

## **DENMARK/DANEMARK**

### **1 July/juillet 2015**

#### **Criminal proceedings**

Under section 977 (1), of the Administration of Justice Act (retsplejelov) a convicted person can request reopening of criminal proceedings in the following situations:

- 1) new information (nye oplysninger) emerges which, if it had been available during the first proceedings, could have led to acquittal or to the application of a considerable more lenient penalty provision;
- 2) false testimony was given or fraudulent documents used during the first proceedings, or a criminal offence aiming at influencing or deciding the case has been committed by the convicted person or by anyone who by virtue of his office or public function assisted in trying the case, which could have affected the judgment;
- 3) if *special circumstances* (særlige omstændigheder) strongly indicate that evidence has not been rightly judged;

A request for reopening of criminal proceedings under section 977 must be submitted to the Special Court of Indictment and Revision (Den Særlige Klageret).

One judgment of the European Court of Human Rights has led to the reopening of proceedings by virtue of being considered “special circumstances” under section 977 (1) (3).

#### **Example:**

*Jersild (judgment of 23.09.1994, Resolution DH (95) 212)*

The European Court of Human Rights held the conviction of the applicant, a journalist who contributed to the dissemination of racist statements, to be in violation of Article 10 of the Convention. Subsequently, the impugned criminal proceedings were reopened by virtue of section 977 (1) (3) of the Administration of Justice Act. One judge expressed a concurring opinion on the basis of section 977 (1) (1) to the effect that the Court’s judgment constituted “new information” permitting the reopening of proceedings.

*Result in the new proceedings:* By judgment of 4 June 1996 the Court of Appeal of Eastern Denmark (Østre Landsret) acquitted the applicant and ordered the state to pay all his costs both in the old and the new proceedings.

#### **Civil proceedings**

When a judgment in a civil case is final the content of the judgment can only be changed if the case is reopened in accordance with Section 399 of the Administration of Justice Act.

Section 399 (1) of the Administration of Justice Act (retsplejeloven) permits the Supreme Court to reopen proceedings if:

1. there is a predominant chance that, through no fault of the applicant, the case was wrongly elucidated and that the result after a reopening will be substantially different.
2. it is obvious, that this is the only way for the applicant to avoid substantial damage or to have substantial damage compensated.
3. the *circumstances* greatly recommend reopening.

Section 399 (1) applies only to cases that have been judged by the Supreme Court. However, according to section 399 (2) the Supreme Court may, under the same circumstances, permit appeal of judgments pronounced by a High Court or a city court after expiry of the time-limit.

A judgment or decision from the European Court of Human Rights is likely to be considered a circumstance that recommends reopening. However, none judgments against Denmark at the European Court of Human Rights has led to a need to reopen a civil case.