



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

FOURTH SECTION

**CASE OF PETRI SALLINEN AND OTHERS v. FINLAND**

*(Application no. 50882/99)*

JUDGMENT

STRASBOURG

27 September 2005

**FINAL**

*27/12/2005*

*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 Petri SALLINEN and Others v. Finland,**

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO,

Ms L. MIJOVIĆ, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 25 November 2003 and on 6 September 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 50882/99) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 18 Finnish nationals, Mr Petri Sallinen (born in 1968 and resident in Joensuu), Ms. H. (born in 1931 and resident in Joensuu), Ms. M. (born in 1962 and resident in Joensuu), Mr. P.S. (born in 1962 and resident at Onkamo), Mr. J. (born in 1967 and resident in Joensuu), Mr. J.J. (born in 1974 and resident at Lehmo), Ms. N. (born in 1976 and resident at Lehmo), Mr. V. (born in 1940 and resident at Suhmura), Mr. L. (born in 1945 and resident at Suhmura), Mr. T. (born in 1943 and resident in Joensuu), Mr. K. (born in 1964 and resident at Kylmäkoski), Mr. T.A. (born in 1968 and resident in Joensuu), Ms. T.S. (born in 1971 and resident in Joensuu), Ms. S. (born in 1942 and resident in Joensuu), Mr. J.V. (born in 1968 and resident in Joensuu), Mr. A.H. (born in 1952 and resident in Joensuu), Ms. T.T. (born in 1945 and resident in Joensuu), and Mr. R., born in 1962 and resident at Lehmo (“the applicants”), on 2 September 1999.

2. The applicants were represented by Mr Markku Fredman, a lawyer practising in Helsinki. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen, Director, Ministry for Foreign Affairs.

3. The applicants complained about the search and seizure of privileged material in the first applicant's law firm. They relied on Articles 6, 8 and 13 of the Convention.

4. 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.

5. By a decision of 25 November 2003 the Court declared the application admissible.

6. 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. In addition, third-party comments were received from the Finnish Bar Association, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The parties were given the possibility to reply to those comments (Rule 44 § 5).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1968 and lives in Joensuu. He is a member of the Finnish Bar. The other 17 applicants were his clients at the relevant time ("the client applicants").

8. On 26 January 1999 the police conducted a search – it is not entirely clear of which premises – based on the suspicion that the first applicant's clients X and Y (not client applicants before the Court) had committed aggravated debtor's fraud. In the course of that search X managed to destroy the original of a promissory note which the police had attempted to seize and which may have been relevant to the financial arrangements underlying the suspected offence.

9. At the time the first applicant's status in the investigation had been that of a witness. On 22 February 1999 the police requested him to attend for questioning in this capacity. This request was apparently cancelled before he had taken any action thereon.

10. A police officer in charge of the criminal investigations granted a search warrant and on 2 March 1999 seven officers of the National Bureau of Investigation (*keskusrikospoliisi, centralkriminalpolisen*), assisted by a tax inspector and an enforcement official (*ulosottomies, utmätningsman*), searched the first applicant's law office, flat and vehicles. This search warrant was likewise based on the suspicion that X and Y had committed aggravated debtor's fraud but the first applicant was now indicated as a

suspect, namely that he had aided and abetted the offences by drafting certain documents.

11. Under the terms of the warrant the search aimed at examining “the documents, computers and archives of the law office” as well as the first applicant's flat and vehicles “so as to investigate the share transactions by the limited liability company [H.] in 1998 and to find material relating to those transactions”.

12. During the search of his law office all of the first applicant's client files were allegedly perused. The police also examined all floppy disks and examined his note books pertaining to his meetings with clients. In addition, the hard disks in the office computers were copied: two were copied on the spot and two computers, including the one used by the first applicant himself, were seized for later disk-copying on police premises. Those computers were returned on 4 March 1999.

13. The first applicant's computer also contained software for electronic mail, including his private and professional messages.

14. A fellow member of the Bar assisted the first applicant during part of the search.

15. On 4 March 1999 the first applicant requested the District Court (*käräjäoikeus, tingsrätten*) of Joensuu to revoke the seizure as being unlawful. On 24 March 1999 the court nevertheless maintained it, noting that the first applicant was suspected of aiding and abetting aggravated debtor's dishonesty.

