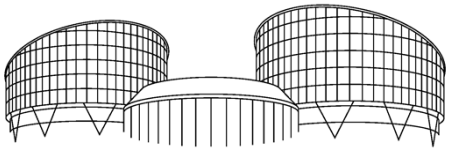

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF OMDAHL v. NORWAY

(Application no. 46371/18)

JUDGMENT

Art 6 § 1 (civil) ● Reasonable time ● Art 6 applicable to administration of estate under domestic law, characterised by a mixture of contentious and non-contentious elements ● Exceptionally complex administration of deceased's estate lasting more than twenty-two years and involving a number of disputes, not excessive ● Disadvantages reduced by interim distributions ● Length of proceedings not due to any shortcomings in legal and procedural framework

STRASBOURG

22 April 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Omdahl v. Norway,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President,*
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Ivana Jelić,
Mattias Guyomar, *judges,*
Jørgen Aall, ad hoc *judge,*

and Victor Soloveytchik, *Section Registrar,*

Having regard to the application (no. 46371/18) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Norwegian national, Mr Olav Omdahl ("the applicant"), on 21 September 2018;

the decision to give notice to the Norwegian Government ("the Government") of the complaint concerning Article 6 of the Convention;

the parties' observations;

Having deliberated in private on 23 March 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the question whether the administration and division of a deceased person's estate over a period of twenty-two years and four months was compatible with the "reasonable time" requirement in Article 6 of the Convention.

THE FACTS

2. The applicant was born in 1951 and lives in Oslo. He was represented by Mr M. Garman, a lawyer practising in Oslo.

3. The Government were represented by their Agent, Mr M. Emberland of the Attorney General's Office (Civil Matters), assisted by Ms H. Ruus, advocate at the same office.

4. Mr Arnfinn Bårdsen, judge elected in respect of Norway, was unable to sit in the case (Rule 28 of the Rules of Court). On 10 February 2021 the President of the Chamber designated Mr Jørgen Aall to sit as an *ad hoc* judge in his place (Article 26 § 4 of the Convention and Rule 29 of the Rules of Court).

5. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND

6. O.A. Knutsen, a grandfather of the applicant, was born on 11 February 1899 and died on 24 April 1993. He had been engaged in shipping and owned a shipping company, of which the family lost control owing to financial difficulties in the 1980s. The deceased had nonetheless accumulated extensive assets from shipping, property and various industrial activities.

7. The heirs at the time of O.A. Knutsen's death were three children and two grandchildren. The assets of the estate mainly consisted of an extensive property portfolio, various shares in wholly and partly owned companies, securities and moveable property. The assets were worth approximately 100 million Norwegian kroner (NOK) in all and the estate's debt was approximately NOK 10 million. Two of the children, including the applicant's mother, died before the final distribution took place.

8. On 5 May 1993 the public administration of the estate commenced before the Probate Court (*skifterett* – following reorganisation, the Probate Court has since become the District Court (*tingrett*); the former term will still be employed in referring to the court dealing with the administration of the estate in the present judgment). An advocate was appointed as administrator.

II. THE ADMINISTRATION OF THE ESTATE

9. Meetings both in and out of court were conducted throughout the period in which the estate was being administered, and the accounts for the estate were kept and audited by a public accountant.

10. At the beginning of the administration of the estate, some small properties were converted into cash. However, several sets of legal proceedings concerning heirs' rights to have assets distributed in kind, in accordance with the deceased's will and a codicil thereto, resulted in the proceeds being tied up until the turn of the year 2005/06 (see paragraph 30 below). In parallel with those proceedings the Probate Court made a number of decisions intended to convert further assets into cash, but those decisions were either quashed or amended on appeal by the High Court (*lagmannsrett*). It was therefore not possible to distribute any assets from the estate.

