



## Resolution 2223 (2018)<sup>1</sup>

# Detainees with disabilities in Europe

### Parliamentary Assembly

1. The Parliamentary Assembly is very concerned about the situation of detainees with disabilities, whether these disabilities are physical, sensory, intellectual or psychosocial. Inadequate provision for their specific needs and a lack of accessibility and reasonable accommodation expose detainees with disabilities to violations of their fundamental rights and to degrading and discriminatory conditions of detention, which amount to a double punishment.

2. Depending on the type and seriousness of their disability, detainees with disabilities are faced with unsuitable cells, resulting in shameful living conditions, and the lack of access to common areas in prisons, which prevents them from moving around outside their cells without assistance. Communication difficulties may also have serious consequences in terms of access by detainees with disabilities to information in accessible formats and activities suited to their disabilities.

3. In the absence of measures to help them understand their rights, the sentence imposed on them, the operation and rules of the facilities where they are held and the complaints procedures, there is a risk of detainees with an intellectual or learning disability not being able to understand their environment, being seen as disruptive and being subjected to unjustified sanctions.

4. Unsuitable conditions of detention, the lack or inadequacy of appropriate care provision and the lack of trained staff mean that detainees with a psychosocial disability often do not have access to treatment suited to their specific needs, which worsens their state of health and does nothing to enable their future reintegration into the community. 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. Some people who have committed acts prohibited under criminal law but who have been declared not criminally responsible for their actions because of a psychosocial disability are deprived of their liberty for years with access neither to appropriate care nor to the necessary safeguards concerning their placement.

5. The Assembly notes that these issues also exacerbate the vulnerability and isolation of detainees with disabilities and prevent their social integration in prison. Moreover, these problems are compounded by factors that have a negative impact on all detainees but that disproportionately affect prisoners with disabilities, such as prison overcrowding; the tendency to imprison offenders rather than impose alternative sentences; the lack of medical staff willing to work in prison settings, which sometimes results in excessive use of immobilisation or in overmedication; repeated transfers and lack of continuity of care; and insufficient staff with adequate training in assisting detainees with disabilities. Lastly, the Assembly regrets the fact that the lack of up-to-date figures on the number of detainees with disabilities or the types of disability concerned prevents the introduction of appropriate measures for dealing with the problems encountered.

6. The Assembly underlines that it is States' responsibility to take all necessary steps to ensure that the conditions of detention in their prisons do not violate prisoners' fundamental rights and that their dignity is respected. While regretting the absence of a specific legal framework governing the situation of detainees with

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 1 June 2018 (see [Doc. 14557](#), report of the Committee on Equality and Non-Discrimination, rapporteur: Mr Manuel Tornare; and [Doc. 14561](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pierre-Alain Fridez).

See also [Recommendation 2132 \(2018\)](#).



disabilities at European level, it draws the attention of States to their obligations arising notably under the European Convention on Human Rights (ETS No. 5) and the United Nations Convention on the Rights of Persons with Disabilities, to the relevant rules in Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules and in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and to the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

7. In the light of the above and with a view to respecting the human dignity of all prisoners with disabilities, the Assembly calls on Council of Europe member States:

7.1. regarding the legal framework applicable to detainees with disabilities and its implementation, to:

7.1.1. sign and ratify the United Nations Convention on the Rights of Persons with Disabilities if they have not yet done so, and to implement its provisions;

7.1.2. adopt in their domestic law specific provisions governing the situation of detainees with disabilities, so as to ensure that the fundamental principles of equality of treatment, non-discrimination, reasonable accommodation and accessibility are respected for these detainees;

7.2. with a view to identifying the measures and means necessary for dealing with the problems encountered by detainees with disabilities, to gather statistical data, including data disaggregated by age, gender and other relevant criteria, which provide a clear picture of the number and circumstances of detainees with disabilities in all their diversity;

7.3. to take account, in all policies concerning the situation of detainees with disabilities, of the particular needs of detainees with disabilities at risk of multiple or intersectional discrimination, in particular those of women; elderly people; lesbian, gay, bisexual, transgender and intersex (LGBTI) people; and members of ethnic minorities;

7.4. with a view to ensuring fair access to justice, to put in place measures to identify all types of disability as soon as individuals come into contact with the criminal justice system, and to provide the assistance or care which they need without delay;

7.5. in order to prevent the imprisonment of persons whose condition is incompatible with detention, to provide for and further develop the application of adjusted sentences or alternatives to prison sentences, 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;

7.6. when a person with disabilities is placed in detention, to make sure that the choice of facility is based on the ability of the facility to meet the person's needs in terms of accessibility and reasonable accommodation; 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;

7.7. to reduce to an absolute minimum any delays between the arrival of persons with disabilities in prison and the provision of appropriate care for them, by identifying from the moment they enter prison their needs in terms of accessibility and reasonable accommodation, and to make sure that these needs are monitored throughout their detention;

7.8. with a view to ensuring that the accessibility and reasonable accommodation obligations are complied with for all types of disability, to:

7.8.1. provide a sufficient number of cells for persons with reduced mobility and to fit out prisons in line with the CPT's specific recommendations on such persons in terms of living space and cell design;

7.8.2. lay out prison premises in such a way that detainees with disabilities, in particular detainees with physical disabilities and visually impaired detainees, have the same access as their fellow detainees to all areas to which they should be able to go – sanitary facilities, outside areas, areas used for activities and training provided for detainees, medical services and areas used for visits, etc.;

7.8.3. provide, where appropriate, sign language interpretation services in detention facilities when other types of communication support are inadequate;

- 7.8.4. ensure access to information for persons with intellectual disabilities and, to this end, to prepare or support the preparation of easy-to-read versions of information concerning prison regimes and detainees' rights, drawn up in line with the standards developed by non-governmental organisations representing persons with intellectual disabilities;
- 7.8.5. provide a sufficient range of activities suited to the needs of detainees with disabilities;
- 7.9. regarding access to care, to:
  - 7.9.1. ensure prompt access to suitable care provided by a sufficient number of qualified staff, including medical staff, covering all necessary specialist areas; these staff members must also be trained in the specific features of the prison environment;
  - 7.9.2. ensure the continuity of care, including in the case of transfers to other facilities or in exceptional circumstances, such as industrial action by prison staff affecting the normal operation of prison services;
- 7.10. to provide disability training for judicial and prison staff and to include awareness of disability and multiple and intersectional discrimination in recruitment criteria.