



Explanatory Report to the European Convention on Mutual Assistance in Criminal Matters

Strasbourg, 20.IV.1959

The present text is a revised edition of a confidential explanatory report on the European Convention on Mutual Assistance in Criminal Matters, which was opened for signature by member States of the Council of Europe in April 1959.

Events and developments occurring after that date and having a bearing on the contents of the report have been indicated in footnotes. Furthermore, the original report has been slightly amended with a view to preserving the anonymity of governmental or individual opinions expressed during the preparation of the Convention.

It is hoped that this text may facilitate an understanding of the background considerations which led to the final text of the Convention which entered into force on 12 June 1962.

Introduction

In 1953 the Committee of Ministers of the Council of Europe instructed the Secretary General to convene a Committee of Governmental Experts to examine the possibility of establishing certain principles of extradition to be embodied in a European Convention on Extradition.

The Committee of Experts mentioned in its report accompanying the draft Convention that it had discussed the question of mutual assistance in criminal proceedings. The relevant part of the report reads as follows:

"This question which is connected with the problem of extradition was referred to during the committee's discussions. The committee was generally in favor of concluding a special convention on mutual assistance in criminal proceedings. So far, no multilateral convention on this subject has been drawn up. Several delegations stated that their countries had concluded bilateral treaties on the question and that model conventions had also been prepared.

The experts thought that this was a matter of great practical importance and should be dealt with in a multilateral convention between the member countries of the Council of Europe. They considered that such a convention would be acceptable to more of the Council's Members than the Convention on Extradition. The Committee of Experts therefore recommends to the Committee of Ministers that it should instruct a Committee of Experts to prepare a convention on mutual assistance in criminal proceedings."

During their 41st meeting (September 1956) the Ministers'Deputies decided at the request of the experts to widen their terms of reference, instructing them to prepare a draft Convention on Mutual Assistance in Criminal Matters.

The Committee of Experts on Mutual Assistance in Criminal Matters met at the Council of Europe, Strasbourg on 13-20 February, 4-13 November 1957, and 16-23 April 1958, with Mr. de la Fontaine (Luxembourg) in the Chair.

The present explanatory report contains:

- (a) general considerations on the work of the committee;
- (b) commentaries on the Articles of the Convention;
- (c) the text of the European Convention on Mutual Assistance in Criminal Matters opened for signature by the Member States of the Council of Europe on 20 April 1959.

General considerations

The work of the Council of Europe on mutual assistance in criminal matters follows on that relating to the preparation of the [European Convention on Extradition](#) signed in Paris on 13 December 1957.

The Convention drafted by the experts deals with such matters as letters rogatory for the examination of witnesses or experts, service of official documents and judicial verdicts, summoning of witnesses, experts, or persons in custody and transmission of information from judicial records.>

A number of guiding principles were laid down for mutual assistance in criminal matters. It was decided that such assistance should be independent of extradition in that it should be granted even in cases where extradition was refused. For example, it was agreed that assistance should be granted in the case of minor offences and that as a general rule the offence need not be an offence under the law of both countries. In the case of letters rogatory for search and seizure, however, the Contracting Parties could derogate from these rules under Article 5 of the Convention.

It was considered advisable to exclude mutual assistance in cases of a military nature from the application of the Convention and to make it optional to refuse assistance in cases of a political or fiscal nature.

Mutual assistance in the prosecution of nationals of the requested country was not excluded. A clause was inserted, however, in order to protect their interest (see commentary on Article 7, paragraph 3). An expert considered that, in this respect, aliens or stateless persons domiciled in the requested country should receive the same treatment as nationals.

Assistance must be given even if the offence is one which may be prosecuted by the authorities of *both* the requesting *and* the requested Parties.

It should be pointed out that some States, including Austria, the Federal Republic of Germany and Norway, make no distinction between "letters rogatory" and "other requests for mutual assistance" such as the "service of writs" or "communication of information from judicial records." For those States, all these forms come under the single concept of "mutual assistance" and should be dealt with as a whole. The special situation of those countries was accordingly taken into account, particularly in designing the arrangements of the Convention. Thus, for example, the experts were led to group the provisions concerning "channels" for the transmission of requests for mutual assistance in a single Article.

