



November 2018

Safeguarding the Rights of Vulnerable Offenders

EU criminal law provides suspects and accused with a set of procedural rights to ensure that their basic rights are protected sufficiently. In particular, the legislative measures provide suspects and accused with the right to access to a lawyer and to communicate upon arrest ([Directive 2013/48/EU](#)), the right to be presumed innocent until proved guilty according to law, to remain silent and not to incriminate oneself ([Directive 2016/343/EU](#)) and the right to legal aid ([Directive 2016/1919/EU](#)).

A key prerequisite to enable suspects and accused to effectively benefit from all these safeguards is the degree, to which these persons are aware of and adequately understand these rights and the procedure for their exercise. This is particularly relevant for vulnerable groups of individuals, such as the persons with psycho-social or intellectual disabilities. To address their vulnerable situation in criminal proceedings, in 2013 the EC adopted a special Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings. The aim of this Recommendation is to encourage Member States to strengthen the procedural rights of all suspects or accused persons who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities.

In many EU Member States, the vulnerable situation of persons with psycho-social and intellectual disabilities is not properly assessed and taken into account when such persons are suspected or accused of committing a crime. This is often due to the lack of knowledge on the part of law enforcement and judicial authorities as to how to identify the vulnerabilities of such persons, what are the most appropriate ways to communicate with them and how to provide them with adequate opportunities to exercise their rights.

The failure to identify, at the very beginning of the proceedings, the specific vulnerabilities of persons with psycho-social and intellectual disabilities, and to communicate to them, in an understandable way, the information about the safeguards they can benefit from, might seriously harm their rights.

OPSIDIANET Project

Against this background, a consortium of research institutes experienced in the field of prison reform and inmates' rights from four Member States ([Center for the Study of Democracy](#) – Bulgaria; [The Center for European Constitutional Law](#) - Greece; [Comunità Papa Giovanni XXIII](#) - Italy; and [Droit au Droit \(DAD\)](#) – Belgium) have launched this project, with the aim to contribute to the effective and coherent application of EU criminal law in the area of the rights of suspects and accused with psycho-social or intellectual disabilities.

Specific objectives of the project will consist in:

- identifying gaps in national legislations and practices that prevent suspects and accused with psycho-social or intellectual disabilities to effectively benefit from the full scope of their rights.
- developing tools to enable judicial and law enforcement authorities properly identify and safeguard the rights such persons.
- delivering a series of trainings to facilitate and promote the use of these tools in criminal proceedings.

[Read more](#)

Project Logo Competition

Objective of the competition

The objective of this competition is to create a logo for the project. The logo will serve as the main component of the visual identity of the project and will appear on all project deliverables, including website, electronic newsletters and printed publications.

Further information about the tasks is provided in the [Terms of Reference](#).

Deadlines

The deadline for submissions is **30 November 2018, 18:00 CET**. Submissions received after the deadline will not be accepted. Receipt confirmation will be sent to each candidate not later than 24 hours after the entry is received. Candidates, who have not received a confirmation within 24 hours are encouraged to contact the organisers.

The deadline for the evaluation of entries is 14 December 2018. Each candidate will be informed about the outcome of the competition by email not later than 21 December 2018.

Recommended Reading

Koen Geijsen et al, “Identifying psychological vulnerabilities: Studies on police suspects’ mental health issues and police officers’ views”

(2018) 5(1) Cogent Psychology

Psychological vulnerabilities in police suspects may interfere with the demands of police interrogations, and thereby increase the risk of an unreliable statement, or even a false confession. [Read more](#)

“Persons with disabilities and the European Convention on Human Rights”

European Court of Human Rights, (2018)

This factsheet of the ECtHR focuses on the overall obligation to respect human right, and is applied to persons with disabilities while emphasizing various aspects as key elements in the respect for human rights. [Read more](#)

Anna Arstein-Kerslake et al, “Human Rights and Unfitness to Plead: The Demands of the Convention on the Rights of Persons with Disabilities”

(2017) 17 Human Rights Law Review

This article provides a critical analysis of unfitness to plead regimes in common law and civil law countries in the light of key rights set out in the United Nations Convention of the Rights of Persons with Disabilities. It then examines how unfitness to plead regimes might be reformed to ensure that the rights of persons with cognitive disabilities are protected. [Read more](#)

“Rights of suspected and accused persons across the EU: translation, interpretation and information”

(2016), European Union Agency for Fundamental Rights

Protecting the human rights of individuals subject to criminal proceedings is an essential element of the rule of law. Persons who are suspected or accused of crimes in countries other than their own are particularly vulnerable, making appropriate procedural safeguards crucial. In addition, people with disabilities and children may have specific needs that may place them at further disadvantage. [Read more](#)

Duncan Chappell, “Policing and the Mentally Ill: International Perspectives”

CRC Press 2013

The book demonstrates how a number of jurisdictions in Europe have only recently begun to recognize therapeutic intervention with the mentally ill as a priority issue, and still frequently suffer from a lack of significant resources. The largest section of the book focuses on Australia, where local law enforcement agencies have displayed a remarkable enthusiasm for and commitment to change in their management of interactions with citizens with mental illness. Finally, the book examines the particular challenges of providing humane and effective policing for persons with mental illnesses in parts of the developing world. These challenges often involve dealing with entrenched cultural beliefs and practices based on superstition, fear, and prejudice regarding persons thought to be mentally ill. [Read more](#)

Jenny Holmes & Iain McKinnon, “Assessment of people with learning difficulties and disabilities in police custody”

(2017) Faculty of Forensic & Legal Medicine of the Royal College of Physicians.

People with learning disabilities come into contact with the Police in many ways. Police may be called to behavioural disturbances in family homes or crises in care placements. Acquiescence and suggestibility renders individuals vulnerable to be drawn into offending behaviours. Challenging behaviours associated with the learning disability may lead to offences such as assault and damage to property. Poor awareness of societal norms and boundaries can lead to offending of all types. As such, the Faculty of Forensic & Legal Medicine of the Royal College of Physicians has published medico-legal guidelines and recommendations on the matter of assessing learning difficulties and disabilities of people in police custody. [Read more](#)

Samson Schatz, “Interrogated with Intellectual Disabilities: The Risk of False Confession”

(2018) 70 Stanford Law Review.

Few pieces of scholarship focus specifically on the heightened risks faced by individuals with intellectual disabilities throughout the process of police interrogation. This Note describes the various ways these individuals are disadvantaged. And it offers an additional data point illustrating the vulnerability of people with intellectual disabilities. [Read more](#)

De Smet S, De Keyzer W, De Donder L, Ryan D, Verté D, Broekaert E, Vandeveldel S., [Older offenders deemed criminally irresponsible in Flanders \(Belgium\): Descriptive results from a retrospective case note study](#)

International Journal of Law and Psychiatry, Volume 46, May–June 2016, Pages 35-41.

This paper aimed to explore the characteristics of older offenders categorized as criminally irresponsible in Flanders (northern Belgium) with a focus on the differences between imprisoned older offenders deemed criminally irresponsible and their peers who are residing outside prison.

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