11. During the administration, disputes also arose relating to a trust which the deceased had established in the Bahamas, managed by a London-based bank. The existence of the trust only came to light after the death of the applicant's mother in 2002, and in December 2005 each of the deceased's children and grandchildren received NOK 5.5 million from this trust.

12. The trust gave rise to disputes as to whether certain funds belonged to the estate. It also gave rise to numerous questions relating to the taxation of both the estate and the heirs, which were clarified in correspondence between the Probate Court and the tax authorities from 2006 onwards. The tax issues were ultimately clarified by the tax authorities during the winter of 2010.

13. When, among other matters, the tax questions – which had been one of the reasons why the interim distribution of assets from the estate proposed in 2007 had not been possible – had been settled, an interim distribution took place on 1 July 2010, whereby each branch of the lineal descendants received NOK 10 million. The heirs lodged an appeal against that distribution which was dismissed by the High Court on 7 June 2011. On 1 November 2011 the Supreme Court refused leave to appeal against the High Court's decision.

14. In parallel with those measures, disputes arose about how shares belonging to the estate were to be sold. The District Court made a decision in those proceedings on 11 June 2010, which was appealed against, and the matter was therefore not finally settled until 25 March 2011. A number of other legal actions were also brought concerning disputes between various heirs and a motion was filed to have a judge disqualified on grounds of partiality. In addition, disputes arose about the sale of shares in a property company and a fish oil factory. Following proceedings in these matters, which came to an end during 2012, the sale of the shares was then for the most part completed during the first half of 2013 and the remaining limited liability companies belonging to the estate were wound up in December 2013.

15. The Probate Court decided on the final distribution on 1 August 2014. The decision was appealed against to the High Court, which dismissed the appeal in a ruling of 27 November 2014. On 7 April 2015 the Supreme Court's Appeals Leave Committee (*Høyesteretts ankeutvalg*) refused leave to appeal against the High Court's ruling.

16. The final distribution was then disbursed on 16 April 2015, and each branch of the family received approximately NOK 18.9 million. A distribution of assets recovered after the final distribution was decided on 10 August 2015. It entailed no payments to any of the heirs, and became final and enforceable in September 2015.

17. Accordingly, the public administration of the estate was completed, twenty-two years and four months after it had commenced.

III. THE DOMESTIC PROCEEDINGS CONCERNING ARTICLE 6 OF THE CONVENTION

18. On 9 March 2016 the applicant instituted proceedings against the Norwegian Government before the Oslo City Court, seeking a declaratory

judgment to the effect that his rights under Article 6 § 1 of the Convention had been violated because the administration of the estate had failed to comply with the "reasonable time" requirement flowing from that provision, and claiming compensation on account of that alleged violation.

19. In its judgment of 15 September 2016 the City Court took as its starting-point the fact that the "reasonable time" requirement in Article 6 § 1 of the Convention called for a concrete assessment of the criteria flowing from the European Court of Human Rights' case-law, notably the complexity of the case, the conduct of the parties and of the relevant authorities, what was at stake in the case, and, finally, an overall assessment. The court went on to set out in more detail what each criterion entailed, on the basis of an analysis of the Court's case-law.

20. Turning to the facts of the case, the City Court noted that the administration of the estate had lasted for twenty-two years and four months. Viewed in isolation, that length clearly indicated that the Convention had been violated.

21. The City Court found, however, that considerable importance had to be attached to the complicated nature of the administration of the estate. In addition to the sheer size of the estate, several difficult legal and factual issues had arisen during the administration process.

22. As to the conduct of the parties, the City Court considered that the applicant and his legal predecessor had not been particularly litigious, but that other heirs had instituted a considerable number of legal proceedings. Suits instituted in relation to the codicil to the deceased's will had, for example, effectively prevented the estate from selling properties for approximately twelve years. On the basis of the evidence presented to it, the City Court was of the opinion that the respondent State could not be blamed for the time that had elapsed while all the disputes that arose were resolved.

