



Explanatory Report to the European Convention on the International Effects of Deprivation of the Right to Drive a Motor Vehicle

Brussels, 3.VI.1976

I . The European Convention on the International Effects of the Deprivation of the Right to Drive a Motor Vehicle, drawn up within the Council of Europe by a committee of governmental experts under the authority of the European Committee on Crime Problems (ECCP) was opened to signature by the member states of the Council of Europe on 3 June 1976.

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.

General remarks

1. Amid the steady expansion in the volume of international traffic and communications, a major step towards greater road safety was taken on 15 October 1971 when the Committee of Ministers of the Council of Europe adopted Resolution (71) 28 recommending that Council of Europe member states introduce a system for deprivation of the right to drive in accordance with the principles set out in the resolution.

2. The reason for this action was that, in the face of the large number of traffic accidents due to human error, deprivation of the right to drive is regarded as an effective means of prevention, education and punishment with regard to those committing road traffic offences.

3. However, the effectiveness of the recommendations contained in this resolution frequently depends on the extent to which the deprivation of the right to drive can be enforced internationally. This applies particularly in the case of a driver who is habitually resident (See Resolution (72) 1 on the standardisation of the legal concepts of "domicile" and of "residence" adopted by the Committee of Ministers of the Council of Europe on 18 January 1972) abroad or who holds a foreign driving licence (or equivalent document).

4. In the absence of a suitable legal instrument, therefore, Resolution (71) 28 can in many cases have only a limited international impact on road safety. Accordingly the purpose of the present Convention is to ensure that driving deprivations are also operative abroad.

5. While there are wide differences in the legislations of Council of Europe member states governing the withdrawal of driving licences, they are nevertheless all based mainly on the principle that :

Where a driver has committed a serious road traffic offence or else a series of offences which show that he is a dangerous driver, it is in the interests of public safety that his right to drive should be subjected to certain restrictions for a suitable period.

6. The deprivation of the right to drive ordered in a state shall apply in that state for the period specified, as long as the driver who has suffered the deprivation remains there. However, if he goes to a foreign state, public safety requires that he should not be able to avoid the effects of the deprivation, either by obtaining a new driving licence there or by using an international one.

7. Measures must therefore be taken in all the states concerned and are of particular importance in cases where a driver who has suffered a deprivation has residences in more than one state or frequently travels abroad.

8. Hence the need for a system to ensure that a deprivation may be effective internationally, especially in states where the driver concerned has been issued with a licence or where he sometimes resides or stays.

9. This calls for close co-operation among Council of Europe member States. These States should exchange information and grant the greatest mutual assistance possible to achieve the desired aim to the fullest possible extent.

10. The question arose as to whether such co-operation could not be achieved by means of a recommendation, but it quickly became apparent that a recommendation would not constitute a sufficient basis for states to lend the required assistance with the effectiveness desired. In addition, traffic offences are dealt with in some member states by the administrative authorities, in others by the judicial authorities, and in still others by both. According to the circumstances, these authorities are or may be competent to order the deprivation of the right to drive. Application of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 would consequently encounter obstacles.

11. It was accordingly judged necessary to draw up a new Convention providing for specific co-operation among Council of Europe member States in the international enforcement of driving deprivations.

12. During the drafting of this text, account was taken of the reluctance of some member States to recognise in their own territory the validity of decisions rendered in other member States ; this should facilitate ratification or acceptance considerably.

13. It was not possible for the new Convention to alter the rules governing the issue of national or international driving licences, as this is a matter outside the province of the Council of Europe.

14. In the course of drafting, however, it became clear that for practical reasons no driver should possess more than one national driving licence and that an international licence should be valid only in combination with the national one.

15. This would undoubtedly be made easier by the establishment of a central agency where a record was kept of all driving licences issued as well as all decisions ordering restrictions on the right to drive. This agency could be empowered to supply to the states concerned all information concerning the application of the Convention. While not appearing to be necessary immediately, the establishment of such a central agency might usefully be envisaged at a future date which remains to be fixed.

Commentary on the provisions of the Convention

Article 1

16. This article defines what is meant by "deprivation of the right to drive". Its wording is similar to that of the first paragraph of Resolution (71) 28 of the Committee of Ministers of the Council of Europe. Any distinction according to the nature of the deprivation or the character (judicial or administrative) of the authority ordering it has been very sensibly avoided

17. It should be emphasised, however, that the Convention applies only to "final measures" of deprivation of the right to drive, that is those which are ordered at the outcome of proceedings organised by national legislation.

18. Accordingly, the Convention does not apply to any "provisional decisions" to withdraw a driver's licence or ban him from driving.

19. The Convention also refrains from making any distinction based on the length of the period of deprivation, mainly because of the differences which exist in this regard between the legislation of the different states.

Article 2

20. Article 2 specifies the obligations of the Contracting Party in whose territory the deprivation was ordered. That Contracting Party is required to give notification of such deprivation to :

- a. the State which has issued a driving licence to the driver concerned
- b. the State in whose territory the driver is habitually resident.

The particular advantage of this measure is that it helps to prevent a driving licence from being issued to a driver who is not yet entitled to one and who is subject abroad to a driving prohibition.

21. No limit has been placed on these obligations according to the length of the period of deprivation. It was considered to be in the interests of the state of residence of the driver concerned as well as of the state which issued his licence to be informed of any driving restrictions imposed on him in any other state.

Article 3

22. Under this article, each Contracting Party notified of a deprivation shall assess what action to take on the information received.

If it thinks fit, it may, in accordance with the provisions of national legislation (adapted if necessary), subject the driver to a deprivation on its own territory as if the facts and circumstances of the case had occurred there.

23. By allowing the notified Contracting Party complete discretion, this provision has the merit of not encroaching upon the principle of state sovereignty. However, that Party may, of course, where appropriate take into account the actual length of deprivation in the state where it was ordered.

It is worth repeating here that even if the state notified does not see fit to order a deprivation in its own territory, it is nonetheless in its interests to know about any deprivations to which a particular driver is subject in other states.

Article 4

24. This article stresses the importance of an exchange of information between Contracting Parties to the Convention by requiring a state notified of a deprivation ordered abroad to inform the notifying state, if so requested, of any action it has itself taken.

Articles 5, 6, 8 and 9

25. These articles do not call for any particular comment.

Article 7

26. The term "Contracting Parties" shall be understood as referring to the authorities of each Party as indicated in the definition of a driving deprivation in Article 1.a.

Articles 10 to 14

27. These articles generally correspond to the model final clauses of European conventions and agreements, as approved by the Committee of Ministers of the Council of Europe.