

The Withdrawal of Indictment under the Examination of the Right Against Double Jeopardy

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Abstract

A criminal defendant's right against double jeopardy shall have its constitutional origin in Taiwan even though the Constitution does not have any words about it. Taiwan's Code of Criminal Procedure (CCP) allows a prosecutor to withdraw the indictment without the defendant's consent before the closing arguments at trial. Under CCP, a prosecutor has broad discretion to indict the same offense as long as there are new facts, evidence or other specific reasons. The justification for the re-prosecution of the same offense is the traditional concept that the right against double jeopardy does not attach until a verdict is given and becomes final. This Article argues that the relevant provisions in CCP allowing the re-prosecution of the same offense after the withdrawal of indictment are unconstitutional. This Article bases its argument on the ground that a defendant is put in jeopardy even though the criminal proceeding against him terminates before verdict. Furthermore, this Article argues that the right against double jeopardy in Taiwan shall attach when the court starts the examination of evidence at trial. After this point, a prosecutor may not withdraw the indictment without the defendant's consent. However, before this point, a prosecutor may withdraw the indictment only under the reasons specified in the Article 269 of CCP. A prosecutor may not re-prosecute the same offence unless he meets the conditions specified in the Article 260 of CCP.

Keywords: double jeopardy, withdrawal of indictment, attachment of jeopardy, re-prosecution, same offense, consent of withdrawal, due process of law

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