

# 5<sup>th</sup> World Congress on Probation and Parole

Concurrent session D3

- Opening
- Supervision Around the World (SAW) Project
- Non-custodial sanctions and measures across the EU: lessons from a comparative study
- Practical steps toward non-discriminatory use of alternatives to imprisonment
- Discussion and Reflection



INSTITUTO JURÍDICO  
FACULDADE DE DIREITO  
UNIVERSIDADE DE  
COIMBRA



SAW  
PROJECT

# Non-discriminatory alternatives to imprisonment

LESSONS FROM EUROPE



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Professor Anabela Miranda Rodrigues  
University of Coimbra



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# Development of alternatives to imprisonment

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- > main sanctions;
- > replacement sanctions;
- > ancillary sanctions;
- > part of a probation sentence.

## Common problems in the EU context

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- > the net-widening phenomenon;
- > lack of awareness of alternative sentences;
- > long waiting lists to serve a community sentence;
- > shortage of workplaces available for community service;
- > the complexity of the legal systems;
  - > lack of data regarding individuals in situations of vulnerability or belonging to minorities.

## Lessons of the pandemic

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- > Emergency laws in many countries allowed a significant reduction of prison populations without causing an outbreak of delinquency.
- > Many persons could be serving their sentence in the community instead of in a prison.

# The legal framework of the sanctions systems

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- > the *ultima ratio* character of imprisonment shall be strengthened;
- > the prevalence of imprisonment as a reference sanction and the way non-custodial sanctions are provided in law should be reconsidered;
- > simplification and flexibility of sanctioning systems would be recommended.

## Practical and organizational measures

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- > promoting the specialization of all professionals involved in sentencing;
- > promoting a close dialogue between courts and probation services;
- > promoting articulation between probation services and civil society organisations.

## Data collection and research

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- > empirical research on the effectiveness and practical operation of non-custodial sanctions;
- > collecting and analysing data on the punishment of persons belonging to minorities or in situations of vulnerability.

# Persons in vulnerable situations

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Better partnerships can be a useful resource (collaboration with other entities, either public services or civil society organizations, with experience or expertise in dealing with certain social groups).

# The role of technology

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- > technology has the potential to play an important role in the future of alternative sentences;
- > technology is to be used as a form of supplementing, not reducing or replacing, human support

# Non-discriminatory alternatives to imprisonment

PRACTICAL STEPS AND RECOMMENDATIONS



Tanja Dejanova  
Project coordinator, Alternatives to imprisonment in Europe

[www.penalreform.org](http://www.penalreform.org)

What does **non-discrimination** mean in the context of (non-custodial) criminal sanctions?

**Who** may face disproportionate challenges or be left particularly vulnerable?

What are some the **barriers** to ensuring non-discrimination?

# What happened during the COVID-19 pandemic?

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- > Rush to action
- > Exacerbated issues
- > Narrow focus
- > New ways of working



## Differentiation or discrimination?

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*“...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.”*

Commentary on Recommendation CM/Rec (2017)  
on the European Rules on community sanctions and measures

## Examples of good practice

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- > Alternative conflict resolution options and decriminalisation
- > Avoiding prison time: short sentences, non-compliance
- > Promoting rehabilitation and individualisation in sentencing
- > Enhancing role of probation

etc.

## Collaboration as a key

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- > Cross-regional probation meetings and training in Croatia
- > Joint Agency Response to Crime in Ireland
- > Communication and aligned processes between chain partners in the Netherlands
- > Enhanced volunteer participation in delivery of non-custodial measures and community partnerships to ensure housing options in Portugal



# Improving the delivery of community-based sanctions for individuals with mental health support needs

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## Portugal pilot

- > Cross-agency collaboration
  - > Improved access to community mental health services
  - > Targeted measures
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- > Multidisciplinary cooperation in Ireland, Poland, UK



## Learning and training for better services

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- > Joint training of probation and judiciary in Portugal, Hungary
- > Prioritisation of identified needs in staff training and recruitment in Kyrgyzstan
- > Training on gender-informed practices in Ireland

*“Situations [that challenge successful sentence completion] are also caused by insufficient knowledge within the probation services of [available] mental health services, and on the part of these services of the particularities of those who need mental health care while serving a sentence or measure in the community.”*

## Flexibility and variety

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- > Ensuring laws support flexibility and individualisation
  - Sentencing options and discretion
- > Providing varied community service options
  - Focus on larger partners in the Netherlands
  - Cooperation with municipalities in Georgia
- > Using technology to broaden services and access

## Common themes and emergent issues

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- > **Data limitations** are a challenge
- > Reforms and needed awareness are limited by **silos** and **capacity issues**
- > **Key populations:**
  - mental health
  - homelessness
  - Socio-economically disadvantaged or marginalized groups
  - Racial and ethnic minorities, but lacking data



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Further information:  
[www.penalreform.org](http://www.penalreform.org)  
[www.prialteur.pt](http://www.prialteur.pt)

[tdejanova@penalreform.org](mailto:tdejanova@penalreform.org)



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