Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 14557
09 May 2018

Detainees with disabilities in Europe

Report[1]
Committee on Equality and Non-Discrimination
Rapporteur: Mr Manuel TORNARE, Switzerland, Socialists, Democrats and Greens Group

Summary

Detainees with disabilities whose physical, sensory, intellectual or psychosocial disability is not recognised or not sufficiently taken into account face shameful conditions of detention. States all too often violate the human rights of detainees with disabilities by failing to take into account their needs.

The four fundamental principles of equality, non-discrimination, accessibility and reasonable accommodation must always be respected regarding detainees with disabilities. States must also guarantee them fair access to justice and ensure that persons whose condition is incompatible with detention are not imprisoned but given an alternative sentence.

To better protect the rights of detainees with disabilities, States should take all necessary measures to identify the possible disabilities of every person entering the criminal justice system and provide for the needs of detainees with disabilities. They should guarantee them access to and continuity of care. Prisons should be laid out so as to ensure their accessibility to all detainees, and information should be provided in an accessible format. A sufficient range of activities should also be available to them. To prevent violations of the prohibition of inhuman and degrading treatment, it is also essential to train prison staff and those working in the criminal justice system on all forms of disability.

1. Reference to committee: Doc. 14107, Reference 4238 of 14 October 2016.

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A. Draft resolution[2]

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 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 with inaccessibility of the 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 disability or learning disorder 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. 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 without access to appropriate care or 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, including 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 lack of 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 disabilities at European level, it would draw the attention of States to their obligations 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 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 in their case;

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;

2. Draft resolution adopted unanimously by the committee on 26 April 2016.

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;

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;

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 prisons 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 sufficient staff, including medical staff, covering all necessary specialist areas; these staff 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.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution … (2018) on detainees with disabilities in Europe, in which it calls on member States to take a number of measures to prevent the imprisonment of persons whose condition is incompatible with detention and to ensure that the fundamental principles of equality of treatment, non-discrimination, reasonable accommodation and accessibility are respected in the case of detainees with disabilities.

2. The Assembly underlines the obligations already arising under the European Convention on Human Rights (ETS No. 5) and the United Nations Convention on the Rights of Persons with Disabilities, the relevant rules in Recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

3. The Assembly nevertheless regrets the lack of specific attention paid by member States and international instruments to the situation of detainees with disabilities. In many cases, the conditions of detention of persons with disabilities have been found to be degrading and discriminatory. It stresses that situations where deprivation of liberty leads to a deprivation of dignity must not be tolerated.

4. The Assembly therefore invites the Committee of Ministers to:

4.1. bring Resolution … (2018) to the attention of the governments of the member States;

4.2. encourage member States to collect and share statistics on all disability situations found in prisons;

4.3. take without delay the measures envisaged in its reply to Assembly Recommendation 2082 (2015) on the fate of critically ill detainees in Europe;

4.4. undertake a comprehensive study on the legislation and practice in all member States relating to provision for disability in the criminal justice and prison system, with a view to identifying best practices and adopting guidelines in this area.

3. Draft recommendation adopted unanimously by the committee on 26 April 2016.

C. Explanatory memorandum by Mr Manuel Tornare, rapporteur

1. Introduction

"The degree of civilisation in a society can be judged by entering its prisons", Fyodor Dostoyevsky

1. The protection of the rights of persons placed in detention has been a long-standing concern of the Council of Europe. Because of their confinement, detainees are at risk of ill-treatment or even torture. Some groups, in particular persons with disabilities, are especially vulnerable. Persons in pretrial detention and convicted persons may not only have a disability before being placed in detention, but may also develop such a disability in prison due to an accident or illness. Moreover, many persons with a psychosocial disability are in prison.

2. The case law of the European Court of Human Rights ("the Court") provides numerous illustrations of violations of the rights of detained persons, which States Parties to the European Convention on Human Rights (ETS No. 5) must respect. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) also established a mechanism designed to monitor the treatment of persons deprived of their liberty in Council of Europe member States. The Parliamentary Assembly has itself repeatedly indicated its commitment to combating torture and inhuman or degrading treatment.

3. Yet despite the existing legal instruments and mechanisms, the situation of detainees with disabilities rarely receives special attention, even though it raises fundamental questions of human dignity. The purpose of this report is therefore to remedy this situation and carry forward the work started by the Assembly in Resolution 2082 (2015) on the fate of critically ill detainees in Europe by making proposals to improve the situation of detainees with disabilities and strengthen the mechanisms affording protection against torture and inhuman or degrading treatment. As its title indicates, my report focuses particularly on prisons and the prison environment. Nevertheless, I also consider the situation of persons with disabilities held in other places of deprivation of liberty, in particular centres holding persons with psychosocial disabilities who have committed or are suspected of having committed criminal offences.

4. In connection with the preparation of this report, I participated in the general discussion on equality and non-discrimination held in Geneva on 25 August 2017 by the United Nations Committee on the Rights of Persons with Disabilities. I also carried out a fact-finding visit to France on 8 December 2017, during which I visited Fleury-Mérogis prison, followed by a fact-finding visit to Belgium on 10 and 11 January 2018, including visits to the Ghent Forensic Psychiatry Centre and to Marche-en-Famenne prison. I wish to thank the French and Belgian authorities for all the assistance they gave me, which made these visits particularly instructive and useful. I also wish to thank the speakers who agreed to participate in the hearing held by the Committee on Equality and Non-Discrimination in Paris on 7 December 2017, and the representative of the Danish Ombudsman, whom I met in Copenhagen on 2 March 2018, for giving of their time and experience in order to inform our work on this report.

