

## Research Article

# LEGAL CAPACITY AND ELECTORAL RIGHTS IN LITHUANIA: THE ISSUE OF COMPATIBILITY BETWEEN THE CONSTITUTION AND THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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## ABSTRACT

**Background.** For decades, persons with disabilities in Lithuania, as well as in other CEE countries, faced significant barriers to exercising their political rights, including voting and standing for election, due to restrictive legal provisions and social attitudes. The adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2006 marked a paradigm shift from the medical and charity models of disability towards a human rights-based approach. Article 29 of the CRPD obliges State Parties to ensure the full political participation of persons with disabilities. However, the implementation of these provisions in Lithuania has been challenged by constitutional restrictions that exclude persons declared legally incapacitated by a court from participating in elections. This has created tensions between international human rights obligations and national constitutional provisions.

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**Methods.** This study employs a multi-method legal research approach to examine the compatibility of the Lithuanian Constitution with Article 29 of the CRPD in the context of electoral rights. Document content analysis was conducted on relevant Lithuanian legal provisions, Constitutional Court rulings, and international human rights instruments. A comparative analysis was conducted to assess reforms in EU Member States aimed at removing voting restrictions based on legal incapacity. Historical and teleological methods were used to trace the evolution of legal incapacity and uncover the intended meaning of constitutional provisions. Systematic and logical analysis supported the evaluation of potential constitutional amendments required for compliance with the CRPD.

**Results and conclusion.** The analysis revealed that while significant reforms were introduced in Lithuania in 2016 to replace full legal incapacity with partial incapacity in specific areas, the electoral rights of persons with disabilities may still be restricted by a court decision. Draft laws proposed in 2024 sought to abolish the institution of legal incapacity entirely and to implement Article 29 of the CRPD. However, these reforms were suspended following concerns about their compatibility with the Lithuanian Constitution, which explicitly prohibits persons declared legally incapacitated from exercising electoral rights. Comparative analysis showed that many EU Member States have successfully reformed their legal frameworks to align with the CRPD, including constitutional amendments in Luxembourg. The study demonstrates that the full implementation of Article 29 of the CRPD in Lithuania is obstructed by constitutional provisions that explicitly restrict electoral rights for persons declared legally incapacitated. While legislative reforms alone are insufficient to resolve this issue, constitutional amendments would be required to ensure compliance with international human rights standards. Given prevailing societal attitudes towards persons with mental and intellectual disabilities, such amendments are likely to encounter political and social resistance. Nevertheless, aligning national law with the CRPD remains essential to promote inclusive democracy and uphold the principle of equality enshrined in both international and national legal systems.

## 1 INTRODUCTION

For a long time, active political participation was inaccessible to persons with disabilities due to exceptional legal provisions or inaccessible procedures and infrastructure. As a result, persons with disabilities were unable to participate in political life. To address this problem, Article 29 of the United Nations Convention on the Rights of Persons with Disabilities<sup>1</sup> (hereinafter – the Convention or CRPD) provides for important political rights for persons with disabilities. These include not only the right to vote, but also the right to be elected to political office.

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1 UNGA Res 61/106 'Convention on the Rights of Persons with Disabilities' (13 December 2006) <<https://docs.un.org/A/Res/61/106>> accessed 8 July 2025.

Scholars emphasise that Article 29 of the CRPD is one of the most prominent examples of a provision granting a person the right to participate in decision-making when it concerns his or her interests.<sup>2</sup> It is also noted that, so far, the political rights of persons with disabilities have received little attention, with discussions mostly centred on the legitimacy and extent of exceptions. However, neither lawmakers nor courts have shown interest in the positive dimension of these developments—namely, how to ensure that persons with disabilities can effectively exercise their electoral rights.<sup>3</sup>

Nevertheless, emerging practices around the world demonstrate that persons with disabilities, including those with mental disabilities, can be successfully included in all stages of the electoral process.<sup>4</sup>

The Committee on the Rights of Persons with Disabilities (hereinafter – the CRPD Committee), a body of independent experts responsible for overseeing the implementation of the Convention by the States parties, has noted that the rights enshrined in Article 29 of the Convention should not be restricted on the basis of legal capacity. Despite the aforementioned interpretation by the CRPD Committee, the concept of legal capacity formulated in Roman law remains in one form or another in the legislation of many European countries. It is understandable why many countries find it difficult to abolish it, as it is deeply rooted in the legal thinking of legal professionals.<sup>5</sup>

Nevertheless, taking into account the aforementioned provisions of the Convention and the explanations of the CRPD Committee, European countries are gradually abolishing restrictions in the field of electoral rights based on declared incapacity.<sup>6</sup> In Lithuania, significant reforms in the area of legal incapacity were implemented in 2016 with the entry into force of amendments to the Civil Code and other laws, according to which a person may be declared legally incapacitated by a court only in certain areas. With regard to electoral rights, this right may also be restricted by a court decision.

To implement the requirements of the CRPD, in 2024, the Lithuanian Ministry of Justice attempted to take further steps in the area of legal protection for persons with mental or intellectual disabilities by preparing draft laws aimed at completely abolishing both the institutions of incapacity and limited capacity.<sup>7</sup> Among other things, these projects sought

2 Rachele Cera, 'Article 29 [Participation in Political and Public Life]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano, *The United Nations Convention on the Rights of Persons with Disabilities* (Springer, Cham 2017) 525. doi:10.1007/978-3-319-43790-3\_33

3 Janet E Lord, Michael Ashley Stein and János Fiala-Butora, 'Facilitating an Equal Right to Vote for Persons with Disabilities' (2014) 6(1) *Journal of Human Rights Practice* 115. doi:10.1093/jhuman/hut034.

4 *ibid* 116.

5 Cera (n 2).

6 For more on this in the third part of this article.

7 For more on this in the second part of this article.

to implement Article 29 of the Convention, under which the States Parties commit to guaranteeing the participation of persons with disabilities in political life, including their right and opportunity to vote and stand for election. However, this reform was halted in Lithuania due to questions raised about the compliance of the proposed legal regulation with the Lithuanian Constitution.<sup>8</sup>

Therefore, this article aims to analyse the compatibility between the Lithuanian Constitution and the UN CRPD in the field of electoral rights and to propose possible solutions. To achieve this, the following tasks are outlined and implemented:

- 1) To reveal the historical development of the concept of legal incapacity and its conceptual changes in recent decades;
- 2) To analyse the international and comparative context of EU countries regarding restrictions in the field of electoral rights based on established legal incapacity;
- 3) To discuss the provisions of the Lithuanian Constitution and the official constitutional doctrine of the Constitutional Court that are relevant to the issue under consideration, as well as doubts about the compatibility of these provisions with Article 29 of the Convention.

There are academic works by foreign authors devoted to reforms of the concept of legal incapacity aimed at implementing the provisions of the CRPD,<sup>9</sup> but only a few address the challenges posed by Article 29 of the Convention.<sup>10</sup> There are also a few academic works devoted to legal incapacity in the context of the implementation of the CRPD in Lithuania.<sup>11</sup> The issue of the compatibility of the Lithuanian Constitution and the UN CRPD in the field of electoral rights is planned to be addressed in the doctoral dissertation currently being prepared by Kornelija Krutulytė, a doctoral student at the Faculty of Law of Vilnius

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8 For more on this in the fourth part of the article.

