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CONSIDERATIONS ON THE *NE BIS IN IDEM* PRINCIPLE

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Abstract: *The principle of ne bis in idem represents a fundamental safeguard against the repeated exercise of the State's punitive power and constitutes an essential component of legal certainty in criminal matters. This article aims to examine the content, scope and practical implications of the principle, with particular emphasis on the prohibition of being tried or punished twice for the same offence. Previous legal scholarship and the case-law of the European Court of Human Rights have progressively developed the autonomous meaning of the concepts of "criminal proceedings", "same offence", "final conviction" and duplication of proceedings. The article approaches these elements from a legal and jurisprudential perspective, with particular consideration given to the relationship between the procedural and substantive dimensions of ne bis in idem and to its application in the Romanian legal system. The analysis of relevant European case-law highlights the importance of assessing the factual identity of the conduct rather than relying exclusively on its formal legal classification, as well as the need to distinguish legitimate coexistence of different forms of legal liability from prohibited duplication of criminal proceedings or penalties. The findings emphasize the role of the principle in safeguarding individual rights, legal certainty and proportionality in the exercise of criminal jurisdiction. The article also identifies the continuing challenges arising from the interaction between domestic law and the autonomous Convention standards developed by the Court.*

Keywords: *ne bis in idem; double jeopardy; European Court of Human Rights; criminal proceedings; legal certainty.*

Introduction

The principle of ne bis in idem, enshrined in Article 4 of Protocol No. 7 to the European Convention on Human Rights, constitutes one of the fundamental safeguards of legal certainty in the field of punitive liability. According to this principle, no person may be tried or punished again, in criminal proceedings, for an offence for which he or she has already been finally acquitted or convicted. The rationale underlying this guarantee lies in the need to protect the individual against the repeated exercise of the State's punitive power and to ensure that a definitive judicial determination brings legal proceedings to an end. In the Romanian legal system, this requirement reflects the necessity of preventing the repeated attribution of legal liability for the same conduct, without, however, implying that all forms of legal liability

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are necessarily incompatible with one another. Thus, the coexistence of criminal liability with other forms of liability, such as disciplinary, civil or, under certain circumstances, administrative-offence liability, does not, in itself, amount to a violation of the ne bis in idem principle where each form of liability protects distinct social values and pursues different legal purposes (Central Institute for Economic Research, 1989, p. 224).

A relevant contribution to the understanding of the ne bis in idem principle in Romanian law is provided by a Decision of the High Court of Cassation and Justice[1], which emphasizes that the scope of this guarantee cannot be determined exclusively by reference to the formal classification of the proceedings under domestic law. In assessing whether a previous decision is capable of triggering the protection afforded by the principle, particular importance must be attached to the substantive nature of the proceedings and the sanction imposed, as assessed in the light of the autonomous Convention concept of a "criminal charge". Consequently, the notion of a "judgement" relevant for the purposes of ne bis in idem cannot be confined, in an exclusively formal manner, to judgements delivered in criminal proceedings. A decision rendered in proceedings formally classified under another branch of law may also fall within the scope of Article 4 of Protocol No. 7 where, having regard to the criteria developed by the European Court of Human Rights, the proceedings are criminal in substance and the decision has definitively determined the individual's criminal liability in the autonomous Convention sense. This approach is particularly significant because it prevents the protection afforded by ne bis in idem from depending on the terminology chosen by the national legislature or authorities and ensures that the Convention guarantee remains effective irrespective of the formal legal label attached to the proceedings. In this sense, the decisive question is not whether the proceedings were formally characterized as criminal, administrative, fiscal, civil or contraventional under domestic law, but whether, in substance, they involved a "criminal" charge and resulted in a final determination carrying punitive consequences for the individual.

