

# 10. Detainees with disabilities or serious medical conditions

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## 10.1. Considerations before your visit to persons with disabilities or serious medical conditions

Over the last decades, the Court has found various European States in a considerable number of cases to be in violation of Article 3 of the ECHR (prohibition of torture and inhuman or degrading treatment) when assessing whether imprisoned persons have been provided with adequate healthcare by the authorities. These cases refer to persons with a somatic illness, a disability, and in particular detainees suffering from a mental illness. In many EU member states, the humane detention and care for persons with mental health disorders have in fact become one of the most urgent issues of the respective penitentiary systems.

The problems faced by mentally ill persons in detention are complex and manifold and it would go beyond the scope of this guide to deal with every aspect of care. Therefore, only the most pressing issues NPMs could encounter during visits are dealt with below. It should, however, always be kept in mind that according to international and European standards, prisons can never be adequate facilities for the care of severely ill persons, and that **persons who are suffering from a mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose**. Anything else is likely to amount to inhuman or degrading treatment. !

As outlined above, NPM members who are not medical professionals might not have the entire range of possibilities to assess the quality of healthcare provided to detainees. It is therefore advisable to **include a person with medical expertise in a visiting delegation**. In particular if an NPM decides to have a special focus on these matters it is - not least for credibility reasons - essential to take a doctor, psychiatrist, nurse or other healthcare expert along on the visit, either as an externally hired expert or as a member of the NPM.

In the course of any regular visit to a detention facility, the members of a delegation could come across persons who complain about a lack of health care during interviews, or who are apparently very ill. As a first step, the NPM should look into all the steps that the detention facility has already undertaken to have the person in question seen by a medical expert. If it is found that no, or only inadequate action, has been taken with regard to this person, a standard procedure should be in place to set in motion measures such as arranging a medical examination by an expert; or having severely ill persons transferred to an appropriate health care facility; or to alert the responsible authority to persons who complain about or visibly suffer from insufficient/inadequate healthcare. In other words, **visiting delegations who do not comprise a member or expert with medical training are not exonerated from preventing inhuman or degrading treatment of individual detainees suffering from a serious medical condition, including mental health condition**. !

In addition, a visiting delegation could encounter detainees with **disabilities** while inspecting a particular detention facility. Again, the overall assessment whether the health care service of that facility is in the position to adequately cater for the needs of these persons should preferably be done by experts with the necessary medical background. Nevertheless, the NPM should still examine whether the necessary conditions are in place to allow these persons to take part in prison life without risks to their safety or discrimination.

## 10.2. Health care for persons with disabilities or serious medical conditions

*“Member States should ensure that persons with disabilities or other persons with serious medical conditions receive appropriate care comparable to that provided by the national public health system which meets their specific needs. In particular, Member States should ensure that persons who are diagnosed with mental health related medical conditions receive specialised professional care, where needed in specialised institutions or dedicated sections of the detention facility under medical supervision, and that continuity of healthcare is provided for detainees in preparation of release, where necessary.*

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*Member States should take special care to meet the needs of and ensure accessibility for detainees with disabilities or serious medical conditions with regards to material detention conditions and detention regimes. This should [include] the provision of appropriate activities for such detainees."*

*Paragraphs 75 and 76 of the Commission Recommendation*



#### Relevant international laws and standards:

- ▶ UN Convention on the Rights of Persons with Disabilities
- ▶ Articles 3 and 8 ECHR (Factsheets "Detention and mental health" and "Prisoners health-related rights" for a summary of case law by the Court)
- ▶ Rules 12.1, 40.4, 42.3 (b), 43.1, 43.3, 47.1, 47.2, 53A (b), 60.6.b and 81.3 of the revised European Prison Rules 2020
- ▶ Rules 5 (2), 45, 46 (3), 55 (2), 109 and 110 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards "Health care services in prison"

## Questions to ask and ways to find out



### Preliminary assessment:

Are the national laws and policies in line with paragraphs 75 and 76 of European Commission Recommendation?