9 Antonio Martinez-Pujalte, 'Legal Capacity and Supported Decision-Making: Lessons from Some Recent Legal Reforms' (2019) 8(1) *Laws* 4. doi:10.3390/laws8010004; Marie Fallon-Kund and Jerome Bickenbach, 'Strengthening the Voice of Persons with Mental Health Problems in Legal Capacity Proceedings' (2016) 5(3) *Laws* 29. doi:10.3390/laws5030029; Robert D Dinerstein, 'Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making' (2012) 19(2) *Human Rights Brief* 8.

10 Cera (n 2); Lord, Stein and Fiala-Butora (n 3); Sanja Jovičić, 'ECHR v UNCRPD: Ending Restrictions on Voting Rights of Persons with Disabilities' (2021) 22 *ERA Forum* 699. doi:10.1007/s12027-021-00692-4.

11 Dovilė Juodkaitė, 'Teisinio veiksnio reforma Lietuvoje: nuo sovietinio konteksto iki šiuolaikinių žmogaus teisių standartų' (2015) 16(2) *Socialinis Darbas: Patirtis ir Metodai* 25. doi:10.7220/2029-5820.16.2.2; Dovilė Pūraitė-Andrikienė, 'Kai kurie Lietuvos teisės aktuose įtvirtinto neveiksnio instituto probleminiai aspektai' (2012) 3(77) *Teisės Problemos* 72; Kornelija Krutulytė and Rasa Genienė, 'Pilnamečio veiksnio asmens rūpyba Lietuvoje: ar nacionalinė teisė atitinka tarptautinius Lietuvos įsipareigojimus?' (2025) 135 *Teisė* 71. doi:10.15388/Teise.2025.135.4.

University, who has also written on this topic in the popular press.<sup>12</sup> Nevertheless, this article is the first academic paper to examine, in a comparative context with other European countries, the issues related to ensuring the electoral rights of persons with disabilities in Lithuania. The issues analysed in this article are particularly important in both the international and Lithuanian national contexts.

This article employs a multi-method legal research approach to examine the compatibility of the Lithuanian Constitution with Article 29 of the CRPD in the context of electoral rights. Document content analysis was conducted on relevant Lithuanian legal provisions, Constitutional Court rulings, and international human rights instruments. A comparative analysis was conducted to assess reforms in EU Member States aimed at removing voting restrictions based on legal incapacity. Historical and teleological methods were used to trace the evolution of legal incapacity and uncover the intended meaning of constitutional provisions. Systematic and logical analysis supported the evaluation of potential constitutional amendments required for compliance with the CRPD.

## 2 HISTORICAL DEVELOPMENT OF LEGAL INCAPACITY AND ITS CONCEPTUAL CHANGES IN RECENT DECADES

The concept of incapacity has a long history. Ancient Jewish, Christian, and Arab laws prohibited minors, persons with mental disability, and the insane from entering into legal transactions. Even in ancient Athens, the court appointed guardians to protect the property interests of people with severe mental illnesses, thereby recognising their incapacity.<sup>13</sup> In Rome, from the 5th century BC, according to the Law of the Twelve Tables—the legal code of the time—guardians were appointed for persons with mental disabilities after their condition was assessed, and they managed their property.<sup>14</sup>

In Lithuania, the first Lithuanian Statute (1529) declared that a will is valid only if it is made with “good memory and sound mind.” The fifth chapter, On Guardians, which specifies who has and who does not have the right to make a will for their real estate, states that “... the insane, heretics, slaves, and those who are losing their minds” do not have such a right.

12 Kornelija Krutulytė, 'Jungtinių Tautų asmenų su negalia teisių konvencijos atitiktis Lietuvos Respublikos Konstitucijai ir Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencijai dilema' (*TeisePro*, 26 September 2025) <<https://www.teise.pro/index.php/2025/09/26/k-krutulyte-jungtiniu-tautu-asmenu-su-negalia-teisiu-konvencijos-atitiktis-lietuvos-respublikos-konstitucijai-ir-europos-zmogaus-teisiu-ir-pagrindiniu-laisviu-apsaugos-konvencijai-dilema/>> accessed 30 September 2025.

The author of the article would like to thank Kornelija Krutulytė and Dovilė Juodkaitė (a member of the European Economic and Social Committee) for the discussions on this topical issue, which helped to develop the statements presented in the article.

13 Liaudginas Erdvilas Radavičius, *Teisės psichiatrija: istorija ir dabartis* (Mykolo Romerio universiteto Leidybos centras 2004) 64.

14 *ibid* 118.

Already in modern times, in the United States in 1872 the Supreme Court ruled that the fundamental idea of a contract requires the participation and agreement of two rational parties, and that a mad person (still referred to by the Latin term *non compos mentis*) does not have what is legally considered sound mind, and therefore, in principle, cannot enter into a valid transaction or contract.<sup>15</sup>

In interwar Lithuania, it was declared that “a mentally ill person who, due to their illness, is unable to correctly understand the meaning and consequences of their actions, must be recognised as incapable of performing legal acts and not responsible for their behaviour”. In such a case, “guardianship should be imposed immediately”. Under the laws of that time, any civil act was deemed invalid (“false”) if witness testimony or expert examination established that the person performing the act was suffering from a mental illness at the time.<sup>16</sup>

During the Soviet era, the legal concept of incapacity did not function as a protective mechanism for the rights of persons with disability, as it was often used as a means of silencing opponents of the regime.<sup>17</sup> According to the model of the time, the status of incapacity essentially meant the social and legal death of a person, and the process of recognition of incapacity did not even comply with the most basic provisions for the implementation of human rights.<sup>18</sup>

Thus, although the concepts of incapacity and guardianship were created as “protective” mechanisms to defend the rights of individuals, historical experience (especially during the Soviet era) has shown that they can be transformed into instruments of oppression and often result in severe human rights violations affecting thousands of people.<sup>19</sup>

Therefore, in recent decades, fundamental reforms have been underway in European countries to restructure this mechanism. In many European countries, the rules governing the legal incapacity system have recently been changed to strengthen the legal protection of persons with intellectual or mental disabilities, or to abandon this system altogether, adopting alternative measures to protect the rights and interests of persons with mental disabilities.

It should be noted that before these reforms, the laws regulating the status of incapacitated persons in most countries (especially in Eastern and Central Europe) had remained unchanged for decades. This process was influenced by the fact that it took several decades after the adoption of the first human rights documents for the international community to recognise that the non-discrimination provisions enshrined in them also applied to persons

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15    *ibid* 64.

16    *ibid* 67.

17    Pūraitė-Andrikiienė (n 11) 75.

18    *ibid* 77.

19    *ibid* 75.

with disabilities.<sup>20</sup> The most prominent reflection of this metamorphosis is the UN CRPD, adopted in 2006, which is the first binding international human rights document to formalise fundamental issues related to the protection of the rights of persons with disabilities. Although the Convention was created in response to the failure of the existing human rights protection system to adequately protect the rights of persons with disabilities, the purpose of this Convention is not to establish separate or special rights for persons with disabilities, but to include these persons in the existing human rights protection system by adapting existing rights to their needs.

