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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Cooperation
(PC-CP)

Report
on the 1st Meeting of the
Ad hoc Drafting Group on Dangerous Offenders
(PC-GR-DD)
by Ms. Irene Koeck (Austria)
Member of the PC-CP Working Group

- (1) The European Committee on Crime Problems (CDPC), set up an ad hoc drafting group on dangerous offenders (hereafter: Drafting Group) in order to elaborate a non-binding legal instrument on dangerous offenders in 2013. The decision also contains the Drafting Group's terms of reference.
- (2) The Drafting Group is composed of 16 representatives of Member States selected by the CDPC and of one scientific expert. Other member states may designate additional representatives without defrayal of expenses.
- (3) The Member States selected are:
 - Belgium
 - Croatia
 - Czech Republic
 - Denmark
 - Finland
 - France
 - Germany
 - Greece
 - Italy
 - The Netherlands
 - Norway
 - Poland
 - Russian Federation
 - Switzerland
 - United Kingdom
- (4) Austria was the only Member State that made use of the possibility to designate a representative without defrayal of expenses.
- (5) Ms. Louise Victoria JOHANSEN, Faculty of Law, University of Copenhagen, was appointed scientific expert.
- (6) The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is represented in the Drafting Group, by Mr. James McManus, as observer.
- (7) The Council for Penological Co-operation (PC-CP) is represented, in the Drafting Group, by Ms. Irene KOECK, Member of the working group of PC-CP as observer.

- (8) According to its terms of reference it is the task of the Drafting Group , in particular, to examine the following issues:
- 1) risk and threat assessments of dangerous offenders in criminal proceedings which could result in detention due to the danger posed by the offenders;
 - 2) treatment and conditions of detention of dangerous offenders;
 - 3) measures for the prevention of re-offending by dangerous offenders to the extent that such measures are covered by the criminal justice system.
- (9) The Drafting Group shall limit its work to offenders deemed to represent a threat to society, notably because of their personality, the violent character of the criminal offence which they have committed, and the risk of re-offending.
- (10) Other issues related to dangerous offenders, in particular regarding offenders whose dangerousness is determined by their involvement in organised crime and/or terrorism, should not be examined by Drafting Group, but shall be the subject of future work by the CDPC.
- (11) The First Meeting of the Drafting Group was convened for 17-19 December 2012 and was held in Strasbourg.
- (12) The Meeting was attended by the representatives of 11 of the selected Member States, the representatives of Belgium, Finland, Germany, Russian Federation and United Kingdom sent apologies. Furthermore the meeting was attended by the scientific expert and by the observers from the CPT and the PC-CP (cf. nos. 5-7, *supra*).
- (13) The Action against Crime Department was represented by Mr. Ivan Koedjikov and the Criminal Law Division by Mr. Carlo Chiaromonte, Head of the Division.
- (14) Mr. Oscar Alarcon Jimenez functioned as Secretary of the Drafting Group.
- (15) The Drafting Group had before it the following provisional agenda:
1. Opening of the Meeting
 2. Adoption of the Agenda
[The Drafting Committee had before it the Provisional Agenda PC-GR-DD (2012)OJ]
 3. Election of a Chair
 4. Information by the Secretariat
[The Drafting Committee had before it the following documents: CDPC ToR, List of Decisions, PC-GR-DD ToR, PC-GR-DD (2012)1]

- 4.1 Last meeting of the Bureau of the European Committee on Crime Problems, 4-5 October 2012
- 4.2 Terms of reference of the Ad hoc Group on Dangerous Offenders (PC-GR-DD)
- 4.3 Background document prepared by the Secretariat on the reasons to deal with the issue of dangerous offenders
5. Council of Europe previous work on dangerous offenders
 - 5.1 Recommendations and Resolutions
[The Drafting Group had before it Resolution (62)2, No. R (82) 17, Rec(2003)22, Rec(2003)23, Rec(2006)2, CM Rec (2010)1]
 - 5.2 Report on “The sentencing, management and treatment of “dangerous” offenders” by Nicola Padfield
[The Drafting Group had before it the following document: PC-CP (2010) 10 rev 5]
 - 5.3 European Court of Human Rights case law
The Drafting Group had before it a document on ECtHR Case law , PC-GR-DD (2012) 2]
 - 5.4 Discussion
6. Preliminary consideration of dangerous offenders
 - 6.1 Presentation by the scientific expert on the current trend and main concerns in Europe in the field of dangerous offenders
[The Drafting Group had before it Doc. PC-GR-DD (2012)3]
 - 6.2 Presentation by each member of the Ad hoc drafting Group on Dangerous Offenders of any (legislative) measure existing in his/her country of origin on Dangerous Offenders
 - 6.3 Discussion
7. Drafting of a Recommendation on Dangerous Offenders
 - 7.1 Main items to be included in the forthcoming Recommendation
 - 7.2 Discussion
8. Other Business
 - 8.1 Forthcoming meetings of the PC-GR-DD
 - 8.2 Other

(16) The meeting was opened by Mr. Carlo Chiaromonte, Head of the Criminal Law Division

(17) The Agenda was adopted unanimously.

