

# **Dispatch by an Estate Distributor as Dispute Settlement**

Tapani Lohi

Senior Lecturer at the University of Helsinki

## **INTRODUCTION**

The intention of this presentation is by no means to comment on the previous presentations. Instead, I will briefly discuss a Swedish-Finnish special procedure employed in estate distribution: dispatch by an estate distributor.

According to the Code of Inheritance, heirs can freely agree upon the way in which they wish to distribute the estate of a decedent. In most cases, the distribution is also confirmed by agreement. However, agreement is not always reached. Therefore, a procedure is needed in which the outcome of the estate distribution can be decided upon in a way that is binding on all the heirs. One possibility would of course be that heirs who disagree would use the same method as in other civil disputes, that is, to initiate court proceedings. However, this has not been considered a good procedure in disputes concerning inheritance. Instead, as a rule, estate distribution is dispatched by an estate distributor appointed by the court.

In Finland, dispatch by a distributor is also used in civil suits between spouses and cohabitants. The distributor can carry out distribution of matrimonial property between spouses and separation of property between cohabitants. However, I will now only discuss estate distribution.

It is stipulated in the Code of Inheritance that any of the heirs can submit an application and demand that the court appoints an estate distributor for the execution of the estate distribution. No grounds are needed for the application, and an heir does not even have to try to agree on the matter with other heirs. Usually, an advocate or another lawyer specialising in family and inheritance law is appointed as the distributor. In matters concerning estate distribution, the distributor has a role similar to that of a court or an arbitrator. The distributor has the power to make decisions in individual issues related to estate distribution and thereby decide on the outcome of the distribution. This means that the distributor decides on the inheritance that an heir will receive. Therefore, the dispatch

procedure can be considered the court of first instance in disputes over an inheritance. If an heir is not satisfied with the distribution, he/she can object to the distribution by bringing a suit in a district court.

### **NEED FOR A SPECIAL DISPUTE SETTLEMENT PROCEDURE**

Why, then, has a specific dispute settlement procedure taking place outside of court been created for estate distribution and why has estate distribution not been left for the courts to decide upon? This is due to problems encountered in the old system. At the time when the Code of Inheritance from 1734 was enacted, estate distribution had to be subjected to a court if the heirs did not reach an agreement on it. Disputes over an inheritance then became long and complicated. The courts could not determine the final distribution with a single decision but heirs had to turn to the court several times. They would perhaps first disagree on which of them had the right of inheritance, then on the shares of their inheritance, and finally on the property that each of them would receive. Therefore, when a new Code of Inheritance was being prepared in the 1930s, it was considered necessary to create a new procedure for estate distribution. In modern legal language, the aim was to improve the availability of justice.

Anyone who has ever been involved in disagreements over estate distribution with other heirs surely understands that civil trials would make estate distribution difficult. A typical estate distribution differs from an ordinary civil trial process in that a more flexible procedure is needed. Among other things, this is due to the following:

1. The parties to an estate distribution seldom have a single, clear claim, but each heir demands that the estate should be distributed according to law. This can be compared, for example, to a case in which the plaintiff demands a specific sum of money from a defendant by way of compensation for loss on the grounds that the defendant has caused major loss to him/her. In estate distribution, however, there are usually several more or less interrelated points at stake that must be dealt with. Therefore, an estate distribution is a more complex and broader case than many civil disputes.

2. Estate distribution is further complicated by the fact that there are often more than two parties involved. For example, we can think of a situation where there are, say, four heirs and each one disagrees on how the estate distribution should be carried out.

3. There are often more legal decision alternatives in an estate distribution than in a typical civil dispute. If the estate is large, there are several ways of distributing it legally between the heirs.

4. For the heirs, it is important that the estate is distributed in a legal manner and that the distribution is as purposeful as possible from their point of view. Therefore, it is often advisable to strive towards a distribution that is not even legal, to be precise. If the estate includes real property, for example, a fraction of the real property should be given to each heir, based on the legal outcome of the distribution. However, often a more reasonable approach would be to give the entire real property to one heir and a corresponding share of other property to the other heirs.

5. Parties to an estate distribution dispute are typically laymen. In practice, it would be difficult for them to act on their own in an ordinary civil suit process.

