

OPSIDIANET

**Offenders with Psycho-Social and Intellectual Disabilities
Assessing the Needs and Ensuring Equal Treatment**



May 2019

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:

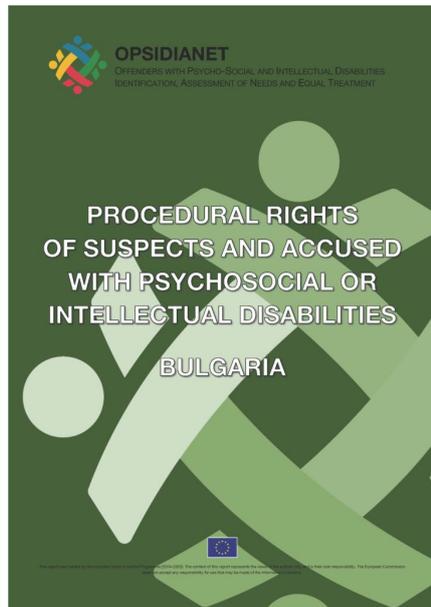
- identifying gaps in national legislations and practices that prevent suspects and accused with psycho-social or intellectual disabilities to effectively benefit from the full scope of their rights.
- developing tools to enable judicial and law enforcement authorities properly identify and safeguard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

Check the **OPSIDIANET's website** (<https://www.opsidianet.eu/>) to find all the information about the project in one place, stay updated on new developments, download publications in several languages or get in contact with the project team.

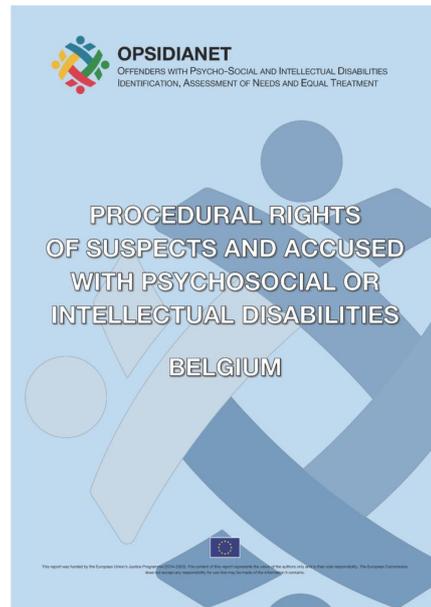
Publications



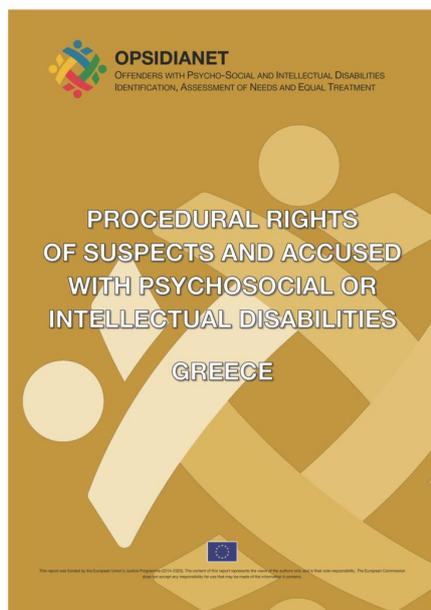
These reports offer an overview of the procedural rights of suspects and accused with psychosocial or intellectual disabilities in **Bulgaria, Belgium, Greece and Italy**. It explains the legal status of individuals with psychosocial or intellectual disabilities according to the law of these countries, describes the applicable procedures and practices when such persons commit a crime and reviews the different measures applied by the authorities in such cases.



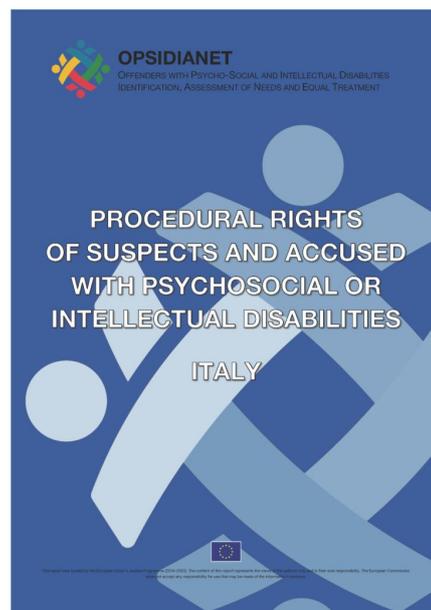
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Suspects and Accused with Psychosocial or Intellectual Disabilities: Library of Resources

30 March 2019

The collection of literature offers an overview, in a summarised format, of the main scientific findings and observations on the situation of suspects and accused with psycho-social or intellectual disabilities. The collection includes academic research, reports and studies of nongovernmental organisations, and policy documents of national and international institutions. The review is based on an interdisciplinary approach and, in addition to legal studies, includes also relevant criminological, sociological and psychological works

[Download the full text \(PDF, 1 MB\)](#)

Advancing Access to Justice for People with Disabilities in Armenia

Anahit Chilingaryan, Human rights Watch, 26 January 2019

A recent decision by Armenia's highest court promises to advance the right to equal justice for people with disabilities in Armenia. In 2015, Artur Hakobyan, a then 18-year-old military conscript reported that a military commander physically abused him on several occasions during his mandatory service. Hakobyan alleges that on one occasion, the commander dragged him by his ear and hit him in the neck when he refused to water trees on the military base. But after hearing the testimony of the commander and other soldiers, the investigator quickly closed the investigation. Relying on a provision in the criminal procedure code that precludes testimony from persons "not able to perceive correctly and reproduce the circumstances," investigators and prosecutors dismissed Hakobyan's testimony because of his psychosocial disability (mental health condition) after doctors had determined he was such a person. His appeals through the lower courts were dismissed on the same grounds. But now Armenia's Cassation Court has ruled investigators and courts must hear and consider the testimony of persons with mental health conditions, and they cannot ignore testimony based exclusively on medical examinations of a person's mental health.

[Read the full story here](#)

Not fit for prison: The journey of a mentally disabled woman through the criminal justice system

Harrison Christian, Stuff, 15 November 2018

In July at the Auckland women's prison, the 24-year-old was dressed in a stitched gown and seemed hazy on her personal details. She couldn't recall her full name correctly. But she was able to tell the prison forensic team: "I have been in prison before." The report concluded she was unlikely to be found fit to stand trial.

The same conclusion had already been reached on another matter last year, but here was Josie in the criminal justice system again. Each time she faced new charges, a new report had to be written. There had been three reports in the past two years. Each time Josie appeared before the psychologists they started from scratch: looking over her past, assessing her mental abilities, and checking whether she understood the criminal charges she faced.

[Read the full story here](#)

Editor-in-Chief: [Nicola Giovannini](#)
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