



Recommendations on disability rights in pre-trial detention

European Disability Forum

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**Input to the European Commission's consultation on:
Pre-trial detention – EU recommendation on rights and
conditions (call for evidence)**



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Background information

Detainees with disabilities continue to face many violations of their rights in EU Member States.

In 2017 the European Parliament adopted a [resolution on prison systems and conditions](#). The resolution recognised the **failure of EU Member States to protect the rights of prisoners with disabilities**.

Violations of fundamental rights are also described in a report of the Council of Europe on [Detainees with disabilities in Europe](#) published in 2018. They range from the non-recognition of their disability, difficult living conditions in unsuitable cells, to lack of access to treatment, failure to provide assistance and support and even ill-treatment and torture. There is also a disproportionate number of persons on the autism spectrum and persons with intellectual and psychosocial disabilities in prison. For example, in France, “nearly a quarter of detainees are said to have ‘psychotic disorders’”.¹

EU rules on detention and pre-trial detention are important to ensure harmonisation of detention rules and respect of fundamental rights across the EU Member States.

Recommendations

The European Disability Forum welcomes the adoption of EU recommendations on pre-trial detention.

We call on the European Commission ensure the protection of the rights enshrined in the **UN Convention on the Rights of Persons with Disabilities** ratified by the EU and all its Member States.

¹ See Parliamentary Assembly of the Council of Europe, [Detainees with disabilities in Europe](#) (2018), 3.3.

In particular the EU recommendations on pre-trial detention should:

- Refer to the implementation of, and compliance with the [UN Convention on the Rights of Persons with Disabilities](#) (CRPD) and the [Council of Europe's Parliamentary Assembly resolution 2223\(2018\) on detainees with disabilities](#)
- Ensure that EU Member States adequately assess and identify all types of disability of detainees and ensure and respect all the fundamental rights of detainees with disabilities, including the provision of:
 - **Assistance and accessible communication and information**, such as information in accessible formats (e.g. Easy to Read format, sign language interpretation, etc.), for example in relation to the detention policies and the detainees' rights.
 - **Accessibility, reasonable accommodation and procedural accommodation** before, during and after pre-trial detention.² For example when a person with disabilities is placed in detention, Member States should ensure 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.
 - **Access to healthcare**, including sexual and reproductive health as well as mental healthcare
 - Sufficient **range of activities** suited to the needs of detainees with disabilities
- Require the collection of **data** on persons in pre-trial detention in EU Member States disaggregated by disability, gender and other relevant criteria to provide a clear picture of the number and circumstances of detainees with disabilities in all their diversity
- Require the establishment of a **monitoring mechanism** that would include regular visits of places of detention, by one or several independent bodies such as National Human Rights Institutions, and

² "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (art. 2 CRPD). Procedural accommodation relates to accommodation required to ensure access to justice and the right of a fair trial. Contrary to reasonable accommodation, procedural accommodation is not limited by disproportionality. An illustration of a procedural accommodation is the recognition of diverse communication methods of persons with disabilities standing in courts and tribunals. See [General Comment No. 3](#), para. 13.

immediate investigation and remedies in cases of violence and ill-treatment, including against detainees with disabilities

- Require Member States to provide **training on disability and the CRPD** for judicial and prison staff and to include awareness of disability and multiple and intersectional discrimination in recruitment criteria
- Demand that Member States **involve civil society**, including representative organisations of persons with disabilities, in the development of detention rules and guidelines and in their monitoring

European Disability Forum

The European Disability Forum (EDF) is an umbrella organisation of persons with disabilities that defends the interests of over 100 million persons with disabilities in the European Union. We are a unique platform which brings together representative organisations of persons with disabilities from across Europe. We are run by persons with disabilities and their families, and as such represent a strong, united voice of persons with disabilities in Europe.

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