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REOPENING OF CASES AT THE DOMESTIC LEVEL FOLLOWING JUDGMENTS OR DECISIONS OF THE EUROPEAN COURT: LEGAL GROUNDS AND PRACTICAL APPLICATION

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OFFICE OF THE REPRESENTATIVE ON
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NOTE TO READERS

The effective implementation of European human rights standards at the national level has been a core strategic priority for the Office of the Representative on International Legal Matters over the past five years. As part of this sustained effort, the Office, *inter alia*, has worked to equip national institutions with practical tools to align domestic legal practice with the standards of the European Convention on Human Rights.

This Guide addresses one of the most nuanced aspects of implementation - the reopening of domestic judicial proceedings following judgments or decisions of the European Court of Human Rights. It presents a comprehensive analysis of the legal framework, key principles, and comparative jurisprudence relevant to reopening, serving as a practical reference for national legal and judicial actors involved in the execution of European Court's judgments.

The Guide also complements a broader collection of methodological resources developed by the Office to support the domestic application of the European Convention. In particular, it is published alongside two thematically related handbooks that are already available:

- [Information Note on key case law of the European Court of Human Rights](#)
- [Guide on the Protection of Personal Data under the European Human Rights standards](#)

Together, these publications form part of a dedicated initiative undertaken in the context of the 75th Anniversary of the European Convention on Human Rights, reaffirming the Armenia's ongoing commitment to strengthening Convention-based justice and ensuring meaningful implementation at the national level.

***Head of the Office of the Representative on
International Legal Matters
LIPARIT DRMEYAN***

INTRODUCTION

The European Court of Human Rights¹ occasionally delivers such judgments establishing a violation or reiterates such decisions, the effective execution of which implies reopening of a domestic case or review of the proceedings in order to fully restore justice as well as the violated rights. Nevertheless, determining the necessity for reopening of cases following the judgment or decision of the European Court or reopening of cases in itself as an institute is not straightforward, and finding consensual approaches in the legal systems of member States therefore remains quite challenging. This is naturally attributed to the unique nature of this institute, possible complexities of its practical application, as well as features of approaches adopted within the European Convention system in respect thereof.

This Guide² aims to demonstrate all possible features of reopening of domestic judicial proceedings or its review following the judgment or decision of the European Court. In particular, based on the study of the jurisprudence of the European Court and the CoE Committee of Ministers³ this Guide demonstrates:

- legal grounds for reopening of cases;
- principles and criteria underlying the reopening of cases;
- circumstances justifying the necessity for reopening;
- circumstances hindering the reopening;

¹ Hereinafter referred to as the European Court or the Court or the Strasbourg Court

² Hereinafter referred to as the Guide

³ Hereinafter referred to as the Committee of Ministers or the Committee

- effective alternatives to reopening;
- features of reopening of criminal cases;
- peculiarities of reopening in case of administrative and civil cases, as well as friendly settlements and unilateral declarations.

The Guide provides detailed study of the jurisprudence of both the European Court and the Committee of Ministers to highlight all aspects (both positive and negative, as well as practically complex and easily applicable) of the institute of reopening and its practical application. Accordingly, all possible patterns concerning the institute in question and its practical application have been selected and grouped by combining and comparing the practices of these two organs of the Council of Europe. At the same time, the Guide highlights cases and situations that depart from the above-mentioned patterns with a view to providing more comprehensive and objective insight into the institute.

1. General provisions concerning the reopening of domestic judicial proceedings

1.1. Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms⁴

Article 46 § 1 of the European Convention provides that the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. The provision in question is interpreted to mean that any judgment rendered by the European Court against any state provides three types of obligations for that State:

1. Payment of just satisfaction awarded by the European Court, according to Article 41 of the European Convention (*just satisfaction*);
2. Ensuring that the violation has ceased and the consequences have been eliminated to the extent possible (*individual measures*);
3. Preventing violations similar to those found in the judgment (*general measures*).

In executing the judgment of the European Court the state undertakes individual and general measures that are primarily intended to put an end to the violation and provide compensation for the resulting damage to the fullest extent possible.

⁴Hereinafter referred to as the European Convention or the Convention

1.2. Recommendation R(2000)2⁵ of the Committee of Ministers

This [Recommendation](#)⁶ of the Committee of Ministers has been adopted to address the concerns between the member States with respect to effective execution of judgments of the European Court. The Committee of Ministers finds it obvious that even through the financial compensation under Article 41 of the European Convention may serve as a form of redress, it, nevertheless, may not be sufficient in the cases involving grave procedural breaches, particularly in criminal proceedings that are capable to undermine the justice delivery. Therefore, the Recommendation aims to achieve, as far as possible, *restitutio in integrum*, i.e. full restoration of the rights of the individual, by encouraging the member States to reopen the cases where otherwise achieving justice is impossible. In this respect, reopening of cases is perceived as a “last resort” to remedy the human rights violations.

Thus, according to the Recommendation, it must be ensured that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, especially where, according to the judgment of the European Court, the injured party **continues to suffer very serious negative consequences** because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening. Another simultaneous condition is that the judgement of the European Court must lead to the conclusion that (1) *the impugned domestic decision is on the merits contrary to the Convention*, or (2) *the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of*.

⁵ Hereinafter referred to as the Recommendation

⁶ URL: <https://rm.coe.int/16805e2f06>

1.3. Summary of key approaches underlying the Recommendation and its accompanying explanatory memorandum

The Recommendation invites the member States to introduce a legal system which would provide for the possibility of reopening of domestic proceedings or reopening of cases following the judgment of the European Court.

For criminal cases the Recommendation requires that the judicial proceedings be reopened particularly in the cases when the European Court has observed procedural violations of the Convention, such as “unfair trials”, “adducing false evidence” or “restriction of the lawyer’s participation”. Referring to **civil and administrative proceedings**, the Recommendation notes that in this case reopening of cases may be more complex given the principle of *res judicata*. In any case, the approach stipulated in the Recommendation is that in case of civil and administrative cases ensuring the principle of *restitutio in integrum* implies that the reopening of cases must be applicable in all cases where the financial redress may be regarded as full compensation for the damaged caused by the violation.

In general, the following principles may be selected for reopening of cases:

- ***restitutio in integrum***: the essence of this principle is to reinstate the situation of the injured party existing before the breach;
- **the absence of need to reopen all cases**: the Committee of Ministers does not require reopening of absolutely all cases. Especially in civil and administrative proceedings the states may undertake alternative measures, such as redress or other alternatives for redress of the violation.

- **discretion of the state:** by exercising supervision over the execution proceedings in the case, the Committee of Ministers provides the member States an opportunity to decide what measures to undertake for execution of the judgment of the European Court. The reopening is one of the measures but not the only one, and other forms of redress may also be applicable and effective which must take precedence over the reopening of cases.

1.4. *Restitutio in integrum* (restoration to the original state)

The principle of *restitutio in integrum* (in Latin — restoration to the original condition) is one of the most important concepts of the international law, particularly in the context of the human rights violations. The content of the principle is that the State must undertake all necessary measures to ensure that the injured party is put in the situation that they would have been in had the violation not occurred. It is linked to the concept of full redress with the aim to remedy the consequences of the unlawful act as far as possible.

Considering the principle in question in light of the judgments of the European Court establishing a violation it becomes apparent that the responding state has a legal obligation to put an end to the violation and provide redress for it. Although the margin of appreciation of the responding state is to select and undertake such measures that would be aimed at securing the obligation in question, it is, however, important that the measures undertaken ensure *restitutio in integrum* of the injured party as far as possible.

One of the effective methods to ensure *restitutio in integrum* in the execution of judgments of the European Court constitutes fresh

examination of cases at domestic level, as well as providing effective remedy to reopen cases and/or re-examine them through judicial procedure. Re-examination of cases or reopening of proceedings at domestic level is of particular importance when *restitutio in integrum* cannot be achieved through other means.

In this context it is interesting that the European Convention imposes no obligation on states to provide for a possibility in the legislation to re-examine cases or reopen proceedings, nevertheless, the re-examination of cases or reopening of proceedings is an important individual measure, and in certain cases it is the only one that may ensure that a person is put in the situation before the breach. In this respect, the European Court observes that the European Convention ensures no possibility for reopening of proceedings. Even though the European Court frequently awards financial reparations, *restitutio in integrum* is regarded as a non-pecuniary measure explicitly focused on elimination of legal and procedural consequences of the violation with an aim to provide the party with an opportunity to re-examine the case thereof, by ensuring the legal safeguards.

1.5. Absence of need to reopen all the cases establishing a violation

The study of the practice of the European Court and Committee of Ministers demonstrate that in the context of its supervisory powers over the execution of the judgment the Committee of Ministers seeks to ensure balance between the fulfilment of the requirements set forth in the judgment of the European Court and the fact that reopening of the proceedings is not necessarily the most effective and “the most convenient” measure. The examples provided below prove the foregoing.

1.5.1. *Pisano v. Italy, (Application N° 36732/97)*

Violation: The case concerns the procedural delays in the criminal proceedings that resulted in violation of the reasonable time established by Article 6 of the Convention.

The position of the European Court: The European Court found that reopening is not required as the applicant incurred damages due to delays in time. The European Court concluded that the financial reparation is sufficient to remedy the violation in the instant case.

The approach of the Committee of Ministers: The Committee is convinced that Italy provided financial reparation to the applicant and concluded that there was no need for reopening civil cases having regard to the fact that the reparation was sufficient to remedy the damage⁷.