Article 12 of this Convention establishes that individuals with disabilities have the right to be recognised as subjects of law in all cases, possess juridical capacity on an equal basis with others in all areas of life, and that States Parties to this Convention shall take appropriate measures to provide individuals with disabilities with access to the support they may require in exercising their juridical capacity. The revolution brought about by Article 12 has become a symbol of the changes that have taken place in recent years in the field of the rights of persons with disabilities and lies at the very heart of the Convention. Nevertheless, academic literature emphasises that Article 12 was among the most controversial provisions discussed during the negotiation process of this international treaty.

In addition to disputes over the provision of support, the nature of the procedure for altering decisions, and the safeguards ensuring “due process” in relation to legal capacity, the main dispute concerned whether a distinction should be drawn between legal capacity in relation to rights and legal capacity in relation to actions.<sup>21</sup> Before the adoption of this Convention, the standards for the protection of persons with mental disabilities who had been declared legally incapacitated were regulated internationally mainly through non-binding instruments, the most comprehensive of which was Recommendation No. R(99) on the principles of legal protection of adults who are legally incompetent.<sup>22</sup>

The European Court of Human Rights (hereinafter – ECtHR) and the constitutional justice institutions of European states have played a significant role in the process of modernising the institution of legal incapacity by assessing the constitutionality of the provisions regulating it.<sup>23</sup> The need to reform the institution of incapacity established in the legislation of the Republic of Lithuania was also signalled by the ECtHR judgment of 14 February 2012 in the case of *D. D. v. Lithuania*,<sup>24</sup> in which the ECtHR raised some problematic aspects of the legal regulation

20 Dovilė Juodkaitė, ‘Neveikusių asmenų statuso reglamentavimas tarptautinių žmogaus teisių kontekste’ in *Neveiksumo problematika Europos sąjungos deklaruojamų vertybių kontekste* (Globali iniciatyva psichiatrijoje 2007) 6.

21 Dinerstein (n 9) 8.

22 Recommendation No R (99) 4 of the Committee of Ministers to Member States ‘On Principles Concerning the Legal Protection of Incapable Adults’ (23 February 1999) <<https://search.coe.int/cm?i=09000016805e303c>> accessed 8 July 2025.

23 For more on this, see: Pūraitė-Andrikienė (n 11).

24 *DD v Lithuania* App no 13469/06 (ECtHR, 14 February 2012) <<https://hudoc.echr.coe.int/fre?i=001-109091>> accessed 8 July 2025..



of the national system of incapacity. However, as discussed in the next section of this paper, the views of the ECtHR and the CRPD Committee differ on several issues.

On 17 September 2010, upon the entry into force of the CRPD, Lithuania made a commitment to respect and fully implement the rights of persons with disabilities and to preserve their legal capacity. However, the legal concept of incapacity, inherited from the Soviet era—which, as mentioned above, was not designed to protect the rights of people with mental disabilities but was often used as a means of silencing opponents of the regime—was reformed rather slowly.

Significant reforms were implemented on 1 July 2016, when amendments to the Civil Code entered into force, replacing the institution of full incapacity with the concept of incapacity in specific areas.<sup>25</sup> The reform aimed to implement the requirements of Article 12 of the Convention. The principal outcome of this reform is that a court may now recognise a person as having limited capacity in certain areas. Concerning electoral rights, following the entry into force of these amendments, this right may be restricted only by a court decision. However, even after these changes were adopted, experts on the rights of persons with disabilities pointed out that, to fully implement the provisions of the Convention, Lithuania must completely abandon the institution of incapacity, since individuals must make their own decisions and no exceptions can be justified. It can therefore be argued that the introduction of partial incapacity represents only a small step towards change.<sup>26</sup> These legal changes were also criticised in academic works.<sup>27</sup>

Despite these significant reforms, the CRPD Committee, after evaluating Lithuania's initial report on the implementation of the Convention, recommended “to eliminate laws, policies, and practices that allow for the guardianship and property management of adults with disabilities, and to replace the process of decision-making on behalf of another person with a process of support in decision-making.”<sup>28</sup>

In 2024, the Ministry of Justice attempted to take further steps in improving the legal protection for persons with mental or intellectual disabilities. It prepared draft amendments to the Civil Code, the Code of Civil Procedure, and other laws.<sup>29</sup> The draft laws implemented

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25 Law of the Republic of Lithuania No XII-1566 ‘Amendment of the Civil Code’ (26 March 2015) [2015] TAR 5573.

26 Aidas Makštutis, ‘Neveiksumo instituto reforma – ar teisingą kryptį pasirinkome?’ (*Lrytas*, 21 December 2015) <<https://www.lrytas.lt/asgaliu/lygios-galimybes/2015/12/21/news/neveiksumo-instituto-reforma-ar-teisinga-krypti-pasirinkome--2718864>> accessed 8 July 2025.

27 Juodkaitė (n 11).

28 CRPD, ‘Concluding Observations on the Initial Report of Lithuania’ (11 May 2016) <[https://tinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FCO%2F2015%2F1&Lang=en](https://tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FCO%2F2015%2F1&Lang=en)> accessed 8 July 2025.

29 Ministry of Justice of the Republic of Lithuania to the Government of the Republic of Lithuania No 1.5E)2T-1023 ‘On Submission of the Amended Draft Law on Amendment of the Civil Code of the Republic of Lithuania and Related Draft Laws’ (18 July 2024) <<https://lr.lt/media/viesa/saugykla/2024/8/AAyusVh1V6M.pdf>> accessed 8 July 2025.



the provisions of the Implementation Plan for the Eighteenth Programme of the Government of the Republic of Lithuania, which in subparagraph 8.1, provides for the following measure: “In implementing the United Nations Convention on the Rights of Persons with Disabilities and taking into account the results of public consultations, to abandon the institution of full incapacity, while proposing measures that would help persons with disabilities to effectively exercise their rights.”<sup>30</sup>

The draft laws were prepared with a view to implementing the provisions of the Convention and proposed measures to help persons with disabilities effectively exercise their rights, taking into account the general comment and related recommendations of the CRPD Committee addressed to Lithuania. Summarising all the amendments proposed in the drafts, it should be noted that they aim to completely abolish both the concepts of incapacity and limited capacity. The objective was to ensure that persons with disabilities could participate in all areas of life on an equal basis with others. These draft laws also aimed to implement Article 29 of the Convention, under which Member States undertake to guarantee the participation of persons with disabilities in political and public life, including the right and opportunity to vote and to be elected.

However, on 11 September 2024, the Legal Department of the Seimas Chancellery concluded that the proposed amendments to the Civil Code were contrary to the Constitution.<sup>31</sup> The Legal Department pointed out that a systematic interpretation of the proposed legal regulation—pursuant to Article 6 of the draft, Article 2.6(2) of the Civil Code—would mean that the right to vote of persons who, due to their personal disabilities or impairments, are unable to understand the significance of their actions or to control them, and who are therefore placed under guardianship, could not be restricted. Meanwhile, the Constitution expressly prohibits persons who have been declared legally incompetent by a court from participating in elections.<sup>32</sup>

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30 Resolution of the Government of the Republic of Lithuania No 155 ‘On the Approval of the Implementation Plan for the Provisions of the Eighteenth Programme of the Government of the Republic of Lithuania’ (10 March 2021) [2021] TAR 5318.

