EFFECTIVE INVESTIGATION OF CRIME AND THE
EUROPEAN NE BIS IN IDEM PRINCIPLE

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SUMMARY

The judgment of the Court of Justice of 21 December 2016 in the Kossowski case (C – 486/14) introduced a partly new interpretation of article 54 of the Convention Implementing the Schengen Agreement of 14 June 1985 and perception of the ne bis in idem principle in the EU generally. According to the judgment, the ne bis in idem principle is not to be applied to final decisions of the authorities in the member states if the criminal investigation of the case was not detailed.

In the article, the author analyses the above mentioned judgment and the earlier judgments of the Court of Justice interpreting article 54 of the Convention Implementing the Schengen Agreement. The approach of the Court taken in the Kossowski case is criticised in the light of the mutual recognition principle and the Polish regulations giving the possibility of reopening the case. The departure of the Court from an analysis of res iudicata on the base of national legislation may cause serious consequences, undermining mutual trust between the member states and decreasing the effectiveness of European cooperation in criminal matters. The potential “side effects” of the judgment prevail over its potential value in certain circumstances.

Despite the criticism of the judgment, the author tries to interpret the term “detailed investigation”, referring to the concept of effective investigation, created by the European Court of Human Rights. The concepts of “detailed investigation” and “effective investigation” are not the same, but some useful guidelines could be drawn from the jurisprudence of the European Court of Human Rights.

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The judgment of the Court of Justice of 21 December 2016 in case C – 486/14\(^2\) introduced a partly new interpretation of article 54 of the Convention Implementing the Schengen Agreement (CISA)\(^3\) and a perception of the *ne bis in idem* principle in the EU generally. According to the judgment, the *ne bis in idem* principle is not to be applied to the final decisions of the authorities in the member states if the criminal investigation of the case was not detailed.

Let us look briefly at the facts of the case. Piotr Kossowski was a Polish national who was suspected in Germany of extortion with aggravating factors committed in October 2005. After the alleged act he fled to Poland and the same month was stopped by the Polish police and arrested with a view to the enforcement of a term of imprisonment to which he had been sentenced in Poland in a different case. As the police had suspicions about the car in which he was driving, after enquiries they opened a criminal investigation against him and requested copies of evidence from Germany. Nevertheless, by their decision of 22 December 2006, the Polish public prosecution service (*prokuratura*) terminated, for lack of sufficient evidence, the criminal proceedings against the suspect. The reasons for the decision were that the suspect refused to give evidence and the victim and witness were living in Germany, so that it had not been possible for the Polish authorities to interview them and it had therefore not been possible to verify the statements made by the victim, which were, in parts, vague and contradictory. The decision was communicated to the German authorities. The victim did not appeal against the decision and it became final. Then, in 2009 the Hamburg Public Prosecutor’s Office issued a European arrest warrant against the suspect (living at the time in Poland), but the surrender was refused by a Polish court indicating, that the case was finally terminated in Poland by the public prosecution service. A few years later, in 2014, Piotr Kossowski was arrested in Berlin and the Hamburg Public Prosecutor’s Office brought charges against him to the court, but the Landgericht Hamburg refused to open a trial, indicating that further prosecution was precluded for the purposes of article 54 of the CISA, by the decision of the Polish public prosecution service terminating the criminal proceedings. The German public prosecution office appealed against the judgment. The appeal court in Hamburg expressed the opinion that the evidence against the accused was sufficient to start trial; however the principle of *ne bis in idem* laid down in article 54 of the CISA and article 50 of the Charter of Fundamental Rights (CFR)\(^4\) might be a bar to that. Having doubts as to the application of the principle of *ne bis in idem*, the Hanseatisches Oberlandesgericht

\(^2\) ECLI:EU:C:2016:483.

