

REOPENING OF DOMESTIC JUDICIAL PROCEEDINGS FOLLOWING THE EUROPEAN COURT'S JUDGMENTS



DEPARTMENT FOR
THE EXECUTION OF
JUDGMENTS OF THE
EUROPEAN COURT OF
HUMAN RIGHTS

DG1

THEMATIC FACTSHEET

October 2022

REOPENING OF DOMESTIC JUDICIAL PROCEEDINGS FOLLOWING THE EUROPEAN COURT'S JUDGMENTS

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The full, effective and speedy implementation of the judgments of the European Court of Human Rights by the States parties to the Convention makes a major contribution to the achievement of common observance and enforcement of human rights in Europe.

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 breach. This is the principle of *restitutio in integrum*, which has also frequently been applied by the Committee of Ministers. 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 States to provide in their national law for the re-examination or reopening of proceedings, the existence of such possibilities has proven to be important, and indeed in some cases the only, means to achieve *restitutio in integrum*.

The present factsheet presents an overview of the general principles concerning reopening of domestic judicial proceedings, as well examples of the relevant State practice examined by the Committee of Ministers in the context of the execution of the European Court's judgments concerning various provisions of the Convention

1. Overview of general principles concerning reopening

Under the Committee of Ministers (CM) *Recommendation No. R(2000)2*, re-examination - including reopening of a case - should be possible at national level especially if, following a European Court's judgment, the injured party continues to suffer very serious negative consequences from the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified other than by re-examination or reopening. Another condition that should be met at the same time is that the judgment of the Court leads to the conclusion that *a.* the impugned domestic decision is on the merits contrary to the Convention, or *b.* 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 at issue.¹ As to the existence of such doubts, the CM may accept the authorities' conclusions, if they are well-substantiated.²

Reopening can thus be the most efficient, if not the only, means of achieving *restitutio in integrum*, especially in the field of criminal law, and the possibility of to reopen criminal cases is now provided in almost all member States,³ sometimes following a special decision by a higher court.⁴

As a result, in practice, reopening has become a common individual measure in criminal cases: the negative consequences of a Convention violation need not necessarily be very serious to call for reopening.⁵ Reopening should not, at the same time, go as far as to imply any risk of deterioration of the applicant's situation (*non reformatio in peius*).⁶

Even the persons who have never lodged an application with the Court can have their cases reopened if they have suffered from the events similar to those resulting in the Convention violations, notably those found in the pilot judgments by the Court.⁷ At the same time, no obligation as such exists to reopen all domestic *res judicata* cases similar to cases in which the Court has found a violation. Indeed, under the "reopening in mass cases" exception, which are cases in which a certain structural deficiency leads to a great number of violations of the Convention, it is, in principle, best left to the State concerned to decide whether reopening is realistic.⁸

¹ *Recommendation R (2000)2 of the Committee of Ministers to Member States on the re-examination or Reopening of Certain Cases at Domestic Level Following Judgements of the Court*, adopted on 19 January 2000.

² *TUR / Öcalan (46221/99)*, Judgment final 12/06/2003, Final Resolution *CM/ResDH(2007)1* (assessment of the influence of the violation on the outcome made by the domestic court); *EST / Martin (35985/09)*, Judgment final 07/10/2013, Final Resolution *CM/ResDH(2016)308* (assessment made by the domestic court); *TUR / Gökç (36590/97)*, Judgment final 11/07/2002, Final Resolution *CM/ResDH(2011)307* (assessment made by the government agent).

³ *PRT / Moreira Ferreira (19867/12)*, judgment final 11/07/2017, §§ 39, 48.

⁴ *ITA / Bracci (36822/02)*, Judgment final 15/02/2006, Final Resolution *CM/ResDH(2014)102* (concerning an interpretation of law by the Constitutional Court to allow reopening of criminal cases).

⁵ *ROM / Bucur and Toma (40238/02)*, Judgment final 08/04/2013, Notes to the decision adopted by the CM in December 2016, *CM/Notes/1273/H46-21* (in that case, the domestic court found that the applicant had been fully rehabilitated to address the violation, but that this still had not erased all its negative consequences, and decided to reopen the case).

