

ARTICLES

THE POST-LISBON PRINCIPLE OF TRANSNATIONAL *NE BIS IN IDEM*: ON THE RELATIONSHIP BETWEEN ARTICLE 50 CHARTER OF FUNDAMENTAL RIGHTS AND ARTICLE 54 CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT

Case note on District Court Aachen,
Germany, (52 Ks 9/08 – “Boere”),
Decision of 8 December 2010

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ABSTRACT

The ne bis in idem provision in Article 50 CFR – which gained the status of primary law when the Lisbon Treaty entered into force – differs in some important details from the long known Article 54 CISA. For example, only the latter contains an explicit “enforcement clause” – that only executed sentences prohibit a second proceeding. We discuss a recent case decided by the District Court Aachen where this difference was relevant, and consider Article 54 CISA to be a (secondary) operational embodiment of the (primary) Article 50 CFR. Despite the “angst clause” in Article 51(1) CFR, the judicial rights specified in the CFR are at least applicable whenever national courts interpret Union laws. At this point in time, the official Explanations to the CFR guide the interpretation of the CFR, albeit not precluding future dynamic extensions of the scope of protection offered by the CFR.

Keywords: Charter of Fundamental Rights; double jeopardy; implementing Union law; interpretative methodology; ne bis in idem

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