



OPSIDIANET

OFFENDERS WITH PSYCHO-SOCIAL AND INTELLECTUAL DISABILITIES
IDENTIFICATION, ASSESSMENT OF NEEDS AND EQUAL TREATMENT

**PROCEDURAL RIGHTS
OF SUSPECTS AND ACCUSED
WITH PSYCHOSOCIAL OR
INTELLECTUAL DISABILITIES
BULGARIA**



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INTELLECTUAL DISABILITIES**

BULGARIA

Miriana Ilcheva

Center for the Study of Democracy

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Legal status of individuals with psycho-social and intellectual disabilities

This section shall explain the legal status of individuals with psycho-social and intellectual disabilities in Bulgaria. In general, the regulation of the status is heavily impacted by a (fairly outdated) fully medical perception of disability and a fairly restrictive regulation of those persons' rights.

General legal status of persons with psycho-social and intellectual disabilities

The regulation of the general legal status of persons with psycho-social and intellectual disabilities is closely related to their legal capacity and is done in parallel with the regulation of legal capacity of children. Thus, the Persons and Family Act¹ postulates that those of 14-18 years of age (hereinafter, underage) and those over 18 years of age (hereinafter, adults), who, due to 'weakness of mind or mental illness' cannot 'take care of their dealings' have their legal capacity taken away and are put under full guardianship, legally equating them to persons under 14 years of age (hereinafter, minors). Like for minors, legal action on behalf of those under full guardianship is only taken by their guardians. Adults with such 'ailments whose condition is not that grave to be put under full guardianship' are put under partial guardianship and are legally equated to the underage. Like for the underage, people under partial guardianship take legal action with the consent of their guardians, but can themselves enter into 'petty deals for fulfilling their current needs' and dispose of what they have acquired through their own labour.

As indicated by the year of adoption of the Act (1949) and its formulations, it has little to do with international standards regulating the status of persons with psycho-social and intellectual disabilities. A number of NGOs and other social and legal professionals have been, for a number of years, criticising the outdated legal framework for seemingly 'protecting' persons' rights by taking them away,² and advocating for the adoption of new legislation to introduce assisted decision making and related support measures in the Bulgarian legal framework. A draft Physical Persons and Support Measures Act has been developed and submitted to Parliament in 2016,³ but was never tabled for voting due to the early dissolution of the National Assembly and ensuing

¹ Persons and Family Act (*Закон за лицата и семейството*), 10 September 1949, available in Bulgarian at <https://lex.bg/laws/ldoc/2121624577>.

² Bulgarian Center for Non-for-Profit Law (*Български център за нестопанско право*) (2018), Statement on the Consultation Document (*Становище по консултационен документ*), 21 November 2018, available at www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=3831, p. 3.

³ Draft Physical Persons and Support Measures Act (*Законопроект за физическите лица и мерките за подкрепа*), 4 August 2016, available in Bulgarian at www.parliament.bg/bg/bills/ID/44032.



elections. The draft is currently again up for public consultations⁴ with no timeline spelled out for its ultimate adoption.

According to this latest consultation document, the draft proposes ‘a change in the attitude’ towards people with disabilities, making them active bearers of rights and aiming at their empowerment and autonomy. The draft is also supposed to engage the responsibility of institutions and third parties who are obliged to guarantee the effective exercise of those rights. The state is attempting to comply by its commitments under the Convention on the Rights of Persons with Disabilities. The draft develops a number of support measures for persons to exercise their rights without substitution of their will and ensure a number of guarantees and safeguards to balance the personal choice of each person, his/her safety when at serious risk and the interests of third parties. Notably, although a previous draft is referred to, no actual legislative texts are presented, which does not signify readiness on the part of the state to soon initiate a process of adoption. NGO statements commend the draft as changing the paradigm and pre-supposing that each adult person has legal capacity and the existence of a disability or difficulty only leads to his/her entitlement to support measures.⁵

Identification criteria, procedures and legal consequences

In line with the (fairly outdated) understanding, outlined above, the main criteria to identify an individual as having psycho-social or intellectual disabilities are medical and the leading procedures are the forensic psychiatric and psychological expert examinations. In addition, mental fitness to bear criminal liability is said to be led by medical and legal criteria, by the legal criterion is a consequence of the medical one.⁶

The conduct of the forensic psychiatric and psychological examinations is provided for in a special regulation.⁷ Forensic psychiatric examinations are ordered to establish the mental condition of a person when there is suspicion about a mental disorder – thus, medical classifications are practically referred to for the delineation of disabilities. It should be done by an expert

⁴ Minister of Justice (*Министър на правосъдието*) (2018) Consultation document on the Draft Physical Persons and Support Measures Act (*Консултационен документ по проект на Закон за физическите лица и мерките за подкрепа*), 23 October 2018, available at www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=3831.

⁵ Bulgarian Center for Non-for-Profit Law (*Български център за нестопанско право*) (2018), Statement on the Consultation Document (*Становище по консултационен документ*), 21 November 2018, available at www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=3831, p. 4

⁶ Stoynov, Al. (1999) Criminal Law General Part (*Наказателно право Обща част*). Sofia: Ciela Publishing House, p. 120 and following.

