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Declaring a person incapacitated and appointing a guardian: Standards of procedural fairness in the ECHR judgement

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■ **Abstract.** The study aimed to identify and systematise the main standards of procedural fairness developed in the case law of the European Court of Human Rights concerning the procedures for limitation of legal capacity and guardianship, with a subsequent analysis of the peculiarities of their implementation in the national legal systems of European States. The study was conducted using a comprehensive methodological approach that combined a systematic method for analysing the interrelationships between the elements of procedural justice, a comparative legal method for comparing the approaches of different European legal systems, a case law analysis method for systematising key decisions, and a structural and functional analysis for studying the functioning of guardianship models. As a result of the systematisation of case law, five fundamental standards of procedural fairness were identified: the obligation to ensure personal participation or proper representation of a person in court proceedings, the application of an individual approach to the assessment of legal capacity and ensuring the proportionality of restriction measures, guaranteeing periodic review of decisions on the restriction of legal capacity, taking into account the will and preferences of the person in decision-making, and ensuring independent legal assistance. A comparative analysis of the implementation of the standards in the three countries under study revealed significant differences: the progressive Betreuung system in Germany with support without deprivation of rights, the decision-making support system in Finland without transfer of rights and the limited compliance of Ukrainian legislation with European requirements due to the lack of mandatory personal participation of a person in court hearings and mechanisms for periodic review of decisions. The practical significance of the study is determined by the creation of a methodological framework for assessing the effectiveness of national legal systems and developing practical recommendations for legislative reforms in the field of guardianship and incapacity. The findings of the study can be used by judicial authorities, legislators and human rights organisations to improve

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procedural safeguards and transition from traditional models of full guardianship to modern decision-making support mechanisms that respect the principles of human dignity and autonomy of persons with disabilities

■ **Keywords:** legal personality; legal capacity; human rights protection; international standards; case law; disability

■ Introduction

Procedures for declaring a person incapacitated and appointing a guardian are central elements of legal systems designed to ensure the protection of persons with disabilities while respecting the principles of legal autonomy. In the context of the evolution of international human rights law, under the influence of the UN Convention on the Rights of Persons with Disabilities (CRPD¹) and the case law of the European Court of Human Rights (ECtHR), national legal systems need to adapt traditional mechanisms to modern standards of procedural fairness. The growing number of cases involving violations of the rights of persons with psychosocial and intellectual disabilities in the legal incapacity procedures demonstrates the need for a systematic analysis of the relevant legal standards. The issue of harmonisation of national procedures with European standards is of relevance, given the development of the doctrine of decision support as an alternative to traditional models of substitute decision-making. At the same time, the ECHR case law forms new guidelines for national courts to ensure procedural guarantees in capacity cases, which requires a thorough legal analysis to understand current trends in this area of law.

Scientific research on the procedural aspects of recognising incapacity and appointing guardianship has been developed within the framework of an interdisciplinary approach, covering the legal, medical and social aspects of this issue. Research in this area has focused on analysing the functioning of specialised tribunals, the theoretical basis for assessing capacity and the practical aspects of ensuring procedural fairness. The procedural aspects of mental health tribunals were the subject of a detailed study by S. Boyle & T. Walsh (2020), which analysed the balance between efficiency and procedural fairness. The study identified shortcomings in informing clients about procedures, the quality of evidence, and mechanisms for challenging medical opinions. F. Jager *et al.* (2024) extended this analysis by comparing the views of lawyers and health professionals on the functioning of mental health tribunals. The study found differences between the professional groups: lawyers criticised the tribunals' bias in favour of medical opinion, while health professionals

expressed concerns about the adversarial nature of the procedures and their impact on patients.

Ukrainian scholars have made an important contribution to the study of legal aspects of legal capacity and procedural guarantees. I.M. Popovych (2020) conducted a detailed analysis of forensic examination as a source of evidence in special proceedings, particularly in cases of declaring an individual incapacitated. The study found that an expert's opinion is significant in the process of proof in special proceedings, especially when special knowledge is required. The study emphasised the need for judicial control over the legality of the appointment and conduct of an expert examination, as well as a comprehensive assessment of the expert's opinion for compliance with the requirements of procedural design. I.A. Borovska (2020) studied the problematic issues of considering cases on declaring an individual incapacitated in the context of reforming the civil procedural legislation of Ukraine. The study revealed formal conflicts between certain provisions of the current civil procedural legislation regarding the establishment of the validity period of a decision to declare an individual incapacitated. The study substantiated the need to ensure the personal participation of the person in question in the court proceedings as a means of ensuring access to justice following European standards.

The theoretical foundations of capacity assessment have been studied through the prism of different conceptual approaches in legal science. M. Scholten (2025) systematised three main approaches to the assessment of legal capacity: status, function and performance, analysing their advantages and limitations in the context of the CRPD. The study considered the concept of decision support as a key element of the modern approach to ensuring the rights of persons with disabilities. A.R. Keene *et al.* (2023) critically analysed the challenges to the legitimacy of the concept of capacity put forward by the Committee on the Rights of Persons with Disabilities and argued for the preservation of a functional approach to assessing capacity with adequate decision support. The fundamental issues of legal capacity in the context of international human rights law were analysed by J. Craigie *et al.* (2019), who

¹ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

examined different interpretations of Article 12 of the CRPD¹ and their implications for national legal systems. The authors found that the differences in approaches stem from different understandings of the consequences of limited legal capacity, priorities of values and decision-support capabilities. The study emphasised the interconnection between resource provision, legal recognition and the actual freedoms of persons with disabilities.

The general principles of procedural justice in the European context and their practical implementation have been studied by scholars from the standpoint of comparative jurisprudence. B. Cerekja & O. Mucollari (2024) analysed the mechanisms for ensuring that trials comply with the standards of Article 6 of the European Convention on Human Rights (ECHR)². The study revealed different approaches of European countries to balancing the efficiency and fairness of judicial procedures, identifying systemic problems in the implementation of international standards at the national level. The study determined that the judicial systems of France and Poland favoured expedited review of cases, which could harm the rights of the accused, while Germany, Italy and Albania emphasised comprehensive review of cases, which guaranteed fairness but led to delays in procedures.

Modern approaches to assessing the fairness of procedures and the consideration of the human factor in decision-making systems were reviewed by C. Starke *et al.* (2022) in the context of algorithmic decision-making. Although the study highlighted technological aspects, it provided methodological insights into the perception of procedural fairness and the importance of an interdisciplinary approach to fairness assessment, which is relevant to the analysis of traditional court procedures in capacity cases. The study emphasised the need to incorporate contextual factors and diverse stakeholder perspectives when designing and implementing fair decision-making procedures. Existing studies do not fully cover the practical mechanisms for implementing ECHR standards in national procedures for recognising incapacity and do not contain a systematic analysis of the effectiveness of different models of procedural guarantees in ensuring the rights of persons with psychosocial and intellectual disabilities. The interaction between European standards of procedural justice and national legal traditions in the field of guardianship also requires further research.