### Is equivalence of care guaranteed for detainees with serious medical conditions, including mental illnesses?

- ▶ Get the numbers of health care staff working in the prison (including whether they are on a full-time basis, part-time or visiting experts), information on shifts, their respective expertise (e.g. trained mental health nurses) and compare with provisions outside prison to establish whether they are at least equivalent. (**NB:** Due to the comparatively higher incidence of mental health disorders among prisoners, equivalence of care actually requires a greater staff complement than for the general population.)
- ▶ Visit the infirmary, health bay, and any special units for ill or mentally ill detainees and assess whether the conditions therein resemble health care facilities on the outside.
- ▶ Establish whether all medication necessary for the treatment of ill detainees is readily available in the facility.
- ▶ A medical expert of the delegation should examine the individual medical files of detainees found to be suffering from a serious medical condition and determine whether continued detention in the facility is appropriate or whether they need to be transferred to a hospital or similar.
- ▶ Discuss with health care staff under which circumstances transfers to hospitals can be carried out.



### Are other necessary care measures in place?

- ▶ Establish with health care staff present and by talking to detainees whether there is a need among detainees for additional care measures, such as psychological interventions, substance use, alcohol or rape counselling, occupational therapy, physiotherapy, dietary, podiatry etc.
- ▶ Get the numbers of staff for these kinds of care measures, e.g. number of clinical psychologists or visiting counsellors.
- ▶ Establish if all persons in need of any additional care measures are seen by a specialist within a reasonable time by, e.g. checking waiting lists.

- ▶ Check the availability and appropriateness of facilities and rooms for additional care interventions (e.g. group therapy rooms, facilities for occupational therapy etc.)
- ▶ Speak with medical and civilian staff about any obstacles they face in providing care measures and occupational therapies to detainees.

### 10.3. Accommodation, segregation and regime of persons with disabilities or serious medical conditions

#### Questions to ask and ways to find out



**Are segregation measures for persons suffering from serious medical conditions, including mental illnesses, appropriate?**

- ▶ Visit any segregation cell or unit used for medical reasons, e.g. for persons prone to self-harm or at risk of suicide and establish whether the material conditions in these cells are adequate in terms of lighting, ventilation, temperature, personal space, personal safety concerns, cleanliness and that a bed or plinth with a mattress is available to each detainee.
- ▶ Establish whether persons held in these cells have regular and dignified access to sanitary facilities.
- ▶ Establish whether there are legal time limits for holding persons in medical segregation, and whether they are being adhered to by checking the relevant files and registers.
- ▶ Check registers or files to find out whether health care staff is regularly seeing persons in medical segregation and whether there are means to alert health care staff from within such cells.
- ▶ Verify whether persons in medical segregation have meaningful human contact with others or if they are de facto held in solitary confinement.
- ▶ Verify whether detainees in such segregation have access to the outdoors and can remain in contact with their families, and that any restrictions on outdoor exercise and contact with the outside world are necessary and proportionate.



**Are persons with disabilities held in the detention facility? Are they separated from other detainees? Are their living conditions adapted to their individual needs?**

- ▶ Get an overview of the number of persons who are acknowledged by the prison management to have disabilities.
- ▶ Find out with the management if such persons are separated from the main prison population.
- ▶ Visit the cells where persons with disabilities are held and establish whether the material conditions are adequately adapted (e.g. more spacious cells and sanitary facilities for wheelchair bound detainees).
- ▶ Speak to detainees with disabilities about their situation in detention, and in particular how they perceive their personal security.<sup>3</sup>



**Are persons with disabilities enabled to participate in prison life?**

- ▶ Speak with staff to find out which measures are taken to allow detainees with disabilities to take part in the daily regime activities, outdoor exercise etc.
- ▶ Establish with civilian staff whether any specially adapted activities are being organised for them.
- ▶ Speak with detainees with a disability about their participation in regime activities.

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*"[...] Member States should also allow detainees to correspond freely [...] by letter and, as often as possible, by telephone or other forms of communication including alternative means of communication for persons with disabilities."*

*Paragraph 54 the Commission Recommendation*

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## **Questions to ask and ways to find out**



### **Are alternative means of communication available for persons with disabilities?**

- ▶ *Speak with (civilian) staff to find out whether the detention facility offers alternative means of communication if necessary, and whether persons with disabilities are assisted in their communication with the outside world.*
- ▶ *Speak with detainees with a disability about their experiences in this regard.*