⁷ Minister of Justice, Minister of the Interior and Minister of Health (*Министър на правосъдието, министър на вътрешните работи и министър на здравеопазването*), Regulation N 2 of 26 October 2011 on the conditions and order for forensic medical, psychiatric and psychological examination, including the reimbursement of expenses of medical facilities (*Наредба № 2 от 26 октомври 2011 г. за условията и реда за извършване на съдебномедицинските, съдебнопсихиатричните и съдебнопсихологичните експертизи, включително и за заплащането на разходите на лечебните заведения*), 18 November 2011, available in Bulgarian at <https://www.lex.bg/laws/ldoc/2135760470>.



psychiatrist, or another doctor in case the examination is done by a panel of specialists. It is used in all types of proceedings (criminal, civil and administrative) and assesses, among others, the person's fitness for criminal liability, concerning a specific act, his/her mental fitness to participate in pre-trial or trial proceedings, or to serve a sentence (and the need for medical care while serving the sentence), the need to apply compulsory medical measures and their type (see below in the report), the person's capacity to take legal actions, as outlined above. The forensic psychiatric examination is done in medical establishments and, if the person has to be admitted and stay there, it cannot be longer than 30 days, extendable only once with another 30 days. An expert opinion is issued, including the person's case history and the results of his/her thorough physical, neurological and mental examination. The expert examines the person's family and social background, his/her biological, mental and social development, his/her past illnesses and current health condition; his/her mental condition before, during and after the impugned act; his/her mental diagnosis and its impact on the criteria for understanding and managing one's actions. The conclusions reflect the diagnosis given and the forensic psychiatric assessment, as well as concrete medical recommendations on measures or care needed.

Forensic psychological examinations, on the other hand, are done by clinical psychologists and establish, in the criminal, civil and administrative proceedings, among others, the level of development of the person's cognitive processes (perception, attention, memory, thinking), intellect and personality structure; the correspondence of the person's intellect and personality development with his/her age; the person's mental fitness to correctly perceive the facts of a case and give credible explanations or statements about them; assessment of personality development and social functioning; analysis of psychological experiences and behavioural mechanisms, related to an incriminated act. Expert psychological examinations are done independently or in conjunction with expert psychiatric or other examinations. They can be done in medical establishments or private offices.

Being an expert activity, forensic psychiatric and psychological examinations suffer from the overall problem of the situation and work of experts in Bulgarian legal proceedings: low remuneration of experts, resulting in unwillingness of experts to join expert pools.

Registration

The Health Act⁸ provides for a National Official Register of Persons with Mental Disorders. The order and conditions for maintaining the register and using its data is supposed to be stipulated in a regulation by the Minister of Health. Another regulation by the Minister of Health in consultation with the Minister of the Interior is supposed to set the conditions and order for official exchange of information on persons with mental disorders applying to work with

⁸ Health Act (*Закон за здравето*), 1 January 2005, available in Bulgarian at www.lex.bg/laws/ldoc%20/2135489147.



hazardous materials. The register is practically non-functioning and several attempts to further regulate its scope, procedure and safeguards against misuse of information have raised concerns about such misuse.

Legal status of persons with psycho-social and intellectual disabilities in criminal law

In a relatively short chapter, Bulgarian Criminal Code⁹ defines as criminally liable adult persons who are mentally fit to bear criminal responsibility. Such mental fitness is defined by delineating who is mentally unfit and thus not criminally liable – a person who, due to mental underdevelopment or long-term or short-term mental disturbance could not perceive his/her act's nature, i.e. how his/her act changes reality,¹⁰ or significance, what the society's assessment of his/her act is,¹¹ or manage his/her actions. Understanding the nature and significance of one's act is seen as the intellectual element of mental fitness, while managing actions is seen as the wilful part.¹² Mental unfitness is thus a state where either both elements or the wilful element of mental fitness is missing.¹³ However, both mental underdevelopment and disturbance are said not to reflect contemporary classification of mental illnesses.

According to the Criminal Code, punishment is not imposed on a person who has committed a crime, but who, until the sentence is pronounced, falls into a mental disturbance, as a result of which he/she cannot perceive the nature or significance of his/her act or manage his/her actions. Such mental disturbance would not allow for achieving the aims of the punishment.¹⁴ Those persons are criminally liable, but their criminal liability cannot be realised. Such a person would receive punishment, if he/she recovers. With regard to the above persons, in the cases, provided for in the Code, compulsory medical measures can be imposed (see below in the report).

Exemption from criminal responsibility

According to the Bulgarian Criminal Procedure Code,¹⁵ no criminal proceedings are instituted and those instituted are terminated if, among others, after committing the crime the perpetrator has fallen into long-term mental disturbance, excluding mental fitness to be criminally liable. If such mental disturbance is only short-term, proceedings are suspended. Termination or suspension can be ruled by the prosecutor after completing the investigation, while suspension can also be

⁹ Criminal Code (*Наказателен кодекс*), 1 May 1968, available in Bulgarian at www.lex.bg/laws/ldoc/1589654529.

¹⁰ Stoynov, Al. (1999) Criminal Law General Part (*Наказателно право Обща част*). Sofia: Ciela Publishing House, p. 118.

¹¹ Stoynov, Al. (1999) Criminal Law General Part (*Наказателно право Обща част*). Sofia: Ciela Publishing House, p. 118.

¹² Stoynov, Al. (1999) Criminal Law General Part (*Наказателно право Обща част*). Sofia: Ciela Publishing House, p. 118.

¹³ Stoynov, Al. (1999) Criminal Law General Part (*Наказателно право Обща част*). Sofia: Ciela Publishing House, p. 119.

¹⁴ Stoynov, Al. (1999) Criminal Law General Part (*Наказателно право Обща част*). Sofia: Ciela Publishing House, p. 122.

¹⁵ Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, available in Bulgarian at <http://lex.bg/laws/ldoc/2135512224>.



done by the court upon its preliminary session before trial. If the mental unfitness concerns the moment of committing the alleged crime, up until trial the prosecutor would terminate the case, while the court, if mental unfitness is established during the trial, would most often acquit the defendant because he/she is not mentally fit to bear criminal responsibility, so the act is not formally punishable. Termination of proceedings by court is also encountered.

Expert psychiatric and psychological opinions (see above in the report) are always sought when there is doubt about the mental fitness of the defendant to be criminally liable, or about his/her capacity, in view of his/her physical or mental conditions, to correctly perceive the facts of significance to the case and give credible evidence about them.

