

Strasbourg, 9 September 2024

PC-OCMod(2024)01rev2

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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**

Document prepared by the Secretariat on the basis of replies to the questions contained in the discussion paper prepared by Mariana Radu (Romania)

## 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)?

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### **AUSTRIA**

1. The AT Penal Code uses both the institutions of suspended sentences and conditional release, a postponement of the application of the sentence is foreseen in the juvenile justice act and for reasons

of serious health problems as regulated in the Federal Law on the execution of criminal sentences. These institutions are available without regard to the citizenship or domicile of the sentenced person.

The Court competent for the execution of sentences has to take the decision to transfer the supervision abroad and has to take the necessary steps towards the foreign requested authority.

For incoming requests for supervision, the Austrian Federal Law on Extradition and Mutual Legal Assistance sets up the following rules:

#### *Taking over Surveillance Operations*

##### *Prerequisites*

§ 61. *Upon request by another State, the surveillance of a person shall be admissible, who was convicted by a foreign court with final and enforceable effect, when imposing a punishment has been deferred on condition, or when a punishment or preventive measure was suspended on probation, or when the person was released on condition from a custodial sentence or a preventive measure involving deprivation of liberty, provided that*

- 1. the decision of the foreign court was taken in proceedings that complied with the principles set forth in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958,*
- 2. the conviction was for an act that is subject to a court punishment under Austrian law,*
- 3. the conviction was not for one of the punishable acts listed in § 14 and § 15,*
- 4. the convicted person is not prosecuted for the act in Austria, was not convicted or acquitted with final and enforceable effect or otherwise exempted from prosecution for it in Austria,*
- 5. the convicted person has his/her domicile or place of residence in Austria.*

##### *Surveillance Measures*

§ 62. *Surveillance shall deter the offender from further acts sanctioned by punishment. To the extent necessary or expedient, the measures provided for under Austrian law (§ 51 and § 52 of the Criminal Law Code) shall be ordered, giving due consideration to the foreign court decision.*

##### *Competences and Procedures*

§ 63. (1) *The Federal Ministry of Justice shall forward requests to take over surveillance operations to the competent court (paragraph (2)). In the event that a request cannot give rise to a surveillance operation for one of the reasons listed in paragraphs § 2 and § 3 (1 or if the request is not suited for lawful processing, the Federal Minister of Justice shall refuse further processing of the request. At any stage of the procedure, the Federal Minister of Justice may demand additional documents from the State requesting the taking over of the surveillance operation, either at his/her own initiative or upon application by the court.*

(2) *The court in whose district the convicted person has his/her domicile or place of residence shall have local jurisdiction to decide on the request for surveillance, as well as to order the surveillance measures. If under Austrian law the punishable act underlying the foreign conviction comes under the competences of local courts, a local court shall be responsible for ordering the required measures; otherwise a single judge of a regional court shall have the requisite competences.*

(3) *The Federal Minister of Justice shall inform the requesting State about the decision on the request for taking over the surveillance operation, as well as of the measures ordered on the basis of this request, using the established channels of communication.*

In the framework of EU-Member States the FD 2008/947/JHA applies as implemented in the Austrian Federal Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union.

2. Austria has ratified the convention, there are, however, very few cases of application due to the fact that the number of ratifications is rather low.

3. From time to time Austria had successful cases of the supervision of orders imposed when conditional release was granted applying the principle of reciprocity. The most common obstacle is the diversity of concepts of measures or orders and the lack of harmonization in this field. Different rules on costs, e.g. for medical therapies in drug cases, can also hinder an efficient cooperation.

4. Whenever information is needed during the phase of the execution of a sentence or when deciding on conditional release the MLA requests are usually based on the Protocol ETS 099. The flow of information is usually not problematic, the transfer of supervision, however, is usually not based on this provision.

## **CZECHIA**

1 The Czech Republic legal system includes the institutes of conditionally suspended sentence of imprisonment and the conditional release from execution of imprisonment, both of which are regulated in very extensive manner (see part A. and B. below). These institutes are available to any sentenced persons based on the conditions specified further. Concerning the possibility to transfer supervision of measures and restrictions imposed as a part of conditionally suspended sentence or conditional release from its execution, it is the court deciding in the particular criminal case, which is competent to decide on the transfer of supervision. As an administering state, the Czech Republic may take over the execution of foreign judgements and supervision measures and restrictions under the condition that such foreign judgment is recognized and ordered to be executed in the territory of the Czech Republic by decision of the competent court (in the Czech Republic).

2 The Czech Republic is a party to the CoE Convention ETS 051, however our experience with its application is limited due to the low number of parties outside the European Union, whereas the transfer of supervision measures with European Union Member States is regulated by the respective EU legal instrument.

3 N/A.

4 The Czech Republic is a party to the Additional Protocol ETS 099, however our experience with application of Article 3 (b) is also very limited.

### **A. Conditional sentences to imprisonment**

Conditional sentencing can be used when a prison sentence is suspended for a probationary period from one to five years, leaving the sentenced person at liberty. The court may impose a suspended sentence if, having regard to the offender's person and circumstances, in particular taking into account his or her previous life and the environment in which he or she lives and works, and the circumstances of the case, it reasonably considers that the execution of the sentence imposed is not necessary in order to influence the offender to lead a proper life. However, this institution of criminal law may be used only in the case of a custodial sentence and only if it does not exceed three years.

