



The Prohibition Against Retroactive Application of Criminal Law

Definition

The prohibition against retroactive application of criminal law prohibits the application of law to events that took place before the law was introduced. In other words, **newly adopted criminal laws only apply to acts committed after they came into force and criminalized such acts.**

This prohibition derives from the general **principle of legality**, which is composed of the following doctrines:



The doctrine **Nullum crimen sine lege**, which literally translates as “**no crime without law**,” provides that a person cannot commit a crime unless it is an act prohibited by law at the time it was committed.



The doctrine **Nulla poena sine lege**, which literally translates as “**no punishment without law**,” provides that only a penalty provided by law can be imposed on a convicted person. In addition, courts cannot impose a penalty that is heavier than the one applicable at the time the criminal offense was committed.

The principle of legality overall means that **only the law can define crime and prescribe penalties**. Consequently:

No one may be prosecuted and found guilty of a criminal offense for an act or omission that did not constitute a criminal offense at the time the alleged action or omission took place.



If found guilty of an existing criminal offense, the convicted person cannot be imposed a sentence that is not provided by law and that is heavier than the penalties provided by law at the time the offense was committed.



Legal Framework

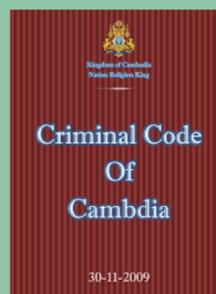
International Law

The prohibition against retrospective application of criminal law is expressly guaranteed in Article 11(2) of the Universal Declaration of Human Rights which states, "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed." It is also protected by Article 15 of the International Covenant on Civil and Political Rights (ICCPR) and Article 40 of the Convention on the Rights of the Child.



Cambodian Law

The prohibition against retrospective application of criminal law is guaranteed in Article 3 of the Cambodian Criminal Code which states, "Conduct may give rise to criminal conviction only if it constituted an offence at the time it occurred," and in its Articles 9 and 10.



Importance

The prohibition against retroactive application of criminal law is crucial as it **underpins the fundamental principle of legality**, a **cornerstone of the rule of law** that requires that criminal offenses be prescribed by law. The prohibition ensures:



The **fairness of the judiciary**: it protects individuals against unlawful prosecution, conviction and punishment.



The **foreseeability of the law**: by knowing which acts and omissions can make them criminally liable and penalties they face, individuals can adapt their behaviors accordingly.

Limitations

1 As per Article 4 of the ICCPR, the prohibition against retroactive application of criminal law **cannot be derogated from** during a state of emergency.

2 However, international law sets out **an exception**: the retroactive application of criminal laws is allowed for **more lenient criminal laws that favor the accused** (e.g., laws decriminalizing acts, laws imposing lighter penalties).

3 The prohibition of retroactive application of criminal law only applies to changes in laws impacting the criminalization of a conduct and **not to changes in procedural or evidentiary rules that do not affect the nature of the offense.**

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