

## LATVIA / LETTONIE

### 16 July/juillet 2015

From the outset it should be noted that the Latvian legal system does not clearly distinguish reopening and re-examination of proceedings. Relevant procedural laws are open enough allowing to consider to what extent a newly disclosed fact or circumstance serves as a basis for reopening of proceedings, and also to determine to what extent the individual concerned may be reinstated in her/his rights. Therefore, for the purpose of the present overview, only the term “reopening” will be used. It should be further noted that the domestic law of Latvia provides for a possibility to reopen criminal, civil and administrative court proceedings. Moreover, under the Latvian law, the “reopening” is not limited to the Court’s judgments.

### **Criminal proceedings**

#### Legal framework

Article 655 § 1 of the *Criminal Procedure Law* of 21 April 2005 provides for a possibility to reopen criminal proceedings on the basis of “newly disclosed facts and circumstances” in cases where a court’s judgment or decision has already entered into force. Pursuant to Article 655 § 2 (5) “newly disclosed facts and circumstances” shall also include a conclusion by an international tribunal that a ruling delivered by the Latvian court and that had entered into force, is incompatible with international legal instruments binding upon Latvia.

Article 656 of the *Criminal Procedure Law* sets time limit for reopening of criminal proceedings under the above given circumstances. However, if the newly established facts and circumstances are at the convicted person’s favour, there is no time bar for reopening of the criminal proceedings (Article 656 § 3).

The reopening proceedings on the basis of newly disclosed circumstances consist of two sequential stages. As a general rule, the reopening of proceedings should be initiated by the parties to the respective criminal proceedings or their representatives (Article 657). In the first stage of the reopening the request for reopening is addressed to the competent prosecutor who adopts a conclusion either to proceed with the request or to dismiss it. If the prosecutor refuses to reopen the criminal proceedings, he or she adopts a reasoned decision and notifies the applicant thereof; the prosecutor’s decision is subject to an appeal (Article 658 §§ 3 and 4). If the prosecutor decides that there are sufficient grounds for reopening of the criminal proceedings on the basis of newly disclosed circumstances, the prosecutor’s conclusion together with the criminal case file is forwarded to the competent court (Article 658 §§ 1 and 2).

In the second stage of the reopening proceedings the competent court may: (1) to revoke the domestic court’s ruling in full or in part, and transfer the criminal proceedings to the Prosecutor Office; (2) to revoke the domestic court’s ruling in full or in part, and transfer the criminal proceedings to the competent court; (3) to dismiss the prosecutor’s conclusion; (4) to terminate the proceedings (Article 660 § 5).

To sum up, if the Court finds that a ruling of the national court is incompatible with the Convention standards, the Court's judgment may serve as a "newly disclosed circumstance" for reviewing the criminal case *de novo*.

### Domestic practice

On 28 November 2002 the Court adopted the judgment in the case of *Lavents v. Latvia* (application no.58442/00), *inter alia*, finding a violation of Article 6 § 1 of the Convention concerning the applicant's conviction by the Riga Regional Court on 19 December 2001. Also, the Court found a violation of Article 8 concerning the interference with the applicant's right to respect for his correspondence.

Following the Court's judgment of 28 November 2002, on 13 February 2003, that is prior to the entry into force of the respective provisions of the *Criminal Procedure Law* of 21 April 2005, the Supreme Court of Latvia quashed the Riga Regional Court's judgment of 19 December 2001 and sent the applicant's criminal case for fresh examination before the Riga Regional Court by a new panel of judges. As concerned the violation of Article 8 of the Convention, on 27 March 2003 the Riga Regional Court quashed the Riga Regional Court's decision of 22 October 1997 imposing the attachment on the applicant's correspondence.