23. In its overall assessment of the case, the City Court gave particular weight to the fact that no periods of inactivity had been proven and that, on the basis of the facts that had been proved in the case, the length had been due only to circumstances for which the respondent State could not be blamed. It had not been proved that the domestic courts or the authorities of the respondent State could have handled matters any differently.

24. Based on the above, the City Court concluded that Article 6 § 1 of the Convention had not been violated and that the applicant could not, accordingly, claim compensation for the alleged violation. It also found that the applicant had no interest in a separate declaratory judgment holding that there had been no violation.

25. The applicant appealed against the City Court's judgment to the High Court, which held a hearing on 6 and 7 March 2018 at which, *inter alia*, two witnesses were heard.

26. In its judgment of 22 March 2018 the High Court deemed at the outset that the administration of a deceased person's estate was governed by

Article 6 § 1 of the Convention, though it was not a type of case which required particularly expeditious handling. In its introductory remarks it further stated, referring to *Humen v. Poland* ([GC], no. 26614/95, § 66, 15 October 1999), that the State was only responsible for circumstances that could be attributed to the authorities' handling of the case. Furthermore, the State was obliged to organise its legal system in such a manner that the courts complied with Article 6 § 1, which, however, also set out further requirements in addition to the "reasonable time" requirement, such as with respect to adversarial proceedings. Parties could not demand that the State organise its legal system or deal with legal disputes in a manner that would conflict with others' rights under that provision.

27. The High Court went on to state that in accordance with the European Court of Human Rights' case-law a concrete assessment of the relevant criteria – in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute – had to be carried out. Reference was made to *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, § 143, 29 November 2016).

28. It was clear in the instant case that the total duration of the administration of the estate had been very long, longer than desirable and definitely longer than normal: according to the High Court's information, the public administration and division of a deceased's estate would normally take between one and three years. The High Court also observed that the European Court of Human Rights had in many cases given quite summary consideration to the other factors when the length of proceedings seen in isolation had been long. The court referred to *Nielsen v. Denmark* (no. 44034/07, §§ 35-51, 2 July 2009); *Christensen v. Denmark* (no. 247/07, §§ 81-98, 22 January 2009); *Grässer v. Germany* (no. 66491/01, § 57, 5 October 2006); *Berlin v. Luxembourg* (no. 44978/98, 15 July 2003); and *Obermeier v. Austria* (28 June 1990, § 72, Series A no. 179).

29. The High Court concluded that it was nonetheless required to carry out a concrete assessment. In that assessment, however, the weight given to the different factors had to be relative and would depend on the concrete circumstances. The longer the length of the proceedings, the more prominent that factor would be in the overall assessment, and the other factors might, relatively speaking, become less important. The High Court also emphasised that progress at each stage of a case had to be achieved within a reasonable time. Periods without any progress could easily entail a violation.

30. The High Court went on to carry out an examination and assessment of the whole history and the different phases of the administration of the estate, particularly in order to ascertain whether there had been periods of inactivity. It concluded with respect to all phases that there had not been any inactivity. With regard to the period from the commencement of

administration until the turn of the year 2005/06, the court referred to a first set of dispute proceedings that had been instituted already on 15 September 1993 and that ended with a Supreme Court decision of 20 December 1995. It further made references to a number of other sets of such proceedings where decisions had been taken on appeal by the High Court or the Supreme Court in 1995, 1997, 1998, 2002, 2003, 2004, 2005 and 2006. It also found that there had been no practical opportunity for the Probate Court to consider all the different disputes in parallel with each other to a greater extent than had been done, as new disputes had often been triggered by decisions on earlier ones. In particular, the applicant had argued that a ruling from the High Court of 23 October 1997 had been erroneous and had effectively blocked the further progress of the administration process for many years. The High Court did not, however, find it necessary at that stage in the proceedings to adopt a stance on that argument; it sufficed for it to observe that the ruling had become legally binding and that the applicant's predecessor had not appealed against it at the time. The High Court referred to a similarly large number of dispute proceedings that had been instituted and decided since 2005/06 and decisions made on appeal in the course of those proceedings as well as on appeals against interim distributions of funds from the estate.