The experts examined certain other points which were not regulated in the draft Convention.

In the first place, the committee debated whether a provision should be drawn up to enable single items of information concerning a criminal matter to be exchanged directly between "police authorities acting in an auxiliary capacity to the judicial authorities." The majority of the experts were in favor of making no such provision. They thought it best not to force the existing practice of the police into a rigid mould, besides which, the Statute of the International Criminal Police Organisation (Interpol) already regulated mutual assistance between police authorities. However, it was stipulated in paragraph 5 of Article 15 relating to channels of communication that, in all cases where direct transmission is permitted, it may take place through Interpol.>

Second: the question was raised whether provision should be made for an "arbitral body" to settle any disputes over the interpretation or application of the Convention.

The committee thought that arbitration would be out of place, as Article 2 enabled Contracting Parties to refuse assistance on the grounds specified therein, which are to be assessed according to the practice of the requested country.

Some experts then asked whether it would not be advisable to consider setting up a "Committee" which would be responsible for establishing a "common interpretation" of the provisions of the Convention. The experts were unable to come to an agreement on this question.

Third: The question was brought up whether *officials and magistrates* of one Party should not be authorised to engage in *certain activities in the territory of another Party* with a view to the continued pursuit and arrest of a fugitive offender. It was explained that such activities would be subject to the condition that the offender, after arrest, should be immediately handed over to the local authorities.

The experts thought that this matter should be the subject of bilateral arrangements, as it affected only countries with a common frontier.

The European Convention on Mutual Assistance was, by a decision taken by the Committee of Ministers sitting at Deputy level, at its 71st meeting (April 1959), opened for signature by the Member States of the Council of Europe on 20 April 1959.

Commentaries on the articles of the Convention

Article 1

Paragraph 1 applies to the whole Convention, the Contracting Parties giving an undertaking in principle to afford each other the widest measure of mutual assistance in proceedings in respect of offences the punishment of which falls within the competence of the judicial authorities of the requesting Party. Provision is thus made for minor offences as well as for other, serious, offences; furthermore, mutual assistance is not subject to the rules governing extradition (but see commentary on Article 5). Mutual assistance must also be accorded in cases where the offence comes under the jurisdiction of the requested Party.

The Convention applies only to judicial proceedings as opposed to administrative proceedings. As regards the concept of "judicial authorities" mentioned in that paragraph, some experts pointed out that in their countries "public prosecutors" were regarded as administrative authorities, whereas in certain others they were judicial authorities. A provision (Article 24) was accordingly adopted in order to enable the Parties to state which authorities they consider as judicial authorities within the meaning of this Convention (see commentary on Article 24).

This paragraph, which is of a general character, is to be interpreted in a broad sense. It covers not only those forms of mutual assistance specifically mentioned in the Convention, but also every other kind of mutual legal assistance, including requests for assistance made in connection with:

- (i) proceedings in respect of an *Ordnungswidrigkeit* under German law; an *Ordnungswidrigkeit* is an offence which, while not classified as a criminal offence, is punishable by a fine imposed by an administrative authority; the accused person has, however, a right of appeal to the ordinary courts. To make it quite clear that mutual assistance can only be invoked in the judicial stage of such proceedings, the Committee of Experts inserted the phrase "at the time of the request for assistance" in this paragraph;
- (ii) injured party claims for damages in criminal proceedings;
- (iii) application for pardon or review of sentence;
- (iv) proceedings for the compensation of persons found innocent.

In Austria the amount of compensation payable to persons found innocent was a matter not for criminal jurisdiction but for the civil courts. Under Turkish legislation compensation could be obtained only by application to the administrative authorities.

