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Analysis of the *ne bis in idem* principle in a court ruling.

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Abstract: The *ne bis in idem* principle establishes the impossibility of trying twice a person for the same criminal acts. In this short communication, we analyse the doctrine of the Spain Supreme Court, appreciating a conflict between the previous dualist system and the present vicarial system regarding this matter. The purpose of this study is to determine if the Spanish Supreme Court's ruling nº 1332/2002 of the, 2nd courtroom (Criminal Chamber), 15th of July 2002, broke the *ne bis in idem* principle. Secondly, we define what this principle means by analysing the sentence. Finally, we made a critical commentary of the assessments of the Court.

Key words: *ne bis in idem* principle, vicarial system, dualist system, punishment, security measure.

Court ruling's analysis:

The *ne bis in idem* principle, basically, consists on the fact that no one can be punished twice for the same incident, a breach that would mean arbitrariness and abuse of power. However, it is possible to punish someone for the commission of some criminal acts of the same nature many times.

Concerning the analysis of the Spanish Supreme Court's ruling nº 1332/2002 of the, 2nd courtroom (Criminal Chamber), 15th of July 2002, it is necessary to clarify that it is an appeal for the convict, in which he argues three motives where the first and the last one are the same:

1. (and also 3.) contains the argument of violation of the article 25.2 from the Spanish Constitution because, the imposed criminal sanction does not respect the re-socializing principle contained in that article, and because the application of the security measure of the hospitalization in a detoxication centre in order to overcome the serious addiction is missing.
2. Contains infraction of the law's report, specifically of the article 66.4 of the Spanish Criminal Code due to the imposition of a criminal sanction without enough motivation.

The Supreme Court states for the first and the third motives that, under the precedent dualist system, considering that punishments and security measures could consist in the same result, if finally there were a sentence of punishment, the *ne bis in idem* principle would be violated. But the new vicarial system overcomes this imperfection because the security measure can be an alternative to the punishment, even though this measure can consist in imprisonment. The the accused in the criminal case, asks for the implementation of the security measure of the hospitalization in a detoxification centre (it can be deduced from the Criminal Code that if the judge applies the extenuating circumstance or the exculpatory circumstance because of drug addiction, he should apply the security measure previously mentioned). However, the Supreme Court denies the request, based on the medical report that concluded that the criminal was in detoxification process.

For the second motive the Supreme Court argues that the decision of reducing the punishment in two degrees is optional, while reducing in one degree is mandatory, and that is why there is no reason to discuss about that.

To understand this, it is necessary to explain what these two systems consist of:

- Dualist system: the punishment responds to the culprit of the criminal, and the ration to its culpability. Punishment and measure respond to a different idea and purpose.
- Vicarial system: it is a variation of the previous one. During the execution of the punishment, the punishment can be replaced by a security measure, beginning with that measure, and the compliance would diminish the duration of the punishment. The remaining time of the punishment would be perform later or cancelled by the judge based on the social dangerousness of the convicted person. It has some objections: the excessive power conferred to the judge, the difficulty of the application, and the confusion between the punishment and the measure.

In this case, the convict was sentenced to prison, without any security measure. It is not an objective of this communication to discuss about will the possible arbitrariness of the judge in the moment to stablish the punishment. Nonetheless, I have to conclude that, as convict is a habitual drug consumer, the security measure should have been sentenced with no other option because the Spanish legal system has the aim to re-educate and reintegrate in society, two aspects that are not going to happen without the detoxification of the criminal.

Due to the dualist system by which offender was tried, the punishment and the security measure that were imposed to the criminal were both of them imprisonment. Consequently, the *ne bis in idem* principle is violated. It is not fair to sentence a criminal with two identical consequences for the same act, which, as said in the content of the sentence, is something that happens in this type of system, and which should never do.

On the contrary, using the vicarial system the judge did not adjust it to the danger of the criminal, nor did the re-education and reintegration mentioned in the Spanish Constitution, as it did not impose any security measure that would have been validated with the punishment of imprisonment later. Thus, here is another conflict with the *ne bis in idem* principle considering that, as in the former case, the punishment is much bigger because it takes the part of the punishment and also the part of the security measure that is not applied. That's why it is possible to understand that the criminal has been sanctioned twice for the commission of the same crime and based on the same basis.

Bibliography: Manual de Derecho Penal Parte General, Introducción Teoría Jurídica del Delito, Carlos María Romeo Casabona, Esteban Sola Reche, Miguel Ángel Boldova Pasamar (coord.), Comares, Granada, 2015.