



Press and Information

Court of Justice of the European Union

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Judgment in Case C-129/14 - PPU
Zoran Spasic

The rule, in the Schengen Area, restricting the application of the *ne bis in idem* principle to cases in which the penalty imposed in a Member State has been enforced or is actually in the process of being enforced is not contrary to the Charter of Fundamental Rights

Where the penalty consists of a term of imprisonment and a fine, both imposed as principal penalties, the payment of the fine alone is not sufficient to consider that the penalty has been enforced

The Convention Implementing the Schengen Agreement (CISA) provides that a person whose trial has been finally disposed of in one State may not be prosecuted in another State for the same acts (the *ne bis in idem* principle). However, the CISA specifies that the *ne bis in idem* principle is applicable only if the penalty imposed has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing State (the 'enforcement condition'). The Charter of Fundamental Rights of the EU enshrines the *ne bis in idem* principle without making any express reference to such a condition.¹

Mr Zoran Spasic, a Serbian national, is being prosecuted in Germany for fraud committed in Milan in 2009 (an individual was defrauded of €40 000 in small denomination banknotes in exchange for €500 banknotes which were subsequently found to be counterfeit). In parallel, Mr Spasic was convicted in Italy for the same offence and sentenced to a one-year custodial sentence and a fine of €800. Mr Spasic, who was already imprisoned in Austria for other offences, paid the fine, but did not serve his custodial sentence.

As a result of a European arrest warrant issued by Germany, the Austrian authorities surrendered Mr Spasic to the German authorities. Mr Spasic has been remanded in pre-trial custody since the end of 2013, awaiting judgment for the fraud offence committed in Italy. Mr Spasic claims that in accordance with the *ne bis in idem* principle he cannot be prosecuted for the same acts, since he already received a final and enforceable conviction in Italy. The German authorities take the view that, having regard to the CISA, the *ne bis in idem* principle does not apply, since Mr Spasic has not yet served his custodial sentence in Italy. Mr Spasic contends that the enforcement condition laid down in the CISA cannot lawfully restrict the scope of the Charter of Fundamental Rights and that he must be released, since he paid the €800 fine and has therefore performed the sentence imposed.

In today's judgment, the Court, ruling on a request for a preliminary ruling from the Oberlandesgericht Nürnberg, holds that the additional enforcement condition laid down in the CISA constitutes **a limitation of the *ne bis in idem* principle that is compatible with the Charter of Fundamental Rights**. The explanations relating to the Charter make express reference, as regards the *ne bis in idem* principle, to the CISA, with the result that the latter lawfully limits the *ne bis in idem* principle enshrined in the Charter. Moreover, the Court considers that the enforcement condition laid down in the CISA does not call into question the *ne bis in idem* principle as such, since its only purpose is to avoid a situation in which persons finally convicted in a Member State go unpunished. Lastly, the Court considers that the enforcement condition is proportional to the objective pursued (ensuring a high level of security within the area of freedom, security and justice)

¹ Article 50 of the Charter.

and does not go beyond what is necessary to prevent a situation in which convicted persons go unpunished.

In addition, the Court holds that where a custodial sentence and a fine are imposed as principal penalties (as in Mr Spasic's case), **the payment of the fine alone is not sufficient to consider that the penalty has been enforced or is in the process of being enforced within the meaning of the CISA.** In that respect, the Court points out that, although the CISA provides that 'a penalty' must have been enforced or be in the process of being enforced, that condition covers the situation where **two** principal penalties have been imposed. Any other interpretation would lead to rendering the *ne bis in idem* principle set out in the CISA meaningless and would undermine the effective application of that convention. Since Mr Spasic only paid the fine, without serving the one-year custodial sentence, the Court concludes that the enforcement condition laid down in the CISA has not been fulfilled.

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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