Expert psychiatric examinations are also provided for as a compulsory measure in the Criminal Procedure Code.¹⁶ The placement in a psychiatric establishment for such an examination for up to 30 days is done by the court pre-trial upon request of the prosecutor or, during trial, upon request by the parties or upon its own motion. The court hears an expert psychiatrist and the person whose placement is requested. The time of the placement can be prolonged for not more than another 30 days.

Alternative measures

Compulsory medical measures (*принудителни медицински мерки*) under the Criminal Code¹⁷ can be imposed on persons who have committed a publicly dangerous act while being mentally unfit to be criminally liable, or having fallen into such condition before pronouncing the sentence or while serving it. Those can be:

- entrusting the person to his/her relatives if they commit to his/her treatment in a psychiatric establishment;
- compulsory treatment in an ordinary or specialised psychiatric establishment, in the latter case if the person is considered particularly dangerous.

Measures are imposed, terminated or amended by the court depending on the condition of the person and the needs of his/her treatment and, in any case, after six months from the person's placement in a medical establishment. Compulsory treatment may also be imposed in parallel with an imprisonment or other sentence if the (mentally fit for criminal liability) perpetrator suffers from alcohol or drug abuse.

For those imprisoned compulsory measures take place during the serving of the sentence and the court may prolong them after the person is released from prison.

¹⁶ Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, available in Bulgarian at <http://lex.bg/laws/ldoc/2135512224>.

¹⁷ Criminal Code (*Наказателен кодекс*), 1 May 1968, available in Bulgarian at www.lex.bg/laws/ldoc/1589654529.



The application of compulsory medical measures is regulated in a special section of the Criminal Procedure Code.¹⁸ The proposal for such application is done by the prosecutor, who, before proposing, requests an expert opinion and orders an investigative authority to clarify how the person acted before and after the impugned act and whether he/she presents danger to society. The proposal is then reviewed by regional (or district, if imprisonment or probation are suspended) court, summoning the person (unless he/she is too ill), his/her parents/guardians and the victim, with the participation of the prosecutor and the person's attorney. The court also hears an expert psychiatrist and rules initially and every six months after the person is placed in hospital for compulsory treatment.

The Health Act¹⁹ offers another set of measures, more of a precautionary nature, called 'mandatory placement and treatment' (*задължително настаняване и лечение*), not directly related to criminal procedure, in its chapter on mental health. It is applied to persons with mental disorders who, due to their illness, can commit a crime, presenting danger to their relatives, to the persons close to them, to society or their own health. It is imposed by a decision of the regional court upon the permanent address of the person to be placed and takes place in specialised psychiatric medical establishments. Mandatory placement and treatment is requested by the prosecutor, whose request is reviewed in an open court session with the participation of the person - who should either appear, or, if his/her health condition does not allow, the court should form a direct impression of his/her condition otherwise. The participation of a psychiatrist, defence attorney and the prosecutor is also mandatory. A forensic psychiatric examination is ordered if the court establishes that the person may commit a crime, and the person is also heard on its results. The court then rules on the need for mandatory placement and the person's ability to express informed consent – if he/she is not able to, a person from among his/her relatives, or, in case of conflict of interest, from the municipal services, is appointed to express informed consent. The ruling on placement is reviewed every three months by the regional court upon the seat of the medical establishment where the person is placed.

In terms of assessing the above procedures and their compliance with EU and international human rights standards, proceedings under a request for a preliminary ruling, concerning both compulsory and mandatory treatment, were instituted in 2018 at the request of a Bulgarian regional jurisdiction.²⁰ The questions referred concerned issues like:

- whether compulsory treatment falls within the scope of Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings;
- whether the procedure for imposing compulsory treatment, under which the court is not empowered to refer the proceedings back to the Public Prosecutor's Office with the

¹⁸ Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, available in Bulgarian at www.lex.bg/en/laws/ldoc/2135512224.

¹⁹ Health Act (*Закон за здравето*), 1 January 2005, available in Bulgarian at www.lex.bg/laws/ldoc%20/2135489147.

²⁰ Request for a preliminary ruling from the Rayonen Sad Lukovit (Bulgaria) lodged on 17 July 2018 — criminal proceedings against EP (Case C-467/18) (2018/C 352/26), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CN0467&from=BG>.



instruction to rectify the procedural errors committed in the course of the pre-trial procedure, but can either grant the application for compulsory medical measures or reject it, constitute an effective remedy, within the meaning of Article 12 of Directive 2013/48/EU and Article 8 of Directive 2012/13/EU in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union;

- whether Directive 2012/13/EU and Directive 2013/48/EU are applicable to (pre-trial) criminal proceedings where national law does not recognise the legal concept of ‘suspect’ and the Public Prosecutor’s Office does not formally regard a mentally unfit person as a defendant during the pre-trial procedure, but closes the criminal proceedings without informing the person concerned and applies to the court for compulsory measures;
- whether a person in relation to whom compulsory treatment has been applied is to be regarded as being ‘suspected’ within the meaning of Article 2(1) of Directive 2012/13/EU and Article 2(3) of Directive 2013/48/EU in the case where he was questioned and handcuffed at a murder scene, so that information pursuant to Article 3(1) in conjunction with (2) of Directive 2012/13/EU is provided even at that stage, and how the particular needs of that person are to be taken into account, where the police officer was aware that the person in question suffered from a mental disorder;
- whether the procedure for imposing mandatory treatment under the Health Act is compatible with Article 3 of Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence, in the case where the real reason for initiating the procedure is the offence on account of which criminal proceedings have been brought against the person committed for treatment, and whether this circumvents the right to fair trial.

The above questions cast serious doubt on some aspects of the two quasi-criminal procedures whose harmonisation with the persons’ right to information, right to access to a lawyer and presumption of innocence is yet to be fully achieved.

Statistics and survey data

No publicly available official data was found on the topic of persons with identified psycho-social and intellectual disabilities and their contact with the criminal justice system.

