LITHUANIA / LITUANIE
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Criminal proceedings

1) How has the reopening of criminal proceedings been addressed in your domestic law and have there been examples of successful reopening in such cases?

Under Article 456 of the Lithuanian Code of Criminal Procedure of 2003 the criminal cases examined by the Lithuanian courts may be reopened when the ECtHR finds that the convicting judgment was adopted in violation of the Convention and its Protocols, if the violations taken into consideration their nature and gravity raise reasonable doubts as to the conviction as such and if they might be remedied only upon reopening of the case of the convicted person. Under Article 458 the request for the reopening may be submitted before the Supreme Court of Lithuania within 6 months from the date on which the judgment of the ECtHR becomes final. Under Article 459 duly submitted request shall be transmitted by the President of the Supreme Court to the Chamber of 3 judges of the Supreme Court, which within 1 month from the date of its submission shall resolve the question of its admissibility. If the Chamber finds such a request admissible and decides to reopen the criminal case, the reopened criminal case shall be heard by the Chamber of 3 judges (if the criminal case had not been examined in the proceedings of cassation) or by the Plenary of the Division of Criminal Cases of the Supreme Court (if the case had been examined in the proceedings of cassation).

Before the entry into force of the Code of Criminal Procedure of 2003 the reopening of the criminal cases was regulated by the Code of Criminal Procedure of 1961, as amended in this regard in 2001. Overall 6 criminal cases on the ground of the judgments of the ECtHR have been reopened – in one of them criminal proceedings were discontinued (on the ground of the judgment of GC in the case of *Ramanauskas v. Lithuania*), in 3 of them – persons previously convicted by the domestic courts were acquitted (on the ground of the judgments in cases *Birutis and Others v. Lithuania*, *Malininas v. Lithuania* and *Lalas v. Lithuania*), in 2 of them – the judgments of the domestic courts were left unchanged (on the ground of the judgment in case of *Daktaras v. Lithuania* and *Butkevičius v. Lithuania*).

2) What practical or procedural difficulties have been encountered in practice? How have they been overcome?

Practical difficulties might arise due to the length of proceedings before the ECtHR – e.g. in criminal case by the applicants Malininas and Lalas (2 co-accused in the context of one criminal proceedings) had been terminated before the domestic courts by their conviction by the final judgment of the Supreme Court yet in 2003, and relevant judgments of the ECtHR were adopted in 2008 - in respect of Malinimas and in 2011 - in respect of Lalas. Both applicants were acquitted after the reopening of their criminal case by final judgment of the court of appellate instance, to which the case was transferred by the Lithuanian Supreme Court, adopted in 2013. As the violations of the Convention found were related with illegitimate use of undercover techniques in criminal investigations, namely, the use of evidence obtained as a result of police incitement – some practical difficulties occurred during resumed procedure of assessment of evidentiary after all these years.

3) Have you encountered specific difficulties with respect to reopening of cases following friendly settlements or unilateral declarations?

No criminal cases were reopened following friendly settlements or unilateral declarations. As a specific difficulty in this regard (though, only in theory, as in practice no such unilateral declarations or friendly settlements following which the reopening of the case would be necessary were adopted/reached in cases against Lithuania) the lack of specific legal regulation might be indicated. Currently, the provision of the Code of Criminal Procedure explicitly refers to the convicting judgment of the ECtHR. However, one could expect some expansive interpretation of existing legal regulation by the Lithuanian Supreme Court in this regard, if the need be.

Civil proceedings

1) How has the reopening of civil proceedings been addressed and have there been examples of successful reopening in such cases?

Under Article 366 § 1 Item 1 of the Lithuanian Code of Civil Procedure of 2003 the civil proceedings may be reopened if the ECtHR finds that the judgments, decisions or orders of the Lithuanian courts violate the Convention or its Protocols. Under Article 367 the request for the reopening shall be submitted before the Supreme Court of Lithuania within 3 months from the date when the person concerned became aware of the circumstance constituting the ground for the reopening of the proceedings but no later than within 5 years from the date when the judgment or decision (adopted by the domestic court) came into effect (Article 368 § 2).

Before the entry into force of the Code of Civil Procedure of 2003 the reopening of the civil cases was regulated by the Code of Civil Procedure of 1964, as amended in this regard in 2002. Since 2002 civil proceedings had been reopened on the ground of the judgments of the ECtHR in 4 cases – in one of them additional pecuniary damage to the amount of just satisfaction awarded by the ECtHR was adjudged (on the ground of the judgment in the case of *Jucys v. Lithuania*), in another civil case the dismissal from work of the claimant (ex-KGB officer, in respect of whom the legislative restriction to be employed in private sector was found to be in violation of the Convention) was recognized as unlawful and constituting just satisfaction in itself (on the ground of the judgment in the case of *Rainys and Gasparavičius v. Lithuania*), and in the third one – the civil proceedings, previously dismissed by the Lithuanian courts claiming that they have no jurisdiction on the ground of State immunity, which was found to be incompatible with Article 6 § 1 by the Grand Chamber judgment in *Cudak* case, were reopened on the ground of *Cudak* judgment and examined on the merits, finding the claimant's dismissal from work unlawful and awarding pecuniary compensation in this regard. Moreover, the Supreme Court of Lithuania recently reopened a civil case on the ground of the judgment of the ECtHR in the case of *Digrytė Klibavičienė v. Lithuania*. Additional pecuniary damages will need to be addressed in the domestic court due to the violation of the Convention found.