1.5.2. *Brumarescu v. Romania, (Application N° 28342/95)*

Violation: The title of the applicant was, according to Article 1 of Protocol No 1, violated after the Romanian courts retrospectively annulled applicant's title to the property.

The position of the European Court: For this violation the Court demanded to the applicant to be paid.

The approach of the Committee of Ministers: The Committee guaranteed that Romania provided just satisfaction awarded by the Court. The Committee concluded that reopening of the case might infringe the legal certainty in property disputes and found just satisfaction sufficient to remedy the damage⁸.

⁷ See Final Resolution of the Committee of Ministers [Résolution CM/ResDH\(2011\)14](#).

⁸ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2007\)90](#).

1.5.3. *Sejdovic v. Italy, (Application N° 56581/00)*

Violation: The case concerns trial in absentia in criminal proceedings, where the applicant was convicted in absentia, in violation of Article 6 of the Convention.

The position of the European Convention: Although the European Court found that the criminal judgment violated the right to a fair trial, the Court, however, did not require the automatic reopening of the criminal proceedings. The European Court left the choice of remedy to the discretion of the State of Italy, considering the reopening of the case as an appropriate way of executing the judgment, and not as an obligation.

The approach of the Committee of Ministers: The Committee of Ministers monitored the effectiveness of the measures undertaken by the Italian authorities. The authorities decided to offer just satisfaction, and the Committee admitted that there was no necessity for reopening of the case relying on the fact that alternative measures made it possible to remedy the violation⁹.

1.6. *Discretion of the member States: main criteria for margin of appreciation in reopening of cases*

As it was stated above, the European convention system imposes no obligation on member States to necessarily reopen their domestic proceedings following the judgment of the European Court. On the contrary, it leaves some discretion to the member States in executing the judgment or the decision of the Court. The margin of appreciation

⁹ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2016\)121](#).

provides the state with an opportunity to decide on the best applicable measures that are most consistent with the convention standards their own legal traditions and specific circumstances of the case. In other words, the national authorities usually make more accurate assessment of local needs and conditions as they have deep knowledge of the local situation.

The European Convention in itself does not contain any details as to how to execute the judgment delivered by the Court or remedy the violation established. Nevertheless, the European Court reiterates in its jurisprudence that the violations established are in essence declarative, while acknowledging that states are free to select, in their domestic legal system, the measures that are suitable to fulfil the requirements of Article 46 of the Convention.

Nevertheless, the selection of the measures for execution of the judgment by the state is not unlimited for these two reasons:

1. they are supervised and assessed by the Committee of Ministers¹⁰;
2. The European Court does not entirely refrain from supervising the execution of judgments (e.g. in recent years the Court has argued that the measures undertaken must be consistent with the findings in the final part of its judgments, thus outlining the general and special measures to be undertaken by the states). Over the years the European Court argues more vigorously that the states must undertake such **measures that are the most effective** from the perspective of execution of the judgment¹¹.

¹⁰ According to Article 46§ 1 of the European Convention, *the final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.*

¹¹ In this respect, subsection 1.9 of the Guide provides a more detailed reference to the possible “intervention” of the European Court with the supervisory function of the Committee of Ministers and the limits of that “intervention”.

In general, several assessment criteria may be selected whereby the states must be guided in exercising their margin of appreciations. Among these criteria, the basic ones are the following:

- ❖ *Effectiveness of remedies:* Article 13 of the Convention requires that the state must provide effective remedy for the violation of the Convention. When assessing the necessity for reopening, account should be taken of whether the existing alternative measures are “capable” to sufficiently remedy the consequences of the damage caused.
- ❖ *Subsidiarity and national sovereignty:* The European Court acts in consideration of the principle of subsidiarity, meaning that domestic courts and authorities are in more beneficial position to address the human rights violations. The margin of appreciation implies respect of the European Court for the sovereignty of the member State, concurrently the obligation of the states to respect and observe the general criteria set forth by the Convention.
- ❖ *Pursuit of balance between the legal certainty and justice:* the reopening of cases may conflict with the principle of legal certainty which means that when the judicial act is final and enters into legal force, it must not be easily reversible. States must strike balance between this principle and the condition involving the need to remedy the human rights violations. In assessing the necessity for reopening the European Court takes into account this circumstance.
- ❖ *Systemic and individual violations:* the margin of appreciation is, as a rule, broader when it refers to systemic violations, where states are required to make legislative improvements or strategic amendments instead of reopening of individual cases. In general,

reopening may be considered the most appropriate remedy for individual violations.

1.7. Existence of reopening requirement in the judgment of the European Court and its “consequences”

As noted, the European Convention imposes no direct obligation on the member States to reopen the domestic proceedings of the case in question following the judgment of the European Court. As regards the European Court, it also, as a rule, leaves the issue of necessity for reopening and assessment of its effectiveness to the Committee of Ministers when exercising the supervisory power over the execution of the judgment. However, the study of the practice of the European Court demonstrates that from time to time the Court explicitly points out in its judgment that in the given circumstances the reopening may be the most effective measure for execution of the judgment. Whereas, notably the practice of the Committee of Ministers has evolved in such a way that a reference in the judgment of the European Court to the necessity for reopening in no way implies automatic reopening of the case. In any case the discretion of assessment of the necessity for reopening is left to the member State, subject to several criteria for assessment of the necessity for reopening. In fact, there is also the opposite practice when the European Court, in its judgment, makes no reference to the reopening, while the Committee of Ministers does not close the proceedings in the case until the reopening of the case at domestic level.

In general, it follows that:

1. the condition present in the judgment of the European Court regarding the necessity for reopening is, however, not binding **insofar as if the reopening is practically infeasible, and the member State**

provides to the Committee of Ministers sufficiently reasonable information thereon, the Committee of Ministers may close the proceedings of the case;

2. where the absence of a provision in the judgment of the European Court regarding the necessity for reopening the **reopening may be considered necessary and the most effective measure.**

1.7.1. Gaspari v. Slovenia, (Application N° 21055/03)

Case summary: The case concerns the violation of reasonable time-limits for the examination of the civil case. In particular, the applicant complained that the civil proceedings concerning the loan payment dispute lasted more than 10 years, despite several interim judicial acts and appeals.

Conclusion of the European Court: In the judgment establishing a violation the European Court has observed that it is not for the Court to speculate as to what the outcome of the proceedings would have been if they had been in conformity with the requirements of Article 6 of the European Convention. The European Court has noted that in this case the most appropriate form of redress in respect of the violation would be reopening of the case at domestic level.

The approach of the Committee of Ministers: The Committee of Ministers closed the proceedings of the case when, notwithstanding the instructions in the judgment of the European Court, the case was still not reopened at the domestic level. Additionally, the reason behind the failure to reopen the case was that the domestic legislation of Slovenia does not provide a reopening possibility for the civil procedure¹².

¹² See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2018\)401](#).

*1.7.2. Al-Khawaja and Tahery v. the United Kingdom [GC],
(Applications N^{os} 26766/05 and 22228/06)*

Case summary: In the present case the conviction of one of the applicants is based on untested evidence. In particular, no witness originally claimed to have seen the applicant at the scene. Later on, one of the witnesses made a statement to the police, but, according to the prosecution, was too fearful to attend the trial. The trial judge gave a leave for the statement of the witness to be read before the jury. As a result, the applicant was convicted on the bases of this evidence.

Conclusion of the European Court: The European Court has found a violation on this count, by reiterating once again that the accused must be provided an opportunity to cross-examine the persons who offered testimony against them.

The approach of the Committee of Ministers: The Committee of Ministers closed the proceedings of the present case, by satisfying itself that the Government provided just satisfaction to the applicant. At the same time, the Government stated that it saw no need for other individual measures. The applicant can file with the higher instance an application for review of their case¹³.

1.7.3. Yaremenko v. Ukraine (N^o2), (Application N^o 66338/09)

Case summary: In the present case the applicant was convicted for murder and theft; the conviction was mainly based on self-incriminatory statements made during the questioning at the police department; moreover, they were obtained in the absence of the lawyer.

¹³ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2012\)229](#).

Conclusion of the European Court: The European Court found that the evidence was obtained in violation of Article 6 of the European Convention, confirming that the fair trial guarantees were not complied with. The European Court pointed out in its judgment establishing a violation that in all cases where an individual has been convicted in proceedings which did not meet the Convention requirements [...], a retrial, reopening or review of the case [...] represents [...] an appropriate way of redressing the violation

The approach of the Committee of Ministers: The Committee of Ministers closed the proceedings of the present case. It is noteworthy that although there is a reopening requirement in the judgment of the European Court, the judgment in the present case has nevertheless not been reopened. The Committee of Ministers was satisfied with the compensation provided in respect of non-pecuniary damage, and costs and expenses. Having referred to the question of reopening, the Committee of Ministers satisfied itself by the information provided by the Government that the applicant submitted no reopening application¹⁴.

1.7.4. Guta Tudor Teodorescu v. Romani, (Application N° 33751/05)

Case summary: The present case concerns the failure of the public authorities to issue and validate in a timely manner the decisions granting him compensation for lost properties from provinces which were formerly part of Romania during the Second World War.

¹⁴ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2022\)34](#).