31 Conclusion of the Legal department of the Chancellery of the Seimas of the Republic of Lithuania No XIVP-4079 ‘On the Draft Law on Amendments to the Civil Code of the Lithuanian Republic’ (11 September 2024) <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/a26ea590701111ef9c779dd37198d447?positionInSearchResults=0&searchModelUUID=d10aa865-e826-4428-a606-5908dba2dc55>> accessed 8 July 2025.

32 Article 34(3) of the Constitution stipulates that citizens who have been declared incapacitated by a court of law may not participate in elections. Under Article 56(2) of the Constitution, persons who have been declared incapacitated by a court may not be elected as members of the Seimas; under Article 78(1), a citizen who is not eligible for election as a member of the Seimas may not be elected as President of the Republic.

### 3 INTERNATIONAL AND COMPARATIVE CONTEXT OF EU COUNTRIES REGARDING RESTRICTIONS ON VOTING RIGHTS BASED ON LEGAL INCAPACITY

Historically, individuals with disabilities have been denied the enjoyment of human rights, including the right to participate in politics. The UN CRPD responded to this situation by proposing a solution. Article 29 regulates the establishment and implementation of a non-discriminatory electoral process. It requires states to ensure that voters with disabilities have access to adapted conditions and other facilitating measures, enabling them to exercise their voting rights on an equal basis with others.<sup>33</sup>

The CRPD seeks to advance, safeguard, and guarantee that all people with disabilities fully and equally enjoy all human rights and fundamental freedoms, while fostering respect for their inherent dignity. It marks a transformative shift away from charity- and medical-based perspectives on disability towards a human rights-based approach.<sup>34</sup> This vision is reflected in Article 29, which requires State Parties to guarantee political rights and the opportunity to enjoy them on an equal basis with others. Both the European Union itself and its Member States are parties to this convention; consequently, they are obliged to align their legislation and practices with its provisions.

Article 29 of the CRPD obliges Member States to guarantee that persons with disabilities can effectively and fully participate in political and public life on an equal footing with others, whether directly or through freely chosen representatives, including enjoying the right and opportunity to be elected. The provision also calls for the adoption of specific measures to support such participation. Furthermore, the CRPD Committee has emphasised that this right must not be limited on the grounds of legal capacity.<sup>35</sup>

In its interpretive provision, the CRPD Committee stressed that a person's decision-making capacity cannot be invoked as a reason to deny individuals with disabilities their political rights, such as the right to vote, to stand for election, or to serve as jurors. The Committee further underscored that excluding persons with disabilities from electoral processes and other aspects of political life constitutes a common form of disability-based discrimination. Accordingly, it urged Member States to adopt legal reforms aimed at facilitating the participation of persons with disabilities in electoral processes by ensuring accessibility, providing reasonable accommodation, and offering adequate support.<sup>36</sup>

33 Lord, Stein and Fiala-Butora (n 3) 120.

34 Theresia Degener, 'Disability in a Human Rights Context' (2016) 5(3) *Laws* 35. doi:10.3390/laws5030035.

35 Communication No 4/2011(2013) *Zsolt Bujdosó and five others v Hungary* (CRPD Committee, 9 September 2013) <<https://www.refworld.org/jurisprudence/caselaw/crpd/2013/en/95560>> accessed 8 July 2025; CRPD, *General Comment No 1 – Article 12: Equal Recognition Before the Law* (11 April 2014) <<https://docs.un.org/CRPD/C/GC/1>> accessed 8 July 2025.

36 CRPD, *General Comment No 6 on Equality and Non-Discrimination* (26 April 2018) <<https://docs.un.org/CRPD/C/GC/6>> accessed 8 July 2025.

Scholarly literature highlights that the CRPD Committee's interpretation compels legal professionals to reflect on crucial questions: Can we truly evaluate a person's inner capacities and thoughts objectively, without projecting our own interpretations and expectations? Is the legal system fundamentally structured to serve only the majority or those with certain abilities?<sup>37</sup>

Nevertheless, the ECtHR, in its case law, has maintained that under Article 3 of Protocol No. 1 to the ECHR, the voting rights of persons placed under guardianship may be subject to restrictions. However, such restrictions must be grounded in an individual judicial decision.<sup>38</sup> As a result, the diverging approaches among Member States arise from two competing interpretations of international human rights instruments. On the one hand, the CRPD Committee's reading of the Convention advocates for the unrestricted participation of persons with disabilities in elections, irrespective of their legal capacity. On the other hand, the ECtHR's interpretation continues to permit limitations on the voting rights of individuals under guardianship.<sup>39</sup>

Despite the aforementioned CRPD Committee's interpretation, the Roman legal concept of legal capacity continues to persist in various forms in the legislation of several European countries. Its endurance is understandable: the concept is deeply rooted in the foundations of legal thought and remains difficult to abandon entirely.<sup>40</sup>

Academic literature has criticised the ECtHR, arguing that by focusing on the "actual abilities" of individuals exercising their electoral rights, the ECtHR perpetuates the medical model of disability, ignoring the changes brought about by the UN CRPD and the European Union and Council of Europe institutions that support the human rights model. In this way, the ECtHR—together with a significant number of Council of Europe member states—refuse to recognise the relevant interpretations of the Committee.<sup>41</sup>

However, when analysing the position of EU countries in this area, it should be noted that between 2014 and 2024, there has been a strong push to remove restrictions on voting rights based on legal incapacity. In 2014, 10 countries had completely removed the restrictions on voting rights in question; in 13 countries, individuals under legal guardianship are automatically excluded from voting; and four countries provided for certain intermediate options. Meanwhile, by 2024, 14 countries had completely abolished the restrictions on

37 Jovičić (n 10) 700.

38 *Ströbye and Rosenlind v Denmark* App nos 25802/18 and 27338/18 (EctHR, 2 February 2021) <<https://hudoc.echr.coe.int/fre?i=001-207667>> accessed 8 July 2025; *Caamaño Valle v Spain* App no 43564/17 (EctHR, 11 May 2021) <<https://hudoc.echr.coe.int/fre?i=001-210089>> accessed 8 July 2025; *Anatoliy Marinov v Bulgaria* App no 26081/17 (EctHR, 15 February 2022) <<https://hudoc.echr.coe.int/eng?i=001-215603>> accessed 8 July 2025.

39 Jovičić (n 10) 710.

40 Cera (n 2).

41 Jovičić (n 10) 710.

voting rights in question, and only seven countries have legal provisions that automatically exclude persons under legal guardianship from exercising their right to vote.<sup>42</sup>

As of 2023, the legal acts of Bulgaria, Estonia, Cyprus, Greece, Malta, Poland, and Romania continued to provide for the automatic exclusion of people under legal guardianship from the voting process. In contrast, Austria, Croatia, Denmark, Germany, Finland, France, Italy, Latvia, Luxembourg, the Netherlands, Slovakia, Slovenia, and Sweden no longer imposed any restrictions on voting rights related to determinations of incapacity.<sup>43</sup>

Reforms across EU Member States have taken diverse forms: 1) in some countries, constitutional amendments were introduced to align national frameworks with the requirements of the Convention; 2) in others, legislative reforms alone were sufficient; and 3) in some instances, national courts had to intervene to ensure compliance with the requirements of the Convention.

