

THE RE-OPENING OF JUDICIAL PROCEEDINGS IN THE ARMENIAN LAW AND PRACTICE FOLLOWING THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

ARTAK ASATRYAN

The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) guarantees a number of rights and freedoms that the states that have ratified the Convention are obliged to respect in the territories under their jurisdiction. Regarding violations recorded by the European Court of Human Rights (hereinafter referred to as the ECtHR) created on the basis of the Convention, there is often a need to reopen judicial cases at the domestic level. The importance of this process lies in its central place in the execution system of the ECtHR's judgments and in some cases is considered as the only way to restore the violated rights.

Within the framework of this article, the legislation and practice of the Republic of Armenia regarding the reopening of judicial cases following the judgments of the ECtHR were studied. In particular, the relevant legal regulations of RA criminal procedure, RA civil procedure, RA administrative procedure codes and other legal acts were analyzed. As a result of the comprehensive studies carried out in the article, the gaps, shortcomings and uncertainties of the RA legislation and practice in the discussed field were highlighted, and relevant recommendations were made to fill, eliminate or clarify them.

Key words: *Execution of ECtHR judgments, reopening of judicial cases, revision of judicial cases, legislation of reopening of judicial cases, practice of reopening of judicial cases, flaws in reopening legislation, practical issues of reopening of judicial cases*

As explained in the Explanatory Memorandum to the Recommendation Rec (2000) 2 of the Committee of Ministers of the Council of Europe to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights¹, the Contracting Parties to the Convention enjoy a discretion, subject to the supervision of the Committee of Ministers, as to how they comply with the obligation in Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms² (hereinafter referred to as “the Convention”) “to abide by the final judgment of the Court in any case to which they are parties.”

The Court has held: “A judgment in which the Court finds a breach imposes on the respondent State a legal 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 breach³”. The Court was here expressing the well-known international law principle of *restitutio in integrum*, which has also

¹ Recommendation was adopted by the Committee of Ministers on 19 and 21 January 2000 at its 694th Session.

² Adopted in Rome on 4 Nov. 1950; entered into force on 3 Sept. 1953.

³ See, *inter alia*, the Court's judgment in the *Papamichalopoulos* case against Greece of 31 October 1995, paragraph 34, Series A 330-B.

frequently been applied by the Committee of Ministers in its resolutions. In this context, the need to improve the possibilities under national legal systems to ensure *restitutio in integrum* for the injured party has become increasingly apparent.

Although the Convention contains no provision imposing an obligation on Contracting Parties to provide in their national law for the re-examination or reopening of proceedings, the existence of such possibilities has proven to be important in special circumstances, and indeed in some cases the only means to achieve *restitutio in integrum*. An increasing number of States have adopted special legislation providing for the possibility of such re-examination or reopening. In other States, this possibility has been developed by the courts and national authorities under existing law.

In this article, we have set the task to review Armenian legislative norms governing the issue of re-opening of cases in the light of the rulings and judgments of the European Court of Human Rights (hereinafter referred to as “the ECtHR”), identify the gaps and inadequate provisions, which in practice can cause problems, or as a result of which some practical problems have already been identified, and make appropriate recommendations for their elimination and further streamlining. To this end, we will refer to the relevant provisions of the RA Criminal Procedure Code⁴, the RA Civil Procedure Code⁵, the RA Administrative Procedure Code⁶, decisions of the RA Constitutional and Cassation Courts and other relevant legal acts.

Before referring to the regulations of the Procedural Codes, it should be noted that the issue at stake was also referred to by the RA Constitutional Court in a number of its rulings. In particular, in the decision No. CCD-1099⁷, the High Court states: “...the legal constitutional content of the judicial acts’ revision mechanism is that it ensures restoration of violated rights under Constitution and/or Convention. The latter, based on the basic principles of the rule of law, requires elimination of the negative consequences for the victim as a result of the violation, which in turn requires the restoration of the situation that existed before the violation (*restitutio in integrum*). In case the Constitutional and/or Convention right of a person has been violated by a judicial act that has entered into force, the restoration of that right before the violation of the law presupposes the creation of a situation for the person that existed in the absence of the Court act.

Below we will separately discuss provisions of the Procedural Codes pertaining to the revision of judicial acts following ECtHR judgments.

CRIMINAL PROCEDURE CODE

The proceeding for revision of a case upon new circumstance is included in Chapter 49 of the RA Criminal Procedure Code, which is entitled "Exclusive Review". The list of judicial acts that are subject to exclusive review has been significantly expanded in the wording of the new Code (Article 401).

⁴ Adopted by the RA National Assembly on July 30, 2021.

⁵ Adopted by the RA National Assembly on February 9, 2018.

⁶ Adopted by the RA National Assembly on December 5, 2013.

⁷ Adopted by the RA Constitutional Court on 31 May, 2013.

According to Article 402.1 (3-4) of the Code, the following persons have the right to lodge an exclusive review appeal:

1) the person who was a private participant in the given proceedings, whose legitimate interests are related to the alleged new circumstance or the alleged fundamental violation or the alleged new emerging circumstance;

2) ...

