

German Court Links Petruhhin Doctrine with ne bis in idem and Boosts Common European Criminal Law

Thomas Wahl

A German court transferred the principles on extradition of EU citizens to third countries (as established by the CJEU) to the privilege not to be prosecuted twice. In the [case at issue before the Higher Regional Court of Frankfurt am Main](#), the USA requested the extradition of an Italian national who had been arrested at Frankfurt airport on charges of gang fraud (art forgeries) against citizens in the USA, among others. The newly arrested person had previously been sentenced to imprisonment in Italy on the same accusation. The Higher Regional Court declared the extradition of the prosecuted person to be inadmissible because of the prohibition of double jeopardy (which Italy explicitly claimed).

According to the German-US Extradition Treaty, extradition shall not be granted if the requested person has already been tried and discharged or punished with final and binding effect by the competent authorities of the requested state for the offence for which extradition is requested. Admittedly, this protection against double jeopardy principally applies only if the judgment was rendered by German courts. However, the Higher Regional Court is of the opinion that Union law forces the recognition of the conviction by Italian courts, which has a protective effect on the extraditions requested by third countries. The Court refers in this context to the CJEU judgments in *Petruhhin* ((C-182/15, see [eu crim 3/2016, p. 131](#))) and *Pisciotti* (C-191/16, see [eu crim 1/2018, p. 29](#)).

It results from these judgments that prosecution of an EU citizen in his home (EU) country must take precedence over prosecutions in third countries. The protection of an EU citizen, which is guaranteed by his/her home country, must also be afforded by other EU Member States. This is the only way to ensure free movement in the EU. Hence, it would lead to inadmissible unequal treatment if an EU citizen could not be extradited if he/she were arrested in his home state, but could be extradited if the arrest took place in another EU Member State. If the defendant being prosecuted had been arrested in Italy as an Italian national, he/she would not have been extradited to the United States; the same must apply if he/she is arrested in Germany. In addition, the Court argues that if the defendant had not finally been convicted, the German authorities would have been obliged to grant surrender to Italy and block extradition to a third country. The applicability of the principle of double jeopardy is also justified in this case.

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