CONSEIL DE L'EUROPE

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

FOURTH SECTION

CASE OF PITKÄNEN v. FINLAND

(Application no. 30508/96)

JUDGMENT

STRASBOURG

9 March 2004

FINAL

09/06/2004

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 Pitkänen v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 10 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 30508/96) 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 two Finnish nationals, Eila and Markku Pitkänen ("the applicants"), on 6 February 1996.

2. The applicants, who had been granted legal aid, were represented by Mr Heikki Salo, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agents, Ms Irma Ertman, Deputy Director-General for Legal Affairs in the Ministry for Foreign Affairs, and Mr Arto Kosonen, Director in the same Ministry.

3. The applicants alleged, in particular, that Article 6 § 1 of the Convention had been violated both on account of the total length of the various court proceedings and the unfairness of the first set of civil proceedings.

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 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. By a decision of 4 March 2003 the Court declared the application partly admissible.

8. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants are a married Finnish couple, born in 1957 and 1955 respectively and resident in Helsinki. In 1987 they bought a real property from the owner of a neighbouring property, L., who had undertaken to tear down a lean-to which the latter had constructed partly on the land purchased by the applicants before splitting it up into a separate property. The applicants and L. allegedly reached a further agreement to the effect that the latter consented to the applicants' construction of a car shelter which would be connected to a new sauna building which L. agreed to construct on his own property so as to replace the sauna in his lean-to.

10. On 26 January 1988 the Helsinki Building Inspection (*rakennus-valvontavirasto, byggnadsinspektionen*) granted permission to demolish the lean-to. Following that demolition, the Helsinki Building Board (*rakennuslautakunta, byggnadsnämnden*), on 23 February 1988, granted the applicants permission to construct a dwelling-house and a car shelter on their property. L. did not appeal but refused to demolish the whole of his lean-to and to construct the new sauna building to be connected to the applicants' dwelling.

11. In August 1988 L. was prohibited from using his existing sauna as its chimney top was found to be partly under the roof level of the applicants' car shelter. The applicants' offer to have the chimney top extended was refused by L.

12. On 2 October 1990 representatives of the Building Board inspected the applicants' car shelter and found that it complied with the building permit. L. lodged an objection with the Building Board against this finding.

13. In November 1990 L. brought a civil action against the applicants, demanding, *inter alia*, that they be ordered to tear down the car shelter which they had allegedly built in violation of the fire regulations. The Helsinki City Court (*raastuvanoikeus, rådstuvurätten*) held its first hearing in January 1991 but adjourned the case at L.'s request in anticipation of the Building Board's forthcoming decision.

14. On 29 January 1991 the Building Board dismissed L.'s objection against the outcome of the inspection on 2 October 1990 and confirmed that the applicants had constructed their buildings in accordance with the permit delivered in 1988. The Board found that L. had contributed to the fact that he had been prohibited from using his sauna, having refused to carry out his own construction works as agreed with the applicants. Had he fulfilled his part of their joint agreement in accordance with the building permission granted to that effect, the roof of his and the applicants' respective buildings would have been at the same height. The Board considered that the dispute between the parties was to be resolved by the civil courts.

15. L. appealed to the County Administrative Court (*lääninoikeus, länsrätten*) of Uusimaa, arguing that while he had consented to the applicants' constructing up to the boundary line, he had not agreed to any construction on their part preventing him from using his existing sauna and requiring him to take construction measures of his own. Although he had informed the applicants that his consent did not cover those aspects, they had not informed the Building Board accordingly. As a result the building permit and the approval of the applicants' construction works had been based on false premises.

16. In February 1991 the applicants filed a counter claim against L., demanding that he be ordered to carry out his part of their alleged agreement. The two suits were joined at the applicants' request. The City Court's second hearing was held on 7 March 1991 but the case was again adjourned at L.'s request.

17. On 17 September 1991 the County Administrative Court upheld the Building Board's decision of 29 January 1991. L. appealed further to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) and also requested the annulment of the Building Board's decision of 1988, whereby it had granted the applicants a building permit.

18. The City Court's third hearing was held on 19 September 1991. The case was again adjourned at L.'s request, as he had not yet received the County Administrative Court's decision of 17 September 1991.

