DANGEROUS OFFENDERS

Recommendation CM/Rec(2014)3
adopted by the Committee of Ministers
of the Council of Europe
on 19 February 2014
and explanatory memorandum

Council of Europe

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Recommendation CM/Rec(2014)3

of the Committee of Ministers to member States concerning dangerous offenders

(adopted by the Committee of Ministers on 19 February 2014 at the 1192nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular through harmonising laws on matters of common interest;

Considering the specific approach necessary with regard to dangerous offenders detained in the prisons in its member States;

Recognising the challenges which European States face in balancing the rights of dangerous offenders with the need to provide security in society;

Bearing in mind the relevance of the principles contained in previous conventions and recommendations and in particular:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);
- the Convention on the Transfer of Sentenced Persons (ETS No. 112);
- the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201);

- Recommendation Rec(82)17 of the Committee of Ministers to member States concerning custody and treatment of dangerous prisoners;
- Recommendation Rec(92)17 of the Committee of Ministers to member States concerning consistency in sentencing;
- Recommendation Rec(97)12 of the Committee of Ministers to member States on staff concerned with the implementation of sanctions and measures;
- Recommendation Rec(98)7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison;
- Recommendation Rec(2000)20 of the Committee of Ministers to member States on the role of early psychosocial intervention in the prevention of criminality;
- Recommendation Rec(2000)22 of the Committee of Ministers to member States on improving the implementation of European rules on community sanctions and measures;
- Recommendation Rec(2003)23 of the Committee of Ministers to member States on the management by prison administrations of life sentence and other long-term prisoners;
- Recommendation Rec(2004)10 of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder;
- Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules;
- Recommendation CM/Rec(2008)11 of the Committee of Ministers to member States on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation CM/Rec(2010)1 of the Committee of Ministers to member States on the Council of Europe Probation Rules;
- Recommendation Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring;

Taking into account the constitutional principles, legal traditions and the independence of the judiciary in its member States;

Acknowledging that this recommendation does not contain any obligation to member States to introduce secure preventive detention or preventive supervision into national law;

Acknowledging that this recommendation could be applied in accordance with national law *mutatis mutandis* in other cases than those referred to in the recommendation;

Recognising that a range of authorities and agencies deal with dangerous offenders and that such bodies are in a need of a coherent set of guiding principles in line with Council of Europe standards,

Recommends that Council of Europe member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation;
- ensure that this recommendation and its accompanying commentary are translated and disseminated to all relevant authorities, agencies, professionals and associations which deal with dangerous offenders, as well as to the offenders themselves.

Appendix to Recommendation CM/Rec(2014)3

Part I – Definitions and basic principles

Definitions

1. For the purpose of this recommendation:

a. A **dangerous offender** is a person who has been convicted of a very serious sexual or very serious violent crime against persons and who presents a high likelihood of re-offending with further very serious sexual or very serious violent crimes against persons.

b. **Violence** may be defined as the intentional use of physicial force, either threatened or actual, against persons, that either results in, or has a high likelihood of resulting in, injury, psychological harm or death. This definition identifies four means by which violence may be inflicted: physical, sexual and psychological attack and deprivation of liberty.

c. **Risk** is defined as the high likelihood of a further very serious sexual or very serious violent offence against persons.

d. **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.

e. **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 in the context of preventive supervision, with the aim of reducing the risk of very serious sexual or very serious violent crime against persons.

f. **Treatment** includes, but is not limited to, medical, psychological and/or social care for therapeutic purposes. 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.

g. **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 he or she may commit other very serious offences in the future.

h. **Preventive supervision** means measures of control, monitoring, surveillance or restriction of movement imposed on a person after he or she has committed a crime and after he or she has 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 he or she may commit other very serious offences in the future.

Scope, application and basic principles

2. This recommendation shall not apply :

a. to children;

b. to persons with mental disorder who are not under the responsibility of the prison system.

3. 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.

4. 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.

5. Careful adherence to criteria for 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. Such criteria should include evidence of previous serious violence, sexual offending, the characteristics of the offender or his/her offending that indicate the likelihood of substantial and continuing risk of violence, or sexual offending, as well as evidence of the inadequacy of lesser measures, such as the offender's previous failure to comply and persistent offending despite the application of lesser measures. The length of the sentence or the offender's general recidivism cannot constitute the only criteria for defining an offender as dangerous in this sense.

6. 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.

7. 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.

8. 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.

9. 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.

10. Risk-assessment and management practices should be evidence based.

11. The effectiveness of risk assessment and management of dangerous offenders should be evaluated by encouraging and funding research that will be used to guide policies and practices within the field. Risk-assessment tools should be carefully evaluated in order to identify cultural, gender and social biases.

12. 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.

Part II – Judicial decisions for dangerous offenders

General provisions

13. Risk assessment should be commissioned by the judicial authority.

14. The alleged dangerous offender should have the possibility of commissioning a separate expert report.

15. The judicial authorities should, where possible and appropriate, be provided with pre-sentence reports about the personal circumstances of the offender whose dangerousness is being evaluated.

Secure preventive detention

16. The decision of a judicial authority to impose secure preventive detention against a dangerous offender should take into account a risk-assessment report from the experts.

17. A dangerous offender should only be held in secure preventive detention on the basis of an assessment establishing that he or she may with high likelihood commit a very serious sexual or very serious violent crime against persons in the future.

18. Secure preventive detention is only justified when it is established as the least restrictive measure needed.

19. When secure preventive detention takes the form of detention beyond the period prescribed for punishment, it is essential that those detained are able to challenge their detention, or the limits on their freedom, before a court at least every two years after the expiry of the period prescribed for punishment.

20. Anyone held for preventive reasons should be entitled to a written plan which provides opportunities for him or her to address the specific risk factors and other characteristics that contribute to their current classification as a dangerous offender.

21. The aim of the relevant authorities should be the reduction of the restriction and release from secure preventive detention in a manner consistent with public protection from the risk posed by the offender.

22. Dangerous offenders in secure preventive detention should, after the expiry of the period prescribed for punishment, be held in appropriate conditions subject to the requirements of risk management, security and public protection. In any case, respect for human dignity should be guaranteed.

Preventive supervision

23. Preventive supervision may be applied as an alternative to secure preventive detention, as a condition for release on probation, or after release, and should be reviewed on a regular basis.

24. Such supervision may consist of one or more of the following measures set up by the competent authority:

i. regular reporting to a designated place;

ii the immediate communication of any change in place of residence, of work or position in the way and within the time limit set out;

iii. prohibition from leaving the place of residence or of any territory without authorisation;

iv. prohibition from approaching or contacting the victim, or his or her relatives or other identified persons;

v. prohibition from visiting certain areas, places or establishments;

vi. prohibition from residing in certain places;

vii. prohibition from performing certain activities that may offer the opportunity to commit crimes of a similar nature;

viii. participation in training programmes or professional, cultural, educational or similar activities;

ix. the obligation to participate in intervention programmes and to undergo regular re-assessment as required;

x. the use of electronic devices which enable continuous monitoring (electronic monitoring) in conjunction with one or some of the measures above;

xi. other measures provided for under national law.

25. When considering indeterminate supervision or life-long supervision, suitable guarantees for a just application of this measure should be guided by the principles contained in Recommendation Rec(2000)22 on improving the implementation of European rules on community sanctions and measures.

Part III – Risk-assessment principle during the implementation of a sentence

26. The depth of assessment should be determined by the level of risk and be proportionate to the gravity of the potential outcome.

27. Risk assessments should involve a detailed analysis of previous behaviours and the historical, personal and situational factors that led to and contributed to it. They should be based on the best reliable information.

28. Risk assessment should be conducted in an evidence-based, structured manner, incorporating appropriate validated tools and professional decision making. Those persons undertaking risk assessments should be aware of and state clearly the limitations of assessing violence risk and of predicting future behaviour, particularly in the long term.

29. Such risk-assessment instruments should be used to develop the most constructive and least restrictive interpretation of a measure or sanction, as well as to an individualised implementation of a sentence. They are not designed to determine the sentence although their findings may be used constructively to indicate the need for interventions.

30. Assessments undertaken during the implementation of a sentence should be seen as progressive, and be periodically reviewed to allow for a dynamic re-assessment of the offender's risk:

a. Risk assessments should be repeated on a regular basis by appropriately trained staff to meet the requirements of sentence planning or when otherwise necessary, allowing for a revision of the circumstances that change during the execution of the sentence.

b. Assessment practices should be responsive to the fact that the risk posed by an individual's offending changes over time: such change may be gradual or sudden.

31. Assessments should be coupled with opportunities for offenders to address their special risk-related needs and change their attitudes and behaviour.

32. Offenders should be involved in assessment, and have information about the process and access to the conclusions of the assessment.

33. A clear distinction should be made between the offender's risks to the outside community and inside prison. These two risks should be evaluated separately.

Part IV – Risk management

34. Interventions for the prevention of reoffending should be clearly linked to the ongoing risk assessment of the individual offender. It should be planned for both the custodial and community settings, ensuring continuity between the two contexts.

35. All plans developed with this aim in mind should include: rehabilitative and restrictive measures to reduce the likelihood of reoffending in the longer term, while affording the necessary level of protection to others; measures to support the individual to address personal needs; contingency measures to respond promptly to indications of either deterioration or imminent offending; and appropriate mechanisms to respond to indications of positive changes.

36. Such a plan should facilitate effective communication, co-ordinate the actions of various agencies and support multi-agency co-operation between prison administration, probation workers, social and medical services and law-enforcement authorities.

37. Plans should be realistic and have achievable objectives and should be structured in such a way as to allow the offender to understand clearly the purposes of the interventions and the expectations of him or her.

