ESTONIA / ESTONIE
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First it should be noted that in Estonia, there are legal basis for reopening (review procedure) all court proceedings: criminal, civil and administrative court proceedings.

1. Criminal proceedings

Legal basis

According to § 365 (1) of the Code of Criminal Procedure (the CCP) a review procedure means hearing of a petition for review by the Supreme Court in order to decide on the resumption of proceedings in a criminal matter in which the decision has entered into force.

In accordance with § 366 7) of the CCP one of the grounds for review is a satisfaction of an individual application filed with the European Court of Human Rights (ECtHR) against a court judgment or ruling in the criminal matter subject to review filed with the ECtHR, due to violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or a Protocol belonging thereto if the violation may have affected the resolution of the matter and it cannot be eliminated or damage caused thereby cannot be compensated in a manner other than by review.

§ 367 (2) of the CCP lists the persons who are entitled to submit a respective petition. Namely, on the basis provided for in clause 366 7) of the CCP, the criminal defence counsel, who is an advocate, of the person who filed an individual appeal with the ECtHR, and the Office of the Prosecutor General, as well as the criminal defence counsel of such person, who is an advocate who has filed an individual appeal with the ECtHR in a similar matter and on the same legal basis or who has the right to file such appeal in a similar matter and on the same legal basis, taking into account the terms provided for in Article 35(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms have the right to submit petitions for review.

A petition for review can be submitted to the Supreme Court within 6 months after the ECtHR judgment. According to § 370 of the CCP, first the Supreme Court has to decide whether to accept the petition. If it accepts the petition, it may either (i) dismiss the petition for review or (ii) if a petition for review is justified, the Supreme Court shall annul the contested decision by a judgment and send the criminal matter for a new hearing by the court which made the annulled decision or to the Office of the Prosecutor General for a new pre-trial proceeding to be conducted (§ 373 (1)-(2)). In the latter case, criminal proceedings shall be conducted pursuant to the general procedure (§ 374). Additionally, if there is no need to ascertain new facts in the criminal matter subject to review, the Supreme Court may make a new judgment after the review of the criminal matter without aggravating the situation of the convicted offender (§ 373 (3)).

Case-law

This right has been confirmed in the case-law of the Supreme Court. Following examples (it is not an exhaustive list) **have been successful for the applicants**:

- The Supreme Court judgment of 20 November 2006 in criminal case no. 3-1-2-6-06

The Supreme Court referred to the judgment of the ECtHR of 22 November 2005 (application no. 13249/02, *Taal vs. Estonia*) in which it had been found that the accused person's right to fair trial, namely the applicant's defence rights were restricted to an extent incompatible with the guarantees provided by Article 6 §§ 1 and 3 (d) of the Convention. The Supreme Court agreed that as the violations found could have had impact on the criminal proceedings and their outcome, these violations cannot be eliminated by any other means than by the review of the criminal proceedings. The Supreme Court granted the petition for review, annulled the earlier judgments of the lower instance courts and referred the case back to Harju County Court for a new hearing. The case was resolved by Harju County Court's judgment of 13 June 2007 in criminal case no. 1-06-15031, in which the court found that as the acts incriminated to the accused person were not supported by evidence, he should be acquitted of the charge.

- The Supreme Court judgment of 9 May 2012 in criminal case no. 3-1-2-2-12

A state appointed legal counsel of a convicted person missed the deadline of cassation appeal and as a result the cassation proceedings were not initiated. The ECtHR found in its judgment of 22 November 2011 (application no. 48132/07, *Andreyev v. Estonia*) that the counsel's non-compliance with his obligations resulted in a violation of the convicted person's right to a fair trial. The Supreme Court found that as the rights of the convicted person were violated because the cassation proceedings were not initiated, its own previous ruling must be annulled and the case to be sent to the Supreme Court for new preliminary proceedings.