The principle of ne bis in idem should not be regarded exclusively as a rule of criminal procedural law. It also possesses an important substantive dimension, reflected in particular in the requirement of idem, namely the identity of the conduct underlying the proceedings. From this perspective, the principle seeks to prevent public authorities from attributing successive or concurrent criminal-law consequences to conduct which, in substance, constitutes the same factual act. Its purpose is consequently to prevent an unjustified multiplication of the State's punitive intervention where the same conduct has already been fully addressed under a criminal provision and has become the subject of a final determination. Understood in this broader sense, ne bis in idem operates as a substantive

[1] High Court of Cassation and Justice, Decision no. 8 of 30 March 2016 on the referral for a preliminary ruling concerning the interpretation of a point of law, published in the Official Gazette of Romania, Part I, no. 430 of 8 June 2016.

safeguard against the excessive exercise of punitive power, while simultaneously protecting legal certainty and the finality of decisions rendered in criminal matters.

This distinction is particularly relevant because the mere existence of several legal consequences arising from the same factual conduct does not necessarily entail a breach of the principle. The decisive issue is whether the successive or concurrent proceedings are, in substance, criminal in nature and whether they concern the same facts, rather than merely whether they bear different formal legal classifications under domestic law. Consequently, the assessment of ne bis in idem requires attention not only to the legal qualification assigned to the conduct, but also to the factual circumstances underlying the proceedings, the nature and purpose of the sanctions imposed, and the relationship between the different sets of proceedings (Feșteu, 2016, pp. 144–165). Such an approach is essential for determining the point at which the legitimate coexistence of different forms of legal liability gives way to a prohibited duplication of criminal proceedings or penalties.

In this context, the case-law of the European Court of Human Rights is of particular importance for shaping and applying the principle of ne bis in idem, as it has progressively clarified the scope of the guarantee and the criteria according to which its protection is to be assessed. The Court's interpretation is particularly significant because it attaches autonomous meaning to the concepts relevant to Article 4 of Protocol No. 7, thereby preventing the applicability of the guarantee from depending exclusively on the formal classifications adopted under domestic law. The development of this case-law has consequently provided an essential framework for examining the criminal nature of proceedings, the identity of the facts, the final character of a previous decision and the compatibility of successive proceedings with the ne bis in idem principle.

Against this background, the present study examines the principle of ne bis in idem with particular emphasis on its procedural and substantive dimensions and on the criteria developed in the case-law of the European Court of Human Rights. The analysis focuses on the relationship between the concepts of bis and idem, the notion of a final decision, the autonomous Convention meaning of criminal proceedings, and the circumstances in which the coexistence or succession of different proceedings may be regarded as compatible with Article 4 of Protocol No. 7. Particular attention is also given to the relevance of these standards within the Romanian legal framework, with a view to identifying the extent to which domestic legal classifications and mechanisms of liability correspond to the requirements arising from the Convention.

The case of V. S. M. v. Romania[1] illustrates with particular clarity that, in the context of ne bis in idem, what must primarily be examined is not the legal designation attributed to the conduct, but its substantive nature. In other words, the State cannot transform a sanction that is, in substance, criminal into a non-criminal one merely by assigning it a different legal

[1] European Court of Human Rights, Case of V. S. M. v. Romania (Application no. 17412/16), available at https://hudoc.echr.coe.int/.

classification. It is within this framework that the issue of guilt also becomes relevant and deserves separate consideration in a scientific analysis. The ne bis in idem principle does not, in itself, determine whether an individual is guilty or innocent; rather, it requires the precise identification of the conduct in respect of which that individual has been subjected to the punitive power of the State.

The same case further demonstrates that the principle should not be understood as a merely mechanical prohibition against the imposition of two sanctions, but rather as a safeguard against the unjustified multiplication of State repression. The Court does not absolutely exclude the possibility that the same conduct may give rise to distinct legal proceedings; however, it requires such proceedings to be sufficiently connected, foreseeable and proportionate in order to be regarded as forming part of a single coherent legal response. Thus, the real concern is not to prevent the State from sanctioning unlawful conduct, but to prevent it from sanctioning the same person, for the same conduct, repeatedly, through proceedings which do not constitute a single and proportionate legal framework. From this perspective, the principle becomes an expression of legal certainty and, at the same time, of the respect owed to the individual in relation to the punitive power of the State. Guilt may justify the imposition of a sanction, but it cannot, in itself, justify an unlimited succession of sanctions for the same conduct.

