CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF LEHTINEN v. FINLAND

(Application no. 34147/96)

JUDGMENT

STRASBOURG

13 September 2005

FINAL

13/12/2005

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 Lehtinen v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 34147/96) 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 a Finnish national, Mr Kenneth Lehtinen ("the applicant"), on 24 October 1996.

2. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen, Director, Ministry for Foreign Affairs.

3. The applicant alleged that the criminal proceedings against him had been excessively lengthy.

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. By a decision of 13 and 27 January 2004 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1950 and lives in Järvenpää.

8. On 11 October 1993 the National Bureau of Investigation (*keskusrikospoliisi, centralkriminalpolisen)* interrogated the applicant as a suspect in the offence of aiding and abetting an aggravated embezzlement. The pre-trial investigation was concluded on 15 December 1993 and the file was transmitted to the public prosecutor on 17 December 1993.

9. The indictment was served on the applicant on 14 March 1996. On 9 September 1996 criminal proceedings were instituted against him and three other defendants before the District Court *(käräjäoikeus, tingsrätt*) of Tuusula. The prosecutor charged two of them with aggravated embezzlement and the applicant and another co-defendant with aiding and abetting the said offence between 9 June and 22 August 1989. The complainant, now a limited liability company to which the ownership of a bank group had been transferred, joined the proceedings and presented an accessory claim for damages and legal costs. All defendants denied the charges.

10. On 10 September 1996 the prosecutor requested an adjournment in order to present further evidence. The case was adjourned until 21 November 1996, when seven prosecution witnesses gave evidence. The case was then adjourned until 30 January 1997 so as to enable the prosecutor to call additional witnesses. At that third hearing the District Court heard evidence from three further prosecution witnesses.

11. At the fourth hearing on 21 March 1997 a witness called by one of the defendants gave evidence. The prosecutor and one of the defendants requested a further adjournment which was granted.

12. At the fifth hearing on 23 May 1997 the District Court took evidence from a prosecution witness and three defence witnesses. At the request of one of the defendants the case was adjourned.

13. At the sixth hearing on 27 June 1997 the District Court heard two further defence witnesses. One of the defendants asked for a further adjournment in order to present additional evidence.

14. At the seventh hearing on 15 August 1997 a further defence witness gave evidence. At the request of two of the defendants the case was adjourned.

15. At the eighth hearing on 26 September 1997 two defence witnesses gave evidence. The applicant requested an immediate dismissal of the charge against him, arguing that it was not detailed enough and did not describe the essential elements of the offence he had been charged with. On the District Court's refusal, he asked that the proceedings be suspended in

anticipation of the outcome of his appeal to the Court of Appeal *(hovioikeus, hovrätt)* of Helsinki in a related matter. The District Court refused this request as well but adjourned the case in order to allow the parties to submit their closing arguments.

16. At the ninth hearing on 13 November 1997 the applicant requested that the complainant be ordered to reimburse his legal costs.

17. In its judgment of 13 November 1997 the District Court acquitted all defendants and dismissed the complainant's accessory claim for damages. Noting that the complainant had merely joined the proceedings brought by the public prosecutor, the court also dismissed the applicant's claim that the complainant be ordered to reimburse his legal costs.

18. The prosecutor, the complainant, the applicant and a co-defendant appealed to the Court of Appeal which rejected their appeals on 31 December 1998.

19. The applicant's acquittal acquired legal force on 2 March 1999, when the prosecutor's and the complainant's deadline for seeking leave to appeal to the Supreme Court *(korkein oikeus, högsta domstolen)* expired. The applicant and a co-defendant sought similar leave to appeal against the Court of Appeal's refusal of their costs claim. Such leave was refused on 28 September 1999.

II. RELEVANT DOMESTIC LAW

20. Under Chapter 16, section 4, subsection 1 of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*, as amended by Act no. 1052/1991 and in force at the relevant time) the district court could adjourn a case upon request by a party, for example if the said party wished to adduce further evidence. The court could not adjourn a hearing *proprio motu* save on special grounds. Under subsection 2 of the said provision any party who considered that the proceedings before a district court were being unjustifiably delayed by an adjournment had the right to lodge a complaint (*kantelu, klagan*) with a Court of Appeal within 30 days from the date of the adjournment.

