CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

**CASE OF PIETILÄINEN v. FINLAND**

*(Application no. 35999/97)*

JUDGMENT

STRASBOURG

5 November 2002

**FINAL**

*27/01/2003*

*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 Pietiläinen v. Finland,**

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 15 October 2002,

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

# PROCEDURE

1. The case originated in an application (no. 35999/97) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Mr Aaro Pietiläinen ("the applicant"), on 29 April 1997.

2. The applicant, who had been granted legal aid, was represented by Mr T. Tapper, a lawyer practising in Jyväskylä. The Finnish Government ("the Government") were represented by their Agents, Mr H. Rotkirch, Director-General for Legal Affairs, Ministry of Foreign Affairs, and Mr A. Kosonen, Director, Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the criminal proceedings against the applicant had been unreasonably lengthy as the criminal investigations were commenced on 5 January 1987 and the final domestic decision was given on 26 November 1996 when the Supreme Court refused the applicant leave to appeal against the Court of Appeal's judgment.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 5 March 2002 having obtained the parties' observations on the admissibility and merits of the case the Chamber declared the application admissible.

7. On 8 March 2002 the Section Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 10 May 2002, after an exchange of correspondence, he noted that there appeared to be no basis for reaching a friendly settlement.

8. The parties filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1943 and lives in Laukaa.

10. On 5 January 1987 criminal investigations were instituted against the applicant who was taken into police custody the same day in respect of, *inter alia*, alleged tax frauds. He was released on 16 January 1987.

11. On 5 July and 31 August 1990 the applicant was summoned to appear before the Helsinki City Court *(raastuvanoikeus, rådstuvurätt*, as from 1 December 1993 Helsinki District Court, *käräjäoikeus, tingsrätt)* indicted for several aggravated tax frauds. The alleged offences concerned the importation of parts of vehicles and failure to pay relevant tax for them. The relevant decisions of the tax authorities after the clearance of the taxes were not yet final as the applicant had appealed against them. The first hearing before the District Court was held on 14 November 1990. The complainants and one of the four defendants, MI, had not yet been summoned. The Public Prosecutor charged the applicant with ten aggravated tax frauds, some of which he had allegedly committed together with other defendants, including MI. The applicant's lawyer asked to be allowed to reply to the charges later. At the request of the Public Prosecutor the case was adjourned until 3 April 1991.

12. At the second hearing, on 3 April 1991, the applicant denied all the charges. Concerning the alleged offences in complicity with MI, the applicant stressed MI's role in the events and his greater knowledge of the subject. Two complainants and the defendant MI had still not been summoned. At the request of the Public Prosecutor and the National Board of Customs, which was one of the complainants, the case was adjourned until 29 May 1991.

13. At the third hearing on 29 May 1991 the National Board of Customs submitted claims for damages. The applicant's lawyer opposed the claims and said he would revert to the question of damages in a later hearing. The

defendant MI had still not been summoned to appear before the City Court. The Public Prosecutor requested an adjournment in order to have MI summoned and to submit further clarification to certain questions. His request was not opposed. The next hearing was ordered to be on 16 October 1991.

14. At the fourth hearing on 16 October 1991 the applicant was heard in person. His lawyer also clarified the reply to the claims of the National Board of Customs. The Public Prosecutor stated that MI had not yet been contacted and requested an adjournment in order to have him summoned. The applicant left the request for an adjournment to the City Court's discretion. The case was adjourned until 4 December 1991.

15. At the fifth hearing on 4 December 1991 the Public Prosecutor stated that MI had still not been summoned and requested a further adjournment. The applicant left the request to the City Court's discretion. The case was adjourned until 13 May 1992.

16. At the sixth hearing on 13 May 1992 the Public Prosecutor requested the case to be adjourned until further notice since MI's place of residence was not known. The applicant left the case to be decided for his part. The City Court considered that it was necessary to hear MI before giving a decision on the charges against the applicant. Furthermore, the National Board of Customs had not yet given its decision concerning the appeals against the decisions of the tax authorities after the clearance of the taxes. The City Court, therefore, adjourned the case until further notice of the date of the next hearing would be given.

17. The National Board of Customs and the Supreme Administrative Court gave decisions concerning the appeals against the post-clearance decisions on 20 April 1993 and 15 December 1993 respectively.

18. In March 1994 the applicant lodged a complaint with the Chancellor of Justice *(oikeuskansleri, justitiekansler)*. The complaint concerned the City Court's decision to adjourn his case until further notice.

19. The seventh hearing before the District Court (the former City Court) was held on 31 August 1994. MI had been summoned but he was absent from the hearing. At the request of the public prosecutor, which was not objected to, the case was adjourned until 21 September 1994.