19. On 10 October 1991 the Land Court (*maaoikeus, jorddomstolen*) of Southern Finland dismissed L.'s appeal against a refusal to move a marker indicating his and the applicants' joint boundary line.

20. The civil case was again heard on 16 January 1992 but was now adjourned at the request of both parties in anticipation of the Supreme Administrative Court's decision in respect of L.'s annulment request.

21. The City Court's fifth hearing was held on 24 September 1992 but the case was again adjourned at L.'s request. Following a sixth hearing on 28 January 1993 the City Court adjourned the case for the summoning of witnesses.

22. On 19 February 1993 the Supreme Administrative Court dismissed L.'s request for annulment of the Building Board's decision of 23 February 1988. The court held that an error had indeed been committed during the Building Board's examination of the applicants' request for a building permit. The court noted however the nature of L.'s written undertakings towards the applicants which had led to the error, the manner in which their car shelter had been built as well as the fact that it would be easy to arrange for the smoke from L.'s sauna to be evacuated in a manner acceptable from the point of view of fire safety. The court therefore considered that the Building Board's decision of 23 February 1988 did not violate L.'s rights, nor was it necessary in the general interest to annul that decision. The court furthermore dismissed L.'s appeal against the County Administrative Court's decision of 17 September 1991.

23. In April 1993 L. extended his civil action against the applicants by bringing further claims partly based on different legislation. At the City Court's seventh hearing on 11 May 1993 it took evidence from the applicants' witnesses K. and P. The case was again adjourned at L.'s request.

24. At the eighth hearing on 31 August 1993 witnesses A. and V. were heard at L.'s request and witness H. was heard at the request of the applicants. A. furthermore handed in reports of his inspections *in situ* dated 2 August 1989 and 8 August 1990. According to the applicants, the City Court had by then already refused their request that the court conduct its own inspection. The case was adjourned at both parties' request so as to enable them to lodge further submissions in writing.

25. At the City Court's ninth hearing on 23 November 1993 one further witness was heard at the applicants' request and another witness at L.'s request. The parties requested permission to make their final pleadings in writing and the case was adjourned for judgment at a later date.

26. Each of the nine hearings was presided over by a different judge.

27. Due to a national reorganisation of the courts of first instance the case was transferred to the Helsinki District Court (*käräjäoikeus, tingsrätten*; formerly the City Court). In its judgment of 3 March 1994 it found that the Supreme Administrative Court's decision of 1993 had not given rise to *res judicata*. The District Court, moreover, accepted L.'s extended action for consideration. It considered that whereas P. was the only witness who could have testified regarding the true character of the alleged agreement between the applicants and L., P.'s testimony had not been so detailed and certain that it could be regarded as decisive evidence that L. had agreed to tear down the whole of his lean-to. The court therefore found it established that the applicants had understood all along that L. had not intended to tear down the whole of his lean-to. By constructing the car shelter in the manner established they had effectively prevented L. from using his sauna. The applicants were therefore ordered to demolish their

shelter and to restore L.'s lean-to into its original state. It followed that the applicants' counter suit had to be dismissed.

28. The applicants were ordered to pay L. FIM 2,850 (about EUR 480) in compensation for the damage which the construction of their shelter had caused to his lean-to. They were ordered to pay a further FIM 3,000 (some EUR 500) a year (as from 1990) in compensation for the impossibility for L. to use his sauna. They also had to reimburse L.'s costs in the amount of FIM 32,668,50 (about EUR 5,500).

29. As regards the extent of the damages suffered by L., the District Court based itself exclusively on A.'s testimony. After the District Court's judgment the applicants filed a criminal complaint against him, suspecting that he had committed perjury.

30. The applicants appealed against the District Court's judgment and later supplemented their appeal with a copy of the record of the pre-trial investigation into the suspected perjury which in their view showed that A.'s testimony had not been truthful.

31. On 9 February 1995 the Helsinki Court of Appeal (*hovioikeus, hovrätten*) dismissed the applicants' appeal and upheld the District Court's judgment, including its reasons. The Court of Appeal refused to take into account the pre-trial investigation record concerning A., as it had been submitted out of time and no special reasons militated in favour of accepting it as evidence. The applicants were ordered to pay L.'s costs in the amount of FIM 2,500 (about EUR 420).

