



Identifying and recognizing mentally vulnerable suspects in a criminal investigation: a difficult task for the police

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I. Mentally vulnerable suspects in a criminal investigation

■ Vulnerable?

- Hampered participation in criminal proceedings
 - Difficulties in understanding the legal rights and the procedure itself
 - Problems in the (decision on the) exercise of legal rights
- Heightened risk of invalid and/or inconsistent statements and even false confessions

■ Causes

- Mental disorders (e.g. psychotic disorders, ADHD, ASD)
- Intellectual and learning disability
- Alcohol and/or drugs addiction or intoxication
- Personality traits
- Physical condition
- But also situational factors (e.g. fatigue, isolation, interview duration and techniques used)

II. The need for an early identification of mentally vulnerable suspects

■ Why?

- Overrepresentation of mentally vulnerable suspects in the criminal justice system (e.g. Bradley, 2009; Gudjonsson & Joyce, 2011; Hayes, 1996; Mackay, 2015)
- Need for an adapted treatment & specific procedural safeguards
- Quality of the statements (truth finding)
 - Prevention of miscarriage of justice
- Prevention of problems in the exercise of the legal rights
 - Fairness of proceedings
- But also European guidance: increased legal attention
 - Diverse ECHR case law
 - Green Paper on procedural safeguards 2003 – broad definition
 - Proposal for a Council Framework decision 2004 – non-exhaustive list
 - Directives 2012/13/EU & 2013/48/EU – attention for particular needs
 - Commission Recommendation on procedural safeguards for vulnerable persons suspects or accused in criminal proceedings 2013 – prompt identification is needed

III. Early identification: a difficult task for the police

- **Causes are diverse and complex**
 - Not (always) readily observable
 - Suspects trying to hide their problems (Gudjonsson, 2003; Hayes, 2002; Meissner, 2009)
 - Malingering is possible (e.g. Giger et al., 2010; Van Oorsouw & Merckelbach, 2010)
 - No definite markers (e.g. Gerry QC, 2016; Gudjonsson, 2010)
- **Lack of knowledge – reliance on experience and gut feeling** (Braanker, 2010; Douglas & Cuskelly, 2012)
- **Lack of useful, validated tools**
 - Specific tools (e.g. ID-screeners)
 - Not readily applicable in practice (e.g. GSS, GCS (Gudjonsson, 1984; 1989))
 - Tools emerged from practice – not validated
- **Not primary task – time pressure**
- **As a consequence: non-detection and no safeguards**
(e.g. Douglas & Cuskelly, 2012; Gudjonsson et al. 1993; Hayes, 2007; Young et al., 2003)

IV. A shift towards the criminal defence lawyer

- Why focusing on the defence lawyer instead of the police?
 - Increased role: ECHR, Belgian Salduz-code of conduct
 - ECHR case law, *Salduz v. Turkey*, 2008: *“In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task it is, among other things, to help to ensure respect of the right of an accused not to incriminate himself”*
 - Belgian Salduz-code of conduct: *“the defence checks whether his client is physically and/or mentally capable of being interviewed [...]”*.
 - Fits in the purpose of the consult and assistance of a lawyer
 - Early identification for the purpose of an effective defence
 - Primary actor, but also not primary task: lack of knowledge, limited time, no useful tools
- A shared responsibility
 - Emphasis on the defence lawyer
 - But still: need for applicable tools and training for early identification
 - Vigilance is always needed – better safe than sorry

Thank you for your
attention!

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