

# Krombach: The Final Curtain

Readers of this blog may be interested to learn that the well-known (and, in many ways, quite depressing) *Krombach/Bamberski* saga appears to have finally found its conclusion with a decision by the European Court of Human Rights (*Krombach v France*, App no 67521/14) that was given yesterday.

Krombach - who, after having been convicted for killing his stepdaughter, had successfully resisted the enforcement of the French civil judgment in Germany (Case C-7/98 *Krombach*) and, equally successfully, appealed the criminal sentence (*Krombach v France*, App no 29731/96), before he had famously been kidnapped, brought to France, and convicted a second time - had brought a new complaint with regard to this second judgment. He had argued that his conviction in France violated the principle of *ne bis in idem* (as guaranteed in Art 4 of Protocol No 7) since he had previously been acquitted in Germany with regard to the same event.

Yesterday, the Court declared this application inadmissible as Art 4 of Protocol No 7, according to both its wording and the Court's previous case law, 'only concerned "courts in the same State"' (see the English Press Release).

*[35.] ... [L]a Cour constate que cette thèse [du requérant] se heurte aux termes mêmes de l'article 4 du Protocole no 7, qui renvoient expressément au « même État » partie à la Convention plutôt qu'à tout État partie à la Convention. ...*

*[36.] La Cour a ainsi jugé avec constance que l'article 4 du Protocole no 7 ne visait que les « juridictions du même État » et ne faisait donc pas obstacle à ce qu'une personne soit poursuivie ou punie pénalement par les juridictions d'un État partie à la Convention en raison d'une infraction pour laquelle elle avait été acquittée ou condamnée par un jugement définitif dans un autre État partie ...*

It also pointed out 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' (ibid).

*[38.] La Cour estime par ailleurs que la circonstance que la France et*

*l'Allemagne sont membres de l'Union Européenne et que le droit de l'Union européenne donne au principe ne bis in idem une dimension trans-étatique à l'échelle de l'Union européenne ... est sans incidence sur la question de l'applicabilité de l'article 4 du Protocole no 7 en l'espèce.*

The Strasbourg Court thus appears to have added the final chapter to a case that has occupied the courts in Germany, France, and Luxembourg for almost 35 years, raising some pertinent questions as to mutual trust and judicial corporation in the process.