

INTERNATIONAL ASSOCIATION OF JUDGES - 2nd Study Commission

SUBJECT: In what circumstances may a case be reopened after the final decision has been reached by a Court ?

QUESTIONNAIRE :

- 1)- Does your legal system permit a final judgment conclusive of the matter in controversy to be modified ?
- 2)- If yes, is a case reopened before the same Court which decided it previously or before an upper Court ?
- 3)- May a case be reopened only when a penal judgment has ascertained an offence committed in connection with the case ?
- 4)- May a case be reopened :
 - a) in case of malice either of one of the parties or of the judge ?
 - b) when a witness or expert has made a statement which was subsequently declared false, or when a party has sworn a statement or exhibited a document which were subsequently declared false ?
 - c) when new documents have been discovered after the expiry of the time limit for an appeal proper ?
 - d) when new evidence is offered, which would obviously have led to a different decision ?
 - e) when the judgment was based on a previous decision which has been subsequently annulled ?
- 5)- May a case be reopened when certain serious errors have been made, with regard to the application of rules of procedure, e.g. :
 - a) when the Court was not duly set up, or when a judge should have been excluded from the judgeship or was disqualified ?
 - b) when one of the parties was not duly assisted by Counsel during the proceeding ?
 - c) when a minor child or a Charity was not duly represented ?
 - d) when some points of the judgment are contradictory to others ?
 - e) when the judgment has not decided some relevant point submitted by the parties ?
 - f) when the judgment has decided beyond the requests of the parties ?
 - g) when the prosecutor has not been heard although his opinion was required by the law ?
 - h) when the parties have colluded to avoid an obstacle of the law ?
- 6)- Shall the petition for resumption of the case be filed within a certain time after the delivery of the judgment, or after another event ?
- 7)- If the judge did not sign the judgment and there was no appeal of the parties, what are the consequences thereof ?
- 8)- May a judgment concerning alimony or custody of children be revised when the situation has changed ?