3) a private participant in the given proceedings, who at the time of making the relevant judicial act by the international court, to which the Republic of Armenia is a participant, had the right to apply to an international court in accordance with the requirements of the international treaty;

4) Prosecutor General of the Republic of Armenia and the deputies thereof.

Moreover, instead of the persons mentioned in Article 402 (1-3), an exceptional review appeal may be submitted by his/her authorized person (proxy), who must also submit to the court the document attesting his/her powers.

The analysis of the aforementioned provisions of the Code shows that the scope of persons to lodge a re-opening appeal on the basis of the ECtHR judgment is limited. Thus, the Code stipulates that person must have been a private party to the judicial proceedings. According to Article 6 (13) of the Code, private participants in the proceedings are the defendant, legal representative to the defendant, lawyer, victim, property respondent, legal representative of the victim and property respondent and the authorized representative.

As we can see, these regulations sufficiently limit the chances of the person involved in the examination of the application to lodge an appeal for re-opening the case in the event of the death of the applicant who was the initiator of the application to the ECtHR. In particular, consider the situation where, for example, following murder the legal successor of the victim, having exhausted the effective domestic remedies, applied to the ECtHR, claiming that there had been numerous procedural violations during the investigation of the criminal case, which later served as a basis for identification by the ECtHR of a violation of the procedural aspect on the protection of the right to life. In the example given, if we assume for a moment that the applicant had died before the ECtHR rendered a judgment and that another person with victim status under ECtHR case law had been involved in the examination of the complaint, it remains unclear whether the latter would have an opportunity to file an application for the exceptional revision of the case. Evidently, the Code does not provide for regulation in such circumstances. The situation in the context of the circumstances described above is unclear also in the event of the applicant's death following a decision of the ECtHR. We would recommend adding to the list of those eligible to lodge an appeal for reviewing a judicial act on the basis of a new circumstance the persons involved in the examination of the case in the ECtHR, who have a legitimate interest in the review of that act.

According to Article 403 (1) (5) of the Criminal Procedure Code, an appeal under new circumstances may be brought, if the fact of violation of the right provided for by the international treaty of the Republic of Armenia has been confirmed by the valid judgment or decision of the international court with the participation of the Republic of Armenia, or the international court approved the reconciliation agreement (friendly settlement) reached between the parties

or the unilateral declaration made by the Republic of Armenia. As a matter of fact, in contrast to Civil and Administrative Procedure Codes, the Criminal Procedure Code mentions explicitly among the grounds of an exceptional review of the judicial act under the new circumstance, the fact of violation of the right of a person under the international treaty of the Republic of Armenia as envisaged by the friendly settlement or unilateral declaration. In this regard, it should be noted that while the Civil Procedure Code and Administrative Procedure Code do not specifically focus on the above grounds, the wording “the fact of violation of a right of a person provided for in the international treaty of the Republic of Armenia was confirmed by the valid judgment or decision of international court” includes recognition of the fact of violation of the rights established by the friendly settlement or unilateral declaration as the friendly settlement or a unilateral declaration are confirmed by a decision of the European Court.

In this regard, it would be appropriate to refer to *Grigoryan and others v. Armenia*, Application No. 40864/06. The Government of the Republic of Armenia made a unilateral declaration regarding this complaint, which was adopted by the ECtHR and on the basis of which the Court, by its decision of 08.11.2018, struck out the application from the list of cases to be examined. Subsequently, the applicants in the case lodged an appeal with the Court of Cassation to review the judicial act, stating that the judgment of the European Court of Human Rights was a new circumstance within the meaning of Article 419 (1) (2) of the RA Civil Procedure Code as “the fact of violation of the right of a person envisaged by the international treaty ratified by the Republic of Armenia (...) was substantiated by the judgment of the court acting on the basis of the international treaty ratified by the Republic of Armenia ...”. In relation to this appeal, the Court of Cassation stated that «(...) As a result of the literal interpretation of the words and expressions of the above-mentioned norm, in other words, due to the expression "substantiated" used in the Article 419 (1) (2) of the RA Civil Procedure Code not to consider the European Court's decision on a unilateral declaration or friendly settlement as a ground for reopening a case under a new circumstance may be an overly formal interpretation. In this regard, the Court of Cassation considers it necessary to emphasize that both the friendly settlement and the unilateral declaration are approved by the European Court, and the fulfilment of the conditions stipulated in them is under the control of the Committee of Ministers⁸.”

With regard to deadlines, under Article 404 of the Criminal Procedure Code, an appeal for an exceptional review on the basis of an ECtHR judgment can be lodged within four months. Calculation of the four-month period shall start from the day of the delivery of the valid judgment or decision of the international court, to which the Republic of Armenia is a participant, to the person who applied to that court in the manner prescribed by the regulations of that court.

In accordance with paragraph 3 of Rule 77 of the ECtHR Rules of Court, the judgment shall be transmitted to the Committee of Ministers. The Registrar

⁸ For more details on the decision of the ECtHR on a unilateral declaration or friendly settlement as a basis for reopening the case, see the decision of the Court of Cassation of October 19, 2021 on revising the ruling of the Chamber of Civil and Economic Affairs of the Court of Cassation of 07.04.2006.

shall send copies to the parties, to the Secretary General of the Council of Europe, to any third party, including the Council of Europe Commissioner for Human Rights, and to any other person directly concerned.

