

The Norwegian Drug Court Model—An Alternative to Incarceration for Criminal Drug Addicts

I. Introduction

Several countries have established special penalties for drug addicts as a part of the fight against drug-related crime. Experiences from Ireland¹ and Scotland² inspired the Norwegian Drug Court model,³ even if the legal systems are different.

There is, however, a general understanding of the correlation between crime and drug abuse,⁴ and the constant need to strengthen and establish measures for drug addicts who commit crime. This is a challenge for both the correctional and the treatment systems.

Anybody, even criminals, can become useful citizens of society as long as they get education and are led in the right direction. — Confucius

Confucius was a philosopher and minister of justice in a part of China around BC 550. Thoughts he expressed then, we can still find in recent Norwegian criminal policy. For example, the white paper entitled “Punishment that works—Less Crime—A safer Society,”⁵ is about leading convicts to the right track by providing the sentence with measures that facilitates this.

II. The Norwegian Drug Treatment Program Supervised by the Court as a Penal Sanction

A. Background

In the early 2000s, clear political wishes were expressed that alternative penal sanctions for drug addicts should be tried in Norway.⁶ There was a lot of knowledge about the situation of the drug addicts in the Correctional Service. Friestad and Skog Hansen’s Living Conditions Survey⁷ from 2004 showed, among other things, that 60 percent of the inmates suffered from a substance abuse problem, in addition to other poor living conditions. At least one-third of the inmates were serving sentences for drug-related crimes and the recidivism rates were high. In Norway, of 5.3 million inhabitants, the prison population is approximately 4,000, or 74 per 100,000 inhabitants).⁸

An interdisciplinary working group with members from different ministries was established and in 2004, delivered a report about the Drug Treatment program.⁹ The report described the drug court system, especially as practiced in Dublin and Glasgow, suggesting that it be tested in Norway. Based on another white paper, “On the Act on Changes to

the Criminal Code,”¹⁰ which called for a pilot project with a drug treatment program supervised by the court, the Parliament adopted the necessary legislative changes in 2005, and the pilot project began on January 1, 2006. It was a pilot project in the cities of Bergen and Oslo for ten years, before it became permanent and nationwide in 2016. The project started as a multi-ministry project, and the ministries of justice, health, and education continue to fund it.

B. Purpose and Expectations

The Norwegian Criminal Code section 37 authorizes the court to pass a suspended sentence with the condition to attend the drug treatment and rehabilitation program supervised by the court, the ND program. The probation period is at least two years, but can be as much as five years. The Ministry of Justice has also published specific regulations that detail the structure, aim, and target group of the ND program.¹¹

The ND program is an alternative to imprisonment for drug-abusing offenders who have committed crimes related to their drug addiction. The main goals are to prevent new crimes, help the offenders to re-socialize, and become drug free. It is also a goal to help improve and coordinate the practical assistance and treatment options for drug addicts. The offender must consent to being sentenced to attend the ND program.

The program is carried out in four phases that, in principle, reflect progression and development: implementation phase, stabilization phase, responsibility phase, and continuation phase. The phases structure the program. Advancing to the next phase is supposed to imply a certain real improvement in the level of functioning, both in terms of controlling drug use and of other skills. The duration of the different phases will depend on how well the convict manages to complete the goals of each phase.

The implementation of the ND program requires a joint effort and a committed cooperation between different sectors and levels of management. The Correctional Service is responsible for coordinating and facilitating integrational efforts like work rehabilitation, education, social welfare services, drug treatment (in institutions or at external facilities), health service, and financial counselling. These are services that convicts are entitled to as a function of being permanent residents of Norway. The services are provided to them by the regular public health, welfare, and



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social service providers in Norway, such as the Norwegian Welfare and Labour Administration (NAV). However, it is often challenging for the convicts to make use of all these services without help and assistance.

C. The Role of the Judge

The Court has a special role in supervising the conditions of the program. When the Norwegian government was investigating this alternative to imprisonment, the court (especially the Supreme Court) was skeptical about having judges be involved in the administration of a sentence. However, there has been a clear development in the direction of more involved courts; during the first years the judges met the convicts only now and then, whereas the current system is characterized by a good deal of close contact and follow-up from the judge throughout the probation period. Interestingly this development happened after the initiative from Bergen District Court, and is now common practice. There are 14 District Courts (out of approximately 60), covering the whole country, who are responsible for court supervision of the ND participants.

