

## SWEDEN / SUEDE

21 May/mai 2015

Under the Swedish Code of Judicial Procedure, the re-opening of proceedings (referred to in the Code as ‘relief for substantive defects’), can be granted only under certain circumstances stipulated in Chapter 58, Sections 1 (civil proceedings) and 2 (criminal proceedings). A new ruling from the Supreme Court amending previous case-law has generally not been considered as a circumstance on which the re-opening of proceedings could be granted. New case-law from the European Court of Human Rights and the EU Court of Justice is dealt with in the same manner.

However, when it comes to criminal proceedings, the Supreme Court has found that re-opening could be granted in certain situations based on Article 13 of the Convention and Swedish procedural law. This follows from a decision of 13 July 2013 in which the Supreme Court examined the question whether a former defendant could be granted a re-opening of criminal proceedings if he or she had been convicted of an offence under the Tax Offences Act in a manner incompatible with Article 4 of Protocol No. 7 to the Convention. The decision was handed down after the Supreme Court, in a ruling dated 11 June 2013, had amended its case-law concerning the application of the *ne bis in idem* principle in tax matters. Previous case-law had stipulated that there was no reason generally to invalidate the Swedish system with double proceedings by virtue of Article 4 of Protocol No. 7. The change in case-law was partly based on the case-law of the European Court of Human Rights, including its judgment in the case of *Sergey Zolotukhin* ([GC], no. [14939/03](#), judgment of 10 February 2009, ECHR 200, thus on 10 February 2009).

In its decision of 13 July 2013, the Supreme Court concluded that, on the basis of the Convention, in particular Article 13, a Swedish court may decide, in certain situations; that a case should be re-opened notwithstanding the special conditions specified in Chapter 58, section 2. This should apply if it is necessary to discontinue a deprivation of liberty that constitutes a violation of the individual’s rights. This could also be the case in situations where re-opening is considered a substantially more adequate measure of just satisfaction than other available measures, provided that the violation in question is of a serious nature.

When it comes to the issue of practical/procedural issues that have been encountered in practice, the following may be of relevance. In the decision of 13 July 2013, the Supreme Court also considered the issue of from which point in time individuals could be granted a re-opening of criminal proceedings in cases concerning the application of the *ne bis in idem* principle. In this regard, the court took the position that the incompatibility of Swedish legislation regarding sanctions for tax-related offences with Article 4 of Protocol No. 7 had arisen by virtue of the *Sergey Zolotukhin* judgment (cited above). The Supreme Court’s decision led to criminal proceedings being re-opened in respect of an individual’s conviction for an offence under the Tax Offences Act. As a result, the possibility of being granted a re-opening of criminal proceedings applies retroactively to judgments having been delivered in criminal proceedings as from 10 February 2009.