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Detainees with disabilities in Europe

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Pierre-Alain FRIDEZ, Switzerland, Socialists, Democrats and Greens Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Equality and Non-Discrimination on his report and broadly supports the proposed draft resolution and draft recommendation. It considers that the draft resolution could be further strengthened by clarifying or elaborating on certain concepts contained therein.

2. The committee recalls its earlier work on issues that are relevant to the present report, including on the fate of critically ill detainees in Europe that led to Parliamentary Assembly [Resolution 2082 \(2015\)](#) and [Recommendation 2082 \(2015\)](#) and promoting alternatives to imprisonment ([Resolution 1938 \(2013\)](#) and [Recommendation 2018 \(2013\)](#)), along with that of the Committee on Migration, Refugees and Displaced Persons on the alternatives to immigration detention of children ([Resolution 2020 \(2014\)](#) and [Recommendation 2056 \(2014\)](#)). On this basis, it is of the view that greater emphasis should be given in the draft resolution to encouraging the relevant national authorities systematically to consider non-custodial measures for disabled persons whose circumstances could otherwise justify detention, depending on the nature and severity of their disability and the capacity of the custodial system to provide appropriate care.

3. The committee therefore proposes four amendments to the draft resolution.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 2, first sentence, before the word “disabilities”, add the word “physical”.

Amendment B (to the draft resolution)

In paragraph 4, after the first sentence, insert the following sentence:

“This population, particularly fragile and sensitive to its environment, is susceptible, where care is inappropriate, to aggravation of its health problems and decompensations in the form of distress, agitation and even violence.”

1. Reference to committee: [D oc. 14107](#), Reference 4238 of 14 October 2016. Reporting Committee: Committee on Equality and Non-Discrimination. See [D oc. 14557](#). Opinion approved by the committee on 22 May 2018.



Amendment C (to the draft resolution)

At the end of paragraph 7.5, add the following words:

“, and systematically to consider non-custodial pretrial coercive measures or sentences, or compassionate release, for disabled persons whose circumstances could otherwise justify detention or imprisonment, depending on the nature and severity of their disability and the capacity of the custodial system to provide appropriate care bearing in mind the principle of reasonable accommodation;”

Amendment D (to the draft resolution)

At the end of paragraph 7.6, add the following words:

“; convicted persons who suffer from serious mental problems should be provided with health care and detained in closed facilities specialised as appropriate to their state of health wherever practicable;”

C. Explanatory memorandum by Mr Pierre-Alain Fridez, rapporteur for opinion

1. I congratulate Mr Manuel Tornare on his report, which displays a balanced, sympathetic approach to a delicate and complicated issue. As in the case of members of other vulnerable groups, the situation of disabled persons in detention requires careful, differentiated consideration; indeed, this differentiation must extend also to individual disabled detainees, depending on the nature and severity of their disability.

2. In this connection, I would recall the Assembly's earlier work on issues that are relevant to the present report, including on the fate of critically ill detainees in Europe that led to [Resolution 2082 \(2015\)](#) and [Recommendation 2082 \(2015\)](#) and on promoting alternatives to imprisonment ([Resolution 1938 \(2013\)](#) and [Recommendation 2018 \(2013\)](#)), along with that of the Committee on Migration, Refugees and Displaced Persons on the alternatives to immigration detention of children ([Resolution 2020 \(2014\)](#) and [Recommendation 2056 \(2014\)](#)).

3. In particular, I would recall the concern expressed by the Assembly in [Resolution 2082 \(2015\)](#) that the prison health-care system does not always provide for timely access to vital medical treatment, particularly for critically ill detainees. This concern may equally apply to disabled detainees. [Resolution 2082 \(2015\)](#) mentions factors including practical barriers, such as the unavailability of trained medical staff, the lack of prompt and efficient communication between prison staff and medical staff, the failure to transfer detainees to a public hospital, and the disproportionate physical restraint of detainees, all of which create obstacles to a detainee's ability to obtain adequate medical care, and all of which may be problematic also in the present context. I am reassured to see that this analysis is reflected in paragraph 5 of the draft resolution.

4. I would also recall the Assembly's concern, expressed in [Resolution 2020 \(2014\)](#), that detention, even for very short periods of time and in relatively humane conditions, has severe negative short- and long-term effects on children's physical and mental health and its observation that children in immigration detention are particularly vulnerable to the negative effects of detention and can be severely traumatised. Insofar as disabled detainees may also be particularly vulnerable, such considerations may also be relevant to them, depending on the nature and degree of their disability; although of course, the situation of disabled persons cannot be likened to that of children.

5. Paragraph 7.5 of the draft resolution raises the issue of adjusted sentences and alternatives to custodial sentences. In this respect, I would recall the basic requirements for the application of non-custodial sentences set out in [Resolution 1938 \(2013\)](#), the following of which are of particular relevant in the present context:

- the prohibition of discrimination in the application of non-custodial measures, which, in accordance with the case law of the European Court of Human Rights, also requires differential treatment of different groups where justified by relative differences in relevant characteristics;
- respect for the principle of proportionality between the seriousness of the offence and the intensity of the punitive character and the interference of the measure applied with the rights of the offender, where the relative intensity of the punitive effect and the interference with the offender's rights may be greater in the case of a disabled detainee;
- respect for an offender's rights to privacy and human dignity, which may be subject to more serious interference in the case of disabled detainees;

- the protection from undue risk of physical or mental injury, which may be greater in the case of disabled detainees.
6. In addition, there are certain details of the draft resolution that could be strengthened by further clarification or differentiation of relevant terminology. (Further explanation of my proposals to this end appears below in connection with the relevant amendments.)
7. On the basis of the foregoing, I would propose four amendments to the draft resolution intended to reinforce certain aspects thereof.

1. Amendment A (to the draft resolution)

Explanatory note

This amendment seeks to clarify that the problems mentioned in the first sentence of paragraph 2 of the draft resolution, especially those relating to mobility issues, are relevant to detainees with physical disabilities in particular.

2. Amendment B (to the draft resolution)

Explanatory note

This amendment seeks to clarify the consequences that may be suffered by detainees with psychosocial disabilities should appropriate care not be available.

3. Amendment C (to the draft resolution)

Explanatory note

This amendment seeks to encourage the relevant national authorities systematically to take account of the individual situation of disabled persons, namely their specific vulnerabilities and needs, when taking decisions on detention whether at the pretrial or sentencing stage, as well as for the purposes of compassionate release.

4. Amendment D (to the draft resolution)

Explanatory note

This amendment is self-explanatory; it is a consequence of the need to ensure appropriate care and respect for the detainee's human dignity and safety, as well as the safety of others in certain cases.