

# Maria Carro-Pitarch\*

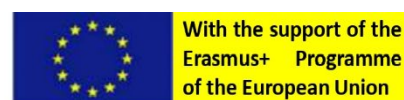
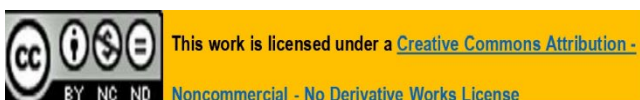
## Article 50 of the Charter of Fundamental Rights of the European Union on the right not to be tried or punished twice in criminal proceedings for the same offence

### SLIDE 1

Hello, welcome. I am Maria Carro and in this video, I am going to talk about article 50 of the Charter of Fundamental Rights of the European Union on the right not to be tried or punished twice in criminal proceedings for the same offence.

### SLIDE 2

Article 50 of the Charter enshrines the *non bis in idem* principle, stating that: "No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law".



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This right protects the individual against the *ius puniendi* of the state.

### **SLIDE 3**

The *non bis in idem* principle provided for in article 50 of the Charter has been recognised by the Court of Justice of the European Union as a general principle of Union law.

Traditionally, this principle is based on constitutional precepts such as article 25 of the Spanish Constitution and has an internal scope in the different legal systems.

In other words, it prevents new criminal proceedings from being brought within the territory of the same State for the same acts and against the same person who has already been convicted for them.

This internal scope is also found in article 4 of Protocol 7 to the European Convention on Human Rights. It states that “No one shall be liable to be tried or punished again in a criminal court of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State”.

On the other hand, article 50 of the Charter is transnational in nature. In other words, it applies not only within the jurisdiction of a single State, but also in relations between several Member States of the European Union. As we have seen, this provision refers to cases in which the individual “has been acquitted or convicted in the Union”.

This transnational scope implies and requires mutual trust of the Member States in their respective criminal justice systems.

#### **SLIDE 4**

The principle applies to the criminal field, as the accumulation of criminal proceedings and sanctions is prohibited.

It has been defined and delimited by the case law of the Court of Justice of the European Union in a broad manner, considering the “very nature of the offence and the seriousness of the penalty which may be imposed on the person concerned”. Thus, it is understood to include sanctioning procedures in the field of competition or tax sanctions, provided that both sanctions are of a criminal nature.

But, for example, if the individual fails to comply with a tax declaration obligation, a State may impose a tax surcharge and a criminal sanction for the same non-compliance because both are not criminal in nature.

## **SLIDE 5**

In relation to the requirements of the principle, we find, in the first place, that of subjective identity. In other words, there must be identity of the person prosecuted or sanctioned.

Secondly, there must be objective identity, we must be dealing with the same offence.

And finally, the person in question must have been “finally acquitted or convicted within the Union in accordance with the law” for that offence. Finally acquitted or convicted must be understood broadly in accordance with the case-law of the Court of Justice.

## **SLIDE 6**

I hope you found this video on the non bis in idem principle interesting.

That is all I had to say. Thank you very much for your attention.