In the case of a suspended sentence, the convicted person may also be subjected to reasonable restrictions and reasonable obligations in order to lead a proper life (e.g. the obligation to undergo work training, to refrain from visiting inappropriate environments, to apologise to the victim, etc.), as well as the obligation to compensate for any damage, to make amends for non-pecuniary damage or to surrender the unjust enrichment resulting from the offence. If there is a need for increased monitoring and control of the offender's behaviour, probation supervision may also be imposed for a specified probationary period.

As can be seen from the legal provisions below, the nationality of the convicted person or his/her place of residence is not mentioned as a formal condition or criterion for the possibility of imposing a

suspended prison sentence, although the place of residence of the person may play a significant role with regard to possible restrictions and obligations within the stipulated probationary period.

## Criminal Code

### Conditionally Suspended Sentence of Imprisonment

#### Section 81 Conditional Suspension of Execution of a Sentence of Imprisonment

(1) The court may conditionally suspend execution of a sentence of imprisonment not exceeding three years, if with regard to the character and circumstances of the offender, especially to his previous life and surroundings he works and lives in, and to circumstances of the case, the court has a reasonable belief that execution of the sentence is not necessary to induce the offender to lead an upright life.

(2) Permission of conditional suspension of execution of a sentence of imprisonment will not apply to execution of other sentences imposed in parallel to this sentence.

#### Section 82 Probation Period, Adequate Restrictions and Duties

(1) When imposing suspended sentence, the court shall set a probationary period of between one and five years, but not for a period shorter than the length of the suspended sentence of imprisonment; the probationary period shall commence upon the legal effect of the judgment.

(2) The court may impose adequate restrictions and duties referred to in Section 48 (4) to the conditionally sentenced person aimed at inducing him to lead an upright life; generally will the court also order him to compensate the damage or remedy the non-material harm caused or to surrender any unjust enrichment obtained through the criminal offense according to his possibilities.

(2) In the case of suspended sentencing, the court may order the offender to reside in a specified household or part thereof for a specified period of time and during a specified part of the probationary period following the commencement of the probationary period. The total duration of the suspended sentence in the designated household or part thereof may not exceed one year, even if a longer period of probation is imposed.

(3) The court may impose on the conditionally sentenced person reasonable restrictions and reasonable obligations referred to in section 48(4) aimed at leading a proper life; as a rule, it shall also order him to compensate to the best of his ability for the damage or non-pecuniary damage caused by the offence or to hand over the unjustified enrichment obtained by the offence.

(4) If an offender at the age close to age of juveniles is concerned, the court may, in the interest of using educational influence of a family, school and other subjects, impose either individually or in parallel to adequate restrictions and duties referred to in Section 48 (4) also some of rehabilitation measures provided for in the Justice over Juveniles Act, while using the according conditions stipulated for juveniles.

(5) The time for which has a conditionally sentenced person lead an upright life within a probation period and complied with the prescribed conditions will be counted into a probation period newly set upon suspending a sentence for the same deed or into a probation period set upon imposition of a cumulative or aggregate sentence or a joint sentence for continuation in a criminal act.

(5) The period of time during which the conditionally sentenced person has led a proper life during the probationary period and has complied with the conditions imposed shall be counted towards the probationary period newly imposed on the conditional sentence for the same act or towards the probationary period imposed on the imposition of a summary or aggregate sentence or a joint sentence for the continuation of the offence; where the court again imposes an obligation to reside in a specified household or part thereof for a specified period of time, the period during which the convicted person has duly complied with that obligation shall be counted towards the duration of that obligation.

#### Section 82a

#### Removal of reasonable restrictions, reasonable obligations and educational measures

If the conditionally sentenced person is leading a proper life and has shown improvement in the performance of his or her duties, the court may revoke the reasonable restriction, reasonable obligation or educational measure imposed if he or she can be expected to lead a proper life without it; the court may take this decision at the earliest after one third of the probationary period has elapsed, but at least after six months. The probationary period imposed shall remain unaffected by the decision under the first sentence.

#### Section 83 Decision on Suspended Sentence

(1) If a conditionally sentenced person has lead an proper life within the probation period and complied with the prescribed conditions, the court will pronounce him or her as approved; otherwise will it decide, possibly also in the course of the probation period, that the imposed sentence will be executed. In exceptional cases may the court, with regard to circumstances of the case and the character of the sentenced person, keep the suspended sentence in effect even though the sentenced person gave reason to ordering execution of the sentence, and

a) order supervision over the sentenced person,

b) adequately prolong the probation period, however by no more than two years, whereas it may not exceed the upper limit of the probation period stated in Section 82 (1), or

c) impose adequate restrictions or duties referred in Section 48 (4) to the convict that have not been imposed so far to induce the convict to lead a proper life.

(d) to impose educational measures not yet imposed pursuant to section 82 (4) if he or she is close to the age of the juvenile; or

(e) provide that the conditionally sentenced person shall reside in the specified household or part thereof pursuant to section 82 (2).

(2) For performing supervision will apply Sections 49 to 51.

(3) If the court has not rendered a decision according to sub-section (1) without any fault of the conditionally sentenced person, he will be considered as approved.

(4) If the court pronounced the conditionally sentenced person as approved, or if he is considered as approved, he will be regarded as if he was never convicted.

(5) If the court decides that the sentence will be executed according to sub-section (1), it will also decide on the manner of its execution.

