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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

REPLIES TO QUESTIONS RELATING TO THE ENFORCEMENT OF SUSPENDED SENTENCES AND PAROLE

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QUESTIONNAIRE

1. *Does your national criminal justice system know the legal institution of postponement of the application of the sentence, suspended sentence and conditional release, if so, are these available to persons not ordinarily residing in your country (foreigners and nationals)? If so, which are the competent authorities to decide upon transferring the supervision abroad, and cooperate with foreign authorities? As an administering (residence) state, does your national criminal justice system provide for the enforcement of foreign judgments and probation decisions and if so, under which conditions?*

2. *For the States party to ETS 051, what is your experience in applying the convention?*

3. *For the non-State Parties, as well as for those that, although party to ETS 051, apply among themselves an already established system based on the existence of a uniform legislation, what is your experience with other states in this field? If no legal instrument or no uniform legislation applies, what is the overall experience in this field?*

4. *For the States Parties to the ETS 099, what is your experience in applying Article 3 b)?*

DENMARK

1. Denmark do have regulations on requests for postponement of the application of the sentence and suspended sentence and conditional release. Depending on the personal connection to Denmark, the transfer to Denmark of the said types of judgements are available for a foreign national. However, permanent or usual residence in Denmark is usually a requirement.

The Danish criminal justice system does provide for the enforcement of foreign judgements and probation decisions. The conditions for the different types of enforcement differs depending on the category of country requesting the transfer, and also on the relevant international legal framework.

2. Denmark has not ratified the ETS 051 Convention.

3. Denmark has only experience in handling requests (as both requesting and executing state) for transfer of conditional sentences or conditionally released offenders with Member states in the EU or Nordic Countries (Norway and Iceland). This is based on the fact, that Denmark has only ratified international legal framework on the said types of transfer in the scope of EU and cooperation between the Nordic countries. For transfer cases based on the existing instruments in the EU and between the Nordic countries, the process for the said types of transfers works well.

4. Denmark has ratified the ETS 099 Additional Protocol. However, Denmark has no experience in applying Article 3 b (either as requesting and executing state). Also, Denmark finds the scope of the provision it to be quite unclear.

FINLAND

Reference legislation:
Imprisonment Act
https://finlex.fi/en/laki/kaannokset/2005/en20050767_20230306.pdf

Act on the Enforcement of Community Sanc□ons
https://www.finlex.fi/fi/laki/kaannokset/2015/en20150400_20200345.pdf

1. POSTPONEMENT OF THE APPLICATION OF THE SENTENCE

The Finnish Imprisonment Act permits postponement of enforcement of the sentence on medical grounds and on other than medical grounds.
Medical grounds for postponing the enforcement of the sentence:
If the treatment of a serious illness or a serious injury of a person sentenced to imprisonmentor to a conversion sentence for unpaid fines would be jeopardised if the person was admitted to prison, or if

the person's treatment in prison would cause considerable difficulties, the commencement of enforcement shall be postponed until the impediments to the commencement of enforcement resulting from the state of health of the sentenced person no longer exist. If, at the time when the enforcement could begin, the sentenced person is already in prison or being treated outside prison pursuant to a decision of the prison service authorities, the sentence may be enforced.
A sentenced person who is pregnant may be granted a postponement of enforcement until the person has recovered from the childbirth.

Other than medical grounds for postponing the enforcement of the sentence:
A postponement of enforcement of a prison sentence may be granted to a sentenced person, upon application or with the person's consent, if the postponement could materially decrease the losses or difficulties that an immediate enforcement would cause for the sentenced person, for the person's close relative or other close person, or for the person's employer or other party to whom the work input of the sentenced person is particularly necessary. The maximum duration of a postponement is six months from the determined arrival (=time to arrive to prison to start serving the sentence). A new postponement may only be granted in an exceptional case and on such grounds for which the date of termination is known. The maximum total duration of postponements is one year from the determined arrival time. A decision on the postponement of enforcement of a sentence also postpones the enforcement of other sentences that become enforceable during the postponement.
The enforcement of a conversion sentence for unpaid fines may be postponed on the grounds referred by at most three months.
A postponement must not be granted, if:
1) the sentenced person is on remand due to the matter or ordered to be remanded due to some other matter;
2) there are reasonable grounds to assume that the sentenced person is evading the enforcement or continues criminal activities;
3) the sentenced person has already started to serve the sentence.
The Prison and Probation Service of Finland (formerly called the Criminal Sanctions Agency) is the competent authority to decide on postponement of enforcement. There are no restrictions to apply the postponement of the enforcement of the sentence to foreigners or convicted persons who do not reside in Finland.

SUSPENDED SENTENCE
A form of suspended sentence in Finland is conditional imprisonment. When a prison sentence is convicted conditionally, the enforcement of the imprisonment is suspended for theprobationary period. Probationary period is from minimum one year to maximum three years.
A court may decide to enforce the conditional imprisonment as an imprisonment in case convicted person commits a crime of a certain gravity during the probationary period.

CONDITIONAL RELEASE
Conditional release is granted directly based on law (Criminal Code) after a certain amount of time of the prison sentence has been served. Conditional release is applied to all convicted persons, except for persons convicted for life imprisonment, not depending on e.g. nationality or residence. Conditional release may include supervision. When the conditional release starts, the person is no longer with a status of a prisoner. However, a conditionally released person with supervision will be supervised by the Prison and Probation Service of Finland. The Prison and Probation Service of Finland is the competent authority to define the date of conditional release, and of the supervision.

Life-time prisoners may be granted conditional release by the Helsinki Court of Appeal upon request, yet no earlier than after having served 12 years of imprisonment. Again, same rule applies to foreigners and persons who reside outside of Finland. Before the conditional release from imprisonment it may be possible to grant so called probationary liberty under supervision by the Prison and Probation Service of Finland, no earlier than six months prior to the date of conditional release. However, during this time of probationary liberty under supervision the person is with the status of a prisoner. Prison and Probation Service is authorized to decide on probationary liberty under supervision, and also whether it should be discontinued and the person to be returned to prison until the conditional release starts.

