative act − the *Law on Persons and Family* enacted in 1949. Its Art. 5, para. 1, provides: *Persons under the age of maturity, as well as adults who cannot manage their affairs due to feeble-mindedness or mental illness, shall be placed under incapacitation and become legally incapable.* As a result, under Bulgarian law, legal incapacity arises when a person is placed under guardianship. Courts initiate this process at the request of the spouse, close relatives, prosecutor, or any person with a legal interest. Decisions are based on a medical condition, which identifies the causes of the mental disability, combined with a legal assessment, which determines whether the individual is capable of managing their own affairs. A Court’s decision includes an assessment of the severity of the mental disability as well as a suggestion of its likely duration. Despite the examination of a medical condition, the Court is not required to demand a forensic psychiatric examination. The judge is only obliged to undertake an interrogation of the individual whose guardianship is being requested. If this is insufficient, the Court may gather additional evidence and hear expert witnesses. Although the decision takes into account the likely duration of disability, there is no mechanism for periodic reassessment unless explicitly requested.

In 2012, Bulgaria ratified the UN Convention on the Rights of Persons with Disabilities without a reservation regarding Art. 12.[22] As a result, the existing century-old rules for *substitute* decision-making in Bulgarian law suddenly stood at variance with the paradigm shift towards *supported* decision-making, introduced by the CRPD. After 2012 there was significant hesitancy within Bulgarian case law regarding whether guardianship orders remained admissible under the new

20 Ivan Ruschev, “Postavyaneto pod zapreshtenie – zashtita ili sanktziya” [Placing under Incapacitation – Protection or Sanction], in *Nauchni cheteniya na tema “Pravo i prinuda”* [Scientific Readings on “Law and Coercion”], eds. Malina Novkirishka-Stoyanova, Ralitsa Ilkova, Krasimir Manov, and Dilyan Nachev (Sofia: Sofia University Press “St. Kliment Ohridski,” 2024), 93.

21 Nadya Shabani et al., “Novata paradigma na pravosubektnostta: Chlen 12 ot Konventziyata na OON za pravata na horata s uvezhdaniya” [The New Paradigm of Legal Capacity: Article 12 of the UN Convention on the Rights of Persons with Disabilities], *Pravna misal* 1 (2014): 88.

22 Act on the ratification of the Convention on the Rights of Persons with Disabilities, State Gazette, no. 12/12.

circumstances. Notably, a judgment by the Sofia City Court[23] categorically denied an application to place a person with an intellectual disability under guardianship. On the basis of the precedence of international over domestic laws, the judge concluded that, under Art. 12 of the CRPD, the deprivation of legal capacity was no longer a legally acceptable option. In this case arguments, drawn from international law, encouraged the Court to recognize the right to freedom from restraint as a specific dimension of the right to privacy.

From this point onward, the clash between the promoters and critics of the "paradigm shift" in Bulgarian legal discourse began. A closer examination of the criticisms reveals that the term "paradigm shift", as popularized in the 2008 *Advocacy Toolkit on CRPD*,[24] has taken on a pejorative connotation among opponents of reform.[25] From this perspective, the proposed "paradigm shift" was seen not as a matter of protecting rights, but rather as altering the regulation of the legal status of individuals. From a conservative doctrinal point of view, addressing the protection of the rights of persons with disabilities is seen as potentially undermining the functioning of the legal system. If legal capacity to act is a fundamental tool in regulating private relations, and the institution of prohibition is already enshrined in the Constitution, some writers argue that the "new paradigm" is effectively redefining the personal status of individuals.

In 2014, a widely discussed article proposed to adopt the new paradigm, thereby advocating for the abolition of incapacitation rules to ensure universal access to legal action through disability support measures.[26] According to the team of authors, which included prominent representatives of both the non-governmental sector and academic science, the ratification of the Convention brought Bulgarian domestic law into conflict with the former's Art. 12. This called for a reform aimed at empowering people with disabilities to take independent action. Traditional private law theory was critically examined, as it presupposed the ability to act to be endowed with a requisite level of "reasonableness and rationality". The latter approach was seen as applying an arbitrary social evaluation, resulting in the non-acceptance of "otherness" and denying personal autonomy to persons with disabilities.[27] It considered that autonomy for all individuals should be guaranteed not through public, interest-based, restrictions ("guaranteeing rights through restrictions") but by granting freedom for supported decision-making. To achieve this, the incapacity provisions in Bulgarian law should be abolished, and their discriminatory and stigmatizing effects addressed by eliminating the medical condition for incapacitation and the introduction of a new system of support measures. The latter should establish a new status for individuals with disabilities, transforming them from "objects of care" into fully autonomous

23 Sofia City Court, Civil Law Department, case no. 16532 of November 4, 2013.

24 United Nations, "Convention on the Rights of Persons with Disabilities: Advocacy Toolkit," accessed January 15, 2025, http://www2.ohchr.org/english/issues/disability/docs/CRPD_Advocacy_Tool.pdf.