#### Section 84 Conditional Suspension of Execution of a Sentence of Imprisonment with Supervision

If it is necessary to increasingly monitor and control the behavior of an offender and provide him with necessary care and assistance during the probation period, the court may, under the conditions referred to in Section 81 (1), conditionally suspend execution of a sentence of imprisonment not exceeding three years while ordering supervision over the offender. For performing the supervision will apply Sections 49 to 51 accordingly.

#### Section 85 Probation Period, Adequate Restrictions and Duties

(1) In the case of a suspended sentence with supervision, the court shall set a probationary period of one to five years, but not for a period shorter than the length of the suspended prison sentence; the probationary period shall commence upon the legal force of the judgment.

(2) In the case of a suspended sentence with supervision, the court may order the offender to reside in a specified household or part thereof for a specified period of time and during a specified part of the probationary period following the beginning of the probationary period. The total duration of the

suspended sentence in the designated household or part thereof may not exceed one year, even if a longer period of probation is imposed.

(3) The court may impose on a conditionally sentenced person who has been placed under supervision reasonable restrictions and reasonable obligations referred to in section 48 (4) aimed at leading a proper life; as a rule, it shall also order him or her to make good to the best of his or her ability the damage or non-pecuniary damage caused by the offence or to surrender the unjust enrichment obtained by the offence.

(4) If an offender at the age close to the age of juveniles is concerned, the court may, in the interest of using educational influence of a family, school and other subjects, impose either individually or in parallel to adequate restrictions and duties referred to in Section 48 (4) also some of rehabilitation measures provided for in the Justice over Juveniles Act, while using the according conditions stipulated for juveniles.

#### Section 85a Removal of supervision or reasonable restrictions, reasonable obligations and educational measures

If a conditionally sentenced person who has been placed under supervision leads a proper life during the probationary period and has shown improvement in the performance of his/her duties, the court may revoke the reasonable restriction, reasonable obligation or educational measure imposed if he/she can be expected to lead a proper life without it, or may revoke the supervision imposed if there is no longer a need for increased monitoring and control of his/her behaviour; the court may take this decision at the earliest after one third of the probationary period has elapsed, but at least after six months of the probationary period. The probationary period imposed shall remain unaffected by the decision referred to in the first sentence.

#### Section 86 Decision on Suspended Sentence with Supervision

(1) If a conditionally sentenced person to whom was ordered supervision has lead an upright life and complied with the prescribed terms during the probation period, the court will pronounce him as approved; otherwise it will decide, possibly also in the course of the probation period, that the sentence will be executed. In exceptional cases may the court, with regard to the circumstances of the case and the character of the convict keep the suspended sentence in progress, keep the suspended sentence in effect even though the convict gave reason to ordering execution of the sentence, and

a) impose further duties to the convict within the ordered supervision,

b) adequately prolong he probation period, but no more than by two years, whereas it cannot exceed the upper limit of the probation period stated in Section 85 (1), or

c) impose adequate restrictions or duties referred in Section 48 (4) to the convict that have not been imposed so far to induce the convict to lead an upright life.

(d) to impose educational measures not yet imposed pursuant to section 85 (4) if he or she is close to the age of the juvenile; or

(e) provide that the conditionally sentenced person shall reside in the designated household or part thereof pursuant to section 85 (2).

(2) If the court has not rendered a decision according to sub-section (1) without any fault of the conditionally sentenced person, he will be considered as approved.

(3) If the court pronounced the conditionally sentenced person as approved, or if he is considered as approved, he will be regarded as if he has never been convicted.

(4) If the court decides that the sentence will be executed according to sub-section (1), it will also decide on the manner of its execution.

#### Criminal Procedure Code

## Suspended Sentence of Imprisonment

### Section 329

(1) The presiding judge will regularly, at least once in every six months, ascertain whether the conditionally sentenced persons leads an orderly life and complies with the imposed adequate restriction or adequate obligation or educational measure; this does not apply to adequate restrictions, adequate obligations or educational measures, inspection of which was entrusted to the Probation and Mediation Service, and to an imposed obligation to stay in the determined time in the designated residence or its portion.

(2) If a decision on a suspended sentence was made while at the same time deciding that the conditionally sentenced person must stay in the determined time in the designated residence or its portion, the procedure of performing this obligation will be governed mutatis mutandis by Section 334b to 334e.

(3) The presiding judge may request a public interest association operating at the convicted person's workplace or in the location of their residence for educational cooperation, if they offered a guarantee for the reeducation of the convicted person.

### Section 330

(1) The presiding judge will decide upon a petition of the convicted person, the public prosecutor, or even without such petition in a public session, whether the convicted person has proven themselves, whether the imposed adequate restriction or adequate obligation or an educational measure is to be cancelled, whether the suspended sentence will remain in effect or whether the sentence is to be executed; if the presiding judge decides to dismiss the petition solely on the grounds that the time required by the law for cancelling the adequate restriction or adequate obligation or educational measure has not yet passed, they may do so also outside of public session. The convicted person may file the petition for cancelling the imposed adequate restriction or adequate obligation or educational measure only if they attach a favorable opinion of the probation officer thereto, provided that the probation officer supervises over the adequate restriction, adequate obligation or educational measure; otherwise the presiding judge will not decide on such petition and return it to the convicted person with advice on the necessity to accompany it with the opinion of the probation officer stated above.

