

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (92) 16

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

**ON THE EUROPEAN RULES
ON COMMUNITY SANCTIONS AND MEASURES**

*(Adopted by the Committee of Ministers on 19 October 1992
at the 482nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the importance of establishing common principles regarding penal policy among the member states of the Council of Europe in order to strengthen international co-operation in this field;

Noting the considerable development which has occurred in member states in the use of sanctions and measures whose enforcement takes place in the community;

Considering that these sanctions and measures constitute important ways of combating crime and that they avoid the negative effects of imprisonment;

Considering the importance attaching to the development of international norms for the creation, imposition and implementation of these sanctions and measures,

Recommends that the governments of member states be guided in their internal legislation and practice by the principles set out in the text of the European rules on community sanctions and measures, appended to the present recommendation, with a view to their progressive implementation and to give the widest possible circulation to this text.

Appendix to Recommendation No. R (92) 16

Preamble

The present rules are intended:

- a. to establish a set of standards to enable national legislators and the practitioners concerned (deciding authorities and authorities responsible for implementation) to provide a just and effective application of community sanctions and measures. This application must aspire to maintain a necessary and desirable balance between, on the one hand, the need to protect society both in the sense of the maintenance of legal order as well as the application of norms providing for reparation for the harm caused to victims, and, on the other hand, the essential recognition of the needs of the offender having regard to his social adjustment;

b. to furnish member states with basic criteria so that the creation and use of community sanctions and measures may be combined with guarantees against the danger that the fundamental human rights of offenders subject to such sanctions and measures are curtailed. Similarly, it is important to guard against the application of these sanctions and measures leading to any kind of abuse such as might, for example, result from their use to the detriment of particular social groups. Full consideration needs to be given to the social advantages and disadvantages of, as well as the potential risks resulting from, or likely to result from, such sanctions and measures. The simple fact of pursuing the aim of achieving a substitute for imprisonment does not justify recourse to any kind of sanction or measure or means of implementation;

c. to propose clear rules of conduct to staff responsible for the implementation of community sanctions and measures and to all those in the community who are involved in this field in order to ensure that this implementation is in conformity with any conditions and obligations imposed, thereby conferring credibility upon the sanctions or measures. This does not mean, however, that implementation is to be thought of in a rigid or formalistic way. Instead, it should be undertaken with constant concern for individualisation, that is, the achievement of a correspondence between the offence and the penal response as well as the personality and the capabilities of the offender. Furthermore, the fact that reference can be made to a set of rules which have been established internationally should facilitate an exchange of experience, in particular concerning methods of work.

It cannot be too strongly emphasised that community sanctions and measures applied within the framework of the present rules are of value for the offender as well as the community since the offender is in a position to continue to exercise choice and assume his social responsibilities. And the implementation of penal sanctions within the community itself rather than through a process of isolation from it may well offer in the long term better protection for society including, of course, the safeguarding of the interests of the victim or victims.

Consequently, the imposition and the implementation of community sanctions and measures must be guided by these considerations as well as the essential aim of treating the offender with respect as a responsible human being.

The present rules, conceived as a parallel to the European Prison Rules, are not to be regarded as a model system. Instead, they form a corpus of requirements susceptible of being commonly accepted and acted upon. Without respect for these requirements there can be no satisfactory application of community sanctions and measures.

Both from its experience as well as its comprehensive view of the situation in the member states, the Council of Europe is well able to see that these rules guide and assist those responsible for national law as well as those who apply it.

The provisions of the present rules deal with all sanctions and measures implemented in the community as defined in the glossary, including ways of enforcing sentences of imprisonment outside prison establishments. However, measures which are specifically concerned with juveniles are not covered by the rules.

First part – General principles

Rule 1

The present rules shall be applied impartially.

Rule 2

The definitions of terms in the glossary contained in the appendix are to be considered as an integral part of the rules.

Chapter I – Legal framework

Rule 3

The definition, adoption and application of community sanctions and measures shall be laid down in law.

Rule 4

The conditions and obligations of community sanctions and measures which are fixed by the deciding authority shall be defined by clear and explicit legal provisions, as shall the consequences of non-observance of these conditions and obligations.

