



European Treaty Series - No. 73

**EUROPEAN CONVENTION
ON THE TRANSFER OF PROCEEDINGS
IN CRIMINAL MATTERS**

Strasbourg, 15.V.1972

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members;

Desiring to supplement the work which they have already accomplished in the field of criminal law with a view to arriving at more just and efficient sanctions;

Considering it useful to this end to ensure, in a spirit of mutual confidence, the organisation of criminal proceedings on the international level, in particular, by avoiding the disadvantages resulting from conflicts of competence,

Have agreed as follows:

Part I - Definitions

Article 1

For the purposes of this Convention:

- a "offence" comprises acts dealt with under the criminal law and those dealt with under the legal provisions listed in Appendix III to this Convention on condition that where an administrative authority is competent to deal with the offence it must be possible for the person concerned to have the case tried by a court;
- b "sanction" means any punishment or other measure incurred or pronounced in respect of an offence or in respect of a violation of the legal provisions listed in Appendix III.

Part II - Competence

Article 2

- 1 For the purposes of applying this Convention, any Contracting State shall have competence to prosecute under its own criminal law any offence to which the law of another Contracting State is applicable.
- 2 The competence conferred on a Contracting State exclusively by virtue of paragraph 1 of this Article may be exercised only pursuant to a request for proceedings presented by another Contracting State.

Article 3

Any Contracting State having competence under its own law to prosecute an offence may, for the purposes of applying this Convention, waive or desist from proceedings against a suspected person who is being or will be prosecuted for the same offence by another Contracting State. Having regard to Article 21, paragraph 2, any such decision to waive or to desist from proceedings shall be provisional pending a final decision in the other Contracting State.

Article 4

The requested State shall discontinue proceedings exclusively grounded on Article 2 when to its knowledge the right of punishment is extinguished under the law of the requesting State for a reason other than time-limitation, to which Articles 10.c, 11.f and g, 22, 23 and 26 in particular apply.

Article 5

The provisions of Part III of this Convention do not limit the competence given to a requested State by its municipal law in regard to prosecutions.

Part III – Transfer of proceedings**Section 1 – Request for proceedings****Article 6**

- 1 When a person is suspected of having committed an offence under the law of a Contracting State, that State may request another Contracting State to take proceedings in the cases and under the conditions provided for in this Convention.
- 2 If under the provisions of this Convention a Contracting State may request another Contracting State to take proceedings, the competent authorities of the first State shall take that possibility into consideration.

Article 7

- 1 Proceedings may not be taken in the requested State unless the offence in respect of which the proceedings are requested would be an offence if committed in its territory and when, under these circumstances, the offender would be liable to sanction under its own law also.
- 2 If the offence was committed by a person of public status or against a person, an institution or any thing of public status in the requesting State, it shall be considered in the requested State as having been committed by a person of public status or against such a person, an institution or any thing corresponding, in the latter State, to that against which it was actually committed.

Article 8

- 1 A Contracting State may request another Contracting State to take proceedings in any one or more of the following cases:
 - a if the suspected person is ordinarily resident in the requested State;
 - b if the suspected person is a national of the requested State or if that State is his State of origin;
 - c if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;
 - d if proceedings for the same or other offences are being taken against the suspected person in the requested State;

- e if it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;
 - f if it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced;
 - g if it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured;
 - h if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so;
- 2 Where the suspected person has been finally sentenced in a Contracting State, that State may request the transfer of proceedings in one or more of the cases referred to in paragraph 1 of this article only if it cannot itself enforce the sentence, even by having recourse to extradition, and if the other Contracting State does not accept enforcement of a foreign judgment as a matter of principle or refuses to enforce such sentence.

Article 9

- 1 The competent authorities in the requested State shall examine the request for proceedings made in pursuance of the preceding articles. They shall decide, in accordance with their own law, what action to take thereon.
- 2 Where the law of the requested State provides for the punishment of the offence by an administrative authority, that State shall, as soon as possible, so inform the requesting State unless the requested State has made a declaration under paragraph 3 of this article.
- 3 Any Contracting State may at the time of signature, or when depositing its instrument of ratification, acceptance or accession, or at any later date indicate, by declaration addressed to the Secretary General of the Council of Europe, the conditions under which its domestic law permits the punishment of certain offences by an administrative authority. Such a declaration shall replace the notification envisaged in paragraph 2 of this article.

