



# THE PROHIBITION AGAINST DOUBLE JEOPARDY

## Definition

The prohibition against double jeopardy protects individuals from being prosecuted twice for the same crime.



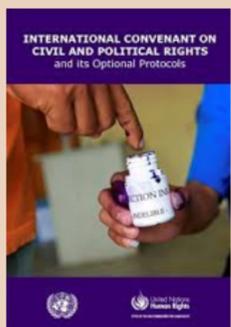
This prohibition embodies the principle of *ne bis in idem*, which literally translates as “not twice about the same” and guarantees any individual the right to remain free from being tried or punished again for an offence for which they have already been finally convicted or acquitted in accordance with the law and the penal procedure of each country.

This principle of *ne bis in idem* is closely related to the doctrine of *res judicata* which literally translates as “already judged” and means that a final adjudication by a competent court or body is conclusive. New proceedings involving the same subject matter, the same legal grounds, and the same parties cannot be conducted. The prohibition against double jeopardy therefore applies only when judgments are final, or in other words, when all venues of appeal have been exhausted.



## Legal Framework

### International Law



The prohibition against double jeopardy is expressly protected under Article 14(7) of the International Covenant on Civil and Political Rights (ICCPR), which states, “No one shall be liable to be tried or punished again for an offence for which he has already been convicted or acquitted in accordance with the law and penal procedure of each country.”

### Cambodian Law

Article 12 of the Cambodian Code of Criminal Procedure, which states that “In applying the principle of *res judicata*, any person who has been acquitted by a court judgement cannot be prosecuted once again for the same act, even if such act is subjected to different legal qualification,” and Article 23 of the Cambodian Criminal Code also embody the prohibition against double jeopardy.



# Importance



The prohibition against double jeopardy provides **judicial protection** for individuals **against State abuse**. It **preserves the principle of res judicata**, which gives finality and integrity to criminal proceedings. It protects individuals from constant threats of persecution and harassment through repeated investigations and prosecutions by the judiciary for the same facts.

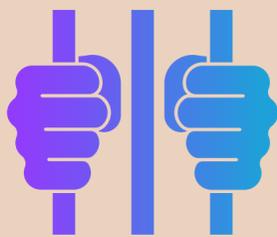
This prohibition safeguards the **principle of legal certainty**, which strengthens the judicial system. It also **avoids wasting vital legal resources** by impeding multiple proceedings by the same or different courts for the same criminal offenses.



It is therefore a principle that is crucial to the proper administration of justice and to avoid miscarriages of justice.

# Limitations

For the United Nations Human Rights Committee, which oversees the implementation of the ICCPR, the prohibition against double jeopardy does not:



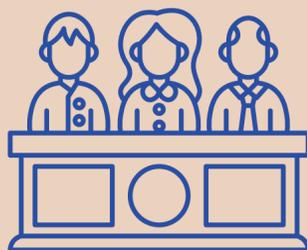
Prohibit the retrial of a person convicted in absentia who requests it.



Prohibit the retrial of an individual after a higher court overrules a conviction.



Prohibit the resumption of a criminal trial if justified by "exceptional circumstances" (e.g., the discovery of new evidence).



Guarantee an individual will not be criminally tried with respect to the national jurisdictions of two or more states. States are however encouraged to prevent retrial for the same criminal offense through international conventions.



Protect against other disciplinary measures that do not amount to a criminal sanction for the same offense. The prohibition against double jeopardy applies to criminal offenses only and not to administrative or civil proceedings.

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