

NOTAT

Tunesien. Generel høring - risiko for dobbeltstraf ("double jeopardy").
US ref. 16/265723
US e-mail af 18. juli 2017

Udlændingestyrelsen har i forlængelse af et tidligere høringssvar fra Udenrigsministeriet af 3. januar 2017, udbedt yderligere informationer vedr. risikoen for dobbeltstraf i Tunesien.

Udenrigsministeriet har via den sædvanligt anvendte advokat i Tunesien fået svar på de af UIM stillede spørgsmål, som følger på engelsk:

- Q. According to Danish case law with regard to foreigners given a prison sentence in Denmark, the efforts to return the foreigner begins when half the sentence has been served. In case a Tunisian citizen was sentenced for 12 months and is returned after having served 6 months of his prison sentence, will he be in risk of double jeopardy?

A. No. There will be no risk of double jeopardy. Article 305 of the Code of Criminal Procedure (CCP) governing the rule of non double jeopardy provides that any Tunisian citizen who, outside the territory of the republic, has been guilty of a crime or offence punishable by Tunisian Law, may be prosecuted and tried by Tunisian courts, unless it is recognized, in case of conviction that he has served his sentence.

In the present case, the Tunisian citizen convicted in Denmark and returned after having served 6 months of 12 months' sentence, would be considered as having served his sentence and would not be prosecuted or punished a second time for the same acts.

- Q. Furthermore, in case a foreigner is acquitted at the district court and the Danish prosecution authorities chooses not to appeal the ruling with regard to the lack of resources, it might be difficult for this foreigner to prove to the authorities in Tunisia that he was "definitively tried abroad". In such cases, will a Tunisian citizen be in risk of double jeopardy?

A. YES. There is a risk of double jeopardy. 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 an offence punishable by Tunisian law unless he proves that he has been definitively tried abroad. In other words, in case of prosecution in Tunisia, the Tunisian citizen must prove that the case was judged abroad and that he was acquitted by a final judgment.

In the present case, provided that the requirements of prosecution under Tunisian criminal law are met, i.e. the crime or offence committed abroad are punishable by Tunisian law, there is a risk that the Tunisian citizen acquitted by a non foreign final judgment could be prosecuted in Tunisia a second time for the same facts committed abroad.

In practice, in case of prosecution in Tunisia, the Tunisian citizen must prove to the Tunisian judicial authorities that he was acquitted by a final judgment. Or, in case the prosecuted Tunisian citizen was unable to do so, the Tunisian judicial authority may contact the foreign authorities in order to get information about whether the judgment rendered in that case was a final judgment pursuant to the applicable foreign law or not.

Udenrigsministeriet, den 29. august 2017