



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case  
C-203/20 AB and Others

## **Advocate General Kokott: European arrest warrant for the abduction of the son of a former Slovak President to be issued after revocation of an amnesty**

In 1995, members of the Slovak security authorities are alleged to have committed several offences, including the abduction of a person to a foreign country, robbery and extortion. The victim of those acts was the son of the then President of Slovakia. On 3 March 1998, the then Prime Minister of Slovakia, representing the President at a time when the office of President was vacant, issued an amnesty in respect of the allegations in question. Consequently, the criminal proceedings subsequently opened on account of those allegations were finally discontinued. According to Slovak law, the discontinuance of the respective criminal proceedings had the effect of a judgment of acquittal.

The National Council of Slovakia revoked that amnesty on 5 April 2017. The criminal proceedings that had been discontinued on account of the amnesty were subsequently reopened.

The Okresný súd Bratislava III (District Court, Bratislava III, Slovakia) is now contemplating the issuance of a European arrest warrant in respect of one of the accused persons. The Slovak court therefore seeks to ascertain whether the issuance of such a European arrest warrant, on the one hand, and the revocation of the amnesty, on the other, are compatible with EU law and in particular with the EAW Framework Decision<sup>1</sup> and the Charter of Fundamental Rights of the European Union. Its concerns are based, in particular, on the *ne bis in idem* principle,<sup>2</sup> because the proceedings concerned have already been finally concluded.

In her Opinion delivered today, Advocate General Juliane Kokott initially addresses the question of whether the discontinuance of criminal proceedings due to an amnesty is, despite the subsequent revocation of the amnesty, to be regarded as a final acquittal triggering the application of the *ne bis in idem* principle. In that connection, the Advocate General notes that such a final decision must fulfil two conditions: first, it must definitively bar further prosecution and, secondly, it must be based on a determination as to the merits of the case.

According to the Advocate General, the first condition is met in the case at hand. The implementation of the amnesty finally terminated the criminal proceedings in question. As regards the second condition, the information contained in the request for a preliminary ruling does not, however, allow for a final assessment. The term 'acquitted' implies that the accused person's criminal responsibility has actually been assessed in the light of the circumstances of the case, which is generally not the case with regard to a decision discontinuing prosecution on account of an amnesty. The request for a preliminary ruling contains contradictory information, however, as to whether criminal responsibility was nevertheless examined.

<sup>1</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) ('the EAW Framework Decision').

<sup>2</sup> In accordance with that principle, no one is to be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted in accordance with the law.

Accordingly, the Advocate General considers that **the *ne bis in idem* principle does not preclude the issuance of a European arrest warrant where the criminal proceedings have been finally discontinued on account of an amnesty without an examination of the criminal responsibility of the persons concerned, but where the decision to discontinue ceased to have effect when the amnesty was revoked.**

Lastly, the Advocate General takes the view that the assessment of the lawfulness of the revocation of the amnesty and of the related reopening of the criminal proceedings does not come within the scope of EU law.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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