

International Standards on Non-Custodial Alternative sanctions and the treatment of vulnerable groups in the criminal justice system – introduction

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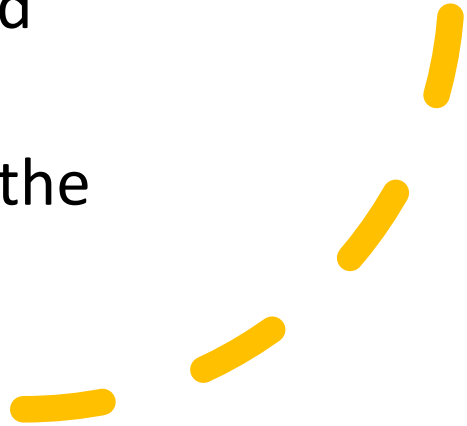
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International Covenant on Civil and Political Rights

- All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Report of the
Working Group on
the Universal
Periodic Review
2021 includes
recommendations
to...

- Take effective measures to ensure full and effective implementation of existing legal provisions prohibiting racial discrimination, thus facilitating access to justice, and provide appropriate remedies for all victims of racial discrimination
 - Ensure that excessive use of force, including ill-treatment and torture by law enforcement officials at the time of arrest and during interrogations, is investigated and prosecuted, and perpetrators convicted and held accountable
 - Implement measures to guarantee the independence of the judiciary
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Recommendation
CM/Rec (2017) on
the European
Rules on
community
sanctions and
measures

- There shall be no discrimination in the imposition and implementation of community sanctions and measures on grounds of race, colour, ethnic origin, nationality, gender, age, disability, sexual orientation, language, religion, political or other opinion, economic, social or other status or physical or mental condition.
 - Account shall be taken of the diversity and of the distinct individual needs of suspects and offenders.
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Commentary on
Recommendation
CM/Rec (2017) on the
European Rules on
community sanctions
and measures

**A distinction must be made between
discrimination and differentiation.**

A prohibition on discrimination does not mean that everyone must be identically dealt with. Differentiation, unlike discrimination, is expected to relieve any unfair disadvantage or to achieve some betterment. People and their circumstances are not all the same and there are circumstances in which people must be treated differently from others, in order to respond to specific individual problems, to meet distinctive individual needs or to take account of special situations. In this way, substantial justice is advanced.

Treatment process in Tokyo Rules

13.1 Specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 Understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 Involve the community and social support systems in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

Convention on the Rights of Persons with Disabilities

- To promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.
- Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.




Concluding observations on the combined second and third periodic reports of Hungary by Committee on the Rights of Persons with Disabilities include:

- Lack of awareness of the rights recognized in the Convention among the judiciary and justice sector professionals, policy- and lawmakers, teachers, medical, health and social workers and all other professionals working with persons with disabilities
- Reports of solitary confinement, mechanical and chemical restraints, forced medication and other forms of ill-treatment of persons with disabilities in residential and psychiatric institutions



Recommendations
from Committee
for Committee on
the Rights of
Persons with
Disabilities 2022

- Ensure legal safeguards for the rights to liberty and security of persons in psychiatric institutions, including in forensic psychiatric institutions
 - Ensure that all facilities, residential care and psychiatric institutions are subjected to independent monitoring
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White Paper Overcrowding 2016

- Prisons “more and more often places to hold persons from socially deprived backgrounds, often substance abusers, often with personality disorders or with other mental disorders.
- Tendency to keep offenders with mental health disorders in prisons and not to take care of them in facilities adapted for their treatment; thus apart from possible human rights issues involved they may also contribute to the overcrowding problems.
- The European Prison Rules 12.1.: “Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose”.
- Obviously any decision should take into account the individual circumstances of a given person and should attempt to give prevalence to healthcare reasons regarding detention in special institutions or sections.

COUNCIL FOR PENOLOGICAL CO-OPERATION
(PC-CP)

Prisons and probation: a Council of Europe White
Paper on the management of offenders with mental
health disorders

Professor Charlie Brooker
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(United Kingdom)

And

Jorge Monteiro
Head of Service
Directorate General of Reintegration and Prison Services
(Portugal)

Forthcoming
White Paper
2022 on
Mental
Health

Draft
Recommendations
of Mental Health
White Paper

National strategy for mental health within probation to :

- Include standards to benchmark services
- Operationalise the probation officer's role in the recognition and assessment of mental health disorders and in providing interventions and/or facilitating access to mental health care
- Address methods for collecting data within the probation service including data on suicide by probationers.
- Ensure continuity of care for mental health disorders on transfer from prison to probation
- Involve service users
- Provide training and establish expert network

CoE Guidelines
regarding
recruitment,
selection, education,
training and
professional
development of
prison and
probation staff 2019

- There should be a specific focus on working with mental health, substance misuse, as well as the impact of adverse childhood experiences, and developing areas of practice such as the use of technology in supervision (e.g. electronic monitoring)



Alternatives to imprisonment for women

- The Bangkok Rules 2010 explicitly encourage development and use of gender-specific non-custodial alternatives to pre-trial detention and to imprisonment
- Many women in conflict with the law do not pose a risk to society and imprisonment frequently has a disproportionately negative impact on their rehabilitation and on their children's lives.
- Non-custodial measures and sanctions which take account of women's distinctive needs enable women to meet their care-taking obligations at the same time as serving their sentence and can be far more effective at addressing the root causes of their offending than time spent in prison.
- Need for therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects.

Evaluation of Council of Europe (2020)

- CoE "should consider how best to strengthen the gender dimension in standard-setting activity, either by improved mainstreaming in recommendations or by developing a specific recommendation on the treatment of women prisoners and non-custodial measures for women offenders."

IMPLEMENTING COMMUNITY SANCTIONS AND MEASURES



Vivian Geiran
Ioan Durnescu

Guidelines

CoE Guidelines 2019

- Community sanctions and measures should be made available to all offenders without discrimination.
- Policies and practices should be periodically reviewed to ensure that they do not result directly or indirectly in unfair treatment.
- An example of an indirect condition that can lead to unnecessary custody is **homelessness**. In many cases, homelessness can lead to imprisonment even for less serious offences.



Recommendations from Implementing community sanctions and measures

- Legislators should avoid regulating conditions for community sanctions and measures that would exclude foreign national offenders from this option. There are some jurisdictions that restrict the application of community sanctions and measures by the requirement of needing a fixed address or domicile or strong family ties in the country. These conditions would frequently exclude foreign offenders from community sanctions and measures, if they cannot fulfil them.
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