
Recommendation CM/Rec(2022)7 of the Committee of Ministers to member States on the risk assessment of individuals indicted or convicted for terrorist offences

*(Adopted by the Committee of Ministers on 30 March 2022
at the 1430th 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;

Recalling that the core mission of the Council of Europe is to promote human rights, democracy and the rule of law;

Considering the specific approach necessary with regard to individuals indicted or convicted for terrorist offences in its member States;

Recognising the challenges which European States face when balancing the rights of individuals indicted or convicted for terrorist offences with the need to provide security in society;

Being aware of the increasing number in some of its member States of individuals convicted for terrorist offences whose sentences are nearing completion and who are likely to pose a serious threat to security and public order upon their release;

Being aware that some member States have already gained useful experience in assessing these risks, and that it is vital to share this experience throughout Europe;

Bearing in mind the relevance of the principles contained in previous conventions, recommendations and guidelines of the Committee of Ministers of the Council of Europe, in particular:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);
- the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and its Additional Protocol (CETS No. 217);
- Recommendation CM/Rec(2018)6 of the Committee of Ministers to member States on terrorists acting alone;
- Recommendation CM/Rec(2014)3 of the Committee of Ministers to member States concerning dangerous offenders;
- Recommendation CM/Rec(2010)1 of the Committee of Ministers to member States on the Council of Europe Probation 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 Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules;

- 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(82)17 of the Committee of Ministers to member States concerning custody and treatment of dangerous prisoners;
- the Guidelines on the links between terrorism and transnational organised crime, adopted by the Committee of Ministers on 31 March 2021;
- the Guidelines for prison and probation services regarding radicalisation and violent extremism, adopted by the Committee of Ministers on 2 March 2016;
- the Council of Europe Handbook for prison and probation services regarding radicalisation and violent extremism;

Taking into account the United Nations Security Council Resolution 2396 (2017), 21 December 2017, S/RES/2396 (2017);

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 for member States to introduce risk assessment into national law;

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

Recognising that a range of authorities, services and agencies deal with individuals indicted or convicted for terrorist offences and that such bodies are in need of a coherent set of guiding principles that are in line with Council of Europe standards,

Recommends that Council of Europe member States:

1. be guided in their legislation, policies and practice by this recommendation;
2. ensure that this recommendation and its accompanying appendix are translated and disseminated to all relevant authorities, agencies, professionals and associations which deal with individuals indicted or convicted for terrorist offences, as well as to the individuals concerned themselves.

Appendix to Recommendation CM/Rec(2022)7

Part I – Definitions and basic principles

Definitions

1. For the purpose of this recommendation:
 - a. “Risk” is defined as the high likelihood of an individual:
 - committing a terrorist offence;
 - recidivating, by committing a new terrorist offence;
 - radicalising to terrorism;
 - spreading the risk, including by recruiting or encouraging other individuals who may in turn pose a risk.
 - b. “Risk assessment” is the process by which the risk posed by an individual indicted or convicted for a terrorist offence, as well as its nature and level of seriousness, its probability and the consequences of its realisation, are understood. The risk assessment identifies the characteristics of the individuals concerned and the circumstances that contribute to determining this situation; it informs appropriate decision making and action with the aim of reducing the risk.
 - c. “Risk management” is the process of selecting and applying a range of measures with the aim of reducing the risk of terrorist offences being committed. It is based on an assessment revealing that the individual indicted or convicted may commit other terrorist offences in the future or recruit or encourage other individuals to commit them.
 - d. “Risk prevention” is understood as all adequate measures to anticipate and prevent the realisation of risk.

Scope and application

2. The purpose of this recommendation is to provide guidance to member States on the measures and tools that might be most effective for assessing the risks posed by individuals who have been indicted or convicted for terrorist offences.
3. This recommendation applies to individuals, regardless of their gender and their age, subject to international juvenile justice standards, who have been indicted or convicted for preparing or committing one or more terrorist offences. These individuals are often differentiated from other offenders by their ideological motivation (political, social, religious, racial, ethnic or other) to seriously disrupt public order through intimidation of a population or compelling a government or an international organisation to perform or abstain from performing any act or to seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation, thereby presenting a great danger to society as well as security and public order. The criteria for identifying the individuals who should be subject to such measures should take into account the intention of the individual.
4. This recommendation applies to terrorist offences defined in Article 1 of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and its Additional Protocol (CETS No. 217).
5. The present recommendation applies to all types of terrorist motivations, as appropriate.