⁶ *AUT / Pfeifer (12556/03)*, Judgment final 15/02/2008, Final Resolution *CM/ResDH(2018)322*.

⁷ Appendix to Recommendation *Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies*, § 17. *ESP / Del Río Prada (42750/09)*, Judgment final 21/10/2013, Final Resolution *CM/ResDH(2014)107* (concerning release of persons affected by deficient law, who never applied to the Court).

⁸ *Explanatory Memorandum to Recommendation (2000)2*, § 14, *ISL / Guðmundur Andri Ástráðsson (26374/18)*, Judgment final 30/11/2021, § 314, Final Resolution *CM/ResDH(2022)48*.

While the Court sometimes indicates that reopening is called for, it does not have jurisdiction to directly order it;⁹ such indications are thus not binding.¹⁰ On the other hand, absence of such indications does not absolve the authorities from an obligation to request or accept a request for reopening if necessary; plenty of cases have been reopened in the absence of any indication from the Court.¹¹

The CM practice has indicated that applicants should have a right to request reopening of criminal judicial proceedings; only exceptionally can the CM accept a system in which not the applicant but a public authority such as a prosecutor, may have this right.¹² If an applicant having this right has nevertheless not requested reopening, the CM may close the case.¹³ Sometimes, when there is no information as to whether the applicant has requested reopening, even the mere possibility under the national law to request it is sufficient for the CM to close the case, if there is nothing to suggest, in particular on the basis of the information available to the CM, that the applicant continues to suffer from the negative consequences of the violation.¹⁴ However, if such consequences are obvious, the authorities can go as far as to reopen the case by their own initiative, *ex officio*.¹⁵

The CM usually waits for the outcome of the reopened criminal proceedings before closing a case, if it concerns a clearly substantive violation of the Convention – because acquittal is usually the only Convention-compliant outcome.¹⁶ In cases where the violation has been duly addressed before the end of the reopened proceedings, there is no need to wait.¹⁷ Pending the outcome of the reopened criminal proceedings, and if the case concerns a violation casting doubt on the decision resulting in the applicant's imprisonment, the applicant is to be released (unless of course there are other legitimate grounds to detain the applicant).¹⁸

As for civil cases concerning, notably, disputes between private parties, considerations of legal certainty will frequently prevent reopening because the rights of good faith of third parties are

⁹ *PRT / Moreira Ferreira (19867/12)*, Judgment final 11/07/2017, § 49.

¹⁰ *SVN / Gaspari (21055/03)*, Judgment final 10/12/2009, § 80, Final Resolution [CM/ResDH\(2018\)401](#) (concerning closure of the case without reopening despite the Court's indications, because no reopening in civil cases is possible in Slovenia, while alternatives remain available).

¹¹ *SUI / Perinçek (46669/99)*, Judgment final 15/10/2015, Final Resolution [CM/ResDH\(2016\)326](#), etc.

¹² *BGR / Petyo Popov (75022/01)*, Judgment final 22/04/2009, Final Resolution [CM/ResDH\(2017\)363](#) (concerning prosecutor's refusal to initiate reopening which, in the prosecutor's opinion, could have deteriorated the applicant's situation).

¹³ *PRT / Paixão Moreira Sá Fernandes (78108/14)*, Judgment final 28/05/2020, Final Resolution [CM/ResDH\(2022\)110](#) (concerning conviction in violation of Article 6; closed after the authorities underlined that the applicant did not request reopening and that this conviction is not in the criminal register); *TUR / Ahmet Arslan and Others (41135/98)*, Judgment final 04/10/2010, Final Resolution [Cm/ResDH\(2016\)330](#) (concerning conviction in violation of Article 9; closed after the authorities reported that the applicant did not request reopening, criminal record was deleted with no more negative consequences of the violation); *PRT / L.P. and Carvalho (24845/13)*, Judgment final 08/10/2019, Final Resolution [CM/ResDH\(2022\)41](#) (concerning conviction in violation of Article 10; closed after the authorities reported that one applicant requested reopening and was acquitted, but the other applicant in the same situation did not request reopening).

