

Press and Information Division

PRESS RELEASE No 07/03

11 February 2003

Judgment of the Court in joined Cases C-187/01 and C-385/01

Criminal proceedings against Hüseyin Gözütok and Klaus Brügge

**THE COURT OF JUSTICE GIVES ITS FIRST RULING ON THE
INTERPRETATION OF THE CONVENTION IMPLEMENTING THE SCHENGEN
AGREEMENT**

A person may not be prosecuted in one Member State for the same facts which, in another Member State, have been finally disposed of without recourse to a Court.

Mr Gözütok, a Turkish citizen resident in the Netherlands, was prosecuted there for unlawfully dealing in narcotics. Criminal proceedings against him were discontinued when he paid the sums stipulated in a settlement with the Netherlands Public Prosecutor's Office. Alerted by a bank which had noticed that large sums of money were passing through Mr Gözütok's account, the German police and prosecuting authorities arrested him and charged him on the same facts as those in respect of which he had been prosecuted in the Netherlands. A court in Aachen sentenced him to a term of imprisonment (a decision subsequently overturned on appeal).

Mr Brügge, a German national resident in Germany, was indicted before the Belgian courts for the assault and wounding in Belgium of a Belgian woman. Whilst the Bonn Public Prosecutor's Office was investigating the same facts, Mr Brügge was given a chance to put an end to the proceedings in Germany by paying a fine.

The questions in both these cases arose in criminal proceedings for offences committed by the two accused, even though prosecutions brought on the same facts in other Member States had been definitively discontinued following payment of a specific sum determined by the Public Prosecutor's Office.

The *ne bis in idem* principle enshrined in Article 54 of the Convention implementing the Schengen Agreement provides that a person may not be prosecuted in a Member State

on the same facts as those in respect of which his case has been finally disposed of in another Member State. The Court of Justice must consider whether the principle applies to procedures whereby further prosecution is barred, by which the Public Prosecutor decides to discontinue criminal proceedings against an accused once the latter has complied with certain obligations imposed by the Public Prosecutor without the involvement of a court.

The Court notes that in such procedures the prosecution is discontinued by the decision of an authority which plays a part in the administration of criminal justice in the national legal system concerned. In addition, when the accused complies with the obligations imposed by the Public Prosecutor, the unlawful conduct with which he is charged is penalised. **Consequently, that person must be regarded as someone whose case has been "finally disposed of" in relation to the acts which he is alleged to have committed, even if no court has been involved in the procedure and the decision taken on conclusion of the procedure does not take the form of a judicial decision.** The Schengen implementing Convention does not make application of the *ne bis in idem* principle subject to any requirements of this kind as to form or procedure. Nor is the principle conditional upon the harmonisation or approximation of the criminal laws of the Member States with regard to procedures whereby further prosecution is barred. **A necessary implication of the principle is that the Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied.**

The *ne bis in idem* principle does not, however, prevent a person who has suffered as a result of the accused's conduct from bringing a civil action to seek compensation for the damage.

Unofficial document for media use only; not binding on the Court of Justice.

Available in Dutch, English, French and German.

*For the full text of the judgment, please consult our Internet page
www.curia.eu.int at approximately 3pm today.*

For further information please contact Christopher Fretwell:

Tel: (00 352) 4303 3355; Fax: (00 352) 4303 2731

*Pictures of the hearing are available on "Europe by Satellite"
European Commission, Press and Information Service, L-2920 Luxembourg
Tel: (00 352) 4301 35177; Fax: (00 352) 4301 35249,
or B-1049 Brussels, Tel: (00 32) 2 2964106, Fax: (00 32) 2 2965956, or (00 32) 2 301280*