(2) In case the petition of the convicted person for cancellation of the adequate restriction or adequate obligation or educational measure is dismissed, the convicted person may re-submit it only after six months after the decision on dismissal came to full force and effect; this does not apply if the petition was dismissed solely on the grounds that the time limit laid down by the law for cancellation of the adequate restriction or adequate obligation or educational measure has not yet passed.

(3) The decision that the conditionally sentenced person has proven themselves and the decision cancelling the imposed adequate restriction or adequate obligation or educational measure may be made by the presiding judge, with a consent of the public prosecutor, outside a public session. When deciding on whether the convicted person has proven themselves, the presiding judge will also take into account the opinion of the public interest association.

(4) A complaint is admissible against the decision according to sub-section (1), which has a dilatory effect.

### Section 330a

(1) When exercising supervision, no other obligations may be imposed to the conditionally convicted person than those stipulated by the law or the convicting judgment.

(2) If the presiding judge deems it appropriate, they will request cooperation of public administration authorities, public interest associations and other authorities, institutions and persons.

(3) Section 330 will apply accordingly to the decision that the conditionally convicted person, who has been under supervision, has proven themselves, that the imposed supervision, the imposed adequate

restriction or adequate obligation or educational measure is cancelled, that the suspended sentence with supervision is to remain in force or that the sentence is to be executed.

(4) The convicted person may file the petition for cancelling the imposed supervision only if they attach a favorable opinion of the probation officer thereto; otherwise the presiding judge will not decide on such petition and return it to the convicted person with advice on the necessity to accompany it with the opinion of the probation officer stated above. A complaint is admissible against this decision, which has a dilatory effect.

#### B. Conditional Release from Execution of Imprisonment

The conditions of conditional release in Section 88 of Act No. 40/2009 Coll., the Criminal Code, are as follows:

After half of the sentence has been served, the convicted person may be released if, in particular, he or she behaves in an exemplary manner while serving the sentence, and from his or her can be expected that will lead an orderly life or the court accepts the guarantee of the civil association.

After half of the sentence has been served, it is possible to release the convicted person for a misdemeanour (unintentional and intentional acts with a maximum sentence of up to 5 years) and to impose a sentence of house arrest, Section 57a.

After one-third may be released the first-time offenders who are not convicted of a particularly serious crime with a maximum sentence of at least 10 years (i.e., the maximum sentence is less than 10 years), Section 88(1)(b),

1. by which death was or should have been caused, unless it is an offence of manslaughter under Section 141 (1),
2. causing or intended to cause grievous bodily harm,
3. which is characterised by its perpetration against a pregnant woman or child,
4. committed as a member of an organized group, in association with an organized group or for the benefit of an organized criminal group, or the particularly serious crime of participation in an organized criminal group (Section 361),
5. committed with intent to enable or facilitate the commission of a terrorist offence, the offence of participation in a terrorist group (Section 312a), the offence of financing terrorism (Section 312d), the offence of supporting and promoting terrorism pursuant to Section 312e (3) or the offence of threatening to commit a terrorist offence (Section 312f), or
6. which is listed in Titles Three, Seven, Nine, Twelve and Thirteen of the Special Part of this Act or in the Section 88 (4).

It is also possible to release a sentenced person from imprisonment before half and one third of the sentence has been served if the application is accompanied directly by an opinion of the prison director on good behaviour (Section 331 (1) of the Criminal Procedure Code. The court may refuse such an application only if it is clear that the sentenced person will not lead a proper life, Section 88 (2) of the Criminal Code.

After two-thirds of the sentence has been served, sentenced person can be released for crimes listed in Section 88 (4) of the Criminal Code, which includes grievous bodily harm, murder, manslaughter, violent crimes or certain forms of rape and sexual abuse.

As can be seen from the legal provisions below, the nationality of the sentenced person or his/her place of residence is not included as a formal condition or criterion for applying for conditional release from imprisonment, although the place of residence may play a significant role with regard to possible restrictions and obligations within the stipulated probationary period.

## Criminal Code

### Section 88 Conditional Release from Imprisonment

(1) The court may release the sentenced person from imprisonment, if after the legal force of the judgment, especially in execution of the sentence, the sentenced person has shown correction by his behavior and fulfilment of his duties and he can be expected to lead a proper life in the future, or the court accepts a guarantee for completing the correction of the convict, and

a) the sentenced person has served at least a half of the sentence imposed or the sentence mitigated by a decision of the President of the Czech Republic, or

(b) a sentenced person who has not been convicted of a particularly serious crime,

1. by which death was or should have been caused, unless the offence is manslaughter under Section 141 (1),

2. which caused or should have caused serious injury to health,

3. the commission of which is characterised by its perpetration against a pregnant woman or child,

4. committed as a member of an organized group, in association with an organized group or for the benefit of an organized criminal group, or the particularly serious crime of participation in an organized criminal group (Section 361),

5. committed with intent to enable or facilitate the commission of a terrorist offence, the offence of participation in a terrorist group (Section 312a), the offence of financing terrorism (Section 312d), the offence of supporting and promoting terrorism pursuant to Section 312e (3) or the offence of threatening to commit a terrorist offence (Section 312f), or

6. which is listed in Titles Three, Seven, Nine, Twelve and Thirteen of the Special Part of this Act or in paragraph 4 of this Section,

and who has not yet served a prison sentence, has served at least one third of the prison sentence imposed or commuted by decision of the President of the Czech Republic.

