

ALBANIA / ALBANIE
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Criminal Proceedings

I. *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 in the Republic of Albania is provided for in Article 449 and Article 450 of the Code of Criminal Procedure of Albania. Article 449 provides for the decisions that are subject for review, stipulating that “The reconsideration of final sentences is permitted in any time for cases provided by law, even when the punishment is executed or ceased.” and that “The decisions of acquittal rendered for crimes may be reviewed on demand of the prosecutor, provided that from the rendering of the decision shall have not passed five years.”

Article 450 of the CCP on the other hand provides for the cases when such a reconsideration is permitted, among which:

- a) when the facts of the grounds of the sentence do not comply with those of another final sentence;
- b) when the sentence is relied upon a civil court decision which after has been revoked;
- c) when after the sentence new evidence have appeared or have been found out which solely or along with those ones evaluated prove that the sentenced is not guilty;
- d) when it is proved that the conviction is rendered as a result of the falsification of the acts of the trial or of another fact provided by law as a criminal offence.

Currently, the Albanian codified criminal procedural legislation does not provide for the reopening of criminal proceedings following a decision of the European Court of Human Rights. However the judgments of the ECtHR have direct effect in the domestic legal system, based on article 122¹ and article 17/2 of the Constitution, also pursuant to Article 46 of ECHR. This being said, the ECtHR’s judgments finding a violation of Article 6/1 of the Convention on grounds of lack of guarantees to the right for a fair trial of the applicants, are automatically part of the Albania case law and legal framework, binding and obligatory to all the relevant and competent institutions.

The reopening of the proceedings in this type of cases is conducted under the ruling of the Constitutional Court through judgment no. 20, dated 01.06.2011 that recognized the jurisdiction of the Supreme Court to provide reconsideration of final criminal decisions, which are based on ECtHR findings. Such jurisdiction has been accorded on the interpretation of articles 450 and Article 10² of the Criminal Procedural Code.

¹ Article 122 “1. Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. The amendment and repeal of laws approved by a majority of all members of the Assembly is done by the same majority for the purposes of the ratification of an international agreement.

2. An international agreement ratified by law has priority over the laws of the country that are incompatible with it.

3. The norms issued by an international organization have priority, in case of conflict, over the law of the country when the direct application of the norms issued by the organization is expressly contemplated in the agreement ratified by the Republic of Albania for participation therein.”

² Which explicitly imposes to the courts the duty to implement the provisions of international treaties where Republic of Albania is a High Contracting Party.

The practice of reopening of criminal proceedings following a decision of the ECtHR finding a violation has been consolidated through the numerous decisions of the Supreme Court, most recently the decision on the case of the applicant Elidon Kotorri³, providing among others that “...in its analysis the Supreme Court considers that, despite the lack of a formally expressed, direct, easily readable by anyone legal reference, the review and address of these issues by the judiciary cannot be frozen and fossilized in the past. Rather, it is and should be creative and visionary, contemporary with the sole purpose of delivering justice and upholding human rights. In this regard, the Supreme Court considers the hierarchy of legal norms and judicial decisions, giving in this way the decisions of the European Court of Human Rights an important higher standing, considering it in this regard, the peak of the pyramid. One such concept comes primarily from the Constitution, which in Articles 116 and 122 has sanctioned the direct application of ratified international agreements by considering them part of the domestic legal system”.⁴

The Supreme Court of the Republic of Albania has further expanded upon this practice through the following decisions:

- i. Decision no. 01388/2010, dated 07.03.2012⁵
- ii. Decision no. 01130/2010, dated 15.02.2012⁶
- iii. Decision no. 00-2014-1107, dated 09.04.2014⁷
- iv. Decision no. 01468/2010, dated 07.03.2012⁸

It is necessary to emphasize that in the various aforementioned decisions of the Supreme Court, the Criminal Chamber of the Court has argued in detail the causes that lead to the acceptance of the application for reconsideration, as the power of the decisions of the ECtHR stems from the very nature of the Convention and the Constitution of the Republic of Albania, where the latter in Articles 116 and 122 has sanctioned the direct application of ratified international agreements and considers them part of the domestic legal system.

II. What practical or procedural difficulties have been encountered in practice? How have they been overcome?

The reopening of criminal proceedings, following a decision of the ECtHR finding a violation of the rights of the applicants for a fair trial, have not encountered in practice any difficulties in their implementation. These procedures have proven proper and effective domestic remedies to the findings of the Court, without any unreasonable delays or procedures to the detriment of the applicants.

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

Albania has not so far had any experience concerning the reopening of criminal proceedings following friendly settlements or unilateral declarations and the subsequent decisions of the European Court of Human Rights.

³ Case *Kaçiu & Kotorri v. Albania*, application no. 33192/07 and 33194/07, judgment of 25/06/2013, final on 09/12/2013.

⁴ Decision no. 00-2014-1107, dated 09.04.2014, of the Supreme Court on the request of the applicant Elidon Kotorri for reopening of criminal proceedings.

⁵ Decision concerning the case *Caka v. Albania* application no. 44023/02, judgment of 08/12/2009, final on 08/03/2010.

⁶ Decision concerning the case *Berhani v. Albania* application no. 847/05, judgment of 27/05/2010, final on 04/10/2010.

⁷ Decision concerning the case *Shkalla v. Albania* application no. 26866/05, judgment of 10/05/2011, final on 10/08/2011.

⁸ Decision concerning the case *Laska & Lika v. Albania* application no. 12315/04, judgment of 20/04/2010, final on 20/07/2010.

Civil Proceedings

- I. *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?

- II. *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.*

The reopening of civil proceedings following a decision of the European Court of Human Rights is provided for in article 494/ë of the Code of Civil Procedure of the Republic of Albania. This article stipulates, “The request for reconsideration is the act requesting the review of a final decision of the court. The interested party may request reconsideration of a decision that has become final, when...” On the matter of reconsideration of a final domestic decision following a decision of the ECtHR, finding a violation of the Convention:

...

“ë) when the European Court of Human Rights finds a violation of the European Convention "On the protection of human rights and fundamental freedoms" and its Protocols, ratified by the Republic of Albania.”

This subsection was added to the Code of Code of Civil Procedure through Law No. 10052, dated 29.12.2008 *“On some amendments and additions to Law no. 8116, dated 29.03. 1996 "Code of Civil Procedure of the Republic of Albania", as amended”*.

The Code of Civil Procedure further stipulates the deadlines for the presentation of a request for reconsideration in Article 496, which provides that:

“The request for reconsideration may be filed within 30 days from the day that the party is made aware of the cause of revision, but in any case not later than one year from the day the cause of the revision became apparent...”

Regarding the presence of examples of successful reopening in such cases in the domestic system and relevant examples of the practice, there have not been so far such examples which to share with the Steering Committee for Human Rights.