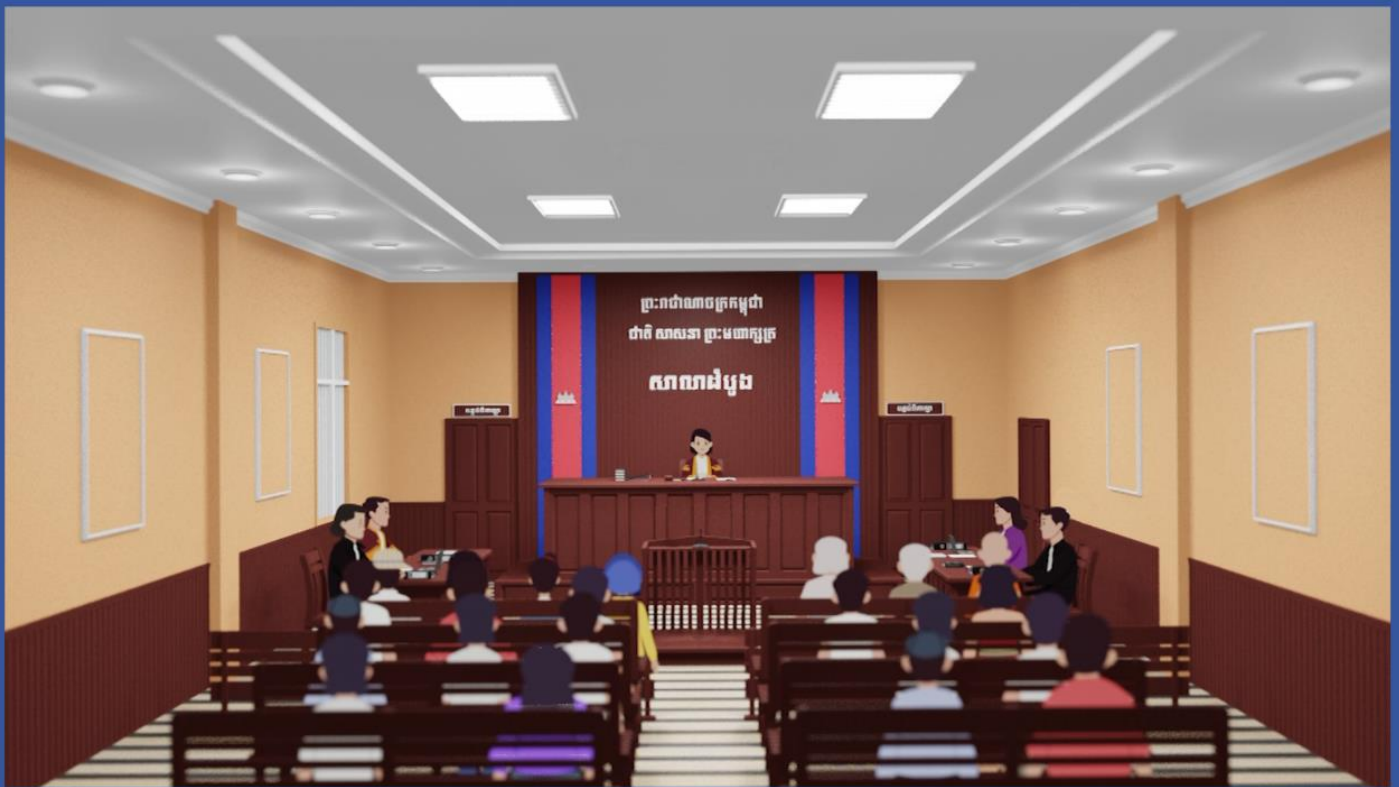


PROHIBITION AGAINST DOUBLE JEOPARDY



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About Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”) is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – in particular civil and political rights – in the Kingdom of Cambodia (“Cambodia”).

CCHR’s vision is of a peaceful Cambodia in which all people can enjoy the fundamental human rights to which they are entitled, all are subject to the rule of law without impunity, all are treated equally without discrimination, all are empowered to participate fully in the democratic process, and all can share in the benefits of Cambodia’s sustainable economic development. CCHR’s logo shows a white bird flying out of a circle of blue sky – this symbolizes Cambodia’s bid for freedom.

CCHR’s Cambodian Human Rights Portal, accessible at <http://www.sithi.org>, is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms and the 2013 winner of the Communication for Social Change Award awarded by the Centre for Communication and Social Change at the University of Queensland in Brisbane, Australia.

For more information about CCHR, please visit www.cchrcambodia.org.