(2) If a person sentenced for a misdemeanor proved by his or her model behavior and fulfilment of his/her duties that further execution of the sentence is not necessary, the court may conditionally release him even before serving a portion of the sentence of imprisonment required for conditional release according to sub-section (1). The court will not grant a petition of the prison director for conditional release of the sentenced person only in case it is clear that he would not lead a proper life after being released.

(3) In decision making on the conditional release of a person sentenced for a felony, the court will consider also whether the sentenced person has entered the execution of the sentence on time and whether he/ she has fully or partially compensated the damage or other harm caused by the criminal offense or surrendered any unjust enrichment obtained through the criminal offence. If the sentenced person was subject to protective treatment before entering execution of the sentence of imprisonment or in the course thereof, the court will also consider the attitude towards the protective treatment shown by the sentenced person.

(4) A person sentenced for a criminal offense of Murder (Section 140), Manslaughter according to Section 141(2), Grievous bodily harm according to Section 145(3), Torture and other inhumane and cruel treatment according to Section 149(4), Illicit interruption of pregnancy without the consent of the pregnant woman according to Section 159(3), (4), Unauthorized extraction of tissues and organs according to Section 164(3), (4), Trafficking in human beings according to Section 168(4), (5), Illegal confinement according to Section 170(2), (3), Abduction according to Section 172(2), (3), Robbery according to Section 173(3), (4), Hostage taking according to Section 174 (3), Extortion according to Section 1854 (3), (4), Sexual abuse according to Section 187(3), (4), Public menace according to

Section 272(2), (3), Unauthorized production and other disposal with narcotic and psychotropic substances and poisons according to Section 283(4), Gaining control over aircraft, civil vessel and fixed platform (Section 290), Hijacking of aircraft to abroad according to Section 292(3), Treason (Section 309), Subversion of the republic (Section 310), Terrorist attack (Section 311), Terror (Section 312), Sabotage (Section 314), Espionage according to Section 316(3), (4), Military treason (Section 320), Violent crossing of state border according to Section 339(3), Organizing and facilitation of illicit crossing of state borders according to Section 340(4), Genocide (Section 400), Attack against humanity (Section 401), Apartheid and discrimination of a group of people (Section 402), Agression (Section 405a), Preparation of offensive war (Section 406), Relations threatening peace (Section 409), Use of forbidden means and methods of combat (Section 411 (3), War cruelty (Section 412), Persecution of civilians (Section 413), Pillage in the area of military operations (Section 414) or Abuse of internationally and state recognized symbols according to Section 415(3), as well as a person sentenced to an exceptional sentence of imprisonment beyond twenty years up to thirty (Section 54(2)) may be conditionally discharged no sooner than after serving two thirds of the imposed sentence, if with regard to the circumstances of the deed for which he was convicted and the nature of his character there is no threat of repeating the committed or another similar especially serious felony.

(5) A person sentenced to an exceptional sentence of imprisonment for life may be conditionally discharged no sooner than after serving at least twenty years of this sentence, if with regard to the circumstances of the deed for which he was convicted and the nature of his character there is no threat of repeating the committed or another similar especially serious felony.

#### Section 89 Probation Period and Adequate Restrictions and Duties in Conditional Release

(1) In conditional release will the court set a probation period for persons convicted for misdemeanors for up to three years and for persons convicted for a felony to one to seven years; the probation period will be counted from the day of conditional release of the convict. The court may also impose supervision over the offender and at the same time order him to remain in his residence or its part within a designated portion of the probation period following its commencement. Performance of the supervision will be regulated by Section 49 to 51 accordingly.

(2) The court may impose on a conditional release prisoner reasonable restrictions and reasonable obligations referred to in section 48 (4) aimed at leading a proper life; it may also order him to make good, to the best of his/ her ability, the damage or non-pecuniary damage he/ she has caused by the offence, or to surrender the unjust enrichment obtained by the offence. If the conditionally released person is close to the age of the juvenile, the court may, in order to take advantage of the educational influence of the family, school and other bodies, impose, either alone or in addition to the reasonable restrictions and reasonable obligations referred to in section 48(4), also some of the educational measures referred to in the Juvenile Justice Act, subject to similar application of the conditions laid down for juveniles. The court may order a person released on parole pursuant to section 88 (2) to reside in a specified household or part thereof for a specified period of time and during a specified part of the probationary period following the beginning of the probationary period, or to perform community service, or to deposit a specified sum of money to assist victims of crime to the account of the court.

(3) The total duration of the designated remaining of the conditionally discharged person in his residence according to sub-sections (1) and (2) may not exceed one year, even in case of prescribing a longer term of probation period. Performance of services according to sub-section (2) may be ordered in the extent of 50 to 200 hours. The financial sum for the benefit of victims of criminal offense according to sub-section (2) will be set in the amount of 2000 CZK to 10 000 000 CZK; when determining this amount the court will consider also the personal and property circumstances of the convict and regarding that may the court order that the designated sum will be paid in adequate monthly payments.

(4) If the conditionally released person leads a proper life during the probationary period and has shown improvement in the performance of his duties, the court may revoke the reasonable restriction, reasonable obligation or educational measure imposed if he can be expected to lead a proper life without them, or may revoke the supervision imposed if there is no longer a need for increased monitoring and control of his behaviour; the court may make this decision at the earliest after one-third

of the probationary period has elapsed, but at least after six months of its duration. The probationary period imposed shall remain unaffected by the decision referred to in the first sentence.