38. The above processes should be subject to regular review, with the capacity to respond to changes in risk assessment.

39. In addition to these recommendations, risk management in the community should be guided by the principles contained in Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules and Recommendation Rec(2000)22 on improving the implementation of European rules and community sanctions on measures.

Part V – Treatment and conditions of imprisonment of dangerous offenders

Conditions of imprisonment

40. Imprisonment, through the deprivation of liberty, is punishment in itself. The conditions of imprisonment and the prison regimes should be guided by the principles contained in Recommendation Rec(2006)2 on the European Prison Rules.

41. Security measures should be set to the minimum necessary, and the level of security should be revised regularly.

Treatment

42. As soon as possible after admission and after an assessment of the risks, special risk-related needs and characteristics of the offender, appropriate treatment in a suitable institution should be prepared in the light of the knowledge obtained about individual special risk-related needs, capacities and dispositions. This should take into account proximity to relatives and specific conditions. The implementation should be supervised by a competent authority.

43. Treatment may include medical, psychological and/or social care.

44. Those who have, or develop, a mental disorder, should receive appropriate treatment. The guidance given in Recommendation No. R (98) 7 concerning the ethical and organisational aspects of health care in prison should be followed. The medical or psychiatric service of the penal institutions should provide or facilitate the medical and psychiatric treatment of all dangerous offenders who are in need of such treatment.

45. The purpose of the treatment of dangerous offenders should be such as to sustain their health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will help them to lead law-abiding and self-supporting lives.

Work, education and other meaningful activities

46. Persons under secure preventive detention should have access to meaningful activities and access to work and education guided by the principles contained in Recommendation Rec(2006)2 on the European Prison Rules.

Vulnerable people

47. Special attention should be given by the prison administration to the special needs of elderly offenders and to the education of young adult offenders.

Part VI – Monitoring, staff and research

48. Staff and agencies dealing with dangerous offenders should be subject to regular government inspection and independent monitoring.

49. All staff, including relevant authorities, agencies, professionals and associations involved in the assessment and treatment of dangerous offenders should be selected on the basis of defined skills and competences and professionally supervised. They should have sufficient resources and training in assessing and dealing with the specific needs, risk factors and conditions of this group. Particular competencies are needed when dealing with offenders who suffer from a mental disorder.

50. Training in multi-agency co-operation between staff inside and outside prisons should be arranged.

51. Research on the use and development of reliable risk and needs assessment tools should be undertaken with special reference to dangerous offenders.

52. Evaluative research should be conducted to establish the quality of risk assessment.

Part VII – Follow-up

53. The European Committee on Crime Problems (CDPC) should play a significant role in the effective implementation of this recommendation. It should make proposals to facilitate or improve its valuable use. The CDPC should include the identification of any problems. It should also facilitate the collection, analysis and exchange of information, experience and good practice between States.

Explanatory memorandum

Introduction

1. In 1982, the Committee of Ministers of the Council of Europe adopted the Recommendation No. R (82)17 concerning the custody and treatment of dangerous prisoners. Since then, there has been a clear need to replace this recommendation with a new text in line with new international and Council of Europe standards, including those regarding the treatment of offenders in custody and the European Prison Rules. The text of the new recommendation aims at building upon and further broadening the scope of Recommendation No. R (82) 17 and at giving policy guidance to national authorities on the main rules to follow when dealing with dangerous offenders.

2. The main objective of the recommendation is to strike the right balance between the protection of public safety and the rights of offenders, particularly in relation to secure preventive detention. Indeed these considerations have been given further weight by several European Court of Human Rights (hereinafter "the Court") judgments, of which only two will be mentioned here:

3. In the case of *Maiorano and others v. Italy* (Application No. 28634/06, judgment of 15 December 2009), the Court made it clear that the State had an obligation to protect its citizens from dangerous offenders. The State does not only have the primary obligation to ensure the right to life by putting in place specific penal legislation, but also in certain well-defined circumstances, Article 2 of the European Convention on Human Rights (hereinafter

"the Convention") may require a State to take positive preventive measures aimed at protecting a person whose life is threatened by the criminal activity of others. This obligation arises only in cases where the authorities knew or should have known of the existence of a real and immediate danger to the life of one or more persons.

4. The case *M. v. Germany* (Application No. 19359/04, judgment of 17 December 2009), on the other hand, concerned the rights of the offender in relation to secure preventive detention. It stated that the replacement of preventive detention of determinate duration (10 years maximum) by preventive detention of indeterminate duration, following a change in German law, amounted not to a mere amendment of the execution of the enforcement of this penalty but to an additional penalty imposed retroactively (Article 7, paragraph 1). Furthermore, if a court responsible for the execution of the sentence orders preventive detention after the original court conviction of the sentencing court, this latter decision does not satisfy the requirement of conviction for the purpose of Article 5, paragraph 1.*a* of the Convention as it no longer involves the finding of guilt.

5. In relation to the case *M. v. Germany*, two aspects of this judgment should be further observed: Article 7 of the Convention embodies, *inter alia,* the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and it also lays down the principle that criminal law must not be extensively construed to an accused's detriment, for instance by analogy; an individual must know from the wording of the relevant provision what acts and omissions will make him or her criminally liable and what penalty will be imposed for the act committed and/or omission. On the other hand, the Court concludes that preventive detention (under the German Criminal Code) is to be qualified as a "penalty" for the purposes of Article 7, paragraph 1 of the Convention.

6. Against this background of the Court's case law, it is currently the experience in Council of Europe member States that although procedures surrounding secure preventive detention have become stricter, the category of "dangerous offender" has at the same time been broadened to include even more individuals. This problem required the Ad hoc Drafting Group on Dangerous Offenders to focus closely on two primary tasks: firstly to work hard on a narrow definition of "dangerous offender" in order to characterise more precisely this group of offenders and secondly to consider how best to recommend management and treatment of dangerous offenders that balance the offender's rights and the protection of the public.

7. The recommendation acknowledges that "dangerousness" is not a clear legal concept. It is also vague in scientific terms, in so far as the assessment of criminological dangerousness and individual risk of reoffending in the long term lacks sufficient supporting evidence to ensure an accurate measurement of dangerousness.

8. In order to strengthen the use of the concept of dangerousness in this particular context, the recommendation has particularly stressed the importance of risk assessment and risk management to reduce risk and uphold proportionate durations of detention. With this emphasis on assessment and management procedures, it will hopefully be possible to counter situations where for instance an offender is detained for an indeterminate period due to a categorisation of dangerousness, even though the risk posed by the offender may have diminished in the meantime. The recommendation therefore also regards assessment and management procedures as interrelated, because they have to be repeated at suitable intervals and must adjust to each other when changes in the offender's situation occur.

Decision-making process

9. As mentioned above, the treatment of long-term and "dangerous" offenders is becoming an increasingly important issue in many Council of Europe member States, and thus for the European Committee on Crime Problems (CDPC), with concerns on a number of different levels.

10. Therefore, following the conclusions of the 14th Conference of Directors of Prison Administration (CDAP), (in Vienna, 19-21 November 2007), the Council for Penological Co-operation (PC-CP) decided to carry out a study on the concept of dangerous offenders.

11. In June 2009, the Ministers of Justice of the Council of Europe invited the CDPC in co-operation with other competent bodies of the Council of Europe to examine existing best practices in member States, in full respect of human rights, related to:

- the assessment of the risk of reoffending and the danger to victims and society posed by perpetrators of acts of domestic violence;
- the supervision and treatment of such perpetrators in serious and repeated cases, in closed settings and in the community, including surveillance techniques;

– programmes and measures aimed at helping perpetrators improve self-control and behaviour management and, where possible, repairing the harm done to victims.

12. The PC-CP considered this resolution at its 62nd meeting (21-23 September 2009) and shared the opinion of the CDPC Bureau that this study should be carried out within the framework of the planned study on the concept of dangerous offenders and their supervision and treatment.

13. A report was drafted by Professor Nicola Padfield entitled "The sentencing, management and treatment of 'dangerous' offenders",[1] which was presented to the CDPC at its meeting on 7 June 2010. It describes the situation in Europe and explains the possible risks and dangers should there be a imbalance between the public interest and the need to safeguard against the abuse of individual rights.

14. A roadmap setting out the work of the CDPC in the field of dangerous offenders was submitted to the CDPC in December 2011 where the decision was taken to prepare draft terms of reference for a restricted drafting group of experts on dangerous offenders.

15. In March 2012, the CDPC Bureau approved the above-mentioned draft terms of reference and instructed the secretariat to send them to all CDPC delegations for approval by written procedure and to submit them to the Committee of Ministers for adoption.

Terms of reference

16. On 21 November 2012, the Committee of Ministers adopted the terms of reference of the Ad hoc Drafting Group on Dangerous Offenders (PC-GR-DD). Under the authority of the CDPC, the PC-GR-DD was requested to prepare a non-binding legal instrument on dangerous offenders.

17. The PC-GR-DD was required, in particular, to examine the following issues:

– risk and threat assessment of dangerous offenders in criminal proceedings which could result in detention due to the danger posed by the offenders;

1. Padfield N., "The sentencing, management and treatment of 'dangerous' offenders". Please see: www.coe.int/t/dghl/standardsetting/cdpc/PC-GR-DD/PC-CP(2010)10%20rev%205_E%20_vs%2026%2001%2011_%20-%20THE%20SENTENCING%20MANAGEMENT%20AND%20TREATMENT%20OF%20DANGEROUS%20OFFENDERS.pdf

– treatment and conditions of detention of dangerous offenders;

– measures for the prevention of reoffending by dangerous offenders to the extent that such measures are covered by the criminal justice system.

18. The definition of the term "dangerous offenders" to be worked on was clearly delineated in the terms of reference as follows.

19. The work of the PC-GR-DD should focus on offenders deemed to represent a threat to society because of their personality, the violent character of the criminal offence(s) which they have committed and the risk of reoffending.

