



Press and Information

Court of Justice of the European Union

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Judgment in Case C-505/19
WS v Bundesrepublik Deutschland

The principle prohibiting the duplication of proceedings can preclude the arrest, within the Schengen Area and the European Union, of a person who is the subject of an Interpol notice

This is the case where the competent authorities are aware of a final judicial decision, taken in a State that is a party to the Schengen Agreement or a Member State, which establishes that that principle applies

In 2012, the International Criminal Police Organisation (Interpol) published, at the request of the United States and on the basis of an arrest warrant issued by the authorities of that country, a red notice in respect of WS, a German national, with a view to his potential extradition. Where a person who is the subject of such a notice is located in a State affiliated to Interpol, that State must, in principle, provisionally arrest that person or monitor or restrict his or her movements.

However, even before that red notice was published, a procedure investigating WS, which related, according to the referring court, to the same acts as those which formed the basis for that notice, had been carried out in Germany. That procedure was definitively discontinued in 2010 after a sum of money had been paid by WS as part of a specific settlement procedure provided for under German criminal law. The Bundeskriminalamt (Federal Criminal Police Office, Germany) subsequently informed Interpol that, in its view, as a result of that earlier procedure, the *ne bis in idem* principle was applicable in the present case. That principle, which is enshrined in both Article 54 of the Convention implementing the Schengen Agreement¹ and Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter'), prohibits, inter alia, a person whose trial has been finally disposed of from being prosecuted again for the same offence.

In 2017, WS brought an action against Germany before the Verwaltungsgericht Wiesbaden (Administrative Court, Wiesbaden, Germany) seeking an order requiring that Member State to take the measures necessary to arrange for that red notice to be withdrawn. In that regard, WS relies not only on an infringement of the *ne bis in idem* principle, but also on an infringement of his right to freedom of movement, as guaranteed under Article 21 TFEU, since he cannot travel to any State that is a party to the Schengen Agreement or to any Member State without risking arrest. He also argues that, due to those infringements, the processing of his personal data appearing in the red notice is contrary to Directive 2016/680, which concerns the protection of personal data in criminal matters.²

That is the context in which the Verwaltungsgericht Wiesbaden decided to ask the Court about how the *ne bis in idem* principle is to be applied and, specifically, whether it is possible provisionally to arrest a person who is the subject of a red notice in a situation such as the one at issue. Furthermore, in the event that that principle does apply, that court wishes to know what the

¹ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen (Luxembourg) on 19 June 1990 and which entered into force on 26 March 1995 (OJ 2000 L 239, p. 19; 'the CISA').

² Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89).

consequences are for the processing, by Member States, of the personal data contained in such a notice.

In its Grand Chamber judgment, the Court finds that Article 54 of the CISA and Article 21(1) TFEU, read in the light of Article 50 of the Charter, must be interpreted as not precluding the provisional arrest, by the authorities of a State that is a party to the Schengen Agreement or by those of a Member State, of a person in respect of whom Interpol has published a red notice, at the request of a third State, unless it is established, in a final judicial decision taken in a State that is a party to that agreement or in a Member State, that the trial of that person in respect of the same acts as those on which that red notice is based has already been finally disposed of by a State that is a party to that agreement or by a Member State respectively. The Court also finds that the provisions of Directive 2016/680, read in the light of Article 54 of the CISA and Article 50 of the Charter, must be interpreted as not precluding the processing of personal data appearing in a red notice issued by Interpol in the case where it has not been established, by means of such a judicial decision, that the *ne bis in idem* principle applies in respect of the acts on which that notice is based, provided that such processing satisfies the conditions laid down by that directive.

Assessment of the Court

As a preliminary point, the Court notes that the *ne bis in idem* principle may apply in a situation such as the one at issue in the present case, namely where a decision has been adopted which definitively discontinues criminal proceedings provided that the person concerned meets certain conditions, such as the payment of a sum of money set by the public prosecutor.

After having noted the foregoing, the Court rules, in the first place, that Article 54 of the CISA, Article 50 of the Charter and Article 21(1) TFEU do not preclude the provisional arrest of a person who is the subject of an Interpol red notice where it has not been established that that person's trial has been finally disposed of by a State that is a party to the Schengen Agreement or by a Member State in respect of the same acts as those forming the basis of the red notice and that, consequently, the *ne bis in idem* principle applies.

In that regard, the Court notes that, where the application of the *ne bis in idem* principle remains uncertain, provisional arrest may be an essential step in order to carry out the necessary checks while avoiding the risk that the person concerned may abscond. That measure is therefore justified by the legitimate objective of preventing the impunity of the person concerned. By contrast, as soon as it has been established by a final judicial decision that the *ne bis in idem* principle applies, both the mutual trust between the States that are parties to the Schengen Agreement and the right to freedom of movement prohibit that person from being provisionally arrested or from being kept in custody. The Court points out that it is for the States that are parties to the Schengen Agreement and for Member States to ensure the availability of legal remedies enabling the persons concerned to obtain such a decision. It also finds that, where provisional arrest is incompatible with EU law, because the *ne bis in idem* principle is applicable, a State affiliated to Interpol which refrains from making such an arrest would therefore not fail to fulfil its obligations as an affiliate of that organisation.

In the second place, as regards the matter of personal data appearing in an Interpol red notice, the Court notes that any operation performed on those data, such as registering them in a Member State's list of wanted persons, constitutes 'processing' which falls under Directive 2016/680.³ Additionally, the Court finds, first, that that processing pursues a legitimate objective and, second, that it cannot be regarded as unlawful solely on the ground that the *ne bis in idem* principle may apply to the acts on which that red notice is based.⁴ That processing, by the authorities of the Member States, may indeed be indispensable precisely in order to determine whether that principle applies.

³ See Article 2(1) and Article 3(2) of Directive 2016/680.

⁴ See Article 4(1)(b) and Article 8(1) of Directive 2016/680.

In those circumstances, the Court also finds that Directive 2016/680, read in the light of Article 54 of the CISA and Article 50 of the Charter, does not preclude the processing of personal data appearing in a red notice where no final judicial decision has established that the *ne bis in idem* principle applies in the relevant case. However, such processing must be carried out in compliance with the conditions laid down by that directive. In that respect, it must, inter alia, be necessary for the performance of a task carried out by a competent national authority for purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.⁵

By contrast, where the *ne bis in idem* principle does apply, the recording, in the Member States' lists of wanted persons, of the personal data contained in an Interpol red notice is no longer necessary, because the person concerned can no longer be the subject of criminal proceedings in respect of the acts covered by that notice and, consequently, cannot be arrested for those same acts. It follows that the data subject must be able to request that his or her data be erased. If, nevertheless, those data remain recorded, they must be accompanied by a note to the effect that the person in question can no longer be prosecuted in a Member State or in a State that is a party to the Schengen Agreement for the same acts by reason of the *ne bis in idem* principle.

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 European Union 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 judgment is published on the CURIA website on the day of delivery.

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⁵ See Article 1(1) and Article 8(1) of Directive 2016/680.