CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF A. AND E. RIIS v. NORWAY

(Application no. 9042/04)

JUDGMENT

STRASBOURG

31 May 2007

FINAL

31/08/2007

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 A. and E. Riis v. Norway,

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

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS,
Mr G. MALINVERNI, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 10 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 9042/04) 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 two Norwegian nationals, Mrs Amelia Riis and Mr Einar Riis ("the applicants"), on 22 February 2004.

2. The applicants were represented by Mr H. Berge, a lawyer practising in Oslo. The Norwegian Government ("the Government") were represented by their Agent, Mrs F. Platou Amble, Attorney, Attorney- General's Office (Civil Matters).

3. On 5 September 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1930 and 1922 respectively and have been living in Oslo, Norway. The second applicant died on 30 May 2006. On 20 October 2006 Mr Berge informed the Court that he no longer represented the first applicant.

A. Factual background to the case

5. This is the fifth application brought by the applicants under the Convention in relation to the same case complex, the factual background of which is summarised in *Amelia and Einar Riis against Norway* (dec.)(no. 23106/02, struck out on 8 July 2004).

6. The first applicant is the daughter of a merchant ship owner, the late Mr Kristoffer Olsen (Senior), who died in 1948, and of Mrs Dagny Marie Olsen, who died in 1970. Following her death, the parents' joint estate was subjected to public division (*offentlig skifte*) by the Oslo Probate Court (*skifterett*), as the heirs did not take over the estate's debts. The first applicant was one of three heirs to the estate, which comprised major shareholding positions in *Luksefjell* Ltd and, indirectly, in *Dovrefjell* Ltd., the family's two principal companies. These formed part of the *Olsen & Ugelstad* Ltd Shipping Company (founded in 1915 by the first applicant's father and by Mr Rudolf Ugelstad). One of the other heirs, the first applicant's brother, Mr Kristoffer Olsen (Junior) was, under powers delegated to him in 1951 by his mother, the only member of the Olsen family taking part in the leadership of the Shipping Company.

7. The division of the estate involved severe and long lasting disputes between the first applicant and her brother.

8. Under an agreement of 5 April 1974 (the so-called “Easter Agreement”) between the applicants, on the one hand, and *Falkefjell* Ltd. and Mr Kristoffer Olsen, on the other hand, Mrs Amelia Riis was to acquire the ship *MS Sognefjell* from *Falkefjell* Ltd by 6 May 1974. The first applicant resold the ship to an Indian purchaser, but since an export licence was not obtained until August 1974 the deal did not materialise, by which time the ship's market value had fallen. A dispute ensued as to the implementation of the Easter Agreement, which the first applicant brought before an arbitration tribunal (*voldgiftsrett*) in October 1974. On 2 May 1975 the tribunal delivered its judgment, finding that *Falkefjell* Ltd was responsible for a delay from July to October 1974 in the delivery of the ship, indicating certain amounts for compensation (between 6,000,000 and 18,900,000 Norwegian kroner (NOK)) and annulling the Easter Agreement.

9. According an agreement between *Falkefjell* Ltd and *Den norske Creditbank* (*Dnc*), *MS Sognefjell* was pawned as security for a loan to the company and a mortgage bond was transported to the bank for this purpose on 7 June 1975. On 3 December 1975 the bond was deleted.

10. In February 1977 the first applicant sought to have the arbitration tribunal's judgment quashed by the ordinary courts. She argued that *Falkefjell* Ltd had failed to inform her about its difficult financial situation and about having pawned the ship when the case was before the arbitration tribunal. Her action was rejected at first instance, then upheld at second

instance, and finally rejected by the Supreme Court on 9 November 1983. Her request for reopening of the proceedings was dismissed in March 1985.

The first applicant also brought compensation proceedings against the *Dnc*, but her suit was rejected by the Oslo City Court (*byrett*, later renamed *tingrett*) and the Borgarting High Court (*lagmannsrett*) and leave to appeal to the Supreme Court (*Høyesterett*) was refused.

B. Compensation proceedings brought by the first applicant against *Falkefjell* Ltd. and Mr Kristoffer Olsen

1. Proceedings before the City Court

11. On 6 March 1986 the first applicant instituted compensation proceedings against *Falkefjell* Ltd. and Mr Kristoffer Olsen. She claimed that they had carried out unlawful dispositions against her in the spring of 1975 in relation to the pawning of *MS Sognefjell*, of which she had not been duly informed, and that she should be compensated for the loss of value.

12. Until 7 September 1988 written pleadings were filed from both sides, in two instances, after extensions had been granted to the first applicant.