20. Offenders whose level of danger is determined by their involvement in organised crime and/or terrorism would not be covered by the PC-GR-DD, but be the subject of future work by the CDPC.

21. The terms of reference of the PC-GR-DD specify that "other issues related to dangerous offenders, in particular with regard to offenders whose dangerousness is determined by their involvement in organised crime and/or terrorism, should not be examined as a matter of priority by PC-GR-DD, but shall be the subject of future work by the CDPC". In fact, with these types of dangerous offenders come specific demands, in particular as far as questions of security and public order are concerned: the development of phenomena such as violence and/or proselytism in prisons needs to be avoided; when necessary, these dangerous offenders should be detained in penitentiary establishments located far from places where criminal organisations have a strong presence; and, these dangerous offenders should not be able to carry on with their criminal activities while in detention (for example they should not have the opportunity to transmit orders to their accomplices on the outside). As a result, the specific objectives relating to prevention and security should be carried out through additional work under the aegis of the CDPC.

22. The expected results were the drafting of a non-binding legal instrument concerning dangerous offenders. This led to a draft recommendation and its commentary addressing the guiding principles for the application of the rules, as well as explanations that would enhance the understanding and use of the rules.

23. The terms of reference required the PC-GR-DD to have completed its work by December 2013.

Composition of the committee

24. The Ad hoc Drafting Group was composed of 16 representatives of member States with the aim of reflecting an equitable geographic distribution amongst the member States.

25. It consisted of representatives from Belgium, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Poland, the Russian Federation, Switzerland, Turkey and the United Kingdom. Other participants (Austria) took part at the meeting at their own expense. Mr Sławomir Buczma (Poland) was elected chairman of the committee.

26. Ms Louise Victoria Johansen was appointed as scientific expert to assist the Ad hoc Drafting Group. Moreover, consultant drafters Ms Yvonne Gailey and Professor Carlos María Romeo-Casabona were appointed with effect from the first restricted meeting of the group. Representatives from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), the Council for Penological Co-operation (PC-CP) as well as Penal Reform International participated in the committee's meetings as observers.

Working methods

27. The first meeting of the Ad hoc Drafting Group was held in December 2012 and began with a round-table presentation of the policies and legislation in each representative's country regarding dangerous offenders. The group discussed basic principles, scope and definitions concerning dangerous offenders and focused on the possible structure of the draft recommendation. Considerations were also made on the issue of existing practices, risk assessment and management. Proposals for common standards regarding these measures were also discussed.

28. In addition, the relevant case law of the Court and the best practices of member States were taken into account. A representative from the Court was invited to make a presentation of the Court's case law in relation to secure preventive detention, particularly the case *M. v. Germany* (also *M., K., S. v. Germany*).

29. The group also consulted the above-mentioned report of Professor Nicola Padfield commissioned by the CDPC. However, in the draft commentary, no attempt was made to present an exhaustive presentation of all the variations between Council of Europe member States that do (or do not) have a particular policy or practice concerning dangerous offenders.

30. The Ad hoc Drafting Group held its second meeting in April 2013, where the preliminary draft recommendation was presented. Each rule was examined and commented upon by the representatives of member States. Core definitions and principles of the future recommendation concerning "dangerous offenders", "treatment", "secure preventive detention", "preventive supervision", "risk assessment" and "risk management" were discussed and agreed upon. It was decided at this point that the recommendation should not apply to children and persons suffering from a mental disorder who are not under the responsibility of the prison system. The PC-GR-DD decided to present a draft commentary at its next meeting, and this commentary was then developed by the scientific expert and the consultant drafters.

31. The Ad hoc Drafting Group held its third meeting from 18 to 20 September 2013, where the draft commentary was presented. The draft recommendation and its commentary were examined and approved by the CDPC during its 65th Plenary meeting held from 2 to 5 December 2013, before their transmission to the Committee of Ministers for adoption.

32. The PC-GR-DD's work resulted in a draft recommendation concerning dangerous offenders and a draft report containing elaborations and explanations of the rules.

Commentary to the preamble

33. The preamble makes reference to a list of relevant recommendations expressing fundamental Council of Europe principles that should guide the interpretation and implementation of the rules of this recommendation.

34. The preamble underlines that national legislation, policies and practice are addressed by this recommendation. This means that the recommendation offers a guide for both legislation and a framework for good practice concerning dangerous offenders. This does not mean, however, that the recommendation offers an exhaustive guide on every aspect of daily practices concerning this group. It is for the different Council of Europe member States to accommodate these rules into their legislation and to translate them into practice.

Part I – Definitions and basic principles

Definitions

35. The definition of "dangerous offender" is central to determining the scope of application of the recommendation. Rule 1.*a* reflects the intentions of the

Ad hoc Drafting Group to define narrowly the term "dangerous offender". It establishes that only very serious sexual or very serious violent crime against persons falls within the scope of this recommendation. The term "very serious sexual or very serious violent crime" in this context refers to an indictable offence that is punishable by a high level of imprisonment penalties according to each specific national criminal code. The Ad hoc Drafting Group took note of the fact that Council of Europe member States apply quite different mechanisms when dealing with the phenomenon of dangerous offenders and that many states have developed different concepts of what may be considered to be forms of "secure preventive detention" and/or "preventive supervision". Member States' legislation also differs in respect of the type of offence to which such measures may be applied.[2] Therefore, this recommendation is neither intended to oblige member States to introduce measures of secure preventive detention or preventive supervision into their national law nor is it intended in any way to impose – or even to propose – any limitations in respect of the types of offences in which member States may apply mechanisms of secure preventive detention and/or preventive supervision. Nevertheless, whenever a member State does apply such mechanisms to deal with the phenomenon of "dangerous offenders" it should take into account the rules contained in this recommendation.

36. The concept of "high likelihood" is not defined by legislation and will be for the court to assess in each case, supported by expert reports. However, the use of "high likelihood" in this recommendation underlines the importance of considering both the seriousness of the offence and the likelihood of its (re)occurrence.[3] An offender having committed a very serious sexual or very serious violent crime may in some circumstances represent a low likelihood of reoffending and should not necessarily be dealt with under the definition of "dangerous offender".

37. This definition takes into account that "dangerousness" should be considered as a dynamic, and not a static, concept. The degree of dangerousness can change over time: it may increase, diminish or even cease.

38. It is important to stress that the definition of "dangerous offender" is valid only for the purposes of the application of this recommendation, and it does not require a Council of Europe member State to introduce a definition of dangerous offender in its national laws.

2. Padfield N., op.cit., paragraph 95-98, pp. 27-29.
3. Padfield N., op. cit., p. 10.

39. The definition of violence is inspired by the World Health Organization (WHO). According to WHO, violence includes "the intentional use of physical force or power, threatened or actual". The term "threatened" refers to the intended use of violence whether or not it causes harm to the victim. The mere consideration of committing an act of violence is not enough to meet the term "threatened", whereas an act, expressed intent or implementation is. The WHO definition includes reference to groups and community. It may be that in addition to serious crime against the person a particular group is also targeted in, for example, racist, sexist or homophobic attacks.

40. See also paragraph 36 above as regards the concept of "high likelihood".

41. This definition of risk management mentions intervention measures in "custodial and community settings", referring to situations, among others, in which the offender may have been given leave for a shorter or longer period, maybe as a step towards conditional release, under which he or she may in fact be in a community setting, although intervention measures are still applied.

42. For the purpose of this recommendation, a distinction is made between the terms "intervention" and "treatment". Intervention in this context refers to efforts aimed at reducing the risk of reoffending through a range of possible measures as listed in part IV on risk management.

43. Treatment is more broadly defined and applied in this recommendation than "intervention". Treatment may address the health or well-being of the offender, regardless of whether the treatment undertaken is related to the reduction of risk.

44. Treatment refers to a range of medical, psychosocial and/or social services offered to offenders, and it is aimed at improving the physical, psychiatric and/or social dimension of the offender's life.

45. In many European countries there are specific rules regulating the detention of dangerous offenders for public security reasons. For the purpose of this recommendation, secure preventive detention is considered to be a measure for public protection and not solely a penal sanction. Secure preventive detention may be of a fixed term but more often is of indefinite duration. It should always be ordered by the sentencing court, as stated in more detail in Part II on judicial decisions for dangerous offenders.

Scope, application and basic principles

46. Children, understood as persons under 18, are not included in this recommendation, and should be dealt with under a different set of arrangements to adult offenders. Children are instead addressed by Recommendation CM/Rec(2008)11 on European Rules for juvenile offenders subject to sanctions or measures, the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice[4] and Article 40 of the United Nations Convention on the Rights of the Child.

47. In the recommendation, the reference to dangerous offenders with a mental disorder only applies to persons who are under the responsibility of the prison/justice system. The committee considered whether dangerous offenders with a mental disorder should be addressed in the recommendation. This was regarded as being problematic since persons with a serious mental disorder should not be subject to imprisonment but be treated in other regimes such as that found in psychiatric hospitals. At the same time, it was acknowledged that many dangerous offenders who are under the responsibility of the prison/justice system do suffer from some personal or developmental disorders and are in need of treatment during imprisonment, and possibly after eventual release. The recommendation addresses the risks, needs and rights of dangerous offenders with such a mental disorder.

48. Dangerous offenders can face conditions that are particular for them as a group. This may include indefinite detention, treatment and surveillance measures for the protection of the public.

49. In particular, secure preventive detention poses significant human rights concerns, since the offender is detained beyond the period prescribed for punishment because of the risk that he or she is perceived to present in the future. The protection of the rights of dangerous offenders in the imposition and implementation of secure preventive detention and preventive supervision remains fundamental.

50. At the same time it is recognised that public safety is an obligation of nation States,[5] and the protection of the public should be balanced with the protection of human rights of offenders classified as dangerous.

