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Strasbourg, 12 April 2013

(Draft) RECOMMENDATION CM/REC(201X) XX
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
CONCERNING DANGEROUS OFFENDERS

*(Adopted by the Committee of Ministers on XXX
at the XXX 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;

Desirous of facilitating the treatment of dangerous offenders;

Bearing in mind the relevance of the principles contained in previous 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);
- Recommendation No. R (82)17 concerning custody and treatment of dangerous prisoners;
- Recommendation No. R (92)17 concerning consistency in sentencing;
- Recommendation No. R (97)12 on staff concerned with the implementation of sanctions and measures;
- Recommendation No. R (98)7 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(2003)23 on the management by prison administrations of life sentence and other long-term prisoners;
- Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder;
- Recommendation Rec(2006)2 on the European Prison Rules;
- Recommendation Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation Rec(2010)1 on the Council of Europe Probation Rules;

Bearing in mind:

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

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

Recommends that the member states:

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

Part I - Definitions and basic principles

Definitions

1. For the purpose of this Recommendation:
 - a. **Dangerous offender** is a person who has been convicted of a very serious sexual or violent crime against person(s) and who presents a high probability of re-offending with further serious sexual or violent crimes against person(s).
 - b. **Violence** may be defined as the intentional use of physical force or power, threatened or actual, against another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death and psychological harm. This definition identifies four means by which violence may be inflicted: physical, sexual and psychological attack and deprivation¹.
 - c. **Risk** is defined as the likelihood of a further serious sexual or violent offence against a person.
 - d. **Risk assessment** is the process by which risk is understood: it examines the nature, seriousness and pattern of offences; it identifies the characteristics and 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 applying a range of measures both during imprisonment and in the post-release period or preventive supervision with the aim of reducing the risk of serious sexual or violent crime against person(s).
 - f. **Treatment** means an intervention (social, medical or psychological), that has a therapeutic purpose in relation to that person. Treatment may include measures to improve the social dimension of a person's life.
 - g. **Secure preventive detention** means detention imposed by the judicial authority to a person after the fixed term of imprisonment has been served. It is not imposed as the punishment for a crime, but on the basis of an assessment revealing that the offender may commit other serious offences in future and is therefore a measure for public protection.
 - h. **Preventive supervision** means measures of control, monitoring, surveillance or restriction of movement imposed by the judicial authority at the time of sentencing to a person after having committed a crime and after having served a prison sentence or instead of, but in all these cases on the basis of an assessment revealing that the offender may commit other serious offences in future and is therefore a measure for public protection.
 - i. **Recidivism** means that a person has previously been convicted of offences of the same nature.

Basic Principles

2. Dangerous offenders, like all offenders, shall 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 efficiently from them. Any decision that could result in a deprivation or restriction of a fundamental right or freedom of a supposed or declared dangerous offender will be decided or agreed by the competent judicial authority.
3. This Recommendation shall not apply to children.

¹ WHO (1996) *Global Consultation on Violence and Health. Violence: a public health priority*. Geneva: World Health Organization pp. 5-6

4. 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 ensure that this group is a small minority of the total prison population of offenders without compromising public safety. Such criteria should include evidence of previous serious violence, characteristics of the offender or his/her offending that indicate likelihood of substantial and continuing risk of violence, evidence of the inadequacy of lesser measures, such as previous failure to comply and persistent offending despite the application of lesser measures. Length of sentence or the offender's general recidivism cannot constitute the only criteria for defining an offender as dangerous in this sense.
6. A plan that contains a range of rehabilitation, reintegration and risk management measures as appropriate to the individual case should be developed.
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 detention preventive supervision or restriction of movement measures should be secured by means of regular and independent monitoring, according to national rules, by a judicial authority or other independent [duly constituted] body authorised to visit and not belonging to the prison administration.
9. Special welfare 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. There should be accessible and impartial complaint procedures regarding relevant authorities' risk assessment leading to detention and management during detention or to preventive supervision or restriction of movement.
11. Assessment and management treatment and interventions should be based on the current research.
12. The effectiveness of risk assessment as well as, treatment and management of dangerous offenders should be evaluated by encouraging research that will be used to guide policies and practices within the field. Particularly, risk assessment tools should be carefully evaluated in order to identify cultural, gender and social biases.
13. Appropriate training in assessing and dealing with dangerous offenders should be provided for the relevant authorities, agencies, professionals and associations, 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
14. [A clear distinction should be made between the offender's risk to the outside community, and inside prison, and should be evaluated separately, as the treatment of dangerous offenders inside prison will be performed as it is established by national laws.]

