



CDDH (2018)04 **Addendum**

15/06/2018

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

Parliamentary Assembly Recommendation 2132 (2018) – “Detainees with disabilities in Europe” transmitted by the Ministers’ Deputies to the CDDH

Text of the Recommendation and elements for possible CDDH comments

Introduction

1. Further to the decision taken by the Ministers’ Deputies at their 1319th meeting (13 June 2018), the text of the Parliamentary Assembly Recommendation 2132 (2018) – “Detainees with disabilities in Europe”¹ has been transmitted to the CDDH for information and possible comments by 25 July 2018².
2. The present document contains the text of the Recommendation as well as elements suggested by the Secretariat for possible CDDH comments. These elements could be examined at the 89th meeting (19-22 June 2018).

¹ Adopted by the Standing Committee, acting on behalf of the Assembly (Zagreb, 1 June 2018).

² The text of the Recommendation has also been transmitted by the Ministers’ Deputies to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

RECOMMENDATION 2132 (2018) – “DETAINEES WITH DISABILITIES IN EUROPE”***Text of the Recommendation***

1. The Parliamentary Assembly refers to its Resolution 2223 (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 2223 (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.

Draft comments

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2132(2018) - "*Detainees with disabilities in Europe*". It fully shares the concerns regarding the equality of treatment, non-discrimination, accessibility and reasonable accommodation within prison for detainees with disabilities. In this context, the Council of Europe has adopted several relevant instruments in order to protect human rights of persons with disabilities in prison³.
2. Furthermore, the Council of Europe Strategy on the Rights of Persons with Disabilities⁴ outlines the Organisation's priorities in the period 2017-2023 on this issue and declares that "the Council of Europe promotes, protects and monitors 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".
3. Like the Assembly, the CDDH stresses the importance of the respect of obligations already arising under the European Convention on Human Rights (ETS No. 5) and other instruments concluded concerning the situation of persons with disabilities in prison. The CDDH recalls that there is extensive case-law of the European Court of Human Rights regarding human rights of ill persons or persons with disabilities in prison⁵. 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"⁶.

³ [Recommendation Rec\(2006\)2](#) of the Committee of Ministers to member states on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006 at its 952nd meeting); [Recommendation No. R \(98\) 7](#), (Adopted by the Committee of Ministers on 8 April 1998 at its 627th meeting), concerning the ethical and organisational aspects of health care in prison; [Recommendation No. R \(99\) 22](#), (Adopted by the Committee of Ministers on 30 September 1999 at its 681st meeting), concerning prison overcrowding and prison population inflation; [Recommendation No. Rec\(2004\)10](#), (Adopted by the Committee of Ministers on 22 September 2004 at its 896th meeting) of the Committee of Ministers to member states 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.

⁴ The [Council of Europe Strategy on the Rights of Persons with Disabilities](#) was adopted by the Committee of Ministers at its 1272nd Meeting on 30 November 2016.

⁵ Some cases can be found in the [Prisoners' health-related rights factsheet](#) and in the [Persons with disabilities and the European Convention on Human Rights factsheet](#) published by the Press Unit of the European Court of Human Rights.

⁶ 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).

4. The CDDH refers to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Commissioner for Human Rights and the European Committee on Crime Problems on this important issue. Moreover, the CDDH recalls the pertinent work carried out by the DH-BIO to protect the human rights of persons with mental disorders.
5. As for encouraging member States to collect and share statistics on all disability situations found in prisons and to undertake a comprehensive study on the legislation and practice in all member States, the CDDH, recalling the Committee of Ministers' reply⁷ to the Parliamentary Assembly Recommendation 2082 (2015) "On the fate of critically ill detainees in Europe",⁸ considers that carrying out such a study and collecting and sharing statistics would be useful in order to identify best practices and elaborate guidelines in this field if necessary.

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⁷ On its [reply](#) adopted at its 1262nd meeting (6 July 2016), the Committee of Ministers "considers that a study as recommended by the Parliamentary Assembly on member States' legislation and practice in relation to the compassionate release of prisoners and other categories of persons in detention would be useful" and that "in addition to severely ill detainees, such a study should cover persons with severe disabilities"; finally the Committee of Ministers "encourages member States to consider collecting and sharing the statistics referred to by the Parliamentary Assembly in paragraph 3.1 of its [recommendation](#)".

⁸ The [Council of Europe budget and programme 2018-2019](#) includes the target of emphasising "on good management in prisons, protecting Human Rights, especially of vulnerable prisoners, and on Human Rights based policing and combating ill-treatment and impunity as regards law enforcement structures".