Action report provided by the respondent State: [Consolidated Action Plan on measures to be taken for implementation of the Court's judgments in the group of cases "Bochan v. Ukraine \(No. 2\)"](#)

Conclusion of the European Court: The European Court found that violation of the right protected by Article 1 of Protocol No 1 to the Convention has occurred due to Romania's failure to validate in a time manner the decisions granting him compensation [...], which caused the applicant financial loss, including in the absence of adjustment for inflation.

Reopening requirement: In the judgment establishing a violation the European Court observed that the respondent State had an obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. In its judgment the Court found that in the present case the most appropriate form of redress would be to reopen the proceedings.

The approach of the Committee of Ministers: The Committee of Ministers closed the proceedings of the present case. The Committee of Ministers satisfied itself with the information that the Romanian Civil Procedure Code allows for the reopening of the domestic proceedings based on the judgment of the European Court¹⁵. At the same the successor of the applicant requested that the judgment of the European Court be translated and published on the official media, which would allow to apply for reopening¹⁶.

¹⁵ See Final Resolution of the Committee of Ministers [Résolution CM/ResDH\(2017\)238](#).

¹⁶ See the action report provided by the respondent State at [1294 réunion \(septembre 2017\) \(DH\) - Bilan d'action révisé \(14/06/2017\) - Communication de la Roumanie concernant l'affaire Guța Tudor Teodorescu contre Roumanie \(Requête n° 33751/05\) \[French only\] \[DH-DD\(2017\)677\]](#),

[1280 réunion \(7-9 mars 2017\) \(DH\) - Bilan d'action \(16/12/2016\) - Communication de la Roumanie concernant l'affaire Guța Tudor Teodorescu contre Roumanie \(Requête n° 33751/05\) \[French only\] \[DH-DD\(2016\)1438\]](#)

1.8. Absence of need to await the outcome of the reopened proceedings

In all cases where the violation has been fully redressed before the closure of the reopened proceedings, the Committee of Ministers may close the proceedings of the case without awaiting the closure of the reopened domestic proceedings.

1.8.1. *Mitrov v. “the former Yugoslav Republic of Macedonia”,* (Application N° 45959/09)

Case summary: An investigation was opened against the applicant for a fatal traffic accident. The President of the court of first instance examining the case was the parent of the deceased. The applicant requested that the case be remitted and heard either before a different panel of the trial court or before a different court due to concerns regarding the court’s impartiality. However, the request was rejected on the ground that the judges gave statements that the fact that their colleague’s daughter had died in the accident would not influence their adjudication. As a result, the applicant was convicted and sentenced to four years and six months’ imprisonment, and the appellate court upheld the judgment. The applicant argued that a violation of Article 6 § 1 of the Convention occurred.

The approach of the Committee of Ministers: The Committee of Ministers closed the proceedings in the present case after the case proceedings were reopened, and the case was heard before an impartial tribunal¹⁷. Thus, the Committee of Ministers did not find it necessary to

¹⁷ See Final Resolution of the Committee of Ministers [Résolution CM/ResDH\(2017\)146](#).

wait for the closure of the reopened proceedings given that the reopening already redressed the violation established in the judgment.

1.8.2. Naltakyan and others v. Armenia, (Application N° 47448/12)

Case summary: The case concerns expropriation of the plots of agricultural land owned by the applicants for the construction of a mineral water plant.

The approach of the Committee of Ministers: In the context of individual measures in the execution proceedings of the present case the Committee of Ministers observed that the respondent State paid the pecuniary damage awarded by the European Court within the deadline. The case has been reopened at domestic level and is pending before the Court of Cassation. Considering that the purpose of the reopened proceedings is the request for compensation and that the compensation awarded by the European Court has already been paid to the applicants, therefore, for the purposes of closure of the case there is no need to await for further developments of the domestic processes. Thus, in its Final Resolution the Committee of Ministers closed the execution supervision proceedings of this case¹⁸.

¹⁸ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2024\)85](#).

1.9. Cases of application by the member States of the margin of appreciation conferred on them, based on “case by case” approach

The study of many cases of the European Court demonstrates that the Court links the exercise of the margin of appreciation of the state with the assessment of necessity for reopening of the case in question, enabling the States to compare the measures they have undertaken with the circumstances of the case. In certain cases reopening may be the one measure that fully remedies the violation found. In other cases there may be a need for more extensive legal and legislative amendments.

The jurisprudence of the European Court and the Committee of Ministers demonstrates that the margin of appreciation is not a one-time approach, but rather a tool for balancing the specific circumstances of each case, justice and legal certainty. The cases that particularly highlight the aforementioned are provided below:

1.9.1. *Ferreira v. Portugal (no. 2), (Application N° 19867/12)*

Case summary: In the present case the applicant contested before the Grand Chamber of the Court that domestic courts refused to reopen the case following the judgment of 5 July 2011 establishing that a violation of Article 6 of the European Convention had occurred.

Exercise of the margin of appreciation and its outcome: Assessing the necessity for reopening of cases falls within the exclusive discretion of the member States; this idea underlies the judgment of the Grand Chamber of the European Court. In particular, the Court reiterated that the Convention does not guarantee a right to have a terminated case reopened or re-examined, while referring to the the lack of a uniform

approach among the member States as to this question. The Court emphasised that in the judgment of 5 July 2011 the Chamber stated that a retrial or the reopening of the case [...] represents in principle an appropriate way of redressing the violation. A retrial or the reopening of the proceedings was thus described **as an appropriate solution, but not a necessary or exclusive one**. Therefore, the Chamber of the Court refrained from giving binding indications on how to execute the judgment. The Court cannot conclude that the Supreme Court's reading of the Court's 2011 judgment was [...] the result of a manifest factual or legal error [...] resulting in a "denial of justice". Having regard to the principle of subsidiarity and to the wording of the Court's 2011 judgment, the Court considers that the Supreme Court's refusal to reopen the proceedings [...] did not distort the findings of the Court's judgment and the judgment as a whole, and that that judgment is based on a concept known as "margin of manoeuvre", in other words — **margin of appreciation**.

1.9.2. *Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland (Nº 2),*
(Application Nº 32772/02)

Case summary: In the present case a Swiss association was denied permission to broadcast a television commercial criticising the battery farming. The European Court found a violation of Article 10 of the Convention. Switzerland refused to reopen the case, instead proposing redress through other means.

Exercise of the margin of appreciation: The Swiss Government submitted that other means of redress, such as compensation may be entirely sufficient to redress the violation. However, the European Court has emphasised that in the present case the reopening of the

case constitutes the only means of full restoration of the right of the association to freedom of expression, as the previous violation was prior restraints on broadcasting on air.

Outcome: the European Court held that Switzerland exceeded its discretionary right by failing to reopen the case, as in these circumstances reopening is the only measure fully “capable” to remedy the violation of Article 10. Accordingly, the Court held that in certain circumstances reopening might be the only appropriate measure.

1.9.3. *Salduz v. Turkey, (Application N° 336391/02)*

Case summary: The applicant was convicted relying on the self-incriminatory statement made without a legal assistance, which, according to the European Court, was a violation of Article 6 of the Convention.

Necessity for reopening: In the present case reopening of the case is the best measure to remedy the procedural violation, as the evidence underlying the conviction has been acquired in violation of the right of the appli^{cant}.

Execution of the judgment: Having regard to the judgment Turkey changed its legislation concerning access to lawyer during police custody, and the case was reopened to fulfil the requirements of fair trial¹⁹.

1.9.4. *Öcalan v. Turkey, [GC], (Application N° 46221/99)*

Case summary: In the present case violation of Article 6, *inter alia*, also occurred, as for a long time he was not granted access to a lawyer in the criminal proceedings, and the examination was conducted without

¹⁹ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2018\)219](#).

the applicant and his lawyer having an opportunity to study the criminal case files.

Necessity for reopening: The Grand Chamber of the Court points out in its judgment that if an individual has convicted by a court which it does not meet the Convention requirements of independence and impartiality, a retrial or a reopening of the case, if requested, represents in principle an appropriate way of redressing the violation. However, the specific remedial measures, if any, required of a respondent State in order to discharge its obligations under Article 46 had to depend on the particular circumstances of the individual case and be determined in the light of the terms of the Court's judgment in that case, and with due regard to the [...] case-law of the Court

Execution of the judgment: The Committee of Ministers closed the proceedings of this judgment where no re-examination of the case was conducted at domestic level. The Committee of Ministers satisfied itself that the case was reopened, as a result of which the domestic court considered the facts and case files submitted and concluded that there was no need to conduct additional examination or further hearings²⁰.

1.10. European Court–Committee of Minister “dialogue” in the context of reopening of domestic proceedings

The study of the relevant case-law of the European Court with respect to reopening of the domestic proceedings makes it possible to stress that the supervision of execution of the judgment establishing a violation may also go beyond the scope of functions of the Committee of Ministers. Thus, even the cases **closed by the Committee of Ministers may, in**

²⁰ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2007\)1](#).

certain cases, come back under the European Court's scrutiny. It is noteworthy that in general, the European Court does give assessments to the “quality” of the supervisory function performed by the Committee of Ministers, however, if it arrives at the conclusion that the respondent state, nevertheless, failed to take effective measures for full remedy of the violation, may intervene “on its own” by establishing a new violation. It is important to note that the European Court may examine a case both when the execution proceedings of the original judgment were closed by the Committee of Minister, and when the execution proceedings are pending.

Key cases that particularly illustrate the Committee of Ministers-European Court “dialogue” are provided below.