32. On 7 September 1995 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the applicants leave to appeal.

33. In order to tear down their car shelter and restore L.'s lean-to the applicants were to obtain permission from the Building Inspection. In an opinion to the Supreme Court dated 22 February 1995 the Building Inspection nevertheless considered that the District Court's demolition order was "not an equitable solution", since the only change needed from the point of view of fire safety would be to extend L.'s chimney top to a point 80 centimetres above the applicants' car shelter. The Building Inspection would therefore not permit the car shelter to be torn down and such demolition would be contrary to the general interest by spoiling the appearance of the neighbourhood and violate both local planning regulations and general regulations on fire safety.

34. On 20 August 1997 the Helsinki District Court convicted A. of perjury and sentenced him to nine months' conditional imprisonment. It found it established that he had deliberately omitted various relevant information from his testimony in L.'s civil case against the applicants. In the light of this judgment the applicants requested the Supreme Court to reopen the proceedings.

35. L. died in November 1997, having sold his property.

36. On 8 March 2000 the Supreme Court granted the applicants' request for a reopening of the proceedings in so far as they had been ordered to compensate L. for the damage which the construction of their car shelter had caused to his lean-to as well as to pay him the costs incurred in the proceedings before the lower courts. The Supreme Court referred to A.'s conviction of perjury.

37. Referring to its decision of 16 May 1997, the Supreme Court declined to examine anew the applicant's request for a re-opening of the case in respect of the order requiring them to demolish the car shelter, to restore L.'s lean-to into its state prior to the construction of the shelter as well as to pay L. annual compensation for the fact that he had been prevented from using his sauna.

38. As of November 2002 the current owners of L.'s house had not requested, and the authorities had not enforced, the aforementioned three orders.

39. In re-opening part of the case the Supreme Court instructed the applicants to file, within three months, a new action against L. before the District Court. They initiated such proceedings against L.'s successors on 30 May 2000 and supplemented their statement of claim on 28 May 2001 in light of the defendants' written observations. The court's preparatory hearing was held on 5 June 2002.

40. On 13 August 2002 the parties reached a settlement whereby L.'s successors undertook to reimburse the applicants the amount of FIM 2,850 (i.e. the compensation which the applicants had paid to L.) as well as a further sum of EUR 5,045.64. L.'s insurance company undertook to reimburse EUR 3,363.76 of the costs paid by the applicants. The sums were to be divided between the applicants and their insurance company as later agreed. The applicants and L.'s successors declared that they had no further claims against one another whether in relation to the proceedings initiated in May 2000 or to any previous court proceedings or related events.

41. The settlement was approved by the District Court on 23 August 2002.

II. RELEVANT DOMESTIC LAW

42. According to the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*), as in force at the relevant time (Chapter 2, section 3), the chairman and three lay judges constituted the quorum in a district court. Each of the lay judges had a personal vote.

43. If a party considered that civil or criminal proceedings had been delayed unjustifiably, a procedural complaint (*kantelu, klagan*) could be lodged with the court of appeal within 30 days from the adjournment (Chapter 16, section 4, subsection 2 of the Code of Judicial Procedure). If it was important for the resolution of the case that an issue under examination

in other proceedings be resolved first, or if there was another long-term impediment to the case being examined, the court could adjourn the case until such time that the impediment has ceased to exist (section 5). These provisions were repealed with effect from 1 October 1997.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

A. Applicants' status as "victims" within the meaning of Article 34

44. In its decision declaring the case partly admissible the Court noted that in a settlement of 2002 L.'s successors and insurance company had undertaken to reimburse the applicants certain compensation and costs. In the same vein the parties to the domestic proceedings had declared to have no further claims against one another, in relation to any court proceedings or related events. The Court retained for later consideration the question whether the applicants could still claim to be "victims" within the meaning of Article 34 in view of the aforementioned settlement.

45. The applicants maintained that they had received no redress from the State such that they could no longer claim to be "victims" of a denial of fair proceedings. For their main part, the proceedings in question had not been annulled and the State had never granted the applicants any compensation whether in respect of the unfairness or the excessive length of the various proceedings. The settlement reached had in no way involved the State or any government body.

