

CJEU: Amnesty Does Not Preclude Issuance of EAW

Thomas Wahl



News

A European arrest warrant (EAW) may be issued even if the underlying criminal proceedings have been resumed after an amnesty. On 16 December 2021, the CJEU took this [decision in Case C-203/20](#) and followed the opinion of Advocate General Kokott of 17 June 2021 (→ [eucrim 2/2021, 104](#)). The judgment replies to a request for a preliminary ruling from a Slovak court. In 1998, the head of the Slovakian government had issued an amnesty in relation to crimes committed by some Slovakian security officers, including the kidnapping of the son of the then Slovak President in 1995. As a result, the prosecution was discontinued, which had the effect of an acquittal under Slovak law. After the amnesty was revoked in 2017, all criminal proceedings were resumed.

The competent Slovak criminal court now intended to issue an EAW and therefore asked the CJEU in essence whether the *ne bis in idem* principle may preclude the issuance of such arrest warrant.

The CJEU took the view that the *ne bis in idem* principle had not been violated in the present case, since the proceedings had been discontinued without the Slovak courts having been able to rule on the criminal liability of the persons being prosecuted. The *ne bis in idem* principle can only be invoked if the criminal liability of the person concerned has been examined and a determination in that regard has been made. This was not the case with the amnesty in question.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

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