1.10.1. *Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland (Nº 2)*,
(Application Nº 32772/02)²¹

Case summary: In 2001 the European Court delivered a judgment establishing a violation of Article 10 of the Convention in favour of the applicant (animal-protection association), according to which the applicant was denied permission to broadcast a commercial. Based on this judgment of the European Court the applicant applied to the domestic court to lift the prohibition on broadcasting. Accordingly, the domestic court dismissed the application for review, arguing that the applicant had not provided sufficient substantiation for its request and had not sufficiently shown that it still had an interest in broadcasting an eight-year-old commercial. The applicant further lodged a new application with

²¹ This case was considered also in subsection 1.7 of the Guide, emphasising the scope of margin of appreciation that the states have in reopening.

the European Court. Moreover, the Committee of Ministers closed the proceedings of the judgment of 2001, having regard to the fact that just satisfaction was provided to the applicant²².

The position of the European Court: In the judgment the European Court observed that the supervisory power of the Committee of Ministers in execution of the judgment does not prevent new violation when the respondent State submits different grounds for non-execution of the original judgment. In the present case the Swiss court refused to reopen the proceedings on the ground that because of the time that had elapsed, the applicant had lost all interest in having the commercial broadcast. The Committee of Ministers was unaware of this reasoning when it was closing the execution proceedings of the case. Meanwhile, this resulted in a fresh violation of Article 10 of the Convention.

In the present case the European Court found that Switzerland had a positive obligation to take the necessary measures to allow the television commercial to be broadcast. And the refusal by the Swiss judicial authorities to reopen the case was overly formalistic and did not consider that the applicant may and must assess whether its commercial is outdated. Accordingly, the European Court reiterated that a violation of Article 10 had occurred.

Outcome: This judgment of the European Court is somehow related also to the supervisory powers of the Committee of Ministers. The Court made it clear that closure of the execution proceedings of the judgment by the Committee did not prevent it from considering new legal aspects of the previous violation.

²² See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2024\)16](#).

1.10.2. *V.D v. Croatia (Nº 2), (Application Nº 19421/15)*

Case summary: The applicant, who suffered from schizophrenia, was arrested in his parents' flat. In its judgment of 2011 (Application Nº [15526/10](#)) the European Court held that there had been a violation of both substantive and procedural limbs of Article 3 of the Convention. In execution of the judgment the domestic courts reopened the proceedings of the case which concerned police and prosecution officers suspected of ill-treatment of the applicant. The applicant submitted that the fresh investigation had fallen short of the requirements of Article 3 of the Convention, and the Committee of Ministers had not yet completed the fulfilment of its supervision function.

The position of the European Court: The Court first attempted to ascertain that it had jurisdiction to consider the applicant's complaint without encroaching on the prerogatives of the respondent State and the Committee of Ministers under Article 46 of the Convention in the execution of the Court's judgment. The fresh investigation gave rise to a number of further procedural measures which led to the collection of further evidence and the establishment of new facts concerning the applicant's case. The applicant's complaints concern the effectiveness of the fresh investigation and the decision of the State Attorney's Office to terminate that investigation. In these circumstances, the Court considers that the alleged lack of effectiveness of the fresh investigation, and more specifically the errors which the applicant claimed had vitiated the decision of the State Attorney's Office to terminate the proceedings, constitute new information in relation to the Court's previous judgment. As these issues could not have been decided by the previous judgment [...], they may be dealt with by the Court in the present case. And the fact that a

supervision procedure in respect of the execution of the initial judgment is still pending before the Committee of Ministers does not prevent the Court from considering a new application in so far as it includes new aspects which were not determined in the initial judgment.

Outcome: The primary importance of this judgment of the European Court constitutes the fact that the Court held that supervision of the execution of the judgment still pending before the Committee of Ministers does not restrict its jurisdiction to consider new aspects or developments of the case that have not been determined in the previous judgment.

2. General grounds justifying the necessity and lack of necessity for reopening of domestic judicial proceedings, circumstances hindering the reopening and its alternatives

2.1. General grounds justifying the necessity for reopening

Brief review of the practice of the European Court and the Committee of Ministers renders it possible to summarise the cases where the reopening of the domestic proceedings of the case, has, nevertheless, been encouraged and considered as the only possible measure to remedy the violation. In particular:

- ❖ *persistent severe damage that financial compensation may not remedy*: in certain cases the violation causes a severe damage that cannot be remedied only by providing just satisfaction (financial reparation). For example, in the event of unlawful conviction reopening is necessary to ascertain that a person has been released;
- ❖ *procedural violations that cast a doubt on the lawfulness of the judicial act*: the necessity for reopening may also arise where there are such procedural violations in the proceedings that undermine the lawfulness and fairness of the proceedings in question. For example:
 - **improper use of evidence**: if the evidence has been falsified, concealed or admitted improperly, this “jeopardises” the justice, and therefore, review of the proceedings is required;
 - **failure to ensure fair trial**: Violations of Article 6 of the Convention constitute a general ground for reopening. For example, restriction on the right of access to a lawyer, non-

participation of the lawyer in certain stages of the examination, violation of the right to cross-examination;

- **absence of a lawyer:** if during the trial the accused is not represented by a lawyer, the fairness of the trial is, in principle, “jeopardised”, and, therefore, reopening of the proceedings is required to ensure the rights of the accused;
- ❖ *violations established by the European Court that question the fairness and irreversibility of the judicial act:* reopening, as a rule, is required when the European Court, in its judgment, reveals significant legal or factual errors that cast a doubt on the fairness and irreversibility of the judicial act. In particular:
 - **misapplication of the national or international law:** in the event the European Court reveals that domestic courts have misinterpreted or misapplied the applicable law, the reopening may be required to rectify the legal grounds of the judicial act;
 - **partiality:** where the Court finds that the trial court lacked independence and impartiality, the lawfulness of the judicial act delivered by that court may be called into question, which may give rise to a necessity for reopening of the proceedings;
 - **misinterpretation of crucial facts:** where the European Court determines that domestic courts have misinterpreted crucial evidence or factual circumstances, reopening of the proceedings may ensure that accurate evidence and facts are taken into consideration, or they are interpreted accurately.

2.2. Cases where reopening is not “encouraged”

The study of the jurisprudence of the European Convention system demonstrates that having regard to certain factors reopening or re-

examination does not constitute a “desirable” measure for remedy of the violation. These factors may include:

- **practical impossibility:** for example, restoration of the right of ownership through reopening may be infeasible due to certain changes, lapse of a long period of time and other circumstance;
- **third-party rights:** where the reopening results in violation of third-party rights, particularly in ownership disputes, compensation, as a rule, constitutes the best measure by ensuring the legal stability;
- **political sensitivity:** cases involving political conflicts, national security or sensitive territorial questions diminish the necessity for reopening and practical impossibility as in these cases reopening is less likely to produce any results given the broader scope of the national and international relations;
- **widespread violations or systemic issues:** in situations involving systemic issues that are relevant to many people it is necessary that provision of reparation is accompanied by legislative or political changes. This approach is more acceptable than merely reopening an individual case.

2.2.1. Assanidze v. Georgia, (Application N° 71503/01)

Case summary: The applicant was unlawfully detained by the Georgian authorities, despite the applicant’s previous acquittal. The applicant contested his continued detention as a violation of Article 5.

The position of the European Court: The European Court found a violation of Article 5, but did not require reopening of the case. Instead, the Court awarded just satisfaction.

Reason for the lack of necessity for reopening: The Committee of Ministers closed the case, having regard to the fact that applicant was released on the day following the delivery of the Court's judgment, and the applicant was paid just satisfaction²³.

2.2.2. Papamichalopoulos and Others v. Greece, (Application N° 14556/89)

Case summary: The applicants were deprived of their lands by the Navy, seeking to have it restored.

The position of the European Court: The European Court found a violation of Article 1 of Protocol No 1, awarding the applicant financial compensation. At the same time, the Court noted that quite a long period of time had elapsed for return of the land of the applicants, which gave rise to practical difficulties.

Reason for the lack of necessity for reopening: The Committee of Ministers closed the case²⁴. There is no necessity for reopening in the present case because returning of the land is practically impossible (at that time it was already in use), while jeopardising the interests of the third party.

2.2.3. Loizidou v. Turkey, (Application N° 15318/89)

Case summary: Greek Cypriot applicant lost ownership of her property in the Northern Cyprus after the Turkish occupation.

The position of the European Court: The European Court found a

²³ See Final Resolution of the Committee of Ministers [Resolution ResDH\(2006\)53](#).

²⁴ See Final Resolution of the Committee of Ministers [RESOLUTION DH \(98\) 309](#).

violation of Article 1 of Protocol No 1, however, reopening of the case of restoration of the property rights of the applicant was deemed practically infeasible due to political situation in the Northern Cyprus. The Court awarded just satisfaction.

Reason for the lack of necessity for reopening: The Committee of Ministers closed the case²⁵. In the present case the lack of necessity for reopening is subject to political conflict and territorial disputes, which renders it impossible to restore the property rights. Therefore, just satisfaction was considered as the most feasible manner of execution of the judgment.

2.2.4. *Amuur v. France, (Application N° 19776/92)*

Case summary: Before expulsion the Somali refugees, i.e. the applicants, were held in the French airport's transit zone for 20 days.

Position of the European Court: The European Court found that prolonged deprivation of applicant of liberty of the applicants in the transit zone led to violation of Article 5 of the Convention.

