

Article 12:

# Guardianship Law and Legal Capacity for Intellectually Disabled People in Turkey



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## Background

Turkey ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2009. Article 12 of the CRPD guarantees the right of all disabled people to equal recognition before the law and to the support necessary to enjoy legal capacity on an equal basis with others in all areas of life.

However, Turkey's guardianship system permits the removal of the legal capacity of intellectually disabled people and the transfer of their decision-making authority to another person. This has been identified as a serious human rights concern by the CRPD Committee in its 2019 review of Turkey.

This policy brief presents findings from Taşcıoğlu and Şeref's research project and offers evidence-based recommendations for reform.

## Key Concepts

**Intellectual disability:** A broad term used in this research to refer to people with learning disabilities, autism and other neurodevelopmental disabilities.

**Legal capacity:** The right to hold rights and to act on them. Under the CRPD, this right is universal and states are required to support its enjoyment.

**Mental capacity:** A person's decision-making abilities, which can vary depending on the situation and time. The CRPD makes clear that this is distinct from legal capacity and should not be used to remove legal capacity.

## The Turkish Legal Framework

While the Turkish Civil Code guarantees all citizens the capacity to hold rights, it allows a person's capacity to act to be fully restricted where they are deemed to lack "power of discernment". Courts make this decision on the basis of official medical board reports and generally appoint a family member as guardian. For many intellectually disabled adults with living parents, this takes the form of extended custodianship.

People under guardianship lose not only the authority to make decisions about their own lives, but also the ability to exercise fundamental civil and political rights such as marrying and voting.

## About the Research

Taşcıoğlu and Şeref's research examines the barriers to, and possibilities for, supporting the legal capacity of intellectually disabled people in everyday and institutional life in Turkey. The study draws on qualitative interviews with 44 participants: 11 intellectually disabled adults, 15 parents, 8 lawyers, and 10 medical professionals. Participation for intellectually disabled people was supported through plain-language materials, flexible interview formats, visual aids, and the option to involve a supporter.

# Key Findings

## Guardianship in Practice

The research shows that guardianship is regarded for intellectually disabled people not as an exceptional legal measure, but as a routine practice. Alongside the widespread belief that intellectually disabled people are inherently in need of protection, families often apply for guardianship because they believe it is necessary to access public services such as disability benefits, tax exemptions, and passport applications. This perception is routinely reinforced by public institutions and other families.

Actually, we didn't [put him under guardianship] throughout his university education. [...] It was directly imposed on us, like, 'You must put him under guardianship; there could be issues you haven't considered.' But we didn't do it. [...] However, one day, the topic of traveling abroad came up. They made it a requirement for international travel, citing his autism diagnosis. So, we were forced to do it at that point.

Cemal, father

Medical assessments of power of discernment play a central role in this process. Conducted in public hospitals under significant time and resource constraints, they often presume incapacity on the basis of intellectual disability rather than undertaking an individualised evaluation. The incapacity is frequently treated not as limited to particular decisions or periods of time, but as a permanent incapacity extending across all areas of life.

Generally, for autistic individuals or those with mental deficiencies, we tend to take the view that they lack capacity to act.

Mehmet, psychiatrist

Taçcıoğlu and Şeref's research shows that medical reports play a decisive role in guardianship proceedings and that cases are often conducted, in the words of lawyer participants, "on the file." In many cases, the person concerned is not heard by the court.



We couldn't even get into the courtroom. We waited and waited, but the time never came. There was quite a long queue. They said our case is scheduled for later in the day. [...] We left and when we returned, the trial was all over, it had finished. They had already made a decision. They said, 'Your presence wouldn't have made any difference. The decision would have been the same.'

Saniye, mother

## Guardianship, Care, and Lack of Oversight

Guardianship emerges in everyday family life as a role most often assumed by mothers as an extension of caregiving responsibilities. This intertwining of guardianship and care reinforces the assumption that intellectually disabled people are unable to lead independent adult lives.

The research also finds that while the guardianship system is often justified in the name of care and protection, the concentration of decision-making authority in a single person can create conditions for other rights violations, including abuse, neglect, and ill-treatment. Formal safeguards concerning the supervision of guardians are often implemented weakly or only in a limited manner.

