

SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE

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

Under Section 394 §§ 1 and 4 of the Criminal Procedure Code, reopening of the proceedings, which were terminated by a final judgement or by a final criminal order shall only be granted if there are found the facts or evidence not known to the court previously, which could, by themselves or in conjunction with the facts and evidence previously known, justify a different decision on the guilt, or with respect to which the originally inflicted punishment would be clearly inadequate to the act's gravity or the perpetrator's situation, or if the inflicted punishment would clearly contradict the purpose of the punishment, or with respect to which abandonment of punishment or abandonment of imposition of a subsequent total sentence would be clearly inadequate to the act's gravity or to the perpetrator's situation, or which would clearly contradict the purpose of the punishment. A decision of the European Court of Human Rights according to which fundamental human rights or freedoms of an accused person were violated by a decision of a prosecutor or a court of the Slovak Republic or in the proceedings, which preceded such decision, also constitutes a fact not previously known under §§ 1- 3, provided that negative consequences of such decision cannot be redressed otherwise.

The proceedings were successfully reopened on the basis of the European Court of Human Rights judgment in the case *Klein v. Slovakia* of 31 October 2006 (no. 72208/01). The case concerned a violation of the applicant journalist's right to freedom of expression on account of his criminal conviction for defamation following the publication in March 1997 of an article on Archbishop Ján Sokol (violation of Article 10). The article criticised the Archbishop for advocating that a film, and the posters publishing it, should be withdrawn as they constituted a defamation of the symbol of the Christian religion, and questioned why decent members of the Catholic Church did not leave it. By judgment of 15 June 2000, the applicant was convicted of an offence under Article 198(1)(b) of the Criminal Code on the grounds that he had defamed the Archbishop and thereby offended members of the Roman Catholic Church. He was sentenced to a fine, to be converted into one month's imprisonment in the event of failure to pay. The judgment was upheld on appeal by the Košice Regional Court on 10 January 2009. The European Court of Human Rights found that the applicant's article criticised exclusively the person of the Archbishop, and had neither interfered with the right of believers to express and exercise their religion, nor denigrated their faith. In these circumstances the European Court of Human Rights observed that, irrespective of the nature of the penalty imposed, the applicant's conviction was in itself inappropriate. It held that the interference with his right to freedom of expression neither corresponded to a pressing social need, nor was proportionate to the legitimate aim pursued.

The judgment became final on 31 January 2007. On 30 January 2008 the Kosice I District Court, under Section 394 §§1 and 4 of the Code of Criminal Procedure, allowed the reopening of the criminal proceedings and quashed its judgment of 15 June 2000 and the judgment of the Kosice Regional Court of 10 January 2001. Consequently, the Kosice I District Court began new proceedings on the basis of the original charge, in which the applicant was acquitted on 19 September 2008.

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

The Slovak law do not provide for possibility of reopening of proceedings following friendly settlements or unilateral declarations.

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?

Under Section 228 § 1 (d) of the Civil Procedure Code, a party to the proceedings may challenge a final judgment by a petition seeking reopening of the proceedings if there exists a decision delivered by European Court of Human Rights, in which it found that a decision taken by national court, or the proceedings preceding such a decision, had violated the fundamental rights or freedoms of the party to the proceedings, whereby substantial consequences arising from such violation have not been duly remedied by awarding a just satisfaction.

Under Section 230 § 1, a petition for reopening of proceedings must be filed in the time limit of three months from the day when the person proposing the reopening learned about the reason of the reopening or from the day when he/she could apply it.

The proceedings were successfully reopened on the basis of the European Court of Human Rights judgment in the case *Paulík v. Slovakia* of 10 October 2006 (no. 10699/05). The case concerned a violation of the right to respect for private life of the applicant due to the impossibility, in 2004, of challenging his paternity which had been established by a court in 1970, notwithstanding the fact that according to DNA tests conducted in 2004 he was not the father of the child (violation of Article 8). It also concerned the difference in treatment between the applicant, who, due to the fact that his paternity had been established by a court, had no procedure by which he could challenge the declaration of his paternity, and others in a similar situation who (if paternity was only presumed by marriage or declaration) were able to access a procedure to challenge paternity (violation of Article 14, taken in conjunction with Article 8).

The judgment became final on 10 January 2007. The applicant, under Section 228 § 1 (d) of the Civil Procedure Code, filed a petition for reopening of the paternity proceedings with the Bratislava IV District Court, on 26 January 2007. On 21 August 2007 the Bratislava I District Court granted reopening of paternity proceedings. On 3 October 2007 the Bratislava I District Court pronounced decision in the reopened paternity proceedings. On 2 April 2008 the Nitra Register Office amended the record in the birth register, removing the reference to the applicant as the father. Subsequently, a new birth certificate of the child has been issued in which the applicant is not registered as the father and in the column “father” the word “unknown” is marked.

The proceedings were also successfully reopened on the basis of the European Court of Human Rights judgment in the case *Ringier Axel Springer Slovakia a. s. v. Slovakia* of 26 July 2011 (no. 41262/05). The case concerned a violation of the right to freedom of expression on account of the judgment of the Žilina District Court of 12 June 2003 and the judgment of the Žilina Regional Court of 3 February 2004 by which the applicant company – editor of the journal was obliged to apologise to the plaintiff and to pay him a non-pecuniary damage for publication of a series of articles (violation of Article 10).

The applicant company, under Section 228 § 1 (d) of the Civil Procedure Code, filed a petition for reopening of the civil proceedings with the Žilina District Court, on 4 November 2011. On 5 December 2012 the Žilina District Court granted reopening of proceedings. On 20 May 2013 the Žilina District Court pronounced decision in the reopened proceedings by which it changed the original judgment of 12 June 2003 and rejected the action.

- 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 of proceedings has not been introduced in Slovakia on the basis of the case law of domestic courts.

It is important to note in this respect that the Slovak legal order provides also for the possibility of **constitutional proceedings** being reopened where the European Court of Human Rights concludes in a judgment that a Constitutional Court's decision or proceedings prior to it were in breach of the fundamental human rights or freedoms of the party. (As of 1 January 2002 Slovakia introduced constitutional remedy enabling individuals to complain to the Constitutional Court on the violation of their rights guaranteed under the Convention in proceedings before the domestic authorities. If it finds a violation of a person's rights or freedoms, it may, among other actions, quash the final decision, measure or act of the authority concerned, order to take the necessary action and grant appropriate financial compensation to this person.)