25 Ruschev, "Postavyaneto pod zapreshtenie", 91.

26 Shabani et al., "Novata paradigma na pravosubektnostta," 78-96.

27 Shabani et al., "Novata paradigma na pravosubektnostta," 83.

agents.[28]

In 2014, after extensive public discussion, the Bulgarian Ombudsman referred to the Constitutional Court the question of whether the provisions of the aforementioned Art. 5, para. 1 of the Persons and Family Act for the complete deprivation of legal capacity under the Persons and Family Act were in conformity with Art. 42 (right to vote) and Art. 65 (right to stand for election) of the Bulgarian Constitution. The connection with electoral rights − whose exercise the Constitution limits to individuals "not under incapacitation" − served only as the formal basis for requesting the Constitutional Court to review whether the regulations on incapacitation conform to the constitutional framework of rights. Non-governmental organizations called the abolition of legal incapacitation, with some representatives even describing it as a form of "civil death" for persons with disabilities.[29] This viewpoint was contested by academics who opposed the reform. They pointed to potential issues in family,[30] inheritance[31] or contract law.[32] It was argued, for example, that any reform could jeopardize the protection of heirs with mental disabilities, expose disabled people to disadvantageous contracts, or raise the complex issue of their right to marry − with the added risk of subsequent property abuse by a spouse. This persistent tendency in legal scholarship to view the status of persons with disabilities primarily through the lens of potential property abuse by third parties is examined separately in section 4.2.

In 2015 the human rights advocacy community, including the Bulgarian Ombudsman, argued that the prohibition to act regime constituted a systematic restriction of human rights imposed by the State.[33] The Ombudsman's appeal to the Constitutional Court primarily focused on the provisions of Art. 12 of the CRPD. In its Decision No. 12/2014, the Court did not find the national provisions in question to be inconsistent with the Constitution. However, the judges agreed that these rules should be interpreted restrictively to ensure compliance with the constitutional requirement to provide enhanced protection for people with disabilities.

28 Shabani et al., "Novata paradigma na pravosubektnostta," 92.

29 See the "Opinion of the Bulgarian Helsinki Committee to the Constitutional Court of July 10, 2014 on Constitutional Case No. 10 of 2014," accessed January 15, 2025, https://www.constcourt.bg/bg/case-479; "Opinion of the Supreme Bar Council of November 22, 2018 on the legislative bill "On Natural Persons and Supported Decision-Making,"" accessed January 15, 2025, https://www.strategy.bg/FileHandler.ashx?fileId=15015.

30 Tzanka Tzankova, "Vaprosi na deesposobnostta" [Issues of Legal Capacity], in *Jubilee Collection Dedicated to the 80th Anniversary of Prof. Dr. Vassil Mratchkov*, ed. Krasimira Sredkova (Sofia: Trud i Pravo Publishing house, 2014), 203-224.

31 Ventsislav L. Petrov, "Promeni v uregbata na usloviyata za vstŭpvane v brak spored proekta za zakon za fizicheskite litsa i merkite za podkrepa" [Changes in the Regulation of Marriage Conditions in the Draft Law on Natural Persons and Support Measures], in *Proceedings of the Jubilee International Scientific Conference on the Application of Constitutional Principles in Public and Private Law*, ed. Tsvetan Sivkov (Veliko Tarnovo: St. Cyril and Methodius University Press, 2017), 412-420.

32 Ruschev, "Postavyaneto pod zapreshtenie," 91-118.

33 Velina Todorova, and Nadya Shabani, "Vtori mezhdunaroden praven seminar po uregbata na deesposobnostta i zapreshtenie" [Second International Legal Seminar on the Regulation of Legal Capacity and Incapacitation], *Pravna Misal* 2 (2015): 126.

Moreover, the Court emphasized that harmonizing Bulgarian legislation with CRPD cannot be accomplished merely by non-enforcement of the contested provisions. The establishment of a comprehensive legal framework for the protection of people with disabilities is a matter reserved for the legislative body. Therefore, it was recognized that declaring the contested provisions unconstitutional would not resolve any issues affecting the rights of persons placed under guardianship. On the contrary, it would worsen their legal status, as a legislative gap concerning persons with disabilities would eliminate all existing special safeguards provided to them.

The Bulgarian Constitutional Court adopted a balanced approach in addressing the conflict between the existing substitute decision-making system and the "paradigm shift" approach. It is worth noting that those drafting General Comment No. 1 (2014) indicated that, to ensure compliance, national legislators should adopt a two-step approach: firstly, abolishing the substitute decision-making system and guardianship; and secondly, introducing a supported decision-making system. The decision of the Bulgarian Constitutional Court in this regard indicated that it was not within its prerogative to take the second step thus envisaged.

3.3 Attempts at a Legislative Solution

In 2016, a Legislative Bill *On Natural Persons and Supported Decision-Making* was introduced to the Bulgarian National Assembly, with the aim of replacing the substitute decision-making system.[34] The Bill defined supported decision-making as "the primary means of enabling persons with disabilities to express their will and preferences" and specified various forms of supported decision-making, including; clarifying the actions taken by the individual and the consequences thereof; facilitating the person's understanding of actions taken by others in the private sphere; and providing support for the expression of wishes and preferences. To address severe cases, the Bill included a safeguard by imposing restrictions on the alienation of property belonging to individuals with mental disabilities. The goal was that such a restriction be imposed, by Court Order, for a specified period of time. The proposed remedy reflected Art. 12, para. 4 of the CRPD, serving as a safeguard designed to prevent the abuse of persons with disabilities. Unfortunately, the proposed legislation was not adopted in 2016, and a subsequent public consultation, organized by the Minister of Justice in 2018, also failed to achieve success.[35] Currently, Bulgarian courts continue to apply the rules applicable to guardianship and the substitute decision-making system. This is primarily due to the absence of national legislation that aligns with the provisions of Art. 12 of the CRPD.