46. The Government noted that in the settlement the various parties had waived any claims against one another in respect of any court proceedings or related events. The settlement having aimed at terminating the proceedings to the satisfaction of all parties, the applicants could no longer claim to be "victims" of a violation of Article 6.

47. Under Article 34 of the Convention the Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. Applicants will only cease to have standing as victims within the meaning of Article 34 if the national authorities have acknowledged the alleged violations either expressly or in substance and then afforded redress (see *Guisset v. France*, no. 33933/96, §§ 66-67, ECHR 2000-IX). A decision or measure favourable to the applicant is in principle not sufficient

to deprive him of his status as a victim in the absence of such acknowledgement and redress (*Constantinescu v. Romania*, no. 28871/95, § 40, ECHR 2000-VIII).

48. The Court notes that the settlement in question was reached between two private parties and without the applicants being afforded any acknowledgement or other redress by a national authority whether in respect of the alleged unfairness or the length of the proceedings. In these circumstances the applicants may still claim to be "victims" of a violation of Article 6.

B. Alleged unfairness of the first set of civil proceedings

49. The applicants complained that the first set of civil proceedings had been unfair for a number of reasons. First, each of the district court's hearings for hearing evidence had been presided over by a different judge and the judge presiding at the delivery of the judgment had not been the one who had signed it. The court had also permitted L. to extend his action against the applicants three and a half years after initiating the proceedings. They had been adjourned repeatedly and the court had favoured L. in different ways. Even though the evidence eventually leading to A.'s conviction of perjury had already been adduced by the applicants in the civil proceedings, the courts had not taken that evidence into account. Moreover, while the administrative court proceedings had remained pending the District Court had refused to hear any of the witnesses proposed by the applicants. When those witnesses had eventually been heard, the court had questioned the accuracy of their testimony of events four years earlier. The applicants' requests that the court hear witnesses, conduct an inspection *in situ* and view a video recording had not been recorded in the minutes until the sixth hearing. The court had failed to take account of the testimony of H., who had been present in 1989 when L.'s representative had orally authorised the applicants to complete the construction of their car shelter.

50. The applicants finally maintained that the civil courts had wrongly considered themselves competent to adjudicate a matter which had already been determined finally in prior administrative proceedings, namely the applicants' right to erect a car shelter. The civil judgment had been so erroneous and unlawful that the executive authorities had refused to enforce them.

51. The applicants invoked Article 6 § 1 of the Convention which reads, in its pertinent parts, as follows:

> "In the determination of his civil rights and obligations..., everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

52. The Government considered that there had been no violation of Article 6. They conceded that each of the nine hearings for taking evidence had been presided over by a different judge. Nevertheless, since the testimony had been audiotaped and transcribed and the court file had contained the parties' claims and observations in writing, each judge had been familiar with the object of the litigation and aware of what had occurred during the previous hearings.

53. The Government submitted, moreover, that the applicants had waited until the sixth hearing before calling witnesses. Their allegation that the court had dismissed their earlier requests to hear witnesses had not been supported by the hearing minutes.

1. Scope of the complaint now before the Court

54. The Court recalls that it declared inadmissible the applicants' complaint under Article 6 and other Convention provisions that the allegedly contradictory outcome of the first set of civil proceedings and the administrative court proceedings had led to a continuing, unresolved dispute between them and the owner of the neighbouring house.

55. It follows that the Court can no longer entertain the complaint that the civil courts wrongly considered themselves competent to adjudicate a matter which had already been determined finally in prior administrative proceedings.

2. The Court's considerations on the merits

56. The Court must now ascertain whether the first set of civil proceedings, including the way in which evidence was dealt with, was fair within the meaning of Article 6 § 1. This provision places the domestic tribunal under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision.

57. In criminal proceedings all evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. Article 6 §§ 1 and 3 (d) require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he was making his statement or at a later stage of the proceedings (see, for example, *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 711, § 51).