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4. Information about the Council of Europe's work on child-friendly justice and its progress is available on the website: www.coe.int/childjustice.
5. For example, the Court's case law, *Maiorano v. Italy* (Application No. 28634/06, judgment 15 December 2009).

51. Measures that limit personal liberty require the decision of a judicial authority. In other cases, other competent authorities may be involved in imposing the restriction on the offenders, as in the case of prison authorities when taking decisions relating to internal prison conditions and limitations. Decisions of this kind that are not within the scope of a judge's power should at least be subject to judicial review.

52. This rule also addresses proportionality principles. The Court has noted that throughout the Convention there is a search for a fair balance between the demands of the general interest of the community and the requirements for the protection of the individual's fundamental rights. Such a fair balance is struck by the principle of proportionality. Proportionality can apply to many situations and is most commonly associated with the balancing exercise in determining claims under Convention rights that permit the State's lawful interference in certain circumstances. Proportionality requires that decision makers must balance the severity of the interference with the intensity of the need for action, taking into account the suitability, necessity and proportionality *sensu stricto* of the restriction of the rights involved. All the three mentioned conditions should be fulfilled if personal liberty is to be limited.

53. Limitations placed upon an offender's protected rights should only be imposed if they are in accordance with the national law, and are intended to achieve a legitimate objective, for example treatment, safety of the individual or safety of others.

54. This rule underscores the importance of a restricted identification of dangerous offenders to ensure that only those exceptional cases that merit special measures are so identified. This identification should rely on comprehensive risk and needs assessments as described later in the recommendation.

55. The reference to "a small minority of the offender population" refers to the ideal of restricting the number of offenders classified as "dangerous" to the minimum necessary. It does not presume to suggest how many dangerous offenders should be present in any one prison.

56. In some systems, a label of dangerousness is automatically imposed on offenders with a long-term sentence regardless of the nature of the offence. Equally, general recidivism is sometimes regarded as aggravating in itself and therefore "dangerous". Contrary to this approach, this rule stresses that specific characteristics of an offender's serious criminal behaviour combined with an assessment of the likelihood of similar reoffending are necessary to

lead to a classification of "dangerousness". Dangerous offenders should be very narrowly defined as a specific group.

57. The following elements may be used to define such criteria:

a. the nature, seriousness and pattern of the offender's behaviour in the past;

b. characteristics of the offender that are problematic, persistent and pervasive, and which contribute to continued and substantial risk to persons;

c. the degree to which such characteristics may or may not be amenable to change;

d. the presence or absence of any positive or protective factors to counterbalance these characteristics;

e. the likelihood that without exceptional measures the offender will commit very serious sexual or very serious violent crimes against persons;

f. the extent to which exceptional measures are needed, given:

i. the provision of intervention in the past;

ii. the efficacy of intervention in the past;

iii. the response to and compliance with intervention that has been provided in the past.

58. The issue of economic resources was raised in connection with the assessment of dangerousness. Concern was voiced about the often very high cost of making a thorough assessment involving psychiatrists, psychologists and other professionals, as well as the fact that this process may take a long time. There is therefore an important economic dimension to narrowly defining the group labelled as "dangerous offenders", in order to avoid flooding the criminal justice system with risk assessments.

59. Dangerous offenders often serve long sentences and/or secure preventive detention. They should be offered a structured regime of activities such as work, education and other meaningful activities as well as access to psychosocial support to make the time spent in prison more constructive. These activities may also help eventual reintegration into society after imprisonment or detention with due regard to the necessities of this group.

60. Balancing the rights of the prisoner on the one hand and the protection of society on the other lies at the heart of this recommendation. That

said, it is worth stressing that, to a large extent, the rights of the prisoner and the obligation to protect society are in fact two sides of the same coin. For example, there is the preparation for release, which is important not only for the prisoner but for the protection of society, as it will diminish the risk of reoffending/recidivism.

61. Preparation for release does not only encompass education, vocational training or interventions because of psychiatric problems, etc. Contact with the outside world is also highly important in this regard. Being released into society directly from a high-security prison is extremely difficult for a long-term prisoner and should be avoided also in the interests of protecting society.

62. A plan should show evidence of an appropriate balance of measures depending on the risks and needs of the individual. Although it may seem difficult in some cases, safe reintegration into the community is the aim, and this is promoted through the application of sufficient rehabilitative measures. However, given the level of risk posed by such individuals, restrictive measures also need to be appropriately applied to reduce the likelihood of reoffending. This rule reinforces the fair balance referred to previously: it addresses the offender's right to the prospect of eventual reintegration and it also explains why a well-planned pre-release phase is necessary to reduce risk in the community afterwards. This rule requires the continuity of risk management between custody and community whether on eventual release or during short periods of leave as preparation for release.

63. Victims can have particular issues with the offender's reintegration into society. Steps should be taken to protect victims from threat, or fear, as well as to take into consideration their sense of justice. For instance, close consideration should be given to the geographical proximity of offenders to victims, and where this is seen to be an unavoidable scenario, the risks inherent in it need to be carefully managed.

64. Where appropriate and possible, the victim (and the offender) should be offered restorative justice meetings and/or dialogue.

65. While dangerous offenders may face measures specifically targeted at managing the risk of danger they pose, this should not justify detaining dangerous offenders under harsher or different conditions than other offenders. Detention conditions and levels of security in prison should correspond with the actual level of risk posed by the dangerous offender inside prison, and be guided by Rule 34 of this recommendation. Given the stress associated with

indefinite detention, dangerous offenders may have specific problems that should be addressed by staff or even by the judicial authority.

66. Prohibition of discrimination in the execution of sentences imposed upon dangerous offenders is also relevant to the provision of treatment and interventions. Offenders have been found to have been discriminated against on grounds of their foreign nationality in the interventions offered to them in order to reduce dangerousness.[6] Paragraph 26 of Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners notes that foreign prisoners may be less likely to attend treatment programmes than other prisoners, and states that their participation in these activities should not be limited.

67. Furthermore, the increasingly ethnically diverse population within Council of Europe member States makes it particularly important to address specific minority issues. Minority status can influence both the needs of different ethnic or linguistic minority groups, and specific reactions to treatment. Specific measures might be necessary for some minority offenders, although these needs will vary across particular groups or individuals. Most importantly, these minority offenders should not be regarded as less suited to, or less worthy of, treatment and training, just because of their status as a minority.

68. The explanatory memorandum to Recommendation No. R (92) 16 of the Committee of Ministers to member States on the European rules on community sanctions and measures defines discrimination as the unjust or unfair exercise of discretion on the basis of race, skin colour, ethnic origin, gender, nationality, language, religion, political or other opinion, economic, social or other status or physical or mental condition. This does not mean that all offenders should be treated identically. Rather, each individual's specific needs, problems and situation may require different treatment or interventions.

69. Because of the significant and enduring consequences of the classification of "dangerous offender", it is essential that assessments that inform such decisions, measures taken to minimise risk and imprisonment conditions are subject to regular and independent inspection and monitoring. In particular,

6. One example in the Court's case law concerns an applicant who was not allowed to participate in necessary therapy because of an expulsion order against him. He could not, therefore, be prepared for a life without crime in the defendant country by the course of therapy. When the domestic courts assessed whether he was still dangerous, they found that he was because he had not completed the therapy (*Rangelov v. Germany*, Application No. 5123/07, judgment 22 March 2012 – violation of Article 5, read in conjunction with Article 14 of the Convention).

the conditions and duration of secure preventive detention should be subject to inspection and review.

70. Those detained as dangerous offenders should have access to independent legal advice regarding the measures imposed upon them. Dangerous offenders are very dependent on the procedures that establish the risk that they pose. They should be able to challenge the basis of the assessments used to justify their detention.

71. It is likely that dangerous offenders will present a complex and challenging range of risks and needs: for example, the co-existence of antisocial personality patterns or disorder, psychopathy, substance abuse problems or disorder, other mental disorders or cognitive impairments. Any specific needs that have been identified during assessment require appropriate treatment or interventions in order to reduce the level of risk posed and the resources to provide these treatments or interventions should be made available.

72. Specific needs could also emerge because of the effects of a long-term or indefinite imprisonment period. In Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners, paragraph 21 acknowledges the possible damaging social and psychological effects of long sentences as well as ways of counteracting them.

73. The concept of evidence-based practice (EBP) involves attention to the relevant research literature including systematic, updated and controlled studies of the effectiveness of a given intervention. It was expounded initially in the fields of medicine and health care, but is now applied in a range of fields such as education and criminal justice. In the context of the recommendation, EBP involves reference to the literature on risk assessment and management and the degree to which they have been scientifically tested and proven effective in evaluating or reducing offender risk. EBP recognises that assessment and management should be individualised, subject to change and acknowledge uncertainty.

74. Even though research has been conducted to evaluate some types of risk assessments, much is still to be done particularly in addressing questions of the effectiveness and accuracy of assessments of dangerousness.

75. Moreover, documentation on the effectiveness of risk-assessment and risk-management measures with dangerous offenders will develop greater understanding of this specific group.

76. This is why the need for an individualised and comprehensive assessment of the characteristics, history and current circumstances of the offender concerned should be recognised to prevent inappropriate decisions. For example, it is important to look at the possible biases that may be inherent in risk-assessment tools. They are often founded on the circumstances affecting the majority of offenders, or, occasionally, a particular population, and for this reason may not be adapted to the special conditions of individual offenders. But just as minorities should not be overlooked by these assessment tools, it is equally important to stress that not all offenders belonging to a minority group, based on, for example, ethnicity, gender or religion, are the same just because of their minority status.[7]

77. Dangerous offenders present a range of challenges and complexities. During imprisonment and post-release stages, it is important that the various types of staff and agencies are well equipped to manage those challenges. Staff dealing with dangerous offenders may encounter more difficult working conditions, and professionals undertaking assessment and delivering measures for treatment and risk reduction require ongoing training to develop and maintain adequate competency. Adequate resources must be allocated to this kind of training. Some types of risk assessment may require a higher level of competence from staff.

