

Factual review of final court decisions – reopened criminal proceedings

The jurisprudence analysis focuses on one of the extraordinary remedies in criminal cases, namely on reopened proceedings. The working group has been entrusted with the task of exploring and assessing the courts' case-law on such proceedings on the basis of both the Code of Criminal Procedure in force and the new Code of Criminal Procedure coming into effect on 1 July 2018.

The examination aims at addressing the fundamental problems that have been so far faced by the judiciary. The most important issue is whether the most significant grounds for the reopening of proceedings have resulted in a court ruling ordering the reopening and whether the reopened proceedings have led to a diverging decision.

Reopened proceedings following an *in absentia* trial are of particular importance. In that regard, it is necessary to examine whether there has been any reference to a new piece of evidence in the petition for the reopening of proceedings following the reappearance of the accused person or whether the reopening has been ordered in a compulsory manner on grounds of the accused person's absence in the previous court proceedings. It has also to be examined i. whether the reopening of proceedings in such cases can be considered as an effective legal remedy, which may produce real change in terms of the previous court decision and ii. what kind of practical problems may arise in respect of the mandatory ordering of reopening.

The reopening of proceedings mainly serves the purposes of correcting factual errors, and drawing right legal conclusions and applying appropriate legal consequences on the basis of them. Practical experience, however, shows that the mandatory ordering of the reopening of proceedings following an *in absentia* trial is rather a mere pretence. In the majority of cases, such reopened proceedings do not lead to any revision.

The new Code of Criminal Procedure does not bring any conceptual changes regarding the reopening of proceedings. No change in respect of the grounds for the reopening of proceedings is to be expected. Having regard to the small modifications, it can be stated that the jurisprudence-analysing working group's summary report will be of use for the judiciary in terms of both the previous and the new Code of Criminal Procedure.

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