The study aimed to determine the standards of procedural fairness established by the case law of the European Court of Human Rights in cases of declaring a person incapacitated and appointing a guardian. The objectives of the study were:

- to systematise the key judgments of the European Court of Human Rights in cases of recognition of incapacity to identify the basic principles of procedural justice;
- to conduct a comparative legal analysis of Ukrainian legislation on the procedures for recognising incapacity with the standards established by the case law of the European Court of Human Rights;
- to study the experience of European countries in reforming guardianship systems and develop recommendations for improving Ukrainian legislation in line with European standards of procedural fairness.

■ Materials and Methods

The conceptual framework of the study was based on the theoretical foundations of procedural justice in international human rights law, in particular the doctrinal provisions of Article 6 of the European Convention on Human Rights³ on the right to a fair trial, the principles of Article 12 of the UN Convention on the Rights of Persons with Disabilities⁴ on equal recognition before the law, as well as conceptual approaches to the evolution of the understanding of disability from a medical to a social model. The theoretical basis of the study was also the doctrinal principles of the relationship between the state duty to protect vulnerable persons and guarantee their right to autonomy and self-determination, which were formed under the influence of international legal standards and paradigmatic changes in approaches to the legal personality of persons with disabilities⁵. Of particular importance for the theoretical basis of the study was General Comment No. 1 of the UN Committee on the Rights of Persons with Disabilities, which was analysed to study current international approaches to the legal personality of persons with disabilities and their impact on procedural justice in cases of incapacity.

The methodological basis of the study was an integrated approach which combines general scientific and special legal methods of scientific knowledge. The systemic method was used to analyse the interrelationships between various elements of procedural justice and their impact on ensuring the rights of persons with disabilities, which was used to address

¹ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

² European Convention on Human Rights. (1950, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

³ *Ibidem*, 1950.

⁴ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

⁵ General Comment of Committee on the Rights of Persons with Disabilities No. 1 “Article 12: Equal Recognition Before the Law”. (2014, May). Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf>.

procedural guarantees as an integral system of inter-related components and to identify five fundamental standards of procedural justice. The comparative legal method was used to compare the approaches of different European legal systems to the regulation of the procedures for recognising incapacity when analysing the legislation of Ukraine, Germany and Finland on the implementation of the standards of the European Court of Human Rights. The selection of these countries was due to the need to present different models of legal regulation: Ukraine as an example of a post-Soviet legal system in the process of adapting to European standards, Germany as a representative of the continental European tradition with a progressive Betreuung system, and Finland as an example of the Scandinavian model with an emphasis on supportive mechanisms. The method of case law analysis was used to systematise the key judgments of the European Court of Human Rights in cases of recognition of incapacity to stand trial with a view to highlighting the basic principles of procedural justice. The structural-functional analysis was used to study the functioning of various models of guardianship and decision-making support mechanisms in European legal systems. The formal legal method was used to analyse legal acts and determine their compliance with international standards of procedural fairness when studying the provisions of the Civil and Civil Procedure Codes of Ukraine.

The research was based on the judgments of the European Court of Human Rights in the cases of *Stanev v. Bulgaria*¹, *D.D. v. Lithuania*², *Alajos Kis v. Hungary*³, *Ivanovic v. Croatia*⁴, *M.S. v. Ukraine*⁵ and *Miranda Magro v. Portugal*⁶. The selection of these cases was due to their fundamental importance for the formation of the European doctrine of procedural justice, chronological coverage of the development of case law over two decades and presentation of various aspects of violations of procedural guarantees. International legal instruments included the Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of

Biology and Medicine⁷. The national legislation was represented by the Civil Code of Ukraine⁸, the Civil Procedure Code of Ukraine⁹, as well as relevant regulations of Germany on the Betreuung system and Finland on the regulation of guardianship. The study also relied on analytical materials by Inclusion Europe on the implementation of alternative decision support mechanisms (Inclusion Europe, 2022), and documents of the Ministry of Health of Ukraine on reforming the mental health system (Ministry of Health of Ukraine, 2018). The specificity of the source base was a combination of court decisions of international and national courts, international legal acts, national legislation and analytical materials, which provided a comprehensive approach to the study of procedural justice in cases of incapacity at different levels of legal regulation.

■ Results

Conceptual foundations of procedural justice in cases of incapacity. Procedural fairness in cases of declaring a person incapacitated and appointing a guardian is one of the most complex and conceptually significant aspects of contemporary international human rights law. This legal category embodies the fundamental tension between the need to protect persons who may require additional support in decision-making and the imperative to preserve their autonomy, right to self-determination and equality before the law. The conceptual framework of procedural justice in this area was formed during the 1990s and 2020s under the influence of international legal standards, the evolution of the understanding of disability as a social construct, and paradigmatic changes in doctrinal approaches to the legal personality of persons with disabilities.

The conceptual basis for procedural fairness in cases of incapacity is Article 6 of the European Convention on Human Rights¹⁰, which establishes the fundamental right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the

¹ Judgement of the European Court of Human Rights in Case No. 36760/06 “Stanev v. Bulgaria”. (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

² Judgement of the European Court of Human Rights in Case No. 13469/06 “D.D. v. Lithuania”. (2012, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-109091>.

³ Judgement of the European Court of Human Rights in Case No. 38832/06 “Alajos Kiss v. Hungary”. (2010, May). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-98800>.

⁴ Judgement of the European Court of Human Rights in Case No. 13006/13 “Ivanović v. Croatia”. (2014, September). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-146393>.

⁵ Judgement of the European Court of Human Rights in Case No. 2091/13 “M.S. v. Ukraine”. (2017, July). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-175140>.

⁶ Judgement of the European Court of Human Rights in Case No. 30138/21 “Miranda Magro v. Portugal”. (2024, January). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-229894%22%5D%7D>.

⁷ Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of Biology and Medicine. (1997, April). Retrieved from <https://rm.coe.int/168007cf98>.