Part II - Risk and needs assessment in criminal proceedings

Assessment procedure

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

16. Risk assessments that inform decisions relating to the restriction of liberty for the protection of the public should involve a detailed analysis of the violent behaviour and the historical, personal and situational factors that led to and contribute to it. It should be based on the best available information, in particular gathered from documents and interviews.
17. Risk assessment should be conducted in an evidence-based, structured manner, incorporating appropriate tools and professional decision making. Those undertaking risk assessment should be aware of and state clearly the limitations of assessing violence risk and of predicting future behaviour, particularly in the long term.
18. Appropriate, validated risk assessment tools should be used to ensure that assessments are grounded in empirical knowledge about the factors that have been shown to be associated with offending.
19. Such risk assessment instruments should be used to develop the most constructive and least restrictive interpretation of a sanction, as well as to an individualized 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.
20. Assessments 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 sentence.
 - b. Assessment practices should be responsive to the fact that the risk posed by an individual's violent offending changes over time: such change may be gradual or sudden.
21. Assessments should be linked to opportunities for offenders to address their needs and change their thinking and behavior.
22. Offenders should be involved in assessment, and have information about the process and access to the conclusions of the assessment.

Part III - Sentencing and treatment of dangerous offenders

Sentencing

23. Risk assessment shall be commissioned by the judicial authority in charge of the criminal trial.
24. The offence committed must have certain characteristics and repetitive traits before member states can be guided by the rules contained in the appendix to this recommendation. The offences, as defined in paragraph 1.a) should include manslaughter, sexual offences against children (including rape), sexual abuse and serious violent crime against persons.
25. 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.
26. The decision of a judicial authority to impose preventive measures against an offender shall require a supporting report from the expert team. However, a report supportive of preventive measures is not binding on the judicial authority.

Secure preventive detention

27. An offender should only be held in secure preventive detention on the basis of an assessment revealing that they may with high probability commit a very serious sexual or violent crime against person(s) in the future, if released.
28. Secure preventive detention is only justified when it is established as the least restrictive measure needed.
29. Secure preventive detention should be subject to regular review by a court like body/ competent judicial authority at least every two years.
30. When secure preventive detention takes the form of detention beyond the proportionate punishment, it is essential that those detained are able to challenge their detention, or the limits on their freedom, before a court at regular intervals and at after the expiry of the proportionate punishment part of the sentence.
31. Anyone held for preventive reasons should be entitled to a written sentence plan which provides opportunities for him/her to address the specific risk factors and other characteristics that contribute to the current classification as a dangerous offender.
32. The aim of the relevant authorities should be the reduction of restriction and release from secure preventive detention in a manner consistent with public protection, dangerousness of the offender and the limit of the nature of the crimes previously committed.
33. Dangerous offenders in secure preventive detention should, after the expiry of the proportionate punishment part of the sentence, be held in enhanced conditions as tolerable as possible. In any case respect for human dignity shall be guaranteed.

Preventive supervision

34. Preventive supervision may be applied as an alternative to secure preventive detention or after release.
35. Preventive supervision should be available as a disposal of the courts as an alternative to detention. Such a disposal may consist one or more of the following measures:
 - i) The use of electronic devices which enable continuous monitoring (electronic monitoring)².
 - ii) Regular reporting to a place nominated by the judge or court.
 - iii) The immediate communication of any change in place of residence, of work or position in the way and within the time limit set out by the judge or the court.
 - iv) Prohibition from leaving the place of residence or of any territory without authorisation from the judge or court.
 - v) The prohibition of approaching or contacting the victim, or those of his/her relatives or other persons identified by the judge or court.
 - vi) Prohibition of going to certain areas, places or establishments.
 - vii) Prohibition of residing in certain places.