It is appropriate to note that the ECtHR Registry sends to the parties both the final judgment that has entered into force and those that have not yet entered into force. This depends on which body made the judgment - the Committee, the Chamber or the Grand Chamber. Judgments of the Committee and the Grand Chamber are final and shall enter into force upon their adoption. With regard to judgments made by the Chamber, under Article 44 of the Convention there are three scenarios for their entry into force. According to paragraph 2 of the mentioned article, the judgment of the Chamber should be considered final:

(a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or

(b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or

(c) when the panel of the Grand Chamber rejects the request to refer under Article 43

It follows from the above that the ECtHR Registry delivers to the parties in one case a final decision which has already entered into force (Committee, Grand Chamber), which confirms the new circumstance, while in the second case, it delivers a decision which can take effect in up to three months period or at a later date, depending on what further steps the parties take in relation to that judgment (declare that they will not request a referral to the Grand Chamber; they will not appeal the judgment within three months after it has been made; or in the event of an appeal, the Grand Chamber will review or reject the review of the Chamber judgment).

Taking into account the above mentioned, we recommend to make an amendment to the Criminal Procedure Code, stipulating ***that an appeal to review a judicial act under a new circumstance may be brought within a period of 4 or 6 months (provisionally) following a judgment or decision of an international court to which the Republic of Armenia is participant enters into force.*** As a result, there will be no need to differentiate between a judgment of the Committee, the Chamber or the Grand Chamber, in order to understand whether it has already entered into force at the time of delivering the appeal or not, etc. The proposed period will be sufficient even for the delivery of the judgment that has already entered into force to the parties and lodging of an appeal for the review of the judicial act on that basis.

As we mentioned above, the Code also reserved the right to file a complaint for the review of the judicial case based on the ECtHR judgment to the RA Prosecutor General and the deputy thereof. However, the Code does not specify in what terms the latter can submit this complaint. In practice, the RA Prosecutor's Office is informed about the decision from the letter of the RA Representative before the ECtHR. But even in these cases, problems with the calculation of the time period do not disappear, as the Representative of Armenia before the ECtHR himself/herself is usually not aware of the date of service of the ECtHR judgment (decision) to the applicant, and, therefore, cannot indicate the date of expiration of the four-month period. Hence, if the RA Prosecutor General or the deputy thereof wishes to lodge a

reopening appeal the only thing that can be done is to arrange the process "within a safe period". This, obviously, cannot be an adequate solution to the problem. Our recommendation seems to solve this problem as well. Thus, if we set a four-month or six-month period for the review of a judicial act after the entry into force of the ECtHR judgment, there will be no problems for either the applicant or the Prosecutor General or his/her Deputy in terms of starting and counting that period.

In the context of the reopening of cases based on ECtHR judgments, the language of the documents presented to the court acquires special importance. The official languages of the ECtHR are English and French. In order to reopen cases, it is necessary to attach, among other documents, also the ECtHR judgment or decision to the complaint. In this regard, it is worth mentioning that all procedural codes contain provisions on the conduct of court proceedings in Armenian. In addition, for example, the Code of Criminal Procedure states that the document presented to the court in another language is attached to the proceeding materials with the Armenian translation certified by the translator (Article 27). The Civil and Administrative Procedure Codes stipulate that the persons participating in proceedings submit all the procedural documents in Armenian or in another language with a proper Armenian translation (Articles 16 and 9, respectively). As we can see, the regulations of procedural laws regarding Armenian translation are not uniform. In particular, the term "proper translation" remains vague, to put it mildly.

In Armenia, ECtHR judgments are translated through the "Translation Center" SNCO of the Ministry of Justice of the Republic of Armenia, but they are not official translations, which is usually the case for official translations of normative legal acts under the requirements of the RA Law on Normative Legal Acts and other legal acts. Also, there is a question of what criteria should be used to assess the "adequacy" of that translation if the applicant decides to translate the ECtHR judgment on his own or even in person. For example, in one case the appellant submitted a judgment to the Court of Cassation translated personally, which, however, was not considered a proper translation by the Court of Cassation and the appeal was dismissed. In other words, under the established practice, translations done by the "Translation Center" SNCO of the RA Ministry of Justice are deemed proper translation of the ECtHR judgments.

Summing up this issue, it should be noted that in the event only translations of the Translation Center of the Ministry of Justice are deemed "proper", the applicant or the Prosecutor General or his/her Deputy have a very limited time to file a complaint, as they will have to wait for the Armenian translation of the judgment. To this end, we would recommend, first to streamline in the procedural codes the requirement to attach the Armenian translation of the ECtHR judgment. This would bring clarity to the issue at stake and exclude ambiguities. Moreover, having regard that the Court of Cassation considers exclusively translations of the ECtHR judgments by the Ministry of Justice Translation Center as "proper", we recommend to introduce here a legislative clarification, which will prevent translation of the ECtHR judgments by the appellants on their own.