⁸ Civil Code of Ukraine. (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁹ Civil Procedural Code of Ukraine No. 1618-IV. (2004, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

¹⁰ European Convention on Human Rights. (1950, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

determination of civil rights and obligations. This principle is of particular legal significance in the context of legal incapacity cases, as court decisions in such cases may radically limit or completely deprive a person of legal personality and the ability to make legally significant decisions in all areas of life. The European Court of Human Rights has repeatedly emphasised in its established case law that the right to a fair trial is so central to a democratic society that there can be no justification for a restrictive interpretation of Article 6 § 1 of the Convention, especially given that this right is “unconditional” (Goss, 2023). A key characteristic of procedural fairness in incapacity cases is the requirement to ensure effective participation of the person in the judicial process, which is emphasised in international doctrine by the provision that access to the courts loses its meaning if the person cannot understand or participate in the court procedures (Vogiatzis, 2022). The requirements for procedural fairness cover a wide range of procedural guarantees, including the right to qualified legal assistance, the right to be heard in person or through a representative, the right to an independent medical examination, the right to appeal a court decision to a higher court, and the right to periodic review of a decision on the restriction of legal capacity.

The evolution of approaches to the recognition of incapacity demonstrates a fundamental paradigm shift from the medical to the social model of disability, which has had a fundamental impact on the rethinking of procedural justice in this area. The medical model of disability, which dominated from the nineteenth century to the last decades of the twentieth century, viewed disability as a defect within the individual, a deviation from normal traits and characteristics that required medical intervention or “correction” (University of California..., 2024). This model was based on two main assumptions that had a dangerous impact on human rights: first, that persons with disabilities need care and social welfare, and second, that impairment can preclude legal capacity (Degener, 2016). Instead, the social model of disability, which developed in the 1970s under the influence of the disability rights movement and criticism of the medical model, argues that disability is caused by the way society is organised, rather than by individual impairments (Disability Nottinghamshire, 2020). This approach has fundamentally changed the understanding of procedural justice, shifting the focus from the medical “fixing” of a person to the structural adaptation of judicial

procedures, legal norms and social institutions to their needs and capacities.

The UN Convention on the Rights of Persons with Disabilities¹, adopted by the UN General Assembly on 13 December 2006 and opened for signature on 30 March 2007, established a new legal paradigm for understanding legal personality and procedural justice in international law. Article 12 of the Convention establishes the revolutionary principle that States Parties reaffirm that persons with disabilities have the right to recognition as persons before the law everywhere and that persons with disabilities enjoy legal personality on an equal basis with others in all aspects of life. It is of fundamental importance that all measures relating to the exercise of legal personality should include appropriate and effective safeguards to prevent abuse following international human rights law and that such safeguards should ensure that measures relating to the exercise of legal personality respect the rights, will and preferences of the person, are free from conflict of interest and undue influence, are proportionate and tailored to the circumstances of the person, are applied for the shortest possible time and are

The UN Committee on the Rights of Persons with Disabilities in its General Comment No. 1 on Article 12², adopted on 11 April 2014, formulated a revolutionary approach to legal personality that fundamentally redefines traditional legal constructs. The Committee argues that Article 12 introduces a new paradigm of “universal legal personality” that cannot be restricted based on disability or mental incapacity (Series & Nilsson, 2018). In its commentary, the Committee stated that the right to equal recognition before the law applies “everywhere”, which means that there are no circumstances in which a person may be deprived of the right to recognition as a person before the law or in which this right may be restricted (United Nations in Ukraine, 2024). The Committee also emphasised that the right to equal recognition before the law implies that legal personality is a universal attribute inherent in all persons by their human nature and should be upheld for persons with disabilities on an equal basis with others (Centre for Global..., 2014). This approach requires a fundamental overhaul of traditional legal incapacity procedures and a shift from substitute decision-making to decision-support mechanisms. In its General Comment No. 1, the Committee proposes replacing the “best interests” standard with a “best interpretation” guarantee to ensure that the rights of persons with disabilities to legal personality are

¹ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

² General Comment of Committee on the Rights of Persons with Disabilities No. 1 “Article 12: Equal Recognition Before the Law”. (2014, May). Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf>.

respected and protected from abuse on an equal basis with those of others (Center for Global..., 2014).

An additional international legal instrument that has an impact on the understanding of procedural fairness in incapacity cases is the Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of Biology and Medicine (Oviedo Convention¹), signed on 4 April 1997 in Oviedo, Spain. This Convention is the only international legally binding instrument for the protection of human rights in the biomedical field. Article 5 of the Oviedo Convention establishes the general rule that interventions in the field of health care may only be carried out after the person concerned has given free and informed consent, and the person must receive appropriate information in advance about the purpose and nature of the intervention, as well as its consequences and risks. The Convention also contains special rules for persons who are unable to give free and informed consent, which directly relates to issues of procedural fairness in incapacity cases.

A comparative analysis of the approaches to procedural fairness in different European legal systems reveals significant differences in the understanding and practical application of these principles, reflecting the diversity of legal traditions on the continent. Modern national legal systems are generally based on one of the main legal traditions: civil law or common law, with each legal system shaped by its unique history and including individual variations (University of Michigan Law Library, 2024). In the Anglo-Saxon legal tradition, procedural justice develops mainly through judicial precedents, which contribute to flexible adaptation to individual case circumstances and the evolutionary development of legal standards. In common law systems, judicial decisions take precedence over other types of law, including legislation, with judges creating law with each new decision (University of Michigan..., 2024). The continental European legal tradition is characterised by a more systematic and codified approach to the regulation of incapacity procedures. In civil law systems, the primary source of law is a written code, and the written constitution is based on specific codes that establish fundamental rights and obligations (University of Michigan..., 2024). The most important are the French Civil Code of 1804² and the German Civil Code of 1900³, each of which was the result of long and careful study by appointed commissions, but they are based on different traditions and theories (Swift, 2021).

The balance between the protection of vulnerable persons and preserving autonomy is a central conceptual dilemma of procedural justice in incapacity cases that requires a delicate legal balancing act. On the one hand, states have a positive obligation to protect persons who may not have the full capacity to protect themselves from abuse, exploitation or harm. On the other hand, the CRPD serves as a major catalyst for the global disability rights movement, enabling a shift from viewing persons with disabilities as objects of charity, medical treatment and social protection to viewing them as full and equal members of society with human rights. This legal tension requires the development of balanced procedural safeguards that provide the necessary protection without sacrificing the fundamental right to self-determination and autonomy. The development of the concept of procedural fairness in incapacity cases also reflects the general evolution of international human rights law from formal to substantive and transformative equality. Transformative equality aims to change structures and systems through a variety of positive measures (Degener, 2016), which means that procedural justice cannot be limited to the formal provision of the right to participate in court proceedings, but must include active measures to ensure that a person has a real opportunity to comprehend procedures, effectively defend their rights and have access to the necessary support to exercise their legal personality.

Case law of the European Court of Human Rights in cases of recognition of incapacity. The case law of the European Court of Human Rights in cases of declaring a person incapacitated and appointing a guardian constitutes a systematic body of judgments that define mandatory standards of procedural fairness in the states parties to the Convention for the Protection of Human Rights and Fundamental Freedoms. In 2004-2024, the Court developed the doctrinal framework for the relationship between the state duty to protect vulnerable persons and the guarantee of the right to autonomy, self-determination and effective participation in judicial proceedings. Its judgments have established specific procedural requirements for national legal systems and created legal standards for the legal personality of persons with disabilities that have transformed traditional approaches to guardianship and incapacity regulation.