Basic principles

6. Individuals indicted or convicted for terrorist offences, 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 their potential criminal actions.
7. Specific dispositions should be envisaged for the assessment of risks presented by minors, taking into account their specific and particular rights and needs.

8. Criteria for identifying the individuals to be concerned by the risk assessment should take into account that in general this group forms a small minority of the total offender population, without, however, compromising public safety. Such criteria should be proportionate, necessary and include objective evidence of a concrete and persistent risk to security and public order.
9. Risk assessment of individuals indicted for terrorist offences should be conducted in strict compliance with the presumption of innocence.
10. All information collected, treated, stored and exchanged at all stages of the risk assessment should be processed in accordance with applicable data protection standards.

Part II – General principles

11. Member States should establish processes for assessing the risk posed by individuals indicted or convicted for terrorist offences, or improve existing ones.
12. The conclusions of the risk assessment should, where necessary, guide the risk-management strategy. Risk-management measures should be adapted in light of potential changes identified during the course of the continuous risk assessment.
13. Depending on the national jurisdictions, the risk assessment should be conducted in one or several of the following cases:
 - during the pretrial phase;
 - during the trial, in support of the court decisions;
 - at the time of an inmate's admission to and allocation within detention facilities;
 - during the execution of a prison sentence or probation measure or sentence;
 - as part of the preparation for the release of an inmate;
 - as a follow-up and monitoring measure upon release from prison.

Part III – Methodology

14. Risk assessment should be conducted using a structured professional judgment methodology and be based on objective evidence and appropriate, validated tools.
15. Risk assessment should be governed by a defined methodology specific to the individuals concerned and the risks they pose to society.
16. The co-operation of the individual in the risk assessment process should be sought and encouraged, if possible. As appropriate, the individual can be actively involved in the assessment process, including through interviews, receive information about the process and have access to the conclusions, which should be open to adversarial discussion and comment.
17. The type and modalities of realisation of the risk assessment should be proportionate in terms of duration and intrusiveness to the seriousness of the offence alleged or committed, be tailored to the individual, take into account his or her individual circumstances and be regularly reviewed.
18. Risk assessment should be a dynamic, continuous process, adapted to the specific and evolving situation of each individual, which should be followed up in a co-ordinated manner by all relevant personnel, authorities, bodies, professions and associations involved throughout the different phases of the individual's follow-up.
19. Assessment practices should take into account the fact that the risks posed by the individuals concerned evolve over time, and that this evolution might be gradual or sudden.
20. Risk assessments should be conducted using a variety of information sources and as much evidence, intelligence and other observations and reports as possible. This can include the individual's judicial records, court records, pre-sentence reports (pre-decisional documents), prison documentation, intelligence reports when they are not or no longer classified, psychological and social worker reports, and other information provided by all personnel, stakeholders and third parties in contact with the individual concerned.

21. Risk assessment methods should be sufficiently flexible and adaptable to allow for the addition of new indicators which are deemed relevant.

Part IV – Personnel and actors involved in the conduct of the assessment

Multidisciplinary

22. Risk assessment should be a multidisciplinary and collaborative process and involve, *inter alia* and as appropriate, the following professions and actors:

- judicial authorities;
- prison staff;
- probation services;
- law-enforcement agencies;
- forensic professions;
- social services;
- intelligence services;
- religious representatives;
- academic specialists;
- experts in various disciplines related to radical ideology.

23. All personnel belonging to the relevant authorities, bodies, professions and associations responsible for carrying out risk assessment during the different phases of the follow-up of the individual should be recruited on the basis of specific defined skills and competences and be professionally supervised.

24. They should also be granted sufficient and appropriate support, resources, security and monitoring to carry out this specific assessment.

25. Personnel responsible for conducting the risk assessment should draw on and involve relevant civil society actors who may be able to participate in the process on the basis of their expertise, experience, profession or relationship with the individual concerned, including family, relatives, community and religious representatives, etc. This participation may include interviews.

Co-ordination and co-operation

26. Member States should ensure, as far as possible, that relevant legislation and mechanisms are in place to enable effective co-ordination, including where appropriate the exchange of data and information, between competent authorities and agencies at both national and local levels.

27. The exchange of the content of risk assessments between different authorities and agencies should be facilitated in order to ensure continuity in the assessment process and to share information on the history of the level of risk presented by the individual.

28. Member States should encourage all bodies, agencies or institutions, governmental, intergovernmental and non-governmental, that deal with risk assessment to share their expertise, experience and good practice at national and international levels.