78. Dangerous offenders with a mental disorder are a particularly vulnerable group with specific psychosocial needs, and it is vital that staff are trained in handling and understanding these needs. As stated in paragraph 47 of this commentary, the reference to dangerous offenders with a mental disorder only applies to persons who are under the responsibility of the prison/justice system.

Part II – Judicial decisions for dangerous offenders

General provisions

79. The decision to request risk assessment is the responsibility of the judicial authority. Risk assessment used to inform judicial decision making should be undertaken by independent experts.

80. This rule establishes the right of the offender to request an expert report on risk assessment other than the one commissioned by the judicial authority.

7. Commentary to Recommendation CM/Rec(2010)1 of the Committee of Ministers to member States on the Council of Europe Probation Rules, Rule 4.

The recommendation treats this standard of requesting a separate report as a crucial step towards securing the offender's rights in the light of the fact that risk-assessment reports and psychiatric evaluations can come to quite different conclusions. This rule also presumes that the judicial authority will have received this report before taking a decision related to an offender's risk assessment.

81. Council of Europe member States have different procedures for judicial decision making regarding conviction and sentencing. In some countries, guilt will be established first, without the aid of pre-sentence reports, and only after the offender has been found guilty will a report guide the judges in the choice of sentencing. In other countries the guilt and sentencing phase are often merged and the judge will pronounce both at the same time, in some cases without the aid of pre-sentence reports.

82. This rule takes into account these differences, but at the same time states that it would be very useful for judges to make use of reports concerning the offender's personal circumstances in order to be precise about the assessment of the dangerousness of the offender at the time of sentencing.

Secure preventive detention

83. Secure preventive detention, defined as the detention of offenders for the purpose of public protection, is a measure which varies considerably between different countries. These variations include countries where secure preventive detention is not allowed and countries where it is foreseen either at the time of sentence, or at the time of release.[8] In some countries a maximum limit has been established while it is indefinite in others. Some countries already have in place a broader catalogue of crimes for which secure preventive detention may be applied.

84. This rule underscores the importance of taking into account risk-assessment reports when considering restrictive measures exceeding the ordinary sentence, such as secure preventive detention. Risk-assessment reports offer a much deeper picture of the offender's situation and risk factors than can be obtained in court; judges should be able to draw on these expert

8. For a comparison of the subject see: Padfield N., op.cit., note 5, pp. 27-29; the discussion paper on secure preventive detention, Bureau of the European Committee on Crime Problems, 22 February 2010 (CDPC-BU(2010)04rev-e), as well as the Court's ruling on *Rangelov v. Germany*, which recalls the prohibition of the retroactive application of secure preventive detention.

conclusions in their decision making, but without prejudice to judicial independence; the report should not be imposed as binding on judicial authorities.

85. This rule establishes that secure preventive detention should only be possible when the offence committed falls within the definition of dangerousness as defined earlier in the recommendation. Only offenders who have been convicted of a very serious sexual or very serious violent crime against persons and who present a high likelihood of committing further very serious sexual or very serious violent crimes against persons should be considered for secure preventive detention.

86. In some countries, offenders are regarded as dangerous solely on the grounds of repeated recidivism, or because they have a long-term or life sentence, even though the crimes committed are not themselves considered dangerous. This rule establishes that neither long-term sentences nor recidivism should in themselves justify the use of secure preventive detention.

87. This rule states that secure preventive detention should be regarded as the *ultima ratio*, namely the principle of the last resort when dealing with dangerous offenders. This is in accordance with the general concern of the recommendation for avoiding the over-criminalisation of offenders assessed as dangerous and subjecting them to excessive security measures. Decisions to use secure preventive detention should take into account whether secure preventive detention is appropriate and necessary and whether there are any comparable alternatives, that is if the same purposes are not achievable through an ordinary imprisonment penalty under which the offender could be convicted. The principle of proportionality requires that a balance be struck between the requirements of the case and the application of secure preventive detention.

88. The need for regular reviews has been established by the Court on several occasions, for example the case concerning the non-compliance with the time limit for review of the necessity of a person's preventive detention, *Schönbrod v. Germany*, Application No. 48038/06, judgment 24 November 2011, where a violation of Article 5, paragraph 1, was found because of the domestic courts' non-compliance with the statutory time limits for review of the necessity of the applicant's preventive detention.

89. There are different situations in Council of Europe member States concerning secure preventive detention: some countries impose a fixed sentence proportionate to the offence committed, and secure preventive detention begins after this period. In other countries, secure preventive detention

replaces an ordinary sentence. This rule establishes that offenders have the right to challenge their detention, after the fixed term has been served. For the purpose of this rule, "regular intervals" means at least biannually, as stated in Rule 19.

90. This regular review should also be supported by an up-to-date risk-assessment report. The situation of the offender, as well as the risk posed, can change. Outdated reports give an inaccurate basis on which to make decisions about retention or eventual release from secure preventive detention.

91. The validity of a person's continued detention because of his or her dangerousness always requires that the domestic courts base their decision to prolong the detention on adequate and sufficiently up-to-date evidence.[9] The right provided in Rule 22 should also be applicable in this case.

92. Offenders held in secure preventive detention should be afforded reasonable opportunity to reduce the level of risk that they pose and that causes them to be held in detention. This can be achieved, notwithstanding the more procedural challenges to the decisions on their detention, by giving them the opportunity to address and possibly ameliorate specific risk factors, such as by undergoing treatment for personality, sexual or development disorders. Offenders should, as far as possible, have access to this kind of treatment, and its planning and progression should be fully accessible to the offender.

93. Imposing the least restrictive measures on the offender should be balanced against the assessment of risk to the public. It thus lies at the heart of the recommendation to address both aspects, as is also explained under the Terms of Reference of the PC-GR-DD.

94. When dangerous offenders are held in detention beyond their ordinary sentence due to the assessed risk they may pose to the public in the future, their detention conditions should be tolerable and if possible they should be held in better conditions than in ordinary prisons. Reference is made particularly to the Court's case law, *M. v. Germany*, which stated that there had been a violation of Article 7, paragraph 1, partly due to the fact that the offender had been detained in an ordinary prison beyond the period of sentence, with no substantial difference between the execution of prison sentence and that of a preventive detention order. Therefore, the Court could not subscribe to the German Government's argument that preventive detention served a purely preventive, and not punitive, purpose.

9. See for instance the Court's case law in *Dörr v. Germany* (dec.), No. 2894/08, 22 January 2013.

95. The term "appropriate" refers to, among other things, elderly dangerous offenders who will probably not need "top security" prison conditions. Therefore, in each case, the conditions offered to offenders should be adapted to their individual needs and risk behaviour, which may differ markedly from offender to offender.

Preventive supervision

96. The recommendation acknowledges that not all countries have preventive supervision, and this will not be imposed on them.

97. In Recommendation Rec(2000)22 of the Committee of Ministers to member States on improving the implementation of the European rules on community sanctions and measures, paragraph 5 made it possible to allow for indeterminate supervision in the community. This could be of great relevance for dangerous offenders, especially where this is the only safe way for the offender to achieve release. It can thus replace detention if it is properly assessed that the risk can be managed in the community.

98. A regular review of the appropriateness of the preventive supervision imposed should be introduced.

99. With the aim of protecting citizens against potentially dangerous offenders after their release, different kinds of supervision measures may be taken into consideration according to the specific risks and needs of the offender. These can include, for example, surveillance by law-enforcement officials, follow-up by social workers, regular meetings with staff and multi-agency supervision, or a combination of these. An additional possibility is electronic monitoring or GPS satellite tracking. Whenever using these measures, priority should be given to those offenders considered critically dangerous and should not be a common measure for any kind of violent offender. The released person should not be subject to intense surveillance without good reason. There is also an economic aspect: the often scarce resources within the criminal system must be carefully targeted.

100. The rule mentions a number of measures but it should be stressed that these measures are not listed in a specific order to be followed. The measures required in each case may vary according to the specific circumstances pertaining to each offence. Rule 24.xi leaves open the possibility of applying other measures than those listed in this rule, as long as they are provided for under national law.

101. The rule mentions a number of measures aimed at the prohibition of certain activities and actions, but also measures aimed at participation in supportive and constructive activities. This motivating aspect of supervision is just as important as restrictive and controlling measures, since the rehabilitation of the offender is crucial for the reduction of the risk of reoffending. Focusing on personal strengths and aspirations also implies a positive collaboration with the offender, wherever possible.

102. Points *v* and *vi* mention the prohibition of going to or residing in certain places. This means restricting where offenders can go or live. Examples may be a certain distance from places such as the area of residence or work of the victim(s) and/or their families, schools, playgrounds or parks. However, studies suggest that, for example, sexual recidivism is more likely to result from a pre-existing relationship between the sexual offender and the victim rather than residential proximity to schools. Therefore, the effectiveness of residence restrictions in reducing sex offender recidivism should be balanced against the possible detrimental effects of prohibition of residence, like alienation from family members and the supportive social network of the offender.

103. Electronic surveillance is increasingly being used on offenders after release in many member States. It includes a range of different monitoring possibilities from GPS to voice recognition. The potential of being able to follow a released dangerous offender and prevent him or her from seeking out certain places or persons may constitute a relevant purpose for using these instruments. However, neither the efficacy of using electronic monitoring nor the consequences for the released person's privacy have been fully documented. This is also due to the fact that electronic monitoring is not a single kind of measure, making it difficult to evaluate its impact.[10] GPS and other electronic monitoring should be used with constraint and always together with other face-to-face rehabilitation measures undertaken by social workers. Client–supervisor continuity in this context is crucial; research has shown more positive results when the offender establishes a stable relationship of trust with one specific supervisor.