The European Court of Human Rights has identified three categories of violations of the Convention.

¹ Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of Biology and Medicine. (1997, April). Retrieved from <https://rm.coe.int/168007cf98>.

² Civil Code of France. (1804, March). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/1804-03-25.

³ Civil Code of Germany. (1900, January). Retrieved from <https://www.gesetze-im-internet.de/bgb/>.

Firstly, a violation of Article 6 § 1 of the Convention¹ on the right to a fair trial due to non-compliance with procedural guarantees, with the Court emphasising that the discretionary powers of national authorities regarding procedural rules for persons with mental disorders cannot violate the essence of the right to a fair trial. Secondly, a violation of Article 8 of the Convention as a result of disproportionate interference with the right to respect for private life through the complete deprivation of legal capacity, which did not comply with the principle of proportionality between the measures applied and the legitimate aim of the state (Mental Disability Advocacy Centre, 2008). Thirdly, a violation of Article 5 of the Convention on the Right to Liberty and Security of the Person due to unlawful forced hospitalisation without sufficient justification for the need to detain the person (Human Rights Law Centre, 2017).

The case of *Stanev v. Bulgaria*² (2012), considered by the Grand Chamber of the European Court of Human Rights, extended the concept of deprivation of liberty to include cases of placement of persons with psychosocial disabilities in social and medical institutions. Rusi Kosev Stanev, who was diagnosed with schizophrenia in 1975, was partially deprived of legal capacity in November 2000 on the application of stepmother and half-sister without knowledge and was then placed in 2002 in an isolated institution approximately 400 kilometres from hometown. The Grand Chamber's judgment set new legal standards for the institutionalisation of persons with disabilities. The Court found that Stanev's placement in a social and medical institution without consent for almost a decade, with the institution controlling documents and finances and requiring the director's permission to leave, constituted a deprivation of liberty that was not following national law and was unlawful under Article 5(1) of the Convention (Human Rights Law Centre, 2024). Additionally, the Court found a violation of Article 5(4) of the Convention due to the lack of access to judicial review of the detention and a violation of Article 3 of the Convention due to inhuman or degrading conditions of detention (Human Rights Law Centre, 2024). The case of *D.D. v. Lithuania*³ (2012) added to the

European jurisprudence with legal positions on procedural guarantees in cases of incapacity and involuntary institutionalisation, in particular, the right of access to court. D.D., a Lithuanian citizen suffering from schizophrenia, was legally declared incapacitated in 2000 at the request of foster father after simplified court procedures in which the citizen was not able to participate, and in 2004 was placed in a social and medical institution without consent. The European Court of Human Rights stated that D.D.'s forced placement constituted a deprivation of liberty due to the administration's full control over the person's treatment, care, accommodation and freedom of movement, while Lithuanian law did not provide for judicial review of such institutionalisation, and a person without legal capacity was deprived of the right to appeal to the court (Human Rights Monitoring Institute, 2012).

The European Court of Human Rights has developed additional standards on individual approach, proportionality of measures and consideration of the person's will in the procedures of recognition of incapacity. In the case of *Alajos Kisz v. Hungary*⁴, the Court established the principle of limited necessity, according to which guardianship orders should be as broad in scope and time as necessary to protect the interests of the person. In *Ivanović v. Croatia*⁵, the Court emphasised the requirement of strict scrutiny in cases of measures that adversely affect the individual autonomy of a person. Concerning the right to periodic review, in *M.S. v. Ukraine*⁶, the Grand Chamber found that the significance of decisions on incapacity requires that restrictions on the right of access to courts be limited and proportionate to a legitimate aim. The Court attaches particular importance to the consideration of the person's will and preferences, noting in *Stanev v. Bulgaria*⁷ that the lack of legal capacity does not mean that the person cannot understand the situation and emphasises the importance of considering the person's clearly expressed wishes to leave the institution or to regain legal capacity. Summarising the reviewed case law can be used to systematise the main standards of procedural fairness established by the European Court of Human Rights, which are presented in Table 1.

¹ European Convention on Human Rights. (1950, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

² Judgement of the European Court of Human Rights in Case No. 36760/06 "Stanev v. Bulgaria". (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

³ Judgement of the European Court of Human Rights in Case No. 13469/06 "D.D. v. Lithuania". (2012, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-109091>.

⁴ Judgement of the European Court of Human Rights in Case No. 38832/06 "Alajos Kiss v. Hungary". (2010, May). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-98800>.

⁵ Judgement of the European Court of Human Rights in Case No. 13006/13 "Ivanović v. Croatia". (2014, September). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-146393>.

⁶ Judgement of the European Court of Human Rights in Case No. 2091/13 "M.S. v. Ukraine". (2017, July). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-175140>.

⁷ Judgement of the European Court of Human Rights in Case No. 36760/06 "Stanev v. Bulgaria". (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

Table 1. Main standards procedural justice in cases of incapacity: the ECHR practice

No.	Standard of procedural fairness	Justification in the ECHR case law	Key cases
1	Individual approach and proportionality of measures	Prohibition of automatic deprivation of legal capacity based on a medical diagnosis alone	Alajos Kiss v. Hungary ¹
2	Periodic review of decisions	The court must guarantee the right to regular review of restrictions	M.S. v. Ukraine ²
3	Consideration of the person's will and preferences	The court must incorporate the wishes of the person, even if legally incapacitated	Stanev v. Bulgaria ³
4	Access to legal aid	A person has the right to a representative or defence counsel in cases of legal capacity	D.D. v. Lithuania ⁴

Source: created by the author

The system of procedural fairness standards presented in Table 1 reflects the comprehensive approach of the European Court of Human Rights to the protection of persons with disabilities, where each standard plays a specific role within a single doctrinal concept. The relationship between procedural guarantees and substantive legal principles, which ensures the continuity of protection from the moment of initiation of the procedure to the stage of enforcement of court decisions, was emphasised. A key feature of this model is the emphasis on an individual approach and constant review of restrictive measures, which helps preserve the autonomy of the individual to the maximum extent possible and prevents unjustified interference with the rights. An important element is also the inclusion of requirements to incorporate the person's will and ensure legal assistance in the general system of guarantees, which emphasises the focus on a supportive model of guardianship instead of the traditional paternalistic approach. The proposed systematisation demonstrates how different procedural elements can effectively complement each other, creating a holistic architecture of legal protection for vulnerable persons.