34 Legislative Bill "On Natural Persons and Supported Decision-Making", registered under no 602-01-48/04.08.2016., accessed October 20, 2024, https://www.parliament.bg/bg/bills/ID/44032.

35 See Consultation Document on the Draft Law on Individuals and Support Measures, published on the national public consultation website, accessed October 20, 2024, https://strategy.bg/PublicConsultations/View.aspx?lang=en-BG&Id=3831.

3.4 Paternalism and Empowerment in the Debate on a New Approach to the Status of Persons with Disabilities

As previously noted, international law recognizes "the right to recognition everywhere as a person before the law" as a fundamental human right, as established in foundational documents such as the Universal Declaration of Human Rights (Art. 6) and the International Covenant on Civil and Political Rights (Art. 16). Legal theory considers this right a form of legal capacity. The capacity to act extends beyond merely being recognized as a potential bearer of rights and duties; it encompasses being acknowledged as an active subject capable of exercising them. This legal capacity reflects the innate human potential to think, communicate, make decisions, perceive the world, act within it, and effect change.

The reformist approach views limiting the power of the State as essential for guaranteeing individual freedom. The individual can be constrained so as not to harm himself, but this should not translate into parental guardianship, a tendency traditionally labelled as "legal paternalism."[36] In this context, regarding the capacity to act, the guarantees of Art. 12 of the CRPD function as defences aligned with the German concept of *Abwehrrechte* (defensive rights), opposing State interference that denies the freedom to act independently and achieve the legal outcomes desired. In the Bulgarian context, the reformist approach in favour of CRPD implementation employs progressivist arguments, such as explicitly contrasting "old" and "new" legal concepts and arguing that "legal constructions from 2,000 years ago"[37] should not bind contemporary society and its legislature. Similarly, in the past, paternalistic societies-imposed restrictions to protect and guarantee the rights of individuals with disabilities, such as safeguarding their property through coercive measures that regulated their freedom to act. Reform advocates perceive a paradox in "guaranteeing rights through coercion," specifically through the deprivation of freedom.[38]

The modern antithesis of "protective restrictions" is "support measures". In para. 29, subsections (a) to (i), the UN Committee outlined "key provisions to ensure compliance with Art.12 of the Convention" regarding various forms of support. Notably, one of the requirements is that all forms of support be based on the individual's will and preferences, rather than on what is believed to be in their "objective" interest (paragraph 29, subsection (b) of the General Comment). The UN Committee's approach has been criticized by some as one-sided, failing to address "hard cases" where individuals have extensive cognitive impairment, and their will cannot be discerned. It is arguable whether such a situation requiring 100 per cent support necessarily blurs into substitute decision-making and that supported decision-making in this particular instance is actually almost identical to an optimally operating guardianship, i.e. substitute decision-making.[39]

36 Dhanda, "Conversations between the Proponents," 89.

37 Todorova and Shabani, "Second International Legal Seminar," 123.

38 Shabani et al., "Novata paradigma na pravosubektnostta," 86.

39 About this discussion cf. Bruce Alston, "Towards Supported Decision-Making: Article 12 of the Convention on the Rights of Persons with Disabilities and the Guardianship Law Reform," *Law in Context* 35, no. 2 (2017): 38.

The conservative "paternalistic" approach in Bulgaria is primarily driven by the aim of preserving security on two distinct levels. Firstly, there is a focus on ensuring security within the private sphere of individuals with disabilities, and secondly, on maintaining systemic security for the legal system as a whole. The institution of disability is considered essential for regulating various legal domains, including family, property, and labour laws. Its abolition therefore carries systemic risks of gaps in the law and a lack of regulation[40] therein which returns to the previous point, where security and protection of a vulnerable category of persons are needed. From the conservative perspective, protecting individuals with disabilities involves safeguarding their interests through decisions made by others on their behalf. This approach aligns with the concept of "protection *from* oneself," where individuals under guardianship are shielded from actions that may not meet criteria for rationality, personal safety, or self-preservation. Similarly, the discussion extends to society's rights, emphasizing the need to guarantee that actions involving individuals with mental health conditions, particularly legal transactions, result in clear and stable legal consequences over time.[41] According to the reformist approach, the optimal solution for promoting autonomy and social integration is empowering individuals to make independent decisions. From this perspective, support measures aim to mitigate the risks associated with those decisions, which, according to the liberal view, are also present in individuals without mental disability.[42] However, the argument for respecting irrationality in others is difficult to justify by merely citing examples of "irrational" behavior in individuals without mental disability. Thus, the addressees of the argument would be prompted to compare themselves with the disabled and to acknowledge that each may act in ways that are not the most rational from the viewpoint of "ordinary people". Such blurring of boundaries rather diverts our gaze from the actual conditioning of the boundary between the "rational" and "irrational" by the cultural givens of social convention.