## Criminal Procedure Code

### Conditional Release from Execution of Prison Sentence

#### Section 331

(1) The conditional release from serving a prison sentence will be decided on by the court in a public session upon a petition of the convicted person, public prosecutor or director of the prison, in which the sentence is served, or even without such petition. A convicted person, who serves a sentence of imprisonment, may only file the petition for conditional release through the director of the prison, otherwise the presiding judge will return the petition to them with advice that it must be submitted in this manner. The presiding judge will also notify the aggrieved person, who has requested such information, about holding the public session on conditional release from imprisonment imposed for a felony (Section 228 (4)).

(2) The convicted person may file a petition for a conditional release pursuant to Section 88 (2) of the Criminal Code, only if it is accompanied by a favorable opinion of the director of the prison stating that the convicted person has shown by their good behavior and performing their duties that the continued serving of the sentence is not necessary.

(3) If the conditional release is petitioned by the director of the prison, in which the convicted person serves the sentence, or if they join such petition, the presiding judge may make the decision that the convicted person is conditionally released, with a consent of the public prosecutor, also outside of a public session.

(4) The petition of the convicted person for conditional release may also be joined by a public interest association, if it offers to assume the guarantee for completion of the convicted person's correction. If the convicted person agrees, the public interest association may, before joining the petition of the convicted person, request the director of the prison, in which the sentence is being served, to notify them about the status of re-education of the convicted person.

(5) If the petition of the convicted person for conditional release is dismissed or withdrawn, the convicted person may re-submit it no sooner than after six months after the decision on dismissal came to full force and effect or after the withdrawal of the petition is delivered to the court; this does not apply in case the petition was dismissed or withdrawn solely on the grounds that the time limit stipulated by the law for conditional release has not yet passed.

#### Section 331a

(1) If it was decided on a conditional release while at the same time

a) ordering supervision, the procedure of executing the supervision will be governed *mutatis mutandis* by Section 330a and 350k,

b) imposing an adequate restriction or adequate obligation or educational measure, the procedure of performing the inspections will be governed *mutatis mutandis* by Section 329 and 350l,

c) deciding that the conditionally released person is to stay in the specified portion of the probation period in the determined time in the designated residence or its portion, the procedure of performing this obligation will be governed *mutatis mutandis* by Section 334b to 334e,

d) deciding that the conditionally released person is to perform work for the benefit of a community service provider within the trial period, the procedure of performing this obligation will be governed *mutatis mutandis* by Section 336 to 339,

e) deciding that the conditionally released person is to deposit to the bank account of the court a financial sum designated for financial aid to victims of criminal activity, the presiding judge may, at the request of the convicted person for important reasons

1. postpone the deposit of this sum for a period of no more than six months from the day the decision came to full force and effect, or

2. allow payment of this sum in monthly installments so that the whole sum is paid in full before the end of the set trial period.

(2) If the court deems the educational cooperation of a public interest association beneficial, it will proceed *mutatis mutandis* pursuant to Section 329 (3).

#### Section 332

(1) The decision on whether the conditionally released person has proven themselves, whether the imposed adequate restriction or adequate obligation or educational measure or supervision is to be cancelled, or whether the remaining term of the sentence will be served, or whether the conditional release will remain in effect, will be governed by Section 330 and 330a accordingly. A complaint is admissible against the decision according to the first sentence, which has a dilatory effect.

(2) When making the decision on whether the conditionally released person has proven themselves, the court will also consider on the opinion of the public interest group.

#### Section 333

(1) The petition for conditional release from a sentence of imprisonment is decided on by the court; the presiding judge may dismiss the petition solely on the grounds that the time limit set by the law for conditional release has not yet passed also outside of a public session. Unless important reasons prevent it, the petition will be decided on within 30 days of its receipt by the court. Decisions under Section 332 will be made by the presiding judge that has conditionally released the convicted person from the sentence.

(2) The convicted person must be questioned before making the decision on the conditional release or on the execution of the remaining term of the sentence; this does not apply if the court proceeds pursuant to Section 331 (3).

(3) A complaint is admissible against the decision according to Section 331 (3) on the determination of the length of the probation period and imposition of supervision or other measures referred to in Section 89 (2) of the Criminal Code. A complaint is admissible against other decisions pursuant to Section 331, which has a dilatory effect.

#### Section 333a

If the accused person was finally and effectively sentenced to imprisonment, the presiding judge may impose restrictions consisting in a prohibition to travel abroad to the convict, which will last until the convicted person serves the sentence or until the occurrence of another matter of fact associated with termination of serving a sentence. A complaint is admissible against such a decision. Section 77a (2) through (6) will apply accordingly to cases according to the first sentence.

### **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](https://finlex.fi/en/laki/kaannokset/2005/en20050767_20230306.pdf)

Act on the Enforcement of Community Sanctions

[https://www.finlex.fi/fi/laki/kaannokset/2015/en20150400\\_20200345.pdf](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 imprisonment or 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 the probationary 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.

#### **GEORGIA**

1. Georgian legal system recognizes (i) postponement/deferral of the application of the sentence, (ii) suspension of the enforcement of the sentence and (iii) conditional early release.<sup>1</sup> All of the rules mentioned above apply similarly to the Georgian nationals, nationals of foreign states and those without residence permits.