The Court's current case law continues to develop these standards in the direction of strengthening procedural safeguards and individual approaches. The case of *Miranda Magro v. Portugal*⁵ confirmed the principle of the link between Articles 3 and 5 of the Convention on the conditions of detention of persons with mental disorders, establishing that treatment conditions are relevant to assessing the lawfulness of detention of a person with a mental disorder. At the same time, national courts apply

European standards in cross-border proceedings, as demonstrated by the case of *Aberdeenshire County Council v. S.F.*⁶, where the English court refused to recognise a Scottish guardianship order because of a violation of the person's right to be heard, which was contrary to Article 5(1)(e) of the Convention.

The systematisation of case law identified five fundamental standards of procedural fairness established by the European Court of Human Rights. Firstly, it is mandatory to ensure personal participation or proper representation of a person in court proceedings relating to legal capacity, while the absence of a person at a hearing without objective obstacles and proper representation constitutes a violation of the right to a fair trial. Secondly, applying an individual approach to the assessment of legal capacity and ensuring the proportionality of restrictive measures, which excludes the automatic application of standard solutions solely based on a medical diagnosis. Thirdly, guarantees periodic review of decisions on the restriction of legal capacity and ensures the right of a person to appeal against such decisions, including the possibility of independent appeal to the court. Fourthly, incorporating the person's will and preferences when making decisions on limiting legal capacity and placement in institutions, even if there are certain limitations in the ability to make decisions. Fifth, ensuring independent legal assistance and preventing obstruction of access to legal representation. These standards form a comprehensive system of procedural safeguards aimed at protecting the rights and interests of persons with disabilities while preserving their autonomy and self-determination to the

¹ Judgement of the European Court of Human Rights in Case No. 38832/06 "Alajos Kiss v. Hungary". (2010, May). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-98800>.

² Judgement of the European Court of Human Rights in Case No. 2091/13 "M.S. v. Ukraine". (2017, July). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-175140>.

³ Judgement of the European Court of Human Rights in Case No. 36760/06 "Stanev v. Bulgaria". (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

⁴ Judgement of the European Court of Human Rights in Case No. 13469/06 "D.D. v. Lithuania". (2012, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-109091>.

⁵ Judgment of the European Court of Human Rights in Case No. 30138/21 "Miranda Magro v. Portugal". (2024, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-230821>.

⁶ Judgement of the Court of Protection in Case "Aberdeenshire Council v. SF & Ors (No. 2)". (2024, March). Retrieved from <https://courtprotectionhub.uk/cases/aberdeenshire-council-v-sf-ors-no-2-2024-ewcop-10>.

maximum extent possible. The practical significance of the standards formulated by the European Court of Human Rights is determined by the degree of their implementation in the national legal systems

of the States Parties to the Convention. A comparative analysis of the implementation of these standards in the legislation of Ukraine, Germany and Finland is presented in Table 2.

Table 2. Comparative characteristics of the implementation of ECHR standards in the legislation of Ukraine and selected European countries

ECHR standard	Ukraine	Germany	Finland
Personal participation of a person in court	Not mandatory (the Civil Code ¹ and the Code of Civil Procedure ² do not guarantee the presence of a person)	Participation of the person or a representative within the Betreuung is provided for	Participation of the individual is a priority; the law provides for support mechanisms
Periodic review	Not necessarily fixed, initiated only by the guardian or guardianship authority	Provided for by law every 7 years or upon application	5-year maximum set; automatic review
Consideration of the person's will	Formally not mandatory	Mandatory consideration of the person's wishes	Enshrined in law; interests and desires are considered
Provision of legal aid	Depends on the initiative of the guardian or guardianship authority	A lawyer is guaranteed for every decision	Automatic state legal aid
Form of guardianship (support/restrictions)	Complete deprivation of legal capacity with limited alternatives	Betreuung model support without deprivation of rights	Decision support system without transfer of rights

Source: compiled by the author based on Y. Melamed *et al.* (2007), K. Karjalainen (2022), K. Näkki *et al.* (2024)

The comparative characteristics presented in Table 2 demonstrate different models of implementation of European standards of procedural fairness, reflecting the specifics of national legal traditions and the level of integration of international obligations into domestic legislation. The analysis reveals a graduation from minimal compliance with conventional requirements to progressive approaches that exceed the basic standards of the European Court of Human Rights. The differentiation between the formal enshrining of procedural guarantees and their practical implementation is particularly revealing, highlighting the importance of not only regulatory frameworks but also the institutional capacity of legal systems to ensure effective protection of the rights of persons with disabilities. The variety of approaches to organising periodic reviews and considering the will of the person reflects different concepts of the balance between protecting vulnerable persons and preserving their autonomy. The systematisation also demonstrates the evolution from the traditional model of full guardianship to modern forms of supported decision-making, which correlates with current international standards on the rights of persons with disabilities and the requirements of the UN Convention on the Rights of Persons with Disabilities³.

Implementation of European standards of procedural fairness in national legislation. The implementation of European standards of procedural

fairness in cases of declaring a person incapacitated and appointing a guardian into national legislation is a complex multidimensional process that requires comprehensive reform of legal, institutional and procedural mechanisms. The practice of European countries demonstrates a variety of approaches to this problem, from gradual modifications of existing guardianship systems to a radical transition to decision-support models. At the same time, the numerous challenges faced by national legal systems in trying to bring the norms in line with the standards set by the European Court of Human Rights and the UN Convention on the Rights of Persons with Disabilities demonstrate the need for a balanced approach that incorporates both international obligations and the specifics of national legal traditions and socio-economic conditions.

The state of implementation of European standards of procedural fairness in Ukrainian legislation is characterised by certain positive developments but retains significant gaps that do not fully meet the requirements established by the case law of the European Court of Human Rights. The Civil Code of Ukraine⁴ in Articles 36-42 establish procedures for restricting civil capacity and declaring a person incapacitated, with Article 36 providing that a court may restrict the civil capacity of an individual in case of abuse of alcohol, drugs, toxic substances, gambling, etc. and thus endangers personal financial situation

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

² Code of Civil Procedure of Ukraine. (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

³ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

⁴ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

or of a family, as well as other legally obliged persons. The procedure for restricting a person's civil capacity is established by the Civil Procedure Code of Ukraine¹, and a person's civil capacity is restricted from the moment a court decision to that effect enters into force. In addition, Article 39 of the Civil Code of Ukraine provides that an individual may be declared incapacitated by a court if, as a result of a chronic, persistent mental disorder, a person is unable to understand the significance of actions and/or to control them. At the same time, Article 42 establishes the possibility of restoring the civil capacity of a person who has been declared incapacitated at the request of a guardian or guardianship authority, if it is established that, as a result of recovery or significant improvement of mental state, the incapacitated regained the ability to understand the significance of personal actions and to control them.