\(^3\) According to article 54 of the Convention “A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.” *Official Journal L 239, 22/09/2000, P. 0019 – 0062.*

\(^4\) According to article 50 of the CFR “No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law”. *Official Journal C 364, 18/12/2000, P. 0001 – 0022.*
Hamburg decided to stay the proceedings and to refer to the Court of Justice for a preliminary ruling on the question if in the circumstances where no detailed investigation was carried out prior to the decision of 22 December 2006, and the criminal proceedings were terminated and no obligations were imposed on the suspect, the proceedings might be regarded as ‘finally disposed of’ within the meaning of article 54 of the CISA or the person has been ‘finally acquitted’ within the meaning of article 50 of the CFR. After consideration of the case, the Court of Justice gave a preliminary ruling, according to which:

The principle of ne bis in idem 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, read in the light of Article 50 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a decision of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person, albeit with the possibility of its being reopened or annulled, without any penalties having been imposed, cannot be characterised as a final decision for the purposes of those articles 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; in view of the fact that neither the victim nor a potential witness was interviewed is an indication that no such investigation took place.

Without a doubt, the ne bis in idem principle stipulated by article 54 of the CISA and article 50 of the CFR is one of the most important achievements of the European integration in criminal matters. It should be noticed that this principle is sometimes not adopted even in federal states, where double or multiple prosecutions are possible for crimes prescribed by states and a federation under the double sovereignty doctrine. In the EU limiting multiple prosecutions strengthens human rights, freedom of movement, and the concept of the EU area of justice generally. In the Kossowski judgment the Court pointed that:

Article 54 of the CISA should in this respect be interpreted in the light of Article 3(2) TEU, which states that the European Union is to offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with regard to, amongst other matters, the prevention and combating of crime.

The judgment is a change in the perception of the ne bis in idem principle in the EU. The jurisprudence of the Court of Justice was up to the time of the judgment in the Kossowski case very coherent and supported a non-enquiry rule in relation to decisions issued in other member states. The Court of Justice underlined many times that different organisation[s] and decisions of judicial authorities shall be taken into account. In order to determine if it is the same act in

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6 Par. 46.


8 See for example the Gözütok and Brügge case, where the final decision of the public prosecutor was recognised as precluding prosecution in other member states. As the Court observed: “if Article 54 of the CISA were to apply only to decisions discontinuing prosecutions which are taken by a court or take the form
the meaning of article 54 of the CISA, the facts of the case shall be taken into account rather than
the legal classification of the act in criminal law of a certain member state. The Court also
expressed the opinion that the issue of whether a judgment or a decision is final, shall be
determined by the law of the member state where the judgment or the decision was given.
Therefore:

an order making a finding that there is no ground to refer a case to a trial court which
precludes, in the Contracting State in which that order was made, the bringing of new criminal
proceedings in respect of the same acts against the person to whom that finding applies, unless
new facts and/or evidence against that person come to light, must be considered to be a final
judgment, for the purposes of that article, precluding new proceedings against the same person in
respect of the same acts in another Contracting State.

The Kossowski judgment introduces an autonomous concept of the final disposal of
criminal proceedings, which in the aspect of termination of investigation is different from that at
the national level in Poland. There is no doubt that the decision to terminate an investigation,
issued by the public prosecutor and not appealed against by the parties, after the time for an appeal
has elapsed, becomes final, and any new proceedings in Poland would be barred by the domestic
ne bis in idem principle (article 17 § 1 (7) of the Polish Code of Criminal Procedure). The
possibility that the proceedings could be reopened or the decision quashed does not affect its
finality because reopening or annulment can generally take place in the case of every final
judgment. The authorities responsible for investigation in Poland are not empowered to evaluate
whether the final decision issued by other authorities was reasonable or not: up to the moment
the decision is quashed, it must be observed. There is also no doubt that despite the lack of some
evidential activities, the decision of the public prosecution service in the Kossowski case was
taken after determination of the merits of the case, because the testimony of the victim was
analysed and the inconsistencies pointed out.

The new approach may undermine the core concept of the mutual recognition principle
and mutual trust in cooperation in criminal matters. The possibility of the evaluation of the final
decisions of the authorities of the other member states, criticising their methods of investigation,
of a judicial decision, the consequence would be that the ne bis in idem principle laid down in that provision
(and, thus, the freedom of movement which the latter seeks to facilitate) would be of benefit only to
defendants who were guilty of offences which - on account of their seriousness or the penalties attaching to
them - preclude use of a simplified method of disposing of certain criminal cases by a procedure whereby
further prosecution is barred, such as the procedures at issue in the main actions.”. Judgment of the Court
of Justice of 11 February 2003 in joined cases C-187/01 and C-385/01, ECLI:EU:C:2003:87. Such a point of
view is justified by a variety of procedural decisions in the member states, including out of court
settlements. See J. Lelieur, “Transnationalising Ne Bis In Idem: How the Rule of Ne Bis In Idem Reveals the