It was specified in *paragraph 2* that this Convention does not apply to "arrests and the enforcement of verdicts". These words were substituted for the words "enforcement of judgments" employed in the preceding text of the experts since this expression was not sufficiently precise; for instance, it did not cover arrest warrants and imprisonment for debt which are generally to be excluded from the application of mutual assistance. Furthermore, this paragraph excluded military offences which are not offences under ordinary law from the field of application of the Convention. Other treaties or agreements may provide for assistance in cases of military offences. A similar clause appears in Article 4 of the European Convention on Extradition.

Article 2

This article sets forth a number of exceptions.

Sub-paragraph (a) concerns political and fiscal offences. Assistance will not, however, always be refused in these cases since the text of this Article leaves the matter to the discretion of the requested State.

Several experts pointed out that in such cases it might still be in the interest of an accused person that assistance should be granted since he would then be informed of the charge and could prepare his defence. Hearing witnesses might also operate in favour of the accused.

With regard to fiscal offences, it was agreed that the requested Party might in certain circumstances consider it desirable to grant assistance even if such a course was unfavourable to the accused.

Sub-paragraph (b) mentions other cases in which the requested State may refuse assistance.

The phrase "essential interests" refers to the interests of the State, not of individuals. Economic interests may, however, be covered by this concept.

During the drafting it was suggested to add to Article 2 a clause worded as follows:

"The execution of letters rogatory may be refused if such execution does not lie within the competence of the judicial authorities of the requested State."

This proposal was taken from Article 11 (3) of the Convention on Civil Procedure signed at The Hague on 11 March 1954. It was not adopted by the experts, however, on account of its restrictive character.

Another proposal would have resulted in a provision being inserted to the effect that assistance may be refused if the requested Party has substantial grounds for believing that the proceedings against the person concerned have been instituted for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions. A similar provision appears in Article 3 (2) of the European Convention on Extradition.

This suggestion was not accepted by the committee, which considered such a clause unnecessary in the case of mutual assistance under Council of Europe arrangements.

With reference to Articles 8 and 9 of the European Convention on Extradition, it was proposed to provide an optional clause whereby the requested Party would retain the right to refuse assistance:

(a) if the person charged is being proceeded against by the authorities of the requested Party or by the judicial authorities of a third State for the offence or offences which have given rise to the proceedings in the requesting country, or

(b) if the person charged has been finally convicted or acquitted by the judicial authorities of the requested Party or those of a third State in respect of the offence or offences which have given rise to the proceedings in the requesting country or if the aforesaid authorities have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

This proposal was not adopted. It was considered that the insertion of this clause would have reduced the scope of the Convention. Moreover, in certain cases, such a clause might harm not only the interests of the requesting Party – which would still have to take a decision in the criminal matter in question even though it has not received the assistance requested, but also the interests of the requested Party which might require certain information concerning the accused person from the requesting Party, which Party would then apply to it reciprocity. Hence this proposal was not adopted; however, it was accepted that governments may enter a reservation to that effect.

Article 3

This article concerns the execution of letters rogatory.

Paragraph 1 sets forth the purposes for which letters rogatory may be sent. By "letters rogatory", in this Article, is meant a mandate given by a judicial authority of one country to a foreign judicial authority to perform in its place one or more specified actions.

The expression "procuring evidence" refers, inter alia, to the hearing of witnesses, experts or accused persons, the transport involved as well as search and seizure. The words "criminal matter" mean any proceedings within the meaning of Article 1 (1).

It follows from this text that letters rogatory must be executed in the manner provided for by the laws of the requested Party. No condition of substance is stipulated and the rule of culpability in both countries, which is one of the guiding principles of the European Convention on Extradition, has not been retained in the present Convention, because mutual assistance does not have exactly the same effects as extradition. Nevertheless, provision is made in Article 5 (1) for an exception in the case of search and seizure.

In respect of the Federal Republic of Germany, the term "judicial authorities of the requesting Party" denoted also the judicial authorities of the *Länder*.

According to *paragraph 2*, experts and witnesses may give evidence on oath only if the law of the requested Party does not prohibit it. Under this provision, the requested Party may hear evidence given on oath even if, as a general rule, there is no provision in its judicial practice for the taking of an oath, provided that this is not contrary to its law. It was also agreed that the oath would be administered in accordance with the rules of the requested Party.

