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Review Article

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Double Jeopardy Across Borders: Evaluating Nigeria's Legal Basis for Simon Ekpan's Re-Prosecution for Terrorism in Nigeria

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ABSTRACT

This article examines the constitutional guarantee against double jeopardy under Section 36(9) of the 1999 Constitution of the Federal Republic of Nigeria vis-a-vis Simon Ekpan's conviction in Finland for terrorism-related offences. It conducts an enquiry into the propensity of a retrial back home despite his prior conviction for virtually the same offence in Finland. This inquiry is situated within the broader principle of 'ne bis in idem' and draws upon Nigerian case laws, where courts have consistently barred re-prosecution of criminal offences arising from the same conduct. It further engages with international human rights instruments and case laws, particularly the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), both of which embed provisions against double jeopardy, while in addition to that, contain a caveat that the principle lacks extraterritorial effect. That is, the protection applies only within the jurisdiction of a single state and not across borders save and except where a regional instrument to that effect exists and is in operation. This article therefore demonstrates that the Nigerian constitutional law jurisprudence on double jeopardy aligns with international laws and global interpretations. It highlights the limit of the principle especially in relation to extraterritorial offences such as terrorism and money laundering and concludes that even though Simon Ekpan has been earlier convicted for terrorism in Finland, Nigeria is not under any legal obligation or impediment, domestic or international, to refrain from re-prosecution much more so where the impacts of the said offence fell squarely on Nigeria.

Keywords: Double Jeopardy, Ne bis in idem, Terrorism, Transnational

Introduction

The principle of ne bis in idem, which literally means "not twice against the same thing", occupies a central place in criminal justice systems across the world. It embodies the idea that no individual should be tried or punished twice for the same offence. It is a safeguard grounded in the principle of fair hearing and the need to preserve the integrity of judicial processes. In Nigeria, this protection is constitutionally entrenched in **S. 36(9) of the Constitution of the Federal Republic of Nigeria 1999 (As Altered),** which prohibits repeated prosecutions after a conviction or acquittal by a court of competent jurisdiction. While Nigerian courts have consistently applied this provision within the domestic context, the rise of transnational and cross-border crimes, such as terrorism, money laundering, human trafficking and child sexual exploitation raises new questions about the extent of its operation. Specifically, whether or not S. 36(9) of the **Constitution** recognizes a conviction or acquittal in a foreign jurisdiction or is strictly limited to proceedings before Nigerian courts [1].

The recent conviction of Simon Ekpa in Finland on terrorism-related charges with direct impacts on Nigeria provides a timely case study to explore this dilemma. This article therefore examines the provision of **S. 36(9) CFRN 1999** vis-a-vis the transnational applicability or otherwise of the principle of ne bis in idem and more specifically the principle of double jeopardy as a defence against repeated trials. It considers the Nigerian constitutional framework, judicial interpretation as well as relevant international laws and perspectives in order to address the issue as to whether or not Nigeria has legal justification to prosecute Simon Ekpa notwithstanding his conviction for similar offences in Finland.

Background: Facts Leading Simon Ekpan's Conviction in Finland

Simon Ekpa is a Finnish citizen of Nigerian descent and a prominent figure in the Indigenous People of Biafra (IPOB), a

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proscribed separatist movement, which was in September 20, 2017 declared as a terrorist organisation by the government of Federal Republic of Nigeria under the **Terrorism (Prevention) (Proscription Order) Notice, 2017.** From August 2021 to November 2024, Simon Ekpa on numerous ocassion used his social media network to incite violence and promote secessionist aims in southeastern Nigeria. He was also accused of supplying weapons, explosives, and ammunition to armed groups in the region and used online statements to encourage followers to commit acts of violence against Nigerian security operatives.

On 21 November 2024, Simon Ekpan was arrested by Finnish authorities in the Päijät-Häme district and was charged with various offences ranging from participation in a terrorist organization, public incitement to commit criminal acts for terrorist purposes, aggravated tax fraud and supplying arms and explosives to groups tied to the separatist cause. In a judgment delivered on 1 September 2025, the Päijät-Häme District Court found Ekpa guilty of the charges and sentenced him to six years' imprisonment pursuant to **Chapter 34(a) of the Finnish Criminal Code.** The basis of assumption of jurisdiction by Finland even though many of the actions were directed towards Nigeria was premised on the fact the alleged conduct (incitement, coordination, financial and material support) originated from within Finnish territory and that the Finnish laws prohibited terrorist acts even if they are committed outside Finland or against external authorities.