31. Lastly, turning to the overall assessment, the High Court stated that it was difficult to find concrete guidance for the case before it in the Court of Human Rights' case-law, the reason being that the administration and division of the deceased's estate had in fact been a framework for a number of legal disputes concerning a variety of issues. The parties to the case had not been able to provide information about how many legal disputes there had been in total. Several of the disputes had been complex and finally settled only after consideration by two or three levels of court.

32. The High Court nevertheless took three guidelines drawn from the European Court of Human Rights' case-law as its point of departure.

33. Firstly, it observed that, in respect of the case-law of the European Court of Human Rights on what length of proceedings would normally be accepted, the legal literature provided some summaries regarding what the Court had usually found acceptable or not in cases relating to individual disputes. These were, however, not directly pertinent to the case before the High Court, since a large number of different disputes had been determined within the framework of the administration of the estate in question. Nevertheless, what could be inferred in that regard from the Court's case-law could serve as guidelines for the High Court's assessment of the time taken to deal with the individual disputes during the administration process.

34. Secondly, the High Court noted that in the case of *Grässer v. Germany* (no. 66491/01, § 52, 5 October 2006), concerning proceedings that had originated in a liability action and had lasted for approximately

twenty-eight years and eleven months, the European Court of Human Rights had stated that the period of time had been inordinately lengthy and would require "particularly convincing grounds of justification". In other respects, however, that case had little in common with the case before the High Court.

35. Thirdly, the High Court relied on the European Court of Human Rights' judgments in three cases against Poland concerning proceedings that had borne some resemblance to those concerning the administration of deceased persons' estates in Norway, namely *Kolasiński v. Poland* (no. 46243/99, 1 February 2005); *Grela v. Poland* (no. 73003/01, 13 January 2004); and *Koral v. Poland* (no. 52518/99, 5 November 2002). They all differed from the case before the High Court, however. The proceedings that had been examined in those cases had not involved the realisation of assets, only their distribution. Moreover, the case in *Kolasiński* had been less complex and extensive, it had involved several periods of total inactivity and more had been at stake for the applicant in that case than in the case before the High Court, as the applicant in *Kolasiński* had been unable to access funds while the proceedings were ongoing. The proceedings at issue in *Grela* had been far less complex than the administration of the estate of Ole Andreas Knutsen and had also been significantly delayed by periods of total inactivity. The proceedings in *Koral* had been much smaller in scope than the case before the High Court and had not to the same extent formed a framework for a number of different legal disputes. Nor had they been particularly complex, and there had been concrete reasons to criticise the authorities' use of their time.

36. The High Court also took into account the fact that the Supreme Court, in a decision of 22 December 2009, had issued an order to the Probate Court to have the proceedings in some of the disputes that had arisen speeded up, but the Supreme Court had at that time also considered that individual delays in disputes had not affected the progress of the administration of the estate overall.

37. In the High Court's view, the administration and division of the estate of Ole Andreas Knutsen were to be characterised as extraordinary. There had been considerable assets and the process had been made difficult and its progress delayed by the large number of actions brought by the heirs. During the period until the turn of the year 2005/06, disputes concerning the right to have property distributed in kind had prevented the realisation of assets. The Probate Court's subsequent decision regarding the procedure for selling the properties belonging to the estate had also been appealed against, and the issue as to how the properties were to be sold had not been clarified until January 2007. The properties had been advertised for sale over the next year, but several of the sales had been quite difficult to carry out, among other things because quite a large mass of property had been for sale in a

relatively small area. The arrival of the financial crisis in autumn 2008 had made further progress more difficult.