Our recommendation concerning the deadline for the reopening of judicial cases will in fact solve the time problem related to translations. In particular,

within three months after the translation of the ECtHR judgment by the Ministry of Justice Translation Center and its publication on the relevant websites, the applicants and the Prosecutor General or his/her Deputy will still have time to lodge an appeal for the revision of the case. Moreover, in order to make the deadlines for revision of the judicial act more predictable, it is proposed to translate judgments of the Committee and the Grand Chamber not in 3 but in 2 months, enhancing the preparation of the appeal for the appellant in terms of time.

RA Criminal Procedure Code states, that review of acquittals or decisions to discontinue prosecution is permitted during the statute of limitations for criminal liability. The exclusive review of the judicial act with the request to prove the innocence of the convict or their committing a lesser crime is not limited in time. The death of a convict is not an obstacle to conducting an exclusive review to restore the rights of the convict or other persons. (Article 404 (3-5) of the new Criminal Procedure Code).

The appeal of the exclusive review must be submitted to the Court of Cassation, or to the Court of Appeal, if the appealed judicial act was made by the court of first instance. In case of a review appeal by the Prosecutor General of the Republic of Armenia or the deputy thereof, copies of the review appeal and attached materials shall be duly sent to the persons who were private participants in the proceedings. In case of an exceptional review appeal by a private participant in the proceedings or a person authorized by him based on the decision of the ECtHR, copies of the appeal and the attached materials shall also be sent to the Prosecutor General of the Republic of Armenia or the deputy thereof. The documents confirming that copies of the appeal and the attached materials were sent to the mentioned addressees shall be attached to the appeal for exclusive review (Article 406).

An exclusive review proceeding based on an exceptional review appeal shall be initiated by a decision of a competent court. Exclusive review shall be carried out within a reasonable time.

In case of conducting the proceedings through the oral procedure, the person who filed the appeal, the authorized person thereof, the Prosecutor General of the Republic of Armenia and private participants of the given proceedings shall be notified about the place and time of the court session.

Initiation of an exceptional review shall be rejected by a decision if there are any of the following grounds:

1) the appeal was not brought in line with the requirements set forth in Article 355 (1) or (2), or Article 406 of the Code within the period established by the competent court;

2) the appeal is overdue, and in case of initiation, the motion to restore the missed deadline of the appeal was rejected;

3) the appeal was filed or signed by an ineligible person;

4) the appeal was brought against a judicial act that is not subject to exclusive review.

The decision to initiate or reject the initiation of review shall be made by the competent court within one month after receiving the appeal, and shall be sent to the appellant and the persons referred to in Article 406 (2) of the Code.

The decision of the Court of Appeal on rejecting the initiation of an exceptional review may be appealed by the interested person to the Court of Cassation in accordance with the special review procedure established by this Code (Article 407).

Based on the results of the exceptional review, the competent court shall completely or partially overturn the appealed judicial act, transfer the proceedings to the relevant lower court or terminate the criminal prosecution, and terminate the proceedings as well, as needed.

The court conducting the exclusive review has the right not to overturn the appealed judicial act only if it substantiates with a strong argument that the violation registered by the decision of the ECtHR could not substantially affect the outcome of the proceedings.

A court decision rendered as a result of an exceptional review shall enter into force from the date of its publication. The judicial act of the Court of Appeal may be appealed by the interested person through cassation.

A court decision rendered as a result of an exclusive review shall be sent within a reasonable time to the person who lodged the appeal and to the private participants in the given proceedings.

In case the appealed judicial act is overturned by an exceptional review and the proceedings are transferred to a lower court, the proceedings shall be conducted on a general basis, within the limits set by the court conducting the exceptional review.

CIVIL PROCEDURE CODE

Chapter 58 of the Civil Procedure Code deals with the review of judicial acts upon new circumstances. According to Article 415 of the Code, judicial acts of a Court of First Instance and of the Court of Appeal having entered into legal force, which are subject to appeal, orders on payment, as well as the decisions rendered by the Court of Cassation on returning the cassation appeal, leaving it without consideration, dismissing the cassation appeal and the decisions rendered based on examination of the cassation appeal may be reviewed based on newly emerged or new circumstances⁹.

The judicial act delivered by a Court of First Instance having entered into legal force shall be reviewed by the Court of Appeal upon newly emerged or new circumstances. The judicial acts delivered by the Court of Appeal or by the Court of Cassation having entered into legal force shall be reviewed by the Court of Cassation upon newly emerged or new circumstances (Article 416).

According to Article 417 of the Code, persons having the right to lodge an appeal for reviewing a judicial act upon newly emerged or new circumstances shall be:

(i) persons participating in the case and the legal successors thereof, where the disputed legal relationship or that established by a judicial act allows legal succession;

⁹ Pursuant to the decision of the RA Constitutional Court CCD-1573 of 27.01.21, paragraph 1 of Article 415 of Civil Procedure Code was recognized as contradicting Articles 61 and 75 of the RA Constitution and void to the extent that it precludes the review of judicial acts of the Court of Appeal which have entered into force, but are not subject to appeal upon new circumstances.

