



## **Explanatory Report to the European Convention on the Punishment of Road Traffic Offences**

Strasbourg, 30.XI.1964

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I. The European Convention on the Punishment of Road Traffic Offences, drawn up within the Council of Europe by a committee of governmental experts, was opened to signature by the member states of the Council of Europe on 30 November 1964.

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

### **Introduction**

In 1957 a committee of government experts was set up at the Council of Europe and received instructions from the Committee of Ministers: "to draw up and implement a plan of action for the Council of Europe in the field of crime prevention and the treatment of offenders".

The attention of this committee was inevitably drawn to the grave danger in all European countries of breaches of road traffic regulations. Such offences are increasing in number in proportion to the general increase in motor traffic, and the toll of the road has everywhere become a veritable scourge.

The object of the committee was to set up machinery for European co-operation to assist in curbing and checking this new form of delinquency. To this end the committee appointed a working party to prepare a preliminary draft of a multilateral convention between member countries of the Council of Europe, under which road traffic offences committed in one might be punished in another, thereby creating a close bond of solidarity between States in this matter.

The preliminary draft of the Convention was largely the work of Mr. A. D. Belinfante, Professor at Amsterdam University and Chairman of the sub-committee. It was amended at many meetings in the light of the views expressed by the experts of the participating countries, before being submitted to the Committee of Ministers in 1961. Its principles were favourably considered by the Conference of European Ministers of Justice in Paris on 6 June 1961.

Following a detailed examination the Committee of Ministers, sitting at Deputy level, decided to "refer the project to the ECCP along with governments' comments".

In pursuance of this decision, a committee of experts specialising in the subject of road traffic offences met to re-examine the preliminary draft Convention in the light of these comments and of the comments made by experts at the sitting.

This committee's conclusions were re-examined at a joint meeting of the experts of the specialised committee and of the regular committee held on 6 December 1963.

The European Convention on the Punishment of Road Traffic Offences was, by a decision taken by the Committee of Ministers sitting at Deputy level during its 134th meeting (October 1964) opened for signature by the member States of the Council of Europe on 30 November 1964.

## **I. Basic principles**

The law at present does not entirely ensure that penalties will be enforced against drivers from some other country who are guilty of offences against traffic regulations.

Extradition is hedged about with conditions, laid down by municipal law or by treaty, that can rarely be satisfied. Further, the principle of territorial jurisdiction which governs most national criminal law prevents the State of residence of the driver from proceeding against him for traffic offences committed in another country or enforcing sentences pronounced by foreign courts. Thus when proceedings are taken in the State where the offence is committed the offender cannot be punished after he has returned to his country of residence. The proceedings remain in abeyance or are concluded by a sentence which is not likely to be enforced. Moreover, the authorities in one country are naturally apprehensive that a person who causes a road accident may return to his own country to escape the consequences, and they will take measures to detain him in their own territory, which may cause him unnecessary inconvenience and are justified only because there is no enforceable international law.

The present Convention aims at removing these difficulties by departing in two ways from the principle of territoriality which by tradition settles the question of the competent court and the applicable criminal law.

First, it empowers the State where the person responsible is ordinarily resident (State of residence) to take proceedings for an offence committed on the territory of another European State (State of offence) whatever be the nationality of the offender. Secondly, it enables the State of residence under certain conditions to enforce sentences pronounced in the State of the offence. The Convention extends the competence of the State of residence and makes it possible for the State of offence either itself to institute proceedings against an offender in the usual way and eventually to request the State of residence to enforce the sentence, or to request the State of residence to institute proceedings, whatever the nationality of the offender or of the victim. The State of residence on its part is obliged to act on the request for proceedings or enforcement made by the State of the offence, all possible precautions being taken to avoid dual proceedings or dual enforcement. The categories of offence to which the Convention is applicable are listed restrictively in a "Common Schedule of Road Traffic Offences" which forms an integral part of the Convention. Only offences punishable both in the State of residence and in the State of the offence are included.

In order that the text may cover situations peculiar to each State, provision has been made for signatory States, subject to reciprocity, to declare their intention of limiting or extending the content of this Annex and to make reservations on certain articles of the Convention, particularly those concerned with enforcement. It should be noted that the Convention is limited to the punishment of acts which are infringements of criminal law. It does not deal with compensation for damage resulting from such offences. Nor does it deal with the problems of the influence of criminal proceedings on the settlement of civil claims. Claims for damages remain subject to the normal rules of private international law regarding legislative and judicial competence.