It bears mention that the basis of assumption of jurisdiction by Finnish authorities is consistent with the active personality principle, which allows a State to exercise criminal jurisdiction over offences committed by its own nationals outside its territory. Being a citizen of Nigeria and for the fact that his criminal activities were particularly directed against Nigeria, the question that looms large is whether or not he can rightfully be tried again and convicted by a Nigerian Court if found guilty of terrorism.

Origin and Doctrinal Foundations of Ne Bis in Idem

The principle of ne bis in idem, meaning "not twice for the same thing," has its findspot in the Roman law principal nemo debet bis vexari pro una et eadam causa [2]. It means "No one should be troubled or punished twice for one and the same cause". This principle operated as a legal shield against continuation of a trial where the defendant has already been acquitted or convicted of the same offence. Today, it survives across legal systems as the equivalent of the double jeopardy doctrine in common law jurisdictions or similar peremptory pleas of autrefois acquit and autrefois convict in modern civil law countries [3].

In Nigeria, this protection is constitutionally entrenched in **S. 36(9) of the Constitution of the Federal Republic of Nigeria 1999,** which provides that "no person who shows that he has been tried by any court of competent jurisdiction for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court". A replica of **S. 36(9) of the CFRN 1999 is embodied in the Fifth Amendment (Amendment V) to the United States constitution,** stating that, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb". In both jurisdictions, the principle operates as a constitutional shield, foreclosing further prosecutions of a person for offences having the same ingredients as the one for which he has earlier been convicted or acquitted. The rationale behind this constitutional safeguard lies in the need to respect the finality and conclusiveness of court decisions, to shield the defendant from the rigour and embarrassment of repeated prosecutions by the overwhelming power and enormous resources of the state and to avoid the propensity of eventually convicting someone who may in fact be innocent [4].

An Overview of the International and Regional Legal Basis of Ne bis in idem

The legal protection against double jeopardy is not only a well-established principle within the criminal justice system of various countries of the world, but is equally entrenched in international and regional legal instruments, which seem to ensure that no individual is subjected to the rigor and ordeal of criminal trial, where he has earlier been prosecuted for the same offence, culminating either in his conviction or acquittal. **Article 14(7) of the International Convention on Civil and Political Rights** provides 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." **Article 4(1), Protocol 7 of the European Convention of Human Rights** contains a very similar provision. It states that, "No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted" [5].

The common trend in the hitherto mentioned instruments is that they all limit the application of the principle to operate only within a national legal system, and international courts, in a legion of decided cases, have interpreted the principle as lacking cross-border effect. In **A.P. v. Italy**, the Human Rights Committee noted that, **Art. 14, Para. 7 of the ICCPR** prohibits double jeopardy only with regard to offences adjudicated in a given State, and that it does not guarantee protection against retrial with regard to offences adjudicated in another State [6]. Similarly, in its decision in **Krombach v. France**, the European Court of Human Rights unanimously held that, **Art. 4 of Protocol No. 7 of the Convention** does not prevent an individual from being prosecuted or punished by the court of a State Party for an offence of which he or she had been acquitted or convicted in another State Party [7]. The case concerned one Mr. Krombach's criminal conviction in France in respect of an allegation connected with the death of Kalinka Bamberski in 1982 at his home in Germany. Mr. Krombach argued that he had earlier been acquitted of the same charge in Germany and therefore should not have been prosecuted again in France. The central issue in the case was whether the principle of ne bis in idem could prohibit France from trying Mr. Krombach having regard to his previous prosecution and acquittal in Germany. The Court reaffirmed its established position that **Article 4 of Protocol No. 7 to the Convention**, though protects against double jeopardy, operates only within the same State's jurisdiction. It does not bar prosecution in one country for an offence that has already been adjudicated in another. Therefore, since the proceedings in question were conducted in Germany and France respectively rather than in the same country, the Court ruled that Article 4 of the Convention was inapplicable.

It is imperative to state that even though the tentacles of the rule against double jeopardy does not generally extend across borders under the international human rights law, the European legal order represents a notable exception among the countries that are bound by **Convention Implementing the Schengen Agreement (CISA). Article 54 of the CISA** expressly provides that: **"A person whose trial has been finally disposed of in one Contracting State shall not be prosecuted in another Contracting State for the same acts, provided that if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting State" [8].**

Similarly, **Article 50 of the Charter of Fundamental Rights of the European Union also provides as follows:**
"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."