Article 10

The requested State shall not take action on the request:

- a if the request does not comply with the provisions of Articles 6, paragraph 1, and 7, paragraph 1;
- b if the institution of proceedings is contrary to the provisions of Article 35;
- c if, at the date on the request, the time-limit for criminal proceedings has already expired in the requesting State under the legislation of that State.

Article 11

Save as provided for in Article 10 the requested State may not refuse acceptance of the request

in whole or in part, except in any one or more of the following cases:

- a if it considers that the grounds on which the request is based under Article 8 are not justified;
- b if the suspected person is not ordinarily resident in the requested State;
- c if the suspected person is not a national of the requested State and was not ordinarily resident in the territory of that State at the time of the offence;
- d if it considers that the offence for which proceedings are requested is an offence of a political nature or a purely military or fiscal one;
- e if it considers that there are substantial grounds for believing that the request for proceedings was motivated by considerations of race, religion, nationality or political opinion;
- f if its own law is already applicable to the offence and if at the time of the receipt of the request proceedings were precluded by lapse of time according to that law; Article 26, paragraph 2, shall not apply in such a case;
- g if its competence is exclusively grounded on Article 2 and if at the time of the receipt of the request proceedings would be precluded by lapse of time according to its law, the prolongation of the time-limit by six months under the terms of Article 23 being taken into consideration;
- h if the offence was committed outside the territory of the requesting State;
- i if proceedings would be contrary to the international undertakings of the requested State;
- j if proceedings would be contrary to the fundamental principles of the legal system of the requested State;
- k if the requesting State has violated a rule of procedure laid down in this Convention.

Article 12

- 1 The requested State shall withdraw its acceptance of the request if, subsequent to this acceptance, a ground mentioned in Article 10 of this Convention for not taking action on the request becomes apparent.
- 2 The requested State may withdraw its acceptance of the request:
 - a if it becomes apparent that the presence in person of the suspected person cannot be ensured at the hearing of the proceedings in that State or that any sentence, which might be passed, could not be enforced in that State;
 - b if one of the grounds for refusal mentioned in Article 11 becomes apparent before the case is brought before a court; or
 - c in other cases, if the requesting State agrees.

Section 2 – Transfer procedure

Article 13

- 1 All requests specified in this Convention shall be made in writing. They, and all communications necessary for the application of this Convention, shall be sent either by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State or, by virtue of special mutual arrangement, direct by the authorities of the requesting State to those of the requested State; they shall be returned by the same channel.
- 2 In urgent cases, requests and communications may be sent through the International Criminal Police Organisation (Interpol).
- 3 Any Contracting State may, by declaration addressed to the Secretary General of the Council of Europe, give notice of its intention to adopt in so far as it itself is concerned rules of transmission other than those laid down in paragraph 1 of this article.

Article 14

If a Contracting State considers that the information supplied by another Contracting State is not adequate to enable it to apply this Convention, it shall ask for the necessary additional information. It may prescribe a date for the receipt of such information.

Article 15

- 1 A request for proceedings shall be accompanied by the original, or a certified copy, of the criminal file and all other necessary documents. However, if the suspected person is remanded in custody in accordance with the provisions of Section 5 and if the requesting State is unable to transmit these documents at the same time as the request for proceedings, the documents may be sent subsequently.
- 2 The requesting State shall also inform the requested State in writing of any procedural acts performed or measures taken in the requesting State after the transmission of the request which have a bearing on the proceedings. This communication shall be accompanied by any relevant documents.

Article 16

- 1 The requested State shall promptly communicate its decision on the request for proceedings to the requesting State.
- 2 The requested State shall also inform the requesting State of a waiver of proceedings or of the decision taken as a result of proceedings. A certified copy of any written decision shall be transmitted to the requesting State.

Article 17

If the competence of the requested State is exclusively grounded on Article 2 that State shall inform the suspected person of the request for proceedings with a view to allowing him to present his views on the matter before that State has taken a decision on the request.

