

Round Table on “Reopening of proceedings following a judgment of the European Court of Human Rights”

Strasbourg, 5-6 October 2015

Conclusions

On the 5-6 October 2015, the Council of Europe (Department of the Execution of Judgments) organised a Round Table in Strasbourg dedicated to the reopening of proceedings following a judgment of the European Court of Human Rights.

The overall objective of the Round Table is to analyse the reopening of proceedings as a means of ensuring *restitutio in integrum* following a judgment of the European Court, to clarify the scope of the obligation to adopt such a measure, its limitations and alternatives.

The round-table pointed out:

- *generally speaking*, the ongoing interest of the Recommendation (2000)2 and (2004)6 so as to ensure that national law and practice permit effectively to guarantee the *restitutio in integrum* in the event of violations of the Convention;
- that the reopening of proceedings remains an effective way, and sometimes the only way, to that end;
- that the assessment of the necessity of the reopening takes into account the criteria adopted in the Recommendation (2000)2;
- the necessity to ensure that the reopened proceedings can fully address the shortcomings found by the Court;
- *as regards criminal proceedings*, that the vast majority of states have legal provisions ensuring the possibility to ask for reopening of the proceedings impugned by the Court;
- the utility of the exchange of views in order to provide inspiration to states that still have not adopted such provisions in their reform efforts;
- the importance to have adequate procedures in place, notably in order to ensure: that the deadlines for appeal are reasonable; that the applicant's detention pending the new proceedings is not only based on the judgment but also on grounds recognized in respect of remand detention; that the consequences of the reopening are correctly determined, notably to avoid the risk of *reformatio in pejus*;
- the positive experience of states that have extended the effects of reopening to co-defendants, or have also opened the possibility to obtain the reopening to friendly settlements and unilateral declarations;
- *as regards civil proceedings*, the range of systems established, some states having broadly accepted the possibility of reopening, some others in a more *ad hoc* manner, some others relying on others means than reopening to address the consequences of the violations;

- the utility of the exchange of views in order to inspire states to ensure there are, in all situations where reopening is not provided for by the law, or is excluded for other reasons (legal certainty, respect of *res judicata* or the interests of *bona fide* third parties), alternative possibilities to obtain the *restitutio in integrum*;
- the particular interest in these situations of the possibility to get compensation for loss of opportunity;
- the close link between the findings of the Court under Article 41 and the necessity of reopening;
- the positive experience of states that have extended the effects of the reopening, or have also opened the possibility to obtain the reopening to friendly settlements and unilateral declarations;
- furthermore, the positive experience of states that have extended the possibilities of reopening to the Constitutional Court.

The round-table finally expressed the hope that these conclusions and the detailed exchange of views will inspire the current reflection on reopening as part of the CDDH (notably through the subcommittee DH-GDR-F) as well as the current work on a *Vademecum* on the execution.