The Prison and Probation Service of Finland (formerly called the Criminal Sanctions Agency) is the competent authority in transfers within the EU and its legislative framework, namely JHA/2008/909 on transfer of sentenced persons (imprisonment) and JHA/2008/497 on transfer of probation measures

and alternative sanctions. The Ministry of Justice is the competent authority in regard with transfer of sentences of other kind of deprivation of liberty than enforcement of a prison sentence in prison and sentences of treatment sanctions within EU, according to JHA/2008/909 on transfer of sentenced persons.

The Prison and Probation Service of Finland is also the competent authority regarding the legislative framework related to transfer of enforcement of sentences and probation between Nordic Countries (Denmark, Finland, Iceland, Norway, Sweden) which differs from the legislative framework applicable otherwise between EU countries.

The Ministry of Justice is the competent authority in all transfers based on the Council of Europe's legal instruments and with third countries. These authorities communicate directly with the authorities of the potential issuing and executing/receiving states.

2. Finland is not a party to the convention and therefore lacks experience regarding its application.

3. There is only limited experience in applying JAH/2008/947 on transfer of probation measures and alternative sanctions with EU countries. No specific problems have been identified in the transfer of a supervision. But it gets more problematic when transferring alternative sanctions, due to the fact that criminal sanctions in this field differ a lot in nature between the countries.

Probation measures and alternative sanctions are transferred only in case the convicted person is found, and basically, only when the convicted person is willing to that.

4. In this regard, we were unable to gather anything to report.

GERMANY

1.1. Suspended sentence

A term of imprisonment not exceeding two years can be suspended on probation under the conditions set out in section 56 of the Criminal Code (*Strafgesetzbuch*, StGB). Such suspension is subject to various conditions, depending on the amount of the sentence imposed.

Where a court suspends a penalty on probation, it simultaneously sets the probation period, which must be between two and five years. In accordance with section 56d of the Criminal Code, the court may also place the convicted person under the supervision of a probation officer and may, in accordance with section 56c of the Criminal Code, also issue directions, amongst other measures. The aim of issuing directions is to help the convicted person in future live a life free of crime. Besides renewed offending, a breach of directions and of probationary supervision can lead to the suspended sentence being revoked in accordance with section 56f (1) of the Criminal Code. Nationality and place of residence do not, in principle, have any role to play when it comes to whether or not a sentence is to be suspended on probation, meaning that asentence may also, under the relevant statutory conditions, be suspended in the case of convicted persons who are not ordinarily resident in Germany. Uncertain job prospects owing to a lack of language skills or a lack of social ties may at most be indirectly taken into account in the context of the requisite overall assessment of a person's rehabilitation prospects, although such factors do not, per se, take place of residence or nationality as their point of reference. Under certain circumstances, the court is also required to look into whether the suspended sentence can be monitored abroad. In addition, no unreasonable demands may, for example, be made regarding the convicted person's lifestyle when issuing directions (section 56c (1) sentence 2 of the Criminal Code). A German higher regional court held that the direction issued to a convicted person resident in Rumania to report to their probation officer in Germany every four weeks to be reasonable, for instance.The English version of the German Criminal Code is available at https://www.gesetzeiminternet.de/englisch_stgb/

2. Postponement of enforcement
Under section 456 of the Code of Criminal Procedure (*Strafprozessordnung*, StPO), enforcement of a sentence may, upon application, be postponed for up to four months in cases of hardship, regardless of a convicted person's nationality and place of residence if immediate enforcement of the sentence

would cause serious detriment to the convicted person or his or her family which is unintended by the penalty. Postponement of enforcement may be granted in respect of all types of offences, additional penalties and incidental legal consequences requiring enforcement. The grant of temporary postponement of enforcement may be linked to payment of a security or to other conditions. In the special case of enforcement of default imprisonment for failure to pay a fine, which takes the place of an unrecoverable fine upon the ordering of enforcement, the enforcement may be dispensed with in full or in part in accordance with section 459f of the Code of Criminal Procedure if it would constitute undue hardship for the person convicted. This provision likewise applies regardless of the convicted person's nationality or place of residence. Where doubts arise when it comes to interpreting a criminal judgment or calculating the punishment imposed, or where objections are raised to the permissibility ofenforcement of a sentence or orders issued by the law enforcement authorities, the court may also order that the course of enforcement be suspended in accordance with section 458 (3) sentence 1 of the Code of Criminal Procedure. This in particular applies where there are doubts as to enforcement of a sentence. Application of this provision is likewise not dependent on the convicted person's nationality or place of residence. The English version of the German Code of Criminal Procedure is available at https://www.gesetze-im-internet.de/englisch_stpo/

Sections 35 and 36 of the Narcotics Act (*Betäubungsmittelgesetz*, BtMG) regulate the possibility of deferring enforcement of a penalty in order to enable a drug-dependent offender to undergo treatment outside of the penal system ("treatment notpunishment"). These provisions are based on the insight that it is significantly more difficult to provide comprehensive treatment options which promise long-term success within the penal system than outside it. Against this backdrop, the Narcotics Act thus, under certain circumstances and in the interests of resocialisation, gives precedence to treatment in a therapeutic facility rather than to enforcement of a penalty. Where someone has been sentenced to a term of imprisonment of no more than two years and the offence was committed on account of drug dependency, then, in accordance with section 35 (1) sentence 1 of the Narcotics Act, the enforcing authority may, with the consent of the court of first instance, defer enforcement of the penalty for amaximum of two years to enable the convicted person to undergo rehabilitation treatment. Under section 35 (3) of the Narcotics Act, this applies accordingly where an aggregate sentence of no more than two years' imprisonment has been imposed orwhere more than two years of an (aggregate) sentence of more than two year's imprisonment remains to be enforced. Where enforcement has been deferred and the convicted person has undergone treatment in a state recognised facility, the time spent undergoing treatment is deducted from the penalty until two thirds of the penalty has been disposed of as a result of that deduction (section 36 (1) sentence 1 of the Narcotics Act). Where, following the deduction, two thirds of the penalty has been disposed of or treatment in a facility at an earlier point in time is no longer necessary, the court suspends enforcement of the remainder of the penalty on probation as soon as this can be justified, having regard to the public's interest in safety (section 36 (1) sentence 3 of the Narcotics Act).Deferment in accordance with section 35 of the Narcotics Act may be granted to all convicted persons regardless of nationality. Significant language deficits may, however, possibly make it more difficult to find a therapy place in Germany or even make it impossible for practical reasons owing to the lack of prospects of success of the treatment. Undergoing treatment abroad is generally likely to be precluded on account of the fact that it cannot be effectively monitored pursuant to sections 35 et seqq. of the Narcotics Act and revoked if treatment is abandoned. The situation is likely to be different in the case of treatment facilities in the European Union insofar as controls and cooperation with the German judicial system are guaranteed, although only few court decisions relating to this issue have as yet been given.