Reason for the lack of necessity for reopening: The Committee of Ministers closed the case²⁶, having regard to the fact that in the present case the reopening of the case was infeasible because of the time that had elapsed, and the financial reparation was sufficient for redress of the violations.

²⁵ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2022\)255](#).

²⁶ See Final Resolution of the Committee of Ministers [Resolution DH \(98\) 307](#).

2.3. Circumstances hindering the reopening

It should be noted that reopening of cases leads to restoration of the rights and “wellbeing”. This is probably taken into account when the European Court and the Committee of Ministers do not encourage the automatic reopening of all cases. On the contrary, reopening of cases and re-examination of proceedings are considered when other available tools are not capable of restoring the violated right. Based on the study of the jurisprudence of both the European Court and the Committee of Ministers certain circumstances may be selected that, so to say, “prevent” reopening of cases and re-examination of the proceedings and may not be considered an appropriate measure for restoration of the rights.

2.3.1. Legal certainty and *res judicata*

The principle of legal certainty is closely linked to the principle of *res judicata* which ensures that final judicial acts are not easily reversible after they have acquired binding force. Reopening of the case may undermine this principle, particularly in the context of civil law relations, when reopening should not interfere with the third-party rights and the “authority” of the final judgment²⁷.

2.3.1.1. *Tregubenko v. Ukraine, (Application №61333/00)*

Case summary: A final judicial act was delivered in favour of the applicant which was quashed at domestic level following reopening of the case was

²⁷ It should be noted that in cases provided in subsections 2.3.1.1-2.3.2.2 of this section of the Guide reopening constitutes the exclusive domestic reviews based on new or newly disclosed circumstances and not the review based on the judgment or decision of the European Court.

based on the application of the prosecutor. The final judicial act was quashed.

The position of the European Court: The European Court found that quashing of the final judicial act constituted violation of Article 6 of the Convention. In its judgment the Court outlined the importance of legal certainty and *res judicata*, stating that the exceptional review must not be used to circumvent the finality of judgments of domestic courts.

Significance of the judgment: This judgment has once again produced the statement that final judicial acts must be respected and should not be easily quashed, by ensuring the rights of the parties.

2.3.1.2. *Sakhvadze v. Russia, (Application № 15492/09)*

Case summary: A final judicial act was delivered in favour of the applicant in the civil proceedings, whereas under domestic review mechanisms the case was reopened, and the judicial act was quashed.

The position of the European Court: The European Court found that Russia violated Article 6 of the Convention by reopening the proceedings of the final judicial act. The European Court reiterated that in Russian the review mechanisms were subject to improvement insofar as they violated the principle of legal certainty due to lack of clear and strict restrictions.

Significance of the judgment: This judgment once again outlines that states should limit the circumstances, upon which judicial legal acts are subjected to review, by ensuring the stability of the legal system.

2.3.2. *Non reformatio in peius* (prohibition on deterioration the applicant's situation)

In criminal cases *non reformatio in peius* prevents that the reopening of the case does not result in deterioration of the applicant's situation. Reopening of cases must aim to rectify procedural errors and violations of the human rights, rather than creating worse conditions for the applicant.

2.3.2.1. *Guerra v. Italy, (Application N° 116/1996/735/932)*

Case summary: Following conviction the applicant lodged an application with the European Court, arguing that reopening of the case thereof in Italy led to worse consequences. The reopening of the case resulted in increase of the applicant's initial sentence.

The position of the European Court: The European Court found that Italy violated *non reformatio in peius* by imposing a heavier penalty following reopening of the case. The Court concluded that reopening must pursue an aim to remedy the procedural errors and irregularities, and increase of the applicant's sentence explicitly contradicts Article 6 of the Convention.

Significance of the Judgment: The present judgment highlighted and reaffirmed the idea that reopening of criminal cases must not lead to worsening of the applicant's situation.

2.3.2.2. *Lorefice v. Italy, (Application N° 63446/13)*

Case summary: The case of the applicant was reopened following the judgment of the European Court establishing a violation. However, as

a result of reopening of the case the Italian courts imposed a heavier penalty than before.

The position of the European Court: The European Court found that reopening of the applicant's case led to violation of Article 6 of the Convention in so far as the situation of the applicant deteriorated. The Court reiterated that reopening of cases must not aim at imposing a heavier penalty.

Significance of the judgment: The present judgment once again reaffirmed the importance of *non reformatio in peius*.

2.4. Alternatives to reopening

In all cases where reopening is practically infeasible or inexpedient, the execution of the judgment may be ensured through alternative means. These methods and their relevant case-law examples are provided below.

2.4.1. *Financial reparation*

In cases where reopening is infeasible, financial reparation may be considered an effective alternative. This is especially practicable for civil cases where reopening may jeopardise the interests of bona fide third parties or compromise the legal certainty. For example, in the judgment in the case of [*Viasu v. Romania*](#) the European Court found a violation of the property right of the applicant, whereas reopening may damage the property right of the third party. Therefore, instead of reopening, provision of financial reparation as redress for damage is considered acceptable, by maintaining the legal stability.

Although, according to the general approach, procedural violation of Article 6 of the Convention makes reopening a preferable measure, however, specific circumstances may render financial reparation a more appropriate measure. For example, in the judgment in the case of [*Kingsley v. The United Kingdom*](#) the Court seems to have found procedural violations of Article 6 of the Convention, however from the perspective of execution of the judgment the Court satisfied itself with providing financial reparation, having regard to the fact that in the present case reopening would have led to legal complexities, with the final outcome hardly undergoing any changes. And the Committee of Ministers further closed the case²⁸.

2.4.2. Pardon or amnesty in criminal cases

In criminal cases pardon or amnesty may also constitute alternatives to reopening, when practical challenges arise, such as lapse of time, loss of evidence or political complexities. A striking example of the aforementioned is the judgment in the case of [*Findlay v. The United Kingdom*](#): in the judgment in this case conviction of the applicant by the court martial was held to be a violation of Article 6 of the Convention. Further, the United Kingdom granted pardon to the applicant, which, as an individual measures, satisfied the Committee of Ministers to close the case²⁹.

²⁸ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2010\)214](#):

²⁹ See Final Resolution of the Committee of Ministers [Resolution DH \(98\) 11](#).

2.4.3. *Other alternative measures*

- **Restoration of the right:** in cases of erroneous conviction or violation of political rights of the person, the restoration of the right is regarded as the most appropriate measure. For example, the conviction in the case of *Scoppola v. Italy (No. 2)* violated the applicant's right to vote. In the present case an appropriate measure constituted restoration of the applicant's right to vote or other political rights with no need to reopen the case³⁰.
- **Public apology and recognition:** A formal public apology or acknowledgement of error may be an effective and symbolic form of reparation. For example, in execution of the case of *Dink v. Turkey*, Turkey publicly apologised to the family of the applicant, acknowledging the failure of the State to protect his life. Although the Committee of Minister still supervises the execution proceedings of the case, however, the Committee considered the apology, together with the monetary reparation, discharge by the State of its Convention obligations³¹.
- **Legislative and administrative measures:** At times, particularly in the case of systemic violations, legislative amendments may be regarded as effective and far-reaching measures to remedy the damage caused. For example, in the judgment in the case of *D.H. and Others v. Czech Republic* the Court found a systemic issue constituting a discriminatory treatment of Roma. They had to attend special schools for children with mental disabilities. The Committee of Ministers is still supervising the proceedings of the case. The Committee of

³⁰ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2011\)66](#).

³¹ URL: <https://hudoc.exec.coe.int/?i=004-37184>

Ministers, however, noted in relation to individual measures that in the present case there was no necessity for reopening as all the applicants were no longer of school age. Therefore, reopening of an individual case would be entirely ineffective. In executing the case the Czech Republic introduced reforms to the educational system to prevent further discriminatory treatment³².

³² URL: <https://hudoc.exec.coe.int/?i=004-31>

3. Peculiarities of reopening of criminal cases according to the Convention Articles

3.1. Article 2 of the Convention (right to life)

The European Court attaches major importance to re-examination of cases at domestic level in case of procedural violations provided for by Article 2 of the Convention, by defining continuing obligations for effective examination of similar cases. The study of the practice shows that reopenings under Article 2 of the Convention areas of particular importance when the state fails to conduct proper examination which leads to unfair investigation in general. Within the scope of the Article, reopening is particularly important when we deal with the actions of the law enforcement authorities and the military.

Nachova and Others v. Bulgaria, (Applications N°s 43577/98 and 43579/98)

The case concerns shooting and killing of two men of Roma origin by Bulgarian military police. The European Court found a violation of Article 2 of the Convention, including due to failure to conduct effective investigation. Following the judgment of the European Court the proceedings of the case were reopened which satisfied the Committee of Ministers to close the execution supervision proceedings of the case³³.

³³ See Final Resolution of the Committee of Ministers *Résolution CM/ResDH(2017)97*.

3.2. Article 3 of the Convention (Prohibition of torture)

Violations of Article 3 of the Convention during criminal proceedings may lead to reopening of the domestic proceedings.

A.A. v. Switzerland, (Application N° 58802/12)

The case concerns possible expulsion of an Afghan national from Switzerland. The applicant argued that if extradited to Afghanistan he would be subjected to persecution, condemnation and ill-treatment due to political activities thereof and conversion from Islam. The European Court found a violation of Article 3 of the Convention. Following the judgment the domestic court reopened the case and delivered a judgment in favour of the applicant, as a result of which the applicant was recognised a refugee and issued a temporary permit of residence in Switzerland³⁴, and consequently the execution supervision proceedings of the case were closed.