2. International standards and principles applicable to detainees with disabilities

2.1. United Nations

5. The United Nations Convention on the Rights of Persons with Disabilities – the first global treaty on the rights of persons with disabilities – is now the benchmark instrument in the field of disability, with 176 States Parties as at 1 April 2018, including 46 Council of Europe member States.[4] According to the Committee on the Rights of Persons with Disabilities (CRPD), States Parties must ensure that detainees with disabilities can live independently and participate fully in all aspects of daily life in detention, including having access, on an equal basis with others, to all areas and services. In addition, a lack of accessibility and reasonable accommodation places persons with disabilities in conditions of detention which do not meet minimum standards, are incompatible with Article 17 of the United Nations Convention (protection of the integrity of the person) and may constitute a violation of the ban on torture and cruel, inhuman or degrading treatment.[5]

4. Among the Council of Europe member States, only Liechtenstein has not ratified this convention.
5. United Nations, Committee on the Rights of Persons with Disabilities, Guidelines on Article 14 of the United Nations Convention on the Rights of Persons with Disabilities, September 2015; see also Communication No. 8/2012 (X v. Argentina), Views adopted on 11 April 2014, CRPD/C/11/D/8/2012, paragraph 8.5.

6. During our meeting in Geneva on 22 May 2017, the Secretary of the CRPD, Mr Jorge Araya, stated that conditions of detention for persons with disabilities must comply with the four fundamental principles of equality of treatment, non-discrimination, reasonable accommodation and accessibility. Failure to comply with these four principles can result in serious violations of the human rights of detainees with disabilities.

7. The Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules), revised in December 2015 by the General Assembly of the United Nations,[6] reiterate the fundamental principles applicable to all persons who are placed in detention: their dignity must be respected; no detainee may be subjected to torture or other cruel, inhuman or degrading punishment or treatment; the principle of non-discrimination must be put into practice; and the prison administration must take into account the needs of every detainee, especially those belonging to categories that are most vulnerable in prison settings. Nevertheless, and despite the recommendations of the CRPD,[7] these rules contain very few explicit references to detainees with disabilities.

2.2. Council of Europe

8. Many Council of Europe legal instruments address the ban on torture and inhuman and degrading treatment, as well as conditions of detention and the rights of persons with disabilities. However, these topics are only dealt with together in a marginal manner.

9. The 2006 European Prison Rules only mention the situation of detainees with psychosocial disabilities, and only from the point of view of the right to health,[8] without stating that detainees' needs must be taken into account in accordance with the fundamental principles of non-discrimination, accessibility and reasonable accommodation. In this respect, the rules are merely a reflection of the criminal law of the member States.

10. The findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the judgments of the European Court of Human Rights show that deplorable conditions of detention for persons with disabilities exist in many member States of the Council of Europe and underline the need to lay down precise guidelines on the measures that States must implement in order to protect the dignity and fundamental rights of detainees with disabilities.

11. One of the priorities of the Council of Europe Disability Strategy (2017-2023) is the right not to be subjected to exploitation, violence and abuse. Furthermore, the rights of persons with disabilities, including when they are held in detention, are now among the issues that are examined by the Council of Europe Commissioner for Human Rights during country visits.

3. Types of disability covered by this report and specific problems encountered in prison

12. The lack of reliable data concerning the number of detainees with disabilities must be underlined from the outset. Nevertheless, there are inevitably many different disability situations to be found in prisons. When we speak about detainees with disabilities, we most often think of persons who have a physical disability. However, there are also persons with a sensory disability (deafness, blindness) or an intellectual disability in prison. At the same time, a significant proportion of inmates have a psychosocial disability, such as schizophrenia, bipolar disorder, major depressive disorders, etc.

13. For each type of disability, measures tailored to individual needs must be taken, but this is far from always being the case despite the recommendations made to member States and repeated judgments of the European Court of Human Rights against States.

3.1. Physical disability

14. People who have a physical disability or use a wheelchair are often faced with the unsuitability of prisons and cells, the unsuitability of treatment and lack of access to it and the failure to provide assistance and support.

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6. Resolution A/RES/70/175 adopted by the General Assembly of the United Nations on 17 December 2015.
7. CRPD, Observations on the Standard Minimum Rules for the Treatment of Prisoners, 20 November 2013. See Rules 5 (concerning physical disability), 55 (sensory disability), 109 and 110 (mental disability).
8. Committee of Ministers Recommendation Rec(2006)2 of 11 January 2006 on the European Prison Rules.

15. Lack of accessibility is one of the main problems that persons with disabilities face in prison settings, yet accessibility is a fundamental principle for the exercise of their rights. This implies that reasonable accommodation needs to be applied in order not to aggravate incarceration conditions based on disability.[9] As has been underlined on several occasions by the CRPD, denial of reasonable accommodation may be tantamount to discrimination and, in some situations, such as detention, to inhuman or degrading treatment.

16. There are, unfortunately, very many examples of unsuitable premises and facilities (cells or sanitary facilities not adapted or inadequately equipped; difficulties in moving around inside prisons).

17. In France, it was established that in 2006 detainees with disabilities accounted for some 6% of the prison population, or more than 5 000 individuals, while less than 0.5% of cells in new prisons had been designed to accommodate persons with disabilities.[10] If no suitable places are available, persons with reduced mobility are often assigned to ordinary cells. Problems of this kind have been reported, for instance, in France, Italy, "the former Yugoslav Republic of Macedonia" and Turkey.[11] The absence of medicalised beds and non-operational call systems pose serious problems for detainees who are bedridden or paralysed.[12] A cell that is too small to enable a detainee in a wheelchair to move around, combined with switches which are inaccessible, toilets which are very difficult to get to and no daily access to a shower, amounts to living conditions that are not decent.[13] In this connection, I would draw member States' attention to the CPT's recommendations in its recent report on Belgium, stating that the floor area of a cell for a person with reduced mobility should not be under 14-15 m² (thus offering 10 m² of living space for the person concerned, plus adapted sanitary facilities of sufficient size).[14] Moreover, it is important for prisons to have sufficient numbers of specially equipped wheelchairs for toilets and showers.[15]

18. Beyond cells, the lack of accessibility in prisons means that detainees with disabilities cannot participate in daily activities or have access to services (library, dining hall, toilets, outside yard, gymnasium, shop, visiting room, telephone room, prayer room) on an equal footing with other detainees, and remain confined in their cells. The detainees concerned are therefore not only deprived of activities but also suffer *de facto* isolation, which can have a negative impact on their mental health. This type of situation has been observed, for instance, in the Slovak Republic and France.[16]

3.1.1. Lack of access to treatment, failure to provide assistance and support

19. The right to health is a fundamental right for every person. Detainees with disabilities are, however, particularly vulnerable to unsuitability or even a lack of treatment. Several difficulties may be mentioned here:

– unsuitability, inadequacy or even absence of treatment;

– late access to treatment;

– discontinuation of treatment;

– failings in monitoring the administration of treatment.