3. Conditional release

Under section 57 (1) sentence 1 of the Criminal Code, the court suspends enforcement of the remainder of a determinate sentence of imprisonment on probation where two thirds of the imposed sentence, but at least two months, has been served, this can be justified having regard to public interests in safety and the convicted person consents thereto. In accordance with section 57 (2) of the Criminal Code, suspension of enforcement of the remainder of a sentence may already be considered after half of a determinate sentence of imprisonment has been served, though at least six months, if the convicted person is serving a first sentence of imprisonment and the term does not exceed two years, or else an overall evaluation of the offence, the convicted person's character and development whilst serving the sentence imposed shows that special circumstances exist and the remaining conditions set out in section 57 (1) of the Criminal Code are met. Where the convicted person has already served at least one year of the sentence imposed, the court typically places the convicted person under the supervision and guidance of a probation officer for all or a part of the probation period (section 57 (3) sentence 2 of

the Criminal Code). Directions may also be issued (section 57 (3) sentence 1 in conjunction with section 56c of the Criminal Code). The above explanations regarding foreign nationals and persons with no place of residence
in Germany thus apply accordingly.

4. Mutual assistance relating to enforcement in criminal matters
Mutual assistance in enforcement matters involving third countries is regulated insections 48 to 58 of the International Mutual Assistance Act (*Gesetz über die internationale Rechtshilfe in Strafsachen*, IRG) in relation to incoming requests and in section 71 IRG in relation to outgoing requests. The equivalent provisions applicable to Member States of the European Union are set out in sections 90l to 90n IRG in relation to outgoing requests and in sections 90a to 90k IRG for incoming requests. Irrespective of the aforementioned regulations for cooperation within the EU (which are based on the Council Framework Decision on Supervision of Probation 2008/947/JHA as amended by Framework Decision 2009/299/JHA) it is essential for incoming requests that any legally enforceable foreign sanction can be enforced, whereby the only decisive factor when taking over the enforcement of an order is whether the order is based on an offence punishable by law. The consent of the person concerned is only relevant if this is expressly provided for by law (pursuant to section 49 (2) IRG if the sentenced person is staying in the foreign state in which the custodial sanction was imposed and pursuant to section 54a IRG if long custodial sanctions are enforced).Enforcement of the sentence can only be considered if constitutional and international law, in particular the ECHR, do not conflict with this. Section 49 IRG is the central provision that regulates the formal and substantive minimum requirements for the permissibility of the enforcement of a foreign judgement. Accordingly, enforcement is only permissible if a full, final and enforceable judgment has been submitted, minimum procedural standards have been observed, there is mutual sanctionability and equivalence of sanctions, no German decision will have a blocking effect (concurrent jurisdiction) and enforcement is not statute-barred under German law (section 49 (1), (4) IRG). Section 49 (3) IRG contains further exceptions for enforcement assistance on humanitarian grounds. Additional admissibility requirements also apply to foreign confiscation orders (section 49 (5) IRG).The Federal Government has transferred the exercise of its competence for incoming requests for mutual assistance to the *Land* governments via the enforcement of foreign judgments insofar as the request for mutual assistance is based on an agreement under international law and that agreement provides for the requisite channels between an authority in the other state and the *Land* government or another *Land* authority as well as, in the case of outgoing requests for mutual assistance in accordance with section 71 IRG and associated requests for transport, to the same extent as incoming requests.
The English version of the Act on International Mutual Assistance in Criminal Matters is available at https://www.gesetze-im-internet.de/englisch_irg/englisch_irg.pdf

2. Since Germany signed the ETS 051 on 30 November 1964 but never ratified it, the Convention never entered into force for the Federal Republic of Germany.

3. Given the required manual evaluation of cases, it is not possible to provide any details regarding any concrete experience in that regard. That applies both to requests within the EU, which in accordance with the provisions of the Council Framework Decision on Supervision of Probation 2008/947/JHA, the relevant EU instrument, are to be forwarded directly to the competent authority – without the involvement of the federal authorities – as well as to cooperation with third countries. Statistics are thus not recorded at the national level.

4. Given that no statistics are recorded, no valid information at the national level can be provided in this regard either.

MOLDOVA

1. According to the national legislation of the Republic of Moldova there are the following legal institutions:
- Conviction with partial suspension of prison sentence execution (art. 90 Criminal Code),
- Conditional release of sentenced people before the term (art. 91 Criminal Code),
- Postponement of the execution of the penalty for pregnant women and persons having children under the age of 8 (art. 96 Criminal Code).

Generally, these provisions can also be applied to foreign citizens who ordinarily do not have their residence in the Republic of Moldova. Despite this, there have been no such cases so far.