¹⁴ *FRA / Eon (26118/10)*, Judgment final 14/06/2013, Final Resolution [CM/ResDH\(2014\)10](#) (concerning conviction in violation of Article 10, the sentence being a simple warning; closed after the authorities reported that the applicant can request reopening); *FIN / M.P. (36487/12)*, Judgment final 15/03/2017, Final Resolution [CM/ResDH\(2018\)431](#) (concerning another conviction in violation of Article 10; closed after the authorities reported that the applicant can request reopening, and that convictions are not entered in her criminal record).

¹⁵ *HUN / Vajnai (33629/06)*, Judgment final 08/07/2008, Final Resolution [CM/ResDH\(2019\)346](#) (concerning conviction in violation of Article 10; closed after a state prosecutor requested reopening *ex officio*, and the domestic courts reopened the cases and acquitted the applicants).

¹⁶ *SUI / Perinçek (27510/08)*, Judgment final 15/10/2015, Final Resolution [CM/ResDH\(2016\)326](#) (concerning closure of the case only after the applicant convicted in violation of Article 10 had been acquitted in the reopened proceedings).

¹⁷ *MKD / Mitrov (45959/09)*, Judgment final 02/09/2016, Final Resolution [CM/ResDH\(2017\)146](#) (concerning a closure before the reopened proceedings had ended, but after an impartial tribunal had started to consider the case).

¹⁸ *ROM / Constantin and Stoian (23782/06)*, Judgment final 29/12/2009, Final Resolution [CM/ResDH\(2013\)40](#). *LIT / Birutis and Others (47698/99)*, Judgment final 28/06/2002, Final Resolution No. [ResDH\(2004\)45](#) (not all applicants were released but only because of other convictions).

involved.¹⁹ Reopening depends on the will of the applicant to the extent that she/he can even withdraw the reopening request.²⁰ In fact, reopening in civil cases is still not possible in some countries²¹ as it is considered that the damage can be adequately remedied by alternative means, for example, by adequate just satisfaction.²²

Alternatives to reopening in both civil and criminal cases can often be acceptable: reopening is simply another means – albeit a key means – for the full and proper execution of certain of the Court's judgments. A State remains free and sometimes even obliged to choose other means to achieve the applicants' *restitutio in integrum*, to the extent possible, insofar as this means is speedy, efficient and respectful of the conclusions of the Court.²³ Such alternatives may include compensation²⁴ or pardon.²⁵

¹⁹ For example, the current owner of the property who could not have foreseen that the Convention rights of a previous owner (the applicant) had been violated, should not suffer because of the reopening. *NOR / Walston (37372/97)*, Judgment final 03/12/2003, Final Resolution [CM/ResDH\(2008\)55](#).

²⁰ *NOR / TV Vest As and Rogaland Pensjonistparti (21132/05)*, Judgment final 11/03/2009, Final Resolution [CM/ResDH\(2011\)234](#).

²¹ There is no right for reopening of civil proceedings in, for instance, Austria, Belgium, Greece, France (apart from the matters of civil status), Ireland, Malta, Poland and Slovenia.

²² *GRC / Moustakidis (58999/13)*, Judgment final 27/01/2020, Final Resolution [CM/Res DH\(2022\)97](#); *SVN / Gaspari (21055/03)*

²³ *SUI / Verein gegen Tierfabriken (VgT) (No. 2) (32772/02)*, § 90, Judgment final 30/06/2009, Final Resolution [CM/ResDH\(2010\)113](#).

²⁴ *SVN / Ališić and Others (60642/08)*, Judgment final 16/07/2014, Final Resolution [CM/ResDH\(2018\)111](#).

²⁵ *ROM / Dalban and 4 other cases (28114/95)*, Judgment final 28/09/1999, Final Resolution [CM/ResDH\(2011\)73](#).

2. Examples from State practice

2.1. Article 3 (Prohibition of torture)

In a case concerning the risk of ill-treatment of an asylum-seeker in the event of his deportation to Afghanistan, in the absence of a rigorous and thorough examination of the circumstances of the case by the Federal Administrative Court of Switzerland. This court reopened the case and found in favour of the applicant, remitting the case to the State Secretariat for Migration (*Secrétariat d'État aux migrations*) which then recognised the applicant as a refugee and granted him provisional admission to Switzerland.

