Jurnalul de Studii Juridice

JOURNAL OF LEGAL STUDIES

ISSN: 1841 – 6195 (print), ISSN: 2067 – 8509 (electronic)

Coverd in: CEEOL, Index Copernicus, Ideas, RePeC, EconPapers, Socionet

---

INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE

Ramona ACSINTE

Jurnalul de Studii Juridice, Anul VI, Nr. 1-2,
Iunie, 2011, pp: 85-92

The online version of this article can be found at:

http://jls.upa.ro/

Published by:

Lumen Publishing House

On behalf of:

Legal Research Center of Petre Andrei University from Iasi

INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE

Ramona ACSINTE [1]

Abstract:

Alternatives penalties to imprisonment are defined as a substitute for imprisonment, taken by the court when imposing penalties, with the consent of the offender, in order to maintain its freedom (community), by restricting certain rights and freedoms in parallel with the exercise of control by the specialized services

Key Documents of the United Nations and the Council of Europe which cover non-custodial sanctions and measures EU, are the United Nations Standard Rules for non-custodial measures - known as the Tokyo Rules, and the Council of Europe Recommendation No.. R (92) 16 of the Committee of Ministers of member States on the European Rules on Community Sanctions and Measures.

The aim for regulating those non-custodial measures is to reduce incarceration, taking into account the respect for human rights and the needs of offender rehabilitation.

These documents purpose a wide range of non-custodial measures, which correspond to the seriousness of the crime committed, to the convict's personality, to other circumstances of the case, and according to the pre-trial stage, trial and post-procedural. Community participation should be encouraged and regarded as one of the most important means of strengthening the links between persons subject to community sanctions, their families and the communit.

Keywords:

non-custodial measures, imprisonment,community,alternative sanctions, convict, reintegration

[1] Ramona ACSINTE - Asist.univ.drd. Faculty of Law, University „Petre Andrei", Iaşi, Email Address: ram13acs@yahoo.com

ACSINTE, R., (2011) INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE, Jurnalul de Studii Juridice, Anul VI, Nr. 1-2, Iunie, pp: 85-92

For a long time imprisonment was seen as a universal means of state response to any form of crime, regardless of its severity. Moreover, at the crossroads of the eighteenth and nineteenth centuries, under the influence of Enlightenmen philosophy, imprisonment constituted alternatives to inhuman and drastic penalties, such as the death penalty or corporal punishment, widespread in those days. The end of the 19th century is marked by criticism of custodial sentences in terms of criminology, penology and penal policy, emphasizing that the isolation of prisoners from society, by no means can be considered a necessary and appropriate condition to undertake the task of penal policy. More so, this system has proved inadequate for that particular category of offenders, such as minors, putting into question the possibility and correction of prisoners.

Starting from the observation of numerous shortcomings in the system of criminal sanctions, highlighting the negative consequences of imprisonment in contrast to undeniable benefits of alternatives to imprisonment, the need to develop a system especially for juvenile sanctioning, excluding the application of prison sentences was imposeditura The "non-criminal" pattern as it is called in legal literature focuses on the educational measures and monitors the social reintegration of children in conflict with criminal law in ways appropriate to their age and personality, to ensure their treatment impunity in favour of their well-being, proportional to their status and seriousness of the crime committed.

Analyzing the essence and content of imprisonment a number of shortcomings and disadvantages can easily be seen.

One of these effects is to point out that prison reduces the chances of those who have served a prison sentence to find a job and community reintegration opportunities. Released criminals have very few options available, the easiest being the continuation of criminal careers, as noted in numerous studies on the causes of recidivism.

Studies have also highlighted worsening physical and mental health of the incarcerateditura Minors who enter for the first time in prison have multiple somatization (weakness, insomnia, crying, sore legs, are confused over time). (Florian (1996): 121).

Perhaps one of the most serious consequences is that prison is a "source of crime", a true school for criminals, children and young people serving a custodial sentence are the most dramatically affecteditura Occurring in a period which is normally dedicated to education and training, imprisonment contributes to further marginalization and social exclusion. It follows that the younger prisoners are "socialized" in an antisocial environment, which increases the likelihood to commit crimes after their release and more serious ones. In this way, "the vicious circle of violence" is autoregenerateditura Prison becomes training school for criminals who affect cohesion and community organizing.

