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Judgment of the Court in Case C-435/22 PPU | Generalstaatsanwaltschaft München (Extradition and ne bis in idem)

The authorities of a Member State are not to extradite a third-country national to another third country where that national has been convicted by final judgment in another Member State for the same acts as those referred to in the extradition request and has been subject to the sentence imposed in that State

This solution, which follows from EU law, cannot be called into question by the fact that a bilateral extradition treaty concluded by the requested Member State limits the scope of the principle ne bis in idem to judgments handed down in the requested State

The Higher Regional Court, Munich (Germany) is called upon to rule on an extradition request made by the authorities of the United States of America to the German authorities for the purpose of prosecuting a Serbian national who, for that reason, was remanded in custody in Germany.

The US authorities allege that the person concerned took part, between September 2008 and December 2013, in conspiracy to participate in racketeer-influenced corrupt organisations and conspiracy to commit bank fraud and fraud by means of telecommunication.

According to the information provided by the Higher Regional Court, Munich, the person concerned has already been convicted by final judgment in another Member State, namely Slovenia, for the same acts with regard to those committed up to and including June 2010. In addition he has served the sentence handed down there in full.

For this reason, the Higher Regional Court, Munich wonders whether the prohibition of double jeopardy (principle *ne bis in idem*), as enshrined in the Convention Implementing the Schengen Agreement and the Charter of Fundamental Rights of the European Union ('the Charter'), precludes the execution of the extradition request. The doubt entertained by that court in this regard stems in particular from the fact that the extradition treaty concluded between Germany and the United States, provides for the application of the principle *ne bis in idem* only in the case of a conviction in the requested State, in this case Germany, and not for a conviction outside of that Member State. This has led the referring court to refer a question to the Court of Justice on this subject.

In today's judgment, the Court replies that the **principle *ne bis in idem***, as enshrined in the Convention Implementing the Schengen Agreement and the Charter, **precludes the extradition, by the authorities of a Member State, of a third-country national to another third country, where that national has been convicted by final judgment in another Member State for the same acts as those referred to in the extradition request and has been subject to the sentence imposed in that State. The fact that the extradition request is based on a bilateral extradition treaty limiting the scope of the principle *ne bis in idem* to judgments handed down**

in the requested Member State does not alter that result.

The Court states that **the principle *ne bis in idem* laid down by the Convention implementing the Schengen Agreement applies, in the Schengen area, also to third-country nationals, and regardless of whether or not their stay was lawful.** Any other solution would call into question, in relations between the Member States, the very basis of the area of freedom, security and justice as an area without internal borders and would disregard the principles of mutual trust and mutual recognition of judicial decisions in criminal matters on which the principle *ne bis in idem* enshrined in that convention is based.

As regards the fact that the extradition treaty concluded between Germany and the United States does not provide for the application of the principle *ne bis in idem* in respect of judgments handed down in another Member State, the Court states that, having regard to the direct effect of the provisions of the Charter and the Convention Implementing the Schengen Agreement which enshrine that principle, the national courts must disapply, of their own motion, any provision of that treaty which is incompatible with that principle.

REMINDER : A reference for a preliminary ruling allows the courts of the Member States, in the context of a dispute referred to them, to ask the Court of Justice about the interpretation of Union law or the validity of a Union act. The Court of Justice does not decide the dispute itself. It is for the national court to resolve the case in accordance with the Court's decision. Unofficial document for media use, not binding on the Court of Justice.

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

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