Although they are considered here in connection with physical disability, it should be noted that these difficulties can affect all detainees with disabilities.

20. The European Court of Human Rights has repeatedly ruled that holding people suffering from a serious physical disability in conditions incompatible with their state of health or leaving it up to fellow inmates to look after them amounts to degrading treatment.[17] It has pointed out that the obligation for the State to provide adequate conditions of detention includes the obligation to meet the special needs of detainees with a

9. CRPD, Concluding observations on the initial report of the Czech Republic adopted on 10 April 2015, CRPD/C/CZE/CO/1, paragraph 28.
10. Comité Consultatif National d'Ethique pour les Sciences de la Vie et de la Santé (France), Avis No. 94, La santé et la médecine en prison, 26 October 2006, p. 16.
11. France, 2010 Visit, CPT/Inf(2012)13, paragraph 102, and 2012 Activity Report of the Inspector-General of Places of Deprivation of Liberty, p. 239; Italy, 2012 Visit, CPT/Inf(2013)32, paragraph 74; "the former Yugoslav Republic of Macedonia, 2014 Visit, CPT/Inf(2016)8, paragraph 80; Turkey, 2009 Visit, CPT/Inf(2011)13, paragraph 119.
12. Italy, 2012 Visit, CPT/Inf(2013)32, paragraph 74; Italy, 2008 Visit, CPT/Inf(2010)12, paragraph 89.
13. France, 2012 Activity Report of the Inspector-General of Places of Deprivation of Liberty, p. 239.
14. Belgium, 2017 Visit, CPT/Inf(2018)8, paragraph 38. This recommendation was made with reference to new prisons and, in the long term, all prisons.
15. Albania, 2014 Visit, CPT/Inf(2016)6, paragraph 85. See also Bosnia-Herzegovina, 2015 Visit, CPT/Inf(2016)17, paragraphs 55-56: poor design of showers, showers too narrow.
16. Slovak Republic, 2013 Visit, CPT/Inf(2014)29, paragraph 56; *Vincent v. France*, Application No. 6253/03, judgment of 24 October 2006.

physical disability and that the State cannot exempt itself from this obligation by transferring responsibility for it to detainees. Sometimes unsuitable conditions of detention also expose detainees to an unreasonable risk of serious damage to their health or may cause them psychological or physical suffering which undermines their dignity and amounts to inhuman treatment.[18]

21. For people with a physical disability, the need to respect their dignity and privacy may become particularly acute. This is especially true when they are dependent on the assistance and, therefore, the good will of their fellow inmates in order to reach the sanitary facilities, as the CPT has pointed out in the case of *piantoni* (detainees who help detainees with disabilities) in Italy. Proper training and supervision are vital in these cases.[19] Where appropriate, other persons assist the relevant detainees with daily tasks.[20] At the same time, the full-body searches carried out when detainees return from visiting rooms may cause specific problems for persons with reduced mobility if they are unable to take off their clothes themselves. During my visit to Belgium, the Federal Ombudspersons told me that they were in the process of conducting a major study concerning searches and that the needs of detainees with disabilities had to be taken into consideration in this context.

3.2. Sensory disability

22. The main problems encountered by people with a sensory disability are communication and access to care.

23. In the case of visually impaired detainees, there is a risk of the violence to which prisoners with disabilities are subjected by other detainees being compounded by isolation, lack of assistance and very limited access to cultural activities or to books in accessible formats.[21] I was told during my visit to Belgium that only one of the country's 35 prisons has floor markings for the visually impaired. Access to care is also crucial. In Montenegro, the CPT established that two visually impaired detainees had become completely blind without being able to consult a single eye-care specialist.[22]

24. In the case of the deaf or hearing impaired, there are no sign language interpreters in prisons in Germany, although they are available in courts.[23] In France, too, interpreter services are provided free of charge throughout the entire criminal procedure phase, but once they are in detention, it is for the detainees to pay an interpreter so that they can communicate with the medical department, the insertion and probation service and their lawyers, etc. Access to interpretation in sign language therefore depends on the financial resources of the detainee. This is made all the more problematic by the fact that some deaf people are illiterate and therefore cannot use writing as a means of communication. In the United Kingdom, a report published in 2016 identified approximately 400 deaf or hearing-impaired detainees, but in the absence of official statistics the figure was no doubt an underestimate. The detainees concerned cannot communicate or receive information on an equal footing with their fellow detainees owing to the insufficient number of prison officials trained in sign language, the lack of information material available in a format that is accessible to deaf people and the absence of devices such as videophones that would enable them to communicate with the outside world, especially their families. This leads to the isolation of deaf or hearing-impaired prisoners and a lack of social interaction and mental stimulation.[24] Moreover, the lack of communication support has the effect of depriving these detainees of access to training courses or health services.