The case of H. v. Romania[1] is of particular relevance to the analysis of the ne bis in idem principle, as it shifts the focus from the mere existence of two sanctions to a considerably more subtle question: under what circumstances may the State reopen criminal proceedings which have already been terminated by a final decision? In this regard, the Court held that the finality of a decision is not merely a procedural matter, but constitutes a safeguard of an individual's legal certainty. Once the competent authority has examined the case, determined the legal consequences of the conduct and imposed a sanction, the individual must be entitled to legitimately rely on the stability of that decision. Otherwise, the finality of the proceedings would become illusory, leaving the individual permanently exposed to the risk that the same conduct might be reassessed and subjected to a new form of repression. For this reason, ne bis in idem must also be regarded as an expression of legal certainty, rather than merely as a formal prohibition against being tried twice. Moreover, the State cannot transform its subsequent disagreement with a final decision into grounds for reopening the proceedings and resuming criminal repression.

The case of S. v. Romania[2] is particularly important for defining the scope of the ne bis in idem principle and for establishing the conditions under which criminal proceedings that have been definitively concluded may be reopened. The Court emphasized that the risk of errors

[1] European Court of Human Rights, Case of H. v. Romania (Application no. 53173/10) available at https://hudoc.echr.coe.int/.
[2] European Court of Human Rights, Case of S. v. Romania (Application no. 23126/16) available at https://hudoc.echr.coe.int/.

committed by State authorities must be borne by the State itself and must not be transferred to the individual who has already benefited from a final decision.

The case is also relevant in terms of the relationship between domestic law and the Convention standard. Although Romanian law permitted, at the relevant time, the reopening of criminal proceedings under certain conditions, the mere existence of such a possibility under domestic legislation was insufficient to render the measure compatible with the Convention. The Court applied autonomous criteria and examined whether the reopening actually fell within the narrowly defined exceptions provided for in Article 4 § 2 of Protocol No. 7. Since there were no new or newly discovered facts or evidence, nor any fundamental defect in the previous proceedings, the Convention requirements were not satisfied. The judgement therefore reaffirms the primacy of the Convention standard in protecting individuals against repeated prosecution and conviction.

In essence, the case conveys a clear message concerning the exceptional nature of reopening definitively concluded criminal proceedings: the authorities cannot turn the reopening mechanism into an instrument for correcting their own subsequent legal or factual assessments. Once criminal proceedings have been definitively concluded, the stability of the decision acquires an intrinsic value, while exceptions to the ne bis in idem principle must be interpreted strictly. Through this judgement, the Court thus reaffirms the balance between the need to ensure justice and the imperative of legal certainty, emphasizing that the effectiveness of criminal repression cannot be achieved at the cost of exposing individuals permanently to the risk of renewed prosecution and conviction for the same facts.

Conclusion

Ne bis in idem does not merely constitute a mechanical prohibition against trying the same person twice; rather, it expresses a deeper requirement of the rule of law: an individual must be able to regard criminal proceedings as definitively concluded and to shape their future conduct on the basis of the legal certainty afforded by the decision rendered. Nevertheless, such certainty cannot be detached from the basis of the decision and the limits of the jurisdiction that rendered it. Accordingly, the analysis of an acquittal requires more than merely establishing the existence of a final judgement: it is necessary to identify the grounds on which it was rendered, its legal nature, and the scope of its effects (Pradel & Corstens, 1999, p. 78). From this perspective, the ne bis in idem principle lies at the intersection of res judicata, legal certainty, the protection of the individual against arbitrariness, and the autonomy of States in exercising criminal jurisdiction. Its true significance therefore lies not merely in preventing the repetition of proceedings, but in ensuring that the punitive power of the State reaches a point at which it must come to an end.

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