(ii) Prosecutor General and the deputy thereof, in cases provided for by law.

In this context, questions arise, such as whether the Prosecutor General or the deputy thereof have the right to appeal for the review of a judicial act following an ECtHR judgment in a civil case, or whether the above wording refers to newly emerged circumstances. If so, in what cases can such an appeal be lodged by the latter? This is important because the Code article uses the term “in cases provided for by law”, which creates ambiguity. First, what law and what cases are we talking about? While it can be assumed that it is a matter of bringing an appeal in the field of protection of state interests, in this case, its connection with the ECtHR judgment remains unclear. Based on the above, we would suggest referring to “newly emerged” and “subjects having the right to review a judicial act on the basis of new circumstances” in two separate articles, in order to avoid any ambiguity.

According to Article 419 of the Code, “new circumstances shall be a basis for reviewing a judicial act, where: ...

2) in a judgment or a decision, having entered into legal force, of an international court operating based on international agreements ratified by the Republic of Armenia, the fact has been substantiated that a person’s right, as defined in the international agreement ratified by the Republic of Armenia, has been violated, or where the person, at the moment of entry into force of the given judgment or decision, has had the opportunity to exercise that right in compliance with the requirements (time limits) provided for by international agreements.

Appeal on reviewing a judicial act upon emerged or new circumstances may be lodged within a three-month period. Calculation of the three-month period shall begin on the date on which the judgment is served on the person who has applied to that court in the manner prescribed by the judgment of the international court in which the Republic of Armenia is a participant. In this regard, we will probably not make a separate analysis, as we have already presented the problems related to a similar article of the Code above, and it would be desirable for them to be resolved in the Code as well.

Furthermore, Article 420 (2) of the Code defines that an appeal on reviewing a judicial act may not be lodged where twenty years have passed since the entry of the judicial act into legal force. The mentioned time limit shall not be restored.

According to Article 421 of the Code, an appeal on reviewing a judicial act upon newly emerged or new circumstances shall be compiled in writing, in compliance with the requirements of Article 16 (2) of the Code. The appeal must be legible.

In the appeal on reviewing judicial acts upon newly emerged or new circumstances the following shall be included:

- (1) name of the court whereto the appeal is addressed;
- (2) names of the person having lodged the complaint and persons participating in the case, the addresses of their residence (location);
- (3) name of the court having delivered the judicial act against which the appeal is lodged, the number of the case and the year, month, day of delivering the judicial act;

(4)the expounding of the newly emerged or new circumstance serving as a basis for reviewing the judicial act and substantiation of the reason it must be a basis for reviewing the judicial act;

(5)the claim of the person having lodged the appeal;

(6) list of documents attached to the appeal.

The following shall be attached to the appeal:

(1)document attesting the powers of the representative, if not available in the case and where the application has been signed by the representative;

(2)evidence confirming newly emerged or new circumstance;

(3)document attesting to the fact of legal succession where the appeal has been lodged by the legal successor of the person participating in the case;

(4)a motion on restoring the term for lodging an appeal where the appeal has been lodged in violation of the time limit as provided for by part 1 of Article 420 of this Code;

(5)evidence of having sent the appeal to the court having delivered the judicial act, except for the case where the appeal is lodged against a judicial act delivered by the Court of Cassation;

(6)evidence of having sent or handed the appeal and the attached documents to other persons participating in the case.

Motions on restoring the term for lodging an appeal, as well as other motions of the person having lodged the appeal, may also be submitted by being included in the appeal.

The appeal on reviewing a judicial act upon newly emerged or new circumstances shall be signed by the person having lodged it or the representative thereof.

According to Article 422 of the Code, the court shall render a decision on returning the appeal lodged for reviewing a judicial act under newly emerged or new circumstances within a one-month period after receiving it, where:

(1)requirements provided for by Article 421 of this Code have not been observed;

(2)an appeal has been lodged against the judicial act of a lower court where there is a judicial act of a higher court that has entered into legal force with regard to the given case or the given issue;

(3)existence of a newly emerged or new circumstance has not been obviously substantiated within the scope of the appeal.

The appeal of the review of the judicial act shall also be waived by the Court of Appeal and the Court of Cassation on the grounds established by Articles 371 and 395 of the Code, respectively.

In the decision of the court on returning the appeal lodged for reviewing a judicial act shall be indicated all prima facie contraventions made in the appeal. In case of rendering such a decision, only the decision on returning the appeal for reviewing a judicial act shall be sent to the person having lodged the appeal.

In case of eliminating the committed contraventions and lodging an appeal again within a two-week period following receipt of the decision on returning the appeal on the grounds of contravention of the requirements of Article 420 of the Code, lodging an appeal upon expiry of the defined time limit and not containing a motion on restoring the defined time limit or having lodged an

appeal against more than one judicial act, the court shall, within a month time, render a decision on initiating proceedings for reviewing the judicial act upon newly emerged or new circumstances. In case of lodging the appeal over again, new time limits shall not be provided for the elimination of contraventions.