25. Detention exacerbates the isolation and vulnerability of these detainees, and a lack of adaptation of detention conditions to this type of disability or delays in taking the measures needed to take account of the particular situation of individuals with severe sensory disabilities may lead to a violation of the prohibition of inhuman or degrading treatment or of the right of everyone who is arrested to be informed, in a language which they understand, of the reasons for their arrest and of any charge against them. Moreover, in keeping

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17. *Price v. the United Kingdom*, Application No. 33394/96, judgment of 10 July 2001, paragraph 30; *Engel v. Hungary*, Application No. 46857/06, judgment of 20 May 2010, paragraphs 27-30; *Vincent v. France*, op. cit., paragraphs 94-103; *D.G. v. Poland*, Application No. 45705/07, judgment of 12 February 2013.
18. *Grimailovs v. Latvia*, Application No. 6087/03, judgment of 25 June 2013; *Arutyunyan v. Russia*, Application No. 48977/09, judgment of 10 January 2012, paragraph 81.
19. Italy, 2012 Visit, CPT/Inf(2013)32, paragraph 75.
20. France, 2010 Visit, CPT/Inf(2012)13, paragraph 102.
21. International Prison Watch, French section, "Malvoyant en prison: l'isolement et les cris", article of 28 June 2016: https://oip.org/temoignage/malvoyant-en-prison-lisolement-et-les-cris/.
22. Montenegro, 2013 Visit, CPT/Inf(2014)16, paragraph 118.
23. Aktion Mensch, *Inklusion im Gefängnis?*, article of 11 March 2012: www.aktion-mensch.de/blog/beitraege/inklusion-im-gefaengnis.html.
24. British Deaf Association, Throw away the key? How Britain's prisons don't rehabilitate Deaf people, 2016, pp. 6-8.

with the concept of reasonable accommodation and the provisions of the United Nations Convention on the Rights of Persons with Disabilities, the authorities must take "reasonable steps" to take account of the situation of detainees with severe disabilities.[25]

26. Communication difficulties may have serious consequences when people with a sensory disability find themselves caught up in the penal system. This raises a number of important questions about whether they have effective access to justice and about their right not to be discriminated against because of their disability.

27. In France, the human rights ombudsman (*Défenseur des droits*) has held that "custodial remand should only be considered on an exceptional basis when a person with a disability is accused of an offence, because of their particular vulnerability" and that "at any rate, alternative measures to custodial remand should be put in place for them whenever the conditions of detention make it impossible to meet the requirements in terms of equal access to rights and respect for dignity laid down by international law and the law on prisons".[26] The *Défenseur des droits* also observed that the general obligation to ensure accessibility introduced by a law passed in 2005 for all public establishments had only been the subject of implementing provisions in the case of persons with reduced mobility. The lack of an appropriate regulatory framework meant prisons could not meet the accessibility requirements for other types of disability, including sensory disabilities.

3.3. Intellectual disability or learning disorder

28. Since 2010, the European Court of Human Rights has recognised that people with an intellectual disability are "a particularly vulnerable group in society"[27] and suffer from social exclusion because of the discrimination and prejudices with which they are faced.

29. According to associations defending the rights of persons with intellectual disabilities, such as the Mental Disability Advocacy Centre (MDAC), there are a disproportionate number of such individuals in prison. In 2008, the Prison Reform Trust in the United Kingdom noted that between 20% and 30% of offenders had learning disabilities or disorders affecting their ability to cope when caught up in the criminal justice system.[28] However, no precise figures can be given owing to a lack of official statistics.

30. It is vital to detect intellectual disabilities promptly. In this connection, I regard as particularly promising the efforts made in the Ghent Forensic Psychiatric Centre (Belgium) to assess not only psychosocial disability but also any intellectual disability of persons placed in psychiatric detention upon their admission in order to ensure that they receive care suited to their needs. This seems to be an exception, however. In Spain, it is reported that in 60% to 70% of cases, the intellectual disability of an individual entering prison has not been previously recognised.[29] This means that the disability was not detected throughout the police investigation and court proceedings and that the individual was not given the assistance necessary to ensure that he or she understood the action taken. This raises the question of whether the individuals concerned had fair access to justice.

31. The imprisonment of persons with an intellectual disability or learning disorder also requires us to ask whether they understand the punishment imposed on them, the prison operating rules and their access to complaints procedures and information on their rights. For this type of disability, it is crucial for them to be provided with information in a format they can understand. Yet the terminology employed and the rules in place in prisons are often complex for those with an intellectual disability or learning disorder. They will experience difficulties in filling in forms or in complying with the prison rules, and as a result, their conduct will be seen as disruptive and will be penalised.[30] Ms Jenny Talbot, Director of the Prison Reform Trust's Care not Custody programme, reminded us forcefully of these issues at our hearing in Paris on 7 December 2017.

32. Persons with an intellectual disability or learning disorder are frequently victims of harassment by their fellow inmates. They therefore try to hide their disability for fear of being ridiculed and in order to not show signs of weakness that could expose them to violence and abuse.[31]

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25. *Z.H. v. Hungary*, Application No. 28973/11, judgment of 8 November 2012.
26. Decision of the *Défenseur des droits* on the conditions of detention of persons with disabilities, No. MLD/2013-24, 11 April 2013, case involving the conditions of detention of a deaf person.
27. *Kiss v. Hungary*, Application No. 38832/06, judgment of 20 May 2010, paragraph 42.
28. Prison Reform Trust, No One Knows programme, "Prisoners' voices – Experiences of the criminal justice system by prisoners with learning disabilities", 2008, p. 3.
29. Plena Inclusión, Manual de procedimiento para la atención de la Policía Local a las personas con discapacidad intelectual, p. 16.
30. Prisoners' voices, op. cit., pp. 65-66.
31. Ibid.

3.4. Psychosocial disability

33. The proportion of people with a psychosocial disability (such as schizophrenia, bipolar disorder or a severe personality disorder) is very high in prisons and often much higher than in the general population.[32] In France, nearly a quarter of detainees are said to have psychotic disorders.[33]

34. The presence of a significant number of individuals with a psychosocial disability requires that the prison and judicial authorities provide the appropriate care. For example, in its last report on a visit to Switzerland, the CPT said the relevant authorities should ensure that detainees with serious mental health problems are looked after in a properly equipped facility (psychiatric hospital, forensic psychiatry unit of a prison or establishment for serving custodial measures) with sufficient qualified staff to provide the necessary assistance.[34] However, many prisons have no hospital or specialised unit, so detainees with psychosocial disorders are subject to an ordinary prison regime that is not suitable for their specific needs.

