

Regional Seminar on Dangerous Offenders

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Definitions and basic principles

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Aim of the Recommendation

Recommendation adopted by the Committee of Ministers on 19 February 2014.

- It intends to **give adequate answers against grave criminality** against life and bodily and sexual integrity, **preventing the commission of similar crimes** by previous convicted offenders (dangerous offenders).
- The way chosen by the R. has been the application of secure measures consisting in secure preventive detention or in preventive supervision (restriction of liberty).

*To reach this objective is to strike the **right balance between the protection of public safety and the rights of offenders, particularly in relation to secure (indeterminate) preventive detention.***

Tools to reach main objectives

While it is true that the R. provides for the application of very serious and restrictive secure measures for the human rights and fundamental freedoms of convicted persons, it has also established a set of ***limitations and guarantees*** in the implementation of these measures, i. e.:

- The *rule of law principle* and legal certainty through definitions
- The *submission to judicial* or other independent *authority* in implementing these measures
- Giving *preference to the least restrictive measure* for the condemned and at the same time is the *most effective way to prevent* the commission of new crimes.

Both definitions and basic principles shall contribute to describe limitations and guarantees

Definitions 1: General overview

Definitions contribute:

- to establish more precisely the scope, framework and extent of the R.
- to set clear limits for the application of security measures provided for in R.

The R. includes eight definitions:

- Dangerous offender
- Violence
- Risk
- Risk assessment
- Risk management
- Treatment
- Secure preventive detention
- Preventive supervision

Definitions 2: Dangerous offender

It is a person who has been convicted of a very serious sexual or very serious violent crime against person(s) and who presents a high likelihood of re-offending with further very serious sexual or very serious violent crimes against person(s):

* previous conviction (limitation: a previous conviction is needed)

* of a very serious sexual or very serious violent crime against persons (limitation: only for these crimes as gathered in national legislation)

* high likelihood of reoffending with same kind of crimes (true and core concept of dangerous offender).

Definitions 3: Violence

The intentional use of physical force, threatened or actual, against another person, or against a group or community that either results in or has a high likelihood of resulting in injury, psychological harm or death.

- Violence falls under the nature of the previous crime committed by the offender.

This definition identifies four means by which violence may be inflicted: physical, sexual and psychological attack and deprivation.

No other kind of violence is accepted as a part of the previous crime committed.

Definitions 4a: Risk

Risk: the high likelihood of a further very serious sexual or very serious violent offence against person(s).

- This is called in many national European penal systems “criminal dangerousness”: Apparently is just to take a different focus or approach:
 - “Risk” refers more directly to the nature of the (criminal) fact that may be committed by an offender. It intends to get an objective approach of recidivism.
 - “Criminal dangerousness” is focused mainly to the personality of the offender, which reveals a tendency to re-offender. It is more concern on the psychologist side of the offender.

Definitions 4b: Risk

Risk assessment: is the process by which risk is understood: it examines the nature, seriousness and pattern of offences; it identifies the characteristics of the offenders and the circumstances that contribute to it; it informs appropriate decision making and action with the aim of reducing risk.

Is it here about the advance of a risk of recidivism for a very serious sexual crime or a very violent crime against persons?

The response is affirmative: the question is to conclude whether the offender personality has a criminal dangerousness (a high risk of reoffending).

Definitions 4c: Risk

Risk Management: is the process of selecting and applying a range of intervention measures in custodial and community settings and in the post-release period or preventive supervision with the aim of reducing the risk of very serious sexual or very serious violent crime against person(s).

The main question: *is it needed to impose to the offender a secure preventive measure, which its extent is indeterminate (its duration has no limit?).*

Definitions 5: Treatment

Treatment includes medical and psychological measures with a therapeutic purpose. It may serve to reduce the risk posed by the person and may include measures to improve the social dimension of the offender's life.

Treatment is addressed to a specific group of persons: only offenders which fall in the prison system: a) because they fallen in a psychiatric/psychological disorder being in prison, or b) they need for a treatment understood in a very broad sense as the aim is to improve the social dimension of the offender's life.

Offenders with a deep mental pathology when they committed the crime are excluded of the R.

Definitions 6a: Secure measures

- **Secure preventive detention** means detention imposed by the judicial authority on a person to be served during or after the fixed term of imprisonment in accordance with its national law. It is not imposed merely because of an offence committed in the past, but also on the basis of an assessment revealing that (s)he may commit other very serious offences in future.
- *The duration of the secure preventive detention is a matter of the national legislation, but may be indeterminate.*

Definitions 6b: Secure measures

- **Preventive supervision means measures of control, monitoring, surveillance or restriction of movement imposed on a person after having committed a crime and after having served a prison sentence or instead of. It is not imposed merely because of an offence committed in the past, but also on the basis of an assessment revealing that (s)he may commit other very serious offences in future.**

Also here the main idea is to prevent the commission of a crime in the future.