The above provisions give the principle of ne bis in idem a transnational dimension by binding Member States and associated Schengen countries to recognize final criminal judgments from other Member States. The Court of Justice of the European Union has reinforced this interpretation, notably in **Gözütok and Brügge,** where it held that Article 54 of CISA precludes a second prosecution in a different Member State once the matter has been "finally disposed of" in another [9]. This position was affirmed in subsequent cases such as **Van Esbroeck v. Openbaar Ministerie,** where it was clarified that the relevant test is whether the same acts, rather than the same legal classification, were at issue [10]. Taken together, these instruments and decisions show that while the prohibition of double jeopardy remains territorially confined under most human rights treaties, the European Union has developed a unique framework in which ne bis in idem operates across national borders albeit only within the Schengen States.

The Application of Ne Bis in Idem under the Nigerian Law
The rule against double jeopardy is duly provided for under the Nigerian Constitution as a procedural defence which precludes the attorney general discretion to institute a criminal action against a person alleged to have committed a criminal offence under the law. This would be the case where the accused in question has previously been tried for the same offence before a court of competent jurisdiction, resulting either in his acquittal or conviction. The principle is embedded in the provision of **S. 36(9) of the Constitution.** It states that:

No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.
It is pertinent to mention here that even though a defendant has the right against double jeopardy, the right cannot be invoked save and except the situation in which reliance is sought on **S. 36(9) of the Constitution** adequately warrants it. In other words, for the defendant to enjoy the protection under **S. 36(9) of the Constitution,** he must be able to satisfy the following fourfold conditions conjunctively:

The first trial must have been a criminal prosecution
The previous action against the defendant must arise from his act or omission which, at the time it was committed, constituted a contravention of a criminal law in force. This excludes other proceedings otherwise than a criminal trial, such as civil and administrative proceedings or a let-off resulting from a plea bargain. Hence, in **R v. Jinadu**, the court rejected the defendant's plea of autrefois acquit because the previous trial was an administrative proceeding held against the defendant in the police orderly room [11]. The court also held **Michael Igbinedion v. FRN** that the plea bargain agreement between the appellant and the respondent, leading to the amendment of the charge before the appellant was arraigned only amounted to a withdrawal of charges against the appellant and not a conviction [12]. Therefore, a plea bargain where no plea of the accused person is taken by the court upon arraignment cannot ground a plea of autrefois convict or autrefois acquit under **S. 36(9) of the Constitution.** The case would, however, be different where there was a plea bargain resulting in the accused pleading guilty to a lesser offence before a court of competent jurisdiction. In this wise, the accused is deemed tried and convicted for that particular offence for which his plea was taken.

The first trial must have been conducted before a court of competent jurisdiction Jurisdiction is the life blood of a case [13]. A court lacking jurisdiction has no competence to entertain a case or to make any pronouncement on it, however minute, just or sound. Therefore, the defendant will be denied the leeway to take solace under **S. 36(9) of the Constitution** if the first trial, although criminal in nature, is conducted by a court that lacks the jurisdiction to entertain it even if that court was the Supreme Court of Nigeria. The Court considered the issue of jurisdiction in **Emeze v. The State,** wherein the Supreme Court set aside the conviction of the appellant on the ground that the Magistrate, who conducted the committal proceeding lacked the jurisdictional competence to try the case [14].

The initial proceeding must have ended either in a conviction or acquittal
The first trial must have been concluded or finalized, resulting either in the accused's conviction or acquittal. Therefore, compounding or plea bargain, except where the accused makes a plea of guilt to a lesser offence in lieu thereof, does not have the same effect as a finalized criminal trial. In the same vein, the exercise of Nolle Prosequi by the Attorney General operates only as a discharge and has no similar legal implication as an acquittal. As such, Nolle Prosequi does not obviate the institution of a criminal trial based on the same facts in the future [15]. Additionally, the Supreme Court has also held in **Ikomo v. The State** that retrials are not prohibited when the original proceeding ended in a mistrial or was set aside on appeal [16]. There must have been a conviction or acquittal for the double jeopardy clause to avail the defendant.

The new action must be similar or substantially the same as the previous one
The criminal charge for which the accused was tried should be the same as the new charge against him or alternatively the new charge should be one in respect of which the accused could have been convicted at the former trial, although not charged with it. The Supreme Court has clarified that subjecting a

person to a fresh charge based on identical facts although under different legal classification or nomenclature contravenes the constitutional safeguard against double jeopardy.

