

right to die with dignity, the ECtHR's assertion in *Pretty* that respect for human dignity relates not only to respect for life, but also to quality of life, does set down an important marker for the future [8, p. 7].

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PRINCIPLE *NE BIS IN IDEM* AND CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA

Generally, the principle of *ne bis in idem*, is not only one of the basic principles of criminal procedure law, but also one of the very important instruments of legal certainty of citizens. This character of the above principle, among other things, is evidenced by the fact that it is not only universal but also in a large number of cases of constitutional nature, and that as such it is guaranteed by key international legal acts from this area. The case is primarily with Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms [1].

In terms of content, the principle of *ne bis in idem*, i.e. "not twice, not about

the same thing", is manifested by means of two prohibitions. First, that criminal proceedings cannot be reopened against the person against whom the criminal proceedings have been finalized for the same criminal offense, the same person may not appear two or more times as a defendant in the same criminal matter which has already been resolved. The decision by which the criminal procedure is finalized can be both a verdict and a decision. A possible attempt to initiate criminal proceedings in a criminal case that has already been finalized is prevented by pointing out the objection of the adjudicated matter - *res iudicata*. Another prohibition prevents the so-called double *lis pendens*. It prohibits the parallel (simultaneous) conduct of two or more criminal proceedings against the same person in connection with the same criminal matter. The principle is valid only in the case when the identity between the previously legally resolved criminal matter and the newly charged criminal matter is established, i.e. the identity of the ongoing criminal matters. With this content, the principle contributes to the legal certainty of citizens and strengthens the degree of protection of the legal order and security of legal relations, and is a natural consequence of the legality of court decisions and *res iudicata*.

In the criminal legislation of the Republic of Serbia, the principle of *ne bis in idem* is not only traditionally present, but also has a constitutional character, which in itself speaks of its importance. The Constitution of the Republic of Serbia (Official Gazette of the RS, No. 98/2006) in its Article 34 paragraph 4 expressly stipulates that "No person may be prosecuted or sentenced for a criminal offence for which he has been acquitted or convicted by a final judgement, for which the charges have been rejected or criminal proceedings dismissed by final judgement, nor may court ruling be altered to the detriment of a person charged with criminal offence by extraordinary legal remedy". The same prohibitions shall be applicable to all other proceedings conducted for any other act punishable by law. A derogation from this prohibition is provided by stipulating that "In special cases, reopening of proceedings shall be allowed in accordance with criminal legislation if evidence is presented about new facts which could have influenced significantly the outcome of proceedings had they been disclosed at the time of the trial, or if serious miscarriage of justice occurred in the previous proceedings which might have influenced its outcome". In addition to this constitutional provision, the principle is also provided for in Article 4 paragraph 1 of the Criminal Procedure Code (Official Gazette of the RS, No. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19), according to which "No one may be prosecuted for a criminal offense for which he has been acquitted or convicted by a final judgment, or the charge for that offense has been rejected or the procedure has been suspended." The exception is the reopening of criminal proceedings in which "a final court decision cannot be changed to the detriment of the defendant." It follows from the stated legal provision that the effect of the principle extends not only to substantive court decisions (acquittal and conviction) but also to decisions by which the

procedure has been suspended. The case is for example with the decision of the public prosecutor on the rejection of criminal charges based on the principle of opportunity of criminal prosecution [2]. Precisely with this feature of the principle, one of the issues present in the theory of criminal procedure is the question of (un)justification of extending the effect of the principle of *ne bis in idem* to procedural decisions (the case is with decisions terminating the procedure or rejecting the accusation). There are opinions according to which the effect of the prohibition of double endangerment should cover exclusively substantive court decisions [3]. In addition to this, in theory, there is also the question of the justification of the legal solution according to which the court decision cannot be changed to the detriment of the defendant in the procedure regarding the legal remedy. Or, there is the issue of applying the principle of *ne bis in idem*, i.e. its possible validity for a prolonged criminal offense, etc.

Starting from the fact that in the criminal justice system of the Republic of Serbia, in addition to criminal offenses, there are two other categories of criminal offenses (misdemeanors and economic offenses), the question of the *ne bis in idem* principle arises in the case of these two categories of criminal offenses. The position of the legislator is that in these cases, too, the principle of *ne bis in idem* has absolute effect. Of course, under the condition of their identity in a specific criminal matter - the coincidence of features - elements of the essence of a specific crime, misdemeanor or economic offense.

The principle of *ne bis in idem* as a basic human right and as one of the key instruments of legal certainty of citizens is traditionally present in the criminal legislation of the Republic of Serbia, and it is elaborated on the provisions contained in relevant international legal acts and positions of the European Court of Human Rights. Its absolute effect is limited only in the case of the use of repetition of criminal proceedings as a special extraordinary legal remedy, with the proviso that even then the court decision cannot be changed to the detriment of the defendant. In addition to this, there is its absolute effect in all three categories of criminal offenses (criminal offenses, misdemeanors, economic offenses).

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