35. The European Court of Human Rights has held that States have an obligation to provide the appropriate medical care for prisoners with health problems, including those suffering from mental health problems.[35]

36. The presence of too few or even no qualified staff has been highlighted by the CPT on numerous occasions in its reports. In Turkey and Armenia, the CPT has found that some prisons are never or very rarely visited by a psychiatrist, thus depriving inmates of the counselling they need.[36]

37. There is a high risk of suicide among detainees with a psychosocial disability and that risk may be aggravated by inappropriate care and conditions of detention, as well as by isolation measures or disciplinary sanctions that are inappropriate or excessively severe in view of the detainee's state of health. The Court found against France regarding the suicide of a detainee in a disciplinary cell on the ground that placement in such a cell was incompatible with the level of treatment required in the case of a person with mental health problems.[37] In Spain, detainees with mental health problems are automatically held in isolation. The CPT regards this practice as a form of degrading treatment.[38]

38. People with a psychosocial disability are thus particularly vulnerable in prison, so much so that one may well ask to what extent prison is the appropriate place for them. Unsuitable conditions of detention, the lack or inadequacy of care provision and of trained staff and prison overcrowding all pose serious risks for the state of health of these individuals and do nothing to enable their future reintegration into the community. Even though the presence of doctors or psychiatric units in prisons may give the impression that detainees with a psychosocial disability are going to be properly cared for, a lack of resources means that it is often not the case.[39]

39. Nonetheless, transferring people with a psychosocial disability to a hospital facility also poses a number of important questions. The involuntary treatment of people with disabilities is strongly condemned by the CPRD, and detainees must therefore agree to being transferred to a care unit. Moreover, the "diversion" of persons with psychosocial disabilities from the criminal justice system to psychiatric facilities results in numerous breaches of their rights. This means that the individuals will have no access to a fair trial since, having being declared "not responsible" for their actions or "unfit to plead", they cannot mount a defence against the allegations made, in violation of the right to presumption of innocence. Accordingly, individuals will be deprived of their liberty on the basis of allegations for which they have not been convicted by a court following adversarial proceedings. Lastly, it has been noted that persons committed to psychiatric hospitals do not enjoy the same legal safeguards as ordinary detainees and that such committal may sometimes last much longer than sentences that would have been served in prison, something which the CRPD has unreservedly condemned.[40]

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32. The Bradley Report, Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system, Executive summary, April 2009, paragraph 40.
33. 2004 study, cited by Human Rights Watch, "Double peine – Conditions de détention inappropriées pour les personnes présentant des troubles psychiatriques dans les prisons en France", 5 April 2016.
34. Switzerland, 2015 Visit, CPT/Inf(2016)18, paragraph 112.
35. *Murray v. the Netherlands*, Application No. 10511/10, judgment of 26 April 2016, paragraphs 105-106.
36. Turkey, 2013 (June) Visit, CPT/Inf(2015)6, paragraph 95; Armenia, 2010 Visit, CPT/Inf(2011)24, paragraph 109.
37. *Ketreb v. France,* Application No. 38447/09, judgment of 19 July 2012, paragraph 115.
38. Information supplied by Professor Timothy Harding, CPT expert and former Director of the University Institute of Forensic Medicine, Geneva, at the hearing held in Paris on 7 December 2017.
39. Interview with Adeline Hazan, Inspector-General of Places of Deprivation of Liberty, France Inter, 17 August 2017.
40. CRPD, Communication No. 7/2012 (Marlon James Noble v. Australia), Views adopted on 2 September 2016, CRPD/C/16/D/7/2012.

40. The situation of persons placed in psychiatric detention in Belgium is very relevant in this respect. These are persons who have committed acts prohibited under the criminal law but who have been declared not responsible for their actions (in particular, because of a psychosocial disability). They are interned for unspecified periods and their release depends on assessment of the risk of reoffending. Receiving appropriate treatment is vital for these internees. However, the lack of places in suitable facilities means that they are often held in prisons, where they sometimes remain for lengthy periods, occasionally together with ordinary prisoners. In these circumstances, their state of health tends to deteriorate rather than improve, and there is therefore very little likelihood of their being released. Some internees have been held for years, although the offences they committed were not serious and the sentences for ordinary prisoners would have been short. Thanks to a recent amendment to the legislation, it will no longer be possible to place people in psychiatric detention for property offences, but only for serious offences against individuals. In addition, the Ghent Forensic Psychiatric Centre provides real care pathways aimed both at reducing the risks of reoffending and at preparing the individuals concerned for reintegrating into society, from which some have been cut off since before the euro came into circulation.

41. There have also been reports in Denmark of individuals with psychosocial disabilities being deprived of their liberty for periods that were disproportionate compared with the offences committed. Many sentences are reported to have been handed down on psychiatric patients who resisted involuntary treatment or immobilisation or had psychotic episodes as a result of improperly managed changes in medication. In cases where the sentence requires the individuals to follow treatment and leaves open the possibility of their subsequent internment, the deprivation of liberty may subsequently be ordered by a single doctor, without any complaint mechanism.[41] In addition, the CPT has criticised the excessive use of immobilisation in the case of persons with psychosocial disabilities and stressed that it must not replace proper treatment or be used to make up for staff shortages.[42]

42. The situation of detainees with a psychosocial disability is very complex and would warrant examination in a separate report. It is, however, a subject to which the general public often reacts in a negative way and is thus seldom regarded as a priority by the authorities. In this context, I wish to acknowledge the efforts which have been made in Belgium for several years now to remedy the above problems, both through the construction of facilities suited to the needs of the individuals concerned and through legislative amendments aimed at introducing more appropriate measures.

4. Specific problems encountered in prison by certain groups of persons with disabilities

43. Some groups of persons with disabilities are particularly vulnerable in prison, especially women and elderly inmates with disabilities.