The list of negative effects of imprisonment is long. All of these adverse consequences can be avoided however, by substituting imprisonment with

ACSINTE, R., (2011) INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE, Jurnalul de Studii Juridice, Anul VI, Nr. 1-2, Iunie, pp: 85-92

alternatives where education prevails over coercition, the convict being not pulled out the usual environment and social relations which give him the opportunity to assimilate the other members of society.

In this perspective, alternatives penalties to imprisonment are defined as a substitute for imprisonment, taken by the court when imposing penalties, with the consent of the offender, in order to maintain its freedom (community), by restricting certain rights and freedoms in parallel with the exercise of control by the specialized services. (Coras, (2009), : 5).

A serious push to promote non-custodial criminal sanctions and their implementation national legislations was given by the UN documents and other international organizations.

The most general framework which led to the settlement of non-custodial sanctions and community measures is the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948 and the International Covenant on Civil and Political Rights in 1966. These movement gave rise to a humanization movement and reconstruction of the criminal laws in line with democratic values and human dignity. (Balahur, (2002),: 30). They have greatly contributed to the achievement of a less oppressive control of crime.

Key Documents of the United Nations and the Council of Europe which cover non-custodial sanctions and measures EU, are the United Nations Standard Rules for non-custodial measures - known as the Tokyo Rules, and the Council of Europe Recommendation No.. R (92) 16 of the Committee of Ministers of member States on the European Rules on Community Sanctions and Measures.

These documents are devoted to alternatives to imprisonment, but there are other international documents that have contributed to the reform of juvenile justice (rules and minimum standards of juvenile justice administration, known as the Beijing Rules, approved in 1985, that are at the basis of community treatment of the non-custodial juvenile, UN Guidelines on juvenile delinquency, approved by UN General Assembly in 1990 and known as the Riyadh Guide, etc). A feature of these standards on alternative measures to imprisonment is that they have the nature of recommendations, ie do not edict mandatory rules, they are not directly binding on national legislative bodies. There is a political and moral obligation of states to follow these recommendations.

United Nations Recommendation refers on non-custodial measures.

Council of Europe Recommendation refers to community sanctions and measures.

There is no focus here on alternatives to detention but on the sui generis rule pertaining to the punishment carried out in freedom.

ACSINTE, R., (2011) INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE, Jurnalul de Studii Juridice, Anul VI, Nr. 1-2, Iunie, pp: 85-92

However, when the fundamental goals are discussed, the Tokyo Rules assume the role of providing the use of non-custodial measures, as well as minimum protection for persons subject to detention alternatives.

Council of Europe Recommendation stresses that it intends to establish a set of standards to provide the decision-making authorities and the authorities responsible for implementation, the capacity to ensure a fair and effective implementation of community sanctions and measures. This application should strive to maintain a necessary and desirable balance between the need to protect society, both in the maintenance of legal order and of the rules which provide for the repair of damage caused to victims, and recognize the essence of the reintegration needs of offenders to society.

Tokyo Rules reflect the major changes occurring in the criminology and criminal philosophy, structured around the values of justice restitution, which is outlined how the objectives and aims of development of these rules (R.1)

- to provide a set of fundamental principles to promote non-custodial sanctions and a minimum of guarantees insured for persons who are serving a non-custodial penalty (rg.1.1);
- to promote a more active community involvement in the management of criminal justice, especially in the treatment of offenders, and develop a sense of responsibility towards society in offenders (Rg.1.2);
- to ensure a balance between the rights of offenders, victims' rights and society care to public safety and crime prevention. (Rg.1.4);
- the aim for regulating those non-custodial measures is to reduce incarceration, taking into account the respect for human rights and the needs of offender rehabilitation (rg.1.5);
- there should be a wide range of non-custodial measures, which correspond to the seriousness of the crime committed, to the convict's personality, to other circumstances of the case, and according to the pre-trial stage, trial and post-procedural (rg.2.3).

References are made at pre-trial stage in rg. 5 and 6 of the Tokyo Rules, which recommend, whenever possible, to police, prosecutors and other criminal justice services in charge, to exculpate the offender, if that decision supports the protection of society, prevents crime and promotes respect for the rights of the victim. There are references to the temporary custody which can be used as a measure of last resort, whose duration shall not extend more than is necessary for the proper conduct of the trial.