Rule 5

No community sanction or measure shall be of indeterminate duration.

The duration of community sanctions and measures shall be fixed by the authority empowered to make the decision within the limits laid down in law.

Rule 6

The nature and the duration of community sanctions and measures shall both be in proportion to the seriousness of the offence for which an offender has been sentenced or of which a person is accused and take into account his personal circumstances.

Rule 7

The authorities responsible for the implementation of community sanctions and measures shall be laid down in law.

The duties and responsibilities of the implementing authority shall also be laid down in law.

Rule 8

The powers of the implementing authorities to decide on methods of implementation, to delegate their implementing duties to third parties if necessary, or to enter into agreements concerning implementation with the offender, other authorities or third parties, shall be laid down in law.

Rule 9

Where the offender does not observe the conditions or obligations laid down in the decision subjecting him to a community sanction or measure, recourse to arrest and custody during the implementation shall be regulated by law.

Rule 10

No provisions shall be made in law for the automatic conversion to imprisonment of a community sanction or measure in the case of failure to follow any condition or obligation attached to such a sanction or measure.

Rule 11

The regular and external scrutiny of the work of the implementing authorities should be provided for in law. This scrutiny shall be carried out by qualified and experienced persons.

Chapter II – Judicial guarantees and complaints procedures

Rule 12

The decision to impose or revoke a community sanction or pretrial measure shall be taken by a judicial authority.

Rule 13

The offender shall have the right to make a complaint to a higher deciding authority against a decision subjecting him to a community sanction or measure, or modifying or revoking such a sanction or measure.

Rule 14

An appeal against a decision concerning the implementation of a community sanction or measure shall be submitted to a judicial authority whenever the offender wishes to complain that a restriction of his liberty or the decision is unlawful or contrary to the content of the imposed sanction or measure.

Rule 15

A complaints procedure shall be available to an offender who wishes to complain against a decision concerning the implementation made by the implementing authority, or the failure to take such a decision.

Rule 16

The procedure for the initiation of complaints shall be simple. Complaints shall be examined promptly and decided on without undue delay.

Rule 17

The complaints authority or body shall obtain all necessary information to enable it to decide on the complaints. Careful consideration shall be given to the desirability of hearing the complainant in person, especially when he has expressed such a wish.

Rule 18

The decision of the complaints authority or body and the reasons for the decision shall be communicated in writing to the complainant and the implementing authority.

Rule 19

Permission to be assisted by a person of his choice, or if necessary by an officially appointed lawyer, where legislative provision is made for such assistance, may not be withheld from an offender who wishes to exercise a right of complaint against a decision concerning the imposition, modification or revocation of a community sanction or measure, or against a decision concerning the implementation of such a sanction or measure.

Chapter III – Respect for fundamental rights

Rule 20

There shall be no discrimination in the imposition and implementation of community sanctions and measures on grounds of race, colour, ethnic origin, nationality, gender, language, religion, political or other opinion, economic, social or other status or physical or mental condition.

Rule 21

No community sanction or measure restricting the civil or political rights of an offender shall be created or imposed if it is contrary to the norms accepted by the international community concerning human rights and fundamental freedoms. These rights shall not be restricted in the implementation of the community sanction or measure to a greater extent than necessarily follows from the decision imposing this sanction or measure.

Rule 22

The nature of all community sanctions and measures and the manner of their implementation shall be in line with any internationally guaranteed human rights of the offender.

Rule 23

The nature, content and methods of implementation of community sanctions and measures shall not jeopardise the privacy or the dignity of the offenders or their families, nor lead to their harassment. Nor shall self-respect, family relationships, links with the community and ability to function in society be jeopardised. Safeguards shall be adopted to protect the offender from insult and improper curiosity or publicity.

Rule 24

Any instructions of the implementing authority, including, in particular, those relating to control requirements shall be practical, precise and limited to what is necessary for the effective implementation of the sanction or measure.

Rule 25

A community sanction or measure shall never involve medical or psychological treatment or procedures which are not in conformity with internationally adopted ethical standards.