29. Member States should share, as appropriate, and exchange any data and information which can be used for risk assessment, voluntarily or in the framework of mutual legal assistance in criminal matters in accordance with their national legislation. Such international co-operation should be based on mutual trust, which is essential in the fight against terrorism.

Training

30. All personnel belonging to the competent authorities, bodies, professions and associations responsible for conducting risk assessment during the different phases of the individual's follow-up should receive appropriate initial and ongoing training in risk assessment so that this practice conforms to the highest national and international ethical and professional standards.

31. Training in interdepartmental and interdisciplinary co-operation should be organised for those involved in conducting the assessment. This should facilitate effective communication, co-ordination and co-operation between the various actors involved.

Part V – Risk assessment tools

32. Member States are encouraged to adopt existing risk assessment tools and to undertake research into their use, quality and reliability, and suitability for their needs and for the management of the particular risks they face.

33. Member States should consider the possibility of developing, where appropriate, their own risk assessment tools based on the above-mentioned criteria.

34. Risk assessment tools and their use should be subject to strict and periodic monitoring, and be regularly reviewed and updated. They should be used in an impartial manner and carefully screened to guarantee their objectivity, validity and reliability.

Part VI – Risk assessment in judicial decisions

35. In the pretrial process within the judicial system, risk assessment should be used to inform and advise judicial authorities and assist them in making appropriate and proportionate informed decisions, where appropriate.

36. Subject to national legislation, risk assessment should be commissioned by the competent authority and the judicial authority should be, as appropriate, informed of the conduct of this assessment.

37. The risk assessment should be conducted by accredited forensic experts and result in the preparation of a report.

38. As appropriate, judicial authorities should be provided with the prepared reports following the assessment and before the sentencing.

39. Member States are encouraged to take appropriate measures so that individuals for whom a risk assessment has been commissioned may have an opportunity to challenge the conclusions of the report and commission a report from a separate expert in accordance with national legislation and existing practices.

40. The conclusions of the risk assessment should not be binding on the judicial authority, which remains free in the way it incorporates them into its decision, which should however be proportionate to the level of risk identified.

41. The judicial decision should not be based solely on the conclusions of the assessment of the risks posed by the defendant.

Part VII – Risk assessment in the context of the execution of sentences

42. Individuals convicted for terrorist offences should be subject to an initial risk assessment at the time of sentencing and, if necessary, on an ongoing basis and at regular intervals during the course of the execution of the sentence.

43. Risk assessment should be used to inform and advise the relevant authorities (such as judicial, prison and probation services) and assist them in making suitable and proportionate informed decisions, where appropriate.

44. The ongoing assessment of the risk posed by an inmate should be dynamic, evolving and adaptable during the course of the execution of the sentence. The conclusions of the risk assessment and its evolution should be taken into account, in particular in any potential reassessment of the conditions of execution of the sentence.

45. In the context of the execution of a sentence, risk assessment and risk management should aim at the disengagement from violence, and the preparation for the release and the safe reintegration into society of the individuals concerned, in conditions consistent with protecting society from the risk these individuals pose.

46. In the context of a sentence of imprisonment, the initial assessment conducted on admission to prison of the inmates concerned should be taken into account in the course of the execution of the sentence, their management, classification, allocation, accommodation, conditions of detention and levels of security within the prison, and should coincide with the actual level of risk posed by the prisoner within the prison.

47. The particular risk of violence posed by the inmate to prison staff should be taken into account in order to ensure the safety of personnel in the performance of their duties.

48. Particular attention should be paid to the risk of radicalisation leading to terrorism in prison, understood as the risk of the individual becoming radicalised and radicalising or recruiting other prisoners.

Part VIII – Risk assessment following the execution of sentences

49. The utmost vigilance should be exercised with regard to individuals convicted for terrorist offences following the execution of their sentences and upon their release in light of the risk they may pose to society.

50. Individuals convicted for a terrorist offence and whose prison sentence is about to expire should be subject to risk assessment before their release.

51. Member States are encouraged to include risk assessment as part of the monitoring of the individual. This assessment should be conducted in a continuous manner and at regular intervals, while remaining strictly proportionate to the seriousness of the risk that the individual poses to society.

52. Member States are encouraged to introduce security measures for terrorist offenders after they have served their sentence, when the conclusions of the risk assessment show that they are likely to pose a threat to society, security and public order. Such measures should remain strictly necessary and proportionate.

Part IX – Research and evaluation

53. Member States should encourage and fund research to inform and improve policy and practice in the area of risk assessment of individuals indicted or convicted for terrorist offences.

54. Studies should be conducted to establish the quality and effectiveness of risk assessment and, where necessary, to propose improvements.