20. At the eighth hearing on 21 September 1994 MI appeared before the District Court to reply to the charges. He and the applicant were examined as regards their complicity in the alleged offences. At the request of MI, which was not objected to, the case was adjourned until 9 November 1994.

21. At the last hearing on 9 November 1994 the applicant submitted that the length of the proceedings should be taken into account when assessing his possible punishment. The District Court convicted the applicant of a repetitive offence, consisting of four tax frauds, an aggravated tax fraud and aiding and abetting in two tax frauds and in two aggravated tax frauds, and sentenced him to six months' suspended imprisonment. In the reasons given

for the sentence the length of the proceedings was not mentioned explicitly. It was, however, noted that the fact that the offences had been committed a long time ago was one of the reasons for the court's decision to impose a suspended sentence.

22. On 17 October 1995 the Deputy Chancellor of Justice *(apulaisoikeuskansleri, justitiekanslersadjoint)* gave his decision on the applicant's complaint, finding no breach of official duties on the part of the City Court's members or of the public prosecutor nor any reason to take further measures in the matter.

23. The public prosecutor and the defendants appealed to the Helsinki Court of Appeal *(hovioikeus, hovrätt)*. The applicant requested, *inter alia*, that the length of the proceedings should be taken into consideration when assessing his sentence. On 4 June 1996 the Court of Appeal, as regards the applicant, upheld the District Court's decision without giving any further reasons.

24. The applicant sought leave to appeal from the Supreme Court *(korkein oikeus, högsta domstolen)* renewing his request that the length of the proceedings be taken into account in the assessment of his sentence. On 26 November 1996 the Supreme Court refused the applicant leave to appeal.

## II. RELEVANT DOMESTIC LAW AS IN FORCE AT THE RELEVANT TIME

25. Chapter 16, Section 4, Subsection 1 (30.4.1987/452), of the Code of Judicial Procedure *(oikeudenkäymiskaari, rättegångsbalken)* provided:

> "When a party requests an adjournment in order to submit further evidence or for some other reason, the case must be adjourned, if the court finds grounds for it. The date for a new hearing must be set at the same time. A court cannot adjourn a case of its own motion unless necessary under particular circumstances. ..."

26. As from 1 December 1993 the rules concerning adjournment of cases were amended (amendment 22.7.1991/1052). As regards criminal cases, the above-mentioned provision of law remained essentially unchanged. Furthermore, Chapter 16, Section 5, of the Code of Judicial Procedure provided:

> "When it is important to wait for a decision of another tribunal or some other body before a decision is given in a pending case, or when some other long-lasting impediment exists, a court may order that the hearing of the case will not be pursued until that obstacle ceases to exist."

27. According to Chapter 14, Section 7a (19.4.1991/708), of the Code of Judicial Procedure, which came into force on 1 April 1992, charges against defendants accused of committing the same offence must, in principle, be tried together.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

28. Before the Court the applicant complained that his right to a trial "within a reasonable time" had not been respected and that there had accordingly been a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

### A. Period to be taken into consideration

29. The Court considers that the proceedings at issue started on 5 May 1987 when the applicant was taken into police custody. The period to be taken into consideration, however, began on 10 May 1990 when the Convention entered into force with respect to Finland. The case was then pending before the public prosecutor, waiting for his consideration of charges. The proceedings ended on 26 November 1996 when the Supreme Court refused the applicant leave to appeal. Accordingly, the proceedings to be taken into consideration lasted six years six months and sixteen days.

In order to determine the reasonableness of the length of time in question, regard must be had, however, to the state of the case on 10 May 1990 (see, amongst other authorities, the Hokkanen v. Finland judgment of 23 September 1994, Series A no 299-A, § 53, and the Kerojärvi v. Finland judgment of 19 July 1995, Series A no. 322, § 41).

### B. Reasonableness of the length of the period in issue

30. The Government submitted that the case was complex. Six of the charges raised concerned crimes that had allegedly been committed jointly by the applicant and MI. The total number of defendants was four. There were problems in finding and summoning MI and there were also parallel proceedings of an administrative nature. The applicant's case could not be decided irrespective of MI's case because the applicant had denied the charges in respect of those offences which he had allegedly committed in complicity with MI, who was living in Germany and had to be summoned there. MI was finally summoned on 5 August 1994 after a warrant for his arrest had been issued.

Furthermore, the proceedings were complicated by the fact that the applicant had appealed against six post-clearance decisions made by the Helsinki district customs office (*Helsingin piiritullikamari, Helsingfors*

*distriktstullkammare*) in 1990. The National Board of Customs (*tullihallitus, tullstyrelsen*) rejected the appeals on 20 April 1993. This decision became final when the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) rejected the applicant's appeal on 15 December 1993.

