



Explanatory Report to the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders

Strasbourg, 30.XI.1964

I. The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, drawn up within the Council of Europe by a committee of governmental experts, was opened to signature by member States of the Council of Europe on 30 November 1964.

II. The text of the explanatory report prepared by the committee of experts and submitted to the Committee of Ministers of the Council of Europe, as amended and completed by the CCJ, does not constitute an instrument providing an authoritative interpretation of the Convention, although it might be of such a nature as to facilitate the application of the provisions contained therein.

Introduction

In 1957 the Committee of Ministers decided to set up a committee of experts with the task of "preparing and putting into effect a Council of Europe programme of action in the field of the prevention of crime and treatment of offenders". This committee was subsequently given the name European Committee on Crime Problems" (ECCP).

At its first meeting, held from 30 June to 3 July 1958, the ECCP drew up a first Council of Europe programme of action comprising the question of possible European co-operation in mutual assistance in after-care.

This programme was approved by the Committee of Ministers in September 1958.

Following this decision, the ECCP considered it expedient to draw up a draft European Convention on the supervision of conditionally sentenced or conditionally released offenders.

A sub-committee was directed to prepare a preliminary draft Convention. This sub-committee met on several occasions, first under the chairmanship of Mr. Peterson (United Kingdom) and subsequently under that of Mr. Dupréel (Belgium).

At its meeting on 8 and 9 May 1963, it finished drawing up the text of a preliminary draft convention for submission to the Plenary Committee.

The Plenary Committee examined this text at its 10th and 11th meetings, held at Strasbourg from 28 to 30 May 1963 and from 2 to 7 December 1963 respectively.

At its 11th meeting, it adopted the draft Convention.

In January 1964, in accordance with the conclusions of the 15th meeting of the Committee of Ministers, the Secretariat sent to the governments of all Council of Europe member countries, the draft Convention. Governments were asked to communicate any observations before 15 March 1964.

The observations formulated by the governments have been examined by the Plenary Committee of the ECCP at its 12th meeting, held from 8-12 June 1964 under the Chairmanship of Mr. Cornil (Belgium).

On the basis of these observations, the ECCP adopted unanimously the text of the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.

Pursuant to a decision taken by the Committee of Ministers sitting at Deputy level during its 134th meeting (October 1964) the Convention was opened to signature by the member States of the Council of Europe on 30 November 1964.

Commentary on the Convention

The European Convention was drawn up by the European Committee on Crime Problems with the object of establishing a system of international co-operation where by conditional measures (suspended sentence, probation, early release etc.) taking effect concurrently with or subsequent to a sentence pronounced by one Contracting Party, may be carried out on the territory of another.

Nowadays conditional measures are a recognised part of the penal system, and are used to provide better protection against crime while at the same time lightening the financial burden of prison costs and aid to prisoners' families.

Except in very few cases, however, these measures for treatment without confinement are applied only on a national scale. Where foreigners or persons residing abroad are concerned, courts are reluctant to pass a sentence which is not certain to be put into effect in another country. In consequence, offenders who would normally have qualified for suspended sentence or probation are either given a term of confinement, kept in prison until their sentence expires, or released only in order to be expelled from the country, making it likely that they will relapse into crime in the country to which they are deported.

In the past this state of affairs aroused little attention, since very few cases were involved ; but today there is so much coming and going between different countries of Europe that a more equitable system has become essential. The Convention is designed to provide such a system. The mutual aid which it organises on an international scale will facilitate the prevention of relapse into crime by making available across frontiers those methods of individual amendment and social rehabilitation which have proved successful on a national scale. Its aim will be not only to supervise released offenders, but also to give such assistance as may be necessary to ensure their rehabilitation in their country of residence.

The Convention is intended to apply only to offenders, of any age, on whom a penal judgment has been pronounced. It does not therefore concern minors dealt with by measures not arising from penal proceedings.

The Convention consists of forty articles grouped in six parts.

Part I (Articles 1 to 9) states the basic principles dealt with above, and specifies that the responsible authorities of the State in which the offender was conditionally sentenced or conditionally released (requesting State) will have three possible courses of action, set out under Parts II, III and IV respectively.

The penal judgments referred to in the Convention are defined in Article 2. They must be final and must have executive force (Article 3). The offence on which the request is based must be punishable under the legislation of both States concerned, in application of the principle of double incrimination (Article 4).

Cases in which the requested State shall or may refuse the action requested are set out in Article 7.

Under Part II (Articles 10 to 15), entitled " Supervision ", the requesting State may ask the State in which the released offender is resident to undertake supervision in order to ascertain whether the offender is complying with the conditions imposed on him. In that case the final decision as to whether the offender has amended his conduct satisfactorily or, if not, whether the suspended sentence should be enforced, shall rest with the requesting State.

Article 10 specifies in particular that the requesting State shall inform the State of residence of "any" supervisory measures with which the offender must comply. This wording was introduced deliberately, to cover hypothetical cases of suspended sentence in which no supervisory measures are ordered.

In accordance with Article 15, the requesting State alone shall remain competent to judge whether or not the offender has satisfied the conditions imposed upon him, and on the basis of such appraisal to take any further steps provided for by its own legislation.

Part III (Articles 16 to 21) deals with enforcement of sentences. It authorises a requesting State which has revoked conditional suspension of sentence to apply to the State of residence to enforce that sentence on its own territory.

Provision is made for enforcement of sentence to take place in accordance with the law of the requested State (Article 17). That State has a certain liberty to make necessary adjustments in the measures it is asked to apply (Article 19).

In order to avoid any risk of the duplication of proceedings, it is laid down that the requesting State may no longer itself enforce the sentence, unless its request has not been met (Article 20).

Part IV (Articles 22 to 25) deals with relinquishment to the requested State and institutes a simplified procedure under which the State in which sentence was imposed may transmit the case to the State of residence, which then enforces the sentence as if it has been pronounced on its own territory.

This procedure will probably be followed where there are grounds for anticipating that the offender will go to the requested State with no intention of returning to the requesting State.

Part V (Articles 26 to 32) consists of provisions common to the three types of procedure described above. It deals with the form of requests, the procedure to be adopted in transmitting them, the language to be used and the method of paying the costs incurred.

Part VI (Articles 33 to 40) comprises the final provisions covering the conditions of ratification or acceptance of the Convention and of accession thereto, and the form to be given to any declaration or reservations formulated by the Contracting Parties at the time of signature or ratification.

The Convention gives Contracting Parties the right to make reservations (Article 38, paragraph 1 and Appendix to the Convention) concerning :

(a) enforcement of sentences and relinquishment to the requested State, which are dealt with in Parts III and IV. The possibility of making reservations concerning these Parts will permit countries, if their municipal legislation requires it, to establish objective criteria governing cases of transfer of competence from the judge in one State to the judge in another;

(b) provisions of paragraph 2 of Article 37.

No reservation can be made in respect of supervision by one State at the request of another. Part II of the Convention does not challenge the established concepts of national sovereignty and can thus be readily accepted by all States.

The Convention as a whole is flexible enough to allow the States concerned considerable liberty both in their choice of procedure and in adapting measures to the requirements of their national laws and penal systems.