4.1. Women with disabilities

44. Article 6 of the United Nations Convention on the Rights of Persons with Disabilities stresses that women with disabilities are exposed to multiple discrimination and that States Parties must “take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms”. In addition, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“the Bangkok Rules”) underline the importance of identifying mental health-care needs, guaranteeing access to care and ensuring that women detainees with mental health problems are housed in accommodation that is not restrictive.[43]

45. Similarly, in Resolution 1663 (2009) on women in prison, the Assembly called on States, on the one hand, to “ensure that women in prison with disabilities and chronic illnesses are provided the essential aid and assistance (such as sign language interpreters, Braille documents, medical care, etc.) that they may require because of their disability during the pre-trial, trial and sentence period; and ensure that they are not segregated from other prisoners in social and educational activities that take place in prison by arranging appropriate programmes and services for them” and, on the other hand, to “ensure that further research is done on the types and prevalence of mental health problems affecting women in prison and that resources to treat such disorders are made available in every women’s prison”.[44]

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41. CRPD, Joint Submission: 38 Danish Civil Society on Denmark (for LOIs), Report to the UN Committee on the Rights of Persons with Disabilities, 2014; exchange of views with the Office of the Danish Ombudsman, Copenhagen, 2 March 2018.
42. Denmark, 2012 Visit, CPT/Inf(2013)3, paragraph 47.
43. Adopted in 2010 by the United Nations General Assembly; see, in particular, Rules 6, 12, 13, 35 and 41.
44. Resolution 1663 (2009) on women in prison, paragraphs 8.8 and 10.7.

46. The Assembly noted with concern that women prisoners often suffer mental health problems in prison, and to a much higher degree than both the male prison population and the general population.[45] Recent studies suggest that this situation persists. In the United Kingdom, 65% of women in prison suffer from depression (compared to 37% of men) and nearly a third of women prisoners had a psychiatric admission prior to entering prison. Women in prison are also at high risk of suicide and self-harm, the reasons for this being their histories of sexual abuse or their distress at separation from their children, and mental illness. In 2014, although they represented only 5% of the prison population in England and Wales, women committed 26% of the suicides and acts of self-harm.[46] The risk of suicide and self-harm must therefore be very carefully assessed by the prison authorities when they determine the prison regime to be applied to these women.

47. In France, the conditions of detention for women with a psychosocial disability are particularly tough. Women, who are in the minority in the prison system, are more limited in their movements than men and have less access to care provided for mental health problems. They also do not have equal access to the products and activities available. Women held in a prison with separate accommodation for men and women have to be accompanied wherever they go, in contrast to male detainees in the same prison. This creates a sense of isolation and makes women feel they are being treated more severely just because they are women. Moreover, only one of the 26 regional medico-psychological services in the French prisons which provide mental health care and make beds available for the night, has beds for women.[47]

48. In Switzerland, women make up less than 5% of the prison population. As in other countries, many women prisoners have psychosocial disorders. However, in 2015 there was no care unit reserved for women.[48] There is also a general lack of places for women. The French-speaking and German-speaking parts of Switzerland have only one women's prison each, which is reserved for long sentences. In the other prisons, women are accommodated in units separate from men. However, prison overcrowding affects women in particular. For example, in the canton of Fribourg there is no prison that admits women,[49] so women have to serve their sentence in another canton, thus taking them further away from their families. In addition, as women prisoners are in the minority, it is hard to take into account their specific needs, and the expenditure necessary to adapt prisons to cover their needs is not considered a priority.

49. More systematic attention should be paid to the situation of women in prison, especially those with a psychosocial disability, not only by policymakers but also by human rights protection bodies. The situation of these women is widely ignored, as shown by the difficulty in gathering accurate recent information.

4.2. Elderly people with disabilities

50. Elderly people are another vulnerable group in prisons, and the disabilities that they may develop over the years (deafness, blindness, reduced mobility, etc.) further increase their vulnerability. In Resolution 2082 (2015) on the fate of critically ill detainees in Europe, the Assembly pointed to an ageing trend in the prison population and stressed the necessity to take into account the resulting need for geriatric-friendly facilities.[50] For instance, it has been held that the imprisonment of a paraplegic octogenarian who was disabled to the point of being unable to attend to most daily tasks unaided violated the prohibition of degrading treatment set out in Article 3 of the European Convention on Human Rights.[51]

51. In the United Kingdom, the number of detainees over 60 has tripled in 15 years and the number of octogenarians has doubled in two years; the oldest person in prison today is now 101.[52] However, there is no programme designed to meet the needs of these prisoners in the country and the authorities prefer to adopt a case-by-case approach. The ageing of the prison population is due in particular to the fact that harsher sentences are handed down for certain offences, but it is also the result of the introduction in 2005 of "imprisonment for public protection" sentences (IPPs), which allowed individuals to be kept in prison until they proved to the parole board that they would not commit any more crimes.[53] This system – abolished in 2012 because of the adverse effects on the mental health of the individuals concerned – continues to be applied to about 4 000 prisoners.[54]

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45. Doc. 11619, Women in prison, paragraph 37. See also CPT factsheet, Women in prison, January 2018, CPT/Inf(2018)5.
46. Prison Reform Trust briefing, Why focus on reducing women's imprisonment?, July 2015, p. 6.
47. Human Rights Watch, op. cit.
48. Switzerland, Federal Department of Justice and Police, DFJP, Info Bulletin 2/2015, "Coup de projecteur: les femmes en detention", p. 12.
49. RTS Info, "Les prisons de Suisse romande manquent de place pour les femmes", 26 March 2017.
50. Resolution 2082 (2015) on the fate of critically ill detainees in Europe, paragraphs 7-8.
51. *Farbtuhs v. Latvia*, Application No. 4672/02, judgment of 2 December 2004, paragraph 61.
52. *The Guardian*, "'Buried alive': the old men stuck in Britain's prisons", 20 June 2017.

52. Greater attention should be paid to this category of detainees and their specific needs. Their presence in prisons poses undeniable challenges for the prison authorities, which must not only adapt their facilities to this group but also their overall approach with regard to access to care, assistance provided and activities offered.