– What were the obstacles / How have they been overcome?

One practical obstacle is related with the period of limitation of 5 years for the reopening of the civil proceedings under Article 368 § 2 mentioned above due to the length of the proceeding before the ECtHR. For example, in the case of *Digrytė Klibavičienė* the request for the reopening was submitted in 2015 (the judgment of the ECtHR became final in 2015), while the final decision in the civil proceedings the request for reopening of which is submitted was adopted yet in 2006. The Supreme Court by the judgment of 22 April 2015 reopened the case and identified prolonged

proceedings before the ECtHR due to which the limitation period of 5 years was missed as an exceptional legal situation which needs to be seen as a ground for exception from the limitation clause. In addition, a legislative initiative currently being under consideration should be mentioned, whereby the Code of Civil Proceedings shall be amended providing for no period of limitation of 5 years for the reopening of civil proceeding on the ground of the judgments of the ECtHR.

Other practical obstacles stem from the quality of the judgments of the ECtHR – for example, the judgments, where the ECtHR making assessment on equitable basis awards some aggregated sum as just satisfaction for all forms of damages, leave room for further claims for damages from the State possibly to be made by the applicants before the domestic courts, while requesting for the reopening of domestic civil proceedings. In this regard, on one hand, more self-restraint of the ECtHR would be desirable, namely, in abstaining from awarding some aggregated sums on equitable basis, while, on the other, general abstention from awarding just satisfaction transferring the question of just satisfaction back to national courts and giving more precise recommendations in this regard of possible reopening of the domestic proceedings, especially in judgments where material violation of the Convention is found though one could make an assumption that the reopening of judicial proceedings at the national level would possibly serve as the most suitable and/or desirable measure in achieving *restitution in integrum*.

– What are the positive outcomes and remaining gaps?

As a remaining gap the lack of specific legal regulation in regard of the reopening of civil proceedings following friendly settlements or unilateral declarations might be indicated.

2) If the reopening has been introduced on the basis of the case law of domestic courts, it would be useful to share the relevant examples.

Administrative proceedings

1) How has the reopening of administrative proceedings been addressed in your domestic law and have there been examples of successful reopening in such cases?

Under Article 153 § 2 Item 1 of the Law on Administrative Proceedings the administrative proceedings may be reopened if the ECtHR finds that the judgment of the Lithuanian court violates the Convention or its Protocols. Under Article 156 § 1 the request for the reopening shall be submitted before the Supreme Administrative Court of Lithuania within 3 months from the moment the person concerned became aware or should have become aware of the circumstance constituting the ground for the reopening of the proceedings (Article 156 § 1). Noteworthy, that there is no period of limitation for the reopening of cases on the ground of the judgment of the ECtHR.

Moreover, the administrative proceedings might also be reopened even if the ECtHR did not find that the judgment of the Lithuanian court violates the Convention or its Protocols. For instance, the proceedings might be reopened if a person submits obvious evidence demonstrating that the fundamental misapplication of substantive legal rule has been exercised which might have determined an illegal judgment (Article 153 § 10). Another ground might be a need to ensure the uniform case-law of administrative courts (Article 153 § 12). Therefore, the developing jurisprudence of the ECtHR might be seen as a factor of reinterpretation of substantive law in future administrative proceedings.

The Supreme Administrative Court has reopened 2 administrative proceedings on the ground of the judgments of the ECtHR. Both of them concern a failure of domestic courts to ensure compliance with Article 6 § 1 of the Convention. In one of them the court re-examined the case where the violation of the Convention was found due to the inability of the applicant to question the experts in the course of the domestic proceedings (on the ground of the judgment *Balsytė-Lideikienė v. Lithuania*). The administrative case was referred back to the first instance court, which has discontinued the case. In other case the court re-examined the case where the violation of the Convention was found due to the failure of domestic courts to assist the applicant in obtaining evidence and to give it consideration, or at least to provide reasons why this was not necessary (on the ground of the judgment *Jokšas v. Lithuania*). The Supreme Administrative Court upon re-examination of the re-opened administrative case has left its previous decision unchanged, as it was established that the violation of the Convention found has no influence upon the lawfulness and validity thereof.

– What were the obstacles / How have they been overcome?

As in criminal cases practical difficulties might arise due to the length of proceedings before the ECtHR. For instance, there might be difficulties to obtain and adjudicate evidences if a case is reopened after a long period.

– What are the positive outcomes and remaining gaps?

As a remaining gap the lack of specific legal regulation in regard of the reopening of administrative proceedings following friendly settlements or unilateral declarations might be indicated.

2) If the reopening has been introduced on the basis of the case law of domestic courts, it would be useful to share the relevant examples.