

GERMANY / ALLEMAGNE
16 July / juillet 2015

Code of Criminal Procedure:

Section 359
[Reopening for the Convicted Person's Benefit]

Reopening of the proceedings concluded by a final judgment shall be admissible for the benefit of the convicted person

1. if a document produced as genuine, to his detriment, at the main hearing was false or forged;
2. if a witness or expert, when giving testimony or an opinion to the convicted person's detriment, was guilty of wilful or negligent breach of the duty imposed by the oath, or of wilfully making a false, unsworn statement;
3. if a judge or lay judge who participated in drafting the judgment was guilty of a criminal violation of his official duties in relation to the case, unless the violation was caused by the convicted person himself;
4. if a civil court judgment on which the criminal judgment is based is quashed by another final judgment;
5. if new facts or evidence were produced, which, independently or in connection with the evidence previously taken, tend to support the defendant's acquittal or, upon application of a less severe penal norm, a lesser sentence or a fundamentally different decision on a measure of reform and prevention;
6. if the European Court of Human Rights has held that there has been a violation of the European Convention on the Protection of Human Rights and Fundamental Freedoms or of its Protocols and the judgment was based on that violation.

Code of Civil Procedure:

Section 580
Action for retrial of the case

An action for retrial of the case may be brought:

1. Where the opponent, by swearing an oath regarding his testimony, on which latter the judgment had been based, has intentionally or negligently committed perjury;
2. Where a record or document on which the judgment was based had been prepared based on misrepresentations of fact or had been falsified;

3. Where, in a testimony or report on which the judgment was based, the witness or experts violated their obligation to tell the truth, such violation being liable to prosecution;
4. Where the judgment was obtained by the representative of the party or its opponent or the opponent's representative by a criminal offence committed in connection with the legal dispute;
5. Where a judge contributed to the judgment who, in connection with the legal dispute, violated his official duties vis-à-vis the party, such violation being liable to prosecution;
6. Where judgment by a court of general jurisdiction, by a former special court, or by an administrative court, on which the judgment had been based, is reversed by another judgment that has entered into force;
7. Where the party
 - a) Finds, or is put in the position to avail itself of, a judgment that was handed down in the same matter and that has become final and binding earlier, or where it
 - b) Finds, or is put in the position to avail itself of, another record or document that would have resulted in a decision more favourable to that party's interests;
8. Where the European Court of Human Rights has established that the European Convention for the Protection of Human Rights and Fundamental Freedoms or its protocols have been violated, and where the judgment is based on this violation.

Section 586
Period for filing an action

- (1) The actions are to be filed prior to expiry of the statutory period of one (1) month.
- (2) The period shall commence running on that day on which the party has become aware of the cause for rescission, but not prior to the judgment having become final and binding. Once five (5) years have lapsed, counting from the date on which the judgment has become res judicata, actions shall no longer be an available remedy.
- (3) The stipulations of the above subsection are not to be applied to an action for annulment due to lack of representation; the period for bringing an action shall commence on the day on which the judgment has been served on the party and, where the party lacks the capacity to sue and be sued, on which it has been served on its legal representative.
- (4) The rule set out in subsection (2), second sentence, is not to be applied to any actions for retrial of a case as provided for by section 580 number 8.

**Act Introducing Assistance with Costs for
Third Parties in Proceedings before the European
Court of Human Rights
(EGMR-Kostenhilfegesetz – EGMRKHG)**

EGMRKHG

Date of issue: 20.4.2013

Full citation: “ECHR Assistance with Costs Act of 20 April 2013 (Federal Gazette (BGBl. I) p. 829)”

Footnote

(+++ Authoritative as of: 25.4.2013 +++)

This act was approved by the Bundestag as Article 1 of the Act of 20.4.2013 I 829. In accordance with Article 3 (1), it enters into force on 25.4.2013.

Section 1 – Prerequisites; Procedure

(1) In proceedings before the European Court of Human Rights, a third party whose human rights are affected shall be granted assistance with costs upon request if:

1. The Court has referred the application to the Federal Republic of Germany for observations,
2. Either:
 - a) The President of the Court has invited such a third party to submit written comments or take part in hearings in accordance with Article 36, paragraph 2, of the European Convention on Human Rights, or
 - b) An application by the third party to submit written comments or take part in hearings in accordance with Article 36, paragraph 2, of the European Convention on Human Rights
 - aa) was successful or
 - bb) has prospects of success and is not frivolous and
3. On account of his or her personal and economic circumstances, the third party affected is unable to meet the costs of litigation or is able to meet them only in part or only in instalments.

(2) With regard to prerequisites and procedures for the granting of assistance with costs, sections 115; 116; 117 (1), sentence 1, first half sentence, sentence 2, (2), sentence 1; section 118 (2); section 120 (1, 3 and 4); and section 124 of the Code of Civil Procedure shall apply mutatis mutandis in their respective current versions. The Federal Office of Justice shall replace the trial court. When making the application, the third party shall use the forms introduced under section 117 (3) of the Code of Civil Procedure for the declaration of personal and economic circumstances.

Section 2 – Approval

- (1) Where assistance with costs is approved, this has the effect of the third party receiving financial assistance from the Federal Cash Office (*Bundeskasse*) with expenses and fees for legal representation. Such representation may be performed by a lawyer or any other person approved as counsel by the Chamber President in the proceedings before the European Court of Human Rights.
- (2) If instalments or amounts to be paid from assets are determined upon approval of assistance with costs, such instalments and amounts shall be paid to the Federal Cash Office.
- (3) The approval of assistance with costs for a third party shall continue to apply in Grand Chamber proceedings.

Section 3 – Assessment; Power to issue statutory instruments

- (1) Assistance with costs covers travel and subsistence expenses and other necessary expenditure incurred by the third party and his or her counsel.
- (2) The Federal Ministry of Justice is authorised to determine by statutory instrument without the approval of the Federal Council (*Bundesrat*) the level of reimbursement for fees and expenses in line with the rates which apply under the Rules of Procedure of the European Court of Human Rights. In the case of proceedings which are straightforward in actual and legal terms and whose scope is relatively limited, provision may be made for a reduction in the level of reimbursement. If the counsel's activity is confined to making the application for third-party intervention, provision shall be made for payment of a quarter of the lump-sum.
- (3) The Federal Office of Justice shall determine the level of assistance with costs once the third party has demonstrated that the fees or expenses are due. Should the third party unexpectedly not be required to pay fees or expenses, the assistance with costs shall be repaid immediately.

Section 4 – Appeals

- (1) A complaint against the decision on assistance with costs shall take the form of a complaint subject to a time limit in accordance with the provisions of the Code of Civil Procedure, on which a judge of the court hearing the complaint sitting alone shall rule. The time limit in accordance with section 569 (1), sentence 1, of the Code of Civil Procedure shall be one month. The complaint may also be declared by recording it with the registry for the files of the court hearing the complaint. Section 572 (1) of the Code of Civil Procedure shall apply with the proviso that the Federal Office of Justice shall decide on redress.
- (2) The complaint shall be heard by the regional court (*Landgericht*) in whose district the seat of the Federal Office of Justice is located.