31. In their view, the applicant contributed to prolonging the proceedings as the applicant's counsel twice informed the City Court that he would submit more information in the following hearing. In seven out of the eight cases of adjournment the counsel either himself requested adjournment or did not object to the prosecutor's request. In the sixth hearing the applicant's counsel informed the court that he was prepared to submit the case for decision, but still did not object to the adjournment. Furthermore, MI's conduct also prolonged the proceedings.

32. Referring to the conduct of the relevant authorities, the Government pointed out that there had been no sign of inactivity in the proceedings before 13 May 1992 when the City Court made an interim decision to adjourn the case until further notice. The applicant did not object to the adjournment of the case on that occasion. Finally, the case was adjourned for two years, three months and eighteen days. However, in the circumstances of the case, the Government regarded that as justified.

The interim decision was mainly based on the need to hear MI who was charged with the same acts as the applicant. The indictments indicate that the applicant and the two other defendants, including MI, were charged with jointly committed tax frauds. The applicant denied the charges in respect of those offences that had allegedly been committed in complicity with MI, contending that due to his deficient language skills and lack of experience he had been completely dependent on MI whose expertise he had trusted. The public prosecutor thus considered that the charges concerning the applicant could not be decided on without hearing MI.

According to the City Court, the adjournment was necessary because the case could not be decided before MI had been heard and the connected post-clearance decisions had become final. The decision to adjourn the proceedings in order to hear MI was a measure of proper administration of justice.

The Government also recalled that in his decision of 17 October 1995 the Deputy Chancellor of Justice found no breach of official duties on the part of the City Court's members or of the public prosecutor nor any reason to take further measures in the matter. He stated in his reasoning, *inter alia*, that the applicant himself had stated to the court that MI's part in the events had been crucial. He concluded that the City Court had had a right to adjourn the case until further notice and that the applicant's legal protection had not been endangered. Moreover, the delay in bringing the co-accused to trial was in no way caused by the Finnish authorities, as there are no means

available to influence the service process in Germany or the efficiency of such a service.

33. The part of the proceedings which took place after MI had been summoned on 5 August 1994 lasted until 26 November 1996. The Government recalled also that the decision of the National Board of Customs had been given, in the meantime, on 20 April 1993. The Supreme Administrative Court made its decision on a further appeal by the applicant on 15 December 1993. However, the criminal case could not be considered until MI had been found and summoned.

The case was then considered by the District Court of Helsinki within the same month, i.e. on 31 August 1994. After this the case was speedily decided. Two further adjournments were, however, necessary because MI was for legitimate reasons (illness) absent from the hearing on 31 August 1994 and because it was necessary to obtain further evidence. The proceedings were terminated two months and nine days later on 9 November 1994. The proceedings before the Court of Appeal lasted one year, six months and nine days, and the proceedings before the Supreme Court lasted five months and twenty-two days.

34. The Government pointed out that the applicant was not deprived of his liberty during the court proceedings but was able to respond to the charges while at liberty. After the first hearing he was requested to attend the court in person only twice. In each hearing he was represented by a counsel paid from public funds.

35. The Government also emphasised that the fact that the offences had been committed a long time before the judgment was given, was one of the reasons for the District Court's decision to impose a conditional sentence. In that assessment the court paid attention to the time interval between the commission of the offences and the imposition of the sentence. In addition the court acknowledged the fact that the applicant had no prior convictions resulting in deprivation of liberty. The length of the proceedings was also taken into account in the decisions of the higher instances when they assessed the applicant's sentence, as the Court of Appeal upheld the District Court's judgment and the Supreme Court refused the applicant leave to appeal.

36. The applicant argued that the case was not complicated. The excessive length was caused merely by the adjournments as one of the applicant's co-accused could not be found and summoned. There were only few witnesses to be heard and the essential part of the facts could be found from the documents submitted to the court. When the absent co-accused was finally found, it did not take too long for the court to decide the case.

37. The applicant also contested the Government's argument that the criminal proceedings could not be finalised before the pending tax appeals had been decided as, according to Finnish law, it is not necessary to wait for the outcome of taxation proceedings in order to give a judgment in related

criminal proceedings. Had the taxation proceedings ended with a different outcome, the criminal judgment could have been quashed later. The applicant also pointed out that it was not his fault that the taxation proceedings took as long as they did.

38. The applicant noted that a hearing was once adjourned because the prosecutor had failed to summon the National Board of Customs. As serving a summons on a State authority cannot fail, it was clearly the prosecutor's negligence that caused this. Moreover, the District Court's decision of 13 May 1992 to adjourn the hearing until further notice was unfair to the applicant as the case was left open without any information as to when the proceedings would continue. The uncertainty of the future proceedings was very hard for the applicant to bear.