The Civil Procedure Code of Ukraine² contains detailed procedural rules on the participation of persons with limited legal capacity in court proceedings, in particular, Article 43 provides that if a party or third party declared legally incapacitated or with limited civil capacity has no legal representative, the court, upon the proposal of the guardianship and trusteeship authority, shall appoint a guardian or trustee and involve them in the case as legal representatives. An important provision is Article 39, which establishes that the rights, freedoms and interests of minors under the age of fourteen, as well as incapacitated persons, are protected in court by their parents, adoptive parents, guardians or other persons specified in the law. However, an analysis of these provisions in the light of the standards established by the case law of the European Court of Human Rights reveals several problematic aspects. Firstly, the Ukrainian legislator does not provide for mandatory personal participation of a person in court proceedings to restrict legal capacity. Secondly, there are no clear guarantees of periodic review of decisions on the restriction of legal capacity, which does not meet the standards set out in *Stanev v. Bulgaria*³. Thirdly, the legislation does not contain sufficient procedural guarantees for considering the will and preferences of the person when making decisions on the restriction of legal capacity.

At the same time, Ukraine has taken some steps towards reforming its mental health care system, which is directly related to procedural fairness in incapacity cases. On 10 June 2018, Ukraine adopted the Law of Ukraine No. 2205-VIII "On Amendments to Certain Legislative Acts of Ukraine on the Provision

of Mental Health Care"⁴, which aims to bring the mental health care system in line with international standards (Ministry of Health of Ukraine, 2018). The Ministry of Health of Ukraine has developed several strategic steps to improve the quality of mental health care and services, including the introduction of comprehensive and evidence-based treatment options, prevention measures, early detection, timely referral to a psychiatrist, and training for medical and multidisciplinary teams (Ministry of Health of Ukraine, 2018). On 27 December 2017, Ukraine adopted a concept for the development of mental health care for the period up to 2030, which envisages a transition from an institutional to a community model of mental health services (The Lancet Psychiatry, 2020). However, according to experts of the World Psychiatric Association, the second phase of the healthcare reform was not properly prepared and implemented, which led to a 50.25% reduction in funding for psychiatric hospitals between April and December 2020 compared to the same period in 2019.

The positive experience of European states in reforming guardianship and incapacity systems demonstrates various models of implementation of international standards that can serve as a guide for Ukraine and other states in the process of legislative reforms. Germany carried out a significant reform of its guardianship system in 1990, replacing the traditional institutions of guardianship and custody with a single legal institution of "care and assistance" (*Betreuung*), which provides a flexible combination of support and intervention. This system does not involve depriving the person of their legal status or any other legal rights, and the carer can be a family member, an agent of an approved carers' association or an agent of a public authority responsible for coordinating care (Melamed *et al.*, 2007). Austria has also implemented a progressive adult protection system that emphasises the principle of subsidiarity and the use of the least restrictive means to resolve an individual's affairs. The Austrian Federal Ministry for Constitutional Affairs has developed new adult protection legislation that aims to balance the right to personal autonomy and protection (Karjalainen, 2022). Sweden, Denmark and Finland have also adopted similar legislation to Finland's to protect individuals who are unable to manage their affairs due to ill health or similar reasons, with the principle of subsidiarity and the principle of using the least restrictive means to manage an individual's affairs being emphasised in government proposals (Näkki *et al.*, 2024).

¹ Code of Civil Procedure of Ukraine. (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

² *Ibidem*, 2003.

³ Judgement of the European Court of Human Rights in Case No. 36760/06 "Stanev v. Bulgaria". (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

⁴ Law of Ukraine No. 2205-VIII "On Amendments to Certain Legislative Acts of Ukraine on the Provision of Mental Health Care". (2017, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/2205-19#Text>.

The challenges of implementing European standards in national legal systems are related to a variety of factors that require a comprehensive approach to address them. First, economic and financial challenges pose a significant barrier, as people often do not have the right to open a bank account and, in some cases, to manage personal finance (Inclusion Europe, 2022). Second, legal frameworks in many countries still include guardianship as part of national law, as these countries have not implemented the transition from guardianship to decision-making assistance as envisaged by the UN Convention on the Rights of Persons with Disabilities. Thirdly, there are serious problems with understanding and awareness, including a lack of knowledge among professionals, policymakers and families about the difference between support persons and carers, and a better understanding of their respective roles. Inclusion Europe has identified several areas where progress needs to be made to support the implementation of modern legal capacity laws: more financial and human resources to develop effective and accessible community-based decision support services, better support networks for people with intellectual disabilities, and better involvement of self-advocates and organisations of people with intellectual disabilities in policy and decision-making.

Alternative decision-making arrangements as a replacement for traditional guardianship represent an innovative approach that is increasingly recognised in European legal systems and international practice. Supported decision-making means that there is no transfer of rights, only support is provided, and the person remains in control of the life, while full guardianship regimes cease to exist and persons with disabilities enjoy all their rights). Key elements of a decision-making support system include safeguards in measures relating to the exercise of legal capacity and an understanding of how the denial of legal capacity affects the lives of people with intellectual disabilities (Inclusion Europe, 2022). Different opinions exist among legal and disability experts on how far-reaching the requirement to replace intrusive measures with less drastic measures is, as illustrated by the debate on the content of Article 12(3)¹ among stakeholders and public authorities (Karjalainen, 2024). Disability rights advocates have strongly argued that Article 12 should be interpreted to completely prevent traditional guardianship regimes and especially measures that result in any deprivation of legal capacity, while legal experts and state actors have taken a different position, noting that it would be virtually impossible for all those covered by the Convention to benefit from a system in which only decision support is possible (Karjalainen, 2024).

The prospects for reforming Ukrainian legislation in incapacity and guardianship should be based on a comprehensive approach that considers both international standards and national peculiarities of the legal system and socio-economic conditions. Firstly, it is necessary to amend the Civil and Civil Procedure Codes of Ukraine to ensure mandatory personal participation of a person in court proceedings to restrict legal capacity or to ensure proper representation in cases where personal participation is impossible for objective reasons. These changes should include clear procedural guarantees for notifying a person of a court hearing, providing an opportunity to be heard and ensuring qualified legal assistance. Secondly, it is necessary to introduce mechanisms for mandatory periodic review of decisions on the restriction of legal capacity with the definition of specific terms for such review and the right of a person to initiate the procedure for restoring legal capacity. Thirdly, it is advisable to develop and implement alternative mechanisms of decision-making support that would avoid complete deprivation of legal capacity in cases where a person needs only partial support in certain areas of life. Fourth, there is a need to train specialised legal and medical personnel who have up-to-date knowledge of the rights of persons with disabilities and procedural guarantees in cases of incapacity.