Paragraph 3 does not call for special comment.

Article 4

This concerns notice of execution of letters rogatory.

The object of this clause is to enable the authorities of the requesting Party or the interested persons, if they expressly so request, to be present at the execution of letters rogatory if the requested Party agrees to this course. It is understood that consent may be given only if the law of the requested Party does not prohibit it.

It was also agreed that where this "express request" is not contained in the letters rogatory it should be transmitted by the channels laid down for such letters.

The Italian expert said during the elaboration of the Convention that under Italian law the interested persons could not be present at the execution of letters rogatory because judicial enquiries were secret. Only the foreign authorities could be allowed to attend.

Article 5

This article lays down the conditions governing execution of letters rogatory for search or seizure.

Under Articles 1 and 3, mutual assistance is not subject to the rules of extradition or to those of culpability in both countries; but *paragraph 1* of Article 5 enables the Parties concerned to require the application of one or both of those rules to cases of search or seizure. According to sub-paragraph (c), moreover, a Party may declare that it will only authorise the execution of a letter rogatory for search or seizure if such execution is consistent with its law.

Paragraph 2 makes it possible for reciprocity to be invoked in regard to any Party which has made use of the optional provisions of the preceding paragraph.

Article 6

This concerns the handing over of property to the requesting Party in execution of letters rogatory.

Paragraph 1 is based on paragraph 3 of Article 20 of the European Convention on Extradition.

The property referred to in *paragrah 2* means (a) property seized in pursuance of letters rogatory, (b) property seized on a previous occasion in connection with other proceedings and handed over to the requesting Party, (c) property handed over without previous seizure. The word "property" refers to the "evidence" mentioned in Article 3, paragraph 1.

It was agreed that in accordance with this text the requesting Party may not dispose of such property even in a case where under its own legislation it is obliged to decide the question of its ownership.

Article 7

This refers to service of writs and records of judicial verdicts. The word "service" is to be understood in a broad sense as referring to both simple transmission and official notification. It is not, however, necessary that the document in question be handed personally to the person to be served unless this is stipulated in the law of the requested Party or is consistent with this law and desired by the requesting Party.

According to *paragraph 1*, the requested Party is obliged to serve writs and records of judicial verdicts sent to it by the requesting Party on the persons concerned. This text refers in particular to the summoning of accused persons, witnesses and experts to hearings in the requesting country. Provision is made for various methods of service on the persons concerned according as to whether the requesting Party does or does not specify the form of service to be employed.

(a) If the requesting Party does not specify the method of service, "service may be effected by simple transmission ". This clause was given an optional form in order to enable the requested Party either to transmit the papers to the person to be served without further formality or to serve them in a manner provided for under domestic law. The requested Party can thus choose the method of service to be employed.

(b) If the requesting Party expressly so requires, the requested Party must serve the documents in a manner provided for under its law or in a special manner compatible with such law.

With regard to *paragrah 2*, it was explained that receipts could be made out in any form desired. The requested Party was not therefore bound to use whatever form was attached to the documents to be served.

Paragraph 3: Before commenting on this text, it should be recalled that the criminal courts of the Scandinavian countries proceed on the basic principle that no accused person may be convicted without having been informed in good time of the charge preferred against him. Moreover, under the legislation of the Scandinavian countries, judgment by default is allowed only in exceptional cases.

It follows that in criminal cases, judgment by default, which is the practice of many Council of Europe States, is unknown to the Scandinavian courts. This divergency between the Scandinavian system and that of these other countries arises not only from a difference in the conduct of criminal proceedings but also from a difference of tradition in the administration of justice. With regard to procedure, for example, it is to be noted that Scandinavian courts may, at their discretion – and here they probably have much wider powers than those of the courts in other countries – compel the accused to appear in court in person.

The final text of paragraph 3 is the result of a compromise between the various legal systems.