Case law

One can fairly clearly see the mechanisms for exempting, or not, people with psycho-social and mental disabilities from criminal responsibility, or, respectively, re-opening criminal proceedings



in decisions of higher judicial institutions. For example, in a decision of 2005²¹ the Bulgarian Supreme Cassation Court reviewed the request of a district prosecutor to re-open criminal proceedings due to the discovery of significant circumstances not previously known to the court. The district court had terminated the proceedings against the defendant due to long-term mental disturbance, as a result of which the defendant could not perceive the nature and significance of his acts and manage his actions. The experts did not rule out the possibility for improvement of the defendant's situation. After the decision came into force, however, a second psychiatric examination found that the defendant was mentally fit to bear criminal responsibility, thus proceedings should be re-opened. The same mechanism is described in a decision of 2016,²² where the case was terminated by a decree of the prosecutor before reaching court. Again slightly diverging from the usual practice to acquit a defendant during trial if it is found that he/she was not mentally fit for criminal responsibility upon committing the impugned act, a regional court terminated proceedings due to establishing lack of mental fitness both upon committing the act and afterwards.²³

²¹ Supreme Cassation Court (*Върховен касационен съд*), Decision No 886 of 29 November 2005 under case No 265/2005, 2nd criminal chamber (*Решение № 886 от 29.11.2005 г. на ВКС по д. № 265/2005 г., II н. о.*).

²² Supreme Cassation Court (*Върховен касационен съд*), Decision No 297 of 22 December 2016 under case No 1114/2016, 1st criminal chamber (*Решение № 297 от 22.12.2016 г. на ВКС по н. д. № 1114/2016 г., I н. о.*).

²³ Burgas Regional Court (*Районен съд Бургас*), Ruling No 2729 of 15 December 2015 under criminal case No 2494/2015 (*Определение № 2729 от 15.12.2015 г. на РС - Бургас по н. о. х. д. № 2494/2015 г.*).



Procedural rules and practices applicable to offenders with psycho-social or intellectual disabilities

This section describes the procedural rules and practices that are applicable to persons with psycho-social or intellectual disabilities within the criminal justice system, taking into account both police and judiciary activity.

Safeguards for the rights of suspects and accused with psycho-social and intellectual disabilities

In the opinion of police, no guidelines or manuals are available for working with persons with psycho-social or intellectual disabilities. Officers can rely on general ethical norms from the respective codes of conduct of state officials and police officers on not allowing acts of torture, inhuman or degrading treatment, punishment or conduct and not allowing discrimination.²⁴ No guidelines are reported by judicial professionals either, while a judge interviewed pointed that many judges have nevertheless followed their own good practices in dealing with such persons.²⁵ All experts contacted referred to the general safeguards available to ensure the protection of defendants' rights and pointed to no special treatment of persons with psycho-social or intellectual disabilities. No obligatory recording of such persons' interviews is provided for as additional safeguard either.

In terms of practically safeguarding the rights and interests of persons with psycho-social and intellectual disabilities during criminal proceedings, a judge interviewed²⁶ related a case where a defendant, later diagnosed with schizophrenia, alleged to have not received the bill of indictment and did not initially get mandatory defence, which the court only appointed when the judge personally established the defendant had trouble understanding the nature of the issues to be discussed. The person also claimed violations of his information and defence rights during the initial police checks and interviews. The court ordered an expert examination, which indeed established mental illness and unfitness for criminal responsibility. The judge signalled to the Prosecutor's Office to re-open two previous cases where the person was tried in absentia in what turned out to be an acute phase of his illness, but the prosecutor's office refused to do so.

Identification and assessment of special needs

²⁴ Ministry of the Interior (*Министерство на вътрешните работи*).

²⁵ Interview with a regional court judge, 30 January 2019.

²⁶ Interview with a regional court judge, 30 January 2019.



Individuals with psycho-social and intellectual disabilities are identified from a very early stage of proceedings when police and prosecution gather data on the alleged perpetrator of the crime under investigation – character traits, material and family status, level of intellectual development, mental illnesses, possible stays in a specialised psychiatric institution, etc. Much reliance is made on the personal impressions of investigative police, but expert examinations are also ordered to establish whether the person indeed has a mental illness and whether he/she can give credible evidence.²⁷ This opinion is supported by police, who, in the absence of direct access to data about such persons, or their possible legal guardianship, usually identify them via direct contact with them, seeing visible signs of a mental disorder, posing direct and imminent danger to their own life or health or those of others. Evidence of the offender’s psycho-social disability is also given by victims when they call police departments before a police patrol is sent to the scene of the offence.²⁸

In general, in the opinion of the prosecution, lack of mental fitness to bear criminal responsibility can be established at any stage – during the pre-trial proceedings, where the prosecutor may terminate them, and even during the trial. In case of mental fitness, the person may as well be sentenced and/or committed to compulsory medical treatment (see above).²⁹ Also after sentencing, the probation measure of ‘inclusion in programmes for influence by the public’ may be a penalty of choice for persons with psycho-social or intellectual disabilities.³⁰

Provision of information

In informing defendants, including persons with psycho-social or intellectual disabilities, about their rights, prosecutors rather rely on what is stipulated in the law and in the decrees for bringing charges. Although no lawful, non-discriminatory way is seen to set a different regime for informing such persons, the approach of authorities is nevertheless ‘adapted’ (see below).³¹ General, standard procedure is also used by police who, upon detention, explain to persons their rights and have them fill in and sign a declaration enlisting those rights. If the persons are in no state to fill in the declaration, it is filled in by an officer in the presence of a witness (see below the chapter on custodial measures).³² Special rules are only available for people who have speaking, visual or hearing impairments and who are not in command of the Bulgarian language – those persons are accorded an interpreter/a sign interpreter. According to police,³³ the appointment of sign interpreters is very much relevant for offenders with psycho-social disabilities since they often have such additional impairments. In practice, especially in smaller

²⁷ Interview with a prosecutor, 12 February 2019.