- The Supreme Court judgment of 14 March 2013 in criminal case no. 3-1-2-3-13

In addition, the Supreme Court has also granted a petition of a person who personally had not had recourse to the Strasbourg Court but whose case was similar to the case where the ECtHR had found a violation (the above referred case no. 3-1-2-2-12 where the omissions of the defence lawyer were established). Proceeding from § 367 (2) of the CCP and from the previous case-law, the Supreme Court found that the defence counsel's non-compliance with his obligations is a substantial violation of criminal law and decided to annul the rulings of the lower instance courts and required the court of appeal to accept and review the appeal of the accused person's counsel regardless of the fact that it was not submitted within the time limits foreseen in law.

Meaning of friendly settlements (unilateral declarations)

Regarding cases where friendly settlements have been accepted by the Strasbourg Court the position of the Estonian Supreme Court has been expressed by the Constitutional Review Chamber of the Supreme Court in its judgment of 22 February 2011 in a constitutional review case no. 3-4-1-18-10. The petitioner in this case argued that it is contrary to the Estonian Constitution that it is not possible to request a reopening of a criminal case after the ECtHR have stroke a case out of its list of applications under Article 37 of the Convention on Human Rights. The Supreme Court first noted that neither the Constitution nor the Convention include a fundamental right requiring that a judgment which has entered into force could be reviewed based on a friendly settlement reached in compliance with the Convention. The Supreme Court underlined that the objective of a friendly settlement is the final resolution of the case (as can be seen from the text of respective declarations). The Supreme Court also noted that if the ECtHR has found the conditions of a settlement to be sufficient for the resolution of the case, the ECtHR does not expect the state to do anything additional (including re-hearing the case) for ensuring the fundamental rights of an applicant.

2. Civil (and administrative) proceedings

Legal basis

According to § 702 (1) of the Code of Civil Procedure if new facts become evident in a matter, a new hearing of a court decision which has entered into force may be organised pursuant to the procedure for review on the basis of a petition filed by a party in the case of an action […].

In accordance with § 702 (2) 8) of the Code of Civil Procedure one of the grounds for review is that the ECtHR has established a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, or Additional Protocols belonging thereto in the making of the court decision, and the violation cannot be reasonably corrected or compensated in any other manner than by review.

According to § 204 (1) of the Code of Administrative Procedure on the basis of an application from a participant of the proceedings or any other person whom the court should have joined to the proceedings when dealing with the matter, judgments and court rulings which have become final may be reviewed in review proceedings provided new facts have come to light.

In accordance with § 240 (2) 8) of the Code of Administrative Procedure one the grounds for review is the grant, on account of infringement of the European Convention for the Protection of Fundamental Rights and Freedoms or of any protocol to that convention, of an application lodged with the ECtHR against a judgment or ruling entered in an administrative matter, provided the infringement may have affected the determination of the matter and cannot reasonably be cured, and the harm that it caused cannot be compensated, otherwise than by means of review.

Respective petitions in both civil and administrative proceedings should be filed within 6 months of the ECtHR judgment to the Supreme Court which first decides on whether to accept the petitions and thereafter either dismisses the petition or annuls the former judgments and either returns the matter for a new hearing or enters a new judgment or ruling in the matter.

Case-law

Estonia has had only few civil/administrative cases where the ECtHR has found a violation which could bring along a reopening of a domestic case. Therefore we have not faced real obstacles so far (although it is obvious that reopening civil cases would affect the rights of third persons directly and that might be problematic).

There is one case-law example regarding the administrative proceedings. The Supreme Court in its judgment of 8 June 2011 in administrative case no. 3-3-2-2-10 has referred to the judgment of the ECtHR of 8 October 2009 (application no. 10664/06, *Mikolenko v. Estonia)* where it had been found that the applicant's detention with a view to expulsion was extraordinarily long. The Supreme Court found that the violation could not be eliminated with any other measure than by the review of the case. The Supreme Court granted the petition for review partially, i.e. to the extent the ECtHR had found a violation, and annulled respective earlier rulings of the domestic courts. In addition the Supreme Court explained that the petitioner had the right to apply to the Police and Border Guard Board for the review of the administrative proceedings regarding recovery of the costs of his detention in the expulsion centre and if necessary, the reversal of an administrative act.