About the Fair Trial Rights Project

The Module on the Prohibition Against Double Jeopardy is part of a series of modules on fair trial rights produced by CCHR’s Fair Trial Rights Project (“the FTR Project”). The FTR Project is the first – and only one – of its kind in Cambodia, uniquely and innovatively working to promote and protect fair trial rights in practice. It overall aims to increase the impartiality and independence of Cambodia’s judiciary by supporting the right to a fair trial in Cambodia’s courts. In pursuit of this goal, the FTR project has two specific objectives: to socialize the concept of fair trial rights among the public by raising its awareness of fair trial rights and to increase compliance with fair trial standards within the judiciary through trial monitoring.

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Queries and Feedback

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The Prohibition Against Double Jeopardy

1. 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 against for an offense for which they have already been finally convicted or acquitted in accordance with the law and the penal procedure of each country.¹

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.² The prohibition against double jeopardy therefore applies only **when judgments are final**, or in other words, when all venues of appeal have been exhausted.



In addition, this prohibition applies to **criminal offenses and not only to the court that adjudicated the case in the first place but also to any other tribunal**. For example, an individual acquitted by a civilian court cannot be tried again for the same offence by a military court or special tribunal.³

2. Legal Framework

2.1. International Law

The prohibition against double jeopardy is expressly protected under the **International Covenant on Civil and Political Rights (“ICCPR”)**, which is directly applicable in Cambodian law through Article 31 of the Cambodian Constitution.

Article 14(7) of the ICCPR: “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.”



2.2. Cambodian Law

The prohibition against double jeopardy is also embodied in the **Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”)** and **Cambodia Criminal Code (“CCC”)**.

¹ UN Human Rights Committee (“UNHRC”), “General Comment No.32 - Article 14, right to equality before courts and tribunals and to a fair trial,” (UN Doc CCPR/C/GC/32, 23 August 2007), para. 3 and 54, <https://www.refworld.org/docid/478b2b2f2.html>. (UNHRC, General Comment No. 32).

² Victor Barin Chaharbakhsh and Seyed Asgher Jafari, ‘The Principle of Res Judicata in International Law’ Vol 7 Issue 8 Journal of Critical Reviews, 2020.

³ UNHRC, General Comment No.32, para 54.

Article 12 of the CCPC: “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.”

Article 23 of the CCC: “No one may be prosecuted for the same conduct for which he or she has already been tried abroad and who, in the event of conviction, establishes that he or she has already served the penalty or that the penalty has been extinguished by statute of limitation.”

3. 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.⁴ The finality of judgments prevents individuals from living in fear they could face 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**⁵ 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**.

4. Limitations

The prohibition against double jeopardy can be subjected to a number of limitations, which can vary between international and regional jurisdictions. For the **United Nations Human Rights Committee** (“UNHRC”) which oversees the implementation of the ICCPR, the prohibition does not:



1. Prohibit the retrial of a person convicted in absentia who requests it;
2. Prohibit the retrial of an individual after a higher court overrules a conviction;
3. Prohibit the resumption of a criminal trial if justified by “*exceptional circumstances*”, such as the discovery of new evidence;
4. 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 conventions⁶ and
5. Protect against other disciplinary measures that do not amount to a criminal sanction for the same offense. The prohibition against double



⁴ OSCE, “Legal digest of International fair trial rights”, (2012), Section 8.4, page 197-198, <https://www.osce.org/odihr/94214#:~:text=The%20Legal%20Digest%20of%20International,of%20OSCE%20trial%20monitoring%20operations>.

⁵ CCHR “Fair Trial Rights in Cambodia Monitoring at the court of Appeal: Annual Report (1 November 2018-31 October 2020”, (October 2020), page 16, [https://www.cchrcambodia.org/admin/media/report/report/english/FTR%20Annual%20Report_ENG%20\(2018-2019\).pdf](https://www.cchrcambodia.org/admin/media/report/report/english/FTR%20Annual%20Report_ENG%20(2018-2019).pdf).

⁶ UNHRC, Comment No. 32, para.57.

jeopardy applies to criminal offenses only,⁷ meaning that it does not apply to administrative or civil proceedings.

In addition, the **Extraordinary Chambers in the Courts of Cambodia (“ECCC”)** have affirmed that the principle of **ne bis in idem** does not prohibit the prosecution of international crimes such as crimes against humanity.⁸

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⁷ UNHRC General Comment No.32, paras. 54 - 57.

⁸ OHCHR, “Annotated Cambodia Code of Criminal Procedure: Annotations to ECCC and Select International Jurisprudence”, OHCHR, Second edition (December 2015), Article 12: Res Judicata p.7 referring to ECCC, TC, “Decision on Ieng Sary’s rule 89 preliminary objections,” (3 November 2011), paras 33 to 36, <https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/FINAL%20Updated%20Annotated%20Code%20of%20Criminal%20Procedure%20%5BEN%5D%20Master%2002112015.pdf>.