

## RUSSIAN FEDERATION / FEDERATION DE RUSSIE

21 May/mai 2015

### 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?*

In accordance with Article 413 (paragraph 4, subparagraph 2) of the Russian Federation Code of Criminal Procedure (*Grounds for Reopening Proceedings in Criminal Case in View of New or Newly Discovered Circumstances*), the new circumstances shall be: violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the course of examination of the criminal case by a court of the Russian Federation, ascertained by the European Court of Human Rights, pertaining to:

- a) application of a Federal statute inconsistent with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms;
- b) other violations of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.

According to Article 414 (paragraph 4, subparagraph 3) of the same Code, the day of the discovery of new or newly discovered circumstances shall be deemed: the day when the decision of the European Court of Human Rights on the presence of the violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms takes legal effect – in the instances referred to in Article 413 (paragraph 4, subparagraph 2) of this Code.

### Examples of successful reopening cases.

October 11, 2011, the Court issued a judgment in the case of “*Romanov v. Russia*”, which establishes the violation of para. 1, Art. 6 of the Convention in relation to failure of national courts to comply with the principle of public hearing (in camera hearing in the criminal case of the applicant).

Pursuant to the representation by the Chairman of the Supreme Court of the Russian Federation, by the ruling of the Presidium of the Supreme Court of 22 May 2013, the judgment in the case of the applicant was canceled because of new circumstances with the resumption of the proceedings. The new trial of the criminal case was conducted in a fair and public hearing.

July 18, 2013 the Court issued a judgment in the case of “*Nasakin v. Russia*”, which establishes the violation of Art. 3 of the Convention in connection with the abuse of the applicant on the part of police officers and the failure to conduct effective investigation of the facts; the violation of para 1, Art. 5 of the Convention – in connection with the illegal applicant’s detention; the violation of 1, Art. 6 of the Convention – in connection with the unfairness of the trial (at sentencing, the court relied on the testimony of the applicant obtained under duress).

Pursuant to the representation by the Chairman of the Supreme Court of the Russian Federation, by the ruling of the Presidium of the Supreme Court of 18 June 2014, the proceedings in the case were resumed because of new circumstances, as a result of which there were cancelled: the judgment against Nasakin (with the forwarding the criminal case for a new trial), judicial decisions on the extension of detention, as well as court decisions, by which ruling of the investigative body to refuse to open a criminal investigation into the ill-treatment of the applicant have been recognized as legal.

Similar approaches are ensured in all other cases, where the Court found violations requiring the cancellation of court decisions. In particular, after the reopening of cases in view of new circumstances in view of the violations found by the Court, about 200 judicial decisions in criminal cases, including about 60 judgments, 100 decisions on measure of restraint in the form of detention and the extension of its duration, 25 rulings on extradition of persons for criminal prosecution or execution of sentence were cancelled.

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

No practical or procedural difficulties have been encountered in practice.

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

There is no judicial practice relating to reopening of cases following friendly settlements or unilateral declarations.