The competent authority to decide upon transferring the supervision abroad is the Court. Nevertheless, the authority to decide on the transfer of supervision abroad and to cooperate with foreign authorities is the National Probation Inspectorate (Ministry of Justice being competent only for transmitting and receiving the applications).
Our judicial system provides the enforcement of court decisions and foreign probation decisions on the territory of the Republic of Moldova, which conditions are covered by the Criminal Procedure Code and the Law on international legal assistance in criminal matters.
a) the decision was pronounced by a competent court;
b) the decision is not contrary to the public order of the Republic of Moldova;
c) the decision may produce legal effects in the country according to the national criminal law;
d) the convicted person is a citizen of the Republic of Moldova or is permanently domiciled on its territory, or is a foreign citizen or stateless person with a residence permit in its territory;

e) as regards the act for which the conviction sentence was pronounced, no criminal prosecution is initiated in the Republic of Moldova;
f) the execution of the decision in the Republic of Moldova may support the social reintegration of the convicted person;
g) the execution of the decision in the Republic of Moldova may support the repair of the damage caused by the offense;
h) the duration of the sentence or security measures ordered by decision is more than one year.

The foreign judgment may also be enforced if the convicted person is serving a penalty on the territory of the Republic of Moldova for a crime other than the one established by the sentence whose execution was requested.
Execution of a foreign decision ordering a penalty or a security measure is possible also when the authorities of the Republic of Moldova refuse the extradition of the convicted person, even if the conditions mentioned in letter f) - h) are not met).
2. The experience of the Republic of Moldova in applying the provisions of this Convention is only four procedures.

3. No system already established by a uniform legislation can be outlined, because the casuistry of our state is very low.

4. There is no experience in applying Article 3 letter b) of the above-mentioned Convention.

MONACO

Le système national de justice pénale de la Principauté de Monaco prévoit le sursis à l'exécution d'une peine privative ou restrictive de liberté (article 393 à 395 du Code pénal monégasque) ainsi que la possibilité pour une personne détenue de bénéficier d'une libération conditionnelle (article 409 à 414 du Code pénal monégasque). Ces possibilités bénéficient à toute personne, nationale ou étrangère, dans le respect des conditions imposées par la loi.

Au regard de l'article 414-1 du Code pénal monégasque, le prononcé d'une peine peut être ajourné pour une durée maximale de six mois, selon les critères cumulatifs suivants: "lorsqu'il apparaît que le reclassement du coupable est en voie d'être acquis, que le dommage causé est en voie d'être réparé et que le trouble résultant de l'infraction va cesser".
La juridiction qui décide de cet ajournement peut également soumettre l'intéressé à l'obligation de consigner une somme d'argent, en vue de garantir le paiement d'éventuels dommages et intérêts qui pourraient être accordés mais également le contraindre à des mesures de surveillances et d'assistance prévues par Ordonnance souveraine. (l'article 414-1 et 414-2 du Code pénal monégasque).

Les décisions étrangères peuvent être appliquées sur le territoire monégasque via des demandes d'entraide pénale internationale adressées à l'autorité centrale compétente, à savoir la Direction des Services Judiciaires. Ces demandes seront transmises aux autorités judiciaires pour exécution.

La Principauté de Monaco ne semble pas rencontrer des difficultés particulières en matière d'exécution des peines dans le cadre de la coopération internationale, sauf circonstances exceptionnelles indépendantes de sa volonté ou de la volonté des états requérants ou requis.

THE NETHERLANDS

1. The Dutch legal system knows the legal institution of conditional release and conditional sentence. Suspended sentences and postponement of a sentence are unknown.

Foreigners may also be subject to conditional release and conditional sentences.
The competent authority in the Netherlands is the Public Prosecutor's Office. A special unit within the PPO deals with the enforcement of sentences. They cooperate with foreign competent authorities as well.

In the Netherlands, foreign judgments and probation decisions are also being enforced, if they have been approved by the competent authority. The Dutch Probation Service then executes these decisions.

2. Despite being a State Party to ETS 051, the Dutch authorities have no experience with the application of this convention.

3. In the field of conditional releases and conditional sentences, the Netherlands currently only cooperate on the basis of Framework Decision 2008/947/JHA with other Member States of the EU. This works well, thanks to an active and outreaching competent authority (the special unit of the Public Prosecutor's Office, mentioned earlier).

In addition to that, the Dutch authorities work on the basis of a multilateral Agreement between the probation services of the Netherlands in Europe and the Caribbean countries within the Kingdom of the Netherlands, as the latter are not part of the EU. This also works well thanks to direct communication lines. This form of cooperation applies only to adult offenders.

PORTUGAL

1. I'm not sure I'm able to distinguish between the postponement of the application of the sentence and the suspended sentence. Maybe Mariana explains it more in depth; I read her paragraphs quickly and still remain uncertain about the difference between the two concepts. What I can confirm is:

a) We do have the concepts of suspended sentence and conditional release;
b) In our domestic Law on international cooperation we do have the international cooperation mechanism that enables our Courts to ask for the execution abroad of their decisions, that either have been suspended or in cases when the person has been already conditionally released; the other way round is also previewed and regulated (articles 126 to 144 of Law 144/99).
c) Since it's a traditional form of cooperation it includes the intervention of the central authority and the Minister of Justice (requests addressed to Portugal) and the Courts of Appeal as well, that will decide if the request is admissible or not (this is because there will be a foreign judgement to be executed in Portugal). In the case of out going requests they will be decided by the Judge of the case, sent to the central authority that will decide, using a delegation of competence from the MOJ, on transmitting or not the decisions to be executed abroad;
d) As mentioned before our system contemplates requests addressed to Portugal and in fact article 126 only mentions, as conditions, that the person currently lives in Portugal and that social rehabilitation will be better achieved. Quite simple.