At the same time, an important aspect of the reform is to align changes in incapacity with the broader reform of the mental health system that began in Ukraine in 2017-2018. According to the Ministry of Health of Ukraine, the mental health system in Ukraine inherited the Soviet model, which was characterised by a highly concentrated psychiatric system with very limited community mental health services, as well as a strong stigma attached to mental illness (Bandura & Raynai, 2023). Before the full-scale war, approximately 30% of Ukrainians suffered from mental health disorders in their lifetime, and in 2019, the prevalence of depressive disorders in Ukraine was higher than the average for the European Union – 5.2% vs. 4.6%, respectively (Seleznova *et al.*, 2023). The reform of the mental health system envisages a shift from inpatient mental health care to outpatient services and psychosocial support, with outpatient services accounting for only 11% of total mental health funding, while psychiatric institutions receive the remaining 89% (Bandura & Raynai, 2023). This reform could create favourable conditions for the introduction of less restrictive alternatives to full deprivation of legal capacity and the development of community-based support services for people with mental disorders.

Thus, the implementation of European standards of procedural fairness in cases of declaring a person

¹ European Convention on Human Rights. (1950, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

incapacitated and appointing a guardian in national legislation requires a comprehensive approach that combines legislative changes, institutional reforms and changing public awareness of the rights of persons with disabilities. The positive experience of European countries demonstrates that it is possible to successfully transition from traditional guardianship models to more flexible decision-making support systems, but this process requires significant resources, political will and a long time. For Ukraine, it is particularly important to align reforms in incapacity with broader health and justice system reforms, as well as to account for the specific challenges posed by martial law and its consequences for the mental health of the population. The successful implementation of European standards can not only ensure better protection of the rights of persons with disabilities but also contribute to the overall improvement of the quality of justice and strengthening of the rule of law in the country.

■ Discussion

The results of the study demonstrate the complex dynamics of the development of procedural fairness standards in cases of declaring a person incapacitated and appointing a guardian in the European legal space. The systematisation of the five fundamental standards established by the case law of the European Court of Human Rights reflects a fundamental paradigm shift from the traditional paternalistic approach to the modern concept of supported decision-making. These results are of particular importance in the context of the global transformation of the understanding of the legal personality of persons with disabilities and require careful analysis in the light of modern scientific research. The identified evolution from a medical to a social model of disability is confirmed by G.D. Martino (2019), who emphasises that the development of medical, social and economic sciences has dramatically changed the relationship between society and persons with disabilities, transforming them from objects of social protection to active participants in public life. This approach is consistent with the findings regarding the need to consider the will and preferences of the individual when making decisions about limiting legal capacity. G.D. Martino (2019) particularly emphasises that self-determination is a fundamental principle, and that “substitution” in personal choices should be considered as an exceptional measure and an *extrema ratio*. This conclusion confirms the standard established in the study regarding the consideration of the person’s will as an indispensable element of procedural justice.

The analysis of legal mechanisms for decision-making support finds theoretical justification in the work of J. Bodio (2021), who examines the legal status of guardians in Polish law and distinguishes two different models of guardianship. The study

demonstrated that a guardian for a partially incapacitated person has the status of a legal representative with powers of representation and property management, while a guardian for a person with a disability without full incapacity provides mainly actual assistance. This differentiation confirms the principle of proportionality of measures and individual approach to each case established in the study, which is in line with the standards of the European Court of Human Rights. At the same time, the results of the study on the importance of periodic review of decisions are empirically confirmed by A. Dombrowska *et al.* (2022), who analyse the legal aspects of incapacity in patients with dementia in Ukraine. The study emphasised that more than a decade after the entry into force of the Convention on the Rights of Persons with Disabilities, the problem of promoting and protecting the rights of this socially vulnerable group remains relevant. The conclusions on the need to introduce decision support systems for persons with disabilities are fully consistent with the standard of periodic review established in the study and confirm the importance of developing alternative mechanisms to the complete deprivation of legal capacity.

The identified problems with the implementation of European standards in national legal systems were confirmed by O. Kaluzhna & M. Shevchuk (2022) in an analysis of the unconditional grounds for recusal of judges in criminal proceedings in Ukraine following the standards of the European Court of Human Rights. The study emphasised that the correct resolution of applications for judicial recusal is important for further criminal proceedings, as a miscarriage of justice may lead to a violation of a person’s right to a “legitimate tribunal” or the right to defence. The conclusions on the need to harmonise national legislation with the standards of the European Court confirm the problems of adapting international standards to national legal systems identified in the study. The analysis of the role of judicial independence in ensuring procedural fairness finds theoretical justification in the work of M. Leloup (2021), who explores the need for the European Court of Human Rights to recognise the subjective right of national judges to independence. The author argues that the absence of such a right in the Court’s case law forces national judges to formulate their complaints in terms of other substantive rights of the Convention, often through rather complex arguments. This conclusion confirms the importance of judicial independence and impartiality as a fundamental element of procedural justice in incapacity cases, as established in the study.

The problem of using capacity criteria for interventions without the consent of persons with mental disorders is thoroughly analysed by J. Stavert (2025), who examines the Scottish experience of revising mental health legislation. The study emphasised that

the use of decision-making capacity as a determining factor for intervention has been criticised from a human rights perspective, especially since the adoption of the Convention on the Rights of Persons with Disabilities¹. The conclusions on the need to develop an autonomous decision-making test as an alternative to traditional criteria of capacity confirm the trends identified in the study towards less discriminatory and more supportive intervention mechanisms. The complexities of applying the provisions of the CRPD in the case law of the European Court of Human Rights are analysed in detail in J. Fiala-Butora (2024), who examines how the European Court has applied the Convention in the field of mental health legislation. The study noted that, despite its initial openness to the application of the Convention, the Court has subsequently distanced itself from the positions of the UN Committee on the Rights of Persons with Disabilities on involuntary hospitalisation and treatment. These findings explain the difficulty of harmonising different international standards identified in the study and confirm the need for further development of consensus between different international institutions.

The analysis of the political rights of persons with disabilities, in particular the right to vote, is explored in detail by S. Jovičić (2021), who examines the conflicting interpretations between the systems of the CRPD and the European Convention on Human Rights. The study emphasised that the UN Committee on the Rights of Persons with Disabilities has clearly stated that a person's decision-making capacity cannot justify any exclusion of persons with disabilities from the exercise of their political rights. These findings confirm the principle established in the study that no automatic deprivation of rights should be based solely on a medical diagnosis. The importance of cross-border protection of adults in the context of globalisation is explored in S. Shakargy (2023), who analyses the challenges faced by existing protection systems in the context of the increasing mobility of persons with disabilities. The study emphasised that national legislation is slow to respond to these challenges, and existing solutions are often insufficient. The conclusions on the need to accede to the 2000 Hague Convention on the Protection of Adults confirm the need for harmonisation of national approaches to procedural justice in incapacity cases, as identified in the study.