The decision of the Court of Appeal on returning the appeal lodged for reviewing a judicial act may be appealed against in cassation procedure within two weeks after receiving it. Where the Court of Cassation cancels the decision, the court shall render a decision on initiating proceedings for reviewing a judicial act upon newly emerged or new circumstances within a three-day period after receiving the case.

The Court of Appeal shall reject the appeal for review of the judicial act on the grounds and in accordance with the procedure established by Article 372 of the Code. The Court of Cassation shall leave the appeal for reviewing a judicial act without consideration and shall reject to accept for proceedings in compliance with the grounds and the procedure as prescribed by Articles 396 and 397 of the Code.

Where there are no grounds for returning an appeal lodged for reviewing a judicial act, leaving it without consideration or dismissing it, the Court of Appeal shall render a decision on accepting the appeal lodged for reviewing the judicial act upon newly emerged or new circumstances for proceedings within one month period after receiving the appeal, and the Court of Cassation - within a three-month period.

The court shall send the decision on accepting for proceedings the appeal lodged for reviewing the judicial act to the person having lodged it and to other persons participating in the case after rendering the decision.

By the decision on accepting for proceedings the appeal lodged for reviewing the judicial act, or during the examination of the case, the court may, on its own initiative or upon motion of a person participating in the case, suspend execution of the judicial act or a part thereof.

Suspension of execution of the judicial act appealed against or a part thereof shall be retained until the judicial act rendered in the result of the appeal enters into legal force, and in case the proceedings for reviewing the judicial act are terminated - before the announcement of the judicial act on that.

The person participating in the case shall have the right to send a response or submit it to the court and other persons participating in the case within a two-week period after receiving the decision of the court on accepting for proceedings the appeal lodged for reviewing a judicial act upon newly emerged or new circumstances.

The response to the appeal lodged for reviewing a judicial act must comply with the requirements prescribed by Articles 369 or 398 of this Code respectively.

The person submitting the response may attach evidence to the response to the appeal lodged for reviewing a judicial act.

The response shall be attached to the response submitted, and, in case evidence has been submitted, also confirmation on having sent the copies of that evidence to other persons participating in the case.

The response shall be signed by the person having submitted it or by a rep-

representative thereof. A document attesting powers of the representative shall be attached to the response signed by the representative.

While reviewing judicial acts upon newly emerged or new circumstances, the Court of Appeal and the Court of Cassation shall examine the case in the procedure of review in compliance with the rules defined for examination of cases in a relevant court prescribed by the Code, unless otherwise provided by the Chapter on the review of a judicial act upon newly emerged or new circumstances.

During the examination of the appeal on reviewing a judicial act, the court shall study the evidence existing in the case.

For the purpose of determining the availability or absence of grounds of the appeal lodged for reviewing a judicial act, the court shall evaluate the evidence examined and may consider new evidence as confirmed, where it is possible to arrive at such a conclusion based on the evidence examined.

When determining the availability of grounds for the review of a judicial act upon a new circumstance, the court shall reverse the judicial act being reviewed and remand it to the respective court for new examination, if it is not possible to amend it.

When reviewing the judicial act on the basis of the judgment of the ECtHR, the court may not reverse the judicial act, only if it substantiates that it could not in fact affect the outcome of the case.

When reversing the judicial act being reviewed, the court shall amend it where the facts confirmed in the case make it possible to deliver a new judicial act without a new examination of the case.

In the result of the examination of the appeal lodged for reviewing a judicial act upon newly emerged or new circumstances, the court shall render a decision which must comply with the requirements of Articles 381 and 406 of the Code, respectively.

The judicial act of the Court of Appeal may be appealed against in the Court of Cassation pursuant to the general procedure prescribed by law.

ADMINISTRATIVE PROCEDURE CODE

Chapter 25 of the RA Administrative Procedure Code deals with the reopening of court cases under a new circumstance.

Pursuant to Article 182.1 (3) of the Code of Administrative Procedure, new circumstances are grounds for review of a judicial act if, by a judgment or decision of an international court acting on the basis of an international treaty ratified by the Republic of Armenia confirmed the fact of violation of a person's right provided by an international treaty ratified by the Republic of Armenia.

A judicial act of an Administrative Court that has entered into legal force shall be reviewed by the Court of Appeal under a new circumstance unless that judicial act has been reviewed by the Court of Appeal or the Court of Cassation before it enters into legal force. Decisions of the Courts of Appeal and Cassation that have entered into legal force shall be reviewed under new circumstances by the Court of Cassation.

An application for the review of a judicial act under emerged or new circumstances may be launched by:

1) participants of the trial, as well as their legal successors, if the disputed legal relationship allows legal succession;

...

3) persons who, at the time of the issuance of the judicial act by the international court where the Republic of Armenia is a participant, may apply to an international court in accordance with the international treaty (Article 184 of the Code).

Article 185 of the Administrative Procedure Code deals with the terms of reviewing a judicial act under emerged or new circumstances. According to that article, an application for review of a judicial act under emerged or new circumstances may be submitted within 3 months after the relevant ground appears.