(i) Article 283 of the Criminal Procedure Code of Georgia (*hereinafter – CPC*) provides the criteria and procedure for the **deferral of the enforcement of a judgment**. Specifically, upon the report of a forensic medical examination, the court that rendered the judgment may defer the enforcement of the judgment against a convicted person if the following grounds exist:

- a. the convicted person is ill with a serious illness that prevents him/her from serving the sentence – until his/her recovery or substantial improvement of his/her health;
- b. the convicted person is pregnant at the time of the enforcement of the judgment – for up to a year after giving birth.

When rendering the decision under Article 283 of the CPC the Court considers medical services available at a penitentiary institution, diagnosis, and the appropriateness of the enforcement of a sentence in the form of imprisonment imposed before the recovery or substantial improvement of the health condition of a convicted person, the personal qualities of the convicted person, the fact of committing a crime by him/her in the past, the nature, motive, and purpose of crime, the result of crime, the risk of repeated commission of crime, how the convicted person behaved during his/her service of sentence, and other circumstances that may affect the court decision. The periodicity of re-examination of the convicted person's health condition is also decided by the same decision of the Court. If the decision of the Court to defer the enforcement of a judgement is based on the circumstances described in the paragraph (ii), when a convicted person's child attains the age of 1 year, the court that deferred the enforcement of the judgment shall release convicted person from serving the sentence, or replace the sentence with a more lenient sentence, or return the convicted person to the respective facility to serve the sentence.

(ii) Under Article 284 of the CPC the court may **release a convicted person from further serving the sentence** if his/her health condition is not compatible with serving the sentence and if, based on the report of examination, the recovery and/or substantial improvement of the health status of the convict is not expected. Moreover, the court may release a person who has attained an elderly age during his/her service of sentence (women – from 65 years of age, men – from 70 years of age) from further serving the sentence if life imprisonment is not imposed on him/her as a sentence and he/she has served at least half of the sentence.

When reviewing the possibility of suspending a sentence the court shall consider the appropriateness of the enforcement of the imprisonment imposed as a sentence, the personal qualities of the convicted person, the fact of the commission of a crime by him/her in the past, the nature, motive and purpose of the crime, the consequence, the risk of repeated commission of crime, how a convicted person behaved during his/her service of sentence, and other circumstances that may affect the court decision. If a convicted person is released from further serving the sentence due to an illness or elderly age, he/she may also be released from serving additional punishment.

(iii) Under Article 285 of the CPC a person, on whom community service, corrective work, service restriction of a military service person or house arrest has been imposed as a sentence, may be conditionally released from serving the sentence, if the Court considers that serving the full term of the sentence is no longer required for his/her correction. A person, on whom a fixed term imprisonment has been imposed, may be released on parole from serving the sentence if the Local Council of the Special Penitentiary Service considers that serving the full term of the sentence imposed is no longer required for his/her correction. Furthermore, this convicted person can be released, in full or in part, from serving additional punishment.

Georgian legislation **does not regulate** the enforcement of probation decisions issued in the foreign states. The **enforcement of the foreign judgements is regulated** by the Law of Georgia on

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<sup>1</sup> Criminal Procedure Code of Georgia - <https://matsne.gov.ge/en/document/view/90034?publication=162>

International Cooperation in Criminal Matters and the CPC. If the Ministry of Justice deems it possible to carry out the measures relating to the enforcement on the territory of Georgia of a judgement of a competent foreign court, the request for the enforcement is transmitted to the competent Court. The decision must be delivered not later than 4 months after the receipt of the case materials by the Court and the decision can be appealed in the same way as a judgement delivered on the territory of Georgia.

2. Georgia is not a party to the ETS 051.
3. N/A
4. N/A

## **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 a sentence 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/](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 of enforcement 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/](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 not punishment”). 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 a maximum 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 or where more than two years of an (aggregate) sentence of more than two years’ 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 in sections 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](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.

## **REPUBLIC OF 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.

## **NORWAY**

1. When imposing a sentence of imprisonment, the court may decide that execution shall be suspended, in part or in full, cf. the Norwegian Penal Code Section 34. The decision is left to the court's unfettered discretion. Thus, it is not a condition for sentencing someone to suspended imprisonment that he or she is residing in Norway. According to the preparatory works, the decision should depend on whether suspended imprisonment is reasonable and appropriate. The court may order the convicted person to comply with certain terms and conditions, including reporting to the police at specific times or residing in a specific place.

The Correctional Service may release a convicted person on probation. It shall not decide to release a convicted person on probation if, after an overall assessment, the circumstances make such a release inadvisable. The Correctional Service shall assign particular importance to the convicted person's conduct while serving the sentence, and to whether there is reason to assume that the convicted person will commit new criminal acts during the probationary period. It may also be relevant to take into account the convicted person's connection to Norway in terms of length of stay, family etc. If it appears necessary for effecting the release on probation in a manner that satisfies the need for security, the Correctional Service shall decide that the person who is released, for a limited period of time, shall appear in a sober state before the Correctional Service. If it appears necessary for security reasons, the Correctional Service shall, during the period in which there is a duty to appear before it, lay down certain conditions for the release. The fact that a convicted person is not ordinarily residing in Norway, is not in itself a reason not to be released on probation. It may, however, be taken into consideration in the overall assessment of whether release on probation is advisable. Among other things, it may be of importance whether the convicted person has the opportunity to live with friends and/or family in the event of a release on probation, or whether there are other appropriate residential or accommodation arrangements. If the convicted person is expelled from Norway, Norwegian authorities will seek to carry out the expulsion order at the time of the release. Denial of release on probation cannot be based solely on the fact that an expulsion order cannot be enforced.