National legal theory ultimately questions whether support measures can achieve the goal of autonomous action in cases where individuals with disabilities lack the natural capacity for judgment. It is argued that in such cases, "empowerment"[43] will occur, but it will primarily benefit the individuals providing the support, rather than those receiving it. Consequently, the liberal rhetoric of empowerment, as a means of achieving social change through the actions of the disempowered, is inverted.

A dispassionate legal analysis identifies the risks of transplanting terminology perceived as a hasty political imposition into the traditional framework of personal law dogmatics. The so-called "empowered" individuals are the supporters, not those being supported, and decision-making substitution becomes inevitable when a person lacks the factual ability to make decisions. Under this reasoning, if Art. 12 were to be radically implemented in domestic law and the regime of full incapacity abolished, there would be, on one hand, the potential for individuals to act without a *de facto*

40 Ruschev, "Postavyaneto pod zapreshtenie," 113.
41 Ruschev, "Postavyaneto pod zapreshtenie," 91-95.
42 Shabani et al., "Novata paradigma na pravosubektnostta," 92.
43 Ruschev, "Postavyaneto pod zapreshtenie", 96.

capacity for judgment, and on the other, a dilution of both the accountability of support providers and the legal consequences of supported actions. All of the above considerations are part of a discussion in which participants would most often argue that specific regulation, in careful detail, could mitigate the risks associated with the proposed reforms.

4 POSSIBLE EXPLANATIONS FOR BULGARIA'S DELAY ON THE PATH TO UNIVERSAL CAPACITY AND CONSIDERATIONS FOR MOVING BEYOND IT

We write this paper with the understanding that doctrinal disputes have an objective basis in the contradictions between national and international frameworks, and a subjective element in the liberal or paternalistic approaches of different authors. Similarly, the reasons for the non-implementation of Art. 12 of the CRPD at the national level result from a complex set of factors. In Bulgaria, a dubiously translated international document was hastily ratified without an implementation plan. The government's move faced resistance from academics, who viewed people with disabilities primarily as victims rather than as individuals in need of empowerment. We aim to identify those factors in two consecutive points, analyzing each from the perspective of possible reforms to fulfill the country's international obligations.

4.1 The "Translational Issues" of CRPD in the Bulgarian Context

"Translational issues" here refers to two levels of the meaning of "translation" involved in integrating international legal frameworks into national law. At the basic level, legal documents written in a foreign language must be "translated" accurately. However, the second level requires that the concepts used in these documents be adapted to the pre-existing conceptual framework of the national legal system to render them "translatable" into that system. Domestic law can be adapted either before or after the ratification of an international document. Bulgarian practice has consistently favored the latter, which often leads to post-ratification problems of non-implementation, as in the case at hand. Understanding the national context first requires addressing the conceptual problem identified by academic doctrine. With due regard to specific chronological and motivational factors, we must address the linguistic critique raised by opponents of the reform. These opponents argue against the proposed method of integrating the CRPD into the national legal system, pointing to issues with its translation into the Bulgarian language.

As discussed above, international legal literature focuses on the dispute over translating "legal capacity" as the legal ability to act, rather than merely as the ability to be a rights holder, as chosen in some translations from the official United Nations languages.[44] The Bulgarian translation, however, is criticized not for such restrictiveness (reducing the "capacity to bear and exercise" rights to merely bearing them), but for expanding the sphere of free action, based on the idea that

44 Dhanda, "Conversations between the Proponents," 89.

rights should always be capable of being exercised independently. The strongest criticism and reasoned critique against the idea of a "paradigm shift" proclaiming a "universal capacity to act" was recently made by Prof. Ivan Ruschev, who compared the Bulgarian translation with the originals in the official UN languages.[45] The comparison reveals that the wording of Art. 12, para. 3, differs from its Bulgarian translation, which we present here "back-translated" into English:

[**Original English Text**] States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.	[**Wording of the Bulgarian Translation**] States Parties shall take appropriate measures to ensure that persons with disabilities have access to the support they need to **exercise their rights independently**.

