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Judgment of the Court in Case C-802/23 | MSIG

Principle *ne bis in idem*: a person cannot be prosecuted in one Member State for an act of terrorism for which he or she has already been convicted in another Member State, even though the offence has a different classification in each of those Member States

On 4 September 2019, a leader of the terrorist organisation Euskadi Ta Askatasuna (ETA) was handed over to the Spanish authorities in execution of a European arrest warrant issued by the Spanish Central Court in criminal proceedings concerning a terrorist attack on the police station of Oviedo (Spain), which took place on 21 July 1997. She is accused of having committed from France terrorism offences consisting in damage to property, attempted murder and actual bodily harm. She faces up to 30 years' imprisonment.

She has already served a sentence of 20 years' imprisonment in France. According to Spanish law, sentences resulting from convictions by French and Spanish courts cannot be merged: the accused would therefore have to serve a minimum term of imprisonment of 50 years, without it being possible to set a cap.

The Spanish Central Court notes that the proceedings brought in Spain relate to the same acts as those which the French judgments concern. By a judgment of 2021, it therefore took the view that it was presented with a 'bis in idem situation'.¹ However, that judgment was set aside on 21 March 2023 by the Spanish Supreme Court, which referred the case back to the Central Court for a new ruling. Faced with this divergent interpretation, the Central Court decided to refer the matter to the Court of Justice.

The Court points out that the concept of 'same acts' refers only to the nature of the acts, so that divergent legal classifications of the same acts in two different Member States or even the pursuit of different legal interests in those States cannot preclude the application of the principle *ne bis in idem*.

It is for the Spanish Central Court to determine whether the acts which are the subject of the criminal proceedings at issue are the same as those in respect of which final judgment has been passed by the French courts. However, the Court states that **the concept of 'same acts' covers the acts of which a person is accused in criminal proceedings brought in a Member State in respect of terrorist acts where that person has already been convicted in another Member State, for the same acts, of involvement in a terrorist association with a view to preparing a terrorist attack.**

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 an EU 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.

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

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ For the purposes of Article 54 of the 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 on 19 June 1990 and entered into force on 26 March 1995. According to that provision, no person may be prosecuted in a Member State for the same acts as those in respect of which, as regards that person, final judgment has been passed in another Member State, provided that, if a penalty has been imposed, it has been enforced, it is actually in the process of being enforced or it can no longer be enforced under the laws of the latter State. That provision ensures respect for the essence of Article 50 of the Charter of Fundamental Rights of the European Union – which enshrines the right not to be tried or punished twice in criminal proceedings for the same offence – and must be interpreted in the light thereof.