9 See for example the judgment of the Court of Justice of 8 March 2006 in the case C-436/04,
ECLI:EU:C:2006:165 where the Court indicated that “the relevant criterion for the purposes of the
application of that article is the identity of the material acts, understood as the existence of a set of facts
which are inextricably linked together, irrespective of the legal classification given to them or the legal
interest protected”.


11 See the judgment of the Court of Justice of 10 March 2005 in the case C – 469/03,
ECLI:EU:C:2005:156.
effectiveness, and procedural acts is certainly not the best way to build a common area of freedom, security, and justice in the EU. Besides, it introduces legal uncertainty as to the finality of decisions in the EU dimension.

It must be emphasised that article 54 of the CISA provides no exceptions to the ne bis in idem principle. Therefore public policy reasons, the importance of the case, or other similar factors are without relevance. This could be contrasted for example with article 17 (1) b of the Rome Statute of the International Criminal Court 1998\textsuperscript{12}, which gives a ground for sui generis non-recognition of national decisions of discontinuance of proceedings if the decisions were taken because of the unwillingness or inability of the state to prosecute the person concerned.

Certainly, the victim in the case had a right to challenge the decision of discontinuation of the preparatory proceedings in Poland, which was not done. Also the victim and the witness could have given evidence before the Polish authorities, with the possibility for the victim of asking for the reopening of the case. According to article 328 § 2 of the Polish Code of Criminal Procedure, reopening may take place at any time if there is new evidence or facts. Clarification of the events by the victim or the witness or additional statements by them may constitute such facts. It is therefore a great pity that the Court of Justice undermined the well-established concept of ne bis in idem without paying attention to other possibilities existing in Polish law. One can hope that the opinion expressed in the judgment will not be followed in the future judgments of the Court of Justice. It is however pointed out\textsuperscript{13}, that the judgment in the Kossowski case is a second crack in the wall of mutual recognition and mutual trust after the judgment of 5 April 2016 in the joined cases Aranyosi and Căldăraru\textsuperscript{14}, where the Court decided that:

where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State.

Therefore there is a visible move of the Court towards permission for assessment by one member state of the functioning of criminal justice systems in other member states. S. Montaldo\textsuperscript{15} argues, that “the Court shows a clear favor integrationis: these principles can be limited only in exceptional circumstances, where it is necessary to provide a cure for severe pathologies affecting the foreign decision”. It is difficult, however, to share his opinion. Opening the possibility of the introduction of exceptions to the principle is risky and may result in a slow, but constant, erosion

\textsuperscript{12} Text available on the webpage of the Court: https://www.icc-cpi.int/nr/rndonlyres/ea9aef17-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.
\textsuperscript{13} See S. Montaldo, A New Crack in the Wall of Mutual Recognition and Mutual Trust: Ne Bis in Idem and the Notion of Final Decision Determining the Merits of the Case, European Papers, vol. 1, 2016, No 3, p. 1183.
\textsuperscript{14} Judgment of the Court of Justice of 5 April 2016 in joined cases C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198.
\textsuperscript{15} S. Montaldo, A New Crack in the Wall of Mutual Recognition and Mutual Trust: Ne Bis in Idem and the Notion of Final Decision Determining the Merits of the Case, European Papers, vol. 1, 2016, No 3, p. 1183.
of the principle and more generally of mutual trust and mutual recognition in the EU. The exceptions are introduced by interpretation of the law and abstention from clear meaning of the provisions done ad casu, but with consequences for future cases. Such steps should be taken rather by legislation after careful consideration of the possible consequences for the functioning of European cooperation in criminal matters.