Article 18

- 1 Subject to paragraph 2 of this article, no translation of the documents relating to the application of this Convention shall be required.
- 2 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, by declaration addressed to the Secretary General of the Council of Europe, reserve the right to require that, with the exception of the copy of the written decision referred to in Article 16, paragraph 2, the said documents be accompanied by a translation. The other Contracting States shall send the translations in either the national language of the receiving State or such one of the official languages of the Council of Europe as the receiving State shall indicate. However, such an indication is not obligatory. The other Contracting States may claim reciprocity.
- 3 This article shall be without prejudice to any provisions concerning translation of requests and supporting documents that may be contained in agreements or arrangements now in force or that may be concluded between two or more Contracting States.

Article 19

Documents transmitted in application of this Convention need not be authenticated.

Article 20

Contracting Parties shall not claim from each other the refund of any expenses resulting from the application of this Convention.

Section 3 – Effects in the requesting State of a request for proceedings**Article 21**

- 1 When the requesting State has requested proceedings, it can no longer prosecute the suspected person for the offence in respect of which the proceedings have been requested or enforce a judgment which has been pronounced previously in that State against him for that offence. Until the requested State's decision on the request for proceedings has been received, the requesting State shall, however, retain its right to take all steps in respect of prosecution, short of bringing the case to trial, or, as the case may be, allowing the competent administrative authority to decide on the case.
- 2 The right of prosecution and of enforcement shall revert to the requesting State:
 - a if the requested State informs it of a decision in accordance with Article 10 not to take action on the request;
 - b if the requested State informs it of a decision in accordance with Article 11 to refuse acceptance of the request;
 - c if the requested State informs it of a decision in accordance with Article 12 to withdraw acceptance of the request;
 - d if the requested State informs it of a decision not to institute proceedings or discontinue them;

- e if it withdraws its request before the requested State has informed it of a decision to take action on the request.

Article 22

A request for proceedings, made in accordance with the provisions of this Part, shall have the effect in the requesting State of prolonging the time-limit for proceedings by six months.

Section 4 – Effects in the requested State of a request for proceedings

Article 23

If the competence of the requested State is exclusively grounded on Article 2 the time-limit for proceedings in that State shall be prolonged by six months.

Article 24

- 1 If proceedings are dependent on a complaint in both States the complaint brought in the requesting State shall have equal validity with that brought in the requested State.
- 2 If a complaint is necessary only in the requested State, that State may take proceedings even in the absence of a complaint if the person who is empowered to bring the complaint has not objected within a period of one month from the date of receipt by him of notice from the competent authority informing him of his right to object.

Article 25

In the requested State the sanction applicable to the offence shall be that prescribed by its own law unless that law provides otherwise. Where the competence of the requested State is exclusively grounded on Article 2, the sanction pronounced in that State shall not be more severe than that provided for in the law of the requesting State.

Article 26

- 1 Any act with a view to proceedings, taken in the requesting State in accordance with its law and regulations, shall have the same validity in the requested State as if it had been taken by the authorities of that State, provided that assimilation does not give such act a greater evidential weight than it has in the requesting State.
- 2 Any act which interrupts time-limitation and which has been validly performed in the requesting State shall have the same effects in the requested State and vice versa.

Section 5 – Provisional measures in the requested State

Article 27

- 1 When the requesting State announces its intention to transmit a request for proceedings, and if the competence of the requested State would be exclusively grounded on Article 2, the requested State may, on application by the requesting State and by virtue of this Convention, provisionally arrest the suspected person:

- a if the law of the requested States authorises remand in custody for the offence, and
 - b if there are reasons to fear that the suspected person will abscond or that he will cause evidence to be suppressed.
- 2 The application for provisional arrest shall state that there exists a warrant of arrest or other order having the same effect, issued in accordance with the procedure laid down in the law of the requesting State; it shall also state for what offence proceedings will be requested and when and where such offence was committed and it shall contain as accurate a description of the suspected person as possible. It shall also contain a brief statement of the circumstances of the case.
 - 3 An application for provisional arrest shall be sent direct by the authorities in the requesting State mentioned in Article 13 to the corresponding authorities in the requested State, by post or telegram or by any other means affording evidence in writing or accepted by the requested State. The requesting State shall be informed without delay of the result of its application.

Article 28

Upon receipt of a request for proceedings accompanied by the documents referred to in Article 15, paragraph 1, the requested State shall have jurisdiction to apply all such provisional measures, including remand in custody of the suspected person and seizure of property, as could be applied under its own law if the offence in respect of which proceedings are requested had been committed in its territory.