²⁸ Ministry of the Interior (*Министерство на вътрешните работи*).

²⁹ Interview with a prosecutor, 12 February 2019.

³⁰ Interview with a prosecutor, 12 February 2019.

³¹ Interview with a prosecutor, 12 February 2019.

³² Ministry of the Interior (*Министерство на вътрешните работи*).

³³ Ministry of the Interior (*Министерство на вътрешните работи*).



towns/villages relatives or caretakers are given such roles because they are in best position to explain to the offender his/her rights and assist police in carrying out their duties.

Appointment of lawyer

The existence of physical or mental disabilities which prevent the person from executing his/her own defence is one of the grounds for appointment of mandatory defence in the criminal proceedings under the Criminal Procedure Code. The existence of such disabilities, however, is a matter to prove and cannot be equated to the existence of any psycho-social or intellectual disability (see section on case law). Defence is also mandatory if a request is made to court for the defendant's detention in custody or if the defendant is already detained on some grounds. No waiver is valid of that right. In case of mandatory defence, the relevant authority appoints a defence attorney.

Special measures

Prosecutors do take into account the needs of persons with psycho-social and intellectual disabilities by affording them breaks to calm down, giving them refreshments, and interviewing them with more care. They attempt not to use too many professional terms and speak simply and understandably, they constantly monitor the persons' condition, because such persons are in principle very much afraid of criminal proceedings, which hinders them from expressing their statements and opinions. However, if the defendant is considered mentally fit, prosecution generally sends its indictment to court, although the person's disabilities and unfavourable family environment may be considered attenuating circumstances when pronouncing the sentence.³⁴

Specialised assistance and services

As support persons are not explicitly established under Bulgarian law, in the opinion of the prosecution, the presence of such persons may be refused although an assessment should be made in accordance with each particular case. A prosecutor interviewed has not had such a case, but thought that, if a doctor wants to be present at the interview of such a person, he/she would most probably be allowed.³⁵ In the opinion of police as well, there are no norms or guidelines on the presence of a family member or support person for such people, and each police officer should assess himself/herself whether the presence of such a person would help the investigation, or the interview.³⁶

³⁴ Interview with a prosecutor, 12 February 2019.

³⁵ Interview with a prosecutor, 12 February 2019.

³⁶ Ministry of the Interior (*Министерство на вътрешните работи*).



Specialised training

Prosecutors in Bulgaria receive no specialised training to work with persons with psycho-social and intellectual disabilities. Such persons are only mentioned within the general practical trainings on how to conduct defendant interviews, but in no sufficient depth.³⁷ Police, including investigative officers, has not had any specialised training either.³⁸

Case-law

As Bulgarian law has few specific norms on the situation of offenders with psycho-social or intellectual disabilities, more substantial bodies of case law are found in relation to those few norms. One of those is the regulation on obligatory defence. A fair differentiation is made in Bulgarian case law between lack of psychiatric fitness to bear criminal liability and mental disabilities hindering the person's ability to defend himself/herself, which would justify the appointment of an ex officio lawyer, but persons would nevertheless be prosecuted and tried with no specific treatment envisaged. Thus, defendants with, respectively, minor oligophrenia, symptomatic epilepsy or organic personality disorder, although having ex officio lawyers or not needing such because of having hired their own, have been found fit for criminal liability and pass the full cycle of criminal procedure, with no indication of specific measures to facilitate their understanding of proceedings.³⁹ Persons' ability to defend themselves has also been seen as affected in cases of drug addiction, for example concerning heroin,⁴⁰ but, according to another court act, alcohol-related epilepsy, for example, did not fall among those cases.⁴¹ Thus, medical criteria primarily used to define a person's disability create a conundrum of diagnoses where criteria on who should or should not get ex officio defence are difficult to establish.

In a notable exception looking at the appointment of obligatory defence as a safeguard for rights, such a lawyer was appointed for maximum guarantee of a defendant's right of defence even though expert opinions on the mental disability do not find the person unable to defend himself/herself.⁴²

³⁷ Interview with a prosecutor, 12 February 2019.

³⁸ Ministry of the Interior (*Министерство на вътрешните работи*).

³⁹ Regional Court of Lovech (*Районен съд - Ловеч*), Sentence No 87 of 11 December 2009 under criminal case No 623/2009 (*Присъда № 87 от 11.12.2009 г. на РС - Ловеч по н. о. х. д. № 623/2009 г.*); Regional Court of Dupnitsa (*Районен съд - Дупница*), Sentence No 7 of 22 January 2014 under criminal case No 1510/2012 (*Присъда № 7 от 22.01.2014 г. на РС - Дупница по н. о. х. д. № 1510/2012 г.*), Sofia City Court (*Софийски градски съд*), Decision No 537 of 29 May 2014 under criminal case No 1587/2014 (*Решение № 537 от 29.05.2014 г. на СГС по в. н. о. х. д. № 1587/2014 г.*).

⁴⁰ Regional Court of Sofia (*Софийски районен съд*), Sentence of 17 June 2014 under criminal case No 10337/2013 (*Присъда от 17.06.2014 г. на СРС по н. о. х. д. № 10337/2013 г.*), Regional Court of Sofia (*Софийски районен съд*), Sentence of 28 January 2010 under criminal case No 12442/2010 (*Присъда от 28.01.2010 г. на СРС по н. о. х. д. № 12442/2010 г.*).

⁴¹ Gabrovo District Court (*Окръжен съд - Габрово*), Decision No 72 of 15 October 2015 under criminal administrative case No 82/2015 (*Решение № 72 от 15.10.2015 г. на ОС - Габрово по в. н. а. х. д. № 82/2015 г.*).

⁴² Regional Court of Vyalta (*Районен съд - Бяла*), Sentence No 140 of 2 December 2010 under criminal case No 234/2010 (*Присъда № 140 от 2.12.2010 г. на РС - Бяла по н. о. х. д. № 234/2010 г.*).