Without focusing on the literal interpretation, it is important to note that the original text provides a more refined basis for regulation, combining legal capacity as: (a) the capacity to bear rights; and (b) the capacity to exercise rights, while establishing that this capacity can be exercised with the support of facilitators. The Bulgarian translation of Art. 12 focuses directly on the exercise of rights, rather than on both the capacity to bear *and* exercise them, emphasizing only the independent exercise of rights. The origin of this linguistic formulation is unclear, but it warrants separate discussion. This translation choice may appear unusual, given the national tradition of using separate terms for: (a) legal personhood (*pravosubektnost*); as a combination of (b) the capacity to bear rights (*pravosposobnost*); and (c) the capacity to act (*deesposobnost*). In English, legal capacity broadly encompasses both the bearing and exercising of rights. However, in Russian − another official UN language − a term analogous to the Bulgarian one, *pravosposobnost* (a calque of the German "*Rechtsfähigkeit"*), refers only to the bearing of rights, not to their being exercised. The term *deesposobnost*, with historical origins in the German "*Handlungsfähigkeit"*, is used for the capacity to exercise rights. From a linguistic perspective, it is noteworthy that the English text uses "legal capacity," the French text uses "*capacité juridique"*, and the Spanish "*capacidad jurídica"*. The Russian text had to choose between the more descriptive and empowering "capacity to bear and exercise rights," and the more conservative "bearing of rights," with the latter ultimately chosen. It is difficult to categorize these choices as right or wrong, since all of the languages listed (as well as Chinese and Arabic, which are not available for analysis) are official UN languages. The more descriptive translation was chosen in German. The official translation used in Germany, Austria, Switzerland, and Liechtenstein refers to providing the necessary support for the exercise of "*Rechts- und Handlungsfähigkeit"* by persons with mental disabilities. Thus, in German, "legal capacity" was translated as a compound concept comprising two separate capacities.

One may speculate that the Bulgarian translator faced particular difficulties. If a broader translation term was chosen, revealing the full meaning of "legal capacity" in English, it would contradict the official Russian text, which refers only to the

45 Ruschev, "Postavyaneto pod zapreshtenie," 98-100.

"capacity to bear rights" using the identical term as in Bulgarian (*pravosposobnost*). Given that condition, it is difficult to envision a better translation, although such a revision may be necessary in light of criticisms of the current version. However, the chosen translation, which directly emphasizes the independent exercise of rights, became an important tool for advocating reforms and promoting a universal legal capacity.

Critical analysis on the part of the conservative doctrine rightly focuses on the fact that official languages do not speak of the "independent exercise of rights."[46] In the Bulgarian debate, the liberal perspective argues that the independent exercise of rights is a fundamental human right and that abolishing prohibition is a necessary precondition to recognizing this. Arguments are drawn from the translated text, as well as from the spirit and *travaux préparatoires* of the Convention.[47] The conservative position highlights the flawed translation as the weak link in the overall logic of those advocating reform.

4.2 Impressions of the Person in Need of Support

An analysis from the perspective of contemporary human rights instruments views guardianship as a means of strict control over everyday life. If people with disabilities are denied even the smallest decisions, such as in a treatment facility, the lack the lack of participation in their own destiny, together with passivity in interactions with people without disabilities, can lead to a loss of decision-making skills. In this context, autonomy is not merely a natural ability, but a social skill that must be exercised, or even taught[48] otherwise, people with disabilities are subjected to a dehumanizing lack of freedom that only deepens their suffering.

Perspectives grounded in the private law tradition measure human life not by everyday actions, but by key legal transactions and dispositions that carry the risk of a mentally disabled person being deceived. It is not an overstatement to conclude that those grounded in human rights doctrine and those based in private law traditions use different depictions of persons in need. In framing these different portrayals of the protected person, they present contrasting views on the appropriate legislative approach to guardianship. At the center of private law doctrine is the image of the severely disabled person who cannot communicate effectively or make any decisions. An important illustration of this discourse is that of an individual with disabilities for whom communication is entirely impossible.[49] For example, one practitioner's recent account examines the issue through a series of court proceedings involving numerous cases of people with disabilities who cannot communicate at all.[50] This indicates that, once placed under special care, those individuals will find it particularly difficult

46 Ruschev, "Postavyaneto pod zapreshtenie," 99.
47 Shabani et al., "Novata paradigma na pravosubektnostta," 78.
48 Dhanda, "Conversations between the Proponents," 91-92.
49 Ruschev, "Postavyaneto pod zapreshtenie," 100.
50 Vladimir Kovachev, "Zapreshtenieto – ad, mŭchenie i oshte neshto" [Incapacitation – Hell, Torture, and Something More], Lex.bg, accessed August 12, 2024, https://news.lex.bg/Запрещението-ад-мъчение-и-още-нещо/.

to request and receive the support they need. As long as people with such severe disabilities exist, decisions will need to be made by others on behalf of the person who cannot decide, even with support. However, even in these cases, advocates of reform emphasize the making of decisions not *for*, but *with*, persons with mental disabilities.[51] According to this doctrine, everyone possesses their own human potential for self-expression, which must be developed through proactive support. Here, the central impression is of a disabled person whose suffering is intensified by social exclusion.

Different representations of persons with disabilities emphasize various obligations that the CRPD imposes on State parties. When the focus is on vulnerability, significant emphasis is placed on "providing legislative safeguards to prevent abuse while persons with disabilities exercise their legal capacity." Conversely, when the emphasis is on overcoming current limitations to personal autonomy, it is crucial to implement *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*. In this case, a cautious approach would likely emphasize the State's obligation to … *ensure that persons with disabilities are not arbitrarily deprived of their property*.

To assist integration of CRPD into national legislations, the drafters of the General Comment aim to facilitate the understanding of what should constitute "support". The principle intention is to dismiss any possibility of the denying of legal capacity to persons with disabilities, especially by State parties, so that these persons can act on their own without having their will substituted or undermined.[52] Critics of universal legal capacity argue that, because some individuals will always lack independence, "support" can become a covert form of decision-making by others.