Article 29

- 1 The provisional measures provided in Articles 27 and 28 shall be governed by the provisions of this Convention and the law of the requested State. The law of that State, or the Convention shall also determine the conditions on which the measures may lapse.
- 2 These measures shall lapse in the cases referred to in Article 21, paragraph 2.
- 3 A person in custody shall in any event be released if he is arrested in pursuance of Article 27 and the requested State does not receive the request for proceedings within 18 days from the date of the arrest.
- 4 A person in custody shall in any event be released if he is arrested in pursuance of Article 27 and the documents which should accompany the request for proceedings have not been received by the requested State within 15 days from the receipt of the request for proceedings.
- 5 The period of custody applied exclusively by virtue of Article 27 shall not in any event exceed 40 days.

Part IV – Plurality of criminal proceedings

Article 30

- 1 Any Contracting State which, before the institution or in the course of proceedings for an offence which it considers to be neither of a political nature nor a purely military one, is aware of proceedings pending in another Contracting State against the same person in respect of the same offence shall consider whether it can either waive or suspend its own proceedings, or

transfer them to the other State.

- 2 If it deems it advisable in the circumstances not to waive or suspend its own proceedings it shall so notify the other State in good time and in any event before judgment is given on the merits.

Article 31

- 1 In the eventuality referred to in Article 30, paragraph 2, the States concerned shall endeavour as far as possible to determine, after evaluation in each of the circumstances mentioned in Article 8, which of them alone shall continue to conduct proceedings. During this consultative procedure the States concerned shall postpone judgment on the merits without however being obliged to prolong such postponement beyond a period of 30 days as from the despatch of the notification provided for in Article 30, paragraph 2.
- 2 The provisions of paragraph 1 shall not be binding:
 - a on the State despatching the notification provided for in Article 30, paragraph 2, if the main trial has been declared open there in the presence of the accused before despatch of the notification;
 - b on the State to which the notification is addressed, if the main trial has been declared open there in the presence of the accused before receipt of the notification.

Article 32

In the interests of arriving at the truth and with a view to the application of an appropriate sanction, the States concerned shall examine whether it is expedient that one of them alone shall conduct proceedings and, if so, endeavour to determine which one, when:

- a several offences which are materially distinct and which fall under the criminal law of each of those States are ascribed either to a single person or to several persons having acted in unison;
- b a single offence which falls under the criminal law of each of those States is ascribed to several persons having acted in unison.

Article 33

All decisions reached in accordance with Articles 31, paragraph 1, and 32 shall entail, as between the States concerned, all the consequences of a transfer of proceedings as provided for in this Convention. The State which waives its own proceedings shall be deemed to have transferred them to the other State.

Article 34

The transfer procedure provided for in Section 2 of Part III shall apply in so far as its provisions are compatible with those contained in the present Part.

Part V – *Ne bis in idem***Article 35**

- 1 A person in respect of whom a final and enforceable criminal judgment has been rendered may for the same act neither be prosecuted nor sentenced nor subjected to enforcement of a sanction in another Contracting State:
 - a if he was acquitted;
 - b if the sanction imposed:
 - i has been completely enforced or is being enforced, or
 - ii has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty, or
 - iii can no longer be enforced because of lapse of time;
 - c if the court convicted the offender without imposing a sanction.
- 2 Nevertheless, a Contracting State shall not, unless it has itself requested the proceedings, be obliged to recognise the effect of *ne bis in idem* if the act which gave rise to the judgment was directed against either a person or an institution or any thing having public status in that State, or if the subject of the judgment had himself a public status in that State.
- 3 Furthermore, a Contracting State where the act was committed or considered as such according to the law of that State shall not be obliged to recognise the effect of *ne bis in idem* unless that State has itself requested the proceedings.

Article 36

If new proceedings are instituted against a person who in another Contracting State has been sentenced for the same act, then any period of deprivation of liberty arising from the sentence enforced shall be deducted from the sanction which may be imposed.

Article 37

This Part shall not prevent the application of wider domestic provisions relating to the effect of *ne bis in idem* attached to foreign criminal judgments.

Part VI – Final clauses**Article 38**

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.

- 3 In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 39

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto provided that the resolution containing such invitation received the unanimous agreement of the Members of the Council who have ratified the Convention.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 40

- 1 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Contracting State may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 45 of this Convention.