The common desire of European States to combat road traffic offences thus finds expression in the addition of a European jurisdiction to national jurisdiction. The State of the offence, as being chiefly interested, retains its normal legislative and judicial competence; but if circumstances prevent it from enforcing a penalty, the State of residence undertakes to help the State of the offence by placing at its disposal the machinery of its juridical system. It is not too much to think that, in arranging for effective co-operation in such matters between European States, the Convention, although limited to road traffic, marks an important stage in the development of international criminal law and foreshadows further developments.

The text that is presented consists of 35 Articles divided into 5 Sections. Section 1 sets forth the basic principles common to the proceedings in respect of road traffic offences and the enforcement of sentences. Sections II and III establish the conditions under which the State of residence may institute proceedings and enforce penalties at the request of the State of the offence. Section IV deals with the form of requests for proceedings or execution, their means of transmission, the purposes for which the proceeds of fines collected in the State of residence are to be used, and the settlement of costs of proceedings, judgment and enforcement. Section V in particular defines the meaning of some of the expressions used in the Convention. It explains the scope of the appended "Common Schedule of Road Traffic Offences" and provides reservations on certain clauses.

## **II. Commentary on the Articles**

### **Preamble**

The preamble requires no comment.

### **Section 1 – Fundamental principles**

#### **Article 1**

##### *Paragraph 1*

When a road traffic offence has been committed in its territory, the State of the offence may itself institute proceedings and carry them through to a final decision in accordance with ordinary law. Alternatively, it may under paragraph 1 report the offence to the State of residence as long as it has not itself fully enforced the penalty that it has imposed. The experts thought it desirable not to deprive the State of the offence of the opportunity of requesting the State of residence to institute proceedings after itself instituting them but before the penalty had been completely enforced in its territory. They felt that the State of the offence should be enabled, when several persons were involved in the same case, at any time to pass differing sentences on each according to the circumstances. Such, for instance, would be the case of a motor accident involving drivers of different nationalities. It may be to the advantage of the State of the offence to initiate proceedings against all individuals concerned but to try only its own nationals and to report aliens to the authorities of their States of residence.

It also appeared desirable to make it possible for the State of the offence to ask the State of residence to take over proceedings if the offender had gone back to that State after proceedings had been started in the State of the offence.

The additional provision which stipulates that the State of the offence must request the State of residence to take proceedings, if its municipal law requires, was inserted because of the difficulties that would be created for the legal system of some States, particularly Italy (and Greece), by a purely optional right - of their legal authorities - to abandon proceedings by means of a request for the institution of proceedings made to the State of residence. In those States it will therefore be necessary to determine by domestic legislation according to what objective criteria a request for proceedings must be addressed to the State of residence.

Such rules may, of course, be laid down either in the law to be adopted to authorise the ratification of the Convention or in a subsequent law.

The experts also considered the case where a request for enforcement originated by the State of the offence under Article 1, (2), would be a dead letter in the State of residence because the latter had not, as is provided by Article 32, (1), subscribed to the provisions of the Convention regarding the enforcement in its own territory of penalties imposed in the State of the offence. In this case, too, it was agreed that the State of the offence could ask the State of residence to take over the proceedings irrespective of the stage then reached.

Admittedly there are disadvantages in the State of the offence requesting the State of residence to take proceedings after itself initiating them. First of all, this might give rise to dual proceedings; and secondly, it would enable the State of the offence to hold the offender in its territory so that it might start proceedings against him which would not necessarily be terminated. Therefore, in order to reconcile the interests of the State of the offence and those of the offender, the text stresses the exceptional nature of a request for proceedings made after proceedings had already started in the State of the offence. Under Article 1, paragraph 1, the State of the offence may report the facts to the State of residence after having started proceedings on them, only if "it is unable to carry them through to a final decision or to enforce the penalty in full".

One of the experts proposed the deletion of the phrase "or to enforce the penalty in full" in order that the State of the offence should not be able to report the facts to the State of residence after pronouncing a final decision. This would avoid any risk of dual judgment on the same facts in the State of offence and in the State of residence.