58. An important element in criminal proceedings is also the possibility of an accused to be confronted with the witness in the presence of the judge who ultimately decides the case. This principle of immediacy is an important guarantee of fairness as the observations made by the court about the demeanour and credibility of a witness may have important

consequences for an accused. A change in the composition of the trial court after the hearing of an important witness should therefore normally lead to the rehearing of that witness (*P.K. v. Finland*, no. 37442/97, 9 July 2002; see also *Eerola v.* Finland, 42059/98, struck out 6 May 2003 following a friendly settlement).

59. The requirements inherent in the concept of "fair hearing" are not necessarily the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge. This is borne out by the absence of detailed provisions such as paragraphs 2 and 3 of Article 6 applying to cases of the former category. Thus, although these provisions have a certain relevance outside the strict confines of criminal law, the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases (see, for example, *Dombo Beheer BV v. the Netherlands*, judgment of 27 October 1993, Series A no. 274-B, p. 19, §§ 32-33).

60. Finally, it is not the function of this Court to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. In particular, while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and national courts.

61. In so far as the applicants have complained about the District Court's evaluation of the evidence and various procedural decisions other than adjourning their case, the Court finds no indication that they were denied a fair hearing within the meaning of Article 6 § 1.

62. As far as the applicants have alleged unfairness on account of the change of the presiding professional judge of the District Court, it is undisputed that he or she changed with every hearing. As in *P.K. v. Finland*, the principle that a change of a judge should lead to the rehearing of an important witness was not respected in this case either. While it is true that the requirement of fairness should not necessarily be as strict as in a criminal case, it would appear that already in the course of the District Court proceedings the applicants challenged the credibility of witness A., who was eventually convicted of perjury. Moreover, as regards the extent of the damage suffered by L., the District Court based itself exclusively on A.'s testimony.

63. The Court notes however that this part of the civil case was eventually reopened on account of A.'s false testimony, whereas in so far as the case was not reopened there is nothing to suggest that it was decided solely on the basis of that evidence.

64. Nor can the Court find that the presiding judge was changed in order to affect the outcome of the case to the applicants' detriment or for any

other improper motives. Finally, it has not been alleged that any of the three lay judges changed.

65. In these particular circumstances the fact that the various presiding judges had at their disposal the recordings and transcriptions of the previous hearings where A. and various other witnesses had been heard sufficed to compensate for the lack of immediacy in the proceedings. The Court concludes therefore that the constant change of presiding judge was not tantamount to depriving the applicants of a fair trial. It follows that there has been no violation of Article 6 in this respect.

C. Length of the proceedings

66. Under Article 6 § 1 of the Convention the applicants further complained that the overall duration of their case before domestic courts and authorities – involving two sets of civil proceedings as well as administrative proceedings, land court proceedings, criminal proceedings against A. and two sets of re-opening proceedings – had amounted to almost twelve years, which was unreasonable. As the criminal proceedings against A. and the proceedings for having the civil proceedings re-opened had been a prerequisite for the final settlement of the case, they could not be disregarded when assessing whether the case had been handled within a reasonable time. The case had not been particularly complex and the proceedings were at no point delayed by the applicants. Ultimately the State had been responsible for ensuring that the proceedings progressed without unreasonable delay.

67. The applicants pointed, in particular, to the first set of civil proceedings, where the various presiding judges had accepted to adjourn the case in anticipation of the outcome of the administrative proceedings initiated by L. In the second set of civil proceedings the preparatory hearing in June 2002 had been held only after the applicants had repeatedly urged the District Court to accelerate the proceedings. For the purposes of Article 6, the overall proceedings should be considered to have started when the applicants' building permit acquired legal force in 1988. Ten years later the case had still been pending in the form of extraordinary proceedings before the Supreme Court.

68. The Government considered that the two sets of civil proceedings had to be examined separately and that neither had been excessive in duration. The first set had lasted four years and nearly ten months at three levels, even though it had entailed joining two actions, one of which had been extended during the proceedings. Both parties had adduced extensive witness testimony and other evidence. The length of the civil proceedings had been due mainly to the conduct of the parties: though the case had been adjourned mostly at the request of L., counsel for the applicants had never objected to any of those requests and had also sought an adjournment on

three occasions. The case had been somewhat complex and the court's decision to await the outcome of the administrative proceedings had been normal and reasonable, since the object of both proceedings had remained the same. Once the administrative proceedings had ended the first-instance court had held three hearings within seven months, whereas the proceedings in the appeal court and the Supreme Court had lasted only ten and five months respectively.