A recent and notable example of constitutional reform is Luxembourg, which amended its Constitution in early 2023 to abolish the exclusion of adults under guardianship from electoral rights. This constitutional reform was accompanied by partial amendments to the 2003 Election Act, which now grants adults under guardianship the right to participate in local, national, and European elections.<sup>44</sup>

Several other EU Member States—France, Spain, Ireland, and Slovenia—have also recently amended their national laws. In 2018, Spain amended Law No. 5/1985 on the general electoral system by removing provisions that deprived persons with disabilities of their right to vote. In addition, a new provision was added to the law, which reads: “Every person has the right to exercise their right to vote consciously, freely, and voluntarily, regardless of the method of voting and the assistance they may need.” In addition, a paragraph was also added, which reads as follows: “... any restrictions on the right to vote imposed by court order shall cease to have effect. Persons whose right to vote has been restricted or revoked on the grounds of disability shall be fully restored to that right.”<sup>45</sup>

In 2019, France adopted a law prohibiting courts from depriving individuals with disabilities of their voting rights. As a result, 300,000 French citizens with physical or mental disabilities have regained their right to vote.<sup>46</sup> In Ireland, the 2023 legal reforms abolished the guardianship system and established new frameworks to support adult decision-making. Under this legislation, all persons are presumed to have decision-making capacity,

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42 European Union Agency for Fundamental Rights, *Political Participation of People with Disabilities – New Developments: Report* (Publications Office of the European Union 2024). doi:10.2811/098625.

43 Ibid 14.

44 Ibid.

45 Kristijan Grdan, *Right to Vote for Persons with Psychosocial Disabilities in the European Union Guidelines* (Mental Health Europe 2023) 7.

46 ‘Helping People with Disabilities Vote: A French Approach’ (Redem, 2020) <[https://www.redem-h2020.eu/handeo\\_desjeux.html](https://www.redem-h2020.eu/handeo_desjeux.html)> accessed 8 July 2025.

with an emphasis on providing support to enable people to make their own decisions. However, in certain situations, a person's decision-making capacity may still be assessed in relation to their ability to make a specific decision at a given time.<sup>47</sup>

A similar reform took place in Slovenia, where a partial amendment to Article 79 of the 2024 European Parliament Election Act introduced a decision-making assistance mechanism. Under the revised provisions, persons with mental disabilities may receive assistance from a person of their choice when voting. Furthermore, the law prohibits courts from depriving individuals of their voting rights on the basis of disability.<sup>48</sup> However, the Slovenian Supreme Court ruled that the voting rights of persons who are truly incapable of understanding the meaning, purpose, and consequences of elections may be restricted in the public interest. The Court observed that Article 29 of the CRPD does not create new rights, but rather outlines the accommodations that States must ensure to enable persons with disabilities to exercise their political rights.<sup>49</sup>

Several Member States that still maintain restrictions have signalled their intention to address them in national strategies and action plans. For instance, Poland has announced plans to introduce legislative changes allowing persons under guardianship to vote and stand for election. Similarly, Belgium and Cyprus have committed to exploring ways to reduce existing limitations on the voting rights of individuals under guardianship.<sup>50</sup>

In some cases, failure to amend national legislation has led to judicial intervention, particularly by constitutional courts. In Germany, until 2019, people who had been wholly deprived of their legal capacity, as well as those declared incompetent after a criminal offence and subsequently admitted to a psychiatric hospital, were denied the right to vote. That year, the German Constitutional Court annulled both provisions of the relevant electoral law, ruling that they completely deprived persons with disabilities of their legal capacity and incapacitated persons of the right to vote.<sup>51</sup> The Court held that such provisions contravene the constitutional principles of universal suffrage and the prohibition of discrimination on the grounds of disability. German law also does not impose a general ban on persons with mental health conditions or psychosocial disabilities from standing for election; however, a court may prohibit an individual from

47 European Union Agency for Fundamental Rights (n 42) 15.

48 Law of the Republic of Slovenia 'On the Election of Members of the European Parliament from the Republic of Slovenia' (25 October 2002) <<https://pisrs.si/pregledPredpisa?id=ZAKO3401>> accessed 8 July 2025.

49 Judgment No X Ips 29/2021 (Supreme Court of the Republic of Slovenia, 23 February 2022) <[https://www.sodnapraksa.si/?q=volilna%20pravica&database%5bSOVS%5d=SOVS&\\_submit=i%C5%A1%C4%8Di&order=date&direction=desc&rowsPerPage=20&page=0&id=2015081111458788](https://www.sodnapraksa.si/?q=volilna%20pravica&database%5bSOVS%5d=SOVS&_submit=i%C5%A1%C4%8Di&order=date&direction=desc&rowsPerPage=20&page=0&id=2015081111458788)> accessed 8 July 2025.

50 European Union Agency for Fundamental Rights (n 42) 15.

51 Decision 2 BvC 62/14 (BVerfG, 29 January 2019) <[https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2019/01/cs20190129\\_2bvc006214.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2019/01/cs20190129_2bvc006214.html)> accessed 8 July 2025.

running for office if it determines that the person lacks the capacity to hold public office—typically in cases involving certain offences.<sup>52</sup>

In Romania, the Constitutional Court declared the guardianship system unconstitutional, finding that it lacked sufficient safeguards to protect human rights. The Court ruled that provisions of the Civil Code, which allow a person to be placed under guardianship, are unconstitutional and contrary to Article 12 of the CRPD. The Court noted that the contested provision does not take into account the different degrees of “capacity” and does not provide for a periodic review of the protective measure.<sup>53</sup> Following this Constitutional Court judgment, the Romanian Government announced a comprehensive reform of the legislation governing the guardianship system, encompassing electoral law.<sup>54</sup>

Under the Estonian Civil Code, individuals under guardianship may face automatic restrictions on their voting rights. However, the Supreme Court ruled that persons deprived of legal capacity should not be deemed legally incapacitated for the purpose of exercising their right to vote.<sup>55</sup> In Poland, a district court ruled that the total exclusion of persons with partially reduced legal capacity from voting in European Parliament elections violated the ECHR, the CRPD and EU law, emphasising the need for an individual evaluation before denying a person the right to vote.<sup>56</sup>

These trends demonstrate that many European Union countries are increasingly striving to guarantee the political rights of persons with disabilities. The academic literature highlights that this is expected to eventually lead to a more unified application of the UN CRPD in European states and to a reversal of the current restrictive ECtHR case law.<sup>57</sup>

## 4 REMOVING RESTRICTIONS ON THE RIGHT TO VOTE IN LITHUANIA: THE ISSUE OF COMPATIBILITY BETWEEN THE CONSTITUTION AND THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

As mentioned above, based on similar arguments, in 2024 the Lithuanian Ministry of Justice drafted draft amendments to the law which, among other objectives, sought to implement Article 29 of the Convention. This article obliges Member States to ensure the participation of persons with disabilities in political life, including the right and opportunity to vote and to stand for election.

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52 Grdan (n 45) 7.