The committee did not approve this proposal. It considered that the provisions of paragraph 1 complied with the rule *ne bis in idem* as applied in most European countries. This rule is generally considered as intended to prevent dual sentence rather than dual enforcement. The same expert also wished to add the following provision to paragraph 1:

"The State of the offence shall without delay take all necessary steps to preserve evidence".

Most of the experts considered that the inclusion of this clause was not necessary, and they assured their colleague that the State of the offence would in any case have the right to take such measures.

#### *Paragraph 2*

Paragraph 2 makes it possible for the State of the offence to request the State of residence to enforce a judgment or administrative decision that it has rendered.

The meaning of the expressions "judgment" and "administrative decision" is explained in Article 24 (e) and (j). The judicial or administrative penalties thus ordered must be enforceable in the State where they were rendered (Article 14, paragraph 3).

The expression "become enforceable... after the offender has been given an opportunity to present his defence" relates to administrative decisions and possibly to judicial decisions rendered by default in so far as they are final (in particular *ordonnances pénales* and *amendes de composition*).

This provision guarantees that these decisions may be enforced only if the offender has had an opportunity to avail himself of the means of defence either before the pronouncement of the decisions or after they were pronounced but before they became enforceable.

*Paragraph 3*

This paragraph contains the provision requiring the State of residence to "take action" on the request for proceedings of enforcement presented to it by the State of the offence. The "action" referred to does not mean in the case of a request for proceedings the actual initiation of proceedings but merely the consideration of their advisability. In fact, the principle that the State of residence alone should assess the advisability of proceedings is contained in Article 4 ("the competent authorities of the State of residence shall examine any request... and shall decide in accordance with their own laws what action to take thereon") On the other hand, when a request for enforcement is presented to it the State of residence must comply with it under Article 8, on the conditions laid down by the Convention ("decisions *shall be enforced*").

This obligation does not include the enforcement of decisions rendered by default. Whether or not its law recognises decisions of this kind, the State of residence has full discretion in such cases, There is, however, nothing to hinder the State of the offence from resenting a request for to the State of residence if the latter has refused enforcement.

The committee were in agreement in considering that for decisions rendered by default the discretion as to enforcement for which provision is made in the text is left to the State of residence in each specific case. It is therefore not necessary for that State to state its position once and for all at the time of signing the Convention or depositing the instrument of ratification or accession.

The experts further specified that the option left open to the State of residence referred only to decisions by default which had become enforceable, Article 14 (3) in fact stipulates that they must be enforceable. Hence a judgment by default which was not enforceable, could never be enforced by the State of residence.

Finally, the committee expressed the opinion that, in cases where a State declined to enforce a decision rendered by default, absence of reciprocity could always be invoked by the State whose request had been declined in an analogous case.

**Article 2**

*Paragraph 1*

This paragraph provides that in order to be covered by the Convention, the offence which gives rise to the request for proceedings or enforcement and which, under Articles 24 (a) and 25, must of course appear in the "Common Schedule of Road Traffic Offences", must be punishable under the law of both the State of the offence and the State of residence. This condition is considered to be satisfied even if the legal definition of the offence under consideration is not, as is often the case, identical in the two States. It is enough for the offence to be amenable to criminal law in these States.

*Paragraph 2*

When at the request of the State of the offence, the authorities of the State of residence take proceedings or enforce a penalty, they apply in principle their own law. When, however, they are considering whether the material factors of the offence have been established they must base themselves on those provisions that regulate road traffic in the State of the offence. Thus, for example, the authorities of a State of residence whose regulations stipulate that traffic must keep to the right will deem such action punishable if the regulations of the State of the offence stipulate that traffic must keep to the left. Further examples could be given: in cases of exceeding the speed limit or exceeding a time-limit for parking, it is always the road traffic rules in force at the place of the offence which must be taken into consideration by the authorities of the State of residence when they are judging the conduct of a driver in the State of the offence.

But for the other factors involved in the offence, such as those subjective factors that determine or modify the offender's responsibility (for example, factors that diminish or aggravate responsibility), it is their own law that must be applied by the authorities of the State of residence.

Article 24 (d) indicates that within the meaning of the Convention, and in particular of Article 2 (2), "road traffic rules" means any regulation relating to road traffic which, when broken, is punished by a penal provision included in one of the categories of offences listed in items 4 et seq. of the "Common Schedule of Road Traffic Offences", and not merely rules regarding road traffic in the strict sense of the term. Thus, the Convention considers as "road traffic rules" regulations regarding insurance obligations, failure to report an accident, driving licences, refusal to obey police orders.