5. Other factors with a specific impact on the situation of detainees with disabilities

53. It is clear from the above analysis that the lack of accessibility and reasonable accommodation for the specific needs of detainees with disabilities can constitute inhuman or degrading treatment and have serious consequences for the lives of these detainees, depriving them of social integration within the prison. Poor access to medical care causes their health to deteriorate and can lead to suicide. Other factors may also worsen the situation of detainees with disabilities: lack of data concerning detainees with disabilities, prison overcrowding, the poor upkeep of prisons, dysfunctionality of the prison system, staff shortages and constant transfers.

5.1. Identification of detainees with disabilities

54. As indicated above, if they have not already been identified, persons with disabilities must be identified upon admission to a detention facility. Particular attention should also be paid to detecting less obvious disabilities such as intellectual or psychosocial disabilities, as well as disabilities which develop during detention.

5.2. Prison overcrowding and tendency to "lock them all up"

55. Prison overcrowding[55] has an impact on the detention conditions of all prisoners, but is particularly keenly felt by those with disabilities or in situations of dependency. This state of affairs is worsened by a tendency to "lock them all up".

56. The response to prison overcrowding and poor detention conditions is often to build new prison places. Yet, the more prison capacity is increased, the greater the tendency to imprison. France once again illustrates this point well: the number of places in prison nearly doubled from 1990 to 2017 without drastically cutting the rate of prison overcrowding (118% on average), despite the fact that there has been a downward trend in the overall crime rate.

5.3. Unsuitability of treatment and lack of access to treatment

57. With regard to inadequacy of care, failure by a State to take the necessary steps on account of a detainee's state of health may amount to degrading treatment. The Court's case law includes many examples of inadequacy of care, in particular concerning detainees with a psychosocial disability (see section 3.4 above) as well as those with a physical disability.[56]

58. The responsibility of prison authorities is not limited to prescribing drugs: they must also ensure that such medicine is taken properly. In addition, in the case of detainees with psychosocial disabilities, the care must also include other types of therapy (psychotherapy, etc.). Failings on the part of prison authorities here may lead to violation of the right to life (suicide of detainees).[57]

59. Late access to care – with detainees sometimes having to wait for years before receiving proper treatment – means that these people do not have immediate access to appropriate treatment, in breach of Article 3 of the European Convention on Human Rights.[58] The delays can be a sign of a failure of co-ordination between judicial and prison services. This often results from a failure to identify the needs of detainees with disabilities before they enter prison.

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53. Ibid.
54. House of Commons Library, Briefing Paper, No. 06086, 9 December 2016, Sentences of Imprisonment for Public Protection.
55. For statistics and up-to-date analysis concerning prison overcrowding throughout Council of Europe member countries, see Council of Europe Annual Penal Statistics, SPACE I – Prison populations, Survey 2016, Final report, PC-CP(2017)10, Strasbourg, 20 March 2018.
56. With regard to physical disability, see *Vladimir Vasilyev v. Russia*, Application No. 28370/05, judgment of 10 January 2012.
57. *Jasińska v. Poland*, Application No. 28326/05, judgment of 1 June 2010.
58. *Serifis v. Greece*, Application No. 27695/03, judgment of 2 November 2006; *Vincent v. France* judgment, op. cit.

5.4. Shortage of doctors and other health-care staff willing to work in prison settings

60. The lack of medical staff in prisons and/or inadequate training is a recurring problem which has been identified by the CPT on many occasions, as well as by the Commissioner for Human Rights.[59] The difficulties in recruiting prison doctors were stressed during my visits to France and Belgium, in particular with regard to certain specialist areas such as physiotherapy, ophthalmology and medical imaging (in France) and psychiatry (in Belgium). It would appear that practising medicine in prison is unattractive, as it is poorly paid and carried out in particularly stressful conditions. Clearly, this has ramifications for the care of detainees with disabilities.

61. In some countries, the lack of staff results in assistance to detainees with disabilities being provided by fellow detainees. As seen above, however, in the particular context of a prison environment, this presents risks of abuse if the persons providing the assistance are not supervised and monitored.

62. It has also been noted that a lack of appropriate staff can lead to excessive use of immobilisation[60] or to overmedication of detainees with disabilities.[61] Put simply, detainees are stupefied with drugs to keep the situation calm and so that staff can cope.

5.5. Repeated transfers and lack of continuity of care

63. Constant transfers are a barrier to appropriate treatment for detainees with disabilities. Such transfers can prevent the necessary medical or psychological monitoring and lead to a deterioration in the detainee's state of health, in breach of Article 3 of the European Convention on Human Rights.[62]

64. The French prison administration informed me that, in practice, persons with disabilities or patients in the prison environment could not receive medical or medico-social supervision equivalent to that provided outside, in spite of the approach aimed at bringing medical services into prisons. In Belgium, where problems have been reported in terms of care being interrupted in the case of transfers between facilities, the digitisation of the medical files of prisoners and persons held in psychiatric detention is regarded as a useful solution to this problem.

65. In Belgium, for many years now, the repeated strikes by prison staff and the authorities' inability to deal with the problem have resulted in warnings from the CPT because of their unacceptable impact on conditions of detention, and especially on the most vulnerable detainees, such as those with psychosocial disorders. The CPT recently urged the Belgian authorities to take the necessary steps to ensure the safety and security of every detainee under all circumstances, including those subject to psychiatric internment measures, and also to guarantee the continuity of care provided to individuals held under psychiatric internment awaiting placement in an appropriate facility and to any other person suffering from psychiatric disorders in prison.[63]

5.6. Adjusted sentences or alternatives to prison sentences

66. During my visit to France, I was told several times that, owing to the existence of care facilities in prisons, judges imprisoned people who were sick or disabled more readily, on the grounds that they would have access to the care they need. However, this mainly has the effect of legitimising the imprisonment of persons who should not be imprisoned because of their disabilities or state of health.

