

SERBIA / SERBIE
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I. LEGAL GROUNDS

General

Within the legal system of the Republic of Serbia, reopening of proceedings is an extraordinary legal remedy possible before the courts of general jurisdiction (civil and criminal courts) as well as before the courts of special jurisdiction (commercial, administrative, minor offences courts).

Civil Proceedings

Reopening of proceedings is prescribed by procedural law governing civil proceedings. Rules of civil proceedings are applied by civil departments of the courts of general jurisdiction and commercial courts, and by administrative courts to a certain extent. The law governing civil proceedings **explicitly prescribes** reopening of proceedings on the basis of the case-law of the European Court of Human Rights, as well as in respect of the decisions of the Constitutional Court concerning constitutional appeals, which are filed because of violations of human rights protected by the Constitution compatible with the rights contained in the Convention.

Namely, the Civil Procedure Code published in the Official Gazette RS, no.72/2011 of 28 September 2011 (Chapter 28 – Extraordinary Legal Remedies - 3. Repeated trial) prescribes as follows:

Article 426

A trial completed by an effective court decision may be repeated upon the request of a party:

11) if the party gets the opportunity to use the decision of the European Court of Human Rights that found violations of human rights, which could have affected the adoption of favourable decision.

12) if, in the proceedings following a constitutional appeal, the constitutional court has established violations or denial of human or minority rights and freedoms guaranteed by the Constitution in a litigious proceedings, and this could have influenced taking of a more favourable decision.

Criminal Proceedings

Reopening of proceedings is also prescribed by procedural law governing criminal proceedings (The Criminal Procedure Code, published in the Official Gazette RS, nos. 72/2011 and 101/2011 - 2. Extraordinary Legal Remedies -Reasons for Reopening of Criminal Proceedings). However, the provisions on reopening of proceedings do not prescribe the case-law of the European Court of Human Rights or the case-law of the Constitutional Court concerning constitutional appeals, as an explicit reason for reopening. Both case-laws could fall under the reasons for reopening of proceedings "... if new facts are presented or new evidence submitted ...", pursuant to Article 473 which prescribes that criminal proceedings concluded with a final judgment may be repeated only to the benefit of the defendant.

Administrative Disputes

Proceedings before the administrative courts are governed by the Law on Administrative Disputes (the Official Gazette of RS, no. 111/09 - applied since 30 December 2009). Within the meaning of Article 56 paragraph 1 item 7 of this Law, reopening of proceedings is an extraordinary legal remedy that may be undertaken if the finding of subsequently adopted decision of the European Court of Human Rights concerning the same issue may have any effect on lawfulness of finally ended court proceedings. Indeed, this option is explicitly prescribed.

Proceedings before minor offences courts

Proceedings before minor offences courts are governed by the Law on Minor Offences (the Official Gazette of RS, no. 65/13) applied since 1 March 2014) in Article 280 paragraph 1 items 5 and 6, which prescribes that minor offences proceedings finished by final decision may be reopened if:

5) the accused gains an opportunity to use a decision of the European Court of Human Rights establishing a violation of some human right, which may have impact on adoption of more favourable decision for the accused;

6) the Constitutional Court established, in proceedings on a constitutional appeal that there has been a violation or denial of some human or minority right and freedom guaranteed by the Constitution in misdemeanour proceedings, which might have impact on adoption of more favourable decision for the accused.

Proceedings before the Constitutional Court

Within the legal system of the Republic of Serbia, human rights enjoy constitutional protection. The decisions of the Constitutional Court concerning constitutional appeals because of violations of human rights are final and may not be subject to re-examination. Additionally, pursuant to Article 89 paragraph 2 of the Law on the Constitutional Court (the Official Gazette of RS, nos. 109/07, 99/11, 18/13 – the Constitutional Court, 108/13 – other law, 40/15 – other law) if this Court finds a violation of human right, it shall be authorized to quash an individual act causing the violation concerned at the same time, also including court decisions, while, according to Article 87 of the Law on the Constitutional Court, a decision of the Constitutional Court establishing a violation of right of some person also concerns to those who had not filed a constitutional appeal, if their legal situation is the same.

II. RELEVANT CASE-LAW

Civil proceedings

Example:

There are many examples of reopening of proceedings based on the case-law of the Constitutional Court according to Articles 89 in conjunction with Article 87 of the Law on the Constitutional Court (cited above), if the Constitutional Court quashed an individual act causing a violation of some human right resulting in reopening of proceedings in respect of a person for whom the Constitutional Court had adopted its decision, but also to reopening of proceedings resulting from identical legal situation of third parties that had not filed constitutional appeals (under a request by such persons for reopening of proceedings based on the case-law of the Constitutional Court).

Criminal proceedings

Example:

In the case *Stanimirović versus Serbia* (judgment no. 26088/06 of 18 October 2011, application of 22 May 2006) the Court found that the applicant did not have a fair trial within the meaning of Article 6/1 of the Convention, since the evidence on which his conviction was based were provided violating Article 3 of the Convention (see paragraphs 51-52 of the judgment).

Based on this judgment of the Court, the applicant made a request of 17 May 2012 for reopening of proceedings, which request was dismissed by the first instance court on two occasions, while the second instance court quashed the first instance decisions on two occasions and remitted them for a new trial. On the third occasion, the first instance court allowed reopening of proceedings based on the case-law of the Court. The reopened proceedings are pending.