38. In addition, the trust had given rise to complicated issues and, over a period of time, to time-consuming work in connection with the inheritance tax calculation. Several of the other disputes that had to be resolved during the administration of the estate had also raised quite complicated questions of law.

39. The High Court noted that the applicant had not argued that there had been any relevant periods of pure inactivity, with the exception of the time spent processing issues relating to the trust. The evidence showed that progress had not been hampered by a lack of resources. The Probate Court had attempted to remedy the difficulties caused by the long processing time by means of interim distributions and the courts had also taken other steps to prevent the administration of the estate from dragging on needlessly. Among other things, leave to appeal had been refused on several occasions.

40. However, the High Court stated that when interpreting and applying the "reasonable time" requirement, it also had to take into account the rights and interests of the other parties to the proceedings. Some heirs had been more litigious than others and the applicant and his predecessor had not been the most active parties, although they too had exercised their rights under the legislation on legal proceedings, partly in order to bring legal actions and partly to appeal against decisions that not had been in their favour. The High Court emphasised, moreover, that the State was responsible for ensuring satisfactory progress in cases, and that if a party applied dilatory tactics, that did not relieve the State of the obligation to determine the case within a reasonable time. However, progress in cases could not be at the expense of the rights of other parties, and the High Court could not see how the Probate Court could legally have done more to prevent the other heirs from delaying the conclusion of the administration of the estate. The High Court added that several of the actions brought by other heirs had been successful and, among other things, cited a High Court decision of 7 December 2005, given on appeal in the course of one of the dispute proceedings, where it had been stated that the appellants could be blamed no more than their counterparties – which included the applicant – for the fact that claims had not been settled at an earlier point in time.

41. Before the High Court, it had not been argued that there were other practical steps that the State could or should have taken, either during consideration of the various disputes, under probate legislation or the legislation on legal proceedings in general, or with regard to the overall organisation of the administration of the estate or the courts. Overall, the High Court could not see what other material steps the State could legally have taken to speed up the proceedings.

42. Based on the above, the High Court, while expressing some doubts, concluded that the circumstances of the case before it had been so

extraordinary that they justified the overall length of proceedings before the administration of the estate had been concluded. Taking into account the nature and complexity of the case, there had been sufficient progress in the overall administration and division of the deceased's estate. The right to determination within a reasonable time under Article 6 of the Convention had thus, in the High Court's view, not been violated. Accordingly, there was no basis for liability. Unlike the City Court, the High Court found that the applicant had a sufficient relevant interest in also having his claim for a declaratory judgment finding a violation of the Convention determined. For the reasons stated above, however, that claim could not succeed on the merits.

43. On 21 June 2018 the Supreme Court's Appeals Leave Committee refused the parties leave to appeal against the High Court's judgment.

RELEVANT LEGAL FRAMEWORK

44. The administration of deceased persons' estates was at the relevant time governed by the Act on the Administration of Estates of 21 February 1930 (*skifteloven*). With effect from 1 January 2021 that Act, together with the Act on Inheritance of 5 March 1972 (*arvelova*), was replaced by the Act on Inheritance and Administration of Estates of 14 June 2019 (*arveloven*). According to the preparatory works to the latter, the purpose of replacing the 1930 Act was principally to modernise the language and legislative techniques applied in the legislation, rather than to substantially reform the procedures (Bill (*prop*.) No. 107 (2017-2018), page 14).

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

45. The applicant complained that the length of time taken to administer the estate had failed to meet the "reasonable time" requirement set out in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

46. The Court observes that the Government have not objected against the applicability of Article 6 of the Convention. Furthermore, both levels of domestic court found that provision applicable to the administration of the estate, and there is no information that the Government had objections to the applicability of it before the domestic courts, either. It is still incumbent on

the Court to examine that issue as it goes to its jurisdiction *ratione materiae* (see, for example, *Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, § 27, 9 February 2017).