67. Many countries have arrangements for suspending sentences on medical grounds. However, they are rarely used, despite their potential as a tailor-made solution for people deemed to have criminal responsibility but whose state of health is incompatible with imprisonment. I was told during my visit to France that the criteria for granting suspensions of sentences are interpreted too restrictively. Either a person's condition has

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59. Armenia, 2010 Visit, CPT/Inf(2011)24, paragraph 109: no psychiatrist in some prisons and very rare visits from outside psychiatrists; no training for staff in relation to detainees with psychosocial disabilities; Turkey, 2013 (June) Visit, CPT/Inf(2015)6, paragraph 95: some prisons not visited by a psychiatrist; CommDH(2016)1, Report by Nils Muižnieks following his visit to Belgium from 14 to 18 September 2015, paragraph 122: in the psychiatric ward at the prison of Forest in Brussels, due to an overcrowding rate of 200% and a 10% reduction in the number of staff, the existing specialist personnel can only spend 15 minutes a week on each patient and no medical staff are present at night.

60. CPT/Inf(2013)3, paragraph 47.

61. CommDH(2016)1, Report by Nils Muižnieks following his visit to Belgium from 14 to 18 September 2015, op. cit.

62. *Bamouhammad v. Belgium*, Application No. 47687/13, judgment of 17 November 2015. In this case, the Court also held that the applicant's continued detention was inappropriate.

63. CPT/Inf(2017)18, Public Statement on Belgium, 13 July 2017, paragraphs 11-12.

to be life-threatening or their state of health must be permanently incompatible with continued imprisonment. A methodological guide was recently drawn up for judges to enable them to make more frequent use of sentence adjustment procedures on medical grounds.

68. I was also told in France that judges are sometimes reluctant to release prisoners with disabilities or ill prisoners, reasoning that, outside prison, they would not be able to access the same care and facilities as were available in the prison environment. Suspensions of sentences are therefore sometimes delayed because accommodation facilities must be found. These concerns raise the issue of release and continuity of care. However, prison should not be regarded as a care facility for people for whom there are not enough places in suitable facilities, such as psychiatric hospitals or elderly care homes.

5.7. Activities available for detainees with disabilities

69. The activities available in prison for people with disabilities are often very limited if not non-existent, as other larger groups of prisoners, such as young adults, are prioritised. In this connection, I would like to highlight two good practices. In Belgium, the Ghent Forensic Psychiatric Centre (which is not regarded as a prison, but as a care facility) has sewing, joinery and metalwork workshops where psychiatric patients can develop useful skills. Some of those who have worked in the centre's kitchens might also be hired by the catering firm upon their release. In France, an agreement has been signed with the Ministry of Sport and several sports federations to develop activities for elderly or dependent detainees. In addition, a centre providing care through employment (ESAT) opened in 2014 at Val-de-Reuil detention centre and enables 10 people with disabilities, including intellectual disabilities, to access work activities. In practice, however, these activities are more occupational in purpose rather than being aimed at social reintegration.

5.8. Isolation

70. It can be seen from the above that detainees with disabilities are particularly at risk of isolation in prison. The difficulty, if not the impossibility, for them to go on their own to the training or other activities available, and the bullying and acts of violence they are subjected to by other prisoners are among the many factors which prevent them taking part in prison life. In the case of detainees with psychosocial disabilities, the isolation inherent in imprisonment can worsen their state of mental health. Moreover, when prisoners with intellectual or psychosocial disabilities fail to obey instructions, this may lead to disciplinary sanctions – usually in the form of temporary isolation measures, which further aggravate their state of health.

6. Conclusions

71. Because people with disabilities form a minority within prisons, their situation is not regarded as a priority. Yet care for persons with disabilities is a major challenge for prison administrations and a review of the situation of people with disabilities in prison shows very serious shortcomings, including structural problems, in many European countries. However, it would appear that prison administrations seldom have up-to-date figures for the number of detainees with disabilities or the types of disability concerned. This makes it difficult to introduce appropriate measures for dealing with the problems encountered.

72. The needs of convicted persons and persons in pretrial detention in terms of accessibility and reasonable accommodation should be determined from the moment they enter prison and should be monitored throughout their detention. It is unacceptable for people to be deprived of care or assistance for weeks, or even months or years, as the European Court of Human Rights has all too often pointed out. It is the responsibility of States to take all necessary steps to ensure that the conditions of detention in their prisons do not violate prisoners' fundamental rights, in accordance with their commitments under various international instruments such as the European Convention on Human Rights and the United Nations Convention on the Rights of Persons with Disabilities.

73. Detention conditions that are unsuited to a person's state of health or disability are tantamount to a double punishment, which may sometimes result in inhuman or degrading treatment. It is well known that detention aggravates prisoners' state of health, especially their mental health. This is sadly illustrated by the risk of suicide and estimates of the number of detainees with mental health issues. Moreover, prison is often a very violent place, and vulnerable individuals are particularly at risk from violence and abuse.

74. I am convinced that people with severe disabilities should not be detained in the same conditions as other prisoners. While accepting the fact that these people are put in prison by decision of a court for offences they have committed, consideration should nevertheless be given as to whether imprisonment is appropriate when humane and dignified conditions of detention cannot be guaranteed. Nothing can justify degrading or

discriminatory conditions of detention. If prison establishments are not capable of providing people with disabilities with detention conditions suited to their circumstances, their sentences should be adjusted or suspended. Mandatory awareness training on the prison environment and disabilities should be provided for judges on a regular basis. Alternatives to prison sentences, for instance house arrest or community sanctions and measures, should be promoted, especially for individuals whose state of health is not compatible with incarceration. I also believe that the issue of fair access to justice for persons with disabilities should be looked at in greater depth by the Assembly.

75. Prisons are a vast topic and I am well aware that the detention of persons with disabilities is just one aspect of a whole host of issues faced by the public authorities (prison overcrowding, violence, lack of resources, difficulties in recruiting both prison and medical staff, etc.). However, the state of prisons is shaped by the choices made by society, and the possible solutions have to be considered holistically and in all their complexity. Political will and courage are also key factors, as improving detention conditions is rarely regarded as a priority by public opinion.

76. Much still needs to be done to achieve this goal in all our member States. We have a duty to tackle these issues. We cannot allow situations to persist in which, for persons with disabilities, deprivation of liberty means being deprived of their dignity.