Article 41

- 1 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in Appendix I or make a declaration provided for in Appendix II to this Convention.
- 2 Any Contracting State may wholly or partly withdraw a reservation or declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 3 A Contracting State which has made a reservation in respect of any provision of this Convention may not claim the application of that provision by any other Contracting State; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 42

- 1 Any Contracting State may at any time, by declaration addressed to the Secretary General of

the Council of Europe, set out the legal provisions to be included in Appendix III to this Convention.

- 2 Any change of the national provisions listed in Appendix III shall be notified to the Secretary General of the Council of Europe if such a change renders the information in this appendix incorrect.
- 3 Any changes made in Appendix III in application of the preceding paragraphs shall take effect in each Contracting State one month after the date of their notification by the Secretary General of the Council of Europe.

Article 43

- 1 This Convention affects neither the rights and the undertakings derived from extradition treaties and international multilateral conventions concerning special matters, nor provisions concerning matters which are dealt with in the present Convention and which are contained in other existing conventions between Contracting States.
- 2 The Contracting States may not conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, except in order to supplement its provisions or facilitate application of the principles embodied in it.
- 3 Should two or more Contracting States, however, have already established their relations in this matter on the basis of uniform legislation, or instituted a special system of their own, or should they in future do so, they shall be entitled to regulate those relations accordingly, notwithstanding the terms of this Convention.
- 4 Contracting States ceasing to apply the terms of this Convention to their mutual relations in this matter in accordance with the provisions of the preceding paragraph shall notify the Secretary General of the Council of Europe to that effect.

Article 44

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 45

- 1 This Convention shall remain in force indefinitely.
- 2 Any Contracting State may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 46

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance or accession;
- c any date of entry into force of this Convention in accordance with Article 38 thereof;
- d any declaration received in pursuance of the provisions of Article 9, paragraph 3;
- e any declaration received in pursuance of the provisions of Article 13, paragraph 3;
- f any declaration received in pursuance of the provisions of Article 18, paragraph 2;
- g any declaration received in pursuance of the provisions of Article 40, paragraphs 2 and 3;
- h any reservation or declaration made in pursuance of the provisions of Article 41, paragraph 1;
- i the withdrawal of any reservation or declaration carried out in pursuance of the provisions of Article 41, paragraph 2;
- j any declaration received in pursuance of Article 42, paragraph 1, and any subsequent notification received in pursuance of paragraph 2 of that article;
- k any notification received in pursuance of the provisions of Article 43, paragraph 4;
- l any notification received in pursuance of the provisions of Article 45 and the date on which denunciation takes effect.

Article 47

This Convention and the notifications and declarations authorised thereunder shall apply only to offences committed after the Convention comes into effect for the Contracting States involved.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 15th day of May, 1972, in English and in French, both texts being equally authoritative, in a single copy, which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory and acceding governments.

APPENDIX I

Each Contracting State may declare that it reserves the right:

- a to refuse a request for proceedings, if it considers that the offence is a purely religious offence;
- b to refuse a request for proceedings for an act the sanctions for which, in accordance with its own law, can be imposed only by an administrative authority;
- c not to accept Article 22;
- d not to accept Article 23;
- e not to accept the provisions contained in the second sentence of Article 25 for constitutional reasons;
- f not to accept the provisions laid down in Article 26, paragraph 2, where it is competent by virtue of its own law;
- g not to apply Articles 30 and 31 in respect of an act for which the sanctions, in accordance with its own law or that of the other State concerned, can be imposed only by an administrative authority.
- h not to accept Part V.

APPENDIX II

Any Contracting State may declare that for reasons arising out of its constitutional law it can make or receive requests for proceedings only in circumstances specified in its municipal law.

Any Contracting State may, by means of a declaration, define as far as it is concerned the term "national" within the meaning of this Convention.

APPENDIX III**List of offences other than offences dealt with under criminal law**

The following offences shall be assimilated to offences under criminal law

– in France:

any unlawful behaviour sanctioned by a *contravention de grande voirie*.

– in the Federal Republic of Germany:

any unlawful behaviour dealt with according to the procedure laid down in the Act of Violations of Regulations (*Gesetz über Ordnungswidrigkeiten* of 24 May 1968 - BGBI 1968, I, 481).

– in Italy:

any unlawful behaviour to which is applicable Act No. 317 of 3 March 1967.