Currently, Bulgaria disregards the unequivocal recommendation that … *to recognize universal legal capacity, whereby all persons, regardless of disability or decision-making skills, inherently possess legal capacity, State parties must abolish denials of legal capacity that discriminate on the basis of disability*.[53] To achieve this, the Committee proposes a two-fold process: abolishing the substitute decision-making regime; and developing supported decision-making alternatives (para. 28). The central aim of the new regime is to include various support options that prioritize individuals' wills and preferences. The specific content, form, and procedures will be determined by national legislators in the most expedient manner, in harmony with national legal and social traditions.

In our view, the UN Committee's staunch position on the inadmissibility of substituted decision-making provisions is in total harmony with the provision of Art. 12 of the CRPD that promotes universal legal capacity on an equal basis, regardless of one's disability. The drafters emphasize the position that persons with disabilities are autonomous and cannot be deprived of their legal capacity. In order to guarantee their actual inclusion in everyday affairs, national legislators should not constrain

51 Shabani et al., "Novata paradigma na pravosubektnostta," 96.

52 Cf. General Comment, 4, para. 16.

53 General Comment, 6, para. 25.

them, but rather provide adequate support mechanisms, tailored to each one's mental capability. The need for individual assessment is clearly stated in para. 18 of the General Comment, where the drafters point out that … *the type and intensity of support to be provided will vary significantly from one person to another owing to the diversity of persons with disabilities... At all times, including in crisis situations, the individual autonomy and capacity of persons with disabilities to make decisions must be respected*.

Moreover, the UN Committee frowns upon retaining *any* form of substituted decision-making within national legislations, even if as a legislative exception to be applied in "hard cases", since this would lead to a discriminatory practice and require determination of what constitutes a "hard" and an "easy" case. It should be noted that para. 29, (b) of the General Comment is particularly aimed at "hard cases," where the drafters once again emphasize the need to adopt an individual approach – *all forms of support …, including more intensive forms of support, must be based on the wills and preferences of the person …*. Therefore, the resolute renouncement of the phrase "hard cases" by the UN Committee is used to guarantee legal capacity on an equal basis for all persons with disabilities.

To summarize the disputes described, it is evident that both a one-sided focus on those who cannot be supported at all and ignoring them by the blanket granting of capacity without substitute mechanisms will be ineffective. National doctrine - even with its conservative support for substitute decision-making - is gradually reaching a consensus on the need for new legislation that includes a range of diversified disability care support regimes.[54] From this perspective, the existing legislation is already seen as illegitimate, primarily due to its poor alignment with the needs of a diverse range of persons with disabilities. The development of new legislation that addresses the variety of situations faced by judicial and medical authorities should diversify decision-making regimes, aligning them with the country's obligations under the CRPD.

4.3 Toward Aligning Bulgaria's Legal Capacity Framework for Persons with Disabilities with the CRPD

Despite introducing the new concept of supported decision-making, the CRPD does not go as far to provide a comprehensive set of rules on the introduction of the "paradigm shift" into national legislations. Such an omission can easily be explained, given the fact that a *one-size-fits-all* approach is virtually unenforceable, given the gross disparities between national legislations on people with disabilities. While sensible, this silence makes it hard for some to comply with the "paradigm shift", as it is the case in Bulgaria, where the substituted decision-making process is neither frowned upon, nor has it been abolished. Therefore, the proper introduction of supported decision-making goes hand in hand with two lines of necessary legislative intervention of the Bulgarian legislator.

The first one consists of the necessity to amend pre-existing provisions in

54 Ruschev, "Postavyaneto pod zapreshtenie," 115.

Bulgarian law outside the law on persons, so that they stand in compliance with the "paradigm shift". It would mean that the rules of conclusion of contracts, drafting testamentary dispositions, incorporation of legal entities, entering into a marriage, as well as the general rules on nullity and annullability in Bulgarian civil law are in need of a revision. Moreover, such an intervention would reach beyond substantive law, as there are numerous institutions of civil litigation where legal capacity plays a pivotal role, such as the right to bring an action and to be appointed as party in the subsequent procedure. Given the bird's eye view of the present paper, a complete set of provisions in need of an amendment will be somewhat excessive. However, a future legislative intervention should ensure that persons with disabilities are not excluded from civil and commercial affairs solely because of this disability and that this disability alone does not render their legal transactions null and void.

The second necessary legislative amendment includes providing an adequate ecosystem so that the concept of supported decision-making can be effectively applied. As it has already been mentioned in 3.3., a legislative bill to incorporate the CRPD into the Bulgarian legal system has been introduced into the Bulgarian Parliament in 2016. It did not, however, pass as a binding act, whereby disputes by legal scholars greatly contributed to this rather unfortunate outcome. To our view, however, this presents the Bulgarian legislator with a new opportunity to improve the bill and to take into consideration best practices from other national legislations. It would seem that the aforementioned legislative bill provided only a generic outlook and did not adopt a flexible approach, able to be tailored to the particular needs of every single person with disability.