Paragraph 2 solves one legal problem which is particularly complex but vital: that of the application in the State of residence of certain laws and regulations in force in the State of the offence.

This problem is complicated by difficulties of a constitutional nature peculiar to those States where the Convention does not, in itself, constitute a fount of municipal law.

In an attempt to reconcile the difficulties, without, however, having recourse to the legal fiction of assimilating offences committed abroad to those committed within national territory, Article 2 (2) confines itself to stating the general principle that authorities of the State of residence should apply their own law to offences committed abroad. They would have to refer to the traffic rules in force in the State of the offence, in other words they would have to apply their own criminal law which, in principle, punishes any violation of national traffic rules - to violation of foreign traffic rules valid at the place where the offence was committed.

An expert proposed that paragraph 2 should be placed in Article 3, dealing with competence to prosecute. He said that although the rules of paragraph 1 referred both to proceedings and to enforcement, these of paragraph 2 only dealt with the assessment of the offence with a view to proceedings, and not with enforcement. This proposal was not accepted. The majority of the committee thought that the principle that the State of residence should apply its own law was fundamental and should therefore govern the whole Convention.

## **Section II – Proceedings in the State of residence**

### **Article 3**

This article grants the State of residence the necessary competence enabling it to take proceedings in respect of a road traffic offence committed outside its territory, when, as is generally the case, it does not possess such competence under its own laws. Such provision seems necessary for those States which will apply the Convention directly, without the need to pass any special legislation on the subject. The personal competence possessed by some States in respect of those who commit road traffic offences abroad remains unaffected by application of Article 26.

### **Article 4**

This article describes the action the authorities of the State of residence may take when they have received a request for proceedings. It will be noted that those authorities are only obliged to "examine" the request and to decide what action to take on it. It is left to their discretion whether they should institute proceedings for the offence committed abroad.

The reference to the law of the State of residence made in the Article is explained by the desire not to prejudice the principle of the desirability of the proceedings when this principle is legally recognised, as is the case in most member States of the Council of Europe.

## **Article 5**

Paragraph 1 deals with the effect of the request for proceedings in the State of the offence. It is aimed at preventing the institution of separate proceedings for the same offence in the State of the offence and in the State of residence. The text provides that in principle the sending by the State of the offence of a request for proceedings rules out or terminates any proceedings in that State. It further forbids any measures of enforcement.

Proceedings maybe resumed or enforcement measures may be taken by the State of the offence only in the cases laid down in paragraph 2. The State of residence must be informed of any resumption, but its consent is not necessary.

The "action" referred to in sub-paragraph (a) of paragraph 2 is the taking of a final internal decision by the State of residence. It would become impossible to take such action if, for example, the offender returned to the State of the offence, or for any other reason of law or of fact.

In pursuance of sub-paragraph (b) of the same paragraph, the resumption of proceedings or enforcement in the State of the offence is only possible if some new fact has come to the knowledge of that State after the request for proceedings was sent and if that resumption comes before a judicial hearing in the State of residence or before the delivery of an administrative decision in that State.

## **Article 6**

The effects of the request for proceedings on the limitation of the time for prosecution in the State of the offence and in the State of residence are dealt with in paragraphs, 1 and 2 respectively.

Paragraph 1 provides that the sending of the request for proceedings by the State of the offence shall suspend the limitation of the time for prosecution in a State. The time limitation shall begin to run again to its full extent in the State of the offence, if that State resumes proceedings in accordance with paragraphs 2 (a) and (b) of Article 5 and in any case at the expiry of a period of six months from the date on which the request for proceedings was sent. The reason behind this clause is the desire not to leave the institution of proceedings in the State of the offence in abeyance for an indefinite period of time.

Paragraph 2 (1 ) provides that in the State of residence the time limitation for prosecution shall begin to run only from the time that the request for proceedings is received.

Paragraph 2 (2) relates to cases where the victim must lodge a complaint before proceedings can be instituted. The period within which the complaint must be lodged begins to run from the date on which the application for the institution of proceedings is received.

## **Article 7**

This article provides that documents drawn up by the judicial and administrative authorities of the State of the offence, following a road traffic offence, in particular police reports establishing the facts, shall have the same force in the State of residence as similar documents drawn up in that State by its national authorities. Thus, under the Convention, a French police report concerning a road offence committed in France would have in Sweden, the State where the offender resided and where the proceedings would be instituted, the same legal force as a report made out under similar circumstances by the Swedish police in respect of a like offence committed in Sweden.