2. Portugal is a State Party to Convention ETS 51 but the experience is pretty limited since it has been rather unusual to find a situation where the State we would like to transmit our decisions to is a State Party of that Convention;

3. The overall experience in this field is very limited, even when stronger instruments have been developed, like it's the case for FWD 2008/947/JHA in the EU;

4. I don't recall any case of appllication of article 3 b) of ETS 099.

TÜRKIYE

1) The Turkish Criminal Justice System provides for the suspension of sentence, suspension of the pronouncement of sentence, conditional release and probation.
Suspension of sentence is a structure which ensures that the imprisonment sentence imposed on the offender for the offence they committed is executed outside the prison under certain conditions. The suspension of sentence is a type of execution of sentences depriving freedom. The offender who is sentenced to a sentence depriving freedom is provided with the opportunity to serve their sentence outside the prison by successfully completing the supervision period. In order to rule for suspension of sentence, certain conditions should be met, and these conditions are enumerated under article 51 of the Turkish Criminal Code:
a) The convict whose sentence is to be suspended should not have been sentenced to a penalty of imprisonment for a term of more than three months for an intentional offence;
b) A sentence of imprisonment for a term of two years or less may be suspended. The upper limit of this term is three years for those under the age of eighteen or over the age of sixty-five at the time of the commission of the offence.
c) The Court should be convinced, as a result of hearing the remorse he expressed during trial, that the offender will not commit further offences in the future.
Suspension of imprisonment sentence may depend upon the condition that compensation is provided to the victim or public, which returns or restores matters to their previous condition or which indemnifies such in respect of all damage caused. In such a case, the execution of the sentence shall continue at the prison until this condition is met. According to article 51 paragraph 2 of the Turkish Criminal Code, "Suspension of imprisonment sentence may depend upon the condition that compensation is provided to the victim or public, which returns or restores matters to their previous condition or which indemnifies such in respect of all damage caused. In such a case, the execution of the sentence shall continue at the prison until this condition is met. Once the condition is met, the offender shall be released from the penal institution immediately, upon a decision of the executive judge."

The Turkish Criminal Code governs a probation period which is not less than one year and not more than three years for the convict whose sentence has been suspended. Article 51 paragraph 3 of the Turkish Criminal Code sets out this provision clearly. According to the mentioned article, "A probation period which is not less than one year and not more than three years shall be specified for the offender whose sentence has been suspended. The lower limit of this period shall not be less than the term of imposed sentence."

Within the probation period, the court may decide that an offender, who does not have a profession or trade, shall attend an educational program for educational purposes; an offender, who possesses a profession or trade, shall work in a public or private institution under the supervision of another person who has the same profession or trade in return for remuneration; an offender, who is under the age of eighteen, shall attend an educational institution, which provides accommodation when necessary, in order to acquire a profession or trade. The court may also assign an expert to counsel the offender within the probation period.

If the convict whose sentence has been suspended does not commit an intentional offence and complies with the imposed conditions during the probation period, then the sentence shall be regarded as served.

The suspension of pronouncement of sentence is the suspension of pronouncement of sentence for 5 years if the sentence imposed on the accused is imprisonment for 2 years or less or a judicial fine and the necessary conditions are met. The conditions of the suspension of pronouncement of sentence is laid down in article 231 of the Turkish Criminal Procedure Code.

Accordingly:
a) The accused must not have been convicted for an intentional offence previously.
b) The court has to reach the belief that the accused shall not commit further offences.
c) The accused must accept the judgement on suspension of pronouncement of sentence ruled concerning them.

If the accused commits a new offence intentionally within the 5-year probation period and acts in violation to the obligations regarding the probation measure, the Court shall pronounce the judgement. In the judgement of which pronunciation is decided to be suspended, the imprisonment sentence cannot

be postponed and cannot be converted into alternative sanctions if it is short-term. In addition, if the accused commits an intentional offence during the probation period, it cannot be decided to suspend the pronouncement of the judgement again due to the intentional offence committed.
If the accused does not commit an intentional offence within the 5-year probation period and complies with the probation conditions, then it shall be as if they never committed an offence, the case and the sentence shall be dismissed.

The conditional release is serving by the convict, who has been sentenced to imprisonment sentence, the remaining part of the imprisonment sentence outside the prison provided that they serve a part of their sentence specified under the law in good behaviour.

In this case, the convict is entitled to serve the remaining part of their sentence in the community if they fulfil certain conditions.

Conditional release aims to encourage the reintegration of the convict into society and the continuation of their good behaviour.
Conditional release is regulated under articles 107 and 108 of the Law on the Execution of Penalties and Security Measures.
In order to benefit from conditional release, the following conditions must be met:
a) The convict must serve a part of their sentence in prison. The period the convict has to spend in prison shall be calculated according to the nature and amount of the imposed imprisonment sentence.
b) The convict must show good behaviour in prison. Good behaviour includes such matters as the convict's compliance with the rules of the prison, not committing disciplinary offences, participating in work and education activities.
c) The court must decide on conditional release concerning the convict. While deciding on the conditional release of the convict, the court shall take into consideration factors such as the nature of the offence, the way it was committed, the situation of the victim, the personality traits and social relations of the convict.

As a rule, execution rate for the conditional release is defined as half. However, as an exception there are also execution rates implemented as 2/3 and ¾.
When a conditional release decision is ruled, the court determines a period of probation for the convict. This period may not be less than one year and not more than three years, and may not be less than the sentence imposed.

Certain conditions are imposed on the convict within the probation period. For example, the convict who does not have a profession or trade continues a vocational programme, the convict who has a profession or trade is employed in a public institution or privately under the supervision of another person performing the same profession or trade.

The court may also assign an expert to counsel the convict within the probation period. This expert advises the convict to keep away from circles where he could acquire bad habits and to lead a good life with awareness of responsibility, meets and consults with the officials of the institution where the convict is receiving training or with the persons together with whom he is working, and draws up and submits to the judge quarterly reports on the convict’s behaviour, his social adaptation and the progress in his awareness of responsibility.

If the convict does not commit a new offence or complies with their obligations during the probation period, the suspended sentence shall be completely cancelled. However, if a new offence is committed during the probation period or if the obligations are not complied with, the suspended sentence shall be executed.
Probation is an alternative punishment and execution system in which all kinds of services and resources are provided in order to improve and reintegrate the suspect, accused or convict into the society through probation and supervision in the community during the probation period determined by the law. Probation is governed under article 105/A of the Law on the Execution of Penalties and Security Measures.