SUI / A.A.
(32218/17)

Judgment final on
05/02/2020

Final Resolution
CM/ResDH(2021)21

2.2. Article 5 (Right to liberty and security)

In a case concerning unreasonably long pre-trial detention (Article 5§3), in the reopened proceedings, the domestic courts quashed the relevant detention orders, allowing the applicant to claim additional compensation under the domestic law.

RUS / Bykov
(4378/02)

Judgment final on
10/03/2009

Status of Execution

In a case concerning unlawful detention (Article 5§1), the domestic courts reopened the proceedings for compensation for such detention.

SER / Mitrovic
(52142/12)

Judgment final on
21/06/2017

Final Resolution
CM/ResDH(2020)78

2.3. Article 6 (Right to a fair trial)

In a case concerning conviction on the basis of statements made by a co-accused, which were retracted before the trial court, without examination as to their reliability and accuracy despite allegations of duress. In the reopened proceedings, the court acquitted the applicant due to the lack of evidence.

CRO / Erkapic
(51198/08)

Judgment final on
25/07/2013

Final Resolution
CM/ResDH(2021)148

In a case concerning failure to examine the merits of a case, the domestic courts reopened proceedings in order to consider all the merits of the case.

CRO / Lesjak
(25904/06)

Judgment final on
18/05/2010

Final Resolution
CM/ResDH(2012)12

In a case in which a violation had been found because very important pieces of evidence were not adequately adduced and discussed at the trial in the applicants' presence and under the watchful eye of the public, the domestic courts in the reopened proceedings acquitted the applicants because there was no sufficient evidence against them.

ESP / Barberà, Messegue and Jabardo
(10590/83)

Judgment final on
06/12/1988

Final Resolution
CM/ResDH(1994)84

In a case in which the domestic court had not been impartial because of objective fears that a superior judge had instructed it on what kind of judgment had to be adopted, the domestic courts in the reopened proceedings reconsidered the case without taking these instructions into account.

LIT / Daktaras
(42095/98)

Judgment final on
17/01/2001

Final Resolution
CM/ResDH(2004)43

In a case in which the court was not impartial because the same judges sat in both first and appeal instances, the proceedings were reopened and the case heard anew by a formation of judges different from those having sat in the original first-instance or appeal proceedings.

MLT / San Leonard Band Club
(77562/01)

Judgment final on
29 October 2004

Final Resolution
CM/ResDH(2013)146

In a case in which the domestic courts had not properly examined the applicants' pleas of entrapment in criminal proceedings concerning allegations of committing drug-related crimes, the domestic courts in the reopened proceedings examined the applicants' pleas.

ROM / Constantin and Stoian
(23782/06)

Judgment final on
29/12/2009

Final Resolution
CM/ResDH(2013)40

In cases in which the domestic courts had failed to hear the witnesses, the domestic courts summoned and heard the witnesses in the reopened proceedings.

ROM / Reiner and Others
(1505/02)

Judgment final on
27/12/2007

Final Resolution
CM/ResDH(2013)41

2.4. Article 7 (No punishment without law)

In cases concerning the application of a more severe criminal law than that which was applicable at the time of the crime, the domestic courts in the reopened proceedings, applied the more lenient criminal law.

BIH / Maktouf and Damjanović
(2312/08)

Judgment final on
18/07/2013

Final Resolution
CM/ResDH(2017)180

In cases in which detention imposed by courts on safety grounds was extended in the absence of a legislative basis, the courts ordered the applicants' release (or new detention secured on lawful grounds: mental illness).

**GER / M. group
(19359/04)**

*Judgment final on
10/05/2010*

Final Resolution
CM/ResDH(2014)290

In cases in which violations were due to the fact that the acts held against the applicants could not foreseeably constitute a criminal offence under the national law in force at the material time, the domestic courts in the reopened proceedings annulled the convictions of the applicants.

**ROM / Dragotoniu and
Militaru-Pidhorni
(77193/01)**

*Judgment final on
24/08/2007*

Final Resolution
CM/ResDH(2011)250

2.5. Article 8 (Right to respect for private and family life)

In a case concerning annulment of the applicants' state degrees in dentistry due to administrative flaws during the first-year registration procedure, in the reopened proceedings, a court nullified the University's decision to annul the applicants' diplomas. In September 2021, the Ministry of Health re-confirmed the certificates of bachelor's degrees in dentistry for all applicants.