Rule 26

The nature, content and methods of implementation of a community sanction or measure shall not involve undue risk of physical or mental injury.

Rule 27

Community sanctions and measures shall be implemented in a way that does not aggravate their afflictive character.

Rule 28

Rights to benefits in any existing social security system shall not be limited by the imposition or implementation of a community sanction or measure.

Rule 29

Where arrangements are made for the provision of help to the implementing authority in the form of appropriate supervising activities carried out against payment by organisations or individuals drawn from the community, responsibility for ensuring that the services provided meet the requirements of the present rules shall rest with the implementing authority. The implementing authority shall decide on the action to be taken if the help so provided does not meet these requirements.

The implementing authority shall also decide on the action to be taken if the supervising activities reveal that the offender has not complied with a condition or obligation or instruction arising from the community sanction or measure imposed.

Chapter IV – Co-operation and consent of the offender

Rule 30

The imposition and implementation of community sanctions and measures shall seek to develop the offender's sense of responsibility to the community in general and the victim(s) in particular.

Rule 31

A community sanction or measure shall only be imposed when it is known what conditions or obligations might be appropriate and whether the offender is prepared to co-operate and comply with them.

Rule 32

Any conditions or obligations to be observed by the offender subject to a community sanction or measure shall be determined taking into account both his individual needs of relevance for implementation, his possibilities and rights as well as his social responsibilities.

Rule 33

Notwithstanding the issue of the formal document conveying the decision on the community sanction or measure imposed, the offender shall be clearly informed before the start of the implementation in a language he understands and, if necessary, in writing, about the nature and purpose of the sanction or measure and the conditions or obligations that must be respected.

Rule 34

Since the implementation of a community sanction or measure shall be designed to secure the co-operation of the offender and to enable him to see the sanction as a just and reasonable reaction to the offence committed, the offender should participate, as far as possible, in decision-making on matters of implementation.

Rule 35

The consent of an accused person should be obtained before the imposition of any community measure to be applied before trial or instead of a decision on a sanction.

Rule 36

Where the offender's consent is required it shall be informed and explicit.

Such consent shall never have the consequence of depriving the offender of any of his fundamental rights.

Second part – Human and financial resources

Chapter V – Professional staff

Rule 37

There shall be no discrimination in the recruitment, selection and promotion of professional staff on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status. Staff recruitment and selection should take into consideration specific policies on behalf of particular categories of persons and the diversity of the offenders to be supervised.

Rule 38

The staff responsible for implementation shall be sufficiently numerous to carry out effectively the various duties incumbent upon them. They shall possess the qualities of character and the professional qualifications necessary for their functions. Norms and policies shall be developed to ensure that the quantity and quality of staff are in conformity with the amount of work and the professional skills and experience required for their work.

Rule 39

The staff responsible for implementation shall have adequate training and be given information that will enable them to have a realistic perception of their particular field of activity, their practical duties and the ethical requirements of their work. Their professional competence shall be regularly reinforced and developed through further training and performance reviews and appraisals.

Rule 40

Professional staff shall be appointed on such a legal, financial and working-hours basis, that professional and personal continuity is ensured, that the employees' awareness of official responsibility will be developed and that their status in relation to conditions of service is equal to that of other professional staff with comparable functions.

Rule 41

Professional staff shall be accountable to the implementing authority set up by law.

This authority shall determine the duties, rights and responsibilities of its staff and shall arrange for the supervision of such staff and assessment of the effectiveness of their work.

Chapter VI – Financial resources

Rule 42

The implementing authorities shall have adequate financial means provided from public funds. Third parties may make a financial or other contribution but implementing authorities shall never be financially dependent on them.

Rule 43

In cases where implementing authorities make use of third parties' financial contributions, there shall be rules defining the procedures to be followed, the persons invested with specific responsibilities in this matter, and the means for auditing the use of funds.

Chapter VII – Community involvement and participation

Rule 44

Appropriate information about the nature and content of community sanctions and measures as well as the various ways in which they are implemented shall be disseminated so that the general public, including private individuals and private and public organisations and services involved in the implementation of these sanctions and measures, can understand them and perceive them as adequate and credible reactions to criminal behaviour.