(18) Mr. Slawomir Buczma, representative of Poland in the Drafting Group, was unanimously elected the Group’s Chairperson.

- (19) This was followed by a “tour de table” in which the members of the Drafting Group introduced themselves and gave an overview on their national law dealing with dangerous offenders.
- (20) The ensuing lengthy discussion centred on the issue of how to define dangerousness. The Drafting Group considered the report by Professor Nicola Padfield on “The sentencing, management and treatment of dangerous offenders” to be a valuable background document and the definition of a dangerous offender contained therein a basic starting point: “An offender who has caused very serious personal physical or psychological harm and who presents a high probability of re-offending, causing similar harm.”
- (21) The Drafting Group discussed the question whether prisoners on remand (pre-trials) should be covered by the draft recommendation if they constituted a respective danger. The Drafting Group decided not to include prisoners on remand, because the Draft recommendation will deal with “offenders”. Offenders being persons who have committed an offence and are not persons only suspected to have done so. Therefore prisoners on remand are not covered by definition.
- (22) The Drafting Group also discussed the question whether juvenile offenders should be covered by the draft recommendation if they constituted a respective danger. While juvenile offenders would not be excluded by definition, the Drafting Group believed that the general approach of subjecting juveniles to a separate regime should not be dealt in this recommendation on dangerous offenders.
- (23) The Drafting Group took note of the CoE Recommendation already existing in this field, namely Rec No. R (82) 17 on “Custody and treatment of dangerous prisoners”, adopted on 24 September 1982. This Recommendation is brief and contains only the following ten rules concerning dangerous prisoners, namely
- 1) to apply, as far as possible, ordinary prison regulations to dangerous prisoners;
 - 2) to apply security measures only to the extent to which they are necessarily required;
 - 3) to apply security measures in a way respectful of human dignity and rights;
 - 4) to ensure that security measures take into account the varying requirements of different kinds of dangerousness;
 - 5) to counteract, to the extent feasible, the possible adverse effects of reinforced security conditions;
 - 6) to devote all necessary attention to the health problems which might result from reinforced security;
 - 7) to provide education, vocational training, work and leisure-time occupations and other activities to the extent that security permits;
 - 8) to have a system for regular review to ensure that time spent in reinforced security custody and level of security applied do not exceed what is required;

- 9) to ensure, when they exist, that reinforced security units have the appropriate number of places, staff and all necessary facilities;
 - 10) to provide suitable training and information for all staff concerned with the custody and treatment of dangerous prisoners.
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- (24) The Drafting Group considered a compilation of the pertinent case law of the European Court of Human Rights (ECtHR), in particular two cases involving Germany, and one case involving Italy.
 - (25) The German cases were discussed with a legal advisor of the German delegation at the ECtHR
 - (26) In *M. v Germany*, Appl. No. 19359/ 04, Judgment of 17 December 2009, the ECtHR held that applicant's continued placement in preventive detention beyond the maximum period authorised at the time of his placement constituted a violation Art. 5 (Right to liberty and security) of the European Convention on Human Rights (ECHR), and that retrospective extension of preventive detention from a maximum of ten years to an unlimited period of time constituted a violation of Art.7 (No punishment without law) ECHR.
 - (27) In *Haidn v Germany*, Appl. No. 6587/04, Judgment of 13 January 2011, the ECtHR held that indefinite preventive detention following completion of prison term constituted a violation Art. 5 (Right to liberty and security) ECHR.
 - (28) In *Maiorano v Italy*, Appl. No. 28634/06, Judgment of 15 December 2009, the ECtHR held that the conduct of judiciary and prosecutors incurring responsibility for a double murder committed by a dangerous offender on day of release amounted to a violation of Art. 2 (Right to life) ECHR.
 - (29) On the basis of the foregoing discussions and considerations, the Drafting Group agreed on the following draft skeleton of a future Recommendation on dangerous offenders:
 - a) Definition
 - b) Basic principles
 - c) Risk and needs assessment
 - d) Treatment and conditions of imprisonment
 - e) Measures for the prevention of re-offending
 - (30) The Drafting Group decided that in order to speed up its work and to facilitate future discussion, a drafting session will be held in March 2013 in which only the Chair, the Scientific Expert and the Secretariat would take part. A preliminary Draft Recommendation should then be presented to the Drafting Group and serve as a basis for discussion.

- (31) The Drafting Group decided to hold its next meeting in Paris on 24-26 April 2013.
- (32) According to the terms of reference, the third and final meeting of the Drafting Group is scheduled for autumn 2013.