² Reference to the new recommendation of the PC-CP

- viii) Prohibition of performing certain activities that may offer or provide the opportunity to commit crimes of a similar nature.
 - ix) The obligation to participate in training programs, labour, cultural, education or similar.
 - x) The obligation to participate in treatment/intervention programmes and to undergo regular re-assessment when recommended by a qualified practitioner.
36. 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 achieving a more effective use of community sanctions and measures

Part IV Risk management

37. Interventions for the prevention of reoffending should be planned for both the custodial and community settings, ensuring continuity between the two contexts. A plan 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; and contingency measures to respond promptly to indications of deterioration or imminent offending.
38. A plan should evidence a balance between rehabilitative and restrictive measures taking into account aspects of the case. The balance of those measures is influenced by the level of risk in the particular context.
39. Such a plan should co-ordinate the actions of various agencies, and support multi-agency cooperation between prison administration, probation workers, social and medical services, and law enforcement authorities.
40. 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/her.:
41. The above processes should be subject to regular review, with the capacity to respond to changes in risk.
42. Reductions and increases in restrictions or interventions should be justified by a suitable reassessment of risk.
43. Member states may, where found necessary in order to prevent re-offence, consider the use of medication as .anti-libidinal treatment. Anti-libidinal treatment should only be provided if the offender:
- a. Has been thoroughly informed about the purpose, procedure and consequences of the intervention.
 - b. He or she has given free and informed consent

Part V Treatment and conditions of imprisonment of dangerous offenders

Conditions of imprisonment

44. Imprisonment is by the deprivation of liberty a punishment in itself. The conditions of imprisonment and the prison regimes should be held in conditions as tolerable as possible and be guided by the principles contained in Recommendation Rec(2006)2 on the European Prison Rules.
45. As soon as possible after admission and after an assessment of the risks, needs and characteristics of the offender, an appropriate programme of treatment in a suitable institution should be prepared in

the light of the knowledge obtained about individual needs, capacities and dispositions that also balances proximity to relatives and specific conditions. The adequacy of treatment will be supervised by a competent authority.

46. Security measures should be set to the minimum necessary, and the level of security should be revised regularly. Ordinary prison regulations should be applied as far as possible.

Treatment

47. Treatment may include medical, psychological and/or social intervention.
48. 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 organizational aspects of health care in prison should be followed. The medical or psychiatric service of the penal institutions should provide for the medical and psychiatric treatment of all dangerous offenders who are in need of such treatment.
49. The purposes of the treatment of dangerous offenders shall 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 assist them to return to society with the best chance of leading law-abiding and self-supporting lives after their release.

Work

50. Dangerous offenders under sentence may be required to work and have the opportunity of education guided by the principles contained in Recommendation Rec(2006)2 on the European Prison Rules. Special attention should be given by prison administrations to the education of younger adults, in particular those of foreign origin or with cultural or ethnic needs.

Part VI - Complaints, monitoring, staff and research

51. Procedures should be provided for by national law regarding appeals raised by dangerous offenders against the assessment and duration of being classified as a dangerous offender. The possibility of commissioning an independent risk assessment report should be available.
52. Staff and agencies dealing with dangerous offenders should be subject to regular government inspection and independent monitoring.
53. All staff involved in the assessment and treatment of dangerous offenders should have sufficient resources and training in dealing with the specific needs, risk factors and conditions of this group
 - a. Appropriate training in assessing and dealing with dangerous offenders should be provided for the relevant authorities, agencies, professionals and associations.
 - b. Particular competencies are needed when dealing with offenders who suffer from a mental disorder
54. Training in multi-agency cooperation between staff inside and outside prisons should be arranged.
55. Research on the use and development of reliable risk and needs assessment tools should be undertaken with special reference to dangerous offenders.
56. Evaluative research should be conducted to establish the accuracy of risk assessment and the identification of dangerousness by experts.