21. The provision in question was repealed with effect from 1 October 1997, when new provisions generally prohibited adjournments.

THE LAW

I. SCOPE OF THE ISSUES BEFORE THE COURT

22. In his memorial to the Court of 1 October 2002 the applicant also complained, invoking Article 13 of the Convention, that he did not have an effective remedy in respect of the excessive length of the proceedings. The Government submitted that the applicant's new complaint could not be examined.

23. The Court notes that the case has been delimited by the decision on admissibility which related to the alleged violation of Article 6 § 1 of the Convention on the grounds of the excessive length of the proceedings. Accordingly, it will limit its examination to the complaints under the said Article.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant claimed to be a victim of a breach of the reasonable time requirement of Article 6 § 1 of the Convention, which reads, in so far as relevant:

> "In the determination of his civil rights... or 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 account

25. The applicant complained that the length of criminal proceedings against him exceeded a reasonable time. He emphasised that the proceedings against him commenced with his interrogation on 11 October 1993, when he was informed of the suspicions against him. Thereafter his business was no longer able to obtain credit from its bank which ceased co-operation. The proceedings ended with the Supreme Court's decision of 28 September 1999, having lasted almost six years.

26. According to the Government the proceedings at issue began on 14 March 1996 when the applicant was formally charged with criminal offences and ended on 31 December 1998 when the Court of Appeal gave its judgment. The proceedings to be taken into account, on their view, lasted only two years, nine months and seventeen days.

27. The Court reiterates that in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary

investigations were opened. "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test of whether "the situation of the [suspect] has been substantially affected" (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 33, § 73). Such proceedings will end with an official notification to the accused that he or she is no longer to be pursued on those charges so as to allow a conclusion that the situation of that person can no longer be considered to be substantially affected (*X v. the United Kingdom*, no. 8233/78, Commission decision of 3 October 1979, §§ 64 and 65, unreported). This end is generally brought about by an acquittal or a conviction.

28. The Court recalls that the one of the purposes of the right to trial within a reasonable period of time is to protect individuals from "remaining too long in a state of uncertainty about their fate" (*Stögmüller v. Austria*, judgment of 10 November 1969, Series A no. 9, § 5).

29. Turning to the present case, the Court finds that the proceedings for the determination of the criminal charge against the applicant began on 11October 1993 when he was interrogated by the National Bureau of Investigation, at which point he can be considered as being substantially affected by actions taken by the authorities as a result of a suspicion against him. They came to an end on 31 December 1998 when the Court of Appeal issued its judgment on the merits, acquitting the applicant of all charges.

Consequently, the Court finds that the proceedings lasted for five years, two months and twenty days.

B. Reasonableness of the length of the proceedings

30. The Court will assess the reasonableness of the length of the proceedings 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. On the latter point, what is at stake for the applicant has also to be taken into account (see *Philis v. Greece (no. 2),* judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

31. The Court observes that the case concerned economic crimes. The applicant's argument that the facts underlying the charges were not complex was contested by the Government, which argued that the proceedings concerned an extensive and difficult case of suspected financial offences committed by four defendants and that the charges concerned complex arrangements by which assets of a bank had allegedly been transferred to the accused and to companies for the management of which they were responsible. The Government further pointed out that the taking of evidence, for example, took several days. The Court considers, however,

that even though the case was of some complexity, it cannot be said that this in itself justified the entire length of the proceedings.

32. As to the conduct of the authorities, the Court notes that the applicant was questioned by the police for the first time in October 1993. According to the parties, the pre-trial investigation was concluded in December 1993. Charges were brought on 14 March 1996, i.e. about two years and three months later. The District Court held nine oral hearings from 9 September 1996 and rendered its judgment on 13 November 1997. Those proceedings thus took about one year and two months. The Court of Appeal gave its judgment on 31 December 1998, one year and one and half months after the District Court's judgment.