In order to benefit from probation, the following conditions must be met:
a) The convict who wants to benefit from probation must be serving their sentence in an open prison.
b) There must be one year or less before the convict’s conditional release.

c) The convict must be in good behaviour and request to be placed on probation.
There is no difference between Turkish and foreign citizens in the implementation of the above-mentioned legal structures. Since the aforementioned provisions do not contain any restrictive phrases for foreigners, every convict has the right to benefit from the aforementioned regulations when the conditions are met. Similarly, article 2 paragraph 1 of the Law on the Execution of Penalties and Security Measures governs that the rules concerning the execution of penalties and security measures shall be implemented without discrimination between convicts as regards race, language, religion, denomination, nationality, colour, gender, birth, philosophical belief, ethnic or social origin, political or other opinion, economic power or other social status, and without making any privilege to anyone.

2) Our country is not a party to the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.

3) There are no practical examples in this regard.

4) There are no practical examples in this regard.

UKRAINE

1. The Ukrainian national criminal justice system provides for such legal institutions.
According to Article 536 of the Criminal Procedural Code of Ukraine (hereafter the CCP of Ukraine) the execution of a sentence in the form of correctional works, arrest, limitation of liberty, keeping in military-disciplinary unit of military servants, deprivation of liberty may be postponed in the following cases:

1) serious illness of the sentenced person, which prevents from serving the punishment – until his/her recovery;

2) pregnancy of sentenced woman or where the sentenced person has a minor child – for the period of pregnancy or until the child reaches the age of three, unless the person was sentenced for the crime which was especially grave;

3) where immediate enforcement of the sentence can entail exceptionally grave consequences for the sentenced person or his/her family because of special circumstances (fire, natural disaster, serious disease or death of the only family member who is able to work, etc.) – for the time prescribed by court but not exceeding one year after the judgment has entered into legal force.

2. Postponement of execution of a sentence shall not be permitted in respect of persons sentenced (except as provided for by clause 2, part 1 of this Article) for grave crimes and special grave crimes, irrespective of the term of punishment.

Chapter XII of the Criminal Code of Ukraine (the CC of Ukraine) provides for the rules for exemption from punishment and its serving.
According to Article 75 «Release from serving a sentence with probation» of the CC of Ukraine if the court, except for cases of conviction for a corruption criminal offense, a criminal offense related to corruption, a criminal offense provided for in Articles 403, 405, 407, 408, 429 of this Code, committed under martial law or in a combat situation, a violation traffic safety rules or the operation of transport by persons who drove vehicles under the influence of alcohol, drugs or other intoxication or were under the influence of drugs that reduce attention and reaction speed, torture provided for in part three of Article 127 of this Code, when imposing punishment in the form of correctional work, service restriction for military personnel, restriction of liberty, as well as deprivation of liberty for a term of no more than five years, taking into account the severity of the criminal offense, the character of the offender and other circumstances of the case, concludes that it is possible to reform the convict without serving the sentence, it may decide on release from serving a sentence with probation.

2. The court makes a decision on release from serving a sentence with probation in the case of approval of a reconciliation agreement or an admission of guilt, if the parties to the agreement have agreed on a punishment in the form of correctional labor, service restriction for military personnel, restriction of freedom, imprisonment for a term of not more than five years, and exemption from serving a sentence with probation was also agreed upon.

3. In the cases provided for by parts one and two of this Article, the court decides to release the convicted person from serving the prescribed punishment, if he/she does not commit a new criminal offense during the specified probation period and fulfills the assigned to him/her duties. The duration of the probation period and the duties imposed on a person released from serving a sentence with probation are determined by the court.

4. The probation period is established by the court and lasts from one to three years.

Under Article 76 of the CC of Ukraine in the case of release from serving a sentence with probation, the court imposes the following duties on the convicted person:
1) periodically appear for registration with the authorized body on probation;
2) notify the authorized probation authority about a change of place of residence, work or study.
2. The court may impose other obligations and limitations as provided for in Article 911 of this Code on persons convicted of crimes related to domestic violence.
3. The court may additionally impose the following obligations on persons released from serving a sentence with probation:
1) apologize to the victim publicly or in any other way;
2) not to travel outside of Ukraine without the consent of the authorized probation authority;
3) to be employed or, under the direction of the authorized probation authority, apply to the state employment service for registration as unemployed and get a job if he/she is offered a suitable position (job);
4) carry out measures provided for by the probation program;
5) undergo a course of treatment for mental and behavioral disorders resulting from the use of psychoactive substances or a disease that poses a health hazard to other persons;
6) to comply with the requirements established by the court regarding the performance of certain actions, restrictions on communication, movement and leisure activities.
On a person released from serving a sentence with probation, the court imposes the duties provided for in the second part of this Article, which are necessary and sufficient for his/her correction, taking into account the severity of the crime committed, the character of the offender and the circumstances mitigating or aggravating the punishment.

4. Supervision over persons released from serving a sentence with probation is carried out by the authorized probation authority at the convict's place of residence, work or study, and in the case of convicted servicemen - by the commanders of military units.

In case of release from serving a sentence with probation, additional punishments may be imposed, such as fine, deprivation of the right to occupy certain positions or engage in certain activities, and revocation of a military or special title, rank, grade or qualification class (Art. 77 of the CC of Ukraine).

Article 78. «Legal consequences of release from serving a sentence with probation»:
1. Upon the expiry of a probation period, a convicted person, who complied with obligations imposed on him/her by a court and committed no further criminal offences shall be discharged from the punishment imposed by a court.
2. Where a convicted person fails to comply with obligations imposed on him/her, or regularly commits offences that entail administrative penalties and demonstrate his/her unwillingness to reform, a court shall send the convicted person to serve the imposed sentence.
3. Should a convicted person commit another crime while on probation, a court shall impose a punishment on him/her pursuant to Articles 71 and 72 of this Code.

Article 81. Parole

1. Parole may be applied to persons who serve their sentences of correctional labour, or service restrictions for military servants, or limitation of liberty, or custody of military servants in a penal battalion, or deprivation of liberty. A person may also be fully or partially paroled from serving his (her) additional punishment.
(according to the Decision of the Constitutional Court of Ukraine № 6-p(II)/2021 from 16.09.2021 Para 1 of Article 81 is declared as not in compliance with the Constitution of Ukraine (is unconstitutional) in view, that it makes impossible to be applied thereof to persons sentenced to life imprisonment)
2. Parole may be applied, if a sentenced person displays decent behaviour and diligence in work as a proof of his (her) reformation.