104. Since the measures can be manifold, it is also important that there is one person co-ordinating and maintaining responsibility for the overall plan.

105. Electronic monitoring of any kind has an impact on offenders' lives in many ways, and imposes different kinds of restrictions and intrusiveness on both

10. Barak Ariel and Francis Taylor (2012), "Protocol: Electronic Monitoring of Offenders: A Systematic Review of Its Effect on Recidivism in the Criminal Justice System".

the offender and immediate family or relatives. This also raises the question of recording, confidentiality and protection of data, since electronic monitoring may not only record the whereabouts of the offender, but also other people. These records must be subject to principles of confidentiality and data protection as set out in national law and as stated in Recommendation CM/Rec(2010)1 of the Committee of Ministers to member States on the Council of Europe Probation Rules, Rule 89.

106. Additionally, the use of electronic monitoring could give a false sense of heightened protection for other citizens from the offender. Efforts should be made to ensure proportionality between the level of monitoring, the rights of the offender, the security of the public and the use of economic resources, guided by Rules 57 and 58 of Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules.

107. The amendment of Rule 5 of Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures allowed for the imposition of indeterminate community sanctions or measures, reserved for offenders convicted of serious offences and with the risk of serious reoffending posing a grave threat to the community. These requirements underline the exceptional situations in which indeterminate measures may be applied. Other guarantees for a just application comprise legislative provision for a regular review of this kind of sanction by an independent body and under the conditions laid down in law. This body should review any decision to impose indeterminate supervision and also be empowered to order its cessation when circumstances allow for it.

Part III – Risk-assessment principle

108. This part of the recommendation concerns risk-assessment undertaken during the implementation of a sentence. It thus has a slightly different scope and a different temporal dimension from the risk assessment reports cited in Rule 13 that are used specifically in judicial decisions before the judgment. This part concerns risk assessments that are dynamic and responsive to change during the execution of the sentence.

109. This rule acknowledges, as stated elsewhere in this recommendation, that the identification of individuals as dangerous involves serious human rights concerns, both in terms of liberty and safety. Therefore, those assessments that guide sentencing or imposition of such a classification should be detailed and comprehensive. Furthermore, the assessments should be sufficiently solid

to support defensible decision making and demonstrate that risks have been identified and managed.

110. A balance between the level of risk and the level of assessment of the individual offender should be kept by taking into consideration the protection of the public, the high risk of perpetrating further very serious sexual or very serious violent crimes against others and the gravity of the measures that could be taken against the offender. It is also worth recalling that very thorough assessment may take many weeks and should be reserved for appropriate cases as defined narrowly under Part I of the recommendation on the term "dangerous offender".

111. However, it does not follow from the rule that the higher the risk emanating from a person, the more in-depth examination of that person is necessary. The thoroughness of the assessment of a person's dangerousness in relation to the level of risk must be decided on a case-by-case basis.

112. This rule emphasises the importance of basing assessments on a broad range of reliable information gathered from a variety of sources such as the use of interviews (of the offender and, where possible and appropriate, the offender's social support/family), communication with other professionals who have knowledge of the individual, criminal records and other official records, video recordings, etc. This kind of information exchange should be guided by Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules, Rule 89, which underlines that a high risk of serious harm can allow for information sharing between various agencies, although confidentiality must be respected as far as possible.

113. It is the experience of professionals working in the area of risk assessment of offenders that many important aspects of the individual offender are not properly circulated between different types of staff, or taken into consideration when assessing and managing risk. Therefore, information gathering should identify characteristics of the offence, the individual and his or her circumstances as appropriate to the individual case. Such information may include, but is not limited to:

- childhood;
- sexual history (if appropriate to the offence committed);
- employment background;
- personality;
- mental-health history;

- social context background;
- substance misuse;
- strengths or protective factors;
- mental-health treatments;
- offences committed and subsequent behaviour;
- modus operandi;
- criminal record, in particular convictions of a very serious sexual or very serious violent crime against persons;
- previous interventions to reduce reoffending risk and the response to them.

114. An explanation for the onset and continuation of violent behaviour should be developed, with an opinion as to the likelihood and circumstances, nature and seriousness of further violent behaviour.

115. For risk assessments to be based on the best available information it is necessary that they are updated regularly; good information sharing and communication between staff and agencies are important to achieve this.

116. In any case, outdated risk-assessment reports should not be used to inform sentencing.

117. Risk-assessment tools are used to ensure that assessments are grounded in empirical knowledge about the factors that have been shown to be associated with offending. Most European countries use clinical assessments of dangerous offenders, although actuarial risk predictors are becoming more widespread. The process of risk assessment has developed through several stages, from the first generation of assessments with unstructured clinical individual judgments, to second generation assessments that involved actuarial methods based on a limited range of demographic, offence and criminal history factors; to a third generation of assessments that incorporates both clinical and actuarial techniques. Therefore the recommendation uses the term "risk assessment" more broadly without defining one particular approach. This is also due to the fact that different types of assessments have limitations as well as advantages and should be used in combination in order to achieve the most accurate result.

118. Clinical assessments are typically carried out by psychiatrists or/and psychologists, and the assessment is often based on lengthy interviews with the offender. While this is a very thorough assessment, it can also be wrought

with subjectivity on the part of the professional. Clinical assessments offer flexibility in the handling of, and deep individual knowledge of, the particular offender, but have been criticised for not ensuring the exclusion of subjectivity in the evaluation by the professional: the individual psychiatrist/psychologist makes his or her own conclusions, and therefore there is a risk that there may be inconsistency between different assessments of the same offender.

119. Actuarial assessments are diagnostic tools based on probability and are perceived to be more devoid of these biases, but often do not address the individual and dynamic situation of offenders. Information considered in the actuarial assessment process is drawn from an institutional report and case files and personal interviews, and typically includes the offender's age, education level, and employment status and known or suspected mental disabilities, in addition to the individual's criminal history. Actuarial risk predictors may take into account dynamic factors such as social, personal or economic factors, that could (or could not) be relevant to the offender's personal situation.

120. Actuarial tools contribute because they offer more objectivity, reliability and validity as well as transparency. But at the same time they suffer from problems related to the impossibility of generalising cases/offenders, they do not offer flexibility as to what to focus on in the offender and, generally, they often give weight to static factors that run the risk of producing automated assessments, although newer generation actuarial tools include dynamic factors. Dynamic factors are important because they take into account that the offender's situation may eventually change over time.

121. Brief actuarial tools based on static factors give a statistical estimate for a particular group of offenders: they should not be relied upon to communicate the risk posed by an individual, nor can they guide interventions.

122. A combination of different approaches can promote systematisation and consistency, and still be flexible enough to take into account the diversity of offenders.

123. Risk-assessment tools thus offer a range of possible resources to assist the evaluation of risk and needs. However, it is important that these tools be used with an awareness of their appropriate application, respective strengths and limitations. For example, many risk tools have been developed in North America, and not all are adapted to local conditions in Council of Europe member States.[11] Care is needed in the interpretation and communication

11. Padfield, N., op.cit., p. 8.

of a tool's findings. Risk-assessment tools should be validated for the various jurisdictions in which they are applied, and evaluated for their validity and utility, for example by establishing a detailed directory of assessment tools.

124. Such instruments should be used in the context of a comprehensive and individualised assessment, taking into account the individual offender's social circumstances, personal characteristics and specific risk/need factors.

125. Risk-assessment tools should only be used by staff or professionals who have been properly trained in their administration and used for the purposes for which they were designed. Regardless of the different ways in which Council of Europe member States have chosen to employ such tools, it is important that staff are well trained in using them as well as understanding their limitations (see also CM/Rec(2010)1 of the Committee of Ministers to member States on the Council of Europe Probation Rules, Rule 71).

126. Assessment should not only involve consideration of issues of risk and need, but also responsiveness and resources. In addition to its focus on risk (of reoffending), it takes into account the offender's own strengths. This means that the offender's potential and abilities are also recognised.

127. Assessment tools can be used to identify the risks and needs that should be taken into account in the management of the individual offender. They should be used to identify the interventions which are necessary to reduce risk and encourage rehabilitation of the offender.

128. While different kinds of risk assessment tools may contribute to the identification of risk levels in offenders, they should not in themselves be used to justify detention or longer sentences.

129. Recommendations for restrictions and interventions imposed on the offender based on specific risk-assessment procedures should acknowledge the uncertainties about the risk-assessment method.

130. This rule establishes that it is crucial to understand assessment of risk and needs as a continuing process. The assessment should be repeated periodically to make sure that it is still relevant in relation to the offender and his or her current situation. Assessment and management practices should be responsive to change, alert to increasing risk and acknowledge positive change with regard to risk factors. Emphasis in this reassessment process is therefore placed on the dynamic risk factors.

131. Specialist staff should have access to the conclusions of these repeated risk assessments in order to be able to respond appropriately to the offender's risk level.

132. This rule stresses that assessment should be understood from a dynamic perspective since dangerous offenders may change their attitude to their previous crimes and/or to their behaviour in relation to reoffending. Both in custodial and non-custodial settings, risk assessment should be followed up by interventions to enable offenders to address their identified risks and needs. This also entails that risk-assessment and risk-management plans are interrelated processes, as addressed in the recommendation's Part IV on risk management.

133. Involvement in this context means that the offender should be informed of the purpose of the assessment, its procedures and the consequences of it. Not all offenders may be willing to engage in the process, but full attempts should be made to ensure this kind of involvement. Even though the offender may be allowed to contribute his or her own views, the content and conclusions of the assessment are decided by the staff.

134. Offenders should be given feedback on the conclusions of the assessments leading to their current detention. This may facilitate engagement and build awareness of specific risk factors or clinical symptoms.