13. On 7 September 1988 the first applicant asked the City Court for a response to her pleadings of 9 October 1987. On 19 September 1988 the City Court explained that a delay had occurred due to the length of the written pleadings (120 pages), the volume of supporting documents (600 pages), the manner of presentation and the lack of relevance of a number of documents. The City Court gave the first applicant until 10 October 1988 to resubmit pleadings, which she did on 8 October 1988. On 22 October 1988 it rejected most of the supporting documents.

14. Thereafter, written pleadings were exchanged between the parties until 4 September 1989, when the first applicant asked for an extension until 31 January 1990. On 26 January 1990 she submitted written pleadings, to be completed at a later stage. On 16 November 1990 she submitted further pleadings with the reservation that she had been interrupted by another case and would have to revert to the matter as soon as possible.

15. On 25 September 1991 the City Court informed the parties that the preparation of the case was sufficient for a date to be set for the opening of the oral hearing. It appears that a preliminary hearing had been fixed for the afore-mentioned date.

On behalf of the first applicant, Mr T. Engelschiøn asked the City Court to fix a later date for the preliminary hearing, while agreeing that the preparation of the case was complete. By a communication of 14 October 1991 the City Court maintained 18 May “1991” (it presumably meant 1992) as the date for the opening of the main hearing.

16. Subsequently, the second applicant submitted written pleadings on various dates until 5 May 1992. In the meantime, the City Court had held a preliminary hearing on 17 and 20 January 1992 and had encouraged the first applicant to appoint a lawyer. On 11 May 1992, Mr Engelschiøn informed the City Court about his appointment and asked for the postponement of the main hearing, which the City Court accepted on 14 May 1992.

17. Between 7 October 1992 and 1 July 1993 the parties submitted written pleadings and on 5 July 1993 the City Court decided to divide the main hearing.

18. On 11 November 1993 the first applicant's lawyer filed additional pleadings. On 18 November 1993, he asked for the hearing, then scheduled for 7 February 1994, to be postponed. On 18 November 1993 the City Court informed that a postponement would mean that the hearing could not be held until the autumn of 1994 and that any objections thereto should be received by 25 November 1993. There is no record of the court's subsequent rescheduling decision, which may have been communicated orally.

19. During 1994 there was no activity in the case.

20. On 4 January 1995 the adversary party filed additional pleadings. On 16 February 1995 the first applicant's lawyer again asked for postponement of the main hearing, suggesting that it be held in the autumn. The City Court responded on 2 March 1995:

> "... The case has now been postponed a number of times. These repeated postponements are a considerable problem for the court with regard both to the progress of the case and to the court's and the co-judges' work schedule.
>
> Not without considerable doubt, and provided that the defendant has no objections, the court once again finds reason for accepting a postponement. The dates of the main hearing are therefore set to 10 a.m. on Tuesday 10 October to Thursday, 19 October 1995. Please notify immediately and within one week if these dates are not convenient. The date of the hearing is otherwise deemed to be set. Further rescheduling may not be expected. ..."

21. After yet a further postponement, of which there is no record, and additional written pleadings by both parties on 19 September and 1 December 1995, the City Court held a main hearing from 5 to 8 December 1995.

22. By a judgment of 28 December 1995 the City Court rejected the first applicant's action and ordered her to reimburse the respondents' legal costs.

2. Appeal proceedings

23. The first applicant appealed against the City Court's judgment to the High Court.

24. Between 29 April 1996 and 8 March 1998 the first applicant insisted that she should be represented by a layman, Mr H. Elvebakk, despite several decisions by the High Court, upheld by the Supreme Court, rejecting her

repeated requests to this effect. Not until 23 December 1998 was the High Court informed that the first applicant had appointed a lawyer, Mr Aabø-Evensen.

25. In the meantime, on 12 May 1997, the High Court decided to go ahead with the preparation of the case and made an attempt on 4 August 1997 to define the scope of the case, inviting the first applicant to observe this. Moreover, she requested that Mr Justice Gussgaard be disqualified from taking part in the case. The matter was left to be decided by the Supreme Court (*Høyesterett*), which by a decision of 20 November 1997 rejected the first applicant's claim. In addition, the applicants asked the High Court to order the opposing party to present documents specified in 65 claims and to extend the case to several other parties, which requests were in large part refused. They also requested several extensions, notably from May to December 1998, pending the appointment of a lawyer.

26. After announcing his appointment on 23 December 1998, Mr Aabø-Evensen asked for several extensions, until 30 July 1999. On the latter date, he filed written pleadings, which were transmitted to the respondent party on 27 September 1999, with a delay due to misunderstandings and change of personnel in the High Court.