An empirical study of the factors influencing the appointment of guardianship for people with dementia is presented by K. Näkki *et al.* (2024), who conducted interviews with healthcare professionals and legal experts in Finland. The study determined

significant differences between professional groups in determining the need for guardianship, including that some doctors may not be aware of the legal requirements for guardianship or may not incorporate them in the assessments. These findings confirm the problem of insufficient awareness of professional participants in the procedures and the need for special training. The practical aspects of reforming the Italian legal guardianship system are analysed by R. Ciliberti (2024), who examines the decisions of the European Court of Human Rights on the abuse of the legal guardianship institution in Italy. The study emphasised that legal guardianship, like the entire Italian judicial system, suffers from a chronic lack of human and material resources, despite the concrete efforts of numerous guardianship judges and appointed support administrators. Its recommendations to abolish incapacitation and prohibition as more restrictive forms of guardianship confirm the areas of reform identified in the study for national systems.

The results obtained demonstrate that European standards of procedural fairness in incapacity cases are in a state of dynamic evolution, reflecting the general trends in the development of international human rights law. The identified gradation from minimal compliance with the conventional requirements to progressive approaches that exceed the basic standards is confirmed by the studies of various authors and indicates the need for further harmonisation of national approaches. At the same time, implementation challenges related to economic factors, lack of professional awareness and institutional constraints remain relevant for most European countries. An important conclusion is the confirmation that the transition from traditional models of full guardianship to modern decision-making support systems requires not only legislative changes but also a fundamental rethinking of the role of the state in relations with persons with disabilities. The analysis of studies by various authors shows that successful implementation of European standards requires a comprehensive approach that combines legal reforms with training of professional staff, development of public support services and change of public consciousness.

■ Conclusions

The study aimed to establish and analyse the standards of procedural fairness in cases of declaring a person incapable and appointing a guardian, as formulated in the case law of the European Court of Human Rights, and to study the peculiarities of their implementation in the national legal systems of European countries. This goal was fully achieved through the application of a comprehensive methodological

¹ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

approach that combined theoretical analysis of the conceptual framework with empirical study of case law and comparative research of national legal systems.

The study provided a comprehensive analysis of the conceptual foundations of procedural justice in cases of incapacity, including the evolution from a medical to a social model of disability and the impact of the UN Convention on the Rights of Persons with Disabilities on the rethinking of traditional legal constructs. It was systematised the key judgments of the European Court of Human Rights in *Stanev v. Bulgaria, D.D. v. Lithuania* and other cases, which identified five fundamental standards of procedural justice: personal participation or proper representation, individual approach and proportionality of measures, periodic review of decisions, consideration of the person's will and preferences, and ensuring access to legal aid.

A comparative analysis of national legal systems has revealed three fundamentally different models of implementation of European standards. Germany represents the most developed model through the *Betreuung* system, which provides individual support to individuals without depriving them of legal capacity and establishes automatic review of decisions every seven years. Finland demonstrates the Scandinavian model with an emphasis on decision support systems and a five-year maximum period of restrictions. Ukraine is characterised by limited compliance with European standards due to the preservation of the traditional post-Soviet model of full deprivation of legal capacity and the absence of mechanisms for periodic review of decisions. These differences are due to historical legal traditions, the level of European integration and the political will to reform.

The impact of these differences is manifested in radically different levels of protection of the rights of persons with disabilities. In Germany and Finland,

people with psychosocial and intellectual disabilities retain maximum autonomy, while in Ukraine, a paternalistic approach with minimal procedural guarantees prevails. The study determined that the main challenges to the implementation of European standards are economic constraints on the creation of support services, insufficient training of professional staff and institutional failure to ensure effective oversight of compliance with standards.

For Ukraine, the priority areas of reform are to introduce comprehensive amendments to the Civil and Civil Procedure Codes to ensure mandatory personal participation in court proceedings, introduce mechanisms for periodic review of decisions and develop alternative forms of decision-making support instead of complete deprivation of legal capacity. These legislative changes should be accompanied by the training of specialised personnel and the creation of a system of public support services as part of the mental health care reform. Promising areas for further research include analysing the impact of emergency circumstances on the realisation of the rights of persons with disabilities, studying the long-term effectiveness of alternative support mechanisms, and developing methodological recommendations for adapting international standards to the specifics of transitional legal systems.

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Визнання особи недієздатною та призначення опікуна: стандарти процедурної справедливості в рішенні ЄСПЛ

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■ **Анотація.** Метою дослідження були встановлення та систематизація основних стандартів процедурної справедливості, розроблені в практиці Європейського суду з прав людини стосовно процедур обмеження дієздатності й опікунства, з подальшим аналізом особливостей їх упровадження в національні правові системи європейських держав. Дослідження здійснено із застосуванням комплексного методологічного підходу, який поєднав системний метод для аналізу взаємозв'язків між елементами процедурної справедливості, порівняльно-правовий метод для зіставлення підходів різних європейських правових систем, метод аналізу судової практики для систематизації ключових рішень і структурно-функціональний аналіз для дослідження функціонування моделей опікунства. За результатами систематизації судової практики виокремлено п'ять фундаментальних стандартів процедурної справедливості: обов'язковість забезпечення особистої участі або належного представництва особи в судових процедурах, застосування індивідуального підходу до оцінювання дієздатності та забезпечення пропорційності заходів обмеження, гарантування періодичного перегляду рішень про обмеження дієздатності, урахування волі та преференцій особи під час прийняття рішень, забезпечення незалежної правової допомоги. Порівняльний аналіз імплементації стандартів у трьох досліджуваних країнах виявив істотні відмінності: прогресивну систему *Betreuung* в Німеччині з підтримкою без позбавлення прав, систему підтримки в прийнятті рішень у Фінляндії без передачі прав й обмежену відповідність українського законодавства європейським вимогам через відсутність обов'язкової особистої участі особи в судових засіданнях і механізмів періодичного перегляду рішень. Практична значущість дослідження полягає у створенні методологічної основи для оцінювання ефективності національних правових систем і розробленні практичних рекомендацій для законодавчих реформ у сфері опікунства й недієздатності. Результати дослідження можуть використовувати судові органи, законодавці та правозахисні організації для вдосконалення процедурних гарантій та переходу від традиційних моделей повного опікунства до сучасних механізмів підтримки в прийнятті рішень, що відповідає принципам поваги до людської гідності й автономії осіб з інвалідністю

■ **Ключові слова:** правосуб'єктність; дієздатність; захист прав людини; міжнародні стандарти; судова практика; інвалідність