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Detainees with disabilities in Europe

Reply to Recommendation¹: Recommendation 2132 (2018)
Committee of Ministers

1. The Committee of Ministers has carefully examined [Recommendation 2132 \(2018\)](#) on "Detainees with disabilities in Europe", which it transmitted to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and to the Steering Committee for Human Rights (CDDH) for information and possible comments. The Council of Penological Co-operation (PC-CP), Working Group (sub-committee to the European Committee on Crime Problems (CDPC)) also provided observations on the Recommendation.

2. The Committee of Ministers fully acknowledges the importance of ensuring that conditions of detention do not violate prisoners' fundamental rights and that their human dignity is respected. It therefore shares the concerns of the Parliamentary Assembly regarding the need to ensure equality of treatment, non-discrimination, accessibility and reasonable accommodation within prison for detainees with disabilities.

3. In this respect, the Committee of Ministers stresses the importance of respecting obligations arising under the European Convention on Human Rights and other relevant legal instruments such as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the importance of United Nations and Council of Europe non-binding instruments² which aim to protect human rights of persons with disabilities in prison.

4. The Committee of Ministers recalls that there is extensive case-law of the European Court of Human Rights regarding human rights of detainees that are ill or with disabilities. The Court has notably reiterated that, even though the Convention cannot "be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment", under Article 3 of the Convention "the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance".³

1. Adopted at the 1332nd meeting of the Ministers' Deputies (12 December 2018).

2. Recommendation [Rec\(2006\)2](#) on the European Prison Rules; Recommendation [Rec\(98\)7](#) concerning the ethical and organisational aspects of health care in prison; Recommendation [Rec\(99\)22](#) concerning prison overcrowding and prison population inflation; Recommendation [Rec\(2003\)23](#) on the management by prison administrations of life sentence and other long-term prisoners; Recommendation [Rec\(2004\)10](#) concerning the protection of the human rights and dignity of persons with mental disorder whose articles 33 and 35 are devoted to persons who have been arrested and persons in penal institutions respectively.

3. Case of *Kudła v. Poland* [GC] (application no. [30210/96](#), §§ 93-94, ECHR 2000-XI), regarding a violation of Article 3 of the Convention (prohibition of torture or inhuman or degrading treatment or punishment).



5. Furthermore, the Council of Europe Disability Strategy 2017-2023 outlines the importance to “promote, protect and monitor the implementation of human rights for all, including persons with disabilities” who are “entitled to have access to and enjoy, on an equal basis with others, the full range of human rights safeguarded by the European Convention on Human Rights, the European Social Charter, the United Nations Convention on the Rights of Persons with Disabilities and other international treaties”.
6. The Committee of Ministers would also underline the important work carried out in this regard by the Commissioner for Human Rights, the CDPC and the CPT. It notes, in particular, that the CPT has found situations where persons with disabilities detained in relation to criminal offences, in particular prisoners with psychosocial or physical disabilities, were accommodated in unsuitable conditions or were not provided with appropriate care and support. The absence of special care facilities or specific arrangements for such persons, the lack of qualified staff and the failure to consider alternative arrangements for persons with disabilities unsuited for continued detention were among the main causes of these situations. On several occasions, the situations observed on the ground were such that the CPT’s delegations made immediate observations in accordance with Article 8, paragraph 5, of the Convention establishing the Committee and asked for urgent action.
7. Whilst acknowledging that governments have generally taken steps in the light of relevant judgments of the European Court of Human Rights in recent years and of the CPT’s recommendations, the Committee of Ministers recognises that member States continue to face various challenges to address the issue.
8. It therefore concurs that special attention should be paid to the situation of persons with disabilities deprived of their liberty in relation to criminal offences. In this respect, and in line with paragraphs 4.1, 4.2 and 4.3 of the Assembly Recommendation, the Committee of Ministers would invite member States to give due consideration to [Resolution 2223 \(2018\)](#) and encourage them to collect and share statistics on all disability situations found in prisons, as also mentioned in its reply to Assembly [Recommendation 2082 \(2015\)](#).
9. Taking into account the revision underway of some of the European Prison Rules, the Committee of Ministers agrees with the Assembly on the need to identifying best practices of member States and that adopting guidelines in this area could greatly assist in preventing violations of the fundamental rights of detainees with disabilities in future.
10. To this end, the Committee of Ministers would invite the CDPC, in consultation with the CPT and other relevant Council of Europe bodies, to consider including the preparation of such an assessment in the proposals for activities for the next biennium. The Committee will keep the Assembly informed about any developments in this respect.