It is worth to recollect that Art. 12 CRPD imposes a legal obligation on State Parties to provide an extensive set of measures, best practices, consultations and other suitable means, intended to interpret the will, expressed by the person with disability. As mental abilities vary from one person to another, we believe that the future legislative act should provide a greater flexibility and ability for professionals and/or the ones who support the person in their decision-making process, to choose the best means given every individual situation. However, this "positive" aspect goes hand in hand with the necessity to provide a comprehensive system of support measures combined with greater involvement of social and medical institutions, and above all safeguards against abuse, so that the legal sphere of the person with disabilities will not be damaged solely because they were supported in the decision-making process. It is sad to admit that the 2016 legislative bill did not contain adequate provisions in both these aspects, which leaves room for further discussions.

5 CONCLUSIONS

CRPD marks a new stage in legislative attitudes toward people with physical and mental disabilities. Its provisions aim at affirming that discrimination based on any of these traits will not be tolerated. However, many national legal systems appeared unprepared to undertake the "paradigm shift" envisioned by the UN Convention. In Bulgaria, this research identified several obstacles hindering implementation of this

process. Among these, a key obstacle is the judgement of Bulgaria's Constitutional Court, which, at the time, proposed retaining legal incapacitation until such time as an adequate legislative replacement is introduced. The Constitutional judges' push for legislative activity was, unfortunately, perceived as a convenient excuse to continue depriving people of their legal capacity. Despite efforts such as the introduction of a Bill on the Law of Persons, no legislative reform on this matter had occurred in Bulgaria as of late 2024. Moreover, there appears to be no consensus among legal theorists and case law as to whether, despite Bulgaria's full and unconditional ratification of the UN Convention, including Art. 12, legal incapacity is indeed an obsolete legal institution that should be replaced with a system of supported decision-making. Ultimately, only time will tell whether the desired "paradigm shift" will occur within a foreseeable timeframe.

BIBLIOGRAPHY

Books and Articles:

1. Alston, Bruce. "Towards Supported Decision-Making: Article 12 of the Convention on the Rights of Persons with Disabilities and the Guardianship Law Reform." *Law in Context* 35, no. 2 (2017): 21-43.
2. Dhanda, Amita. "Conversations between the Proponents of the New Paradigm of Legal Capacity." *International Journal of Law in Context* 13, no. 1 (2017): 87-95.
3. Glendon, Mary Ann. *Rights Talk: The Impoverishment of Political Discourse*. New York: Free Press, 1991.
4. Kovachev, Vladimir. "Zapreshtenieto - ad, mŭchenie i oshte neshto" [Incapacitation - Hell, Torture, and Something More]. Lex.bg. Accessed August 12, 2024. https://news.lex.bg/Запрещението-ад-мъчение-и-още-нещо/.
5. Mellinkoff, David. *The Language of Law*. Boston: Little, Brown and Company, 1963.
6. Monteiro, André R. *Ethics of Human Rights*. New York: Springer, 2014.
7. Petrov, Ventsislav L. "Promeni v uregbata na usloviyata za vstŭpvane v brak spored proekta za zakon za fizicheskite litsa i merkite za podkrepa" [Changes in the Regulation of Marriage Conditions in the Draft Law on Natural Persons and Support Measures]. In *Proceedings of the Jubilee International Scientific Conference on the Application of Constitutional Principles in Public and Private Law*, ed. Tsvetan Sivkov, 412-420. Veliko Tarnovo: St. Cyril and Methodius University Press, 2017.
8. Ruschev, Ivan. "Postavyaneto pod zapreshtenie - zashtita ili sanktziya" [Placing under Incapacitation - Protection or Sanction]. In *Nauchni cheteniya na tema "Pravo i prinuda"* [Scientific Readings on "Law and Coercion"], eds. Malina Novkirishka-Stoyanova, Ralitsa Ilkova, Krasimir Manov, and Dilyan Nachev, 91-118. Sofia: Sofia University Press "St. Kliment Ohridski", 2024.
9. Scholten, Matthé, and Jacov Gather. "Adverse Consequences of Article 12 of the UN Convention on the Rights of Persons with Disabilities for Persons with Mental Disabilities and an Alternative Way Forward." *Journal of Medical Ethics* 44 (2018): 226-233.
10. Series, Lisa, and Anna Nilsson. "Article 12 CRPD: Equal Recognition before the Law." In *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, ed. Ilias Bantekas, Michael Ashley Stein, and Dimitris Anastasiou, 339-382. Oxford: Oxford University Press, 2018.
11. Shabani, Nadya, Pavleta Aleksieva, Marieta Dimitrova, Aneta Genova, and Velina Todorova. "Novata paradigma na pravosubektnostta: Chlen 12 ot Konventziyata na OON za pravata na horata s uvezhdaniya" [The New Paradigm of Legal Capacity: Article 12 of the UN Convention on the Rights of Persons with Disabilities]. *Pravna misal* 1 (2014): 78-96.