According to the *first sentence of this paragraph*, Contracting Parties having exercised the right provided therein might request that the writ should reach them a given time before the date set for appearance. This time, which must not exceed 50 days, is to be specified by the Parties themselves in their "declaration". Its purpose is to enable the requested Party to transmit the writ in good time to the accused so that he may prepare his defence and travel to the place where he is due to appear.

According to the *second sub-paragraph of this paragraph*, this time-limit "shall be taken into account". Under this provision the requesting Party is obliged to fix the date of the appearance of the accused and to serve the writ in time to allow the accused to observe this date. This clause does not make it compulsory for the law to provide that the courts of the requesting Party may not give a judgment by default if, due to special circumstances, the writ could not be transmitted to the requested Party within the stipulated time-limit.

Article 8

This article refers to all witnesses and experts, whether their personal appearance (see Article 10) has or has not been expressly requested.

The rule laid down is derived from an international custom by which witnesses and experts are completely free not to go to the requesting country.

The word "penalty" refers to all forms of restraint, including fines.

Article 9

This article refers to all witnesses or experts whether their personal appearance has or has not been expressly requested (See Article 10).

The phrase "rates at least equal" implies that experts and witnesses will always receive at the very least the amount payable under the scales and rules in force in the requesting country. Thus the requesting Party, which is alone empowered to decide in the matter, may grant them a larger sum.

Article 10

Implicit provision is made in Article 7 (1) for the summoning of witnesses or experts for the purpose of giving evidence.

Paragraph 1 of Article 10 supplements paragraph 1 of Article 7 in that it obliges a requesting Party which attaches particular importance to the personal appearance of a witness or expert to say so in its request for service. In this case, the obligation of the requested Party will be to "invite" the witness or expert to comply with the summons. It was agreed that such invitation would be merely a "recommendation". It follows, quite apart from the provisions of Article 8, that witnesses or experts cannot be compelled by force or otherwise to appear before a court in the requesting country.

Paragraphs 2 and 3 apply only in the case provided for in the preceding paragraph, i.e. when the requesting Party has mentioned in its request that it considers the personal appearance of a witness or expert to be especially necessary.

Article 11

This article is concerned with the transfer of persons in custody.

According to *paragraph 1*, persons in custody whose personal appearance is requested must in principle be transferred. Such transfer may be refused only in the cases provided for in the second sub-paragraph of paragraph 1 which contains four derogations. Of these the fourth is to be regarded as a general clause.

Paragraphs 2 and 3 call for no special comment.

Article 12

This article concerns immunity.

Paragraph 1 applies to both witnesses and experts summoned to appear in the territory of the requesting Party.

Paragraph 2 is in essence identical with paragraph 1 and applies to a person summoned on a charge. This person may not be prosecuted or detained in respect of an offence or a former conviction not mentioned in the summons.

Persons summoned as witnesses, experts, or accused enjoy immunity only in respect of offences or convictions preceding their departure and may be prosecuted for offences committed subsequently.

Paragraph 3 is similar to paragraph 1 (b) of Article 14 of the European Convention on Extradition.

Article 13

This article refers to information in judicial records. It should not be confused with "exchange of information from judicial records" referred to in Article 22.

Paragraph 1 applies to requests from a judicial authority in connection with a "criminal matter".

Paragraph 2 deals with cases where the requests are made by judicial authorities without jurisdiction in criminal matters, for example civil courts, or by administrative authorities. The word "practice" has been inserted in view of the fact that in some countries such matters are not governed by law or regulation.

Article 14

Paragraph 1 specifies what must be contained in requests for assistance.

Paragraph 2 deals with the content of letters rogatory. It was emphasised that it would be useful to add to such letters a list of questions that might be put to the witnesses or experts. This list would be indicative and not restrictive.

Article 15

This article specifies the channels of transmission to be used in mutual assistance. However, it was recognised that whatever the channel adopted, the requesting Party could always use the diplomatic channel if it deemed this to be necessary for special reasons.

Paragraph 1 specifies the channels of transmission for letters rogatory and applications for the personal appearance of a person in custody; these must, in principle, pass through the Ministries of Justice of the two Parties, but there is provision for some exceptions with regard to letters rogatory (see paragraphs 2 and 6 below).

