Criminal justice: ne bis in idem principle or prohibition of double jeopardy

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This explanatory note presents the clear legal impact of the draft framework decision (Greek initiative) as well as the objectives and the effects of this draft which is fundamental for the development of European legal legislation. The aim of this proposal is to strengthen legal security in the Union with the guarantee that a final judgment handed down by a court in one Member State may not be called into question in another Member State. In addition, it aims to supplement and harmonise the disparate provisions with regard to the "ne bis in idem" principle which exist in various international legal instruments, including within the legal framework of Schengen, where it repeals the provisions of Articles 54 to 58 of the 1990 Schengen Convention. The "ne bis in idem" principle is an ancient and fundamental legal concept. It is necessary in all legal systems, which would be unable to survive without a specific ban on constant retrial of the same case. The absence of such a principle would result in a substantial shortfall in legal security. The principle is based on the idea that the all-powerful State should not be permitted to continue to prosecute a person repeatedly for an alleged offence, subjecting him to hardship and expense, obliging him to live in a constant state of anxiety and increasing the likelihood that, even if he is innocent, he may be found guilty. The "ne bis in idem" rule means that no person (whether natural or legal) may be prosecuted or condemned twice for a given criminal offence. Thus the principle is bound up with the recognition of the fundamental res judicata status of final criminal judgments, in accordance with the national law of every Member State, and also with the mutual recognition of judgments in criminal cases. It has been recognised as an individual right by all international legal instruments for the protection of human rights. In the framework of judicial cooperation, the "ne bis in idem" principle exists in different forms such as in Article 7 of the Convention on the protection of the European Communities' Financial Interests of 26 July 1995 and in Article 10 of the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union of 26 May 1997. It also exists in the context of international criminal law this principle is taken into account in Convention on the International Validity of Criminal Judgments; the Council of Europe Convention on the Transfer of Proceedings in Criminal Matters; the United Nations' Model Treaty on the Transfer of Proceedings in Criminal Matters. The draft Framework Decision intends to prevent the conflicts of competences between Member States. In order to strengthen the "ne bis in idem" principle, it must also be applied to cases pending, i.e. where there are criminal proceedings in respect of the same criminal act in a number of Member States. The observance of the institution of lis pendens strengthens mutual confidence in the operation of criminal proceedings at European level and helps to prevent conflicts of jurisdiction (whether positive or negative). The principle applies only to final judgments, ie. to those which are not subject to ordinary or extraordinary appeal, in accordance with the national law of each Member State. Such casesare said to have the force of res judicata.