Rule 45

The work of the authorities responsible for the implementation of community sanctions and measures shall be supplemented by using all appropriate resources existing in the community in order to make available to these

authorities suitable ways of meeting the needs of offenders and upholding their rights. To this latter end, maximum use shall also be made of participation by organisations and individuals drawn from the community.

Rule 46

Community participation shall be used to assist offenders to develop meaningful ties in the community, to become aware of the community's interest in them and to broaden their possibilities for contact and support.

Rule 47

Community participation shall be provided under an agreement with the responsible implementing authority which specifies, in particular, the nature of the duties and the way they are to be carried out.

Rule 48

Participating organisations and individuals drawn from the community shall undertake supervision only in a capacity laid down in law or defined by the authorities responsible for the imposition or implementation of community sanctions or measures.

Rule 49

Recourse to individuals drawn from the community shall not become a substitute for work which should be carried out by professional staff.

Rule 50

The implementing authorities shall define criteria and procedures according to which individuals drawn from the community are selected, informed about their tasks, responsibilities, limits of competence, accountability and other issues.

Rule 51

Individuals drawn from the community shall be guided to the extent necessary by professional staff and enabled to perform those duties which correspond to their capacities and possibilities. Suitable training shall be provided as necessary.

Rule 52

Participating organisations and individuals drawn from the community shall be bound by the demands of professional confidentiality.

Rule 53

Individuals drawn from the community shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for necessary expenditures incurred in the course of their work.

Rule 54

Participating organisations and individuals drawn from the community shall be heard on matters of general character falling within their competence as well as those concerning individual cases. They shall receive feedback information.

Third part – Management aspects of sanctions and measures

Chapter VIII – Conditions of implementation

Rule 55

Community sanctions and measures shall be implemented in such a way that they are made as meaningful as possible to the offender and shall seek to contribute to personal and social development of relevance for adjustment in society. Methods of supervision and control shall serve these aims.

Rule 56

Advice to the court or the public prosecutor concerning the preparation, imposition or implementation of a community sanction or measure shall only be provided by or through professional staff, or by an organisation laid down in law.

Rule 57

The implementing authority shall ensure that information about the rights of those subject to community sanctions and measures and assistance to secure those rights are made available to them. Professional staff and participating organisations and individuals drawn from the community shall be informed of these provisions.

Rule 58

The offender shall have the right to make oral or written representations prior to any decision concerning the implementation of a community sanction or measure.

The implementing authority shall ensure that the offender can contact a responsible member of the professional staff with minimum delay in case of conflict or crisis.

Rule 59

The implementing authority shall respond to and investigate complaints concerning the implementation of the sanction or measure imposed on the offender. It shall responsibly and seriously consider an offender's request for a change of supervisor or other person charged with a duty concerning the offender.

Rule 60

Individual case records shall be established by the implementing authority. They shall be kept up to date so that, *inter alia*, any necessary report can be prepared about the offender's compliance with the conditions or obligations of the sanction or measure.

Rule 61

Information in individual case records shall only encompass matters relevant to the sanction or measure imposed and its implementation. Such information shall be as reliable and objective as possible.

Rule 62

The offender, or a person acting on behalf of the offender, shall have access to his individual case record to the extent that it does not infringe the right to privacy of others. The offender shall have the right to contest the content of the case record. The substance of the contestation shall be written into the case record.

Rule 63

The supervisor of an offender shall ordinarily inform him of the content of the case record and any reports made and explain the content to him.

Rule 64

Information in any individual case record shall only be disclosed to those with a legal right to receive it and any information disclosed shall be limited to what is relevant for the task of the authority requesting information from a case record.

Rule 65

After the termination of the community sanction or measure, case records in the hands of the implementing authority shall be destroyed or kept in archives in accordance with rules providing safeguards on revealing their content to third parties. This shall not be done before the legal effects of the sanction or measure have ceased nor later than the time limit fixed by the legislation.