12. Škorić, Marissabell. "The Twenty-First Century: The Beginning of a New Era in the Protection of Human Rights of Persons with Mental Health Disabilities." *Pravni Vjesnik* 36, no. 1 (2020): 27-45.
13. Todorova, Velina, and Nadya Shabani. "Vtori mezhdunaroden praven seminar po uregbata na deesposobnostta i zapreshtenie" [Second International Legal Seminar on the Regulation of Legal Capacity and Incapacitation]. *Pravna Misal* no. 2 (2015): 122-126.
14. Tzankova, Tzanka. "Vaprosi na deesposobnostta" [Issues of Legal Capacity]. In *Jubilee Collection Dedicated to the 80th Anniversary of Prof. Dr. Vassil Mratchkov,* ed. Krasimira Sredkova, 203-224. Sofia: Trud i Pravo, 2014.

Legal Sources:

1. Act on the Ratification of the Convention on the Rights of Persons with Disabilities, [Bulgarian] State Gazette, no. 12/12.
2. Convention on the Rights of Persons with Disabilities, United Nations, Treaty Series, Vol. 2515, p. 3.
3. Law of Persons, [Bulgarian] State Gazette, no. 273/07.
4. Law of Persons and Family, [Bulgarian] State Gazette, no. 182/49.
5. Legislative Bill "On Natural Persons and Supported Decision-Making", registered under no 602-01-48/04.08.2016. Accessed October 20, 2024. https://www.parliament.bg/bg/bills/ID/44032.
6. United Nations General Assembly, Declaration on the Rights of Persons with Disabilities, A/RES/3447 of December 9, 1975.

Case Law:

1. Constitutional Court of Republic of Bulgaria, decision no. 12/2014 of July 17, 2014, regarding case no. 10/2014.
2. Sofia City Court, case no. 16532/2013 of November 4, 2013.

Internet Sources:

1. Bulgarian Helsinki Committee. "Opinion to the Constitutional Court of 10 July 2014 on Constitutional Case No. 10 of 2014." Accessed January 15, 2025. https://www.constcourt.bg/bg/case-479.
2. "Consultation Document on the Draft Law on Individuals and Support Measures." Accessed October 20, 2024. https://strategy.bg/PublicConsultations/View.aspx?lang=en-BG&Id=3831.
3. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. "Report to the Bulgarian Government on the ad hoc visit to Bulgaria, 21-31 March 2023." Accessed October 2, 2024. https://rm.coe.int/1680ae4960.
4. Supreme Bar Council. "Opinion of November 22, 2018, on the Legislative Bill "On Natural Persons and Supported Decision-Making."" Accessed January 15, 2025. https://www.strategy.bg/FileHandler.ashx?fileId=15015.
5. United Nations. "Convention on the Rights of Persons with Disabilities: Advocacy Toolkit." Accessed January 15, 2025. http://www2.ohchr.org/english/issues/disability/docs/CRPD_Advocacy_Tool.pdf.
6. United Nations. "General Comment No. 1, Article 12: Equal Recognition before the Law." Office of the High Commissioner for Human Rights. Accessed February 17, 2024. https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1.

Dimitar Stoyanov*
Simeon Groysman**

Sažetak

ANALIZA NEPROVOĐENJA ČLANKA 12. KONVENCIJE O PRAVIMA OSOBA S INVALIDITETOM U BUGARSKOJ: IZAZOVI PRAVNOG PREVOĐENJA I PRAVNE TRANSPLANTACIJE

Ovaj rad ispituje izazove u provedbi međunarodnih obveza Bugarske prema Konvenciji o pravima osoba s invaliditetom (CRPD). Pruža analizu zakonodavstva o poslovnoj sposobnosti fizičkih osoba u kontekstu podrijetla temeljnih pojmova i povijesnog razvoja. Odbijanje Bugarske da napusti svoju tradicionalnu pravnu instituciju „pravne nesposobnosti” predstavlja značajnu prepreku za provođenje CRPD-a. U radu se ispituje odnos između međunarodnog i nacionalnog pravnog okvira te se ističu razilaženja u mišljenjima glede uvođenja pune poslovne sposobnosti osoba s invaliditetom. Razlozi za odbijanje nalaze se u činjenici da su vlasti ubrzale ratifikaciju bez jasnog plana provedbe; u nedostatcima pri prevođenju teksta Konvencije te u jednostranosti većine akademskih analiza predmetne problematike. Predlažu se mjere za prevladavanje zastoja u provođenju članka 12. Konvencije, uzimajući u obzir međunarodne pravne standarde za reformu zakonodavstva u relevantnom području.

Ključne riječi: *Konvencija o pravima osoba s invaliditetom; pravo osoba; puna poslovna sposobnost; bugarsko zakonodavstvo; provedba međunarodnih ugovora.*

* Dr. sc. Dimitar Stoyanov, viši docent, Pravni fakultet Sveučilišta Sofija „Sveti Klement Ohridski”; dimituris@uni-sofia.bg. ORCID: https://orcid.org/0000-0001-9080-8641.

** Dr. sc. Simeon Groysman, izvanredni profesor, Pravni fakultet Sveučilišta Sofija „Sveti Klement Ohridski”; groysman@uni-sofia.bg. ORCID: https://orcid.org/0000-0002-9250-688X.
Članak je financiran sredstvima Europske unije – NextGenerationEU, kroz Nacionalni plan za oporavak i otpornost Republike Bugarske, projekt br. BG-RRP-2.004-0008-C01, za koji autori iskazuju svoju zahvalnost.