2. Norway is not a State-Party to ETS 051.
3. The Nordic Enforcement of Criminal Sentences Act provides a legal basis for transferring criminal sanctions to and from other Nordic countries. According to section 10, measures that have been stipulated in a suspended sentence can be transferred to Denmark, Finland, Iceland or Sweden. Norway can also receive such cases from these countries, cf. section 7. Persons who are released on probation from a Norwegian prison can, on request, be subject to supervision in Denmark, Finland, Iceland or Sweden, cf. section 15. Norway can also receive such cases from these countries, cf. section 12. The competent authorities to decide upon transferring the abovementioned sanctions are the correctional service's five regional offices. The conditions for enforcing measures that have been stipulated in a suspended sentence, and supervision of persons who are released on probation, are mainly that the person in question is registered with a Norwegian residential address and has ties to Norway, e.g. work or education. Norway has good experience with the other Nordic countries in this field. The Nordic Enforcement of Criminal Sentences Act has existed for many years, and is well incorporated in the Nordic countries.
4. Norway has no experience to report in applying Article 3 b.

## **POLAND**

1. Obligatory postponement of execution of a prison sentence – Art. 150 Penal Code

Optional postponement of execution of a prison sentence – Art. 151 of the Penal Code

Conditional suspension of the execution of a prison sentence – Art. 69 Penal Code

Conditional release from serving the rest of the prison sentence – Art. 77-82 Penal Code

These provisions also apply to persons sentenced by Polish courts who do not have permanent residence in the territory of the Republic of Poland, regardless of their citizenship.

Cooperation in the enforcement of judgments imposing imprisonment with conditional suspension of its execution, as well as decisions on conditional release and conditional discontinuation of criminal proceedings in relations with EU Member States are carried out on the basis of the provisions of Chapters 66h and 66i of the Code of Criminal Procedure. (art. 611u - 611uj) implementing into national law Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and decisions on probation or parole to monitor compliance probation conditions and obligations arising from alternative sanctions.

Poland isn't bound by any International (multilateral and bilateral) agreement regulating the issue. Provisions of Chapter 66 of the Code of Criminal Procedure (Articles 608 - 611f) regarding the takeover and transfer of judgments, do not regulate this issue. So the cooperation on the basis of reciprocity isn't possible.

2. Poland is not a party to the European Convention on the supervision of conditionally sentenced or conditionally released offenders of November 30, 1964 (ETS 051).

3. There is no practice in this area at the level of the central authority. Cooperation based on the provisions of Chapters 66h and 66i of the Code of Criminal Procedure, implementing the Council Framework Decision 2008/947/JHA, takes place directly between the competent authorities of the countries Member States. In the case of Poland, these are the competent courts (Article 611u and Article 611ud of the Code of Criminal Procedure).

4. Current practice shows that proposals regarding the application of Art. 3 b) 1AP were not implemented or directed through Polish central authorities.

## **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 application of article 3 b) of ETS 099.

## **SWITZERLAND**

1. Le droit suisse prévoit la suspension de la peine sursis ainsi que la libération conditionnelle. La libération conditionnelle peut être octroyée à un condamné qui fait l'objet d'une expulsion si ce dernier a le projet de quitter le territoire suisse et qu'il démontre qu'il a un projet de réinsertion qui tiendrait compte de son expulsion du territoire suisse. Notre système ne prévoit pas le transfert de la surveillance à l'étranger des mesures de probation en lien avec une libération conditionnelle. L'EIMP prévoit la possibilité de faire exécuter des jugements étrangers.

2. La Suisse n'a pas ratifié la convention européenne pour la surveillance des personnes condamnées ou libérées sous condition .
3. Pas de cas d'application.
4. Pas d'expérience.

## **TÜRKİYE**

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 pronouncement 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  $\frac{2}{3}$  and  $\frac{3}{4}$ .

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.

## **UNITED STATES**

1: Generally, yes. The judicial systems in the United States (federal and states) recognize postponement of a sentence, suspended sentences and release under terms of supervision. There is no legal prohibition of which we are aware that prevents the application of these sentences on persons who are not residents of the United States (whether foreigners or nationals). However, it becomes difficult to enforce these measures with respect to persons who are not likely to remain in the United States because they do not reside customarily in the United States.

2: The United States is not a party to the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders. The United States does not transfer supervision functions to foreign authorities when the sentence imposed involves postponement, suspension, or supervised release.

3: The United States does not enforce foreign judgments. The federal justice system allows for "domestication" of foreign judgments in very limited circumstances. In the case of the transfer of sentenced persons, the United States employs an administrative process that relies on the foreign

conviction to determine the comparable sentencing range under U.S. law and the resulting time of incarceration remaining to be served after the prisoner has transferred. This process may also determine whether any term of supervised release should be imposed. The foreign conviction is unaffected by this administrative process and the foreign sentence is not subject to a "judicial conversion." The United States does not transfer a sentenced person solely for the purpose of probation.

## **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 be 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 crime 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. 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.

In 2023 the MoJ of Ukraine initiated before the MoJ of the Republic of Türkiye 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.