53 Decision No 601 (Constitutional Court of Romania, 16 July 2020) <[https://www.ccr.ro/wp-content/uploads/2021/01/Decizie\\_601\\_2020.pdf](https://www.ccr.ro/wp-content/uploads/2021/01/Decizie_601_2020.pdf)> accessed 8 July 2025.

54 Grdan (n 45) 8.

55 Case No 3-2-1-32-17 (Supreme Court of Estonia, 19 April 2017) <<https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=206133329>> accessed 8 July 2025.

56 Case No I Ns 376/19 (District Court in Nowy Sącz, 19 April 2019) <[https://orzeczenia.nowysacz.sr.gov.pl/content/\\$N/152015150000503\\_I\\_Ns\\_000376\\_2019\\_Uz\\_2019-04-19\\_001](https://orzeczenia.nowysacz.sr.gov.pl/content/$N/152015150000503_I_Ns_000376_2019_Uz_2019-04-19_001)> accessed 8 July 2025.

57 Jovičić (n 10) 710.

It should be noted that various international institutions have also issued similar recommendations to Lithuania. For example, as early as 2016, the CRPD Committee recommended that Lithuania repeal provisions denying persons with disabilities the right to vote and stand for election, including by removing the possibility of declaring persons with disabilities legally incapacitated solely on the basis of their disability. The Committee further urged Lithuania to restore voting rights to all people with disabilities.<sup>58</sup>

The Mental Health Europe report, funded by the European Union, likewise recommends: “Repeal national laws or legal provisions that deny people with psychosocial disabilities to participate in elections based on their perceived lack of legal capacity or of being perceived as of ‘unsound mind’.” This recommendation applies to all types of elections, including local, regional, national, presidential, and European Parliament elections, as well as referendums.<sup>59</sup>

As mentioned, the ECtHR has taken a different view in its jurisprudence, holding that under Article 3 of Protocol 1 to the ECHR, the voting rights of persons under guardianship may be restricted, provided that the restriction is based on an individual court decision. However, the above-mentioned MHE report stresses that EU Member States should give priority to Article 29 UN CRPD over Article 3 Protocol No. 1 of the ECHR.<sup>60</sup>

In Lithuania, however, the main problems regarding the implementation of the electoral rights of persons with disabilities do not stem from a potential incompatibility between these international instruments, but rather from the strict provisions of the Constitution. According to these provisions, citizens declared incapacitated by a court are not entitled to participate in elections (Article 34(2)); persons declared incapacitated by a court may not be elected as members of the Seimas (Article 56(2)); the mandate of a member of the Seimas is terminated when a court declares him or her to be incapacitated (Article 63(4)); and a citizen who is incapacitated is not eligible for election as the President of the Republic (Article 78(1)).<sup>61</sup>

In assessing the aforementioned proposals submitted by the Ministry of Justice, the Legal Department of the Seimas Chancellery noted that, under the draft, the abolition of the institution of declaring a natural person legally incapacitated in a certain area—as established in the current Civil Code—would mean that natural persons who are unable to understand the significance of their actions or to control them would not be recognised as legally incapacitated in certain areas. Instead, they would be placed under guardianship in a specific area by court decision, if social services, personal healthcare services, or other less restrictive measures proved insufficient to help them exercise their legal capacity. Therefore,

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58 CRPD (n 28).

59 Grdan (n 45) 11.

60 *ibid.*

61 Constitution of the Republic of Lithuania(approved on 25 October 1992) [1992] Valstybės Žinios 33/1014.



based on a systematic interpretation of this proposed legal regulation (in particular, Article 6 of the draft, Article 2.6(2) of the Civil Code), it follows that persons who, due to impaired or insufficient personal abilities, are unable to understand the significance of their actions or to control them and who are therefore placed under guardianship, cannot have their voting rights restricted.

The Legal Department pointed out that the Constitution expressly prohibits persons who have been declared legally incapacitated by a court from participating in elections. It should be noted that this has also been stated by the Constitutional Court, which states that “the restriction of active and passive electoral rights established in Article 34(3) of the Constitution applies to persons who have been declared legally incapacitated by a court.”<sup>62</sup>

The Department also cited various provisions of the Constitutional Court's official constitutional doctrine, summarising that “the constitutional regulation, according to which persons recognised by the court as legally incompetent do not have active and passive voting rights, should be interpreted as intended to ensure that persons who are unable to express their will do not participate in elections, which are a responsible political process in which citizens express their will through universal suffrage, exercising their right to participate in the governance of their country. To define these persons, use was made of the institution of legal incapacity by court decision, which existed in the Lithuanian legal system at the time of the drafting and adoption of the Constitution and is still in force today (the essence of which, regardless of certain changes, was and is that a court decision recognises incapacity if a person is unable to understand the significance of their actions or to control them), thus constitutionally establishing the powers of the court to take a decision determining the restriction of the active and passive electoral rights of a person who is unable to understand the significance of their actions or to control them.”

In the opinion of the Department, since that the Constitution (Articles 34(3) and 56(2)) explicitly provides for restrictions on active and passive electoral rights in connection with a person being declared legally incapacitated by a court decision, the law cannot establish legal regulations whereby, after the abolition of the institution of declaring a person legally incapacitated, the right to vote of persons who are unable to express their will (regardless of how they are referred to in the law) would not be restricted at all. Such legal regulation would entirely negate the constitutional restriction of electoral rights and the constitutional powers of the court to apply this restriction to specific persons.

Summarising its arguments, the Department expressed the opinion that Article 6 of the draft law, which proposes to amend Article 2.6(2) of the Civil Code so that the right to vote of persons who are unable to express their will would not be restricted, contradicts Article 34(2) and (3) and Article 56(2) of the Constitution, the constitutional principle of the rule of law, as well as Articles 4, 9(1) and 11(2) of the Election Code.

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62 *Inter alia*, the ruling of the Constitutional Court of the Republic of Lithuania of 19 April 2021, No. KT59-N5/2021, case No. 13/2019.

The Department also noted that, as the explanatory memorandum to the draft law bases the proposed legal regulation on the UN CRPD—which the Republic of Lithuania has ratified and thus “has undertaken to take all measures to ensure equal rights for persons with disabilities,” it should be noted that, according to official constitutional doctrine, the provision set out in Article 138(3) of the Constitution, which establishes that international treaties ratified by the Seimas constitute an integral component of Lithuania’s legal framework, must be understood in light of the Constitution’s supremacy principle.

According to the Constitutional Court, if a conflict arises between the legal regulation established by an international treaty ratified by the Seimas and the provisions of the Constitution, the treaty does not take precedence in terms of legal application—the Constitution remains the supreme legal authority. When implementing Lithuania’s international obligations in domestic law, it is necessary to take into account the principle of constitutional supremacy. Lithuania’s legal system is based on the principle that no law or other legal act, including international treaties of Lithuania, may contradict the Constitution, as Article 7(1) of the Constitution stipulates: “No law or other act contrary to the Constitution shall be valid.”<sup>63</sup> Thus, in the event of a conflict between the provisions of an international treaty and the Constitution, Article 135(1) of the Constitution imposes an obligation to resolve such incompatibility. This may be done, *inter alia*, by withdrawing from the relevant international obligations following the norms of international law or by amending the Constitution accordingly.

