

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (75) 11

ON THE CRITERIA GOVERNING PROCEEDINGS HELD IN THE ABSENCE OF THE ACCUSED

*(Adopted by the Committee of Ministers on 21 May 1975
at the 245th meeting of the Ministers' Deputies)¹*

The Committee of Ministers,

1. Recalling that one of the aims of the Council of Europe is to achieve greater unity among its Members ;
2. Whereas the presence of the accused at his trial is of vital importance, from the point of view both of his right to be heard and of the need to establish the facts and, if need be, pass the appropriate sentence ; and whereas exemptions should be granted only in exceptional cases ;
3. Whereas ways and means should be found of securing the accused's right to a hearing as laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and his right to be present at his trial as recognised in the International Covenant on Civil and Political Rights signed in New York on 19 December 1966 ;
4. Whereas the possibility of simplified proceedings without a hearing for certain minor offences should nevertheless not be excluded ;
5. Whereas the systems adopted by several member states to avoid judgements in the absence of the accused and their consequences do not always appear to be effective when, for example, the accused is resident abroad ;
6. Whereas, during the preparation of the European Convention on the International Validity of Criminal Judgments, the question of judgements *in absentia* raised difficulties and it proved necessary to grant Contracting States the right to formulate reservations with regard to the enforcement of such judgements ;
7. Believing that such reservations could be avoided if the procedures for trial in the absence of the accused as currently applied satisfied the requirements of the proper administration of justice ;
8. Convinced that the growing mobility of the population has the effect of increasing the number of judgements rendered in the absence of the accused in those states where this procedure is used,
 - I. Recommends that the governments of the member states apply the following minimum rules :
 1. No one may be tried without having first been effectively served with a summons in time

1. When the resolution was adopted, the Representatives of Sweden and the United Kingdom reserved the right of their governments to comply or not with point 6 of its operative part, in accordance with Article 10, paragraph 2.c of the Rules of Procedure for meetings of the Ministers' Deputies.

to enable him to appear and to prepare his defence, unless it is established that he has deliberately sought to evade justice.

2. The summons must state the consequences of any failure by the accused to appear at the trial.

3. Where the court finds that an accused person who fails to appear at the trial has been served (*atteint*) with a summons, it must order an adjournment if it considers personal appearance of the accused to be indispensable or if there is reason to believe that he has been prevented from appearing.

4. The accused must not be tried in his absence, if it is possible and desirable to transfer the proceedings to another state or to apply for extradition.

5. Where the accused is tried in his absence, evidence must be taken in the usual manner and the defence must have the right to intervene.

6. A judgement passed in the absence of the accused must be notified to him according to the rules governing the service of the summons to appear and the time-limit for lodging an appeal must not begin to run until the convicted person has had effective knowledge of the judgement so notified, unless it is established that he has deliberately sought to evade justice.

7. Any person tried in his absence must be able to appeal against the judgement by whatever means of recourse would have been open to him, had he been present.

8. A person tried in his absence on whom a summons has not been served in due and proper form shall have a remedy enabling him to have the judgement annulled.

9. A person tried in his absence, but on whom a summons has been properly served is entitled to a retrial, in the ordinary way, if that person can prove that his absence and the fact that he could not inform the judge thereof were due to reasons beyond his control.

II. Invites the governments of member states to report to the Secretary General of the Council of Europe every five years on the action taken by them in pursuance of the recommendations contained in this resolution.