Rule 66

The kind and amount of information about offenders given to agencies which provide work placements or personal and social assistance of any kind shall be defined by, and be restricted to, the purpose of the particular action under consideration. In particular, without the explicit and informed consent of the offender, it shall exclude information about the offence and his personal background, as well as any other information likely to have unfavourable social consequences, or to constitute an intrusion into private life.

Rule 67

Tasks provided for offenders doing community work shall not be pointless, but shall be socially useful and meaningful and enhance the offender's skills as much as possible. Community work shall not be undertaken for the purpose of making profit for any enterprise.

Rule 68

Working and occupational conditions of offenders carrying out community work shall be in accordance with all current health and safety legislations. Offenders shall be insured against accident, injury and public liability arising as a result of implementation.

Rule 69

In principle, the costs of implementation shall not be borne by the offender.

Chapter IX – Methods of work

Rule 70

The implementation of community sanctions and measures shall be based on the management of individualised programmes and the development of appropriate working relationships between the offender, the supervisor and any participating organisations or individuals drawn from the community.

Rule 71

Implementation methods shall be individually adapted to the particular circumstances of each case. The authorities and the staff responsible for the implementation shall therefore enjoy a sufficient degree of discretion for this to be possible without leading to serious inequality in treatment.

Rule 72

Where an individual need of relevance for the implementation of the sanction or measure is identified, personal, social or material assistance of established quality shall be provided.

Rule 73

Instructions of the implementing authority issued for the implementation of the decision on the sanction or measure shall be practical and precise. They shall not subject the offender to requirements beyond those resulting from that decision.

Rule 74

Controlling activities shall only be undertaken to the extent that they are necessary for the proper implementation of the sanction or measure imposed and shall be based upon the principle of minimum intervention. They shall be in proportion to the sanction or measure and limited by its aims.

Rule 75

Implementing authorities shall use methods of work which are consistent with proven professional standards. These methods shall take cognisance of developments in research, in social work and in allied fields of activity.

Chapter X – Operation of the sanction or measure and consequences of non-compliance

Rule 76

At the start of the implementation of a community sanction or measure the offender shall be informed about the content of the sanction or measure and what is expected of him. He shall also be informed of the consequences of non-compliance with the conditions and obligations stated in the decision and of the rules under which he may be returned to the deciding authority in respect of non-compliance or inadequate compliance with the requirements of the sanction or measure.

Rule 77

The implementing authority shall clearly define the procedures which implementing staff shall use *vis-à-vis* the offender and the deciding authority in the event of the offender's non-compliance or inadequate compliance with the conditions or obligations imposed.

Rule 78

Minor transgressions against instructions of the implementing authority, or against conditions or obligations which do not require the use of a procedure for revocation of the sanction or measure, shall be promptly dealt with by discretionary means or, if necessary, by an administrative procedure.

Rule 79

In any interview of administrative character concerning minor transgressions the offender shall be given the opportunity to make comments. The content of this interview and any other investigatory action shall be written into the individual case record and conveyed promptly and clearly to the offender.

Rule 80

Any significant failure to comply with the conditions or obligations laid down in a community sanction or measure shall be promptly reported in writing to the deciding authority by the implementing authority.

Rule 81

Any written report on failure to comply with conditions or obligations shall give an objective and detailed account of the manner in which the failure occurred, and the circumstances in which it took place.

Rule 82

The deciding authority shall only give a ruling on the modification or the partial or total revocation of a community sanction or measure after making a detailed examination of the facts reported by the implementing authority.

Rule 83

Before deciding on the modification or partial or total revocation of a community sanction or measure, the deciding authority shall ensure that the offender has had the opportunity to examine the documents on which the request for modification or revocation is based, and to present his comments on the alleged violation of any condition or obligation imposed.

Rule 84

Failure to comply with conditions or obligations attached to the sanction or measure, which may under the legislation in force lead to the modification or partial or total revocation of the sanction or measure, shall not in itself constitute an offence.

Rule 85

Where the revocation of a community sanction or measure is being considered, due account shall be taken of the manner in which and the extent to which any conditions and obligations laid down have been complied with by the offender.