The Legal Department of the Seimas Chancellery is not an institution authorised to officially interpret the Constitution or to review the constitutionality of legal acts. In Lithuania, only the Constitutional Court has such powers. It should be noted that the Lithuanian Constitutional Court has not ruled on a case examining the right and opportunity of persons with disabilities to vote and be elected. However, perhaps this constitutional problem could be analysed by relying not only on the provisions above, but also on other provisions of official constitutional doctrine.

The human rights and freedoms enshrined in the Constitution form a coherent system, meaning that no right may be interpreted in such a way that negates another. Therefore, when interpreting the content of a specific constitutional right, its limits must be considered in the context of the system of constitutional rights and freedoms and their interrelationship. For example, any restriction on electoral rights should be interpreted in the light of the prohibition of discrimination enshrined in Article 29 of the Constitution. This provision contains a non-exhaustive list of grounds for non-discrimination, which, in the author’s opinion, also includes non-discrimination on the grounds of disability.

Moreover, when establishing restrictions on human rights and freedoms under the Constitution, it is necessary to take into account the requirements arising from the

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63     *Inter alia*, the ruling of the Constitutional Court of the Republic of Lithuania of 18 March 2014. TAR, 2014-03-19, No. 3226.

constitutional principle of the rule of law, including the principle of equality of persons before the law. According to the Constitution, when establishing restrictions on human rights and freedoms, the constitutional principle of the rule of law requires consideration of equality and the prohibition of discrimination.

Furthermore, the principle of equality enshrined in Article 29 of the Constitution is fundamentally linked to the constitutional principle of the rule of law, within which the principle of proportionality plays a crucial role. This principle mandates that legal measures correspond to legitimate and socially significant aims, are necessary to attain those aims, and do not impose excessive restrictions on individual rights and freedoms beyond what is essential. It remains doubtful whether the electoral rights limitation in question complies with these standards.

Another aspect concerns the possible conflict between the provisions of the CRPD and the provisions of the Constitution. It can be argued that, despite the principle of supremacy enshrined in the Constitution, the Constitution and international law operate in dialogue, reflecting the Constitution's openness and "friendliness" towards international law. The Constitutional Court has repeatedly noted that the respect for universally accepted principles of international law constitutes a foundational legal tradition and a constitutional tenet of the restored independent Lithuanian state.<sup>64</sup>

The Constitutional Court has also stated that, by recognising the principles and norms of international law, the Lithuanian state cannot apply fundamentally different standards to its residents. As an equal member of the international community, it voluntarily accepts and recognises these principles and norms, their customs, and integrates itself into the global legal order. Lithuanian laws, therefore, cannot establish lower standards than those set by universally recognised international law. Failure to comply with this would conflict with the goals of an open, just, and harmonious civil society and the rule of law—principles enshrined in the preamble to the Constitution and embodied in the constitutional principle of the rule of law.<sup>65</sup>

On the other hand, as mentioned above, the concept of incapacity is expressly referenced three times in the Constitution, each time in the context of electoral rights. Thus, this restriction is enshrined *expressis verbis* in the Constitution. Even when pursuing legitimate goals—such as protection of human dignity, equality, the principle of proportionality, respect for universally recognised norms of international law—it would be difficult to interpret the Constitution in a way that would ignore the provisions directly enshrined in the Constitution, according to which "citizens who have been declared legally incompetent

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64 Inter alia, the ruling of the Constitutional Court of the Republic of Lithuania of 14 March 2006. Žin., 2006, No. 30-1050.

65 Inter alia, the ruling of the Constitutional Court of the Republic of Lithuania of 18 March 2014. TAR, 2014-03-19, No. 3226.

by a court shall not participate in elections". Doing so could set a dangerous precedent, allowing future circumvention of constitutional provisions for less positive purposes.

Therefore, although the arguments presented by the Seimas Legal Department may be criticised for adhering to the medical model of disability and overlooking the paradigm shift introduced by the UN CRPD—which promotes the human rights model of disability—implementing Article 29 of the CRPD would require constitutional amendments to remove provisions establishing the institution of legal incapacity. The CRPD Committee expressed a similar view in 2016, noting concern that the Lithuanian Constitution denies persons with disabilities the right to vote and stand for election if they have been declared legally incapacitated, and recommending the repeal of such provisions.<sup>66</sup> Following the example of Luxembourg, the reform to remove restrictions on electoral rights based on legal incapacity should therefore begin not with ordinary legislation but with amendments to the Constitution.

However, such constitutional amendments are unlikely, as Lithuanian society and its political representatives exhibit limited tolerance toward people with mental and intellectual disabilities. According to a 2022 survey, a quarter of Lithuanian residents would not wish to live next door to a person with mental health issues; two-thirds reported they would not trust such a person to perform their job; and one in five agreed that children with mental health problems should not attend mainstream schools.<sup>67</sup> In such a social context, the complete removal of restrictions on the electoral rights of persons with intellectual or mental disabilities would likely be unacceptable to a large part of society. Nonetheless, as the Constitutional Court has stated, in a democratic state governed by the rule of law, prevailing societal attitudes or stereotypes cannot justify discrimination against individuals.<sup>68</sup>

Such amendments could also be impeded by the ECtHR's aforementioned position that Article 3 of Protocol 1 to the ECHR permits restrictions on the electoral rights of persons under guardianship, provided that such restrictions are based on an individual court decision. When assessing the constitutionality of legal acts, the Constitutional Court consistently refers to various international legal instruments, *inter alia*, United Nations instruments, but most often to the ECHR. Academic literature emphasises that this Convention and the case law of the ECtHR have the most significant influence on the interpretation of human rights enshrined in the Constitution.<sup>69</sup>

66 CRPD (n 28).

67 'Tolerance is Growing, but the Stigma Surrounding Mental Health in Lithuania is still Prevalent: The Ministry Presents Further Steps' (*Ministry of Health of the Republic of Lithuania*, 28 March 2023) <<https://sam.lrv.lt/lt/news/tolerancijos-daugeja-taciau-psichikos-sveikatos-stigma-lietuvoje-vis-dar-gaji-ministerija-pristato-tolesnius-zingsnius/>> accessed 8 July 2025.

68 The ruling of the Constitutional Court of the Republic of Lithuania of 11 January 2019. TAR, 2019-01-11, No. 439.

69 Danutė Jočienė, 'Tarptautinės teisės ir Europos Sąjungos teisės įtaka Lietuvos Respublikos Konstitucinio Teismo oficialiajai konstitucinei doktrinai' in Bronius Sudavičius (ed), *Kelyje su Konstitucija: recenzuotų mokslinių straipsnių rinkinys* (Vilniaus universiteto leidykla 2022) 105.

In 2000, the Constitutional Court affirmed—and has since reiterated—that the case law of the ECtHR, as a source of legal interpretation, is important for the interpretation and application of Lithuanian law.<sup>70</sup> The Convention and the ECtHR's practice serve as authoritative interpretative sources not only for other Lithuanian legal acts but also for the Constitution.<sup>71</sup> When interpreting the Constitution, the Constitutional Court often relies on the interpretation of the Convention provided by the ECtHR. Thus, the ECHR has a special status in the Lithuanian legal system. Given these trends, if the question in the Constitutional Court regarding restrictions on the electoral rights based on established incapacity were raised, the Constitutional Court would likely rely on the interpretation provided by the ECtHR rather than that of the CRPD Committee.