On 15 September 2009 the Court delivered its judgment in the case of *Pacula v. Latvia* (application no.65014/01), finding a violation of Article 6 § 3 (d) of the Convention for the applicant's failure to question the main witness (victim) in the criminal proceedings against him. Following the aforesaid Court's judgment, on 26 April 2010 the Prosecutor General Office adopted the decision to reopen the criminal proceedings in the part concerning the applicant's conviction pursuant to Article 657 of the *Criminal Procedure Law* on the basis of newly disclosed circumstances, namely, the Court's judgment of 15 September 2009. On 28 April 2011 the Supreme Court dismissed the prosecutor's decision concerning the reopening of the criminal proceedings on the account that it was no longer possible to question the witness at issue since she had already passed away.

On 8 January 2013 the Court found a violation of Article 6 § 1 of the Convention in the case of *Baltiņš v. Latvia* (application no.25282/07) on the account that the domestic courts had not properly addressed the applicant's incitement complaint. Having examined the request for reopening lodged by the applicant and his defence counsel on 20 June 2013, the Prosecutor Office decided to reopen the criminal proceedings pursuant to Articles 655 § 2 (5) and 657 of the *Criminal Procedure Law* on the basis of newly disclosed circumstances. The prosecutor's conclusion was based on the Court's findings in its judgment of 8 January 2013. By the decision of 1 October 2013 the Supreme Court upheld the prosecutor's conclusion, quashed the domestic court's rulings, and transferred the criminal case to the appellate instance court for adjudication *de novo*.

On 11 February 2014 the Court found a violation of Article 6 § 1 of the Convention in the case of *Cēsnieks v. Latvia* (application no.9278/06) on the account of the applicant's conviction which based on evidence obtained in breach of Article 3 of the Convention. On the basis of the application lodged by the applicant and his defence counsel, on 30 July 2014 the Riga Regional Prosecutor Office decided to reopen the applicant's criminal proceedings pursuant to Article 657 of the *Criminal Procedure Law* on the basis of newly disclosed circumstances. The criminal case-file was transferred to the Supreme Court, and on 16 December 2014 the Supreme

Court upheld the prosecutor's conclusion as well-founded, quashed the domestic courts' rulings and transferred the criminal case to the appellate instance court for adjudication *de novo*.

### Unilateral declarations

The grounds for reopening of criminal proceedings in connection with "newly disclosed circumstances" provided for in the *Criminal Procedure Law* are sufficiently broad, thus also forming a legal basis for reopening of criminal proceedings following the Government's unilateral declaration.

The existing domestic practice supports the aforesaid. As already noted above, following the Court's judgment of 11 February 2014 finding a violation of Article 6 of the Convention in the case of *Cēsnieks v. Latvia* (application no.9278/06) the competent prosecutor decided to reopen the respective criminal proceedings. In the framework of the reopening proceedings both the prosecutor and afterwards the Supreme Court took into account the unilateral declaration submitted by the Government under Article 3 of the Convention concerning the applicant's ill-treatment.

To the contrary, in the case of *Jeronovičs v. Latvia* (application No.547/02) the competent prosecutor refused the applicant's request, which was based on the Government's unilateral declaration as a newly disclosed circumstance, to reopen the criminal proceedings against the third persons. The competent prosecutor considered that there were no conditions, that is, no newly disclosed circumstances within the meaning of Article 655 § 2 of the *Criminal Procedure Law* that would serve as a basis for reopening of the said criminal proceedings.

The prosecutor's refusal to reopen the criminal proceedings against the third persons has generated a fresh application before the Court (application No.44898/10) and is currently subject to the Grand Chamber proceedings.

## **Civil proceedings**

### Legal framework

Under the *Civil Procedure Law* provisions the reopening of civil proceedings at domestic level is, *inter alia*, possible on the basis of "newly disclosed facts and circumstances" (Article 478). "Newly disclosed facts and circumstances" are listed in Article 479 of the *Civil Procedure Law*. Following the 22 May 2008 amendments to Article 479 of the *Civil Procedure Law* that entered into force on 25 June 2008, a ruling by the European Court of Human Rights shall be considered to constitute "newly disclosed facts and circumstances" serving as a basis for reopening of civil proceedings (Article 479 § 6).