47. Whether Article 6 of the Convention is applicable to the administration of an estate and similar types of proceedings depends on their characteristics and the relevant provisions of domestic law. As the parties have presented the characteristics of the administration proceedings in this case, they appear to contain a mixture of contentious and non-contentious elements once they have commenced (see, *mutatis mutandis*, *Siegel v. France*, no. 36350/97, § 33, ECHR 2000-XII; and *Zongorová v. Slovakia*, no. 28923/06, 19 January 2010). It is also the case, as the Government have submitted, that they may in some respects appear to have elements of a "service" to heirs and an alternative to the heirs' dividing the estate privately. At the same time, public administration proceedings may also be instituted by heirs precisely because there are disputes between heirs about rights to the assets of the estate and the result of the administration proceedings will be decisive in that regard. The Court therefore considers that there are not grounds for removing them from scrutiny under Article 6 and that the complaint is accordingly not inadmissible *ratione materiae*. It is another matter that the characteristics of the specific proceedings complained about must be borne in mind when applying the Court's case-law on the "reasonable time" requirement to them (see paragraph 55 below).

48. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

49. The applicant submitted that the nature and complexity of the estate and the deceased's assets, as relied on by the Government, could not explain the length of the proceedings. He maintained that when put on the market, all the assets – which, in his view, had been quite ordinary – had generally been sold straightforwardly without any restructuring. The main reason for the length of the proceedings had been the domestic authorities' inability to effectively handle a priority claim and the right to choose assets in kind that had been granted to two of the heirs.

50. In the applicant's view, the very length of the proceedings was an indisputable indication of periods of inactivity, or at least "ineffective activity", which should be considered the same as "inactivity". He particularly emphasised that effective handling of the said priority claim and the right of two of the heirs to choose assets in kind, and hence the further administration of the estate and the realisation of its assets, appeared to have

been blocked by a High Court ruling of 23 October 1997 in which two decisions by the Probate Court on how to proceed with respect to those issues had been reversed. Had the High Court not reversed those rulings, the selling of the assets could have gone ahead and the administration of the estate could have been finalised even before the trust came to light.

51. The Government argued that it had to be taken into account that the administration of a deceased's estate under domestic law did not as such constitute proceedings aimed at resolving disputes, but rather was an administrative service provided to the stakeholders in an estate, and could be a framework for a great number of disputes between the heirs over a variety of assets. The administration of the estate at issue in the instant case did not display any signs of a lack of effectiveness and credibility in the administration of justice. There were no structural issues; rather, this was an example of an extraordinary and unprecedented case with specific features, in which the administration of justice had required very lengthy procedures. As to the High Court's decision of 23 October 1997 the Government argued, firstly, that it was a legally binding decision and, secondly, that the applicant's predecessor could have appealed against it at the time, but had not.

52. The administration of the estate had most certainly been complex. However, no inactivity had been identified on the part of the domestic authorities, whereas all the heirs had engaged in litigation: the applicant himself, for example, had lodged an appeal with the Supreme Court as late as 2005, whereas he now submitted before the European Court of Human Rights that the administration of the estate should in fact have been completed several years earlier. As to what had been at stake for the applicant, his interests had been pecuniary and had been partly attended to by way of advance payments from the estate.

2. The Court's assessment

(a) General principles

53. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV). Moreover, only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 66, 15 October 1999, and *Proszak v. Poland*, 16 December 1997, § 40, *Reports of Judgments and Decisions* 1997-VIII). However, even in legal systems applying the

principle that the procedural initiative lies with the parties, the parties' attitude does not dispense the courts from ensuring the expeditious trial required by Article 6 § 1 of the Convention (see, for example, *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006-VII).

The Court also reiterates that Article 6 § 1 imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to hear cases within a reasonable time (ibid.).