Virabyan v. Armenia, (Application N° 40094/05)

In the present case, among other Articles of the Convention, the European Court found also a violation of Article 3, as well as procedural and substantive limb of the Convention. In particular, the Stat failed to provide a plausible explanation of how those injuries were caused to the applicant at the police station. The preliminary investigation that lacked thoroughness established that the injuries were the result of torture by the authorities. As regards the procedural limb, the preliminary investigation, as a matter of fact, lacked detail and objectivity and independence,

³⁴ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2021\)21](#).

it relied on the statements of the police officers and not adequate medical reports, while disregarding consistent and detailed descriptions of the applicants.

Advisory opinion: On 27 January 2021 the Court of Cassation applied to the European Court for an advisory opinion on the compatibility of statutes of limitations for criminal liability for torture or equivalent crimes with Article 7 of the European Convention. The European Court published it [advisory opinion](#) on 26 April 2022.

Then, on 22 December 2023, the Court of Cassation partially satisfied the Prosecutor General's appeal against the judicial act of the Court of Appeal (4 July 2019) finding two police officers guilty of exceeding their powers accompanied by violence. As a result, the Court of Cassation decided to change the wording of the First Instance Court from "(...) to release [them] from criminal liability based on the expiration of the statute of limitations" to "without imposing a penalty".

The approach of the Committee of Ministers: Having highlighted the importance of wide range of measures taken by the respondent State in combating ill-treatment and ineffective investigation, as well as current developments in the present case, the Committee of Ministers closed the execution supervision proceedings of the case³⁵.

3.3. Article 5 of the Convention (Right to liberty and security)

In order to justify the necessity for reopening of the case under Article 5 of the European Convention it is important that the person in custody remains in custody at that moment, otherwise reopening serves no

³⁵ See Final Resolution of the Committee of Ministers [Resolution CM/Del/Dec\(2024\)1514/H46-5](#).

particular purpose; reopening must serve as a tool for obtaining monetary reparation at domestic level. In this context, if a person in custody — even if the detention thereof was unlawful or unjustified or excessively long — has already been released, reopening of the case may not constitute an appropriate measure.

Mitrović v. Serbia, (Application N° 52142/12)

The case concerns unlawful detention. As part of individual measures the applicant was pardoned, after which the applicant died. However, the applicant's heirs requested the reopening of the civil case for compensation for pecuniary and non-pecuniary damages. The domestic court found that the claim for pecuniary damages became time-barred, and the claim for non-pecuniary damage — untransferable to the heirs. Therefore, the Committee of Ministers closed the execution proceedings of the case³⁶.

Bykov v. Russia, (Application N° 4378/02)

The case concerns violation of Article 5 of the Convention due to unjustifiably long detention of the applicant. The domestic proceedings were reopened, and detention orders were quashed. Although the Committee of Ministers did not close the case with respect to other violations, it, however, stated that the applicant was released³⁷.

³⁶ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2020\)78](#).

³⁷ URL: <https://hudoc.exec.coe.int/?i=004-13645>

3.4. Article 6 of the Convention (Right to a fair trial)

The most effective measure to remedy the violation of the criminal aspect of Article 6 of the Convention constitutes new examination or reopening of the proceedings. For the purposes of this Article reopening is particularly encouraged in the following cases:

- **absence of a lawyer:** if the applicant is not represented by a lawyer during the proceedings, the European Court may find a violation of Article 6, in which case reopening may be required.

Salduz v. Turkey, (Application N° 36391/02)

In the present case the European Court found in the judgment that the applicant's right to a fair trial had been violated when the applicant was not provided access to the lawyer during the police interrogation. As a result, Turkey reviewed its legislation introducing an improvement as regards access to a lawyer during interrogation, and the present case reopened³⁸.

- **adducing false evidence:** A violation of Article 6 of the Convention is often found when evidence of vital importance for the conviction are falsified or obtained in violation of the rights of the accused-on-trial (for example, as a result of unlawful search and forced confessions). Such procedural violations cast a doubt on the domestic judicial act, which may require reopening of the case.

³⁸ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2018\)219](#).

Erkapić v. Croatia, (Application N° 51198/08)

The case concerns conviction based on solely the statements of the co-accused, that the First Instance Court relied on in its judgment without verifying their reliability and accuracy, despite the allegations that these statements had been obtained under pressure. In the reopened proceedings the court acquitted the applicant on the grounds of lack of evidence³⁹.

Barbera, Messegue and Jabardo v. Spain, (Applications N°s10590/83 and 06/12/1988)

In the present case the Court found a violation stating that the evidence relevant to the case was not properly examined during the trial. Following the judgment of the European Court the domestic courts reopened the proceedings of the case, during which the applicants were acquitted on the grounds of lack of sufficient evidence⁴⁰.

- **judicial partiality:** if the European Court concludes that there has been judicial partiality or lack of partiality, reopening may be necessary to secure the right of the applicant to be heard before a fair and impartial court.

Daktaras v. Lithuania, (Applications N°s 42095/98 and 10/10/2000)

In the present case the domestic court did not conduct impartial examination for objective reasons, as a result of which the higher court gave instructions regarding the judgment to be delivered. The European Court found a violation of Article 6 of the Convention, which was followed by reopening of the proceedings, the case was reopened and objective examination was conducted without any assignments and instructions⁴¹.

³⁹ See Final Resolution of the Committee of Ministers [Résolution CM/ResDH\(2021\)148](#).

⁴⁰ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(1994\)84](#).

⁴¹ See Final Resolution of the Committee of Ministers [Résolution ResDH\(2004\)43](#).

- **witness questioning:** if the European Court concludes that the domestic proceedings were conducted with unjustified restrictions on the right to question witnesses, reopening of the domestic case or re-examination of the proceedings may be considered necessary.

Manucharyan v. Armenia, (Application № 35688/11⁴²)

The case concerns violation of Article 6 § 3(d) (right to examine) that the applicant was convicted for murder, unable to examine at any stage of the proceedings, the only witness having made statements incriminating the applicant during the preliminary proceedings when the conviction was based on the statements of that witness.

Following the judgment of the European Court the domestic authorities reopened the proceedings of the case and remitted to the First Instance Court for fresh examination. As a result, the competent domestic authorities found the whereabouts of the absent witness. In the reopened proceedings the domestic courts examined the new written statements of the witness. The Committee of Ministers closed the execution supervision proceedings of the case by its Final Resolution, indicating specifically that it satisfied itself that due to the individual measures taken by the State the proceedings had been opened and the courts had examined the new written statements of the witness⁴³.

⁴² The Committee of Ministers has included this case in *Gabrielyan group* of cases. Moreover, the execution supervision proceedings for the majority of cases of this group remain open.

⁴³ See Final Resolution of the Committee of Ministers *Resolution CM/ResDH(2024)175*.

3.5. Article 7 of the Convention (No punishment without law)

This Article prohibits retrospective application of the criminal law and ensures that individuals are not convicted for an act which did not constitute a criminal offence at the time. Under this Article reopening, as a rule, constitutes a necessity when the European Court finds a violation of the Article for the following reasons:

- **misapplication of the legislation:** if the conviction of the person is based on such legislation that was not applicable at the material time, or if the law was given retrospective effect, the European Court may find a violation of Article 7 of the Convention. In similar cases reopening is necessary to ensure that the person serves no unlawful punishment.

Maktouf and Damjanović v. Bosnia and Herzegovina (GC), (Applications N° 2312/08 and 34179/08)

In the present case the applicant was subjected to a heavier punishment than the criminal law that was in force when the offences were committed. As a result of reopening, more lenient legislation was applied with respect to the applicant⁴⁴.

- **ambiguous or obscure legislation:** The scope of Article 7 of the Convention also applies to convictions that are based on ambiguous or obscure legislation.

⁴⁴ See Final Resolution of the Committee of Ministers Resolution [Resolution CM/Res-DH\(2017\)180](#).

Dragotoniu et Militaru-Pidhorni v. Romania, (Applications N^{os} 77193/01 and 77196/01)

The case concerns the fact the acts committed by the applicant could not be expected to constitute a criminal offence, according to the domestic legislation that was in force at the material time. Having opened the proceedings of the case, the domestic courts acquitted the applicant⁴⁵.

⁴⁵ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2011\)250](#).

4. Peculiarities of reopening of civil and administrative cases according to the Convention Articles

For civil and administrative cases that specifically relate to the disputes between private parties it is apparent that reopening need not be compatible with the legal certainty given that the rights of bona fide third parties are jeopardised. The main peculiarity of these cases lies in that the damage caused may be adequately compensated through alternative means, e.g. just satisfaction. However, in civil and administrative cases, depending on specific circumstances of the case, reopening may also constitute an appropriate measure.

4.1. Article 6 of the Convention (Right to a fair trial)

Article 6 of the Convention plays a crucial role in ensuring civil justice and fair trial for each person. Violations of the civil aspect of Article 6 of the Convention are, as a rule, established in the following cases:

- **lack of access to evidence:** when one party is denied the opportunity to present crucial evidence, the procedural fairness is jeopardised, resulting in violation of the procedural rights of the parties to equal opportunities;
- **failure to hear all parties:** one of the main principles of fair trial is the right of each party to be heard and challenge evidence against them. If the court refuses to exercise these rights, there is a violation of Article 6 of the Convention;
- **partiality:** Article 6 of the Convention requires that judges and

court be impartial and independent. Doubts regarding partiality may even result in unfairness of the judicial act, which may give rise to reopening.