In contrast to the current new Criminal Procedure and Civil Procedure Codes, which considered the start of the appeal period for reviewing a judicial act, the date of service of a judgment or decision on a person applying to that court in accordance with ECtHR regulations, the Administrative Procedure Code stipulates that an application for review of a judicial act may be submitted within 3 months after the relevant grounds appear. In such case, the basis is **the valid** judgment or decision on violation of a right or freedom guaranteed by the Convention. In the case of regulations of the Administrative Procedure Code, most of the problems can arise in the case of the judgments of the Committee and the Grand Chamber, because, as already mentioned above, they are final and come into force from the moment of issuing. In this context, it should not be forgotten that they have yet to be properly delivered to the applicant and must be translated by the Translation Center of the RA Ministry of Justice. In such circumstances, the possibility of bringing a complaint to review the judicial act within three months on the basis of a new circumstance seems very unrealistic. Therefore, in order to avoid problems in practice, we would suggest expanding the recommendation made in paragraph 12 above to the provisions of the Administrative Procedure Code.

The legal successor of an individual participating in the proceedings may submit an application for review of a judicial act under the emerged or new circumstances within 3 months after being recognized as such if the legal successor did not exercise his/her right to submit an application because of death (Article 185.2). As a matter of fact, the deadline for the legal successor to file a complaint for review of a judicial act is not regulated in the Administrative Procedure Code and the Code needs to be streamlined in this regard.

An application for review of a judicial act may not be lodged if twenty years have elapsed since the entry into force of the judicial act. An application for review of a judicial act under the emerged or new circumstances shall be made in writing, stating:

- 1) name of the court to which the application is addressed;
- 2) names of the person submitting the application and participants in the proceedings;
- 3) year, month, date and case number of the judicial act subject to review;
- 4) grounds for reviewing the case under the emerged or new circumstances, as well as substantiations concerning their impact on the outcome of the case;
- 5) the subject matter of the claim in the application;
- 6) list of documents attached to the application.

Attached to the application shall be the fact of a new circumstance or evidence confirming the new circumstance, as well as other additional evidence that has not been previously presented. In cases provided by law, the application shall be accompanied by a document confirming the payment of the state fee related to its examination or the code certifying the transfer of the state fee to the relevant treasury account issued by the settlement company, and where the law provides for the possibility of postponing or deferring the payment of the state fee or reducing its amount, the application must include a relevant motion.

The application must be signed by the person submitting it or by his/her representative.

The application and the attached documents and materials shall be filed with the relevant Court.

In the absence of grounds for dismissing the application, the Court shall make a decision on accepting the application for proceedings within fifteen days following the day of receiving it.

Within three days after the decision to accept the application is made, it must be sent to the participants of the proceedings, at the same time informing them of their right to respond to the application.

Parallel to sending the decision to accept the application for proceedings, the participants of the trial shall be notified about the time and place of the court session.

Articles 188-190 of the Code of Administrative Procedure establish norms on the grounds for dismissing the application, the procedure for submitting the response to the application and the procedure for reviewing judicial acts under the emerged or new circumstances.

CONCLUSION

Summarizing the conducted analysis and highlighting the gaps, shortcomings and uncertainties in the national regulations concerning the review of judicial acts following the ECtHR judgments, we have arrived at the following conclusions and recommendations:

- all procedural codes consider judgments of the European Court of Human Rights which identify violations of the rights and freedoms of a person guaranteed by the Convention or the protocols thereto, as an unconditional basis for review of a judicial act. The problem is that in such cases it is not always possible to eliminate the violation by reviewing the judicial act or to reach *restitutio in integrum*. In light of this, we propose to add in the procedural codes a clause for review of a judicial act, noting that ***it can be reviewed if the violation had an impact on the outcome of the case and it cannot be eliminated or the resulting damage cannot be compensated other than by a revision of the judicial act***. As a matter of fact, such conditions exist in the procedural codes of a number of European countries¹⁰. In this regard, it should be noted that the Court of Cassation rejected the reopening of the case on a number of appeals, finding that the judgment or decision of the European Court indicating a violation is not a ground for reversing or quashing the judicial act.¹¹

¹⁰ See, for example, Article 366 (1) (7) of the Estonian Criminal Procedure Code.

¹¹ See, for example the decision of the Court of Cassation of November 7, 2019 on criminal

- We would recommend to amend provisions on the deadlines for the revision of a judicial act following a judgment or decision of the ECtHR, and stipulate that ***an appeal to review a judicial act under a new circumstance may be brought within a period of 4 or 6 months.***

- Given the problems arising in practice with regard to the requirement to submit an Armenian translation of the ECtHR judgments, we would recommend ***to revisit in the procedural codes the requirement to attach an Armenian translation of the ECtHR judgment*** regardless of the existence of a general provision on the language of the trial and the documents submitted during it.

- Furthermore, given that *there is uncertainty with the "proper translation" of ECtHR judgments into Armenian, we would recommend to clarify in the legislation that translations of SNCO "Translation Center" of the RA Ministry of Justice shall be considered as such* and acceptable to the Court of Cassation. This will exclude translation of judicial decisions by the applicants, requesting revision of the judicial acts at their own expense and save them from extra costs.