All 14 courts have dedicated judges for this job. The same judge supervises the same convict throughout his or her probation period. Court supervision starts with an informal meeting between the judge, the convict, and a dedicated legal advisor from the Correctional Service. Following that, there is a court meeting every time the convict has qualified to advance to the next phase. There are also status meetings and a court meeting if there have been repeated or severe violations of the conditions of the sentence. The convict has to appear in front of the judge at least once every 3–4 months, with a legal advisor from the Correctional Service present.¹²

Court supervision has proved to be very important for the ND program. It provides the legal basis for the high degree of flexibility in the terms and conditions. The convicts experience the meetings with the judge as milestones characterized by seriousness and importance.

III. A Closer Look at the ND Program

A. Who are the ND convicts?¹³

In practice, the ND convicts is a diverse group of people. Aged from 20, facing their first prison sentence, to older than 50, convicted more than 30 times and having spent 10–15 years in prison. Approximately 90 percent are men and 10 percent are women. They have been using all kinds of drugs for different durations of time, and they have different backgrounds and upbringing. Even within this diverse population, they have some common features besides the drug addiction. The Cramer report from 2014 about “Occurrence of mental disorders among inmates in Norwegian prisons” shows a high degree of mental illness among inmates¹⁴, and indeed, the vast majority of ND convicts have mental health issues. Most of them struggle with milder psychological difficulties; many have diagnoses of various personality disorders. Many also have poor

physical health and severe physical limitations due to drug-related injuries and accidents. Some have extensive body inflammation after injections. Blood clots and subsequent amputation are a relatively common phenomenon, as are cardiac problems due to inflammation and major problems with teeth and digestion. A large number have untreated hepatitis C, diagnosed ADHD, or ADHD-like symptoms. Hardly any of the convicts in the ND program have completed high school. Most have bad experiences from school and in life generally. Many also have very limited work experience, with intermittent work histories. For many, child welfare has been in the picture—or should have been. However, not everyone has had a difficult upbringing. People start using drugs for many different reasons.

Many of the convicts do not have satisfactory housing, and providing adequate housing is not necessarily a solution in itself. Many have never taken care of a home and lack basic knowledge of keeping the home clean, paying bills, being a good neighbor, etc. Most of them have a social network that does not contribute to good rehabilitation and healthy interests—a network that does not easily let go even if one decides to quit. They might also have debt both to banks and to other criminals, making it difficult to abstain from crime.

B. Type of Crime

The administrative regulations for ND convicts, section 3, provides:

People who are addicted to drugs can be sentenced to a drug treatment program supervised by the court if he or she is convicted of

- (a) violations of section 231, first paragraph, section 232 of the Criminal Code, or section 31, second paragraph, of the Medicines Act [all drug offenses],
- (b) offenses committed under the influence of drugs, or
- (c) offenses committed to finance one’s own drug abuse.¹⁵

The main target group is, in other words, offenders convicted for non-violent, drug-related crime. This is also by far the biggest proportion of the ND convicts.¹⁶ This means that there is a wide range of criminal offenses within the framework, ranging from theft, fraud, robbery, and various financial crimes, driving under the influence of alcohol and drugs, and buying, selling, storing, and using drugs—mostly recurrent crime committed by repeat offenders. The condition is that the commission of the crime or the crime itself in some way relates to substance abuse or addiction.

A 2008 Supreme Court sentence¹⁷ stated that even a serious drug crime can qualify for a suspended sentence with the condition to attend the ND program—if there are reasonable prospects of rehabilitation for the convict. This has resulted in a wide array of ND sentences where the length of the suspended prison sentence varies from 30 days to 3.5 years—all with a minimum probation period

of 2 years. Many of the convicts say that when you live your life with drugs and crime, it doesn't matter if the police catch you with 2 or 200 grams of amphetamine in your pockets. In other words, the drug problem can be severe—and the convict suitable for the ND program—regardless of amount of drugs they are caught with.