Despite the criticism of the judgment in the Kossowski case, we may look at the meaning of the requirement of “detailed investigation” created by the Court of Justice. What standards should be observed, what activities done in order that the final decision cannot be disregarded by the authorities of the other member states? In this particular case the Court came to the conclusion that the investigation was not detailed because the victim and the hearsay witness were not heard. But the court did not give general guidelines on how to interpret the requirement. Certainly hearing the victim will be one of the most important points. Hearing the suspect is the next issue, of course if there is enough evidence to charge any person and the suspect is willing to give evidence, not relying on his right to silence. It may also be assumed that the gathering and careful analysis of key evidence will be done. However, this is quite vague and also depends on the legal system and the model and aims of pretrial proceedings. Therefore it will be useful to look at the standards of “effective investigation” created by the European Court of Human Rights. It could be argued that “detailed investigation” and “effective investigation” have some common points, although they are not synonyms.

The concept of effective investigation was created by the European Court of Human Rights in the context of articles 216 and 317 of the European Convention on Human Rights and is used sometimes also in the context of article 818 of the Convention. According to the concept, the parties of the European Convention on Human Rights have positive obligations concerning the investigation of alleged breaches of the above mentioned articles. Therefore the court analyses the applications raising breach of art. 2 and 3 twofold: in its substantive limb (was it a breach of the right?) and in its procedural limb (was the suspicion of the breach duly investigated? Was the investigation efficient?). As the European Court of Human Rights observed in Ramsahai case19:

In order to be “effective” as this expression is to be understood in the context of Article 2 of the Convention, an investigation into a death that engages the responsibility of a Contracting Party under that Article must firstly be adequate. That is, it must be capable of leading to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to identify the perpetrator or perpetrators will risk falling foul of this standard (…). Secondly, for the investigation to be “effective” in this sense it may generally be regarded as necessary for the persons responsible for it and carrying it out to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection,

18 X and Y v. The Netherlands, judgment of the European Court of Human Rights of 26 March 1983, application no 8978/80, A 91, § 23
but also a practical independence (…). What is at stake here is nothing less than public confidence in the State’s monopoly on the use of force.

From the above judgment it is clear that there are two basic requirements of effectiveness. The second may be omitted, since the notion of detailed investigation does not seem to pose requirements as to the independence of the investigating authorities. Besides, in the EU it could be assumed that such a requirement is fulfilled.

Therefore the requirement of adequacy is to be taken into consideration. Taking all reasonable steps to secure the evidence in an investigated case and avoiding deficiencies which will undermine the ability to identify the perpetrators and prove their guilt could be regarded as an adequate standard. This encompasses taking into consideration all possible versions of the events\textsuperscript{20}, not assuming one version \textit{a priori}. The final decision must not be based on assumptions, but on evidence gathered in the case\textsuperscript{21}. Witnesses and expert witnesses must be called if necessary. In the case of contradictions in their testimonies or opinions, steps should be taken to explain or remove the contradictions. There is no obligation to carry out all the evidence-gathering proposed by the parties, but resignation to carry out a piece of vital evidence may damage the investigation\textsuperscript{22}.

The positive obligation of the state to conduct effective investigation encompasses not only pretrial proceedings, but also the judicial stage of a criminal process\textsuperscript{23}.

The concept of detailed investigation poses the obligation of due diligence, not of result (sentencing the accused, infliction of penal measures). The concept does not seem also to encompass the speed of the investigation, even if unreasonable delays resulted in the passing of the prescription period and a legal bar to the prosecution of the perpetrator\textsuperscript{24}.

It may also be mentioned, that the Advocate General, in his opinion in the Kossowski case\textsuperscript{25}, presented the view that:

\begin{quote}
The \textit{ne bis in idem} principle expressed in Article 54 of that convention and in Article 50 of that charter must be interpreted as meaning that an order of discontinuance made by the public prosecutor’s office, terminating investigative proceedings, cannot be characterised as a final disposal for the purposes of those articles, where it is clear from the reasons stated in that order that the matters making up the very substance of the legal situation, such as hearing the victim and the witness, have not been examined by the judicial authorities concerned.
\end{quote}