3. Parole may be applied after a sentenced person has actually served:

1) not less than half of the term imposed by a court for a misdemeanor or minor crime, except for corruption or related to corruption criminal offences, violation of rules of traffic safety or use of transport by persons who have driven under the influence of alcohol, drugs or other intoxication or have been under the influence of drugs that reduce attention and speed of reaction, as well as for a reckless grave crime;
2) not less than two-thirds of the term imposed by a court for corruption minor crime or related to corruption criminal offence, violation of rules of traffic safety or use of transport by persons who have driven under the influence of alcohol, drugs or other intoxication or have been under the influence of drugs that reduce attention and speed of reaction, intended grave crime or reckless especially grave crime, and also where that person had previously served a sentence of deprivation of liberty imposed for an intentional criminal offence but before the conviction had been cancelled or revoked committed another intentional criminal offence, for which was sentenced to deprivation of liberty;
3) not less than three quarters of the term imposed by a court for an intentional especially grave criminal offence, or in case the life imprisonment was changed to the punishment of imprisonment for a particular term, or of the term imposed upon a person who had been previously paroled but committed another intentional criminal offence during the remaining part of the sentence.
4. Where a paroled person commits another criminal offence during the remaining part of the sentence, a court shall impose a punishment under the rules provided for by Articles 71 and 72 of this Code.

Moreover, Article 82 «Replacement of punishment or its unserved part with a milder one», Article 83 «Exemption from serving a sentence for pregnant women and women with children under the age of three», Article 84 «Exemption from punishment due to illness», Article 85 «Exemption from punishment on the basis of the law of Ukraine on amnesty or the act of pardon», Article 86 «Amnesty», Article 87 «Pardon» of the CC of Ukraine foresee the relevant rules for exemption from punishment and its serving.

If so, which are the competent authorities to decide upon transferring the supervision abroad, and cooperate with foreign authorities?
According to Article 548 Para 1 of the CPC of Ukraine a request (order, motion) for international cooperation shall be drawn up by an authority conducting criminal proceedings or a body authorized by that authority in accordance with the requirements of this Code and the respective international treaty of Ukraine, or in accordance with this Code where no such treaty applies.
According to Chapter X of the Instruction, approved by the Order of the Ministry of Justice of Ukraine from 19.08.2019 № 2599/5, a request for recognition and enforcement of a judgment of a court of Ukraine on the territory of a foreign State is drafted by the court of Ukraine, which rendered the judgment, in accordance with the requirements of the laws and international treaties of Ukraine.
A request for recognition and enforcement of a judgment of a court of Ukraine on the territory of a foreign State must meet the requirements of the legislation and/or international treaty of Ukraine applicable in a specific case.
The court of Ukraine, which passed the sentence, sends to the Ministry of Justice a request for the recognition and enforcement of the sentence of the court of Ukraine on the territory of a foreign State.
The Ministry of Justice checks the compliance of the request with the conditions and requirements of the laws and international treaties of Ukraine. The Ministry of Justice sends the request of the court of Ukraine in accordance with the requirements of the international treaty of Ukraine to the foreign authorized (central) body directly or through diplomatic channels.
If it is necessary to provide additional information at the request of the requested State, the Ministry of Justice shall notify the court of Ukraine, which requested the recognition and enforcement of the judgment of the court of Ukraine on the territory of a foreign State. The Court of Ukraine shall send additional information requested by a foreign State to the Ministry of Justice in compliance with the requirements stipulated in the provisions of laws and international treaties of Ukraine.

As an administering (residence) State, does your national criminal justice system provide for the enforcement of foreign judgments and probations decisions and if so under which conditions?
Criminal Procedural Code of Ukraine
Article 602 «Grounds and procedure for enforcement of judgments of courts of foreign States»
1. A sentence delivered by a court of a foreign State may be recognised and enforced on the territory of Ukraine in cases and in the scope, as prescribed by the international treaty, ratified by the Parliament of Ukraine. 2. ……..

3. Request for execution of foreign State's court sentence, except for a request to transfer a sentenced person shall be considered by the Ministry of Justice of Ukraine within thirty days after receipt of the request. Where the request and additional materials has been received in a foreign language, this time limit shall be extended to three months. 4. When considering a request for the enforcement of a sentence delivered by a foreign court in accordance with part 3 of this Article, the Ministry of Justice of Ukraine shall determine whether grounds for granting request for the enforcement of a sentence exist under the appropriate international treaty of Ukraine. For this purpose, the Ministry of Justice of Ukraine may request and obtain the necessary materials and information in Ukraine or from the competent authority of the foreign State.
5. Having established that the request for recognition and enforcement is consistent with the provisions of the international treaty of Ukraine, the Ministry of Justice of Ukraine shall forward the motion for recognition and enforcement of the sentence of the court of foreign State to a court and submit the obtained materials thereto.
6. Where the request is denied, the Ministry of justice of Ukraine shall inform the requesting foreign authority thereon, with explanation of grounds for refusal.
7. Sentences delivered by courts of foreign States in absentia, that is without participation of the person concerned in criminal proceedings, except when the sentenced person was served a copy of the sentence and given the possibility to appeal the sentence, shall not be enforced in Ukraine. A request for execution of a sentence imposed by a foreign court may be denied, where such execution contradicts any obligations of Ukraine under its international treaties.
8. The issue of recognition and enforcement of a sentence delivered by a court of foreign State in part of a civil action shall be disposed as prescribed by the Civil Procedure Code of Ukraine.
9. In cases provided for by the international treaty, ratified by the Parliament of Ukraine, if a sentence of foreign court envisages a punishment in the form of imprisonment, the Ministry of Justice of Ukraine shall send a certified copy of the request as specified in this Article, to a public prosecutor to request an investigating judge to impose a measure of restraint until the execution of the sentence of a foreign court is decided thereon.
Rules of consideration by Ukrainian court of the issue of enforcement of a sentence of foreign State's court are provided for by Article 603 of the CCP of Ukraine. The Ministry of Justice of Ukraine shall inform the requesting State on the results of enforcement of the sentence of the foreign State's court (Article 604 of the CCP of Ukraine).