The determinative factor is the substance of the offence rather than its nomenclature [17].

It merits consideration to state at this juncture that the principle of double jeopardy may either apply in abstracto or in concreto. It applies in concreto if it precludes subsequent prosecution based on the same factual circumstances underlying an earlier conviction or acquittal. This approach lays emphasis on the identity of the conduct rather than nomenclature or legal category of liability. In abstracto, on the other hand, places emphasis on the identity of the offence. It forecloses further prosecution for the same offence or legal head of liability. Both approaches have been employed in determining criminal liability across various jurisdictions and even in international cases. In **Touvier v. France,** the Court of Appeal of Paris applied the principle in its abstracto sense and held that the accused could still be prosecuted for crimes against humanity despite having previously been tried and sentenced to death in absentia for maintaining contact with a foreign power with the intention of assisting the latter's machinations against France [18]. According to the court, the earlier convictions were for collaboration with the enemy, while the later prosecution concerned crimes against humanity. These were legally distinct offences, involving different legal interests and protected values. The case of **Fisher v. Austria,** on the other hand, presents a quintessential application of the principle in its in concreto form, where the Court of Human Rights refused to apply a strict in abstracto test to **Article 4 of Protocol 7 of the ECHR,** and instead, approved a test based on a similarity to the essential elements of the legal categorization [19]. The court stated emphatically as follows:

Thus, while it is true that the mere fact that a single act constitutes more than one offence is not contrary to this Article, the court must not limit itself to finding that an applicant was, on the basis of one act, tried or punished for nominally different offences. Thus, where different offences based on one fact are prosecuted consecutively, one after the final decision of the other, the court has to examine whether or not such offences have the same essential elements."

In Nigeria, the in concreto approach appears to be the applicable one. Not only that the tenor of the provision of **S. 36(9) of the Constitution** suggests so, but the court has also held that it amounts to a flagrant disregard of the right of the accused person to re-prosecute him/her for merely nominally different offences where those offences are based on the same conduct.

The Simon Ekpan Case: Jurisdictional Questions on Re-Prosecution in Nigeria

As explicated above, the impediment against repeated prosecution under the Nigeria Constitution is enshrined in the provision of **S. 36(9) of the Constitution.** The provision thereof bars the Attorney General or any other entity exercising his power from prosecuting a person for criminal offences—having the same ingredients—twice, where he has previously been convicted or acquitted for the same offence by a court of competent jurisdiction. Applying this to Simon Ekpan's conviction in Finland for terrorism-related offences begs the question of whether or not he can be prosecuted again in Nigeria for terrorism especially considering the fact that he is Nigerian and that the offence was committed against Nigeria and whether Nigeria is under any obligation by virtue of any international convention or treaty to desist from such further prosecution.

First off, the position of the law, as regards **S. 36(9) of the Constitution** has been interpreted by Nigeria courts in an ample of cases. According to the court in **Samson Uwem Sunday v. The State,** for the plea of double jeopardy to be successfully invoked before a Nigerian court, the following ingredients must be conjunctively proved: (a) That the accused had previously been tried on a criminal charge (b) The former trial must have been conducted before a Court of competent jurisdiction (c) The trial must have ended with an acquittal or a conviction (d) The criminal charge for which the accused was tried should be the same as the new charge against him [20].

With specific reference to the second ingredient, a question arises: is a Finnish court a court of competent jurisdiction within the contemplation of **S. 36(9) of the Constitution?** It must be reiterated that the court that has jurisdiction to try terrorism cases in Nigeria is the Federal High Court pursuant to **S. 76 of the Terrorism (Prohibition and Prevention) Act, 2022,** which confers extra-territorial jurisdiction on the Federal High Court to try terrorism cases committed outside Nigeria by a Nigeria. Even a Magistrate Court domiciled in Nigeria does not have such jurisdiction nor the Supreme Court of Nigeria as a court of first instance. What more of a Finnish Court? Any better? The answer is in the negative. The case of **Umeze v. The State** is apposite on the issue of jurisdiction vis-a-vis the principle of double jeopardy in Nigerian courts [21]. In that case, the conviction of the appellant was set aside by the Supreme Court when it was shown that the magistrate court who conducted the committal proceeding was not competent to do so. That is, it lacks jurisdiction to entertain the suit. Therefore, it is not an assiduous task to come to the conclusion that the reference to "a court of competent jurisdiction" in **S. 36(9) of the Constitution** is not a reference to just any court but only to courts that have the jurisdictional power to try cases under the relevant provisions of the Constitution. Moreover, the rule against double jeopardy as contained in **S. 36(9) of the Constitution** admits of an exception, which is that a superior court may order retrial of an accused person notwithstanding that he has earlier been tried for the same offence.

