



Press and Information

Court of Justice of the European Union

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Judgment in Case C-486/14

Piotr Kossowski

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**Fresh proceedings may be brought against a suspect in a Schengen State where previous criminal proceedings in another Schengen State were terminated without a detailed investigation**

*The fact that neither the victim nor a potential witness was interviewed is an indication that no such investigation was carried out*

The public prosecutor's office, Hamburg (Germany), accuses Mr Piotr Kossowski of having committed, in Hamburg, the offence of extortion with aggravating factors. However, the Landgericht Hamburg (Hamburg Regional Court) has refused to open trial proceedings on the ground that it is prevented from doing so by the *ne bis in idem* principle, as it applies in the Schengen area.<sup>1</sup> By virtue of that principle, a person cannot be tried or punished twice in criminal proceedings for the same offence. In the present case, the public prosecutor's office in Kołobrzeg (Poland), where Mr Kossowski had been arrested for another criminal offence, had already opened a criminal investigation procedure against him in respect of the same facts and had definitively closed it in the absence of sufficient evidence. The specific reasons for the decision of the Kołobrzeg public prosecutor to close the investigation were that Mr Kossowski had refused to give a statement and that the victim and a hearsay witness were living in Germany, so that it had not been possible to interview them during the investigation and had therefore not been possible to verify statements made by the victim. No other more detailed investigation had been carried out in Poland.

Hearing an appeal brought by the Hamburg public prosecutor, the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court, Hamburg) asks the Court of Justice for guidance on the scope of the *ne bis in idem* principle. In particular, it wishes to know whether, given that the decision of the Polish prosecutor was taken without a detailed investigation,<sup>2</sup> Mr Kossowski must be regarded as a person whose case has been 'finally disposed of'<sup>3</sup> or who has been 'finally acquitted',<sup>4</sup> so that the *ne bis in idem* principle would preclude further prosecution for the same acts in Germany.

In today's judgment, the Court observes that the aim of the *ne bis in idem* principle is to ensure that a person, once he has been found guilty and served his sentence, or, as the case may be, been acquitted by a final judgment in a Schengen State, may travel within the Schengen area without fear of being prosecuted in another Schengen State for the same acts.

However, that principle is not intended to protect a suspect from having to submit to investigations that may be undertaken successively, in respect of the same acts, in several Schengen States.

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<sup>1</sup> That principle is laid down in 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, which was signed in Schengen (Luxembourg) on 19 June 1990, and in Article 50 of the Charter of Fundamental Rights of the European Union.

<sup>2</sup> According to the Oberlandesgericht, the present case can be distinguished in this regard from the case that gave rise to the judgment of the Court of Justice of 5 June 2014 in M [C-398/12](#).

<sup>3</sup> Within the meaning of Article 54 of the Convention Implementing the Schengen Agreement.

<sup>4</sup> Within the meaning of Article 50 of the Charter of Fundamental Rights of the European Union.

Applying the *ne bis in idem* principle to a decision closing an investigation procedure, which has been adopted by the judicial authorities of a Schengen State without any detailed assessment of the unlawful conduct alleged against the accused, would clearly run counter to a central purpose of the area of freedom, security and justice – that of combating crime – and could undermine the mutual trust between the Member States.

The Court thus holds that a decision of the public prosecutor terminating criminal proceedings and finally<sup>5</sup> closing the investigation procedure against a person (without any penalties having been imposed) cannot be classified as a final decision<sup>6</sup> for the purposes of the application of the *ne bis in idem* principle, when it is clear from the statement of reasons for that decision that the procedure was closed without a detailed investigation having been carried out. The fact that neither the victim nor a potential witness was interviewed is an indication that no detailed investigation was undertaken.<sup>7</sup>

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**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.

Press contact: Holly Gallagher 📞 (+352) 4303 3355

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<sup>5</sup> The Court observes on this point that, under Polish law, neither the fact that the procedure may be reopened in the event of new, essential facts or evidence coming to light, nor the fact that the decision closing the procedure may be annulled, calls into question the fact that further prosecution is definitively precluded.

<sup>6</sup> Within the meaning of Article 54 of the Convention Implementing the Schengen Agreement, read in the light of Article 50 of the Charter of Fundamental Rights of the European Union.

<sup>7</sup> In view of that answer, the Court considers that it is no longer necessary to reply to the other question raised by the Hanseatisches Oberlandesgericht Hamburg. That asked whether the right of a Schengen State to make, when ratifying the Convention Implementing the Schengen Agreement, a reservation declaring that it is not bound by the *ne bis in idem* principle where the acts took place in its territory (such a declaration having been made by Germany) remains valid in the light of the Charter of Fundamental Rights of the European Union.