69. The Government finally noted that the second set of civil proceedings had lasted some two years and three months before one court. That case had not been ready for examination until the applicants had filed their supplementary claims in May 2001. At any rate, the case had been quite complex and included two successors to L. as well as an insurance company.

70. The Court notes that taken separately, the first set of civil proceedings which began in 1990 lasted a little less than five years at three court levels, which might be acceptable in the particular circumstances. The Court finds however that, for the purposes of Article 6, these initial proceedings cannot be separated from those which were partly reopened by the Supreme Court in 2000, ending in 2002 with a final "determination" of part of the dispute in the form of a settlement. As the second set lasted almost two and a half years the overall length of the civil proceedings exceeded seven years (cf., *mutatis mutandis*, *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286-A, p. 13, § 30; *Di Pede v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1384, § 24).

71. 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 therefore that the length of the overall civil proceedings was excessive and failed to satisfy the reasonable time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention also in this respect.

72. In these circumstances the Court need not determine whether any of the other proceedings should be taken into account for the purpose of examining this complaint.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

1. Pecuniary damage

74. The applicants claimed EUR 4,068.47, corresponding to the amounts recovered from them in execution of the court order issued in the first set of civil proceedings to the effect that they should compensate L. annually until their car shelter no longer caused an impediment to his sauna.

75. The Government opposed any award under this head, in the absence of any causal link between the sum claimed and the facts of the alleged violations of Article 6 which did not concern the substance of the dispute before the domestic courts.

76. The Court finds that no causal link has been established between the violation found and the damage sustained. It therefore dismisses the claim under this head.

2. Non-pecuniary damage

77. The applicants claimed EUR 10,000 to each of them, referring to the serious distress they suffered during many years and which necessitated psychiatric and other expert help. They adduced medical certificates to substantiate this claim.

78. Should a violation be found the Government were prepared to accept an award of EUR 1,200 to each of the applicants.

79. The Court accepts that the excessive length of the proceedings caused the applicants significant distress which cannot be made good by the mere finding of a violation of Article 6. Making its assessment on an equitable basis, the Court therefore awards each of them EUR 3,000.

B. Costs and expenses

80. The applicants claimed a total of EUR 21,619,10, broken down into the following items:

(i) EUR 1,681.88 for the first set of civil proceedings 1990-95 (i.e. legal costs not covered either by their insurance company or through their settlement with L.'s successors);
(ii) EUR 3,363.75 for the administrative proceedings 1990-93;
(iii) EUR 2,522.80 for the criminal proceedings against A.;
(iv) EUR 2,555.50 for the second set of civil proceedings 2000-2002;
(v) EUR 420.47 for the annulment proceedings;
(vi) EUR 4,574.70 for medical expenses incurred as a result of the distress suffered; and

(vii) EUR 6,500.00 in fees and expenses before the former Commission and the Court (including translation fees and VAT but without deducting legal aid granted by the Court).

81. The Government considered that the total amount of compensation for costs and expenses should not exceed EUR 2,000 (without VAT), from which sum any legal aid granted by the Court should be deducted. Part of the costs and fees claimed concerned complaints which the Court had declared inadmissible, nor did the applicants' medical expenses in any way relate even to the complaints which had been declared admissible.

82. The Court finds no apparent causal link between the costs and expenses incurred in items (ii)–(vi) and the complaints declared admissible. As for item (i), the Court considers that no award should be made in so far as the applicants already reached a settlement at domestic level.

83. As for the fees and expenses claimed in item (vii), the Court takes account of the legal aid granted in the amount of EUR 955.

84. In the overall circumstances of the case the Court therefore awards EUR 4,000 jointly to the applicants.

C. Default interest

85. 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. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the unfairness of the first set of civil proceedings;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the overall civil proceedings;

3. *Holds*

(a) that the respondent State is to pay the applicants, 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 3,000 (three thousand euros) in respect of non-pecuniary damage to each of the applicants;

(ii) EUR 4,000 (four thousand euros) in respect of costs and expenses jointly to the applicants ;

(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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President