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RUSSIAN FEDERATION

THE DOUBLE JEOPARDY RULE

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Executive Summary

In accordance with major principles of international law, the Russian Constitution provides for the principle of “non bis in idem.” This rule of not prosecuting a person twice for the same crime is implemented by relevant provisions of the Criminal and Criminal Procedural Codes. While this rule has been confirmed by a number of court decisions, it appears that in some cases it is violated by prosecuting an individual for varied components of the same crime, or in the course of review of previous judicial decisions when new circumstances are discovered.

I. Legal Provisions

Protection from double jeopardy is provided by article 14(7) of the International Covenant on Civil and Political Rights, which states that “no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.” Because Russia is a signatory to the Covenant, this provision is a part of Russian national legislation pursuant to article 15.4 of the Russian Federation Constitution. Also, this principle is included in article 50(1) of the Russian Federation Constitution as one of the fundamental human rights and freedoms held by Russian citizens. This Constitutional provision, which states that “nobody can be convicted twice for one and the same crime,” is implemented by article 6(2) of the Criminal Code and article 27(1.4) of the Criminal Procedural Code.

According to these articles, a person cannot be prosecuted if he/she has already been sentenced following an indictment for the same crime if the sentence is legally valid, or if there is a court ruling ordering the termination of a case that was brought on the same grounds. In such situations, a criminal case can be initiated only if previous court decisions in the matter are cancelled during prosecutorial review or because of newly discovered circumstances. A sentence enters into legal force after expiration of the period allowed for its appeal, or expiration of the protest period if it was not appealed. If a sentence or another court ruling is not cancelled, it enters into legal force as soon as it is reviewed by a higher court.

A criminal case cannot be initiated, and a case that has already been initiated must be terminated, if the decision of a prosecutor or an investigator to drop charges against the same person who is accused of committing the same actions is still in force.¹ According to

¹ CRIMINAL PROCEDURAL CODE OF THE RUSSIAN FEDERATION art. 27(1.5).

commentaries to this constitutional provision prepared by the Russian Federation Government, as long as the previous decision under which the charges were dropped remains in force, a prosecutor or investigator cannot initiate new proceedings and perform investigative activities. Only courts are exempt from this rule.²

Increased responsibility for the committed crime due to changes in applicable sentencing guidelines and punishing a person with both basic and additional sentences is not considered dual prosecution.³ Similarly, prosecution of a person for committing acts that relate to different components of a crime, even if they are listed in the same provision (article) of the Criminal Code, is not considered double jeopardy.⁴

II. Major Court Rulings Regarding Double Jeopardy Protection

The first major court ruling that responded to double jeopardy concerns was the decision of the Moscow Regional Court of January 29, 1997, *In re Belichenko*.⁵ This case confirmed that the reversal by a higher court of an acquittal verdict that has already entered into legal effect constitutes a violation of international law.

In this case, three individuals were acquitted after being accused of violating patent rights. The Supreme Court reversed the judgment on supervisory review and remanded the case for a new trial. The defense lawyer filed a motion to dismiss the criminal prosecution on grounds of article 14(7) of the International Covenant on Civil and Political Rights. The court granted the motion and dismissed the case, taking into account that the previous judgment of acquittal was based on a jury verdict of acquittal that had entered into legal force and become final.

The Supreme Court found that the Criminal Procedural Code of Russia has no provisions prohibiting the reversal of acquittals, stating as follows:

Article 380(3) of the Criminal Procedural Code directly contemplates the possibility of reversal of such judgments and the remanding of the case for a new trial. This means that it is possible to convict a person who has been acquitted, which conflicts with article 14(7) of the International Covenant on Civil and Political Rights.⁶

² IRINA MAROGULOVA, KOMMENTARII K KONSTITUTSII ROSSIISKOI FEDERATSII [COMMENTARIES TO THE RUSSIAN FEDERATION CONSTITUTION] 388 (Moscow: Yurist, 2002) (in Russian).

³ IVAN IATSENKO, KONSTITUTSIIA RF. NAUCHNO-PRAKTICHESKII KOMMENTARII I SEMANTICHESKII SLOVAR [RF CONSTITUTION: SCIENTIFIC AND PRACTICAL COMMENTARIES AND SEMANTIC DICTIONARY] 187 (Moscow: Berator Press, 2003) (in Russian).

⁴ Constitutional Court Ruling No. 6-P of April 25, 2001, ROSSIISKAIA GAZETA [ROS. GAZ.] (official publication), June 15, 2001, No. 112, http://www.rg.ru/oficial/doc/min_and_vedom/ks/6_P.shtm (in Russian).

⁵ The case is analyzed in WILLIAM BURNHAM ET AL., LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION 27-28 (New York: Juris Publishing, 2004).

⁶ *Id.*

The second major decision regarding the implementation of article 50(1) of the Russian Constitution was made by the Constitutional Court of the Russian Federation in 2001.⁷ An individual who was accused of both inflicting grave bodily damage in the course of a traffic accident and of leaving the scene of the same accident after inflicting such grave bodily damage argued that bringing two separate charges against him was unconstitutional based on the principle of protection from double jeopardy. The court confirmed the constitutionality of the charges because, according to the court, the underlying legal provision contains two separate criminal components, and the responsibility for each component must be established separately.

III. Practice of Implementation

While procedural legislation prohibits sentencing or making other judicial decisions two or more times in regard to one person for the same acts, the law does not prohibit the review of the legality and validity of a judicial ruling regarding the termination of a case, according to commentaries to the Criminal Procedural Code. Also, there is nothing that could prevent a court or a prosecutor from reviewing the decision to drop charges against an individual made by the police or an investigative authority. In such cases, they may request the investigation to be reopened.⁸

According to reports posted on law-related Internet forums, this rule is used by prosecutors and the police to reopen administrative investigations as criminal investigations after a person has been sentenced for a misdemeanor and served his administrative punishment. This method is sometimes used by the police to improve their statistics when acts for which individuals were punished under the Code of Administrative Violations are elevated to the criminal law level in the course of a case review, and then such individuals are prosecuted as first-time criminal offenders, even though this is the same offense for which they were punished administratively.⁹ This practice was recognized as illegal by the European Court of Human Rights in its judgment in the case of *Sergey Zolotukhin v. Russia*.¹⁰

Another case of prosecuting one person twice for committing the same crime was reported in 2003 by the Grani Information Portal.¹¹ An individual who was convicted of taking a bribe and had already served a two-year prison term was informed by law enforcement that the investigation of his case had been renewed ten years after his release from prison. The Tver

⁷ Constitutional Court Ruling No. 6-P of April 25, 2001, ROS. GAZ., June 15, 2001, No. 112, http://www.rg.ru/oficial/doc/min_and_vedom/ks/6_P.shtm (in Russian).

⁸ IATSENKO, *supra* note 3, at 186.

⁹ See, e.g., <http://sutyajnik.ru/documents/2056.html> (last visited Jan. 26, 2011) (in Russian).

¹⁰ *Sergey Zolotukhin v. Russia*, ECHR, No. 14939/03, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=14939/03&sessionid=65601231&skin=hudoc-en> (last visited Jan. 26, 2011).

¹¹ *Moskvich Popadaet v Knigu Ginessa kak Dvazhdy Sudimyi za odno Prestuplenie (A Muskovite Is Included in the Guinness Record Book as Sentenced Twice for the Same Crime)*, GRANI.RU (Oct. 20, 2003), <http://grani.ru/Society/Law/m.47694.html>.

District Court in Moscow issued the same accusatory judgment as in the first case; however, because this individual had previously served his prison term, he was not imprisoned again.¹²

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¹² *Id.*