Reciprocity is provided for in cases where the State of the offence has resumed proceedings in pursuance of Article 5 (2). The documents drawn up in the State of residence following the, now necessary, request for proceedings or enforcement, would have, in the State of the offence about to resume the proceedings, the same value as similar documents drawn up by its own authorities.

### **Section III – Enforcement in the State of residence**

#### **Article 8**

The first sentence of this Article empowers the State of residence to enforce a penalty imposed in the State of the offence in respect of an offence committed in that State. This provision goes hand-in-hand with that of Article 3 which empowers the State of residence to prosecute. It makes the authorities of the State of residence competent to enforce an order issued by an authority of the State of the offence, although, according to the generally accepted principles and in conformity with the executory formula attached to the decision, the police force of a State executes only the orders of its national authorities.

The second sentence of Article 8 lays down the obligation for the State of residence to enforce the foreign sentence after it has satisfied itself that the requirements as to, form and substance laid down under the Convention have been met. It is up to that State to determine how compliance with these requirements is to be checked.

The third sentence gives the State of residence alone power to take decisions regarding conditional release.

The fourth sentence empowers both the State of residence and the State of the offence to take decisions regarding free pardon. Consultation is not necessary but arrangements in the matter may be made in each individual case.

#### **Article 9**

This article deals with reasons for a refusal to enforce on the part of the State of residence.

##### *Paragraph 1*

Obvious obstacles to enforcement are: that a final decision in the same case has been rendered in the State of residence; that a time-limit has been reached, or an amnesty granted, in the State of the offence and in the State of residence,

##### *Paragraph 2*

This paragraph is modelled on Article 7 (2) of the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders. It entitles the State of residence to refuse enforcement if the authorities in that State have decided not to take proceedings, or to drop proceedings already begun, in respect of the same act, if proceedings are pending in the territory of that State in respect of the same act and, finally, if that State considers enforcement to be incompatible with the fundamental principles of its judicial system or with the principles governing the application of its own penal law. The committee decided to mention as an example the irrebuttable presumption in some legal systems that persons below a certain age are not responsible for offences.

#### **Article 10**

The conditions governing enforcement in the State of residence of penalties other than fines, such as imprisonment, are stipulated in this Article. Its provisions are of particular importance since they offer a solution to the problem rightly considered to be of great complexity.

As such penalties vary from State to State, it is necessary to adapt the sentence pronounced in the State of the offence to the penal system of the State of residence. The text adopted by the committee leaves it to the State of residence to do so. In practice, it was felt that such adaptation was not likely to give rise to any major complication.

In actual fact, the different sentences of imprisonment provided for under European legislation are similar enough for it to be possible to replace the penalty imposed by the State of the offence, without altering its main features, by the penalty provided for in the law of the State of residence in respect of a like offence.

The manner of enforcing sentence, for instance the condition of imprisonment, will be in accordance with the practice of the State where the sentence is served. However, the maximum term of imprisonment provided for in such cases in the law of the State of residence may not be exceeded. Furthermore, the penalty imposed by the State of residence may not be longer or more severe than that imposed by the State of the offence.

This article is not limited in scope to penalties of imprisonment. Its broad wording makes it applicable to penalties depriving the offender of certain rights, such as the suspension or prohibition of the right to drive a motor vehicle, imposed by a court or administrative decision on traffic offenders in all countries. There seems no reason why the measures of adaptation mentioned in the Convention should not be taken with regard to penalties of this kind provided the latter meet the criteria laid down by the Convention.

The experts agreed that this Article should be interpreted as meaning that the requested party may reduce the term of a penalty involving deprivation of liberty, having regard not only to the maximum penalty of its legislation, but also to its court practice in regard to determination of the penalty, and also having regard to the same consideration, that the requested party may commute a penalty involving deprivation of liberty into that of a fine.

An expert proposed the addition of the following provision for Article 10:

"The time limitation for the penalty shall be determined by the law of the State of residence. It shall begin to run on the day when the State of residence receives the request for enforcement."

This proposal was not supported by the majority of the experts. They made clear, however, that the time limitation for the penalty would be determined according to the law of the State of residence and that the commencement of that time limitation would as a general rule be the date of the final sentence.