(b) Application of those principles to the facts of the case

(i) Period to be taken into account

54. The instant case concerns the administration of a deceased person's estate which took twenty-two years and four months from initiation to conclusion and division (see paragraphs 8 and 19 above). However, as explained by the domestic courts, that administration had constituted a framework in which a number of legal disputes concerning a variety of legal issues had been resolved by way of different dispute proceedings (see paragraph 31 above). The Court considers this to be an important feature of the proceedings complained of, which it will take into account in the following assessment (compare, *mutatis mutandis*, *Gilligan v. Ireland*, no. 55276/17, §§ 45-46, 18 March 2021).

(ii) Reasonableness of the length of proceedings

55. In applying the above criteria from the Court's case-law to the period during which the estate was administered, the Court accepts the Government's assertion that as the administration of a deceased's estate under domestic law is a type of proceedings that will continue while disputes are settled by dispute proceedings, the compliance of the overall time taken to administer the estate with the "reasonable time" requirement under Article 6 § 1 of the Convention must be examined with that in mind. That is so since, while the applicant complained about the overall time taken to administer the estate and the domestic courts considered that the administration fell within the scope of Article 6 (see paragraph 26 above), that process as such – as the parties have described its operation in domestic law – does not at all stages have the characteristics of a "determination of ... civil rights" (see paragraph 47 above). By contrast, the applicant did not specifically complain of the length of any of the many sets of proceedings to settle disputes during the administration period, whether they concerned complaints or actions against the estate administration or between heirs. The Court has not, either, previously received any complaints from the applicant about the length of the proceedings concerning any of the disputes. At the present instance, the criteria from the Court's case-law, such as that regarding what was at stake for the applicant "in the dispute" (see

paragraph 51 above), must accordingly also be applied in a manner that is adapted to the applicant's current complaint.

56. The Court further observes that the applicant's complaint under Article 6 of the Convention in the context of his use of domestic remedies was subject to a detailed concrete assessment by the domestic courts across two levels of jurisdiction (see paragraphs 18-42 above). Both the City Court and the High Court conscientiously applied the relevant criteria following from the Court's case-law, and the High Court's judgment, being the final judgment on the merits, accordingly forms the natural focal point for the Court when carrying out its supervisory task.

(1) The complexity of the case

57. Starting with the complexity of the case, the Court notes that the High Court found that the administration of the estate had been exceptionally complex. There had been considerable assets and a large number of disputes which had in particular impacted on the possibilities for selling the estate's properties. The Court also notes that several of the disputes had been complex each in their own, and had concerned matters such as rights to have assets distributed in kind, conversions of assets into cash, and sales of shares (see paragraphs 10 and 14 above). In addition, the High Court took note that several of the sales as such had been quite difficult to carry out, and that the financial crisis had played a role (see paragraph 37 above). Furthermore, the trust had given rise to complicated issues and time-consuming work relating to tax (see paragraph 38 above).

58. The Court does not find that the applicant has provided anything to show that the High Court erred in any of its above findings and does not, either, find any other basis for calling into question that the administration of the estate had been a particularly complex matter. It notes in that context that the disputes concerning the priority claim belonging to two of the heirs, which the applicant has particularly pointed to as a reason for the administration having taken such a long time, was one of many matters that contributed to the overall administration time (see paragraphs 10-15 above), but bears in mind that the applicant did not specifically complain about the length of proceedings in which those disputes were settled (see paragraph 10 above). Likewise, the Court does not find any basis for criticising the substance of the High Court's decision of 23 October 1997, irrespective of what consequences it might have had for the progress of the proceedings in relation to the estate (see paragraph 30 above).

