

THE REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA
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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?*

The criminal proceedings could be reopened in two occurrences:

- (1) either during pending proceedings before the Court but only if the case has been communicated to the Government or;
- (2) after the judgment of the Court finding a violation (in some occurrences the criminal proceedings can be reopened after the Decision based on friendly settlement and unilateral declaration.

The successful reopening of the criminal proceedings depends on what stage they had been finished before the application where brought with the Court. There could be that during the examination of the case the domestic proceedings were being reopened already or there have been developments, which would not require reopening but the Court were not aware of them or the developments do not suffice in erasing victim status or finding a non-violation. In any instance, the issue of reopening of criminal proceedings could be decided only on case-by-case basis and upon the nature of a violation.

According to the law, a high-ranking prosecutor has a large discretion on reopening of the criminal proceedings if they were finished during the pre-trial stage (unsuccessful investigation or closing of the prosecution on other grounds). After the trial stage and final judgments of the courts, the reopening could be decided by the Supreme Court, either at the request of the applicant (only in case when there has been a judgment of the Court finding a violation) or at the requests for extraordinary revision by the prosecution (usually the General Prosecutor or his deputies).

As to successfulness of reopening, there have been many. Usually the prosecution and the Supreme judges review the criminal investigations in ill-treatment cases or criminal convictions based on serious procedural flaws that undermine the fairness of the merits of indictments. The relevant examples of reopening could be provided latter.

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

Procedural difficulties: requests for reopening from the applicants usually exceed the bounds of violation found by the Court (after the judgment) or the alleged violations raised and questions put before the Government (in communicated cases). This could overburden the Supreme Court and the prosecution with speculations on part of the applicants.

Overcome: The Agent's office proposed to be implied in all such cases at the national level, as a third party intervener, in order to cast light what heads of the reopening requests merit consideration.

Procedural difficulties: to overcome the procedural bars in reopening, such as **res judicata** of the domestic judgments.

Overcome: Introduction into the law and case-law of principle of direct application of the Convention and the direct effects of the Court's judgments in the national legal order. The Court's judgments are to be considered as "writ for execution" and as "an exceptional circumstance" requiring extraordinary revisions of judgments.

Procedural difficulty: Further, the most difficulty is to reopen investigations and cases where there have been found serious procedural shortcomings on account of failure to gather evidences and non-expeditious proceedings. In these instances, the reopening would not eventually contribute to erasing of consequences but can reinforce them.

Overcome: The Agent proposed to introduce the following provisions into procedural law – Examination on case-by-case basis whether there is a need to reopen the case and, if not, the well justified and motivated official refusal subjected to judicial control.

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

Yes, when the terms of friendly settlements and unilateral declarations include a clause for reopening, the criminal investigation authorities and the courts may disagree with it, because the applicant benefits from monetary compensation, which in their opinion may suffice. In such cases, in advance of concluding an agreement with the applicant or proposing a unilateral declaration, the Agent seeks assurances from the prosecution that they would agree with reopening. However, such assurances cannot be sought from the judiciary, which would undermine its independence and judicial unpredictability.

In any case, in criminal cases, which would require reopening the authorities' attitude towards a friendly settlement is quite reserved. They would rather prefer to have the case examined by the Court in contentious proceedings than to admit speculations of the applicants during friendly settlement negotiations in criminal cases. In all cases, the burden is usually upon the Agent to find a consensus between the criminal authorities and the grieved applicants.

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?

The mechanism of reopening of civil proceedings is quite similar to the above described, save some particularities.

There are two possibilities to reopen civil proceedings:

- (1) during the pending application, when it is clear that the case before the Court is repetitive or there is already well-established case-law on the matter;
- (2) after the judgment of the Court finding a violation.
In both instances, the Agent himself could seek such a reopening. The applicant could request reopening only after the Court's judgment. The case could be reopened by an extraordinary revision by the Supreme Court only.

There are no serious obstacles, apart from the fact that the reopened civil proceedings usually implies serious opposition from the third private parties, which did not participate in the Court's proceedings. If the civil case implies a dispute between the State authorities and the applicant, the reopening of the civil case does not raise such issues. If there are private parties involved, then the reopening becomes difficult to handle.

To overcome such difficulties, the issue of reopening is thoroughly discussed in advance with the applicant and the Agent and could include a negotiation with other private parties involved. If the applicant, however, seeks reopening the Agent can be asked for his opinion during the judicial proceedings before the Supreme court and to explain whether the case requires reopening and whether there is another possibility to handle the violation without revision of the case. It depends on the case.

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.*

The reopening has been introduced by the procedural laws (not by case-law). The translation of legal texts will be provided later if it will be so desired.