C. Individuality in the ND Program

The ND sentence is a strict penalty. Anyone facing several months in prison for his or her crimes, preferring and consenting to attend the ND program with a probationary period of two or more years, choose a much stricter sentence in practice. The probation period gives the timeframe for the length of the sentence. Instead of serving, for example, 8 months in prison, a convict chooses to work hard and deal with all his problems during the probation period—all the time controlled and supervised by the Correctional Service and the court.

The ND sentence requires a great dedication from the convict. It is necessary to deal with all that is difficult in life, all the things that drugs are used to “fix” or delay. One has to replace drugs with hard work. In many ways, serving an ND sentence is tougher than prison. In 2008, during a conversation in my office, a convict said to me, “Are you aware of how difficult it is to serve your sentence in the community when you have the whole city as your prison yard?”

The components and requirements of an ND sentence are tailored to the individual's needs. They must be rehabilitative and therefore preventive, assuming that by removing/reducing the use of drugs, one will also remove/reduce new crimes. The Correctional Service coordinates all the various components and follows the convict closely throughout the probationary period. What measures will be taken depends on individual needs, and the convicts will always influence that. What does this specific convict need to manage his life without drugs, live safe, have a meaningful everyday life, live without crime, and navigate in the jungle of government help and support programs? These examples are from real convicts who served an ND sentence in Bergen:

- For “Peter”—who was almost 50 years old, had been using drugs for 30 of those years, and served several long prison sentences for drug-trafficking—this was detox. He started methadone medication in a detox clinic, before a longer stay in an inpatient facility and further follow-up in outpatient treatment. Back in his home, home-based follow-up was required, also clarification of his working capacity and close follow-up at work.
- For “Paul”—who was in his mid-20s, had been using amphetamine for five years and served one prison sentence—it was talking to a psychologist every week, help to get an overview of debt, help to find out which school subject he was missing to gain general academic competence, and close follow-up in a school situation.

- For “Mary”—who was disabled—it was necessary to move to a better functioning home, getting support for leisure activities, and filling the days with something meaningful.

Serving an ND sentence also includes more traditional means of control, designed to check whether the convict follows the imposed terms and the stipulated conditions. The convict must exempt cooperating agencies from the restriction of secrecy, to ensure that there is control and that the Correctional Service can cooperate across agencies.

D. Violations and Reactions

A sentence to attend the ND program is a contract between the convict and the court to fulfil the specified conditions. The convict gets a chance to serve the sentence outside prison and must work hard to retain this opportunity. For convicts who have a comprehensive problem in many different areas of life, one must assume that the path to complete rehabilitation is not straightforward. The question is how many and what kind of violations can be accepted before the judge reverses the ND sentence to a prison sentence. Jurisprudence provides few general guidelines. How to respond to violations is individualized in the ND program.

Violations mainly result from the convict not complying with the rules and regulations of the ND program, for example, not attending work programs or drug-treatment or not keeping other appointments. This is usually due to drug use. This will not necessarily result in reversing the sentence to a prison sentence. If the convict collaborates on, for example, detox or other emergency measures, this will be facilitated before the Correctional Service sends a petition to the court asking the judge to reverse the sentence to prison. In other words, the convict gets a second chance, and often a third chance. The judge can also, as a reaction to violations, choose to reverse a part of the sentence to prison and continue the ND program after that, extending the probationary period or setting new conditions.

Some of the convicts commit new crimes during the the ND program. These violations are, just like any crimes that committed in Norway, the responsibility of the prosecuting authority. It can be anything from trivial offenses, like minor drug possession, to more severe drug offenses. The consequences of such new offenses will vary, and different solutions have been used in the past. Examples include a fine, a new combined sentence to be served partly in prison and partly in society with an ND condition, or a full prison sentence. Also in these cases, individual assessments are made of what is the most appropriate sanction. It is also very important for the Correctional Service to have a close dialogue with the police and prosecutor, as many individuals with drug abuse history also engage in crime. During the adjudication process, the convict is encouraged to do his best in the ND program, and he may maintain that this was just a “glitch,” that he has a strong desire to get drug-free and straighten his life. But action is the only

argument that has value in court, not words. “Action speaks louder than words,” or as a convict once said to me, “I have no excuse, just a damn long explanation.” In practice, one can see that, despite the fact that violations occur and that the consequence of such violations is a reversal of the suspended sentence to a prison sentence, in many cases, the convict has made significant efforts to comply with the conditions. The judge considers this, as the following example from a 2013 reversal of a sentence in the Bergen District Court illustrates:

The convicted has undoubtedly benefitted from being in the program and has worked hard to manage it. However, there has not been any progress in the program, mainly due to continued intake of illicit drugs, and also a problematic housing situation. After a total assessment, the court considers that half of the remaining part of the conditional sentence in jail for 1 year and 4 months, that is, 8 months, should be served in jail.¹⁸

This example shows that the convicts get some credit for all the effort they put in the program, even if the program is not completed successfully.