#### **Article 11**

The State of residence will enforce fines on the same principle as for other penalties. For the reason already given, the fines collected by the State of residence, the proceeds of which are its property under Article 21, may not exceed the maximum provided for in the law of that State in respect of a like offence. In Denmark, Norway and Sweden, where there is no legal maximum, the amount of the fines shall not exceed that normally imposed by the competent authorities of the State of residence for a like offence.

#### **Article 12**

This article deals with compulsive measures to be applied by the State of residence to any person who does not pay the fine imposed on him by the State of the offence.

The first paragraph deals with procedures for compelling payment of the fine which do not involve imprisonment of the offender. Enforcement by a bailiff comes within this category.

The second paragraph deals with measures bringing pressure to bear on the offender in order to compel him to pay the fine (for instance, imprisonment for debt in France) or substituting imprisonment for the fine (subsidiary or substitute imprisonment) .

### **Article 13**

This article aims at avoiding dual enforcement in the same case in the State of offence and the State of residence. It corresponds, as regards enforcement, to Article 5 (1) as regards proceedings.

## **Section IV – General provisions**

### **Article 14**

This article covers the form in which requests for proceedings or enforcement shall be made and the nature of supporting documents.

### **Article 15**

Flexible rules governing the transmission of requests for proceedings or enforcement as well as supporting documents were designed to fit the variety of administrative bodies existing in the States concerned.

In principle, the request will be sent by the Ministry of Justice of the State where the offence was committed to the Ministry of Justice of the State of residence. The reply will be transmitted by the same method (paragraph 1). The communications necessary to the application of the Convention will be exchanged either as indicated in paragraph 1 or direct between the authorities of the Contracting Parties (paragraph 2).

However, paragraph 4 gives each Contracting Party the right to derogate from these rules for the transmission of documents.

Paragraph 3 of this article suggests the use of the rapid means of transmission available to the International Criminal Police Organisation (Interpol), already provided for in the European Conventions on Extradition and on Mutual Assistance in Criminal Matters. There is every reason to think that use of this channel will greatly facilitate the inter-State exchange of information required by the Convention.

### **Article 15**

This article empowers the State of residence to ask the State of the offence for such additional information as is needed to establish – in cases where the request is insufficiently documented – whether the conditions laid down by the Convention have been met. It would be particularly desirable in such cases to have recourse to the International Criminal Police Organisation (Interpol), as provided for in Article 15 (3). Clearly, the information in question is not that required by the State of residence in connection with the prosecution itself. Such information can be secured by invoking the European Convention on Mutual Assistance in Criminal Matters.

### **Article 17**

This governs the relationship between the present Convention and the European Convention on Mutual Assistance in Criminal Matters. The mutual assistance provided for in a general way by the latter Convention is that lent between judicial authorities with a view to the punishment of all kinds of offences.

As certain road traffic offences are punished in some States by authorities which other States do not consider judicial authorities, it seems necessary to provide that for the purposes of the Convention, assistance will be granted under any circumstances whatever the authorities concerned.

Furthermore, according to its Article 1 (2), the European Convention on Mutual Assistance does not apply to the enforcement of sentences. It follows that the despatch to the State of residence by the State of the offence of a payment order in respect of a person sentenced to a fine might give rise to difficulties in cases where 'such an act would be regarded by the State of residence as a measure preparatory to enforcement.

It is in order to avoid such contingencies that Article 17 provides that the payment order shall not be deemed an enforcement measure.

#### **Article 18**

This article lays down the obligation for the State of residence to inform the State of the offence of the action taken on its request for proceedings or enforcement.

#### **Article 19**

This settles the question of translations in the same way as Article 16 of the European Convention on Mutual Assistance in Criminal Matters.

It provides that, as a general rule, requests for proceeding's or enforcement together with appended evidence shall be sent without translation. Exceptions may, however, be made, subject to reciprocity.

#### **Article 20**

This is similar to Article 17 of the European Convention on Mutual Assistance in Criminal Matters and does not call for any comment.

#### **Article 21**

To avoid complications arising from the refund by the State of residence of the proceeds of fines levied as a result of requests for proceedings or enforcement, it was agreed that such monies should become the property of that State.

