

AUSTRIA / AUTRICHE
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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?*

According to sections 363a-363c of the Austrian Code on Criminal Procedure (Strafprozessordnung 1975-StPO) the Austrian Supreme Court may reopen criminal cases after an ECtHR's ruling that an Austrian criminal court (including the Austrian Supreme Court ruling on criminal matters) has violated provisions of the ECHR or one of the Protocols thereto. When deciding on whether to reopen a case the Austrian Supreme Court has to strictly adhere to the ECtHR's reasoning. The procedure pursuant to sections 363a-363c StPO can be initiated either by the victim or by the Procurator General. If the Supreme Court allows a reopening, it will either rule on the case or refer the case to the court of first or second instance responsible for the violation of the ECHR.

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

From a practical point of view the reopening of criminal cases pursuant to sections 363a-363c StPO has proven a proper and effective domestic remedy for violations of the ECHR, though the ECtHR has not yet issued specific case-law to that effect.

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

Pursuant to the wording of sections 363a-363c StPO a case is to be reopened only on the basis of a final judgment of the ECtHR. Hence, a reopening must not draw upon friendly settlements or unilateral declarations. However, according to the Supreme Court's constant case-law criminal cases may also be reopened if they meet the following criteria:

- the applicant has suffered a violation of the ECHR by an Austrian criminal court;
- all effective means of appeal have been exhausted;
- the respective request for reopening is submitted to the Austrian Supreme Court within six months from the date on which the final judgment was taken.

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?*
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.*

Bearing in mind the effects a reopening of civil proceedings might have on third parties, there are no specific provisions providing for a reopening of civil proceedings in consequence of a judgment of the ECtHR. Nonetheless, the setting aside of a judgment of a criminal court or the outcome of a reopened criminal proceeding based on a judgment of the ECtHR may lead to the reopening of a related civil proceeding under the general provisions of the Code of Civil Procedure on reopening of proceedings.

Administrative Proceedings

Likewise, there are no specific provisions allowing a reopening of administrative proceedings as a consequence of an ECtHR's judgment. The pertinent general provisions on the reopening of proceedings according to the General Administrative Procedure Act 1991 apply.