39. According to the applicant, there was a lot at stake for him as he was taken into police custody for eleven days, his house was seized for almost six years, he had no previous criminal record and the amount of the compensation claim exceeded all his assets. Moreover, he was charged with an offence for which the maximum penalty is imprisonment.

40. The applicant emphasised also that he had requested all three domestic court instances to take the excessive length of the proceedings into account when sentencing him. None of the courts did. It is true that the District Court's judgment implies that general obedience to the law did not require that an unconditional sentence should be imposed in view of the length of time which had elapsed since the acts referred to had been committed (the acts were committed in 1985 and 1986). This reasoning does not, however, refer to the length of the proceedings or to the distress caused to the applicant by the length.

41. As to the reasonableness of the length of the proceedings, the Court recalls that it must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities dealing with the case as well as what was at stake for the applicant (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, 25 March 1999, *Reports of Judgments and Decisions* 1999, § 67).

42. The Court considers that, even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings. Moreover, the Court finds no evidence to demonstrate that at any subsequent stage of the proceedings the applicant was guilty of dilatory conduct or otherwise upset the proper conduct of the trial. In particular, the fact that he appealed against the post-clearance decisions cannot be held against him. In view of that, the Court considers that his conduct did not contribute substantially to the length of the proceedings.

43. As regards the conduct of the authorities, the Court first considers that the Court of Appeal and the Supreme Court did not affect the length of

the proceedings. In respect of the District Court, the Court notes that it took the court some four years and four months to render a decision in the applicant's case. During that time the Finnish authorities' request to the German authorities to have MI summoned was pending for four years. As the reason for most of the adjournments was the absence of MI, the appeal proceedings concerning post-clearance decisions cannot be regarded as having affected the length. While the Court is satisfied that it was necessary to examine the applicant's submissions in the presence of MI before the applicant could be convicted, it considers that no criminal proceedings pending against a private individual can be adjourned until further notice without any limitation. At the very least such an adjournment should be reconsidered by the court from time to time during the adjournment if the authorities' efforts to summon an absent co-accused meet with no success. As no such procedural guarantees were offered and the co-accused remained absent for years, the Court considers that the length of the proceedings caused the applicant an unreasonable degree of uncertainty.

44. As to the way in which the length of the proceedings was taken into account when the applicant was finally sentenced, the Court notes that the District Court's reasoning related to the wider aspect of the necessity of an immediate term of imprisonment in view of general obedience to the law, not in view of the hardship caused by the length of the proceedings. Thus, the way in which the length of the proceedings was taken into account did not provide adequate redress for the alleged violation (see the Eckle v. Germany judgment of 15 July 1982, Series A no. 51, p. 30, § 66, and *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001).

45. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings complained of, in particular that of the proceedings before the District Court, was excessive and failed to satisfy the reasonable time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant did not seek compensation for pecuniary damage. Under the head of non-pecuniary damage, the applicant claimed a sum of 35,000 euros (EUR), with 11% interest as from 26 November 1996 onwards, for suffering and distress caused by the length of the proceedings.

48. The Government first observed that the applicant's claim for interest does not have any legal or other ground and that it should, accordingly, be rejected by the Court. As far as the compensation for non-pecuniary damage was concerned, the Government considered the sum claimed by the applicant excessive. They requested the Court to rule that the finding of a violation would constitute in itself sufficient just satisfaction. In any event, the sum could not, in the Government's view, exceed the level of EUR 1,160. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases.

49. The Court accepts that the applicant has suffered non-pecuniary damage, such as distress and frustration relating to the length of his trial, which is not sufficiently compensated by the findings of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,700 under this head.

### B. Costs and expenses

50. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought reimbursement of EUR 732 for costs and expenses incurred in the proceedings concerning his complaint to the Chancellor of Justice and EUR 14,744.25 for costs and expenses incurred in the proceedings before the Court.

51. In their memorial the Government argued that the claim for compensation of EUR 732 concerning the complaint lodged at the national level with the Chancellor of Justice could not be reimbursed in this context. They, however, agreed that the applicant has certainly had some costs and expenses before the Strasbourg control organs. They invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum. They further considered that the claim rate of EUR 150 per hour was excessive and should not exceed EUR 117. They also considered the number of hours somewhat excessive.

52. Applying the principles laid down in its case-law and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant EUR 10,000 for his costs and expenses together with any value-added tax that may be chargeable.

### C. Default interest

53. 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 (see the *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, ECHR 2002-...).

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 1,700 (one thousand seven hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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;

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

Done in English, and notified in writing on 5 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President