With respect to judicial proceedings, court rules support impartiality and objectivity. In making its decision, the court must take into account the rehabilitation needs of the offender, the protection of society and the interests of the victim. To that end it has a broad spectrum of non-custodial measures. (Rg. 8.1), among which may be mentioned:

- Sanctioning word such as admonition, reprimand and warning;
- Maintain freedom before the tribunal decision;

ACSINTE, R., (2011) INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE, Jurnalul de Studii Juridice, Anul VI, Nr. 1-2, Iunie, pp: 85-92

- Conditioned renunciation to the accusation;
- Economic sanctions and fines;
- Confiscation or expropriation decision;
- Restitution to the victim or a compensation;
- Suspension or postponement of the decision taken;
- Probation and judicial supervision;
- Working in community service;
- House Arrest;
- Any other non-institutional treatment;
- The combination of these measures (Rg.8.2)

Recommendation. R (92) 16 does not contain a list of alternative sanctions, but sets a number of their features, such as:

- The conditions and requirements included in community sanctions and measures must be defined in clear and explicit legal provisions;
- No community sanction or measure shall not be for an indefinite period;
- Any community sanction or measure, both in terms of nature and duration, must be proportionate to the offense and meet the personal circumstances of the offender, namely personal characteristics, family, material and social circumstances, and criminal record;
- The nature, content and execution of community sanctions and measures must respect the fundamental rights of the offender and his family;
- Imposition and enforcement of sanctions should be made with the cooperation and consent of the offender, following the development of their sense of responsibility towards the community in general and in particular to the victim.

The implementation phase of EU sanctions, are paid particular attention by standards, became the purpose of the state for criminal sanction can not be achieved but through a correct application of those rules.

Community sanctions enforcement bodies must meet the following conditions:

- Enforcement costs should not be borne by the offender;
- The working methods applied to run community penalties will be adjusted each particular case;
- Instructions the enforcement body can take, should be practical and accurate.They must not impose the deliquent requirements greater than those that result from this decision;
- Control activities will be exercised only to the extent that is necessary for a strict implementation of EU sanctions and based on the principle of minimum intervention;
- Implementing body must resort to methods, appealing to recognized professional techniques.

ACSINTE, R., (2011) INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE, Jurnalul de Studii Juridice, Anul VI, Nr. 1-2, Iunie, pp: 85-92

One of the issues covered at this stage both by Tokyo Rules and Recommendation R (92) 16 is linked to recruitment and staff training. Persons appointed to apply non-custodial measures should have a personality suitable for working, if possible, have appropriate training and practical experience. Personnel must be given the status, adequate remuneration and benefits, taking into account the nature of work that iis required and provide training opportunities and career prospects (section 15.3 of the Tokyo Rules). The number of persons charged with the enforcement of these sanctions should be sufficient to perform many tasks assigned to it.

Also, community involvement is emphasized in both documents. Community participation should be encouraged and regarded as one of the most important means of strengthening the links between persons subject to community sanctions, their families and the community. (Rg.17.1).

The emphasis on community component is also the cornerstone of community sanctions and measures laid down in Council of Europe Recommendation. Justice can not be effectively managed outside the community it serves and needs acceptance, as well as public respect. This level of trust and commitment can be achieved if members of society are encouraged and have the opportunity to participate in the administration of justice. The general public has a right to, and should know community sanctions and measures available, the conditions imposed, the offender's rights and responsibilities, and in general terms, how effective community sanctions and measures are. (Coras, (2009),: 164).

Involving the local community gives much easier access to a wide range of material resources and social assistance systems. Criminals may establish links with volunteers, recommended by charitable agencies, with unions and professional associations, social clubs and entertainment, religious groups, charities and other organizations and individuals who can provide assistance and support. It is likely that the offender's attitude towards society to become responsible when they become aware of community interests to improve their personal and social situation.

According rg. Tokyo Rules 10.1, the goal of offender supervision in the community, is to reduce the risk of recidivism and reintegration support in ways that prevent his return to antisocial behavior. It provides the possibility of shortening the term of supervision when progress is recordeditura The Council of Europe Recommendation sets out the principle of minimum intervention in the lives of criminals through activities of official control of the enforcement authority. These will be proportionate to the sanction or measure implemented and will be limited to its goals.

