



## The right not to be tried or punished twice only applies to courts in one and the same State: Mr Krombach's application is inadmissible

In its decision in the case of [Krombach v. France](#) (application no. 67521/14) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned Mr Krombach's criminal conviction in France for events in respect of which he submitted that he had previously been acquitted in Germany. The facts concerned the circumstances surrounding the death of Kalinka Bammerski in 1982 at Mr Krombach's home in Germany. The case raised the question of the right not to be tried or punished twice (*ne bis in idem*).

Pursuant to its constant case-law, the Court held that Article 4 of Protocol No. 7 (right not to be tried or punished twice) did not prevent an individual from being prosecuted or punished by the courts of a State Party to the Convention on the grounds of an offence of which he or she had been acquitted or convicted by a final judgment in another State Party. Since Mr Krombach had been prosecuted by courts in two different States, namely Germany and France, Article 4 of Protocol No. 7 did not apply.

### Principal facts

The applicant, Dieter Krombach, is a German national who was born in 1935. According to the information available to the Court, he is in prison in Paris.

Kalinka Bammerski, aged 15, was Mr Krombach's stepdaughter and the daughter of André Bammerski. The latter had lodged a complaint in Germany and France against Mr Krombach, whom he suspected of raping and then murdering his daughter. Between 1982 and 1986 the German authorities carried out several investigations and issued four decisions discontinuing proceedings, on the basis that there was insufficient evidence to justify a prosecution. As Ms Bammerski was a French national, criminal proceedings had also been opened in France against Mr Krombach.

In 1995 the Paris Assize Court sentenced him in his absence to 15 years' imprisonment for assault resulting in unintentional death. In its judgment *Krombach v. France* (no. 29731/96) of 13 February 2001, the European Court of Human Rights held that this conviction had been in violation of Article 6 (right to a fair trial) of the Convention and Article 2 of Protocol No. 7 (right of appeal in criminal matters). By a judgment of 10 December 2008, the Court of Cassation quashed and set aside, in the interests of the law, the assize court judgment of 1995.

Mr Krombach remained at liberty in Germany until André Bammerski organised his abduction and removal to France: on 18 October 2009 he was deposited in Mulhouse (France), having been tied up, gagged and injured; he was arrested and placed in pre-trial detention. In October 2011 the Paris Assize Court sentenced him to 15 years' imprisonment for assault resulting in Ms Bammerski's unintentional death. That judgment was upheld on appeal, and an appeal on points of law by Mr Krombach was dismissed.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 9 October 2014.

Mr Krombach complained of a violation of Article 4 of Protocol No. 7 (right not to be tried or punished twice).

The decision was given by a Chamber of seven, composed as follows:

Angelika Nußberger (Germany), *President*,  
Erik Møse (Norway),  
Ganna Yudkivska (Ukraine),  
André Potocki (France),  
Síofra O’Leary (Ireland),  
Mārtiņš Mits (Latvia),  
Gabriele Kucsko-Stadlmayer (Austria), *Judges*,

and also Milan Blaško, *Deputy Section Registrar*.

## Decision of the Court

### Article 4 of Protocol No. 7

The Court had consistently held that Article 4 of Protocol No. 7 only concerned “courts in the same State” and therefore did not prevent an individual from being prosecuted or punished by the courts of a State Party to the Convention on the grounds of an offence of which he or she had been acquitted or convicted by a final judgment in another State Party.

Furthermore, the Court considered that the fact that France and Germany were members of the European Union did not affect the applicability of Article 4 of Protocol No. 7. Although European Union law lent a trans-State dimension to the *ne bis in idem* principle at the EU level, the Court reiterated that it had no jurisdiction to apply European Union rules or to assess alleged violations of the latter, unless and in so far as such violations might have infringed the rights secured under the Convention. It was therefore not the Court’s task to judge whether Mr Krombach’s prosecution in France and his subsequent conviction had contravened European Union law. Moreover, the Court emphasised that the Convention did not prevent States Parties from granting wider legal protection to the rights and freedoms which it guaranteed than that which it implemented under domestic law, other international treaties or European Union law.

In conclusion, the Court held that since Mr Krombach’s prosecution had been carried out by courts in two different States, that is to say Germany and France, Article 4 of Protocol No. 7 did not apply to the present case.

The complaint under Article 4 of Protocol No. 7 was incompatible with the provisions of the Convention. It therefore had to be rejected as being inadmissible.

*The decision is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.