

UDENRIGSMINISTERIET

Sagsnr. [REDACTED]
Den 3. januar 2017

NOTAT

TUNESIEN.
Anklagemyndighedshøringer –
Risiko for dobbeltstraf.
US ref. [REDACTED]
US mail af 25.9.2015

Til brug for behandlingen af anklagemyndighedshøringer er Udenrigsministeriet af Udlændingestyrelsen blevet anmodet om, at tilvejebringe oplysninger vedrørende risikoen for dobbeltstraf i forbindelse med tunesiske statsborgeres tilbagevenden til Tunesien.

Udenrigsministeriet har, via ministeriets sædvanligt anvendte advokat i Tunesien, fået følgende svar på de af Udlændingestyrelsen stillede spørgsmål. Spørgsmål og svar følger på engelsk:

1. *Is it possible - according to Tunisian law – that a Tunisian citizen upon return to Tunisia may be prosecuted for a crime committed outside Tunisia and for which the Tunisian citizen has already served the sentence abroad?*

The "Ne bis in idem" / "Double jeopardy" rule is a classical principle of criminal procedure, according to which no one can be prosecuted or punished a second time for the same facts. This expression therefore refers to the authority of res judicata in the criminal law which prohibits any further proceedings against the same person for the same acts. This rule which prohibits Double Jeopardy is above all a concern for the protection of the individual freedoms of the person being prosecuted.

Under Tunisian law, the principle is clearly stated in the Chapter VII of the Code of Criminal Procedure (CCP) entitled "Crimes and offenses committed abroad". In effect, article 305 of the CCP, provides the following:

"Any Tunisian citizen who, outside the territory of the republic, has been guilty of a crime or offense punishable by Tunisian law, may be prosecuted and tried by the Tunisian courts, unless it is recognized that the foreign law does not punish the said offense or that the accused proves that he has been definitively tried abroad and, in case of conviction, that he has served his sentence, or the sentence was prescribed or he has obtained pardon.

The provisions of the preceding paragraph shall apply to the author of the fact who has acquired the status of Tunisian citizen only after the fact attributed to him"

So according to article 305 CCP, the principle is that a Tunisian citizen can be prosecuted by Tunisian courts if he commits abroad a crime or offense punishable by Tunisian law, **unless:**

- it appears that the law of the country where the crime was committed doesn't punish it or,
- the accused person prove that the matter has been judged on the merits "*res judicata*" abroad and in case of conviction, (i) that he has served the judged punishment or (ii) that the said punishment has fallen because of the limitation period (after which sentences may no longer be enforced) or, (III) he has obtained pardon.

In summary, the double jeopardy is prohibited by Tunisian law. Therefore, upon return to Tunisia, a Tunisian citizen may not be prosecuted for a crime committed outside Tunisia and for which he has already served the sentence abroad.

2. Are there any recent examples of Double Jeopardy being practiced in Tunisia?

In its decision number 39433 dated on 30/06/1992, the Supreme Court of Tunisia applied the first section/part of article 305 related to the prohibition of prosecution of a Tunisian citizen for a crime he committed abroad, which is not punishable by the foreign country. The Court considered the following: "*Could not be punished a Tunisian citizen who committed outside the territory a crime or an offense which is not punishable by the law of the country where the crime was committed and thus, in application of article 305 of the CCP*".

Except for the above decision, we did not find a case law/example in which the legal principle of "ne bis in idem" was applied. However, it should be noted in this context that Tunisian doctrine considers that the principle stated in article 305 of the CCP as being a general principle in Tunisian criminal law.

Udenrigsministeriet, den 3. januar 2017