Basic principles 1

General issues: basic principles establish a number of guaranties for the person sentenced without forgetting the needs of protection of society against very serious criminality

As secure preventive detention consists of liberty deprivation, its application should be guided accordingly to imprisonment regime [Rec(2006)2 on the European Prison Rules] and meet some main principles:

- The restrictions to human rights and fundamental freedoms of offenders should be adopted as an exceptional tool to prevent very serious crimes of them.
- Secure measures should be necessary, of minimal duration, proportionate and effective.
- Both kind of measures may be imposed alternatively or successively.
- They shall be revised regularly by a judicial independent authority.

Basic principles 2

Dangerous offenders, like all offenders, should be treated *with respect for their human rights and fundamental freedoms, and with due regard for their particular situation and individual needs* while at the same time protecting society effectively from them.

- ✓ Here it shown the *concern to keep an equilibrium* between rights of offenders and an effective protection of society.

Basic principles 3

Any decision that could result in the deprivation or restriction of liberty of a dangerous offender shall be decided or agreed by the judicial authority. Restriction and intervention measures should not be disproportionate to the level of risk and the least restrictive measure consistent with the protection of the public and the reduction of risk should be applied.

- ✓ No other body or authority should be entitled to take this kind of decisions, especially if they belong to the national Administration of the Penitentiary System.

Basic principles 4

Identifying the “dangerous offender” should take into account that this group is *a small minority of the total offender population*, without, however, compromising public safety [...].

This identification should include:

- ✓ *evidence of previous serious violence, sexual offending*
- ✓ *the characteristics of the offender or his/her offending that indicate the likelihood of risk of violence, or sexual offending*
- ✓ *evidence of the inadequacy of lesser measures*
(i.e., offender’s previous failure to comply and persistent offending despite the application of lesser measures).

Basic principles 5

The risk management of dangerous offenders should, where appropriate, have the long-term aim of their safe reintegration into the community in a manner consistent with public protection from the risk posed by the offender. This should involve an individual plan that contains a staged process of rehabilitation through appropriate intervention.

This means that a deprivation of liberty for life is not an objective of the R., As such, is excluded.

An individual plan for a possible rehabilitation process should be designed.

Basic principles 6

Positive steps should be taken to avoid discrimination and stigmatisation and to address specific problems that dangerous offenders may face while in prison and while undergoing preventive supervision in the community.

The following should be avoided through adequate steps:

- ✓ discrimination and stigmatisation of dangerous offenders
- ✓ specific problems while in prison
- ✓ specific problems while undergoing preventive supervision in the community.

Basic principles 7

The protection of the individual rights of dangerous offenders, with special regard to the legality of the execution of the measures (secure preventive detention, preventive supervision), should be secured by means of regular and independent monitoring, according to national rules, by a judicial authority or other independent body authorised to visit and not belonging to the prison administration.

- *A core of the guaranties provided by the R. is a regular and independent monitoring by a judicial authority or other independent body.*

Basic principles 8

Special risk-related needs of dangerous offenders should be addressed throughout the period of the intervention and sufficient resources should be allocated in order to deal effectively with the particular situation and specific needs.

It is of the utmost importance for adequate intervention in the dangerous offender to facilitate the allocation of sufficient specific resources.

Basic principles 9

Risk assessment and management practices and tools should be:

- ✓ *evidence based* (this is frequently not so easy, as the question is to be able to predict the future criminal acts of a person –a previous offender-)
- ✓ *evaluated by encouraging and funding research that will be used to guide policies and practices within the field*
- ✓ *carefully evaluated in order to identify cultural, gender and social biases.*

Basic principles 10

Appropriate training in assessing and dealing with dangerous offenders should be provided for the relevant authorities, agencies, professionals, associations and prison staff, to ensure that practice conforms to the highest national and international ethical and professional standards. Particular competencies are needed when dealing with offenders who suffer from a mental disorder.

Attention should be paid to the qualification of professionals and staff.

Conclusions

- Society is entitled to defend itself against the most serious crimes.
- Indeterminate deprivation of freedom of dangerous offenders is a tool for crime prevention which has to be seen as a very exceptional reaction.
- A prerequisite for imposing security measures must be the criminal dangerousness of the offender, to be deduced from his/her previous criminal acts and personality and not primarily from targets, automatic or actuarial criteria, that may help as complementary support.
- Any measure against dangerous offenders should be taken accordingly to basic penal principles (rule of law, judicial control, *ultima ratio*, minimal intervention, proportionality) and with respect to human rights and fundamental freedoms.

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Thanks for your attention!!

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