Therefore, as far as the Constitution of the Federal Republic of Nigeria 1999 (As Altered) is concerned, Nigeria can again prosecute Simon Ekpan for terrorism-related offences in line with **S. 76(1)(d)(i)&(iii) of the Terrorism (Prohibition and Prevent) Act 2022,** which confers extra-territorial jurisdiction on the Federal High Court to try terrorism-related offences committed outside Nigeria by a Nigeria if the offence would also constitute an offence under the law of the country where the offence was committed. This is in accordance with the active personality principle in international law, which asserts a state's right to apply its criminal law to its own nationals for acts committed anywhere in the world [22]. The principle was applied in the **United States v. Bowman [23].** Bowman, a

U.S. national, was charged with conspiring to defraud the U.S. government while abroad. He contended that U.S. criminal law had no extra-territorial effect. The court held that certain U.S. criminal statutes apply extraterritorially to U.S. nationals when the conduct directly affects U.S. interest.

The position at international law is pretty much the same. While international conventions to which Nigeria is a signatory recognize ne bis in idem, the provisions thereof do not apply transnationally. For instance, the United Nations Human Rights Committee's General Comment No. 32 (2007, para. 55) clarifies that the principle of double jeopardy, as enshrined in **Article 14(7) of the ICCPR,** only applies within the same state and does not possess any transnational effect [24]. This also aligns with dual-sovereignty doctrine, which holds that two different sovereigns can each prosecute a defendant for the same conduct without violating the rule against double jeopardy. Hence, in **A.P. v. Italy,** the accused who had earlier been convicted in Switzerland for offences connected to kidnapping ransom was later convicted in Italy for related conduct [25]. He sought refuge under **Article 14(7) of the ICCPR** that Italy's prosecution violated double jeopardy. The committee held that the provision of Article 14(7) must be read as applying to decisions of a single state.

Conclusion

Criminal justice systems are a matter of national authority. As such, the provision of **S. 36(9) of the Constitution** operates only as a domestic bar for repeated prosecutions rather than as a global, cross-border shield. In the same vein, while Nigeria has an obligation to uphold international treaties to which it is a signatory as entrenched in **S. 19(d) of its Constitution,** there is no extant or operating treaty under which it is so bound or mandated. Therefore, Nigeria has legal justifications to re-prosecute Simon Ekpan notwithstanding his conviction in Finland based on the personality principle, principle of dual sovereignty and under relevant statutory laws both domestic and international. Amidst legal possibilities, however, geographical barriers and physical unavailability pose a greater challenge.

Reference

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2. Buckland WW. A Text-book of Roman Law from Augustus to Justinian (3 ed.). Cambridge: Cambridge UP. 1963. 695-706
3. See the dictum of Justice Steward in Crist v. Bretz, 437 United States Reports. 1978. 30-31.
4. See also Art. of the American Convention on Human Rights (ACHR). Art. of the Arab Charter on Human Rights. 2004.
5. Communication No. 204/1986, U.N. Doc. CCPR/C/OP/2 at 67. 1990.
6. Application No. 67521/14 (Decision delivered on 29 March, 2018). See also: Mohamed v. Argentina, Series C No. 255 (Decision delivered on 23 Nov., 2012 by the Inter-American Court of Human Rights).
7. Schengen States are the countries bound by CISA and EU laws on Schengen cooperation. They recognize mutual rights such as cross-border application of ne bis in idem under Art. 54 of CISA.
8. Joined Cases C-187/01 & C-385/01.
9. Case C-436/04. Available at: https://curia.europa.eu/juris/liste.jsf?language=en&num=C-436%2F04&utm; See also: Gaetano
10. Mantello's Case C-261/09.
11. Nulyarimma v. Thompson. US. See also: Almeida-Sanchez v. United States, 413 U.S. Federal Court of Australia 1192. 1999.
12. Supra no. 5. See also: Krombach v. France App. No. 29731/96, where the CJEU held that Article 4. Protocol No. 7 of ECHR does not apply transnationally, so France could prosecute notwithstanding prior German proceedings. 2001.
13. Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to fair trial, U.N. Doc. CCPR/C/GC/32. 2007.