27. In October 1999 both parties stated their wishes as to the duration of the oral hearing to be held.

28. Between 15 November 1999 and 13 April 2000 the High Court and the Supreme Court respectively rejected and accepted in part a request by the applicant's lawyer to accept the filing of additional documentary evidence and to hear certain witnesses.

29. Between 20 June 2000 and 30 January 2001, the High Court and the Supreme Court dealt with requests by the applicants' lawyer that the adversary party be ordered to produce a number of documents, which requests were granted in part.

30. On 27 January 2001 the High Court informed the parties that the preparation of the case had been completed and consulted them about the duration of the oral hearing.

31. On 16 March 2001 the applicant's lawyer submitted new documents and asked the High Court to order the adversary party to produce additional documents, pointing out that the preparation of the case needed to continue and that three weeks were needed for the hearing. On 1 June 2001 the High Court refused the filing of several documents and ordered the opposing party to produce some of the documents requested. An appeal by the applicant's lawyer of 5 July 2001 was dismissed on 3 September 2001.

32. On 14 September 2001, the High Court decided to reserve four weeks for the oral hearing. Subsequently, on 30 May 2002, it decided that the hearing would open on 1 October 2002.

33. The High Court hearing took place between 1 and 23 October 2002. The High Court took oral evidence from the first applicant and from Mr R. Ugelstad, who represented *Falkefjell* Ltd, as President of its Governing Board. Mr Kristoffer Olsen was absent due to illness. The High Court also heard five witnesses, including the second applicant.

34. On 25 November 2002 the High Court upheld the City Court's judgment and ordered the first applicant to pay mortgage interests on the defendants' costs and to pay them an additional NOK 1,028,085 for their costs before the High Court.

35. The first applicant appealed against the High Court's judgment, both on procedural grounds and regarding the outcome of the case.

36. On 14 August 2003 the Appeals Selection Committee of the Supreme Court (*Høysteretts kjæremålsutvalg*) refused the first applicant leave to appeal and ordered her to pay within two weeks NOK 100,000, plus default interest for any delays in payment, for the defendants' legal costs at this stage. The decision was notified on 19 September 2003.

COMPLAINTS

37. The applicants complained that in the compensation case against *Falkefjell* Ltd. and Mr Kristoffer Olsen they had not been afforded a fair hearing within a reasonable time by an independent and impartial tribunal, as required by Article 6 of the Convention. They had moreover been denied an effective remedy, in breach of Article 13 of the Convention.

THE LAW

I. ADMISSIBILITY

A. The standing of the second applicant

38. From the outset, the Court observes that the second applicant was not a party to the domestic proceedings. He can therefore not be considered a “victim” for the purposes of Article 34 of the Convention. In so far as this applicant is concerned, the Court declares the application inadmissible under this provision.

B. Complaint under Article 6 § 1 about the duration of the proceedings

39. In the Government's opinion, the first applicant had not exhausted available domestic remedies according to Article 35 § 1 of the Convention with respect to her complaint about the duration of the proceedings. This question ought to be assessed with due regard to the effective remedies that were actually afforded to her under Norwegian law. Ever since the alleged wrongdoing had taken place, she had had the opportunity to claim compensation under national law based on the allegations put forward in her application to the Court. She had, however, not brought such a claim before the national courts. In the Government's view, the Norwegian law on compensation fulfilled the requirements of an effective remedy under Article 13 of the Convention. An allegation of violation of the Convention accompanied by a compensation claim was without doubt a sufficient reason for having *locus standi* before the national courts.

40. The Government further argued that, although the duration of the proceedings had been long, this was essentially attributable to the applicants' own conduct and could not give rise to a violation of the requirement of reasonableness under Article 6 § 1 of the Convention.

41. The Court observes that the Government's submission that an effective remedy was available to the first applicant under national law has not been supported by any specific reference either to the legal ground or to any relevant case-law. Their contention must therefore be rejected as being unsubstantiated (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1210-11, § 65-69; *Dattel and Others v. Luxembourg*, no. 13130/02, §§ 35-36, 4 August 2005).

42. The Court further notes that the period to be taken into consideration began on 6 March 1986 and ended on 14 August 2003. It thus lasted 17 years and five months for three levels of jurisdiction. In the view of the Court, the mere duration of the proceedings raises a serious issue under Article 6 § 1 of the Convention.

43. In the light of the above, the Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on grounds of non-exhaustion or on any other grounds. It must therefore be declared admissible.

C. Other remaining complaints

1. The alleged failure to observe the requirement of independence and impartiality under Article 6 § 1

44. The first applicant further complained under Article 6 § 1 that the High Court had been presided by Mr Justice Gunvald Gussgaard, although his wife, Mrs Karenanne Gussgard, a member of the Supreme Court, had ruled against the first applicant in all the cases before the Supreme Court to which she had been a party.