IV. Reflections

An ND sentence is a form of punishment that has a clear focus on the future of the offender as well as his or her family. ND is about giving convicts with very different backgrounds and baggage the opportunity to repay their debt to society and give something back. An underlying belief is that everyone has to account for the choices they make in life, also when that means using drugs and committing crime. At the same time, not everyone has the same good conditions for making wise and good choices. Especially when they sober up, many people think about their own actions and their consequences. A convict from Bergen described it as follows when we in 2012 talked about what drugs did to him: “I’m not stupid, but I become stupid.”

Most ND convicts have a desire to make up for their behavior, to return to society as law-abiding citizens and contribute something—either with labor, as volunteers, or simply feeling that they are useful. “Finally, I can pay taxes!” a convict said to me in 2008 when he received his first regular paycheck. A few months later, he complained that so much of his paycheck went to pay taxes. He was 100 percent rehabilitated and integrated into working life. He still is, by the way, seven years after he successfully completed the ND program.

I perceive that there is a lot of bad conscience among drug addicts, especially for what they have exposed their family and children to, but also for the time they have wasted on drugs and all the misery included. Many of them experience—justified or not—that society has not taken good care of them when they were children.

This case is an example of a convict who has not had good prerequisites for living a law-abiding, regular life, and who felt that he finally had the opportunity to serve

a sentence, addressing his problems instead of just being stored in prison. He served an ND sentence in Bergen from 2011 to 2013. The court sentenced him to one year and two months in prison, suspending the prison sentence on the condition that he attend the ND program for a probation period of two years. He was a prolific offender, convicted for theft, financial crimes, drug offenses, and driving without a license. He was previously convicted 20 times for similar offenses and had spent approximately 15 years of his life behind bars. All the male members of his family had also served many prison sentences, totalling more than a hundred years in prison. His upbringing was marked by substance abuse, crime, and the child welfare agency. A year into his probationary period, he was given a probation extension of six months due to many irregularities in missing appointments as well as occasional use of illegal drugs. Nevertheless, he did better than ever outside the prison walls. There had been many court meetings, and the judge followed his case closely.

As irregularities and illegal drug use continued, the Correctional Service sent a petition to the court for a new reaction. The judge reversed the sentence. The convict had participated in the ND program for two years. The judge concluded that despite violations of conditions, the convict had served the prison sentence by attending the program for such a long period, and he was not sent back to prison. This example shows that lack of total rehabilitation does not negate some degree of success. For instance, although the sentence of this convict on many metrics would be considered a “failure” of the program, he reduced both his crime rate and drug abuse considerably. In 2014, almost a year after his sentence, he called me just to tell me that he had not even smoked pot for six months and that he had become a father.

V. Results and Social Economics

That a convict succeed in overcoming his addiction and stopped committing crimes will benefit both the defendant and the community. In November 2014, SIRUS researcher Sturla Falck submitted a follow-up study of the 115 persons first sentenced to ND program.¹⁹ These are his findings (see the appendix for more details):

All ND convicts had previous convictions for drug-related and property crimes, and some for minor violence. On average, they had 15 previous convictions and 15 years of mixed drug abuse. Over a third of the people sentenced to the ND program completed the program. Those who completed it spent on average two years and two months in the program. Those who dropped out spent on average one year and two months in the program. Both those who completed and those who dropped out showed a positive trend, albeit somewhat weaker for those who dropped out. The results from the ND program seems better than the alternative, which is imprisonment. The ND program has shown that alternative sanctions are possible even for this group. Imprisonment for recidivists convicted for drug-related crimes have an 85 percent risk of relapse. This

shows the importance of trying alternative sanctions. The percentage completed was positive compared with drug courts in other countries and drug users in treatment. Those who went through the ND program found that their opportunities for further integration into society were strengthened. Work and education are important succeeding factors.

