

The transnational *ne bis in idem* principle in the EU Mutual recognition and equivalent protection of human rights

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Abstract

The deepening and widening of European integration has led to an increase in transborder crime. Concurrent prosecution and sanctioning by several Member States is not only a problem in inter-state relations and an obstacle in the European integration process, but also a violation of the *ne bis in idem* principle, defined as a transnational human right in a common judicial area. This article analyzes whether and to what extent the ECHR has contributed and may continue to contribute to the development of such a common *ne bis in idem* standard in Europe. It is also examined whether the application of the *ne bis in idem* principle in classic inter-state judicial cooperation in criminal matters in the framework of the Council of Europe may make such a contribution as well. The transnational function of the *ne bis in idem* principle is discussed in the light of the Court of Justice's case law on *ne bis in idem* in the framework of the area of Freedom, Security and Justice. Finally the inherent tension between mutual recognition and the protection of human rights in transnational justice is analyzed by looking at the insertion of the *ne bis in idem* principle in the Framework Decision on the European arrest warrant.

Keywords

ne bis in idem, area of Freedom, Security and Justice, human rights, criminal procedure

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