45. However, the Court observes that from the case-file it transpires that these procedural issues were determined more than six months before the introduction of the application under the Convention and that the first applicant did not raise her disqualification point in her appeal to the Supreme Court against the High Court's judgment of 25 November 2002. Her complaint must therefore be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

2. Miscellaneous complaints under Articles 6 § 1 and 13

46. The first applicant moreover complained under Article 6 § 1 of the Convention about not having been afforded a fair hearing.

47. In this connection she claimed that the High Court by an excess of laxness had accepted, on the basis of dubious or weak medical proof, Mr Olsen's absence at the hearing. She further argued that the High Court should have stopped her lawyer in his pleadings, as he obviously failed to properly comply with her wishes and instructions and to defend her interests.

However, the Court notes that it does not appear that she specifically pursued these matters in her appeal to the Supreme Court, for which reason these parts of her application must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

48. As for the remainder of the first applicant's Article 6 § 1 complaints about lack of fairness of the proceedings, the Court notes that, in the application lodged under the Convention on 22 February 2004, the first applicant essentially disputed the assessment of facts made by the national courts. In addition, the first applicant complained about failure to observe Article 13 of the Convention. Presented in somewhat general and vague terms, the applicant's complaint seems to concern primarily the same alleged deficiencies in the national courts' assessment of facts as mentioned above in relation to the Article 6 § 1 complaint about lack of fairness. In so far as it may be understood also to cover the length aspect as such, this could more appropriately be considered separately under Article 6 § 1. On the other hand, the first applicant does not specifically complain about the lack of an effective remedy against unreasonable delays.

Thus, as regards these two additional complaints, the Court, in the light of the material in its possession, and in so far as the matters complained of are within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these parts of the application must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

II. THE MERITS OF THE ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE DURATION OF THE PROCEEDINGS

49. The first applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which 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..."

50. The Government disputed the above allegation. While acknowledging that the duration of the proceedings had been long, this fact ought to be attributed to the applicants' own actions and requests and could not justify the finding of a violation. Only minor and insignificant periods of the time elapsed could be attributed to the national courts.

51. In fact, the Government pointed out that the City Court had made several attempts to hold the main hearing, in spite of protests from the first applicant. Not only had she made several requests for the postponement of the main hearing, but the pleadings and evidence had also been broadly based and voluminous, and thus necessarily making the preparation of the case a time-consuming exercise for the court. It had involved the reading of several hundred pages of written pleadings and supporting documents of questionable relevance.

52. Before the High Court, time was lost by the first applicant's failure to find a legal representative, and also by a number of requests for extension and various unsuccessful procedural appeals to the Supreme Court. She continuously presented new documents, mostly without any bearing on the central questions in the case, and made continued requests for production of additional documents by the opposing party both before and after the court's setting of a time limit for final evidence and arguments.

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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

54. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

55. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Not only were there several periods of inactivity before the national courts or lack of diligence on their part (see paragraphs 13, 19, 30 to 32 above), but the total duration of the proceedings in question, 17 years and five months, was also particularly long. While the Court accepts that the first applicant has contributed to the length of the proceedings (see notably paragraphs 18, 20, 24 and 25 above), this could not absolve the authorities of the respondent State from their obligation under Article 6 § 1 to ensure that the proceedings be concluded within a reasonable time (see *Dattel and Others*, cited above, §§ 53-54). Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

57. The first applicant claimed compensation for damage caused by the State's contribution to undermine, delay or destroy legal proceedings, with the consequence that the first applicant had sustained losses in inheritance rights amounting to 14,000,000 United States Dollars (corresponding approximately to 10,587,500 euros (EUR)), which sum should be increased by 18% interest per year as from 1974. The amount represented the difference between her total losses and those that had been covered by the State in a friendly settlement concluded on 5 June 2003. The first applicant further requested the Court to triple the award by way of punitive damages.

58. The Government did not express an opinion on the matter.

59. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the first applicant must have sustained non-pecuniary damage due to the excessive length of the

proceedings. Ruling on an equitable basis, and bearing in mind the first applicant's own contribution to the protraction of the proceedings, it awards her EUR 15,000 under that head.

B. Costs and expenses

60. The applicants also claimed NOK 50,000 (corresponding approximately to EUR 6,140 euros) for the costs and expenses incurred before the Court.

61. The Government did not express an opinion on the matter.

62. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 covering for the proceedings before the Court.

C. Default interest

63. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the first applicant's complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to the first applicant;

3. *Holds*
   (a) that the respondent State is to pay the first applicant within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage and EUR 4,000 (four thousand) in respect of costs and expenses, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the first applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President