(2) The conduct of the authorities and the applicant

59. Turning to the conduct of the authorities and the applicant, the Court observes that the High Court, starting with the conduct of the authorities, noted that the applicant had not argued that there had been any relevant

periods of pure inactivity, with the exception of the time spent processing issues relating to the trust (see paragraph 39 above). However, it should be noted that the trust in question only came to light in 2002, almost 10 years after the administration of the estate had commenced. Furthermore, before the High Court, it had not been argued that there were any specific practical steps that the State could or should have taken, either during consideration of the various disputes or with regard to the overall organisation of the administration of the estate or the courts. The High Court itself could not see what other material steps the State could legally have taken to speed up the proceeding and found, moreover, that the evidence had shown that progress had not been hampered by a lack of resources. It also took note that the Probate Court had attempted to remedy the difficulties caused by the long processing time (see paragraphs 39 and 41 above). As to the amount of dispute proceedings as such, the Court notes that, though the parties before the domestic courts had been unable to specify the number of such proceedings (see paragraph 31 above), the High Court still made reference to a large number of decisions and judgments on appeal throughout the years (see paragraph 30 above), which also indicates that each separate set of such proceedings did not take unreasonable time.

60. The Court also observes that in many cases leave to appeal was refused (see paragraphs 13-15 above) and that, in 2009, the Supreme Court instructed active case management, although it found no violation of the reasonable time-requirement (see paragraph 36 above).

61. With regard to the conduct of the applicant, the High Court observed that while the applicant and his predecessor had not been the most litigious parties as concerned the many dispute proceedings that had taken place, they too had exercised their rights under the legislation on legal proceedings, partly in order to bring legal actions and partly to appeal against decisions that not had been in their favour (see paragraph 40 above). Moreover, the Court observes that several of the proceedings instituted by co-heirs against *inter alia* the applicant were successful, which indicates that the co-heirs had a legitimate interest in settling these claims (ibid.).

62. The Court does not find that the applicant before it has provided anything to show that the High Court erred on the evidentiary matters with regard to this criterion, either (contrast, for example, *Oliveira Modesto and Others v. Portugal,* no. 68445/10, §§ 70 and 72, 29 January 2019, where alleged procedural obstacles as well as periods of inactivity were unexplained by the Government). Nor does the Court – in the light of the detailed examination carried out by the High Court, in which no periods of inactivity were actually identified – find that general considerations as to whether the very length indicates that there must have been inactivity can lead it to departing from the assessments made by the High Court in this case.

(3) What was at stake for the applicant in the dispute

63. As concerns the criterion following from the Court's case-law concerning "what was at stake for the applicant in the dispute", the Court first reiterates that the complaint does not as such target a particular "dispute", but the administration of the estate as a whole (see paragraph 53 above). However, the High Court also applied that criterion to the administration of the estate as a whole, though it was not at the forefront of its assessment. It noted in general that the type of proceedings and what was at stake did not call for particular requirements in terms of progress, with which the Court agrees (see also, *mutatis mutandis*, *Komanický v. Slovakia (no. 2)*, no. 56161/00, § 108, 2 October 2007). Moreover, the Probate Court had on several occasions tried to reduce the disadvantages by interim distributions. Hence, the situation had not been one such as in the case of *Kolasiński v. Poland* (no. 46243/99, 1 February 2005), where the applicant had been in a situation where he had had no access to funds (see paragraphs 26 and 35 above).

64. The Court does not have any grounds for considering this criterion otherwise, though it notes that the considerable assets in the estate were not only a major contribution to the complexity of the administration (see paragraph 56 above), they at the same time entailed that the heirs had considerable pecuniary interests in it.

(iii) The Court's conclusion

65. In the light of the above, the Court does not find that it has basis for concluding that the domestic courts, in their application of the relevant criteria under the Court's case-law, erred when finding that, even though the administration of the estate had taken an extraordinarily long time, there had been no violation of Article 6 of the Convention on grounds of the "reasonable time" requirement.

66. The Court accepts that the length of the proceedings was due only to extraordinary circumstances and not to any sort of shortcomings in the legal and procedural framework for the administration of estates. The Court has taken note in that context of the information to the effect that the administration of the estates of deceased persons in accordance with the domestic procedural regime and practice normally takes from one to three years (see paragraph 28 above).

67. On the basis of the above considerations, the Court concludes that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 22 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President