To continue the line of safeguarding the rights of persons with psycho-social and mental disabilities during criminal proceedings, such disabilities are in many cases seen as alleviating circumstance when deciding on the criminal penalty.⁴³ Interestingly, courts have also discussed how defendants with psychosocial disabilities, for example one with a serious form of debility, can be suggested and led to admit a crime they have not committed. Such admissions courts did not credit.⁴⁴

⁴³ Regional Court of Lovech (*Районен съд - Ловеч*), Sentence No 87 of 11 December 2009 under criminal case No 623/2009 (*Присъда № 87 от 11.12.2009 г. на РС - Ловеч по н. о. х. д. № 623/2009 г.*), Regional Court of Plevan (*Районен съд - Плевен*), Sentence No 579 of 30 September 2010 under criminal case No 1114/2008 (*Присъда № 579 от 30.09.2010 г. на РС - Плевен по н. о. х. д. № 1114/2008 г.*), Regional Court of Popovo (*Районен съд - Попово*), Sentence of 2 February 2010 under criminal case No 402/2009 (*Присъда от 2.02.2010 г. на РС - Попово по н. о. х. д. № 402/2009 г.*).

⁴⁴ Regional Court of Popovo (*Районен съд - Попово*), Sentence of 2 February 2010 under criminal case No 402/2009 (*Присъда от 2.02.2010 г. на РС - Попово по н. о. х. д. № 402/2009 г.*).



Custodial and non-custodial measures during criminal proceedings

This section explains the measures which may be imposed on suspects or accused with psycho-social or intellectual disabilities during the criminal proceedings.

Custodial and non-custodial measures. Grounds for detention

Firstly, suspects and accused with psycho-social and intellectual disabilities can be detained by police under the Ministry of the Interior Act.⁴⁵ Strictly speaking, only detention of a person 'on whom there is information that he/she has committed a crime' could be part of subsequent criminal proceedings. However, according to practitioners, persons could often be detained by police on other grounds and then become a defendant in subsequent criminal proceedings. Thus, other grounds under which people with psycho-social or intellectual disabilities could be detained are 'wilful obstruction of a police authority to do their official job' or 'displaying serious mental disturbance and, with his/her conduct, violating public order or putting his/her life or the life of others in clear danger', or, as will be seen from case-law below, even lack of identity documents. In practice, police state that most detentions of persons with psycho-social and intellectual disabilities are accompanied by physical force, auxiliary means, additional police forces and, in some cases, psychiatrists and orderlies from psychiatric medical establishments.⁴⁶ This can possibly be attributed to the lack of specific procedures and guidelines to deal with such persons, which the police mention above in the present report.

After being detained, persons may be placed in a detention unit and 'personal security measures' may be taken with regard to them, if their conduct or the aims of detention so require. All police detainees have the right to interpretation, medical aid, to appeal their detention, right to defence, or waiver thereof, and the right to refuse to give explanations. Persons also have the right to notify third persons about their detention. The actual procedure for detention is regulated in a special instruction by the Minister of the Interior.⁴⁷ Few specific rules exist on persons with psycho-social or intellectual disabilities, but a number of others can be relevant to their potentially vulnerable situation:

- If the detainee is not in condition to fill in the declaration about his/her rights himself/herself, it is filled in by an officer while the person dictates his/her wishes in the

⁴⁵ Ministry of the Interior Act (*Закон за Министерството на вътрешните работи*), 27 June 2014, available in Bulgarian at www.lex.bg/laws/ldoc/2136243824.

⁴⁶ Ministry of the Interior (*Министерство на вътрешните работи*).

⁴⁷ Instruction N 81213-78 of 24 January 2015 on the order of executing detention, the equipment of premises for placement of detained persons and the order therein in the Ministry of the Interior (*Инструкция № 81213-78 от 24 януари 2015 г. за осъществяване на задържане, оборудването на помещенията за настаняване на задържани лица и реда в тях в Министерството на вътрешните работи*), 3 February 2015, available in Bulgarian at www.lex.bg/bg/laws/ldoc/2136426770.



presence of a witness, certifying the truthfulness of the declaration by his/her signature – an option often referred to by experts as potentially allowing abuse;

- Detainees are under constant guard;
- Before being placed in the detention premises, the person is searched by an officer of the same gender in the presence of a witness of the same gender; all items found are kept and stored, except, among others, religious writing or fiction, medical documents, photos of family members or relatives, contact details of lawyers or relatives, personal notes if not related to the crime;
- The detainee is subjected to medical examination upon his/her request or when his/her health condition so requires; a request for such examination can also be made by a parent, guardian or attorney; the detainee can also be examined by a doctor of his/her choice at his/her expense; an officer, of the same gender, can be present at the examination only upon request of the doctor; if medicines are prescribed, they are administered under the control of the guards;
- Notably, persons 'in a crisis, mentally ill, having contagious diseases, in a violent state, recidivists and those suspected of serious crimes' are placed on separate detention premises from the other detainees; some detention facilities may be soundproofed and equipped in a way not to allow self-harm.

Consultations with a psychiatrist may also be required⁴⁸ and auxiliary means under strictly defined grounds can be used if persons become violent.

Once being determined mentally fit to be criminally liable, defendants with psycho-social and intellectual disabilities can also be detained in custody under the Criminal Procedure Code.⁴⁹ No specific rules exist in the Code about the detention of such persons either. Detention, as well as the other compulsory measures under the Code (periodic appearance in front of an authority, bail and house arrest), can be ordered when there is evidence for a grounded supposition that the person has committed the crime in question and the defendant can abscond, commit another crime or hinder the execution of his/her sentence. When determining which measure to impose, authorities take into account the degree of public danger of the crime; the evidence against the defendant; notably his/her health condition; family status, profession, age and other personal details.