- In order to streamline the deadlines for revision of the judicial acts, we would recommend ***to translate the decisions of the ECHR or at least those made by the Committee and the Grand Chamber not in 3 but in 2 months,*** which will enhance filling in the application by the applicant in terms of time.

- We would recommend in addition to the private participants in the proceedings, ***to add to the list of persons in the Civil Procedure Code eligible to apply for revision of the judicial act in light of new circumstances, the persons involved in the examination of the case in the ECtHR that have a legitimate interest in revision of that act.***

- Considering that the time limit for filing a complaint by the legal successor of a participant in the trial is not regulated in the Civil Procedure Code, we would recommend ***to regulate the issue in the Civil Procedure Code in a similar way to the Administrative Procedure Code.***

ԱՐՏԱԿ ԱՍՏՏՅՅԱՆ – Մարդու իրավունքների եվրոպական դատարանի վճիռների արդյունքում դատական գործերի վերաբացման ընթացակարգը ՀՀ օրենսդրությունում և սյրակտիկայում – Մարդու իրավունքների և հիմնարար ազատությունների պաշտպանության մասին կոնվենցիան (այսուհետ՝ Կոնվենցիա) երաշխավորում է մի շարք իրավունքներ և ազատություններ, որոնք Կոնվենցիան վավերացրած պետությունները պարտավորվել են հարգել իրենց իրավագործության ներքո գտնվող տարածքներում: Կոնվենցիայի հիման վրա ստեղծված Մարդու իրավունքների եվրոպական դատարանի (այսուհետ՝ ՄԻԵԴ) արձանագրած խախտումների առնչությամբ հաճախ անհրաժեշտություն է լինում ներպետական մակարդակում վերաբացելու դատական գործերը: Այս գործընթացի կարևորությունն այն է, որ դա առանցքային տեղ է զբաղեցնում ՄԻԵԴ վճիռների կատարման համակարգում և որոշ դեպքերում դիտարկվում է որպես խախտված իրավունքների վերականգնման միակ ճանապարհ:

case No. ECD/ 0190/06/08, the decision of the Court of Cassation of October 19, 2021, the decision of the Chamber of Civil and Economic Affairs of the Court of Cassation of 07.04.2006 on grounds for review under new circumstances, etc.

Սույն հոդվածի շրջանակներում ուսումնասիրվել են ՄԻԵԴ վճիռների հիման վրա դատական գործերի վերաբացման վերաբերյալ Հայաստանի Հանրապետության օրենսդրությունը և պրակտիկան: Մասնավորապես, վերլուծության են ենթարկվել ՀՀ քրեական դատավարության, ՀՀ քաղաքացիական դատավարության, ՀՀ վարչական դատավարության օրենսգրքերի և այլ իրավական ակտերի վերաբերելի իրավակարգավորումները: Հոդվածում կատարված համակողմանի ուսումնասիրությունների արդյունքում վեր են հանվել քննարկվող ոլորտում ՀՀ օրենսդրության և պրակտիկայի բացերը, թերությունները և անորոշությունները, որոնց լրացման, վերացման կամ հստակեցման ուղղությամբ կատարվել են համապատասխան առաջարկություններ:

Բանալի բառեր - *ՄԻԵԴ վճիռների կատարում, դատական գործերի վերաբացում, դատական գործերի վերանայում, դատական գործերի վերաբացման օրենսդրություն, դատական գործերի վերաբացման պրակտիկա, վերաբացման օրենսդրության թերություններ, դատական գործերի վերաբացման գործնական խնդիրներ*

АРТАК АСАТРЯН – Порядок возобновления судебных дел в законодательстве и практике РА в результате решений Европейского суда по правам человека. – Конвенция о защите прав человека и основных свобод (далее – Конвенция) гарантирует ряд прав и свобод, которые государства, ратифицировавшие Конвенцию, обязаны соблюдать на территориях, находящихся под их юрисдикцией. Что касается нарушений, зафиксированных Европейским судом по правам человека (далее ЕСПЧ), созданным на основании Конвенции, часто возникает необходимость возобновления судебных дел на внутригосударственном уровне. Важность этого процесса заключается в том, что это занимает ключевое место в системе исполнения решений ЕСПЧ и в ряде случаев рассматривается как единственный способ восстановления нарушенных прав.

В рамках данной статьи изучены законодательство и практика Республики Армения относительно возобновления судебных дел на основании постановлений ЕСПЧ. В частности, были проанализированы соответствующие правовые нормы Уголовно-процессуального, Гражданского процессуального, Административно-процессуального кодексов РА и других правовых актов. В результате комплексных исследований, проведенных в статье, были освещены пробелы, недостатки и неопределенности законодательства и практики РА в обсуждаемой сфере и даны соответствующие рекомендации по их восполнению, устранению или уточнению.

Ключевые слова: *исполнение решений ЕСПЧ, возобновление судебных дел, рассмотрение судебных дел, законодательство о возобновлении судебных дел, практика возобновления судебных дел, недостатки законодательства о возобновлении судебных дел, практические проблемы возобновления судебных дел*