

## **NORWAY / NORVEGE**

### **21 May/mai 2015**

Both the Dispute Act and the Criminal Procedure Act allows, subject to further conditions, for the reopening of a case if there in a complaint against Norway before the European Court of Human Rights has been determined that Norway has violated the European Convention of Human Rights. We have not been able to find examples where a case has been reopened following a judgment of the Court, neither in civil or criminal cases. In this regard, it must be taken into account that Norway has received relatively few judgments from the Court finding a violation of the Convention, and that these cases are often solved in other manners.

### **Criminal proceedings**

Pursuant to Section 391 para. 2 of the Criminal Procedure Act, reopening in favor of the person charged may be required when an international court or UN human rights committee has in a case against Norway found that

- a) The decision conflicts with a rule of international law that is binding on Norway, and it must be assumed that a new hearing should lead to a different decision, or
- b) The procedure on which the decision is based conflicts with a rule of international law that is binding on Norway if there is reason to assume that the procedural error may have influenced the substance of the decision, and that a reopening of the case is necessary in order to remedy the harm that the error has caused.

The petition for reopening in criminal proceedings is submitted to the Norwegian Criminal Case Review Commission.

### **Civil proceedings**

Pursuant to Section 31-3 para. 1 litra d of the Dispute Act, a petition to reopen a case may be made if in a complaint against Norway in respect of the same subject matter, it is determined that the procedure has violated the Convention. This provision may in particular be applicable in cases where the right to a fair and public hearing pursuant to article 6 of the Convention has been violated.

Pursuant to Section 31-4 litra b of The Dispute Act, a petition to reopen a case may be made if a binding ruling made by the European Court of Human Rights (or another international court or an opinion issued by the Human Rights Committee of the United Nations) in respect of the same subject matter, suggests that the ruling was based on an incorrect application of international law.

The aim of the right to have a case reopened pursuant to these provisions is to redress the effects of the incorrect application of international law. Both provisions apply in cases between private parties as well as in cases between a private party and the government. In other terms, the right to have a case reopened if the Court has found a violation of the convention in a complaint against Norway in respect of the same subject matter, is not limited to cases where the government is a party to the case before the national court. This issue was explicitly considered by the Norwegian Supreme Court in a decision from 7 April 2010, concerning a petition for reopening under Section 31-4 litra b of The Dispute Act. In this decision, the Supreme Court interpreted the

right to have a case reopened to be subject to the following condition: In order to ensure that the right to have a cases reopened is not applied to the detriment of the rules on the legal force of a final and enforceable judgment in the case before the national court, a petition for reopening can only be made if such reopening is necessary in order to redress the violation of the convention. The right to reopening does not apply if the violation of the convention can be redressed in another way, for example by means of just satisfaction. The right to have a case reopened is also subject to further conditions as stated in Section 31-5 and 31-6 of the Dispute Act. It follows *inter alia* that a case shall not be reopened if it is reasonably probable that a new hearing of the case would not lead to an amendment of significance to the party.

The procedure for submitting a petition for reopening in civil cases differs from the procedure in criminal cases: Rulings of the conciliation board may be reopened by petition to the district court. Rulings of the district court and the court of appeal may be reopened by petition to a court of the same level in a judicial district that borders on to the court that made the original ruling, whereas rulings of the Supreme Court may be reopened by petition to the Supreme Court.