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(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 the Conventions of the Council of Europe, 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 of the Committee of Ministers to member States concerning custody and treatment of dangerous prisoners;
- Recommendation No. R (92)17 of the Committee of Ministers to member States concerning consistency in sentencing;
- Recommendation No. R (97)12 on staff concerned with the implementation of sanctions and measures;

- Recommendation No. R (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 achieving a more effective use of 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;
- The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201);
- Recommendation 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(2010)1 of the Committee of Ministers to member States on the Council of Europe Probation Rules;

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 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 very serious violent crime against person(s) and who presents a high likelihood of re-offending with further very serious sexual or very serious violent crimes against person(s).
 - 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, psychological harm and death. This definition identifies four means by which violence may be inflicted: physical, sexual and psychological attack and deprivation¹.
 - c. **Risk** is defined as the high likelihood of a further very serious sexual or very serious violent crime 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 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 measures in the community, during imprisonment and in the post-release period or preventive supervision with the aim of reducing the risk of very serious sexual or very serious violent crime against person(s).
 - f. **Treatment** means an intervention that has a therapeutic purpose. It may serve to reduce the risk posed by the person and may include measures to improve the social dimension of a person'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 (s)he may commit other very serious offences in future.
 - h. **Preventive supervision** means measures of control, monitoring, surveillance or restriction of movement imposed on a person after having committed a crime and after having served a prison sentence or instead of. It is not imposed merely because of an offence committed in the past, but also on the basis of an assessment revealing that (s)he may commit other very serious offences in future.

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

Basic Principles

2. This Recommendation shall not apply to:
 - a. children;
 - b. mentally disordered persons who are not under the responsibility of the prison system
3. 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.
4. Any decision that could result in a deprivation or restriction of a fundamental right or freedom of a suspected or declared dangerous offender will be decided or agreed by the judicial or other competent 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 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 the measures (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 as well as treatment 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. Particularly, 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 - Risk and needs assessment

13. The depth of assessment should be determined by the level of risk and be proportionate to the gravity of the potential outcome.
14. Risk assessments should involve a detailed analysis of the previous behaviours and the historical, personal and situational factors that led to and contribute to it. It should be based on the best available information gathered from documents and interviews ensuring all relevant parties consulted.
15. Risk assessment should be conducted in an evidence-based, structured manner, incorporating appropriate validated 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.
16. Such risk assessment instruments should be used to develop the most constructive and least restrictive interpretation of a measure or sanctions, 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.
17. 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 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.
18. Assessments should be linked to opportunities for offenders to address their needs and change their attitudes and behavior.
19. Offenders should be involved in assessment, and have information about the process and access to the conclusions of the assessment.
20. A clear distinction should be made between the offender's risks to the outside community and inside prison. This should be evaluated separately.

Part III - Judicial decisions for dangerous offenders

General provisions

21. Risk assessment should be commissioned by the judicial authority.
22. The alleged dangerous offender should have the possibility of commissioning of a separate expert report.
23. 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.
24. The decision of a judicial authority to impose preventive measures against an offender should take into account a risk assessment report from the experts.

Secure preventive detention

25. An offender should only be held in secure preventive detention on the basis of an assessment revealing that (s)he may with high likelihood commit a very serious sexual or very serious violent crime against person(s) in the future.
26. Secure preventive detention is only justified when it is established as the least restrictive measure needed.
27. Secure preventive detention should be subject to regular review at least every two years.
28. 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 regular intervals after the expiry of the period prescribed for punishment.
29. 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.
30. 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 from the risk posed by the offender.
31. Dangerous offenders in secure preventive detention should, after the expiry of the period prescribed for punishment, be held in appropriate conditions. In any case respect for human dignity shall be guaranteed.

Preventive supervision

32. Preventive supervision may be applied as an alternative to secure preventive detention or after release.
33. 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) The prohibition of approaching or contacting the victim, or those of his/her relatives or other identified persons.
- v) Prohibition of going to certain areas, places or establishments.
- vi) Prohibition of residing in certain places.
- vii) Prohibition of performing certain activities that may offer or provide the opportunity to commit crimes of a similar nature.
- viii) The participation in training programs, labour, cultural, education or similar.
- 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)² in conjunction with one or some of the measures above.

34. 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

35. 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.

36. 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 either deterioration or imminent offending; and appropriate mechanisms to respond to indications of positive changes.

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

² Reference to the new recommendation of the PC-CP

38. 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.
39. The above processes should be subject to regular review, with the capacity to respond to changes in risk assessment.
40. Risk management in the community should be guided by the principles contained in Recommendation Rec(2010)1 on the Council of Europe Probation Rules and Recommendation Rec(2000) 22 on achieving a more effective use of the community sanctions and measures.

Part V - Treatment and conditions of imprisonment of dangerous offenders

Conditions of imprisonment

41. Imprisonment is by the deprivation of liberty a 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.
42. Security measures should be set to the minimum necessary, and the level of security should be revised regularly.

Treatment

43. As soon as possible after admission and after an assessment of the risks, needs and characteristics of the offender, appropriate interventions in a suitable institution should be prepared in the light of the knowledge obtained about individual needs, capacities and dispositions. This should take into account proximity to relatives and specific conditions. The implementation will be supervised by a competent authority.
44. Treatment may include medical, psychological and/or social intervention.
45. 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 for the medical and psychiatric treatment of all dangerous offenders who are in need of such treatment.
46. 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 adopt them leading law-abiding and self-supporting lives.

Work

47. Persons under secure preventive detention may have access to work and have the opportunity of education guided by the principles contained in Recommendation Rec(2006)2 on the European Prison Rules.

Vulnerable people

48. Special attention should be given by prison administrations to the education of elderly and young adults offenders.

Part VI - Complaints, monitoring, staff and research

49. Procedures should be provided for by national law regarding appeals raised by dangerous offenders against the decision classifying a person as dangerous offender and its duration.
50. Staff and agencies dealing with dangerous offenders should be subject to regular government inspection and independent monitoring.
51. 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.
 - c. Staff should be properly selected and professionally supervised.
52. Training in multi-agency cooperation between staff inside and outside prisons should be arranged.
53. Research on the use and development of reliable risk and needs assessment tools should be undertaken with special reference to dangerous offenders.
54. Evaluative research should be conducted to establish the quality of risk assessment.