

Case C-469/03

Criminal proceedings against Filomeno Mario Miraglia

(Reference for a preliminary ruling from the Tribunale di Bologna)

(Article 54 of the Convention implementing the Schengen Agreement — Principle *ne bis in idem* — Scope — Decision of a Member State's judicial authorities to discontinue prosecution by reason solely of the initiation of similar proceedings in another Member State)

Judgment of the Court (Fifth Chamber), 10 March 2005 I - 2011

Summary of the Judgment

*European Union — Police and judicial cooperation in criminal matters — Protocol integrating the Schengen acquis — Convention implementing the Schengen Agreement — Principle *ne bis in idem* — Scope — Decision of the judicial authorities of one Member State closing a case on the ground that similar proceedings have been started in another Member State without any determination whatsoever as to the merits of the case — Excluded*

(Art. 2, fourth indent, first subpara, EU; Convention implementing the Schengen Agreement, Art. 54)

The principle *ne bis in idem*, enshrined in Article 54 of the Convention implementing the Schengen Agreement, the purpose of which is to ensure that no one is prosecuted on the same facts in several Member States on account of his having exercised his right to freedom of movement, 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. Such a decision cannot in fact constitute a decision finally disposing of the case against that person within the meaning of Article 54.

The consequence of applying that principle to such a decision to close criminal proceedings would be to make it more difficult, indeed impossible, actually to penalise in the Member States concerned the unlawful conduct with which the defendant is charged. Such a consequence would clearly run counter to the very purpose of the provisions of Title VI of the Treaty on European Union, as set out in the fourth indent of the first subparagraph of Article 2 EU.

(see paras 30, 33-35, operative part)