To measure the effect of punishment, insight into the impact of punishment on individuals is required, as well as insight into what drug abuse and crime cost society. In 2014, Vista Analysis studied the value of reentry programs and initiatives in Norway on behalf of the Red Cross's "Network after release from prison."²⁰ Vista Analysis stressed that this is a complicated calculation with many contributing factors, some of which are possible to convert to monetary amounts and some of which are not. What, for example, is the value of a child not having to watch his father go in and out of jail? The report concluded that society saves a lot of money by helping people out of addiction and into work, as well as by reducing their drug-abuse and the drug-related harm. One of the main conclusions of the report is that a successful rehabilitation of one person (from crime and substance abuse to ordinary employment) will provide society a saving of between NOK 15 and 21 million (US\$2–2.7 million) in a 20-year perspective. If the person is not able to work but stops committing crime, it has a socio-economic gain of NOK 18 million (US\$2.3 million).

Drug addiction is a lifelong disorder, and the risk of relapse will be present for a long time—maybe always, even though it can diminish over time. The measures implemented, the goals achieved, the good periods, the small and the big sunshine stories—all have an effect from a lifelong perspective, at the same time providing significant socio-economic benefits. Somebody always starts the long process of getting drug free and living without committing crime. There is always someone and something that keeps the process going. The gain is great even when healing is not limited to becoming totally drug free; harm is reduced, quality of life is increased, and crime is reduced.

VI. Conclusion

Years of working with people involved in drugs and crime have taught me that there are no quick fixes, no black-and-white, no one-size-fits-all. The highly individualized structure of the ND program, the multi-agency cooperation, and the court supervision make the ND program a wise alternative to imprisonment for this target group. The program does not suit everyone, but for some it creates a turning point—or at least a step on the way. There is great respect for those who take hold of their own lives and try to become drug- and crime-free.

The result of crime prevention and rehabilitative initiatives to reduce (re)offending is difficult to measure. For the ND program, it is important to bear in mind that although only one third of convicts complete the program, this does not mean that there has been no benefit for the remaining

two thirds. On June 4, 2015, a unanimous parliamentary resolution made the decision to ask the government to consider making the ND program permanent and nationwide. This means politicians have considered the results of the ND program as successful—regarding both criminal and social policy. Both the convicts completing the program and those participating without completing have been important for this decision. Their stories have been heard and understood.

As for the future, many offenders will hopefully get the opportunity to serve an ND sentence. From 2016, there has been a great focus on providing information about this penal sanction to judges and public prosecutors all over Norway. In 2016, the first year with a nationwide ND program, the courts in Norway passed 32 ND judgments. In 2017, the number increased to 132, and is still increasing in 2018.²¹ This strongly suggests that there is an increasing awareness about and support for this alternative to imprisonment among judges, prosecutors, and defense lawyers. Some offenders will even get their second chance with the second ND conviction. It is never too late to get a better life!

Technical Appendix²²

English summary: In 2006, the pilot project, Drug Program with Court Control (Narkotikaprogram med domstolskontroll, ND), started in Oslo and Bergen. The ND model was imported from Drug Court in Ireland, Scotland, and the United States with modifications. The ND program is an alternative criminal sanction for drug users who are recidivists in the criminal justice system. The District Courts in the two cities can decide to give a conditional sentence as an alternative to unconditional imprisonment. The condition is to attend the drug program for a minimum two-year probationary period. The individuals avoid serving a prison term, but dropouts from the program are normally required to serve their prison sentence.

The purpose of the ND program was to prevent new crimes and promote the convicted person's rehabilitation. KRUS (Correctional Service of Norway Staff Academy) was to carry out process evaluation (Johnson & Svendsen, 2007), and SIRUS (Norwegian Institute for Drug and Alcohol Research) was given the responsibility to conduct a result evaluation.

The resulting evaluation looked at 115 of the first participants. They were interviewed after entry to the program (time one, T1), again after one year (T2; 106, or 92%), and finally after two years (T3; 96, or 83%). The interviews mapped substance abuse, crime, physical and mental health problems, and social issues of importance to integration.