Specifically, detention in custody is ordered when there is a grounded supposition that the defendant has committed a crime for which imprisonment or another, more serious penalty is provided for, and the evidence shows that there is real threat for the defendant to abscond or commit a crime. It is imposed by the first instance court upon request of the prosecutor. The

⁴⁸ Ministry of the Interior (*Министерство на вътрешните работи*).

⁴⁹ Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, available in Bulgarian at www.lex.bg/en/laws/ldoc/2135512224.



defendant or his/her lawyer can at any time request another compulsory measure, i.e. to be released from detention. If detention is confirmed, the court can set a time limit of not more than 2 months where another request cannot be made, unless, notably, the health condition of the defendant worsens.

Time limits of detention. Accommodation in a specialised (medical) facility

There are no specific time limits for detention of persons with psycho-social and intellectual disabilities. Detainees can be accommodated in medical establishments, if their health condition so requires. Generally speaking, compulsory and mandatory treatment in psychiatric hospitals (see above) can also be considered 'alternatives' to detention, but they are only imposed under specific conditions and procedure.

Detention conditions

The conditions of police detention are regulated in the same instruction by the Minister of the Interior which regulates the procedure for detention.⁵⁰

No specific clauses are in place for persons with psycho-social or intellectual disabilities and 'special' premises are only allowed for underage persons (14-18 years of age). Some rules relevant to the situation of persons with intellectual disabilities are:

- The regime of detainees is determined, taking into account the detainee's personality, the existence of illnesses or the need for a medical or dietary regime;
- The person's visible health condition is noted upon his/her release and a medical examination may be done if needed or upon request of the person;
- Self-harm of detainees is put among the grounds for crisis action in detention facilities;
- NGOs, experts under international treaties and the Ombudsman are allowed to inspect the observance of human rights in detention facilities; independent civic monitoring is also possible;
- Detention premises are equipped in a manner, suitable for the category of persons to be placed;
- No handcuffs are allowed on detention premises unless the detainee can harm himself/herself or another; no sharp construction elements are allowed for danger of self-harm.

⁵⁰ Instruction N 81213-78 of 24 January 2015 on the order of executing detention, the equipment of premises for placement of detained persons and the order therein in the Ministry of the Interior (*Инструкция № 81213-78 от 24 януари 2015 г. за осъществяване на задържане, оборудването на помещенията за настаняване на задържани лица и реда в тях в Министерството на вътрешните работи*), 3 February 2015, available in Bulgarian at www.lex.bg/bg/laws/ldoc/2136426770.



The regime and conditions of detention in custody within the criminal procedure are regulated in the Execution of Penalties and Detention in Custody Act.⁵¹ Few specific rules are in place for detainees with psycho-social or intellectual disabilities, but a number of norms are relevant to their situation. Detainees can immediately notify their families or relatives about their detention, or sign a declaration that they should not be notified. They have the right to visits, telephone calls, correspondence, food parcels and money for personal needs. Damage risk assessment is made and their conduct is constantly monitored during the detention. If the damage risk assessment shows a high or very high risk, a compulsory psychological examination is given to the detainees. People with mental disturbances are among the vulnerable groups who can be placed separately from others for their own and others' safety. In case of aggressive behaviour, mental disturbance or depression, as a result of which the detainee may threaten his/her or others' life and health, auxiliary means can be used against the person. However, if the person has 'visible' physical or mental disabilities, physical force and auxiliary means are only allowed in cases of sudden attacks, detention, release of hostages or group riots. If detainees' health condition so requires, they can be placed into a prison medical establishment or a general one, if the specialised ones do not have the required resources, upon a ruling by the prosecutor or the court. Detainees are visited by a doctor at least once a week or immediately in urgent cases.

Medical treatment of detainees is further detailed in a special regulation on the matter.⁵² It is done by medical personnel in the detention places, in medical centres and specialised hospitals with the detention places, or, if need be, other medical establishments. The opinions of medical specialists are obligatory for the heads of detention places. Initial training of detention officers contains lectures on indications for, among others, alcohol and drug abuse withdrawal symptoms, mental disturbances, suicidal thoughts and ways to prevent self-harm. Detainees are subjected to an initial check to assess their general medical condition.

Special assistance during detention

No measures of special assistance for offenders with psycho-social and intellectual disabilities have been known in Bulgarian law and practice, except for medical treatment and psychological assessments under the general order, applicable for all detainees. Thus, the regulation on medical treatment of detainees contains a special section on psychiatric aid. In case of suspected mental disturbance of a detainee, the resident psychologist and the psychiatrist with the medical centre do checks to clarify the diagnosis. Special monitoring is done of detainees with a history of alcohol or drug abuse, or suicidal acts, and a programme is prepared for their treatment. Those

⁵¹ Execution of Penalties and Detention in Custody Act (*Закон за изпълнение на наказанията и задържането под стража*), 1 June 2009, available in Bulgarian at www.lex.bg/laws/ldoc/2135627067.

⁵² Regulation N 2 of 22 March 2010 on the conditions and order of medical treatment in the places of deprivation of liberty, issued by the Minister of Health and the Minister of Justice (*Наредба № 2 от 22 март 2010 г. за условията и реда за медицинското обслужване в местата за лишаване от свобода*), 23 April 2010, available in Bulgarian at www.lex.bg/laws/ldoc/2135675773.



subjected to compulsory medical measures due to alcohol and drug abuse are transferred to the prison hospital in the town of Lovech, as well as detainees with mental disturbance needing hospital treatment, who, until the transfer, are put in isolation in the detention facility medical centre. Importantly, if a mental disturbance is suspected which may lead to lack of mental fitness to bear criminal responsibility, the psychiatrist with the detention facility makes a proposal to the prosecutor to request a forensic psychiatric opinion. If such disturbance is established, the detention of custody may be substituted and the person is placed in a specialised psychiatric establishment.