**ROM / Convertito and
Others
(30547/14)**

*Judgment final on
03/07/2020*

Final Resolution
CM/ResDH(2022)111

In cases in which the applicants were unlawfully or disproportionately deprived of their legal capacity, the domestic courts in the reopened proceedings restored the applicants' full legal capacity.

**RUS / Rakevich group
(58973/00)**

*Judgment final on
24/03/2004*

Final Resolution
CM/ResDH(2020)333

In a case concerning dismissal from the police because of criminal proceedings for which the applicants were subsequently acquitted, the domestic courts in the reopened proceedings reinstated them in their positions.

**SER / Milojević
(43519/07)**

*Judgment final on
12/04/2016*

Final Resolution
CM/ResDH(2018)93

In a case concerning denial of the applicant's request to change her patronymic name, in the reopened proceedings, the domestic courts ordered the Civil Status Registration Office to register the applicant's new patronymic name.

**UKR / Garnaga
(20390/07)**

*Judgment final on
16/08/2013*

Final Resolution
CM/ResDH(2020)355

In a case concerning noise, vibration and air and soil pollution caused by a motorway that had been re-routed next to the applicant's house, in the reopened proceedings, a court found in favour of the applicant and additionally to the Court's judgment, awarding her

**UKR / Grimkovskaya
(38182/03)**

*Judgment final on
21/10/2011*

further compensation in respect of non-pecuniary damage (the motorway being no longer in operation).

Final Resolution
CM/ResDH(2020)88

In a case concerning the decision to remove three children from their blind parents' care and place them in different institutions (preventing regular contacts with their parents and siblings), reopened judicial proceedings permitted the children to return to their mother

UKR / Saviny
(39948/06)

Judgment final on
18/03/2009

Final Resolution
CM/ResDH(2018)39

2.6. Article 9 (Freedom of thought, conscience and religion)

In a case concerning the conviction of a Jehovah Witness for not complying with one of the rigid, or indeed prohibitive, conditions on practice of his religious beliefs, that the Court had deemed non-compliant with the Convention, the domestic courts acquitted the applicant in reopened proceedings.

GRC / Manoussakis and Others
(18748/91)

Judgment final on
26/09/1996

Final Resolution
CM/ResDH(2005)87

In cases concerning criminal convictions of the applicants, both of whom had been elected as muftis by a part of the Greek Muslim community and who, having been convicted, were unable, in community with others and in public, to manifest their religion in worship and teaching: the impugned proceedings were reopened and the convictions quashed.

GRC / Serif
(38178/97)

Judgment final on
14/03/2000

GRC / Agga No 2
(50776/99)

Judgment final on
17/01/2003

Final Resolution
CM/ResDH(2005)88

2.7. Article 10 (Freedom of expression)

In a case concerning conviction of a journalist for criticizing wine produced by a state-owned company to raise awareness about the disadvantages of state ownership rather than to denigrate the quality of the company's products, in reopened proceedings, the impugned judgment was quashed and the applicant acquitted.

HUN / Uj
(23954/10)

Judgment final on
19/10/2011

Final Resolution
CM/ResDH(2022)70

In a case concerning the conviction of an official for having severely criticised other officials at a press conference, the domestic court in the reopened proceedings acquitted the official.

MON / Sabanovic
(5995/06)

Judgment final on
31/08/2011

Final Resolution
CM/ResDH(2016)44

In a case concerning the conviction of a journalist for libel, without being given a proper opportunity to adduce evidence in support of his statements by the competent court, the applicant (who had passed away in the meantime) was acquitted by the Supreme Court of Justice in reopened proceedings following an extraordinary appeal lodged by the Prosecutor General.

ROM / Dalban and 4 other cases (28114/95)

Judgment final on 28/09/1999

Final Resolution
CM/ResDH(2011)73

In cases in which detention imposed by courts on safety grounds was extended in the absence of a legislative basis, the courts ordered the applicants' release (or new detention secured on lawful grounds: mental illness).