33. The applicant argued that the time which the prosecutor needed for considering whether to bring charges was particularly excessive, lasting for nearly two years and four months without any apparent explanation. The applicant further argued that it took the District Court one year and eight months to hear the case and render a judgment. Also the period of one year, one month and eighteen days before the appellate court was too long. The Government submitted that the total length of the pre-trial investigation was approximately five months. They did not comment on the time the case was pending before the public prosecutor. The Government admitted that at the beginning of the trial, before the fifth hearing of the District Court held on 23 May 1997, the adjournments were mainly granted upon the prosecutor's request for the purpose of submitting further evidence. However, they emphasised that at no stage of the proceedings was the applicant detained on remand in respect of the particular offence in question.

The Court considers that the time taken by the courts in examining the case once charges were formally lodged does not appear exceptionable. However, it finds no sufficient justification for the time which elapsed while the case was under consideration by the public prosecutor.

34. As to the conduct of the applicant, the applicant rejected the Government's allegation that he had delayed the proceedings with his requests for adjournment and deferral of the proceedings as well as his procedural claims. The Court finds no evidence to demonstrate that at any subsequent stage of the proceedings the applicant hindered the proper conduct of the trial or that his conduct contributed substantially to the length of the proceedings.

35. The Court concludes that in the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the length of the proceedings complained of, in particular the time taken for the consideration of charges by the public prosecutor, was excessive and failed to satisfy the reasonable time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. Under the head of pecuniary damage, the applicant claimed a sum of 1,200,000 euros (EUR), with 11% interest as from 11 October 1993 onwards, for loss of his salary from his professional activities, alleging that the proceedings were causally linked to the cessation of his business activities.

38. Under the head of non-pecuniary damage the applicant asked the Court to award him at least EUR 10,000 for suffering and distress resulting from the length of the proceedings.

39. As to pecuniary damage, the Government argued that there was no causal link between the facts of the alleged violation and any pecuniary damage. In this respect they pointed out that the present case before the Court concerned the length of the proceedings under Article 6 § 1 of the Convention and not the substance of the dispute before the domestic courts. They also noted that there was no justification for making any award under this heading.

40. As to non-pecuniary damage, the Government accepted that the applicant should be awarded reasonable compensation should the Court find a violation of Article 6 § 1 of the Convention. However, the Government found the sum claimed by the applicant excessive. In their view, the amount to be awarded should not exceed EUR 2,000.

41. The Court finds that there is no causal link between the violation found and the alleged pecuniary damage. Consequently, there is no justification for making any award to the applicant under that head.

42. On the other hand, the Court accepts that the applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the excessive length of the proceedings – 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 3,000 under this head.

B. Costs and expenses

43. The applicant, who represented himself during the proceedings before the national courts and before the Court, sought reimbursement for

his own work, loss of time and costs in the total amount of EUR 20,957 in respect of the national proceedings and EUR 2,039.65 before the Court.

44. In their memorial the Government argued that the claim for compensation of EUR 20,957 concerning the complaint lodged in the national proceedings had been refused by the national courts as having no basis in national legislation, and none of these costs and expenses had been incurred in order to prevent the alleged violation of Article 6 § 1 of the Convention. As to costs and expenses before the Strasbourg 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. While the applicant had provided documentation to support his claims for the translation costs EUR 939.65, the Government took the view that the amount to be awarded under this head should not exceed EUR 500.

45. The Court does not consider that the costs in the domestic proceedings were incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention. The claim made in respect of this must therefore be rejected (see, *inter alia*, *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 28, § 80). Having regard to the nature of the case and the fact that the applicant has not substantiated that he personally incurred any translation costs, the Court considers it reasonable to award the applicant EUR 100, including the value-added tax for his costs and expenses in connection with the proceedings before the Court.

C. Default interest

46. 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 a violation of Article 6 § 1 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 in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;

(ii) EUR 100 (one hundred euros) in respect of costs and expenses;

(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 13 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President