The Irish and Swedish experts said that in their countries the Foreign Ministry took the place of the Ministry of Justice for the transmission of letters rogatory. The Ministry of Justice of the requesting Party should therefore apply to the Department of External Affairs in Ireland or the Foreign Ministry in Sweden.

Paragraph 2 makes an exception in respect of the letters rogatory referred to in Articles 3, 4 and 5 by introducing the rule of direct communication in urgent cases; its application, however, is optional. Nevertheless, after the execution of letters rogatory, documents must be returned by the Ministry of Justice of the requested Party to the Ministry of Justice of the requesting Party.

The Irish expert stated that communications could not be made directly between judicial authorities abroad and judicial authorities in Ireland, even in urgent cases.

Paragraph 3 specifies the channels for the transmission of requests for information, including extracts, from the judicial records. Two channels are laid down according to whether the request is made in pursuance of paragraph 1 or paragraph 2 of Article 13.

If the request is made in accordance with paragraph 1 of Article 13, it "may be addressed directly" to the appropriate department of the requested Party, that is the competent local authority. This channel is thus not obligatory, and the requesting Party is therefore also free to apply to the Ministry of Justice (for example, if it does not know the competent local authority).

On the other hand, if the request is made in accordance with paragraph 2 of Article 13, it must needs be transmitted through the Ministries of Justice.

Paragraph 4 specifies the channels for the transmission of requests for assistance other than those mentioned in paragraphs 1 and 3 discussed above. These include requests for service of writs and records of judicial verdicts as well as requests for investigation preliminary to prosecution made by the Public Prosecutor. Direct channels are provided for, but their use is optional.

It was specified that the word "proceedings" under German law referred to *die gerichtliche Strafverfolgung*.

Paragraph 5 allows direct transmission to take place through the International Criminal Police Organisation (Interpol). A similar provision appears in Article 16 of the European Convention on Extradition.

Paragraph 6 was drawn up because some delegations could not accept all the channels provided for in the preceding paragraphs, in particular direct transmission. This provision will allow the Parties concerned freely to choose in all cases the channel of transmission they consider the most appropriate.

According to *paragraph 7*, this Article is without prejudice to the provisions of bilateral agreements or arrangements which provide for the direct transmission of requests for assistance. This clause had to be inserted because, under Article 26 (1), such agreements will be superseded upon the entry into force of this Convention. Without this paragraph, the countries concerned would have to draw up new agreements on this particular point.

Article 16

This article concerns the translation of requests for mutual assistance and annexed documents.

Paragraph 1 lays down the principle that translations shall not be required and, at least for some countries, confirms existing practice.

Paragraph 2 gives Parties the right to derogate from the principle laid down in the preceding paragraph by enabling them to request a translation either into their own language or into either of the official languages of the Council, namely French or English, or into one of the latter languages specified by it. It was thought advisable to allow such derogation, since it is the local authorities (and not, as in extradition matters, the central authorities) who are required to act on requests for assistance and they are, as a rule, familiar only with their own tongue; but reciprocity may be applied. It was agreed that the "declaration" provided for in this paragraph could name countries from which translations would be required.

In the event of the requesting Party having difficulty in securing a translation of the documents to be transmitted into the language of the requested Party, it could always ask the latter to arrange for such translation but would undertake to bear the cost thereof itself. The requested Party shall comply with this request in so far as it is able.

Paragraph 3 is essentially the same as paragraph 7 of Article 15. It stipulates that its provisions shall be without prejudice to those of agreements or arrangements in force or to be made in the matter of the translation of requests or annexed documents. It follows from this text that, where such agreements already exist, a Contracting Party may not exercise the right set forth in paragraph 2 with regard to a Party to the said agreement or arrangement.

Article 16 will not apply to the exchange of information from judicial records referred to in Article 22.

Article 17

It was agreed that the phrase "any form of authentication" also covers every additional formality such as "certification of competence" in German law.