SUI / Verein gegen Tierfabriken (VgT) (No. 2) (32772/02), § 90

Judgment final on 30/06/2009

Final Resolution
CM/ResDH(2010)113

2.8. Article 11 (Freedom of assembly and association)

In a case concerning the unjustified dissolution of the applicant association, all domestic proceedings regarding the applicant's striking off from the register of associations and its cessation of activities were reopened and the impugned decisions annulled.

CRO / Croatian Golf Federation (66994/14)

Judgment final on 17/03/2021

Final Resolution
CM/ResDH (2021)355

In a case concerning the unjustified dissolution of an association, the applicant association was registered in the reopened proceedings.

MKD / Association of Citizens Radko & Paunkovski (74651/01)

Judgment final on 15/04/2009

Final Resolution
CM/ResDH(2017)293

In a case concerning the disproportionate dissolution of an opposition political party, in the reopened proceedings, the domestic courts quashed the decision to dissolve this party.

RUS / Republican Party of Russia (12976/07)

Judgment final on 15/09/2011

Final Resolution
CM/ResDH(2017)354

2.9. Article 14 (Prohibition of discrimination)

In a case concerning the refusal to suspend the prison sentence because of the applicant's Roma origin (violation of Article 14 in conjunction of Article 6), in the reopened proceedings, the domestic courts suspended the prison sentence.

**BGR / Paraskeva Todorova
(37193/07)**

*Judgment final on
25/06/2010*

Final Resolution
CM/ResDH(2016)156

In a case concerning a discriminatory method of calculation of allowances to women wishing to work part time following the birth of their children (violation of Article 14 in conjunction with Article 8), in the reopened proceedings, the domestic courts addressed the Court's concern by granting a 50% disability allowance to the applicants retrospectively for more than 12 years

**SUI / Di Trizio
(7186/09)**

*Judgment final on
02/02/2016*

Final Resolution
CM/ResDH(2017)128

In a case concerning the applicant's dismissal from her post as security officer on the grounds that she did not fulfil the requirements of "being a man" and "having completed military service" (violation of Article 14 in conjunction with Article 8), in the reopened proceedings, the domestic courts reinstated the applicant to her position.

**TUR / Emel Boyraz
(61960/08)**

*Judgment final on
02/03/2015*

Final Resolution
CM/ResDH(2017)147

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

In a case concerning the seizure of a vehicle in the context of a criminal investigation, its prolonged retention in inadequate storage conditions and subsequent refusal by the civil courts and Constitutional Court of the applicant's request for compensation for the damage caused, in the reopened proceedings, a court awarded to the applicant's heir a compensation for the vehicle (approximately 20,000 euros), as well as costs and expenses (642 euros).

**CRO / Vuković
(47880/14)**

*Judgment final on
15/11/2018*

Final Resolution
CM/ResDH(2022)27

In cases concerning the courts' refusal to examine the applicants' compensation claims, where reopening of civil proceedings was not possible under the domestic law, the damage was fully compensated via payment of just satisfaction awarded by the Court.

**GRC / Moustakidis
(58999/13)**

*Judgment final on
27/01/2020*

**GRC / Alfa Glass Anonymi
Emboriki Etairia
Yalopinakon
(74515/13)**

*Judgment final on
31/05/2021*

Final Resolution
CM/Res DH(2022)97

In a case concerning the disproportionate confiscation of a collection of antique weapons, in the reopened proceedings, the domestic courts quashed the decision to confiscate this collection and the weapons were returned to the applicant.

*POL / Waldemar
Nowakowski
(55167/11)*

*Judgment final on
17/12/2012*

Final Resolution
CM/ResDH(2015)165

In a case concerning the unlawful confiscation of smuggled money, the domestic courts in the reopened proceedings ordered payment to the applicant of sums equal to those confiscated.

*RUS / Baklanov
(68443/01)*

*Judgment final on
30/11/2005*

Final Resolution
CM/ResDH(2011)301

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<i>MON / Sabanovic</i>	9	<i>UKR / Garnaga</i>	8
		<i>UKR / Grimkovskaya</i>	8
		<i>UKR / Saviny</i>	9