135. This rule establishes that there may be a large difference between representing a risk to the public while at liberty and behaving dangerously inside prison. Risk should be evaluated for the relevant context. The risk posed by an individual's violent offending changes with the context: some offenders who present a risk of serious harm in the community do not pose management or security problems when in custody; others may pose similar or distinct risks in the secure setting. Some dangerous offenders who have committed serious offences do not necessarily present a danger to other prisoners or staff, while others do. Therefore, the level of security required in prison must be established on a case-by-case basis.

136. Recommendation No. R (82) 17 of the Committee of Ministers to member States concerning the custody and treatment of dangerous prisoners addresses dangerousness both inside prisons and to the outside community, and Recommendation Rec(2003)23 of the Committee of Ministers to member States on the management by prison administrations of life sentence and other long-term prisoners, paragraph 6, also makes this distinction.

Part IV – Risk management

137. Recommendation Rec(2003)23 of the Committee of Ministers to member States on the management by prison administrations of life sentence and other long-term prisoners (paragraphs 33 and 34) addresses important issues about continuity between pre-release and post-release plans. This is particularly important when considering the rehabilitation and reintegration of dangerous offenders and should be regarded as a continuous process beginning in detention and being closely followed up after eventual release. The most efficient measures for the prevention of reoffending are often seen as taking place during imprisonment.

138. This rule stresses that risk assessments, as well as the measures aimed at reducing risk of reoffending delivered in prison, and the subsequent delivery of these interventions after release are seen as being part of one planned process. Assessment must be undertaken at regular intervals to ensure that its conclusions are accurate and up to date.

139. Therefore, risk management should be inextricably linked to risk assessment and any change in risk assessment should be reflected in the risk-management plans.

140. A range of interventions is needed to manage dangerous offenders in a number of ways, which may consist of both rehabilitative and restrictive measures.

141. Monitoring, as described in Part II, Rule 25, aims to determine compliance with restrictions or changes in behaviour and identify current or future risk to others.

142. Interventions such as rehabilitation programmes include a range of social, educational, health, cultural and environmental measures which help to reduce the risk factors of offending and victimisation.

143. These should include programmes aimed at addressing offending behaviour, but health issues, schooling, vocational education and work skills training inside prisons will also be indispensable as means of practical support. At the time of release, it is important that these measures be followed up by support from relevant authorities in finding employment, housing and other practical support. Some of the best measures for preventing reoffending may in fact be of a social kind. Providing working conditions, adequate housing

and social networks is essential for the success of the post-release period. It is also vital that treatment which has been undertaken during imprisonment is continued or at least followed up after release.

144. Apart from the already mentioned education and work training, a number of different treatment programmes aimed at reducing risk of reoffending exist and are being used on many kinds of offenders in member States. It is particularly difficult to determine the success of these programmes specifically on offenders identified as dangerous because of the fact that this group is likely to be very small. Cognitive behavioural programmes are one central measure being used to identify and modify behaviour. They may include anger management programmes aimed at preventing reactive violence, sex offender treatment programmes and improvement of social skills. The effectiveness of programmes aimed at psychopathic disorders is even less well documented, but these programmes could be a treatment choice in some instances.[12] Because of the scarce knowledge about what actually works on this small but diverse group of dangerous offenders, it is important to evaluate on a case-by-case basis the impact of the treatment measures used.[13] The specialised nature of these programmes makes it essential that staff implementing them are well trained in their use.

145. A risk-management plan should strike a balance between rehabilitative and restrictive measures, taking into account aspects of the case, for example the offender's motivation, engagement or resistance, and the level of risk in the current context. The plan should equally take into account the resources, strengths and abilities of the offender as stated in the assessment. Focusing on these resources may be an effective way of rehabilitating offenders instead of focusing only on the offender's deficits or risks of reoffending. Offenders can be strongly motivated by such a strength-based approach.

146. In the process of case management and supervision, a relationship with a key individual will help to promote compliance, engagement and change. Stability and continuity in this relationship are seen as pre-requisites for successful risk management and rehabilitation of the offender. It is also important that adequate resources are allocated to this process. Staff handling

12. Hemphill and Hart, "Psychopathic personality disorder: assessment and management", in Blaauw and Sheridan (eds.) (2002), *Psychopaths: Current international perspectives*, Elsevier, The Hague.
13. Op. cit.

interventions and/or undertaking the case management role should be trained and competent in the relationship and structuring skills that are associated with reduced reoffending.

147. The recommendation acknowledges that even though the assessment has been conducted and risk factors identified, there may not always be a relevant intervention available to minimise risk.

148. As mentioned above, reintegration can only be successful if there is a thorough co-operation between the prison administration, probation workers, social and medical services and law-enforcement authorities. This may help identify the interventions necessary on a case-by-case basis. Offenders may have a variety of needs that must be addressed by a range of professionals. This diversity of expertise further calls for good co-ordination and communication with an exchange of information between relevant authorities, as also stated in paragraph 183 of the commentary. Of particular importance is the exchange of information about changes in circumstances, failures to comply, the emergence of interventions that may have failed, as well as the possible reasons for this failure.

149. Efforts should be made to diminish missing information, misunderstandings and/or the absence of appropriate reactions to the level of risk that can arise when different agencies and types of staff have to co-operate. It is a common experience that reoffending takes place particularly when relevant information has not been shared or when relevant parties have failed to act properly.

150. The recommendation acknowledges that such co-operation and exchange of information should take place only in accordance with respective data protection rules. It also acknowledges that such co-operation can prove difficult particularly in the case of foreign prisoners. The handling of dangerous offenders that are foreign prisoners should be guided by Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners.

151. The continuation of programmes, interventions or treatment undertaken by offenders during imprisonment should always be considered as part of this co-operation. The continuation of such interventions can contribute to diminishing the risk of reoffending by the released as well as maintaining any personal progress made in prison.

152. Dangerous offenders often face indeterminate detention and therefore have no fixed release date. This fact makes it particularly important that their

risk-management plans are accessible to them as far as possible, that they understand the purpose of the plans and that the goals described in the plans can be achieved by them.

153. Plans should be tailored to the needs of the individual offender and delivered in ways that are known to be most effective, in a manner that recognises the individual's cognitive ability, age, gender, mental disorder and readiness to change.

154. The objectives should be clear and measurable, so that progress can be reviewed by both staff and the offender. It is particularly important that the offender receives achievable and concrete goals that can be reached step by step.

155. Offenders' circumstances may change both during custodial and community intervention, and risk-management plans should be reviewed accordingly at suitable intervals to register if some development has been achieved, if important changes have occurred or if circumstances deteriorate and risk escalates. As mentioned above, risk assessment and management are seen as interrelated. Just as the assessments on the risk posed by the offender should be regularly revised, so the process of risk management should adjust to these ongoing assessments. Rather than providing specific time frames for this revision of assessment, Recommendation CM/Rec(2010)1 of the Committee of Ministers to member States on the Council of Europe Probation Rules, Rules 69-70, addresses the particular situations in which assessment should be reviewed, for example significant changes in the offender's life. This approach is also promoted in the present recommendation.

156. This recommendation makes specific reference to Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules and Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures. These recommendations set out principles concerning central issues such as organisation and staff, specialist staff dealing with particular kinds of offences, offending behaviour and difficulties, probation work and processes of supervision, effective programmes and interventions, and recording of information and confidentiality issues.

157. These issues are covered for all kinds of offenders and thus also guide the recommendation on dangerous offenders.

Part V – Treatment and conditions of imprisonment of dangerous offenders

Conditions of imprisonment

158. Even though all prisoners face the deprivation of liberty, this may especially be the case for offenders classified as dangerous, since they will not always be given a specific release date and may be held in special conditions. To make this as tolerable as possible, the conditions of imprisonment should be managed with special care and attention, and any restrictions imposed on dangerous offenders should follow proportionality principles, as addressed in Recommendation Rec(2006)2 on the European Prison Rules.

159. This rule addresses the problem that dangerous offenders are sometimes subjected to very strict security measures, and even segregated solely on the grounds of the offence committed. However, it should not automatically follow that offenders considered dangerous to the outside community are in need of special safety levels inside prison. The risk an offender poses inside the prison should be carefully examined in each case. Dangerous offenders should not automatically be held in high-security conditions.

160. It should also be considered that this kind of dangerousness can change over time and should not be regarded as a static risk. Therefore, if the offender is in need of special security measures, these should regularly be revised so that security measures are upheld only as long as strictly necessary.

161. Recommendation Rec(2006)2 on the European Prison Rules, Rules 51-68, describes what kinds of security measures can be used, as well as restrictions on their use. The use of instruments of restraint (e.g. handcuffs, restraint jackets, other body restraints, the use of chains and irons) shall be exceptional and only when strictly necessary and the manner of their use shall be prescribed by law (Rule 68, European Prison Rules).

162. Special security measures taken against dangerous offenders, such as solitary confinement (see, for instance, the "Carlos" case, *Ramírez Sánchez v. France*, Application No. 59450/00, paragraph 86, judgment 4 July 2006) or strip searches (see, for instance, *Frérot v. France*, Application No. 70204/01, paragraph 25, judgment 12 June 2007), may breach the prohibition of inhuman and degrading treatment under Article 3 of the Convention. Any use of such measures should be for as short a duration as possible and be reviewed frequently.

Treatment

163. Where an individual's liberty is restricted for reasons of public protection a sentence plan based on a comprehensive assessment promotes legitimacy, transparency and accountability.

164. The personal circumstances of the offender should be systematically collected after admission to an institution. In light of the importance of social and familial ties for the successful integration into society, dangerous offenders should, whenever possible, be placed in an institution as close as possible to their family. In addition, every effort should be made to facilitate and maintain the offender's relations with relatives, and to provide them with the appropriate welfare support to do so. See also Recommendation Rec(2003)23 on management by prison administrations of life sentence and other long-term prisoners, paragraph 22.