Although the dispatch by an estate distributor is intended for use in disputed distributions, it would be preferable if the heirs could even then reach agreement on the contents of the dispatch. In addition, the contents of the distribution will then often become more reasonable. The idea behind the Code of Inheritance was that it would offer estate distributors better opportunities to promote conciliation than courts. For example, according to the Code of Inheritance, seeking conciliation is considered the obligation of the distributor (Chapter 23, Section 7: "the estate distributor shall try to have them agree on the distribution").

In practice, it is quite common that at least some type of agreement is reached in the dispatch by a distributor. Sometimes the outcome of the distribution is determined directly on the basis of an agreement between the heirs without the estate distributor in the end having to issue a decision in the dispute at all. In addition, agreements also play a role in cases where the heirs cannot agree on all matters. It is possible, for example, that the heirs

disagree on the value of the shares of inheritance to the extent that the estate distributor has to decide on the matter. After that, the heirs can nevertheless decide on what types of property each of them will receive. If, for example, the estate distributor has confirmed that the share of inheritance of A is 100,000 euros, B and C may consent to A receiving real estate, which belongs to the estate and value of which is 200,000 euros, by paying B and C the sum missing from their shares, that is, 50,000 euros to both of them.

### **THE LEGAL PROTECTION OF THE HEIRS**

Of course, the lack of any specific form of a dispatch by a distributor must not compromise the legal protection of the heirs. In particular, there are two things that must be taken into consideration here: 1) the impartiality of the estate distributor, and 2) the proper hearing of the heirs during the distribution process.

First of all, the impartiality of the estate distributor means that he/she must be fair and not favour or coerce any of the heirs. However, the question of impartiality already has to be considered when the court is appointing the distributor. A very important question is whether the distributor has to be a qualified person and, if so, what are the criteria for his/her qualification.

The Code of Inheritance does not contain any provisions concerning the estate distributor's non-qualification. According to law, the only requirement is that the distributor is "a suitable person". In fact, it was earlier thought that a person closely related to an heir, even one of the heirs, could act as the distributor. Today, this is not considered preferable. It became more evident over the years that in a disputed estate distribution, the distributor exercises power similar to that of a judge settling a civil case. Therefore, the prevailing opinion is that a distributor is subject to the same qualification requirements as a judge. This means that an heir or his/her close relative cannot be appointed the distributor under any circumstances. In addition, a person who has assisted an heir in a matter related to the inheritance or who would directly benefit or lose out from the outcome of the estate distribution is considered disqualified.

However, there is one difference compared to legal proceedings. Most legal experts are of the opinion that a disqualified person can also be appointed as a distributor, subject to the consent of the heirs. This would not be possible in the case of a judge.

The Code of Inheritance does not contain any provisions either about hearing the heirs during the distribution procedure. In any case, it is evident that the hearing principle related to procedural law also applies to the estate distributor. According to a specific provision in the Code of Inheritance “The estate distributor shall...**verifiably invite the shareholders to the distribution**”. In addition, the estate distributor must ensure that the heirs have a real possibility to state their opinion about matters affecting the outcome of the distribution. This requires furnishing the heirs with sufficient information.

On the other hand, the only requirement is that the heirs must be given the chance to be heard. It is for each heir to decide the extent to which he/she wishes to attend the distribution meetings and state his/her opinion at those meetings. Thus, the absence of an heir from distribution meetings does not prevent the completion of the distribution process, provided that the heir has been properly invited to the estate distribution.

### **NEED FOR FURTHER RESEARCH**

In Finland, matters concerning the dispatch by an estate distributor are covered by estate law and matrimonial law. However, they are also interesting from the point of view of procedural law because in practice the dispatch by a distributor is an important dispute settlement procedure. However, the topic has nevertheless received quite little attention in procedural law. The only fairly extensive investigation on the topic in procedural law is the article written by Laura Ervo in 2011, entitled “Oikeudenmukaisuusvaatimus toimitusmenettelyssä” (Legality requirement in the dispatch procedure). For example, the dispatch by a distributor is not even mentioned in the broad general presentation “Prosessioikeus” (Procedural law) in the “Oikeuden perusteokset” (Basic works of law) publication series.

Therefore, it is hoped that the dispatch by an estate distributor would also arouse more interest among researchers of procedural law in the future. The subject would also require

more empirical research. An interesting research topic is how effective the dispatch by a distributor is from the point of view of the availability of justice. There are many questions related to the topic, such as the costs and duration of a dispatch by a distributor. The aim was that the dispatch by a estate distributor would be a quicker and cheaper procedure than normal civil trials dealing with the same issues. Empirical research should be carried out on whether this really is the case.