The standards stipulate the need to bring to the offender's knowledge, the consequences of failure to comply with obligations imposed by the court. It also specifies that minor violations of the performance of community sanctions and measures shall be decided by the enforcement body, and the offender must

ACSINTE, R., (2011) INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE, Jurnalul de Studii Juridice, Anul VI, Nr. 1-2, Iunie, pp: 85-92

be able to make objections and to give explanations. Even when the failure of a condition or obligation requires revocation, it should be possible to treat this situation in a flexible manner and not necessarily impose imprisonment.

A guarantee of the convict's through the correction application of EU sanctions, is that they apply to the prior approval of the convict.

According to the Rules pct.13.1 Tokyo, treatment of prisoners shall be provided by individual methods, group therapy, the application of specialized treatment programs. Treatment is provided by specialists with the necessary training and practical experience, taking into account the particularities of the convicted, development level, their interests and circumstances that have conditioned the crime.

The effectiveness of corrective programs depends largely on the cooperation of convicted with the executing body. Under Rule 31 of the European rules, a community sanction should be imposed only if there is safe, in the conditions and obligations assigned to the convict and his willingness to cooperate and comply with them. Otherwise, enforcement will be impossible for EU sanctions, which may lead to their switching to other penalties, including imprisonment. For this purpose, before beginning the execution of the penalty, the convict must be informed if any - written clearly and in a language they understand, about the nature of the sanction, the purpose, the conditions and obligations to be respecteditura At the same time, the convict must be involved in the process of making decisions on enforcement, this guaranteeing, to a certain extent, the observance of his interests. Convict's consent can not have the effect of depriving him of any of his fundamental rights.

By analyzing the above documents, we see the need to implement alternative sanctions to imprisonment, because of their more human character and special effectiveness inprevention.

Legal measures alternative to imprisonment criminal courts granted the use, by law (taking into account scientific advice and legal practice), of various means of influencing the convict, combining material restrictions with spiritual ones.. This takes place by influencing the psychological structure of personality convict's personality, limiting his "professional" possibilities or other asocial behavior in the future, or by forcing him to perform specific work, in other circumstances, he would not have performed.

It should be noted that some provisions of these international standards have been introduced in the juvenile justice system in Romania. They highlighted several positive aspects to protect the rights of the child who has violated the criminal law, but also some weakness in the system, some of which are to be resolved with the entry into force of the new legislation on criminal matters.

ACSINTE, R., (2011) INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE, Jurnalul de Studii Juridice, Anul VI, Nr. 1-2, Iunie, pp: 85-92

Conclusions

It can be concluded that alternative measures of detention is a particularly important area, international regulations for minors constituiting an important step in the process of reform of criminal law, providing a general framework for a national juvenile justice system, that should work and a model for all countries of a just and humane response to the children who could be found in conflict with criminal law.

Further reform of juvenile justice is extremely important for improving the situation of children in conflict with the law. It is necessary that positive models to be extended nationwide and the application of alternative sanctions to become a norm, not the exception. The role of all persons involved in the prevention and punishment of juvenile offenders is to responsibly approach address this phenomenon, in accordance with national legislation and international recommendations.

Given our state's tendency to adjust its national legislation with international requirements, we consider absolutely necessary to implement these provisions into national legal acts, which will enhance compliance and promote the rights of those punished and, consequently, of the whole society.

References

Books:

Balahur, D. (2002) *Pluralismul socio-juridic si reglementarea probatiunii: standarde legislative universale si europene*, Themis Publishing House, Craiova, Romania;

Coras, L. (2009) *Sanctiuni alternative la pedeapsa inchisorii*, C.H.Beck Publishing House, Bucuresti, Romania;

Florian, G. (1998) *Psihologie penitenciara*, Oscar Print Publishing House, Bucuresti, Romania.

Legislation:

United Nations Standard Rules for non-custodial measures - known as the Tokyo Rules (December 14, 1990);

Council of Europe Recommendation No. R (92) 16 of the Committee of Ministers of member States on the European Rules on Community Sanctions and Measures.

ACSINTE, R., (2011) INTERNATIONAL STANDARDS CONCERNING ALTERNATIVE MEASURES TO DETENTION IN JUVENILE JUSTICE, Jurnalul de Studii Juridice, Anul VI, Nr. 1-2, Iunie, pp: 85-92