



ALTERNATIVES TO PRE-TRIAL DETENTION: OPPORTUNITIES AND CHALLENGES

Ilze Tralmaka, Fair Trials

13 December 2021



www.fairtrials.org



[@fairtrials](https://twitter.com/fairtrials)



[FairTrials](https://www.facebook.com/FairTrials)

[The European Court of Human Rights] reiterates that when a State is not able to guarantee each detainee conditions consistent with Article 3 of the Convention, the most appropriate solution to the problem of overcrowding would be to reduce the number of detainees by more frequent use of non-custodial measures and by minimising the recourse to pre-trial detention.

ECtHR, *Sukachov v. Ukraine*, 2020

The Member States are encouraged to have legislation in place that allows, where appropriate, to make use of alternative measures to detention in order to reduce the population in their detention facilities, thereby furthering the aim of social rehabilitation and also addressing the fact that mutual trust is often hampered by poor detention conditions and the problem of overcrowded prisons.”

Council Conclusions on mutual recognition in Criminal Matters
‘Promoting mutual recognition by enhancing mutual trust’, 2018.

The progress already made in the Member States on the use of alternative measures to detention, both at the pre-trial and the post-trial stage, is welcomed. Further increase in the use of non-custodial sanctions and measures as alternatives to detention throughout the criminal proceedings, when deemed appropriate, should be a common aim across the EU during the next years.

Council conclusions on alternative measures to detention:
the use of non-custodial sanctions and measures
in the field of criminal justice, 2019



MAIN
REASONS FOR
OVERUSE OF PTD

**Flawed judicial decision
making**

**Prosecutorial and judicial
culture**

**Public policies
(overburdening of criminal
justice systems, 'tough on
crime' policies, focus on
punishment etc.)**

- ▶ Personal liberty of every person
- ▶ Only lawful restrictions
- ▶ Lawful = properly applied (assessed, justified, reviewed)
 - ▶ Suspicion of a criminal offence
 - ▶ Grounds for detention (a specific risk)

KEY PRINCIPLES OF JUDICIAL DECISION MAKING

LAWFUL DETENTION AND ALTERNATIVES

- ▶ Grounds for detention (risks)
 - ▶ Reoffending
 - ▶ Flight
 - ▶ Interference with course of justice
- ▶ Alternatives: what measures could prevent the risk?
- ▶ Choice of the least restrictive measure

When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial.

ECtHR, *Idalov. Russia*, 2012

La Cour conclut que la question des mesures alternatives à la détention préventive du requérant n'a jamais été sérieusement examinée par les autorités judiciaires (..). Dans ces conditions, il ne peut être considéré que la détention préventive était fondée sur des motifs « pertinents et suffisants ».

ECtHR, *Lelievre c. Belgique*, 2007

LAWFUL DETENTION AND ALTERNATIVES

ALTERNATIVES: OPPORTUNITIES

- ▶ Preservation of fundamental right to liberty
- ▶ Preservation of other fundamental rights (right to family life, right to work etc.)
- ▶ Reduction of prison overcrowding
- ▶ Economic benefits

ALTERNATIVES: CHALLENGES

- ▶ Widening of the net – unnecessary application of restrictive measures
- ▶ House arrest – deprivation of liberty/ risks for specific vulnerable groups
- ▶ Electronic monitoring – privacy, health concerns



THANK YOU!