As a general rule, the reopening proceedings shall be initiated upon the application from the party to the civil proceedings (Article 478). The respective application has to be submitted to the court of a higher instance (e.g., to the regional court if the contested ruling has been adopted by the first instance court).

The law sets time limit for lodging a reopening request – the application must be submitted within three months following the moment when the newly disclosed facts and circumstances have been established (Article 478 § 2), as well as sets a prescription period of ten years from the entry into force of the contested ruling (Article 478 § 3).

The reopening request is examined by way of written procedure (Article 481). If the court establishes newly disclosed facts and circumstances, it quashes the contested judgment in full or in part, and forwards the case for review to the first instance court (Article 481 § 2). If the court dismisses the application, the applicant may submit an ancillary complaint against this decision (Article 481 §§ 3 and 4).

### Domestic practice

On 24 June 2014 the Court find a violation of procedural aspect of Article 8 of the Convention in the case of *A.K. v. Latvia* (application no. 33011/08). Following the Court's judgment, the applicant requested the Supreme Court to reopen the civil proceedings at the domestic level on the basis of Article 479 § 6 of the *Civil Procedure Law*. On 27 March 2015 the Supreme Court dismissed the applicant's request on the account that the applicant in her application had not properly reasoned as to why the Court's judgment in the particular case should be considered as a newly disclosed circumstance justifying the reopening of proceedings. The Supreme Court also noted that neither the domestic law provisions nor the Court's case-law set an obligation to reopen civil proceedings on each occasion whenever the Court finds a Convention violation. The Supreme Court considered that the applicant's grievances were properly addressed by the Court's judgment of 24 June 2014.

## **Administrative proceedings**

### Legal framework

According to the *Administrative Procedure Law* there are two possibilities for reopening of administrative proceedings following the Court's judgment: (1) within the institution which issued the administrative act and (2) before the court.

In accordance with Article 88 § 2 of the *Administrative Procedure Law* the institution upon its own initiative has an obligation to reopen the administrative proceedings if it is necessary for the implementation of a judgment of the European Court of Human Rights or any other international or supranational court. When re-assessing the case, the institution has to base its decision on the legal assessment of the facts of the case as provided by the Court.

The administrative court proceedings, following the entry into force of a judgment or decision rendered by an administrative court, may be reopened on the basis of "newly disclosed circumstances", which are listed in Article 353 of the *Administrative Procedure Law*. According to Article 353 § 6, a ruling by the European Court of Human Rights is a "newly disclosed circumstance" that serves as a basis for reopening of administrative court proceedings.

The reopening of proceedings may be initiated upon the application by a party to the administrative proceedings (Article 354 § 1). However, it is possible to reopen the administrative proceedings only concerning the rulings adopted by the first instance court and the appellate instance court. Thus, a ruling delivered by the Supreme Court is not subject to reopening proceedings.

According to Article 354 § 2 the application shall be submitted by a party to the administrative proceedings within three months following the day when the newly disclosed

circumstances have been established. The right to institute administrative proceedings on the basis of the Court's ruling is not time-barred (Article 354 § 3).

If the court establishes newly disclosed circumstances, it quashes the contested judgment in full or in part, and forwards the case for review to the first instance court or appellate instance court (Article 357 § 2). If the court fails to establish newly disclosed circumstances and dismisses the application, the applicant may submit an ancillary complaint against this decision (Article 357 § 3).

### Domestic practice

Following the Court's judgment of 9 October 2003 in the case *Sļivenko v. Latvia* (application no.48321/99), finding a violation of Article 8 of the Convention on the account of the applicants' expulsion from Latvia, the Department of Administrative Cases of the Supreme Court on 10 August 2004, upon the application submitted by the Office of Citizenship and Migration Affairs pursuant to Article 354 § 2 of the *Administrative Procedure Law*, decided to reopen the administrative proceedings in the applicant's administrative case. The Court's judgment of 9 October 2003 served as a newly disclosed circumstance.