The regulation on medical treatment also regulated medical measures during problematic situations in detention facilities. Compulsory medical measures are imposed against detainees to prevent acts against his/her own life and health or those of others, for which the prosecutor is notified. In cases of hunger strikes detainees are consulted by the psychiatrist or psychologists. Medical aid is immediately given in cases of self-harm or suicide attempts.

Statistics

No publicly available statistics on custodial and non-custodial measures of persons with psycho-social and intellectual disabilities have been found.

Case-law

Regarding custodial and non-custodial measures imposed upon persons with psycho-social and intellectual disabilities, case-law has discussed at length police detention on various grounds, mostly with regard to appeals of detention orders. In discussing various cases of detention, court decisions have clearly revealed situations, where police neither had sufficient information on the suspects' mental status, nor had at their disposal a risk assessment tool or expert assistance.

By way of example, a decision was reviewed⁵³ where police officers had to visit several times a person with previous history of aggressive behaviour towards uniformed officers. At some point the suspect hit them and police had no choice but arrest and send him to a psychiatric ward. The person was later found to be psychiatrically unfit for criminal liability.

In another case,⁵⁴ police were called to a restaurant where a person was breaking objects aggressively, had to let him ride a taxi with a friend of his, with a promise from both to appear at the precinct, and, after the suspect tried to escape, had to point guns at him in order to detain

⁵³ Regional Court of Svishtov (*Районен съд - Свищов*), Ruling No 220 of 30 August 2013 under private criminal case No 371/2013 (*Определение № 220 от 30.08.2013 г. на РС - Свищов по ч. н. д. № 371/2013 г.*).

⁵⁴ District Court of Shumen (*Окръжен съд Шумен*), Sentence No 13 of 27 March 2017 under criminal case No 38/2017 (*Присъда № 13 от 27.03.2017 г. на ОС - Шумен по в. н. о. х. д. № 38/2017 г.*).



him and take him to police custody. This could be seen as a prolonged situation where police had to resort only to standard techniques, without a previous risk assessment to point to a need for a more specialised approach.

In a very indicative decision,⁵⁵ police were once called to what was reported as a family row, established that the man, living at the address, was 'drunk' and very aggressive, and made quite a difficult arrest, where one of the officers sustained bodily injuries. The person was never charged for his actions, because he turned out mentally ill and not fit to bear criminal responsibility. Thus, police was clearly unable to get advance information about the suspect's mental state, nor was risk assessment applied to potentially call for specialised help.

Decisions have also been reviewed, where persons with psycho-social and mental disabilities have been, wrongfully, formally detained on suspicions of a crime committed and inability of police to establish their identity. Both grounds were pronounced unlawful. In addition, detention documentation was drafted in violation of persons' information rights, due to which their detention orders were later revoked.⁵⁶ Thus, in the absence of specific rules governing the detention of such persons, potential avenues for abuse could be present.

⁵⁵ Sofia Administrative Court (Административен съд - София), Decision No 3276 of 12 May 2015 under administrative case No 12397/2014 (Решение № 3276 от 12.05.2015 г. на АдМС - София по адм. д. № 12397/2014 г.).

⁵⁶ Supreme Administrative Court (Върховен административен съд), Decision No 4231 of 2 April 2018 under administrative case No 8122/2017, 5th division (Решение № 4231 от 2.04.2018 г. на ВАС по адм. д. № 8122/2017 г., V о.).



Promising practices

This section describes promising practices with regards to persons with psycho-social or intellectual disabilities in criminal proceedings.

In the absence of promising practices, developed by public institutions, project-based/NGO-led partnerships, including Bulgaria, should be mentioned as drivers for developing tools for improving the situation of persons with psycho-social or intellectual disabilities within the criminal proceedings.

Among the initiatives furthering the rights of persons with psycho-social or intellectual disabilities within the criminal proceedings is a two-year pilot research project (2016-2018) assessing the implementation of the EC Recommendation on safeguards for vulnerable persons suspected or accused in criminal proceedings (2013/C 378/02), with the participation of a Bulgarian partner, the Bulgarian Helsinki Committee. It produced the Handbook "Dignity at Trial",⁵⁷ translated to all partner countries' languages, which contains a comparative report on partner countries' legal and practical frameworks on the matter, criteria for identifying promising and good practices, a number of recommendations for practitioners and beneficiaries, as well as legal and policy recommendations for Member States. In annexes, the project has developed a checklist on first indications for a person's potential intellectual and/or psychosocial disabilities, and documentation sheets about the rights and obligations during criminal procedure for police and judges, respectively.

The Checklist: First Indications for a Person's Potential Intellectual and/or Psychosocial Disabilities contains questions for screening by police, including whether the questioned person is able to comprehend complex information and express himself/herself, whether he/she has temporal and local orientation or suffers from an obvious thinking or affect disorder. Questions for the suspect are also available: whether he/she gets any kind of professional psychosocial support and whether it is possible to call a person of trust to get further information about the person questioned. Among the further indications given to police to refer to are previous deprivation of liberty in a psychiatric hospital, information about ambulant psychiatric treatment, already existing psychiatric or psychological assessments for other trials, actual medication, drug or alcohol screening, reports from police colleagues from previous actions or information from relatives, close persons or caretakers about the person's disability, suicide attempts.

The documentation sheets about the rights and obligations during criminal procedure are divided into one for police and one for judges. Both contain easy to read information for the

⁵⁷ Dignity at Trial: Enhancing Procedural Safeguards for Suspects with Intellectual and Psychosocial Disabilities (2018), available at <https://bim.lbg.ac.at/en/publication/current-publications/handbook-dignity-trial>.



suspect/defendant about the various stages of the procedure and the actions authorities will take towards him/her. Authorities should go through the sheet with the suspect/defendant and hand out a copy of the document to him/her. Each piece of information is accompanied by an easy to understand statement by which the person can express his/her wishes and understanding, for example: I understand the reason why the police arrested me yes/no and I want to call somebody yes/no.