

# AG: Amnesty Does Not Trigger ne bis in idem Protection

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## News

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In the framework of a reference for a preliminary ruling by a Slovak court, the CJEU has to deal with the question whether the EU-wide ne bis in idem principle precludes the issuance of a European Arrest Warrant (EAW) when an amnesty had been granted. Advocate General (AG) *Juliane Kokott* delivered her [opinion](#) in this case (*C-203/20, AB and Others*) on 17 June 2021.

In the case at issue, the defendants are accused of having kidnapped the son of the then Slovak President in 1995 and of having committed other offences in this context. In 1998, the Slovak Prime Minister at the time issued an amnesty in this regard, which is why the criminal proceedings that had been initiated were initially discontinued. In 2017, however, the amnesty and thus also the legally binding discontinuation order were revoked by the National Council of Slovakia. On the occasion of considering the issuance of an EAW against one of the accused, the question arised whether such an EAW is compatible with the Union law prohibition of double prosecution under Art. 50 CFR (*ne bis in idem*).

AG *Kokott* examined the question of whether the discontinuance of criminal proceedings due to an amnesty is, despite the subsequent revocation of the amnesty, to be regarded as a final acquittal within the meaning of Art. 50 CFR. In this context, she noted that such a final decision must fulfil two conditions:

- It must definitively bar further prosecution;
- It must be based on a determination as to the merits of the case.

AG *Kokott* concluded that the second condition is not fulfilled if criminal proceedings are discontinued on account of amnesty. In such situations, criminal responsibility is generally not assessed.

Accordingly, the *ne bis in idem* principle under Art. 50 CFR does not preclude the issuance of an EAW where the criminal proceedings have been discontinued on account of an amnesty without an examination of the criminal responsibility of the persons concerned, but where the decision to discontinue ceased to have effect when the amnesty was revoked.

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