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Enforcement of Violations of Traffic Regulations with a Foreign Element

1. INTRODUCTION

Since the appearance of the car as a means of transport for the general public, states in Europe have encountered numerous legal and practical problems in cases where foreigners violate traffic regulations. Especially international road transport and tourism cause quite a number of legal problems. Which state is competent if a foreign truck driver violates the speed limit? How to respond when a foreign tourist has caused an accident while driving under influence of alcohol? The expression ‘foreigners’ in this context is not entirely correct, because enforcement problems may not only arise when the suspect is a foreigner, but also when the car is registered in another country, or when the driver does not possess the driving licence of the country in which he violated traffic regulations. In this paper we will deal with some aspects of the enforcement of traffic regulations when such a ‘foreign element’ is involved. We will discuss international agreements that may help states to enforce their traffic regulations. In doing so, we will take the Netherlands and its law as a reference and a starting point. The aim of this paper is also to establish whether there are any serious lacunae in the enforcement of traffic regulations. We will not discuss issues related to roadworthiness tests for motor vehicles, car insurance, and the abuse of recording equipment in road transport.

Firstly, we will deal with the two systems of the Dutch enforcement of traffic violations. Secondly, we will describe in which way the two systems of the Dutch enforcement deal with traffic violations committed by foreigners. For that purpose some elements of international law and community law will be discussed. Finally we will describe the situation of mutual recognition of driving licences of the EC Member States as well as the possibilities of the

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3. We will refrain from dealing with traffic offences committed by members of military forces stationed in another country on the basis of military agreements. These issues are dealt with on the basis of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces (London, 19 June 1951).
withdrawal of driving licences and driving disqualifications within the two systems of the Dutch enforcement of traffic violations. This paper ends with an overall conclusion on the scope of the enforcement in the Netherlands of traffic violations with a foreign element.

2. THE TWO SYSTEMS OF DUTCH ENFORCEMENT OF TRAFFIC VIOLATIONS

Until 1990, the enforcement of both minor and major road traffic offences was dealt with under criminal law and punished accordingly by a court, with the legal guarantees of a criminal procedure. Driving resulting in personal injuries and material damage and serious road traffic offences are still considered criminal offences. These traffic offences are mainly found in the Road Traffic Act 1994 (‘Wegenverkeerswet 1994’) and additional regulations. Because they fall under criminal law, sanctions for these offences are in principle imposed by courts at the instigation of the public prosecutor. The sanctions which may be imposed are of a wide variety, but are mostly limited to fines, driving disqualifications and imprisonment.

In the late 1980s it became clear that the judicial network could not cope with the steadily growing number of minor traffic offences. The workload for courts and public prosecutors became too high and as a consequence, severe difficulties arose in the collection of fines. To overcome these deficiencies a new system of imposing and collecting traffic fines was set up in 1990 with the introduction of the Act on the Administrative Enforcement of Traffic Regulations (‘Wet administratiefrechtelijke handhaving verkeer voorschriften’). This new Act is called the Lex Mulder after its initiator, the former Secretary-General of the Department of Justice, Albert Mulder. The Lex Mulder has three aims: first, to diminish the workload of the police and the judiciary; second, to put an end to the ineffective collection of imposed fines; and third, to ensure a sufficient level of legal guarantees for the citizens involved. According to the results of an evaluation conducted recently, all the above mentioned aims were fulfilled.8

With the introduction of the Lex Mulder, minor traffic offences such as violations of speed limits, parking rules and ignoring of traffic lights were taken out of the criminal sphere and converted into administrative offences, subject to administrative sanctions. This is expressed in Article 2 of the Lex Mulder, which states that provisions of the Penal Code and the Code of Criminal Procedure do not apply. As a consequence, sanctions in the field of traffic regulation may now be applied in most cases without interferences of either public prosecutors or courts. The administrative sanction which may be imposed by the police officer who noted the offence is a fixed fine, with a maximum of HFL 750. The fine will be irrevocable after six weeks, unless the citizen involved appeals against the decision. One may appeal to the public prosecutor, who acts as an administrative body and not as a prosecutor. In the second instance one may appeal to the administrative court. The collection of traffic fines is centralised and to a large extent automatized. For this purpose, a special agency was set up, called the ‘Centraal Justitieel Incassobureau’ (the Central Judicial Agency for the Collection

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8. The implementation of the Lex Mulder is a tremendous success. The workload of the judiciary has dramatically decreased, more fines are collected and the time in which the collection of the fines takes place has been reduced by a half. With respect to the legal guarantees for the citizens, no difficulties of any significance were found. See A.W. Onneweer, Effecten van bestuurlijke boetes (Deventer 1997).