Rule 86

The decision to revoke a community sanction or measure shall not necessarily lead to a decision to impose imprisonment.

Rule 87

It shall be possible for any condition or obligation laid down in a community sanction or measure to be modified, having regard to progress made by the offender, by the deciding authority in accordance with the legislation in force.

Rule 88

The deciding authority should be able to terminate a sanction or measure before it is due to end when it is established that the offender has observed the conditions and obligations required and it appears no longer necessary to maintain them to achieve the purpose of the sanction or measure.

Chapter XI – Research on, and evaluation of, the working of community sanctions and measures

Rule 89

Research on community sanctions and measures shall be encouraged. They should be regularly evaluated.

Rule 90

Evaluation of community sanctions and measures should include, but not be limited to, objective assessment of the extent to which their use:

- conforms to the expectations of law makers, judicial authorities, deciding authorities, implementing authorities and the community concerning the goals of community sanctions and measures;
- contributes to a reduction in the rates of imprisonment;
- enables the offence-related needs of offenders to be met;
- is cost-effective;
- contributes to the reduction of crime in the community.

Appendix – Glossary

1. Community sanctions and measures

The term “community sanctions and measures” refers to sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose.

The term designates any sanction imposed by a court or a judge, and any measure taken before or instead of a decision on a sanction as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

Although monetary sanctions do not fall under this definition, any supervisory or controlling activity undertaken to secure their implementation falls within the scope of the rules.

2. Law – laid down in, regulated by

The expressions “laid down” or “regulated by” both refer to laws made by parliament and to published governmental decrees (ordinances or orders) for the implementation of law.

3. Judicial authority

For the purposes of the rules, the term “judicial authority” means a court, a judge or a prosecutor.

4. Deciding authority

The term “deciding authority” means a judicial authority empowered by law, to impose or revoke a community sanction or measure or to modify its conditions and obligations, or any body which is similarly empowered.

The notion of deciding authority is wider than that of judicial authority.

5. *Implementing authority*

The “implementing authority” is the body or bodies empowered to decide on, and with primary responsibility for, the practical implementation of a community sanction or measure. In many countries the implementing authority is the probation service.

6. *Implementation and application*

By “implementation” is meant the carrying out of the practical aspects of the work of the implementing authority to ensure that a community sanction or measure is properly enforced.

By “application” is meant both the imposition and the implementation of a community sanction or measure.

The latter term has therefore a more general meaning than the former.

7. *Conditions and obligations*

By “conditions and obligations” is meant any requirements which are integral to the sanction or measure imposed by the deciding authority.

8. *Complaint*

The term “complaint” refers both to an appeal to a judicial authority and to the making of a complaint to an administrative body.

9. *Supervision*

The term “supervision” refers both to helping activities conducted by or on behalf of an implementing authority which are intended to maintain the offender in society and to actions taken to ensure that the offender fulfils any conditions or obligations imposed.

10. *Control*

The term “control” refers to activities which are limited to ascertaining whether any imposed conditions or obligations are fulfilled as well as to activities to secure compliance by using, or threatening to use, the procedures available in the event of non-compliance.

The notion of control is narrower than that of supervision.

11. *Offender*

Solely in the interest of brevity, the term “offender” is to be understood as covering both an accused as well as a sentenced person.

12. *Community participation*

The term “community participation” refers to all those forms of help, paid or unpaid, carried out full-time, part-time or intermittently, which are made available to the implementing authority by public or private organisations and by individuals drawn from the community.

13. *Gender*

In the interest of brevity, the rules make use of the masculine gender only (for example, “his”, “him”, “he”). The feminine gender (for example, “hers”, “her”, “she”) is always to be understood in conjunction with the masculine gender.

14. *Verb forms*

Statements in the rules which refer to essential requirements are formulated using “shall” and “must” as verb forms. Conversely, essential prohibitions use these verb forms in the negative. Statements which refer to what is desirable but not absolutely essential have “should” or “ought” as verb forms. What, desirably, should be prohibited uses these verb forms in the negative.