He said he hadn't been bathed for a year. He couldn't speak clearly [...] But I was able to understand him. Afterwards, I told the family, 'Look, you're not bathing him. Isn't that a shame?' and so on. [...] I told the judge as well, explained what was going on. He said, 'Mr Lawyer, am I supposed to deal with this?' Even though this is in fact part of the judge's responsibility.

Onur, lawyer

## Legal Capacity in Everyday Life

I'm organised. I stay at home on my own. I have internet. The other day I came from the seaside alone, without bothering anyone, just thinking in my own head. I came talking to myself: 'I'll wash my feet, then I'll turn on the TV.'

Özgür, disabled individual

Contrary to assumptions that intellectually disabled people lack legal capacity, disabled participants' accounts show that legal capacity emerges in everyday life through relationships of support and trust. Even where verbal communication is not possible, those close to the disabled person often learn over time to recognise and respond to their forms of communication, will, and preferences.

Bora cannot express himself verbally. [...] He mostly uses body language, and more recently, if he wants something, he taps his finger on the table, or taps more forcefully if he does not want it. Over the years, Bora has developed routines shaped around his preferences and choices.

Ayten, mother

## Conditions for the Realisation of Legal Capacity

Alongside legal reform, Taşcıoğlu and Şeref's research points to four key conditions necessary for the enjoyment of legal capacity:

**Accessibility:** Accessibility is a precondition for entering and navigating decision-making environments. Inaccessible spaces and services can exclude individuals before decision-making processes have even begun.

Hospitals are already terrifying places. Loud. I can't find where I'm meant to go. If it's a hospital I've never been to, it's impossible [...] because I can't do those things, I'm terrible at this. Talking to doctors becomes very hard.

Aslı, disabled individual

**Information and Communication:** Access to information and communication are fundamental conditions for understanding options, expressing one's will, and participating in decision-making. However, the research shows that information is often provided in inaccessible formats and that non-verbal forms of communication are insufficiently supported.

**Participation, Recognition, and Support:** The enjoyment of legal capacity depends on individuals being recognised as persons whose views are taken seriously, and on relationships of support grounded in continuity and trust. Disabled people's experiences point to the importance of supported rather than substituted decision-making.

After constantly seeing different doctors who didn't know me and treated me as if they were meeting me for the first time each time, having a consistent doctor and process had a very positive effect [...] There were certain medications [...] With Ms Hande, we were making and implementing those decisions together.

Orhan, disabled individual

**Enabling an Adult Life:** The ability to enjoy legal capacity also depends on the conditions that make adult life possible, including employment, independent living, and community participation. Although these opportunities remain limited for disabled people, they are key to developing self-confidence, building social relationships beyond the family, and participating in life as equal citizens.

I like organising, I've come to understand. I felt its absence as a gap. [...] Organising and being part of something is what replenishes my spoons. When I'm just at home trying to do things, I find I can't move.

Mine, disabled individual



# Recommendations

1. The legal framework needs to be reformed to align with Article 12 of the CRPD by recognising legal capacity as universal and establishing systems to make supported decision-making a reality in practice.
2. Public perceptions and attitudes that view intellectually disabled individuals as dependent or solely in need of protection must be transformed to recognise them as adults with equal rights (CRPD Article 8).
3. Public services should be made accessible, including for sensory and cognitive diversity (CRPD Article 9).
4. Information should be provided in accessible formats and alternative and augmentative communication methods need to be recognised and supported (CRPD Article 21).
5. Professional training should be strengthened to increase awareness of disability rights and enable the meaningful participation of disabled people in institutional processes (CRPD Article 13).
6. Policy should focus on developing structured transitions from education into employment and publicly funded personal assistance schemes to support independent living and reduce reliance on family-based care (CRPD Articles 27 and 19).
7. Community participation and self-advocacy should be strengthened by supporting organisations led by intellectually disabled people and ensuring their meaningful involvement in policymaking (CRPD Article 29).

## References

Taşcıoğlu, E. and Şeref, E. (2026) The Right to Legal Capacity: Guardianship Law, Recognition and Participation in Intellectually Disabled People's Lives in Turkey. Keele University.

**Project website: [www.madde12.org](http://www.madde12.org)**

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