Therefore the opinion, pointing to the issue of the examination of the merits of the case, referred to the criteria of “the matters making up the very substance of the legal situation”, which requires an analysis of the facts of a case and the law applicable. However it does not seem from the judgment that the court was prepared to accept the possibility of critical assessment of the way the issuing authority evaluated evidence in the case. The only criterion is that because of the

\begin{itemize}
\item \textsuperscript{20} Kachurka v. Ukraine, judgment of the European Court of Human Rights of 15 September 2011, application no 4737/06, § 52
\item \textsuperscript{21} Kachurka v. Ukraine, judgment of the European Court of Human Rights of 15 September 2011, application no 4737/06, § 55.
\item \textsuperscript{22} Taraburca v. Moldova, judgment of the European Court of Human Rights of 6 December 2011, application no 18919/10, § 59.
\item \textsuperscript{23} Nikolova and Velichkova v. Bulgaria, judgment of the European Court of Human Rights of 20 December 2007, application no 7888/03, § 57.
\item \textsuperscript{24} Compare the requirements of adequate investigation: in P. M. v. Bulgaria, judgment of the European Court of Human Rights of 24 January 2012, application no 49669/07, § 66.
\item \textsuperscript{25} Opinion delivered on 15 December 2015, ECLI:EU:C:2015:812.
\end{itemize}
deficiencies in evidential activities the national authority was unable to properly decide the case. In situations, where the crucial evidence was gathered, but the national authority took a certain view in evaluating the evidence which was surprising or unreasonable from the point of view of its counterpart in the other member state, the *ne bis in idem* principle shall be applied, as the risk of a different outcome or even error seems to be calculated in the application of the principles of mutual recognition and mutual trust.

In order to avoid situations like the one in the case, not only must the investigation be conducted with due diligence, but also the analysis of the evidence and facts and the reasons for the decision must be convincing. This may of course cause a problem in cases when national authorities are not obliged to give reasons for their decisions, so making the assessment and understanding of their decisions much more difficult if not impossible.

S. Montaldo also rightly points out that the basis for not applying article 54 of the CISA expressed in the Kossowski judgment could be found only in exceptional cases, where the lack of a detailed investigation is “clear”. This limits the possibility of not applying article 54 to cases where the deficiencies in investigation are at first sight visible, obvious, manifest. Such a view on the part of the foreign authority is to be taken “from the statement of reasons for that decision”.

It could be argued that this is to be the sole source of information, otherwise the foreign authority will be given the opportunity to conduct an independent investigation in order to establish whether the final decision was taken after due consideration of the possibilities of gathering evidence.

The question arises, as to whether the requirement of detailed investigation relates only to preparatory (pretrial) proceedings or to the criminal process as whole, including final judicial decisions. In the Kossowski case the decision was taken by a public prosecutor, therefore the Court referred to the decision closing the investigation, but this did not exclude the possibility that a final decision of a national court may have been taken without proper examination of a case. As was mentioned, the ECtHR indicated that lack of effective investigation also encompasses activities at the stage of judicial proceedings. That is why, despite the reference to pretrial proceedings, it could be argued that the term “detailed investigation” should be interpreted as related to the establishment of facts in criminal proceedings, not the stage of criminal proceedings. Of course the possibility of finding manifest lacunas in gathering evidence in proceedings terminated at court level is less likely than at the stage of preparatory proceedings, but this issue could be left as open.

While analysing whether a certain investigation was detailed, the foreign authority should abstain from making statements on the fairness of the proceedings because this is not its role. In order not to impair cooperation, general statements as to the functioning of criminal justice in the issuing member should shall be avoided.

In the Kossowski judgment one vital question was not analysed in depth: the relation between article 54 of the CISA and article 50 of the CFR in the context of the case. The court made only the rather general statement that “since the right not to be tried or punished twice in criminal proceedings for the same offence is set out both in Article 54 of the CISA and in

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27 Montaldo, supra.
Article 50 of the Charter, Article 54 must be interpreted in the light of Article 50 of the CISA. Earlier the Court decided that article 54 of the CISA “which makes the application of the ne bis in idem principle subject to the condition that, upon conviction and sentencing, the penalty imposed ‘has been enforced’ or is ‘actually in the process of being enforced’, is compatible with Article 50 of the Charter of Fundamental Rights of the European Union, in which that principle is enshrined”. But it must be observed that article 54 of the CISA speaks about the final disposition, and article 50 of the CFR refers to acquittal and conviction. Referring to the decision of the national authorities in the Kossowski case, which could be described as an unconditional discontinuance of proceedings, the Court observed:

As regards the absence of a penalty, the Court observes that it is only where a penalty has been imposed that Article 54 of the CISA lays down the condition that the penalty has been enforced, is actually in the process of being enforced, or can no longer be enforced under the laws of the Contracting State of origin.