According to Chapter IX of the Instruction, approved by the Order of the Ministry of Justice of Ukraine from 19.08.2019 № 2599/5, at the request of the authorized (central) body of a foreign State and on the basis of an international treaty of Ukraine, which contains relevant provisions, the judgment of a court of a foreign State may be recognized and executed in part of supervision over a person on the territory of Ukraine to promote correction and social readaptation of a citizen of Ukraine, as well as supervise his/her behavior.

The Ministry of Justice, upon receiving such a request, in order to verify compliance with the conditions under which such a request may be granted, requests from State Migration Service of Ukraine, its territorial bodies, registration bodies and other competent bodies of Ukraine information to verify a person's citizenship of Ukraine, to establish the registered place of residence, the actual whereabouts of the person, receives the necessary information from the information resources of the unified information system of the Ministry of Internal Affairs of Ukraine, other State electronic information resources of State bodies.
After receiving of the information requested, the request for supervision of the authorized (central) body of a foreign State, is further considered according to the general rules, applied when processing the requests for enforcement of the foreign States' sentences.
Also, according to Chapter IX of the mentioned Instruction, enforcement of a judgment of a court of a foreign State is possible if: 1) the act, as a result of which a sentence was passed, is recognized as a crime according to the Criminal Code of Ukraine or would be a crime if it was committed on the territory of Ukraine; 2) the convicted person is a citizen of Ukraine and/or lives or whose property is located on the territory of Ukraine; 3) the statutes of limitations for execution of the guilty verdict according to the legislation of Ukraine and the sentencing State have not expired; 4) if there are other grounds stipulated by the international treaty of Ukraine.

2.Ukraine is a Party of the ETS 051. Within implementation of the ETS 051 the following statistics of the MoJ of Ukraine is available:

in 2020 the MoJ of Ukraine forwarded 1 Ukrainian judicial request to the MoJ of Moldova (according to the Moldavian response the person concerned has passed away);
in 2021 the MoJ of Ukraine: forwarded 2 Ukrainian judicial requests to the MoJ of Moldova
(1 request is still under consideration; 1 request – the Moldavian Side informed that the value of theft is not criminally liable in Moldova);
in 2022 the MoJ of Ukraine received 1 Ukrainian judicial request from the MoJ of Moldova (additionally the Moldavian Side was requested to provide the information on the date of entry of judgment into legal force and confirmation of delivery of the copy thereof upon the offender, or about his participation in criminal proceedings; currently the Moldavian judicial request with the supporting documents is under consideration of the Ukrainian court to render the decision on the possibility of enforcement of supervision measures).
in 2023 the MoJ of Ukraine: forwarded 1 Ukrainian judicial request to the MoJ of Slovakia for taking over enforcement of supervision measures (information on the Slovak decision thereon has not been received yet); received 4 Slovak judicial requests (2 requests were granted by the competent Ukrainian courts; concerning 1 request - the MoJ of Ukraine requested from the Slovak Side the additional information on the participation of the offender in criminal proceedings or confirmation of the delivery of the judgment's copy, texts of the Slovak Criminal Code provisions, information on the limitation periods for sentence enforcement, clarification on the requested duties to enforced within supervision, unexecuted period of supervision (the same information was also requested concerning mentioned granted Slovak requests); concerning 1 request - the MoJ of Ukraine on 23.02.2024 received from the Slovak Side the additional information on clarification, what type of assistance under Article 5 Para 1 of the ETS 051 is requested by the Slovak Side, as far as the offender was brought to criminal responsibility in Ukraine for another crimes after the Slovak supervision was applied; consideration by the Ukrainian Side is currently pending).

3. In 2020 the Ukrainian Side received 1 Bulgarian judicial request (the MoJ of Ukraine in view of Article 602 Para 1 of the CPC of Ukraine returned the request, as it was forwarded without reference to any international treaty thereon).

In 2021 the MoJ of Ukraine received 1 Romanian judicial request, which was returned to the MoJ of Romania, as far as, inter alia, driving a motor vehicle in a state of alcohol intoxication is not criminally liable in Ukraine.

In 2022 the MoJ of Ukraine forwarded 2 Ukrainian judicial requests (1 request - to the MoJ of Lithuania, which was returned due to reference of the Ukrainian court to the ETS 070; 1 request - to the MoJ of Hungary, which was returned due to absence of valid international treaty between Ukraine and Hungary on cooperation on supervision measures, as well as – absence of relevant provisions in the Hungarian domestic legislation thereon, so that there are no legal grounds to take over enforcement of supervision measures, in particular on the basis of reciprocity).

In 2023 the MoJ of Ukraine forwarded 1 Ukrainian judicial request to the MoJ of Poland, which in response informed that the issue will be considered after the 19.09.2023 Protocol between Ukraine and the Republic of Poland amending the Treaty between Ukraine and the Republic of Poland on legal assistance and legal cooperation in civil and criminal matters from 24.05.1993 (regulating cooperation on enforcement of foreign not related to imprisonment punishments) becomes valid.

4.
1. In 2022 the MoJ of Ukraine initiated before the MoJ of the Kingdom of Spain a request for taking over the supervision over a Spanish national, sentenced in Ukraine to deprivation of liberty with release from serving the sentence with the probation period. In response in 2023 the MoJ of the Kingdom of Spain referring to the EST 030 returned the Ukrainian judicial request, as far as it was not furnished with the translation into Spanish language in accordance with relevant declaration of Spain to the Convention.
2. In 2023 the MoJ of Ukraine initiated before the MoJ of the Republic of Turkiye a request for taking over the supervision over a Turkish national, sentenced in Ukraine to deprivation of liberty with release from serving the sentence with the probation period. In 2024 with reference to Article 3 Para 1(b) of the ETS 099 the MoJ of Ukraine requested to inform on the position of the Turkish Side following consideration of the request for supervision.