165. Offenders should also have access to treatment plans with achievable targets that are aimed at reducing risk of reoffending, raising the general well-being of the offender and preparing for his or her reintegration into society. Plans should include work, education, social, medical and psychological care according to the individual situation and needs of the offender. A sentence plan should take into account these issues, and the establishment as well as review of these plans should involve the offender as far as possible.

166. There should be clear procedures for establishing and regularly reviewing these plans, and supervision of these plans should be on a yearly basis by the competent authority or as requested by the offender.

167. Treatment should be understood in a broad sense and may include medical, psychological and social care.[14] This range of treatment possibilities is aimed at maintaining the health of offenders as well as encouraging future reintegration into society. Treatment therefore does not necessarily link to risk-management purposes, although it can be an aspect of it. Some offenders may be seen as posing a risk for a long time; in this context, treatment should address other factors/goals than reducing risk, namely the well-being of the offender.

168. Treatment should be based on informed consent from the offender, as well as other principles and rights as included in the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights

14. Addendum VI to CDPC(82)17, appendix III.

and Biomedicine, (ETS No. 164 (Oviedo Convention)). Although recently, the Parliamentary Assembly of the Council of Europe ("the Assembly") stated that "coerced, non-reversible sterilisations and castrations constitute grave violations of human rights and human dignity, and cannot be accepted in Council of Europe member States",[15] the PC-GR-DD decided not to develop the castration issue further due to very divergent views in member States on this issue.

169. Offenders with a mental disorder are particularly vulnerable as a subgroup of dangerous offenders and steps should be taken to offer them the best conditions possible. These offenders should have access to adequate treatment by doctors and/or psychiatrists, and appropriate therapeutic treatment and psychiatric monitoring should be available. Recommendation No. R (98) 7 in particular gives guidelines to health care in prison, and Recommendation Rec(2006)2 on the European Prison Rules, Rule 47, addresses the mental health of prisoners.

170. Even though dangerous offenders are sometimes seen as posing an indeterminate risk, it is important to underline that reintegration into society of any offender is central to every criminal justice system. In this light, the preparation for re-socialisation of dangerous offenders should take as its point of departure the access to education possibilities, vocational training and other measures aimed at enhancing the offender's opportunities to lead a normal life. It is a measure for the prevention of reoffending, because it provides the offender with vocational skills and tools for modifying behaviour, which are all indispensable for a future life in society.

171. Some dangerous offenders face an indefinite detention sentence and are under extreme stress because of the lack of a final release date. Some offenders may spend most of their natural lives in prison. With this in mind, it is important that treatment programmes try to give them some opportunities for development, both personally and regarding competences in work, education, etc. Treatment should seek to sustain the offender's health, personality and integrity.

Work, education and other meaningful activities

172. This rule considers that dangerous offenders in secure preventive detention should have access to meaningful activities, regardless of their situation

15. Resolution 1945 (2013) of the Parliamentary Assembly of the Council of Europe on putting an end to coerced sterilisations and castrations, adopted by the Assembly on 26 June 2013 (24th Sitting).

and the risk they pose. In addition, they may be allowed to access work and education as long as it is in accordance with security levels for other inmates and staff. It establishes that dangerous offenders should not be barred from work, education and other meaningful activities inside prison just because of the risk they pose in other contexts.

173. Given that some offenders may also be considered dangerous within the prison, precautions should be taken to strike a balance between the desired level of work participation and the security in prison. Recommendation Rec(2006)2 on the European Prison Rules and Recommendation No. R (82) 17 address these issues.

174. Recommendation Rec(2006)2, Rule 26, establishes general conditions for work in prisons, including provisions that work should not be used as punishment or otherwise exploited, and provisions for health and safety, working hours and wages, in accordance with those in society as a whole.

Vulnerable people

175. Even though the recommendation does not address the issue of children, special importance should be attached to young adult offenders, since their life situation may be different from more mature offenders, and should be guided by Recommendation Rec(2006)2 on the European Prison Rules, Rule 28.3. Young dangerous offenders may not have finished any basic education or vocational training. They may be subject to detention for many years of their productive life without possibilities for further work experience, and special measures should be taken to give them the best possible training and education, which may include specialised education if their personal development requires it. This could help young prisoners' self-esteem during imprisonment and make them better able to find employment afterwards.

176. Elderly offenders should have access to relevant regimes of activity taking into account their particular situation, needs and special demands on health care. Activities should be adapted to their capabilities and aimed at maintaining their physical and psychological well-being. Elderly prisoners not able to work should be offered other activities.

Part VI – Monitoring, staff and research

177. This rule underscores the importance of independent monitoring of assessment procedures and treatment of dangerous offenders.

178. Government inspection should be used as a positive tool to ensure acceptable standards for both staff and inmates. It is a supporting tool aimed at heightening the quality of interventions, treatment and work conditions.

179. It pays attention to the possibility that these staff and agencies are at risk of remaining isolated from the ongoing societal development of values and practices.

180. Staff (prison workers, mental-health professionals, social and medical workers) dealing with the assessment of dangerousness and treatment of dangerous offenders should be held accountable to the competent authorities. Monitoring authorities should be independent and have an adequate level of resourcing as well as qualified staff to undertake the monitoring tasks.

181. Monitoring should not focus only on individual performance, but consider the resources available to staff, their training and the adequacy of both administrative and professional work systems concerning dangerous offenders. This is particularly important when dealing with dangerous offenders in secure preventive detention.

182. Reports issued by monitoring bodies should be open to the public and forwarded to relevant international bodies such as the CPT.

183. Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners addresses some aspects of recruitment and training of staff (paragraph 37, *a*, *b* and *c*). However, dealing with dangerous offenders implies a continuing evaluation of the dangerousness posed by the individual offender; the professional competence in assessing risk as well as securing the best conditions possible while in detention is fundamental. Because of the special needs and situation of dangerous offenders, basic prison staff dealing with these offenders, as well as specialist staff engaged in professional assessment of dangerousness, should receive training and follow-up to this training at regular intervals. Training should be linked to their specific work tasks and aimed at developing competences appropriate to their role. This training should be assessed to verify the quality of the competences acquired.

184. Relevant authorities, agencies, professionals and associations could benefit from training in human rights issues.

185. Offenders suffering from a mental disorder are a particularly vulnerable group within the prison regime, and the existence of staff trained in proper

practical, medical and ethical handling of these issues is one way of securing good treatment and conditions for this group.

186. The rule establishes the need for selection of appropriately trained staff. The institutions should have clear policies regarding recruitment and selection of staff, especially with regard to what kinds of educational and personal qualities are required. Different staff members will have different roles to play in relation to dangerous offenders, and therefore, different levels of education and training will be of relevance. As mentioned earlier in the explanatory report, a necessary scientific level should be required for staff dealing with assessment of risk posed by offenders.

187. When dealing with dangerous offenders who are facing release it is vital that co-operation between multiple agencies is in place and is well functioning. In order to handle both public safety and the offender's reintegration into society, many different kinds of professionals will have to work together. This rule aims to promote and make obligatory the exchange of knowledge about best practice in this process. The recommendation encourages mutual learning between prison and probation or post-release staff.

188. An example can be drawn from the United Kingdom, which identifies offenders requiring such monitoring, information sharing and regular meetings between all the relevant agencies, such as prisons, police, local authorities, probation staff and health services.

189. It is important to monitor the tests which qualify an offender as dangerous. No assessments are neutral or objective, and their implementation and conclusions should be researched and followed closely. As mentioned earlier, there is uncertainty about the qualities and effectiveness of the different risk assessment tools and approaches. Assessment tools will need continued research on how they work, and developments of new assessment methods should be taken into account. Improved knowledge about the use of these tools to specifically assess dangerousness could lead to a more precise identification of dangerous offenders.

190. In addition, research should be focused on the needs of the offender in the light of the negative effects of the often long-term imprisonment he or she is facing.

191. The recommendation also calls for research into risk assessment. Systematic research should be further developed by independent bodies, particularly universities. This requires that sufficient resources are allocated

to support research on improving assessment, management and intervention practices. It should be guided by the evidence of effectiveness of anticipating and reducing reoffending, as well as improving the post-release period in the community. It should be guided by principles of effectiveness, revision and independence.

192. Special attention should be given to the uncertainties in calculating the probability of reoffending. The relatively small number of dangerous offenders makes it difficult to evaluate the risk they pose and particularly difficult to systematically assess "what works". A comparison with other countries is one way of countering these difficulties at a national level. North America and the UK have conducted research into risk-assessment tools. However, caution should be given to the local/national context of assessment practices. Risk-assessment tools and research may not always translate smoothly from one national context to another.

193. Research on the role of expert staff in assessing dangerousness should also be commissioned. Experts often act as gatekeepers, because judges and other authorities (penal administrators) will depend heavily on reports and conclusions from the expert when deciding on specific measures for the treatment, conditions and eventual release of a dangerous offender. Recent concern has been voiced that some people labelled as "experts" may not always be suitably equipped to predict dangerousness or risk of reoffending.

Part VII – Follow-up

194. It was decided that the CDPC should ensure the follow-up of the recommendation. This would involve:

a. playing a role in the effective implementation of the recommendation, by making proposals to facilitate or improve the effective use and implementation of it, including the identification of any problems and the effects of any declarations made under this recommendation;

b. playing a general advisory role in respect of the recommendation by expressing an opinion on any question concerning the application of it;

c. serving as a clearing house and facilitating the exchange of information on significant legal, policy or technological developments in relation to the application of the provisions of the recommendation;

d. setting up and establishing, if necessary, any other measures – including the setting up of a specific group of experts – that it would deem necessary to facilitate the implementation of the recommendation.

195. The rule also encourages the sharing of research and best practices between countries in order to raise standards at a national level.

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