## 5 CONCLUSIONS

The evolution of the concept of legal incapacity demonstrates that, historically, it was perceived primarily as a protective mechanism for individuals who, due to their mental or intellectual condition, were unable to properly comprehend the consequences of their actions. However, in practice, especially during periods of totalitarian regimes, this institution often became a repressive measure that violated human rights. The evolution of the international human rights system, especially the UN CRPD adopted in 2006, has significantly changed the approach to the legal capacity of persons with disabilities—from complete separation and guardianship to a model of support in decision-making.

This transformation has prompted the Lithuanian legal system to modernise its approach to legal incapacity. Nevertheless, implementation has been gradual and confronted by both constitutional and practical challenges. Although significant steps have been taken—a transition to a model of limited legal capacity, and draft laws prepared in 2024 that seek to completely abolish the institution of legal incapacity—their compatibility with the Constitution, especially in the area of electoral rights, remains subject to legal debate.

Article 29 of the CRPD embodies a fundamental shift in the human rights approach to political participation by persons with disabilities. The Convention's human rights model requires that all persons, regardless of their disability or legal capacity status, be guaranteed equal opportunities to vote and stand for election. Yet, the ECtHR continues to adhere to a more traditional approach that allows restrictions on the right to vote for persons under guardianship, which highlights the tension between different interpretations of human rights instruments. Nevertheless, over the past decade, EU Member States have taken important steps to align their legal systems with the CRPD, ranging from constitutional and legislative changes to court rulings that have repealed

70 The ruling of the Constitutional Court of the Republic of Lithuania of 8 May 2000. Žin, 39-1105.

71 Dovilė Pūraitė-Andrikienė, *Žmogaus teisių apsauga ir gynimas Lietuvos Respublikos Konstituciniame Teisme: mokslo studija* (Lietuvos socialinių mokslų centro Teisės institutas 2023) 27.

discriminatory provisions. This shows a clear trend towards the comprehensive protection of the political rights of persons with disabilities. These changes offer hope that, in the long term, a more unified approach to political participation grounded in human rights principles will be established across Europe.

In Lithuania, the issue of removing electoral restrictions for persons with disabilities presents a constitutional dilemma between ensuring the rights of persons with disabilities and strict regulations enshrined in the Constitution. Although Article 29 of the CRPD requires that all persons, regardless of disability, be guaranteed the right to vote and to be elected, implementing these provisions in Lithuania faces obstacles due to constitutional provisions that expressly restrict the electoral rights of persons declared legally incapacitated by a court. As long as these constitutional provisions remain in force, it is not possible to remove restrictions on electoral rights for persons with limited legal capacity at the legislative level. Conversely, invoking Article 29 of the Constitution (equality and non-discrimination), alongside the principles of the rule of law and proportionality, raises questions as to whether these restrictions are consistent with broader constitutional values.

Accordingly, to effectively implement Article 29 of the Convention and ensure the equality of persons with disabilities in political life, it is necessary to start not with laws but with amendments to the Constitution itself, abolishing the institution of legal incapacity in the context of the right to vote. However, given societal attitudes towards mental disability, such reforms seem politically and socially unlikely in the near future. Nevertheless, discussion of amending the Constitution in this regard remains necessary to bring national law into line with international human rights standards and to create a more inclusive democracy.

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## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

### ПРАВОВІДПОВІДІСТЬ ТА ВИБОРЧІ ПРАВА В ЛИТВІ: ПИТАННЯ УЗГОДЖЕНОСТІ КОНСТИТУЦІЇ ТА КОНВЕНЦІЇ ООН ПРО ПРАВА ОСІБ З ІНВАЛІДНІСТЮ

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#### АНОТАЦІЯ

**Вступ.** Протягом десятиліть особи з інвалідністю в Литві, а також в інших країнах Центральної та Східної Європи, стикалися зі значними перешкодами у здійсненні своїх політичних прав, зокрема щодо права голосу та балотування на виборах, через обмеження, що закріплені у правових нормах, та соціальні упередження. Ухвалення Конвенції Організації Об'єднаних Націй про права осіб з інвалідністю (CRPD) у 2006 році започаткувало зміну парадигми від медичної та благодійної моделей інвалідності до підходу, що заснований на правах людини. Стаття 29 CRPD зобов'язує держави-учасниці забезпечувати повну політичну участь осіб з інвалідністю. Однак реалізація цих положень у Литві стикається з конституційними обмеженнями, що не допускають осіб, які визнані судом недієздатними, до участі у виборах. Це створило суперечності між міжнародними зобов'язаннями у сфері прав людини та національними конституційними положеннями.

**Методи.** У цьому дослідженні використовується багатометодний підхід до правового дослідження для вивчення узгодженості Конституції Литви зі статтею 29 Конвенції ООН про права осіб з інвалідністю в контексті виборчих прав. Було проведено аналіз змісту документів щодо відповідних положень литовського законодавства, рішень Конституційного Суду та міжнародних документів з прав людини. Було здійснено порівняльний аналіз для оцінки реформ у державах-членах ЄС, спрямованих на скасування обмежень щодо права голосу на підставі недієздатності. Історичні та телеологічні методи були використані для відстеження еволюції недієздатності та виявлення передбачуваного значення конституційних положень. Також за допомогою системного та логічного аналізу була здійснена оцінка потенційних конституційних змін, необхідних для дотримання положень Конвенції про права осіб з інвалідністю.

**Результати та висновки.** Аналіз показав, що виборчі права осіб з інвалідністю все ще можуть бути обмежені рішенням суду, хоча у 2016 році в Литві було запроваджено значні реформи для заміни повної недієздатності частковою в певних сферах. Законопроекти, запропоновані у 2024 році, мали на меті повне скасування інституту недієздатності та реалізацію статті 29 Конвенції про права осіб з інвалідністю. Однак ці реформи були зупинені через питання, що виникли у зв'язку з занепокоєнням щодо їхньої відповідності Конституції Литви, яка прямо забороняє особам, визнаним недієздатними, здійснювати

виборчі права. Порівняльний аналіз показав, що багато держав-членів ЄС успішно реформували свої правові бази відповідно до Конвенції про права осіб з інвалідністю, зокрема це стосується конституційних змін в Люксембурзі. Дослідження демонструє, що повна імплементація статті 29 CRPD у Литві перешикоджається конституційними положеннями, які прямо обмежують виборчі права осіб, визнаних недієздатними. Самих лише законодавчих реформ недостатньо для вирішення цього питання, тож конституційні зміни будуть необхідні для того, щоб забезпечити дотримання міжнародних стандартів у сфері прав людини. З огляду на панівні суспільні настрої щодо осіб з психічними та інтелектуальними вадами, такі зміни, ймовірно, зіткнуться з політичним та соціальним опором. Тим не менш, узгодження національного законодавства з Конвенцією про права осіб з інвалідністю залишається важливим для сприяння інклюзивній демократії та підтримки принципу рівності, закріпленого як у міжнародних, так і в національних правових системах.

**Ключові слова:** виборчі права, права осіб з інвалідністю, Конвенція Організації Об'єднаних Націй про права осіб з інвалідністю, конституція, ЄСПЛ, недієздатність, участь у політичному житті.