

SAN MARINO / SAINT-MARIN
17 June/juin 2015

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?*

The reopening of criminal proceedings is the only means of extraordinary appeal provided for by the Code of Criminal Procedure. The reopening of criminal proceedings is possible in case of judgments which have become *res judicata* and it may be undertaken by the party demonstrating that any of the following conditions are fulfilled:

- new evidence has emerged or has been discovered that demonstrates, alone or together with that already acquired, that the convict must be acquitted; or
- the judgment was issued as a consequence of a falsehood or of another offence; or
- the facts upon which the decision is based are not compatible with those established in another final criminal decision; or
- the Court of Human Rights has ruled that the judgment was rendered in violation of the provisions of the European Convention of Human Rights and Fundamental Freedoms or of its Protocols and the serious negative effects of such judgment can only be removed by reopening the case.

There is a single case of successful reopening (TIERCE vs. SAN MARINO -2007-).

2. *Have you encountered specific difficulties with respect to reopening of cases following friendly settlements or unilateral declarations?*

There has been no case in this regard.

Civil Proceedings

1. *How has the reopening of civil proceedings been addressed and have there been examples of successful reopening in such cases?*
 - *What were the obstacles / How have they been overcome?*
 - *What are the positive outcomes and remaining gaps?*

San Marino legal system has two extraordinary remedies available against any judgements which have become *res judicata*.

The first remedy is the so-called *restitutio in integrum*. It is available to those wishing to challenge the veracity of the examination of the merits carried out by the judge, upon which the judgment under appeal was based. Indeed, *restitutio in integrum* is granted where the party was not able to defend its own rights or in the presence of relevant facts which were unknown to the judge due to *force majeure* or to the opposing party, thus affecting the adequacy and completeness of the assessment of the findings.

The second remedy, the so-called *querela nullitatis*, relates to the challenge of irremediable, substantive or procedural errors regarding the essential requirements of the decision rendered by the judge.

There is a single case of successful *querela nullitatis* (BATTISTINI GRAZIANA vs. BATTISTINI DOMENICO and THE STATE OF THE REPUBLIC OF SAN MARINO -1989-) and three cases of successful *restitutio in integrum* (CECCAROLI MARINO vs. THE STATE OF THE REPUBLIC OF SAN MARINO -1982-; CORINALDI ISA and LIA vs. THE STATE OF THE REPUBLIC OF SAN MARINO -1985-; BATTISTINI GRAZIANA v. BATTISTINI DOMENICO and THE STATE OF THE REPUBLIC OF SAN MARINO -1989-).