#### **Articles 22 and 23**

These articles concern the cost of proceedings incurred in the State of the offence and collected in the State of residence after prosecution or enforcement in the latter State (Article 22) and the costs incurred in the State of residence following a request for proceedings or enforcement by the State of the offence (Article 23). For the sake of simplicity, it has been agreed that in principle costs will not be refunded by the State to which they have been paid. The State of residence may secure from the convicted person the costs of the proceedings instituted in the State of the offence only if it is expressly requested to do so by that State. In that case, only experts' fees incurred in the State of the offence will be refunded to that State.

### **Section V – Final provisions**

These provisions are modelled on the final clauses adopted by the Ministers' Deputies at their 113th meeting.

## Article 24

This article defines the meaning under the Convention of the terms "road traffic offence", "State of the offence", "State of residence", "judgment administrative decision" and "road traffic rules".

Paragraph (a) is comparable with Article 2 which lays down the principle that to be covered by the Convention a road traffic offence must be punishable both in the State of the offence and in the State of residence, the material factors, however, being assessed exclusively according to the road traffic regulations in force in the State of the offence.

The committee considered that the offence must fall under the Convention even if it is committed by a pedestrian and whatever vehicle is used as long as it moves on a thoroughfare. The Convention therefore applies to bicycle traffic as well as to motor vehicles or vehicles drawn by animals.

Paragraph (c) specifies that the State of residence is the State where the offender is ordinarily resident. Residence is therefore characterised by a certain degree of permanence, which in practice must be assessed by those who apply the Convention,

The purpose of paragraph (d) has been explained in connection with Article 2.

Paragraph (e) states that the term "judgment" refers to all decisions rendered by a judicial authority, including criminal sentences (*Strabefehlen* and *Strafverfügungen*) provided for under German penal law and orders to pay compensation as provided for in Articles 524-528 of the French code of penal proceedings.

Paragraph (f) provides that "administrative decisions" should be understood to mean decisions which in certain countries are rendered by administrative authorities empowered to pronounce sentences provided under the laws governing the punishment of road traffic offences. They include decisions rendered in Germany to punish offences known as *Ordnungswidrigkeiten*, i.e. appealable decisions rendered by administrative authorities to punish certain traffic and other violations. Naturally, such decisions should meet the conditions laid down in Article 1 (2) (Cf. commentary of Article 1 (2)).

## Article 25

Paragraphs 1 to 4 of this Article determine the scope of the Convention with regard to the offences covered. A list of road traffic offences to be covered by the Convention has been prepared, it being understood that the Convention will apply to them only if the actual offence committed happens to be punishable both in the State of the offence and the State of residence (Article 2 (1)). The name given to this list, i.e. "Common Schedule of Road Traffic Offences", reflects the identity of views held by the Contracting Parties in this matter. However, this list should not be considered as definitive either at the time of the signature of the Convention or the deposit of the instrument of ratification or accession.

After the coming into force of the Convention, a number of States may, in the light of growing road traffic, consider it necessary to add to the list of offences, just as other countries may have reason to withdraw a number of offences from the original list.

The notification system mentioned in paragraphs 2, 3 and 4 of Article 25 has been established in order to enable any Contracting Party to add to or restrict at any time the list of offences contained in the Annex to the Convention.

It follows that if the Contracting States avail themselves of this possibility a certain discrimination will result as between the different offences appearing on the list. Some offences will be recognised by all the Contracting Parties and will be truly "common" to them, while others will be recognised only as between some of the Parties.

Despite this drawback, it seems desirable that the list should remain a flexible one.

In view of the changes that may be made, this list should form an annex which, as stated in paragraph 1, is considered an integral part of the Convention. In this way, it will be easier to keep up to date than would be the case if it were incorporated in the Convention itself.

It should be pointed out that the notification of withdrawal mentioned in paragraphs 2 and 4 is not identical with the reservations which the Parties may formulate under Article 32,

Paragraph 5 provides for the case when a signatory State has to pass legislation in order to make the Convention applicable in its territory.

#### **Article 26**

This article is intended to express clearly that the Convention does not affect the rules of municipal law regarding the competence of the State of residence (and its exercise) in regard to prosecutions or enforcement.

#### **Article 27**

This article recognises the right of certain signatory States to conclude bilateral or multilateral agreements on a regional basis and to arrange their mutual relations in this matter on the exclusive basis of these agreements. This clause has, in view particularly the conventions between the Scandinavian States and between the Benelux States. It is analogous to that in Article 26 (4) of the European Convention on Mutual Assistance in Criminal Matters.