San Leonard Band Club v. Malta, (Application N° 77562/01)

In the present case the European Court found, in its judgment, a violation of Article 6 of the Convention on the grounds of lack of impartiality of the court as the same judge examined the case both in the First Instance Court and the Court of Appeal. Accordingly, the proceedings were reopened, a new panel of judges examined the case⁴⁶.

4.2. Article 8 of the Convention (Right to respect for private and family life)

In civil and administrative relations violations of Article 8 that may result in reopening of the cases are as follows:

- **family disputes:** with respect to disputes concerning custody, divorce, adoption the Court may find a violation of Article 8 especially when the domestic courts fail to strike balance between the best interests of the child and interests of the parents. If, for example, the decision of the court has unlawfully led to deprivation of the custody right of the parent, reopening may be required in such cases;
- **violations of the right to respect for private life:** the civil proceedings implying interference with the private life of the person, e.g. unauthorised surveillance, search, unlawful disclosure of the personal information, violate Article 8 of the Convention. In these cases reopening is typically required to reassess the expediency of providing appropriate legal remedies.

⁴⁶ See Final Resolution of the Committee of Ministers [Résolution CM/ResDH\(2013\)146](#).

Garnaga v. Ukraine, (Application N° 20390/07)

The case concerns refusal of the applicant's request to change her patronymic. Following the reopened proceedings the domestic court ordered the Civil Status Registration Office to register the new patronymic of the applicant⁴⁷.

Saviny v. Ukraine, (Application N° 39948/06)

In the present case it was decided to remove three children from their visually handicapped parents and place them in different institutions, limiting the contact of children with their parents and each other. Following reopening of the case children were allowed to return to their mother⁴⁸.

4.3. Article 9 of the Convention (Freedom of thought, conscience and religion)

Violations of Article 9 of the Convention in civil and administrative proceedings mainly manifest in the following ways:

- **freedom of religion at workplace:** reopening of cases may be required in cases of manifestations of religious discrimination at workplace;
- **manifestation of belief in the social life:** cases where legal regulations of the country or actions of private entities unfairly restrict religious manifestations in public places may even lead to reopening of cases to reassess the conformity of restrictions with the rights of the person.

⁴⁷ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2020\)355](#).

⁴⁸ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2018\)39](#).

Manoussakis and others v. Greece, (Application N° 18748/91)

The case concerns conviction of a Jehovah's Witness for the latter had established a place of worship without the prior administrative authorisation. Following reopening of the proceedings the applicant was acquitted⁴⁹.

Serif v. Greece, (Application N° 38178/97)

The case concerns conviction of mufti for usurping the functions of a minister of a "known religion" and publicly wearing their dress. Accordingly, the European Court found a violation of Article 9 of the Convention, pointing out that restrictions had been put on the applicant's right of freedom to manifest the religion in worship and teaching. The Court awarded compensation for pecuniary and non-pecuniary damage.

Following the judgment of the European Court the applicant lodged an application for reopening, which was granted by domestic courts. As a result, the conviction of the applicant was quashed. Having taken note of the individual measures taken by the State, particularly the reopening of the case and award of just satisfaction, the Committee of Ministers closed the case⁵⁰.

4.4. Article 10 of the Convention (Freedom of expression)

Violations of Article 10 of the Convention in civil and administrative proceedings mainly manifest in the following ways:

- **cases of defamation:** defamation cases especially include cases where individuals or media outlets are convicted for expressing

⁴⁹ See Final Resolution of the Committee of Ministers [Resolution ResDH\(2005\)87](#).

⁵⁰ See Final Resolution of the Committee of Ministers [Resolution ResDH\(2005\)88](#).

opinion or publishing information that damage another person's reputation. Reopening may be necessary where the domestic court unjustly restricts the applicant's freedom of expression;

- **artistic and political manifestation:** restrictions on artistic works, political speech or media publications may violate Article 10 of the Convention where they are disproportionate or unjustified in the democratic society. In such cases reopening of the case may ensure that court pays proper attention to the significance of the freedom of speech.

Uj v. Hungary, (Application N° 23954/10)

In the present case the journalist was convicted for criticising the production of wine which was a product of a State-owned corporation. The primary aim of the criticism was to raise awareness about the disadvantages of State ownership rather than to denigrate the quality of the products of the company. Following the reopened proceedings the judgment was quashed, and the journalist was acquitted⁵¹.

4.5. Article 14 of the Convention (Prohibition of discrimination)

Violations of Article 14 of the European Convention may also lead to reopening of domestic proceedings, if it is considered an appropriate measure to execute the judgment.

Paraskeva Todorova v. Bulgaria, (Application N° 37193/07)

In the present case the sentence of the applicant was not suspended on the grounds of the Roma origin of the applicant. Following the reopened proceeding the domestic courts suspended the sentence⁵².

⁵¹ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2022\)70](#).

⁵² See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2016\)156](#).

Emel Boyraz v. Turkey, (Application N° 61960/08)

In the present case the applicant was dismissed from her post because she did not fulfil the requirements of “being a man” and “having completed military service”. The Court found a violation of Article 14 of the Convention read in combination with Article 8. Following the reopened proceedings the applicant was reinstated in her position⁵³.

4.6. Article 1 of Protocol No 1 (Protection of property)

With respect to the right of property of the person the issue of necessity for reopening of cases may be quite sensitive. As a matter of fact, in these cases it is preferable to take measures for execution of the judgment different from reopening of the case as the interests of the third party are at stake, as well as the subject matter of the dispute is unavailable (for example the land parcel under dispute is possessed by the bona fide third party, or the construction has been demolished). However, the study of the jurisprudence of the European Court and the Committee of Ministers may lead to the conclusion that in the following cases reopening may be considered an appropriate measure under this Article:

- where the subject matter of the dispute is available, particularly in case of a movable property; and
- reopening would not pose a risk to the rights of the bona fide third parties.

⁵³ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2017\)147](#).

Waldemar Nowakowski v. Poland, (Application N° 55167/11)

The case concerns disproportionate forfeiture of antique arms and weapons. Following the reopened proceedings domestic courts quashed the decision on forfeiture of antique collection, returning them to the applicant⁵⁴.

Lelas v. Croatia, (Application N° 55555/08)

The case concerns a Croatian serviceman having participated in demining operations, whom the State refused to pay the allowances on the ground that they were time-barred. As a result, the Court found a violation of Article 1 of Protocol No 1, pointing out that there had been unlawful interference with the applicant's right to peaceful enjoyment of his possessions.

The case was reopened at domestic level, a decision was rendered, whereby the allowances were paid to the applicant. Taking note of this the Committee of Ministers closed the case⁵⁵.

Osmanyany and Amiraghyany v Armenia, (Application N° 71306/11)

The case concerns the applicants making their living from agriculture, whose plot of arable land owned thereby was expropriated under the copper-molybdenum deposit exploitation project. Accordingly, the European Court found a violation of Article 1 of Protocol No 1 that in consequence of the expropriation the applicants lost their main source of income, which was not taken into account by the domestic courts in their decisions on the amount of the compensation due.

The Committee of Minister, upon its Final Resolution, closed the execution supervision proceedings of the case without reopening the

⁵⁴ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2015\)165](#).

⁵⁵ See the Action report provided by the Government [Action Report DH-DD\(2012\)1042](#) and

case or re-examining it at domestic level, having regard to the fact that the respondent State paid, in a timely manner, both the pecuniary and non-pecuniary damage awarded by the European Court⁵⁶.

Tunyan and others v Armenia, (Application N° 22812/05)

With respect to expropriation by the State of the flat owned by the applicants the European Court found a violation of Article 1 of Protocol No 1 insofar as the respondent State did not carry out the expropriation of the property in compliance with “the conditions provided for by law”. Having regard to the uniform nature of the violation and similarity of factual circumstances, the Committee of Ministers classified the present case under *Minasyan and Semerjyan v. Armenia* group of cases, the execution supervision proceedings of which were closed upon the Final Resolution of the Committee of Ministers⁵⁷ after the Committee satisfied itself that the State had paid, in a timely manner, the just satisfaction awarded by the European Court.

It should be emphasised that the above-mentioned Resolution also closed the execution supervision proceedings of the case of *Tunyan and others v. Armenia*, despite the fact that in this case the applicants applied to the Court of Cassation requesting to reopen the proceedings of the case on the basis of a new fact. Moreover, the Court of Cassation reopened the proceedings and remitted for fresh examination. However, the Committee of Ministers, without awaiting for the possible progress and outcome of the reopened case, also closed the supervision of this case by the Final Resolution, finding that by payment of just satisfaction the respondent State, as a matter of fact, discharged the obligations provided by Article 46 of the Convention.

the Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2014\)230](#).

⁵⁶ See Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2022\) 287](#).

⁵⁷ See the Final Resolution of the Committee of Ministers [Resolution CM/ResDH\(2015\)191](#).