Article 18

Only those local authorities that have received a request for assistance through direct channels are required to inform the requesting authority that the request has been transmitted to the competent local authority.

This is not, however, the case where transmission has taken place through the Ministries of Justice, since in the latter event the requesting Party is not directly interested in knowing which local authority in the requested country is competent.

Article 19

The expression "any refusal" includes refusal in part.

Article 20

This article calls for no special comment.

Article 21

This provision enables any Contracting Party to request another Party to institute proceedings against an individual. It refers in particular to cases where a person, having committed an offence in the requesting country, takes refuge in the territory of the requested country and cannot be extradited.

In this situation it is clear that the requesting Party shall itself afford the widest measure of mutual assistance which could be requested of it by the requested Party in such a case.

The Irish expert explained that in his country, except in a limited number of cases, a person could not be charged with or punished for an offence committed abroad.

Article 22

This article, which is not to be confused with Article 13, introduces the rule of automatic communication of information from judicial records and relates to nationals of other Contracting Parties. According to this text, "criminal convictions" and "subsequent measures" need only be notified if they are entered in the judicial records of the country where sentence was passed.

The words "criminal convictions" must be construed in a broad sense. The "subsequent measures" refer, more particularly, to rehabilitation.

Information – such as is available – must be communicated once a year: it is not necessary for it to be communicated within a year of being entered.

Article 23

This article which concerns reservations is identical with Article 26 of the European Convention on Extradition.

Article 24

As mentioned in the commentary on Article 1, paragraph 1, the term "judicial authorities" has a different connotation in different countries. In some countries "Public Prosecutors" come within the term, whereas in others they do not. Accordingly, it was agreed that any country could at the time of signature or of deposit of its instruments of ratification define how it would construe "judicial authorities" for the purposes of the Convention, so as to allow, if considered desirable, for the inclusion of "Public Prosecutors".

Article 25

This article which concerns the territorial application of the Convention follows the text of Article 27 of the European Convention on Extradition, except for the second sentence of paragraph 2 and paragraph 4.

It should be noted that when depositing its instruments of ratification, the French Government made a declaration excluding from the field of application of the Convention Algeria which has become independent.

Article 26

This article concerns the relationship between this Convention and existing or future bilateral and multilateral agreements.

Paragraph 1 is based on paragraph 1 of Article 28 of the European Convention on Extradition. Under Article 15 (7) and Article 16 (3), the provisions of former treaties relating to the direct transmission of requests for assistance and the translation of requests and annexed documents will remain in force.

Paragraph 2 lays down that clauses relating to specific aspects of mutual assistance in bilateral or multilateral conventions shall not be affected by the present Convention. The Contracting Parties will therefore be bound to respect these clauses. However, if these international conventions are incomplete in this respect, the corresponding provisions of this Convention will have to be applied accordingly. As a general rule, however, the provisions of these conventions shall to the extent they deal with particular aspects of mutual assistance always take precedence with regard to these particular aspects over those of the Council of Europe.

Paragraph 3 is based on paragraph 2 of Article 28 of the European Convention on Extradition. It was accepted that the "agreements" referred to in this paragraph could provide for keeping in force certain provisions of international instruments superseded by virtue of paragraph 1.

Paragraph 4 is based, mutatis mutandis, on paragraph 3 of Article 28 of the European Convention on Extradition. Thus Parties having a system of mutual assistance "on the basis of uniform legislation" (Scandinavian countries) may regulate their mutual relations exclusively in accordance with that system. The reference to a "special system providing for the reciprocal application in their respective territories of measures of mutual assistance" was inserted in order to protect any reciprocal arrangements that might exist between Ireland and the United Kingdom.

Article 27

This article which concerns the signature, ratification and entry into force of the Convention, reproduces the text of Article 29 of the European Convention on Extradition.

Article 28

This article which concerns accession reproduces the text of Article 30 of the European Convention on Extradition.

Article 29

This article which concerns denunciation of the Convention reproduces the text of Article 31 of the European Convention on Extradition.

Article 30

This article which concerns notifications corresponds to Article 32 of the European Convention on Extradition.