

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE
21 May/mai 2015

Questions of reopening in civil and criminal proceedings at domestic level in Bosnia and Herzegovina concerning the implementation of the Convention and execution of the Court's judgments, including examples of practice to the reopening, had been addressed as follows:

Criminal proceedings

The original text of the Criminal Procedure Code of BiH, adopted in June 2003, provides for the reopening of the criminal proceedings in favour of the convicted person in cases where the European Court of Human Rights found human rights violation and where the domestic court judgment was based on that violation (Article 327 § 1 f). No time-limit for reopening is prescribed.

In addition, lower levels of government in Bosnia and Herzegovina also provide for the possibility of reopening where the European Court of Human Rights found a violation of human rights and where the domestic court judgment was based on that violation (Criminal Procedure Code of the Federation of BiH, Article 343 § 1 f); Criminal Procedure Code of the Republika Srpska, Article 342 § 1 đ); Criminal Procedure Code of Brčko District, Article 327 § 1 f).

Following the European Court judgment in *Maktouf and Damjanović v. BiH* of 18 July 2013, the State Court so far reopened criminal proceedings and rendered new judgments in *Damjanović* – final judgment of 6 March 2014, and in *Maktouf* – first instance judgment of 11 July 2014, and the appellate proceedings are on-going before the Court of BiH.

Speaking about practical and/or procedural difficulties, we should mention the implementation of the judgment in *Muslija v. Bosnia and Herzegovina*, as the case has not been reopened yet. Namely, the applicant's representative addressed the Constitutional Court of BiH requesting the reopening. However, the Constitutional Court of BiH has no jurisdiction to decide about reopening of criminal proceedings. The applicant should have requested the relevant Cantonal Court, which conducted the criminal proceedings, to reopen the case following the judgment in *Muslija v. BiH*.

Thereupon, the Office of the Agent of BiH sent a letter to the authorised prosecutor requesting that he file a motion to reopen the proceedings, having in mind that Article 345 of the CPC of FBiH provides as follows:

Persons Authorized to File a Motion

- (1) *A motion to reopen the criminal proceedings may be filed by the parties and the defense attorney, and following the death of the accused the motion may be filed in his favor by the prosecutor and by the persons referred to in Article 308, Paragraph 2, of this Code.*
- (2) *A motion to reopen criminal proceedings in favor of a convicted person may be filed even after the convicted person has served his sentence and regardless of the statute of limitations, amnesty or pardon.*
- (3) *If the court learns that a reason for reopening criminal proceedings exists, the court shall so inform the convicted person or the person authorized to file the motion on his behalf.*

Civil proceedings

Statutory ground for reopening of cases in civil proceedings following the judgment of the European Court of Human Rights, was prescribed for the first time in the Brčko District, by the Non-contentious Proceedings Act of the Brčko District, introduced on 18 March 2009. This Law stipulates in Article 364 § 1 that *where the European Court of Human Rights finds a violation of human rights or fundamental freedoms guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols ratified by Bosnia and Herzegovina, the party may, within 30 days from the day on which the judgment of the European Court of Human Rights became final, apply to the First Instance Court, so as to have the impugned decision amended. The new proceedings shall be conducted with proper application of statutory provisions on retrial. In the new proceedings the court shall abide by the legal positions expressed in the final judgment of European Court of Human Rights that found a violation of the fundamental human right or freedom.*

On State level, the Non-contentious Proceedings Act of BiH was amended on 23 July 2013, by adding a new provision of Article 231a. It now stipulates that *where the European Court of Human Rights finds a violation of human rights or fundamental freedoms guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols ratified by Bosnia and Herzegovina, the party on whose right the European Court of Human Rights decided may, within 90 days from the day on which the judgment of the European Court of Human Rights became final, apply to the court that had ruled in the first instance in the proceedings resulting in a decision that violated the relevant human right or fundamental freedom, so as to have the impugned decision amended. The new proceedings shall be conducted with proper application of statutory provisions on retrial. In the new proceedings the court shall abide by the legal positions expressed in the final judgment of European Court of Human Rights that found a violation of the fundamental human right or freedom.*

The BiH entity of Republika Srpska amended its Non-contentious Proceedings Act in July 2013, with the same provision as prescribed by the Non-contentious Proceedings Act of BiH.

The other BiH entity, the Federation of BiH, has still not amended its Non-contentious Proceedings Act so as to provide for the reopening of civil proceedings.

Until the present day, in practice, there have been no cases of reopening of civil proceedings following the judgment of the European Court of Human Rights.

Reopening proceedings before the Constitutional Court of BiH

Following the judgment in *Avdić et al. v. BiH* the Constitutional Court of BiH was obliged to reopen proceedings upon the constitutional appeals of the applicants. In this respect, in May 2014 the Constitutional Court of BH amended its Rules and prescribed that if the European Court finds a violation of the right of access to a court in the proceedings before the Constitutional Court, the affected party shall be entitled to request the Constitutional Court within three months and in any event within six months at the latest, to reopen the proceedings and reconsider its decision.