5. Peculiarities of reopening of cases in the event of presence of a friendly settlement between the parties or a unilateral declaration approved by the state

5.1. Developments and features of the European convention system

Since 2019, in line with the Copenhagen Declaration⁵⁸ the European Court promotes the negotiation settlement process (friendly settlements, unilateral declarations). In this regard, given many circumstances, including the need to reduce its own workload, the European Court supports the negotiation processes each year. However, the European Court had adopted such an approach, according to which these processes should not prevent or somehow restrict the restoration of the violated rights of persons to the fullest extent possible, as well as selection and application of the most appropriate and effective measures by the member States.

Thus, in this respect, the European Court, in its case-law, developed the idea that when rendering a decision on striking the application out of the list of cases in the event of a friendly settlement or unilateral declaration, such a decision does not, in itself, restrict the possibility for the applicant to resort to effective legal remedies to restore his or her violated rights at the national level. Furthermore, with respect to these cases the European Court explicitly linked the rendering of a decision on striking the application out of the list of cases based on a friendly settlement and unilateral declaration with the possibility to review the case at domestic level.

⁵⁸ On 13 April 2018 all 47 member States of the European Council adopted the Copenhagen Declaration.

As a matter of fact, the primary objective of these two mechanisms is to “avoid” judicial processes. However, it is important to note that these institutes still constitute judicial regulations for dispute settlement (and not alternative regulations for dispute settlement) and their implementation involves strict supervision mechanisms to ensure that the underlying issues are fully and effectively addressed. In other words, the logic of the Convention system dictates that the absence of a classical judicial process should not affect the effectiveness of restoration of human rights violations. Concurrently, the approval of the unilateral declaration made by the state or friendly settlement does not in the least put an end to the supervision functions that exist in the European Convention system. The Strasbourg Court supervises the implementation of the undertakings by the state made in the unilateral declaration; otherwise the case is restored in the list of cases and examined under the ordinary procedure. As regards friendly regulations, exercise of supervision over implementation of the undertakings included therein is assigned to the Committee of Ministers that performs its supervision function in the same manner as it does for execution of a judgment establishing a violation.

It is important to note that on the whole both the European Court and the Committee of Minister do not differentiate between reopening of the case based on a judgment establishing a violation or a unilateral declaration or friendly regulation confirmed by the Court. It follows that all foregoing requirements and criteria for reopening of the case and re-examination of the proceedings at domestic level are identical regardless of whether reopening and re-examination have been conducted based on the judgment of the European Court establishing a violation or a friendly settlement and unilateral declaration confirmed by the Court.

Sroka v. Poland, decision, (Application N° 42801/07)

Facts: the applicant lodged an application with the European Court on the ground of a violation of Article 10 of the Convention stating that his conviction amounted to disproportionate interference with his right to freedom of expression.

The position of the Government: The Polish Government made a unilateral declaration acknowledging that a violation of Article 10 had occurred and proposing to pay monetary compensation.

The position of the European Court The Strasbourg Court adopted the unilateral declaration of the Government finding no need to continue the examination of the case. As opposed to the applicant who desired to ensure that his case was reopened at domestic level based on the judgment of the European Court, the Strasbourg Court observed that the Polish legislation allows reopening of the case at domestic level based on a **decision of the European Court**.

Outcome: it is important that the Polish legislation provides — as a basis for opening of a case — not only the judgment of the European Court establishing a violation, but also its decision and these include unilateral declaration and friendly settlement. It follows that the unilateral declaration made by the government is not in the least a hindrance to reopening of a case and its re-examination at domestic level. Therefore, given the significance of this circumstance the European Court sees no need to restore the present case on the list of cases and examine it under the ordinary procedure. Otherwise, the European Court has the power to reopen the case and examine it under judicial procedure.

Jeronovičs v. Latvia, GC, (Application N° 44898/10)

Facts: The applicant instituted criminal proceedings concerning his alleged ill-treatment by police officers. Those proceedings were ultimately discontinued. The applicant lodged an application with the European Court on the ground of lack of effective investigation into the case. In respect of that complaint the Government submitted a unilateral declaration acknowledging a breach of Article 3 of the Convention and awarding compensation. The European Court struck the case out of the list of cases upon the following decision – [44898/10](#). However, the European Court later restored the present case and examined under the ordinary procedure because the domestic authorities refused to reopen the proceedings of the case.

The position of the European Court regarding unilateral declarations When exercising the power under Article 37 of the Convention to strike a case or part thereof out of the list of cases the Court takes into account a range of circumstances: In particular, these circumstances include: (1) the nature of the complaints made, (2) the acknowledgment of a violation and the payment of adequate compensation for such violation by the state; (3) the existence of relevant case-law in respect of the issues raised; (iv) the manner in which the Government intend to provide redress to the applicant. If the Court is satisfied with the answers to the above questions, it then verifies whether it is no longer justified to continue the examination of the application insofar as respect for human rights does not require it to continue its examination.

When exercising this power the European Court reviews the terms of the unilateral declaration of the Government in detail and expects that the Government discharge the obligations assumed thereby. It follows that the unilateral statement made by the Government is subject to assessment by the Court in two instances:

- before the European Court determines to strike the case or part thereof out of the list of cases;
- striking the case or part thereof out of the list is followed by the Court's supervision of the implementation of the Government's undertakings, examining especially whether there is exceptional circumstance, due to which the case may be restored and examined under the ordinary procedure, resulting in delivery of a judgment.

Position of the European Court in this case: The European Court found grounds for striking this case out of the list of cases, outlining the obligation of the Government to provide just satisfaction for the violated right of the applicant. In this case only just satisfaction was not sufficient. Therefore, the unilateral declaration contradicts the obligation of the State to provide full redress for the violation.

The approach of the Committee of Ministers: Following this judgment of the European Court the case was reopened at domestic level and remitted for fresh investigation. However, during the investigation the re-examination of the case was impossible due to expiry of the statutory limitations⁵⁹. Accordingly, the Committee of Ministers closed the proceedings of the case⁶⁰.

⁵⁹ 1280 meeting (7-9 March 2017) (DH) - Communication from the applicant's representative (02/12/2016) in the case of Jeronovičs against Latvia (Application No. 44898/10) [Anglais uniquement] [DH-DD(2017)7]

⁶⁰ See Final Resolution of the Committee of Ministers Resolution CM/ResDH(2017)312.

5.2. Development of the judicial practice of the Republic of Armenia and improvements of the domestic legislation

When referring to the judicial practice established in the Republic of Armenia for reopening of cases based on a friendly settlement or unilateral declaration notably in the decision in Case No 05-3626, 3-574 (ՎԴ) of 19 October 2021 the Court of Cassation of the Republic of Armenia, having examined the complaint concerning review of the judicial act on the ground of newly disclosed circumstance, expressed a legal position to the effect that *“current regulations of the Civil Procedure Code of the Republic of Armenia are subject to systemic interpretation, taking into note that one of the objectives of the application lodged with the European Court is to ultimately restore the violated rights of the person and ensure restitutio in integrum”*. Given the foregoing the Court of Cassation has found that the decision adopted by the European Court in relation to the unilateral declaration may be considered a newly disclosed circumstance. At the same time, the Court of Cassation has observed that the judgment or decision of the European Court establishing a violation, as well as a friendly settlement and unilateral declaration should not be expressly regarded as an absolute basis for reopening of cases.

Concurrently, the Government of the Republic of Armenia initiated legislative amendments that were adopted and entered into force in June 2022. In particular, under that initiative a proposal was made to supplement the relevant Articles of the criminal, civil and administrative procedure code with provisions that provide — as a ground for review of criminal, civil and administrative cases in domestic courts — also the friendly settlement between the parties and the unilateral declaration made by the Republic of Armenia and approved by the European Court.

It follows that in the Republic of Armenia the judicial practice has developed in conformity with the principles and standards adopted by the European Convention system that are reflected in the above legislative amendments made in 2022.

CONCLUSION

Summarising the complex and comprehensive study of the European Convention system with respect to the reopening or re-examination of the domestic case following the judgment or decision of the European Court the following target provisions may be selected:

- ❖ reopening of the case of re-examination of the proceedings at domestic level may be regarded as an effective measure for ensuring *restitutio in integrum* in all cases when the other measures render it impossible to address the violation;
- ❖ the fact that a measure is regarded as appropriate to redress or remedy the violation does not mean in the least that the convention system “welcomes” automatic reopening of all cases;
- ❖ the member States are given quite broad discretion to determine whether in certain circumstances, following the judgment or decision of the European Court, reopening of the domestic case and re-examination of the proceedings based on it is necessary and whether it constitutes an appropriate measure;
- ❖ the European Court and the Committee of Ministers, as organs exercising supervision over the execution of the judgment, view all measures taken by the member States to redress the violation, including reopening of the domestic case in the light of specific and certain factual circumstances and details of each individual case;
- ❖ however, the study of the convention system enables identification of various patterns, providing a general understanding of

necessity for reopening, circumstances hindering the reopening and re-examination and their equivalent and effective alternative measures;

- ❖ depending on the features of Articles of the European Convention and the nature of the violation (criminal, civil, administrative), the necessity for reopening of the domestic case may vary in scope;
- ❖ for friendly settlements and unilateral declarations, where we deal with the decision of the European Court (and not the judgment establishing a violation), it is important that despite the fact that they have not been delivered under “classical” judicial procedure, they, however, serve as a ground for reopening of cases and re-examination of the proceedings. Furthermore, in this case the practical application of the reopening institute and its implementation are subject to the same factors, criteria and principles that are applied for a judgment establishing a violation.

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