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Promoting non-discriminatory alternatives to imprisonment in Europe

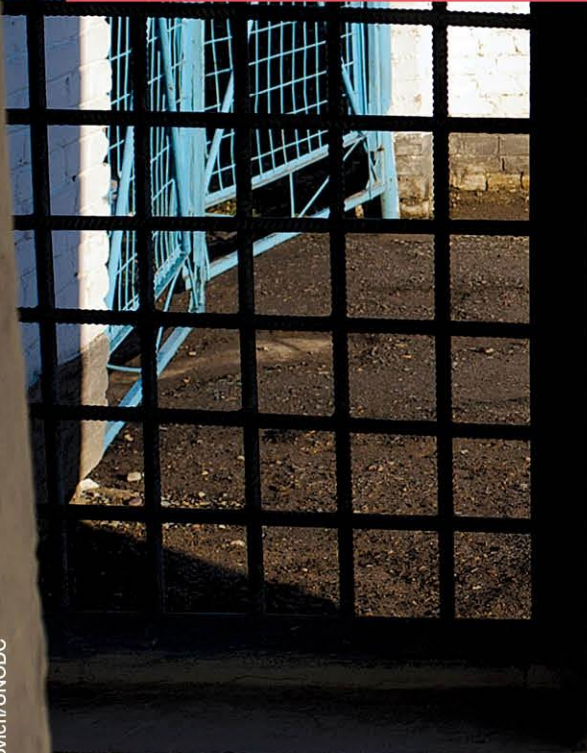


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What does **non-discrimination** mean in the context of (non-custodial) criminal sanctions?

What are some of the **barriers** to ensuring non-discrimination and better use of community-based sanctions?

Who may face disproportionate challenges or be left particularly vulnerable?

Key issues or populations

- Mental health needs
- Homelessness
- Socio-economically disadvantaged or marginalized groups
- Racial and ethnic minorities, but lacking data

Development of alternatives to imprisonment

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

Common problems in the EU context

- > the net-widening phenomenon;
- > the lack of awareness of alternative sentences;
- > the long waiting lists to serve a community sentence;
- > the 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

- > 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

- > 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 organisational measures

- > promoting the **specialisation** 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

- > 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

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).

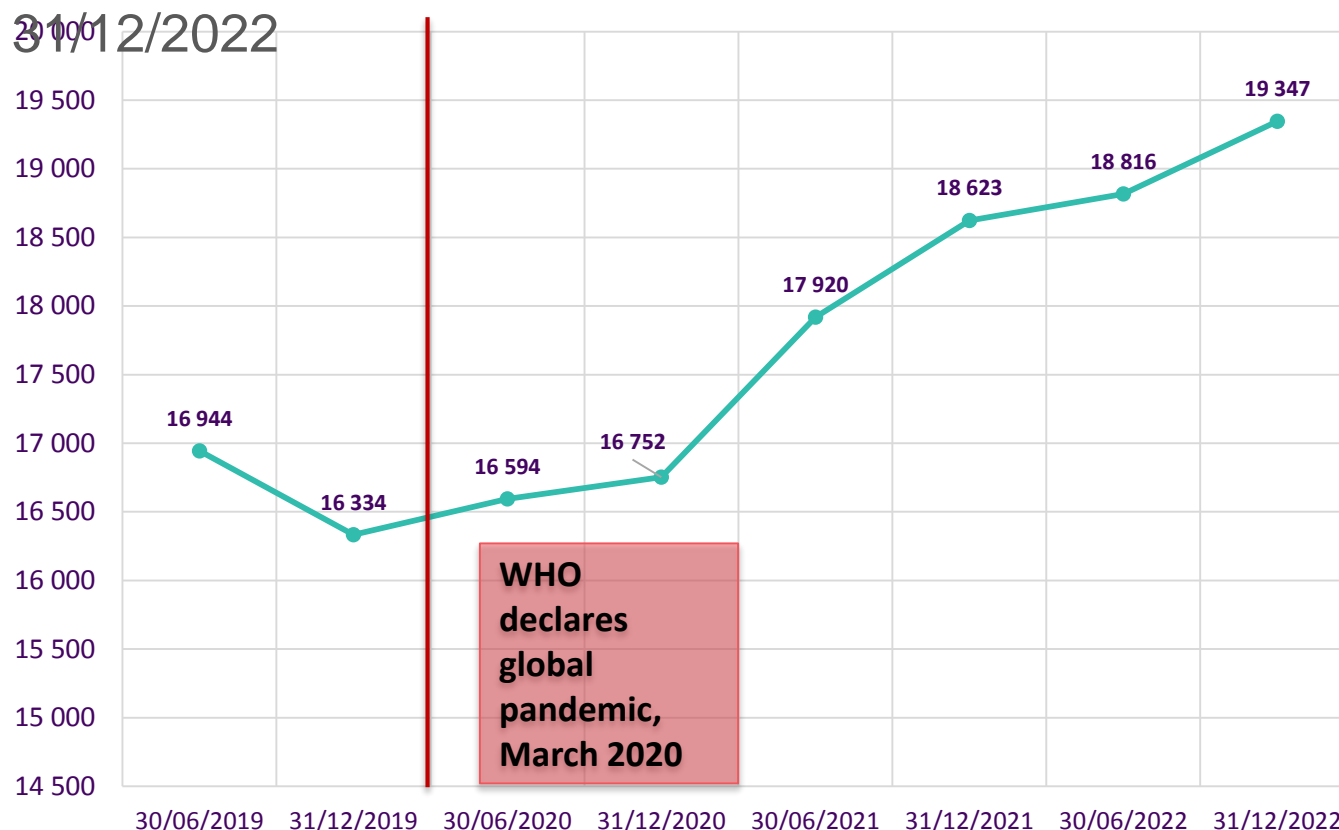
The role of technology

- > 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.



Trainings and Pilot in Hungary and Portugal

Hungarian prison population trend 30/06/2019 – 31/12/2022



Prison pop. (2021):

PT: 110.8
HU: 179.7



Methodology & evidence base

- > Legal analysis, “sentencing guidelines”
- > Statistics (+ FoI data)
- > Interviews:
 - Judges
 - Probation professionals (general + penitentiary)
 - Attorneys
 - Academics
 - *People with lived experience*



Challenges & similarities

- > Data limitations
- > Level of engagement / willingness to reform
- > Capacity, funding issues
- > **Limited awareness of non-custodial measures**
- > **Cross-sectoral non-communication**
 - > **Informing training and pilot**



Challenges to successful sentence completion

- examples from the research

- > Portugal: “...caused by **insufficient knowledge** within the probation services of [available] mental health services”
- > Hungary: “The judge has no capacity for individual assessment, nor for the customisation of judgments. **One rarely finds judges who really wish to know who the person who committed the crime is, and under what circumstances**” (judge)
- > “Personal circumstances are not considered when sentencing; there are, for example, **notorious community-service-convicts**, who never in their lives



Sharing knowledge & best practice

- > **Joint training** improving cross-sectoral cooperation
 - > for probation and judiciary in Portugal
 - > for probation, judiciary, attorneys, MoJ, Mol... in Hungary

- > **Pilot: Multi-agency collaboration**
 - > Portugal: improved access to community mental health services
 - > Hungary: designing process → deeper understanding of needs → professional & public awareness raising → forging new alliances (clients and their families, practitioners, academia etc.) → paying attention to clients' perspective



FAIR AND EFFECTIVE CRIMINAL JUSTICE



[Further information:](#)

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