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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

ALTERNATIVE MEASURES TO IMPRISONMENT

Explicative paper by Belgium

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During the plenary session, the CDPC requested the delegations to come up with proposals on topics for the Conference of the ministers of justice to be held in 2011. Among the topics that could be discussed during that event, the issue of "quasi compulsory measures" in the area of criminal justice would constitute an interesting subject, in our opinion.

1) The notion of "quasi-compulsory measures":

In general, the expression "(formal) compulsory measures" is used when someone is actually forced to undergo a treatment. On the contrary, the wording 'quasi-compulsory measures' is often used as a hybrid concept which lies between voluntary and compulsory undergoing of a treatment. Both compulsory and quasi-compulsory measures pursue a twofold objective: the amelioration of the situation of a person and the decrease of the troubles that this person causes to the community.[1]

However, a slight difference exists between both notions. Indeed, under a "quasi compulsory" measure, the person actually has a choice to make even though it is merely a "constrained" one. Indeed, the choice is constrained by the fact that each decision is attached to a different consequence, which might eventually influence the final decision.

For instance, when one chooses to undergo a specific treatment and to comply with the conditions set out under that treatment, he/she is offered a "reward". That "reward" consists, for example, of not applying more stringent measures or avoiding further prosecution or not implementing a sanction, etc. When the "quasi-compulsory" measure successful is, the measure originally provided for is eventually suppressed.
On the contrary, when one chooses not to undergo a treatment or does not comply with conditions provided for (e.g. Disrespect of applicable rules, relapse into addiction, abandonment of the treatment for some time, etc.) he/she will be subjected to a sanction which mostly consists of adopting a new measure or implementing a penalty already provided for.

Thus, the nature of a 'non-compulsory measure' consists of the fact that negative consequences can be avoided when a person chooses to accept the alternative measure (usually, a treatment) and actually does something to change his/her situation or behavior.[2]

2) Proposal:

The issue of "quasi-compulsory measures" is increasingly on the agenda in the area of criminal justice. This trend reflects a wider tendency towards increased social control by the authorities.

[1] A. STEVENS et al., "On coercion", *International Journal of Drug Policy* 2005, 207-209
[2] M. VAN OOYEN-HOUBEN, D. ROEG, C.H. DE KOGEL en M. KOETER, "Zorg onder dwang en drang. Een verkenning van mogelijkheden en grenzen", *Justitiële verkenningen* 2008, 26-27

The application of “quasi-compulsory measures” raises various issues that could lead to an interesting debate at the political level. The issues/questions which could be discussed are the following:

- Does the concept of “quasi-compulsory measures” exist in the member states?
- If yes, which institutions/mechanisms play a role in providing the “quasi-compulsory” treatment?
- What types of “quasi-compulsory” measures, if any, exist in the Member States?
- Is it effective to impose a treatment to a person who does not want to undergo it?
- What are the conditions for a person to undergo a “quasi-compulsory” treatment?
- What would be the legal basis for the adoption of a “quasi-compulsory measure”?
- What are/should be the legal safeguards to put “quasi-compulsory measures” into a frame?
- What are the good practices of cooperation between the justice authorities and the welfare/assistance organisations in Member states?