#### **Article 28**

This article entrusts the European Committee on Crime Problems of the Council of Europe with the task of watching over the implementation of the Convention by the Contracting Parties and, as far as possible, of aiding in the amicable settlement of any difficulties that may arise. This committee appeared to be in the best position to provide any necessary explanations regarding the application of the Convention in accordance with the intentions of its authors.

#### **Article 29**

This article deals with the conditions of ratification and acceptance of the Convention.

#### **Article 30**

This article deals with the conditions for accession to the Convention.

#### **Article 31**

This article deals with the territorial application of the Convention.

### **Article 32**

Paragraph 1 enables Contracting Parties, by means of a declaration addressed to the Secretary General of the Council of Europe at the time of signature or when depositing their instrument of ratification, acceptance or accession, to avail themselves of the reservations provided for in Annex 2 to the Convention.

Paragraph 2, on the other hand, provides that any signatory may at any time totally or partially withdraw its reservations. The procedure for the withdrawal of reservations is similar to that for their notification.

Paragraph 4 concerns countries in which ratification of the Convention is not considered as entailing solely by the fact of its ratification obligations within the framework of their municipal law.

### **Article 33**

This article concerns the duration of the Convention and the conditions for its denunciation.

### **Articles 34 and 35**

These articles contain the usual final clauses.

Article 35 conforms with the opinion of the majority of the experts that the Convention should apply only to offences committed subsequent to its entry into force.

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## **ANNEX I TO THE CONVENTION**

### **Common Schedule of Road Traffic Offences**

#### **Item 4**

The French expert raised the question of the application of this Convention to the 50% increase in fines decreed under French law in the case of offences in regard to insurance obligation. The committee agreed in considering that this increase which was not penal (*de caractère répressif*) should remain outside the scope of this Convention.

Another expert pointed out that the question should be considered whether it was appropriate to regard "failure to comply with the obligation to be covered by third party insurance" as a road traffic offence, particularly in view of its civil law implications.

The experts studied the question and considered that there were no grounds for omitting "failure to comply with the obligation to be covered by third party insurance" from the field of application of the Convention, when this offence, according to the general principles of the Convention, was punishable by law both in the State of the offence and in the State of residence. It had always been specified in this connection that the civil consequences of accidents were not governed by the Convention which deals only with criminal proceedings. Civil consequences were governed by the normal rules of international private law.

#### **Item 5**

This item covers not only wilful refusal to halt when signalled to do so by a policeman, but also all those cases where a person on a public road does not conform to the orders and signals given by a policeman in relation to road traffic.

**Item 6**

The text of this item takes into account the classification contained in the Protocol to the International Convention on Road Traffic concluded at Geneva on 19 September 1949.

**ANNEX II TO THE CONVENTION**

This annex defines the cases in which Contracting Parties may make reservations.

The Italian delegate pointed out that in conformity with the Italian constitution, every person had the right to know a priori who would judge his case on the basis of objective criteria fixed by the law. The discretionary exercise of the power to make requests for proceedings granted to the State of the offence by Article 1, paragraph 1 of the Convention, in so far as it would determine the competence of the Italian judge, did not appear to the Italian delegate to be compatible with the above-mentioned constitutional principle since that power would leave those concerned uncertain as to the authority competent to take proceedings against them. The possibility of making a reservation of the kind mentioned above was provided for in order to overcome difficulties, of this nature and to ensure that countries in which they would arise are not precluded from ratifying the Convention.

These States could limit the acceptance of the requests addressed to them to certain categories of requests determined by their municipal law. Thus a Contracting Party could declare that in accordance with its municipal law it only accepted requests for proceedings from States of the offence if the transfer of proceedings by that State to the State of residence is compulsory on the basis of objective criteria prescribed in the law of the State of the offence.

Several delegations, whilst recognising that the reservation makes it possible to establish criteria of this kind for the acceptance of requests, pointed out that this would have the effect of depriving States which wanted to maintain complete freedom of choice between proceedings in the State of the offence and proceedings in the State of residence, of the possibility of addressing requests for the taking of proceedings to a State which had established such criteria.

States wishing to make use of this reservation will be required to inform the Secretariat General of the Council of Europe of the categories of requests they would accept.