ND was both a separate program and a facilitator for treatment. The program could be varied to cater to individual plans. Those sentenced had different arrangements: everyone had plans for school, work, and/or training. In addition, a quarter had institutional treatment part of the time, and a third had outpatient treatment.

The courts' role was primarily to decide which sanction to impose; thereafter to determine changes in the program (everyone had to complete four phases before they were deemed to have completed the program); and finally at the end of the probation, to decide whether the individual had completed the program satisfactorily or whether it had to be prolonged. The court also determined whether those who dropped out during the program had to serve all or part of the conditional sentence in prison. The judges have a less active role in the daily running of the program than in most other countries.

Fewer participants than expected were recruited to the ND program. Before it started in Bergen and Oslo, about 100 were expected to pass through it every year, but the result was approximately 25. The explanations are mainly found outside of the actual operation of the ND program; they were partly due to restrictions on who could be sentenced to take part in the program, and whether the person accepted the option. The number of ND participants was too small to have a substantial impact on the number of people sentenced to prison for drug-related offenses. The low number also reduced our ability to draw statistically generalizable conclusions.

More than a third (34%) of those required to undertake the ND program completed the course. The result is satisfactory and corresponds to results from other treatment programs for heavy drug users. The average completion rate in treatment centers for heavy drug users is 20–30 percent.

Compared to similar measures in other countries (Drug Courts), this shows that ND in Norway performs better in general in terms of percentage completed. Relative to the population size, an approximately equal number was ordered to take part in the ND program and the Drug Courts in other countries. Those who dropped out, either in Norway or other countries, tended to have more serious and complex problems than those who completed the program.

The ND program provides an alternative to imprisonment. The recidivism rate to prison for repeat offenders of drug crimes is approximately 85 percent. This indicates the importance of trying alternative reactions.

The follow-up survey with self-reporting by the ND participants after two years revealed:

- Over 80 percent of those who completed the program were outside a controlled environment (prison or institution) after two years, as against only about 40 percent of those who dropped out.
- 8 percent (3) of those who completed were in prison after two years, compared to half of those who dropped out.
- All variables self-reported by the ND participant showed a positive trend (time in controlled environment, drug abuse, crime, psychiatric and somatic health, education, work, and social relationships). Those who completed had better results compared to those who dropped out. Those who dropped out had a positive trend too, but weaker than those who completed the program.

Two unfortunate conditions limited the evaluation's scope. As mentioned, ND had fewer participants than expected. Second, the research design was not optimal. For ethical and practical reasons it was decided not to include a control group of prisoners in the research.

Notes

* The author of this article has been leading the pilot project *Drug treatment program supervised by the court (Narkotikaprogram med domstolskontroll (ND))* in Bergen since late 2005, and therefore has in-depth knowledge of this penal sanction. While working for the Directorate of Correctional Service in 2016–2017, I was responsible for the implementation of the penal sanction nationwide. The examples used in the article are self-experienced from both dialogues with the convicts and knowledge about the 163 ND sentences served in Bergen from 2006 to 2016.

I am educated at the University of Bergen, faculty of law, in 1996. I have worked as a public prosecutor for two years, and have thereafter had different jobs within the Norwegian Correctional Service.

I would like to thank my patient family, and the people I work with—on both sides of the law—for inspiring me. Unless otherwise noted, all translations are mine. ingunn.seim@kriminalomsorg.no

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⁸ Statistics from the Correctional Service database.

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- ¹⁰ Justis- og beredskapsdepartementet (see note 6), Section 1.
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- ¹⁸ Bergen District Court, 25 January 2013 (translation by author).
- ¹⁹ Falck (see note 13).
- ²⁰ I. Rasmussen, T. Myhrvold-Hanssen, & O. Haavardsholm, *Hva kan samfunnet tjene på å lykkes med ettervern for innsatte i norske fengsler? Vista Analyse rapport 2014/38* [What is the economic benefit for society when succeeding with aftercare for Norwegian inmates?], <https://www.vista-analyse.no/no/publikasjoner/nettverk-etter-soning-hva-kan-samfunnet-tjene-pa-bedre-ettersom/>
- ²¹ Numbers from the Correctional Service database.
- ²² Falck (see note 13), p. 55; this is a translation of the Summary.