The reference to a penalty cannot therefore be interpreted in such a way that the application of Article 54 of the CISA is — other than in a case in which a penalty has been imposed — subject to an additional condition.

The issue is therefore still open, of how the interpretation of article 54 of the CISA in the light of article 50 of the CFR changes the scope of the former.

**CONCLUSIONS**

1. To conclude the analysis, it could be underlined once more, that the idea of verification of decisions of the judicial authorities of the member states is contrary to the principle of mutual recognition and mutual trust. The Kossowski case is a change in the long established line of judgments of the Court of Justice. It is hard to predict if the judgment will be followed by the Court in the future, but the possible consequences call for revision of the point of view presented in the Kossowski case. Nevertheless, if the Court were to follow the above presented interpretation of the finality of decisions in its subsequent judgments, some useful guidelines as to the interpretation of the requirement of “detailed investigation” could be taken from the jurisprudence of the European Court of Human Rights and its concept of “effective investigation”.

2. The case also underlined the importance of the choice of forum for criminal prosecution. Certainly Germany was a better place for conducting the investigation, because of the availability of evidence. The fact that the alleged perpetrator was Polish was of secondary importance, bearing in mind the availability of the quick and effective mechanism of the European arrest warrant. Therefore an attempt to investigate the case in Poland, although not precluded by European law, cannot be

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28 Par. 31.
29 Par. 40 – 41.
30 This is also underlined by S. Montaldo, A New Crack in the Wall of Mutual Recognition and Mutual Trust: Ne Bis in Idem and the Notion of Final Decision Determining the Merits of the Case, European Papers, vol. 1, 2016, No 3, p. 1190.
31 In the Turanský judgment the Court underlined that “whilst Article 54 of the CISA aims to ensure that a person, once he has been found guilty and served his sentence, or, as the case may be, been acquitted...
regarded as a good choice. In similar cases, when a conflict of jurisdiction arises, the authorities should contact and choose the best forum for investigation available, in order to minimise the risk that the final decision is taken without the possibility of making a full determination of the facts. This formal decision will not raise the issue of the ne bis in idem principle. As the Court rightly pointed out in the Miraglia case, the principle “…does not fall to be applied to a decision of the judicial authorities of one Member State declaring a case to be closed, after the Public Prosecutor has decided not to pursue the prosecution on the sole ground that criminal proceedings have been started in another Member State against the same defendant and for the same acts, without any determination whatsoever as to the merits of the case.”

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12. Kachurka v. Ukraine, judgment of the European Court of Human Rights of 15 September 2011, application no 4737/06, § 52

by a final judgment in a Contracting State, may travel within the Schengen area without fear of being prosecuted in another Contracting State for the same acts, it 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 Contracting States”. Judgment of the Court of Justice of 22 December 2008 in the case C-491/07, ECLI:EU:C:2008:768.


23. W. B. van Bockel, The ne bis in idem principle in EU law, Leiden 2009


SANTRAUKA

Teisingumo teismo 2016 gruodžio 21 dienos nutarime Kossowski byloje (C - 486/14) buvo priimta dalinai nauja 1985 Birželio 14 Šengeno Konvencijos sutarties 54 straipsnio interpretacija ir ne bis in idem principo bendras suvokimas ES. Pagal nutarį, ne bis in idem principas neturėtų būti pritaikomas valstybėse narėse, jei baudžiamasis tyrimas nebuvo detalus.


Nepaisant nutarės kritikos, autorius interpretuoja "detalaus tyrimo" sąvoką remdamasis efektyvaus tyrimo koncepcija, kurią sukūrė Europos Žmogaus Teisių Teismas. Nors detalaus tyrimo ir efektyvaus tyrimo koncepcijos nėra tapačios, vadovaujantis Europos Žmogaus Teisių Teismo jurisprudencija galima parengti kai kurias naudingas gaires.
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REIKŠMINIAI ŽODŽIAI

Ne bis in idem, Konvencija dėl Šengeno susitarimo, abipusis pripažinimas, Europos teisė