



Major delays in proceedings concerning criminal-assets seizure were caused by Gilligan family

In today's **Committee** judgment in the case of [Gilligan v. Ireland](#) (application no. 55276/17) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 (right to a fair trial within a reasonable time) of the European Convention on Human Rights.

The case concerned the length of several sets of proceedings related to the seizure of the applicants' properties under the Proceeds of Crime Act, 1996, which had included multiple legal stratagems by them within a range of proceedings back and forth across two levels of jurisdiction.

The Court found in particular that the delays had mainly been down to the applicants' wrong-headed legal tactics, which seemed more designed to frustrate and delay the proceedings before the domestic courts than to reach a conclusion.

The judgment is final.

Principal facts

The applicants, John Gilligan, Geraldine Gilligan, Treacy Gilligan and Darren Gilligan, are Irish nationals who were born in 1952, 1956, 1974 and 1975 respectively. They are a family.

On 21 November 1996 the Criminal Assets Bureau initiated proceedings to freeze with a view to ultimately confiscating properties belonging to the applicants. A 21-day interim order was made by the High Court in that connection under the Proceeds of Crime Act, 1996. Several subsequent orders followed, leading up to an "interlocutory" (freezing) order on 16 July 1997, as the High Court accepted the evidence that the properties had been bought with earnings from the sale of illegal drugs. Complex, multi-faceted proceedings initiated by the applicants ensued.

When the proceedings began John Gilligan was in prison in the UK having been arrested while carrying 300,000 pounds sterling through Heathrow Airport. He was later extradited from the UK to Ireland, where he was convicted of drugs offences and sentenced to 20 years' imprisonment. He was released from prison in October 2013.

In 1997 the applicants successfully applied for legal aid. In connection with this issue, the Supreme Court clarified that despite its name, the interlocutory order provided for in the legislation to freeze assets was not a provisional measure but one that would have full force for seven years, after which time the authorities could seek to have the property in question transferred to the State. At a later stage in the proceedings (2005), the Supreme Court confirmed that the freezing order of 16 July 1997 had indeed been final.

John Gilligan challenged the constitutionality of the Proceeds of Crime Act before the High Court in 1997 and the Supreme Court in 2001, to no avail.

The applicants sought by various means to have the freezing order overturned or the proceedings against them struck out. Their challenge to the freezing order on procedural grounds was rejected by the High Court (2006) and Supreme Court (2008). The latter court highlighted that the legislation offered several possibilities to correctly challenge a freezing order, and described the excuse that the applicants had not understood the finality of the freezing order until the High Court ruling of 21 February 2006 as "clearly false".

In December 2004 the authorities applied for disposal of the properties, which was ultimately granted in 2011 following various legal challenges by the applicants and finally upheld by the Supreme Court in 2017.

On various dates in 2009 the applicants took proceedings under the Proceeds of Crime Act, and their challenge to the freezing order was examined in detail including with hearings in 2010. In these proceedings the High Court ruled in 2011, in particular, that the applicants had failed to discharge the onus on them to show that the properties in question had not been acquired using the proceeds of criminal activity, or that the freezing order was unjust. It described John Gilligan's evidence about the source of the funds used to acquire the properties (betting on horses, currency exchange and borrowing) as "untruthful", "incredible", "without foundation" and "implausible".

In a separate judgment the High Court considered a series of Convention grounds raised by the applicants, including that the proceedings against them had been of excessive duration. To this the court replied that it had been open to the applicants to bring proceedings under the Proceeds of Crime Act at any time from the issuing of the freezing order. Specifically, the court noted that claims had been brought by the applicants only in 2009, so the courts could not have dealt with the matter before that, and, as it had been they that had delayed the relevant application, they could not then rely on that delay.

In a third judgment in 2011, the High Court granted the authorities' application to transfer the applicants' properties to the State, granting a temporary stay on the transfer in the light of some of the applicants' living in two of the properties.

The applicants appealed against all three High Court judgments, arguing, among other things, that that court had lacked jurisdiction to examine the matter. After procedural wrangling and adjournments, the hearing took place before the Supreme Court in June 2016, which finally rejected their appeals on 1 February 2017. In response to the applicants' complaint about the duration of the proceedings, the Supreme Court commented that they had slept on their right to challenge the freezing order, which they should have done promptly. Further constitutional actions taken in the meantime were rejected as vexatious and an abuse of process.

According to the applicants, their properties were confiscated by the authorities in June 2017.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair trial within a reasonable time) of the European Convention on Human Rights, the applicants complained that the overall length of the multiple proceedings they had been involved in had been excessive.

The applicants' main complaints had concerned the fairness of the proceedings (Article 6 of the European Convention) and the deprivation of their property (Article 1 of Protocol No. 1 to the Convention) but these had been rejected as inadmissible in a single-judge decision in 2018.

The application was lodged with the European Court of Human Rights on 26 July 2017.

Judgment was given by a Committee of three judges, composed as follows:

Mārtiņš **Mits** (Latvia), *President*,
 Síofra **O'Leary** (Ireland),
 Lətif **Hüseynov** (Azerbaijan),

and also Martina **Keller**, *Deputy Section Registrar*.

Decision of the Court

Article 6

The Court noted that the proceedings in question had not been linear, but instead had been a succession of phases with numerous procedural – and often repetitive – steps. As indicated by the Government, there had been seven separate originating proceedings, over 88 separate applications, leading to 14 separate reasoned judgments and 29 appeals. It noted that the applicants had been among the first people to be targeted under the relevant legislation, which would have posed a challenge for the domestic courts, including needing clarifications from the Supreme Court. The Court agreed with the domestic courts that the applicants' objectives could have been achieved in a more straightforward manner. Instead, they had wasted time with wrongheaded procedural tactics. The lengthy time until the applicants had sought relief in the correct form under the Proceeds of Crime Act, fully 12 years after the Criminal Assets Bureau's initial action, had been down to them.

When they had finally sought to explain the source of the funds used to acquire the properties in question, this evidence had been emphatically rejected by the domestic courts, which had considered the first applicant to be untruthful. The Court noted that the applicants had been responsible for several delays in the appeal to the Supreme Court against the High Court judgments of 2011.

The Court observed that the authorities had dealt with the matter diligently and without major delays overall. Concerning the proceedings before the Supreme Court, the Court noted certain delays, but stated that, having regard to the applicants' general approach to the litigation, those delays had not contributed to the overall length of proceedings. There had been no logjam of cases concerning the freezing of property suspected of being the proceeds of crime and no systemic delay in their regard.

As the applicants had been permitted to live in the properties during this time, the Court adjudged that the length of proceedings had not been unduly prejudicial to them. However, the Court strongly emphasised that the stakes in this case could not be considered in isolation from the purpose for which the proceedings had been instituted by the authorities in the first place, namely to freeze and then ultimately to seize assets acquired using the proceeds of serious criminal activity.

The Court found that the applicants, through their vexatious delaying tactics, had been responsible for the overall duration of the proceedings, in what the domestic courts had found to be an abuse of process, with the applicants litigating and re-litigating the same issue over and over again. Accordingly, there had been no violation of their rights under this Article.

Article 13 in conjunction with Article 6 § 1

The Court was of the view that speeding the proceedings towards a conclusion held little real interest for the applicants. Indeed, their conduct strongly suggested the contrary intention. The Court thus held that it would be inappropriate to examine the question of an effective domestic remedy in the domestic legal order in the present case.

The judgment is available only in English.

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Neil Connolly

Tracey Turner-Tretz

Denis Lambert

Inci Ertekin

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.