16. On 11 May 1999 the Court of Appeal (*hovioikeus, hovrätten*) of Eastern Finland upheld the District Court's decision and on 25 November 1999 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the first applicant leave to appeal.

17. On 4 May 1999 the police certified the return of three of the four hard disks and that they had destroyed any copies thereof. They stated however that they would retain a copy of the fourth hard disk until the lawfulness of the seizure had been finally decided or until the material could be destroyed for any other reason.

18. In June 1999 three of the applicants (nos. 2-3 and 8) requested the District Court to revoke the seizure of the copy of the fourth hard disk (which contained material relating to their instructions to the first applicant) and to order the police to compensate their costs. They argued that the seizure had been unlawful from the outset. At any rate, the copy in question was of no relevance to the pre-trial investigation concerning X and Y.

19. In its rejoinder the National Bureau of Investigation referred to the Court of Appeal's decision of 11 May 1999 in which the seizure had been found lawful. Moreover, the hard disks had only been subjected to a targeted search and they were able to search information concerning only relevant companies and individuals. Only the potentially relevant client files in the law office had been perused. The search and seizure had thus not been

of wholesale nature. The tax and enforcement officials who had witnessed the search had been – and remained – under a duty to keep secret any information thereby obtained.

20. On 17 June 1999 the District Court agreed with the three client applicants and ordered that the copy of the fourth hard disk be returned. It rejected, as not being based on law, the applicants' claim for compensation in respect of their costs. The applicants appealed on this point, whereas the police appealed against the revocation order.

21. In its submissions to the Court of Appeal the National Bureau of Investigation listed the contents of the copied hard disk. For example, specific mention was made of what appears to have been the promissory note which the police had been looking for (and had found). The submissions indicated the debtor's and the creditor's names as well as the amount of the debt. The National Bureau of Investigation furthermore explained that the material on the relevant hard disk had been copied to a so-called optical disk which could in any case not be returned as it also contained internal police data. The submissions by the Bureau were apparently not ordered to be kept confidential.

22. On 27 January 2000 the Court of Appeal declined to examine the parties' appeals, considering that the matter had been resolved *res judicata* in the first set of proceedings ending with the Supreme Court's decision of 25 November 1999. The Supreme Court granted leave to appeal to the three client applicants in question.

23. On 3 March 2000 the public prosecutor charged, among others, X and Y with aggravated debtor's dishonesty but decided to press no charges against the first applicant, having found no evidence of any crime.

24. On 20 April 2001 the Supreme Court ruled that although a final decision had already been rendered in respect of another appellant, it did not prevent the courts from examining similar appeals filed by other parties. The case was referred back to the Court of Appeal which, on 4 October 2001, revoked the District Court's decision on the basis that the seizure had been lawful.

25. The three client applicants in question were again granted leave to appeal to the Supreme Court. On 18 October 2002 it revoked the seizure in so far as it pertained to information which those applicants had given to the first applicant.

26. The Supreme Court found it undisputed that the copied hard disk contained information relating to the three client applicants' instructions to the first applicant. It had not been argued that this information was not protected by counsel's secrecy obligation under Chapter 17, section 23 of the Code of Judicial Procedure. Nor did the information in question pertain to any suspicion that the first applicant or any one else had committed a crime.

27. The Supreme Court accepted that the police had been entitled by Chapter 4, section 1 of the Coercive Measures Act (*pakkokeinolaki, tvångsmedelslagen* 450/1987) to seize the first applicant's hard disk and make a copy thereof. Technical reasons and practical needs (the fact that the police had been obliged at the time of the search to copy the whole hard disk) did not however permit any deviation from the prohibition on seizure of privileged material. The police should therefore have returned the computer files immediately or destroyed them. The appellants were awarded reasonable compensation for their costs and expenses.

28. On 11 November 2002 the Chief Enforcement Officer of Vantaa confirmed that the copy of the hard disk had been destroyed on that day.

29. On 22 August 2003 the Deputy Chancellor of Justice (*valtioneuvoston apulaisoikeuskansleri, justitiekansleradjointen i statsrådet*) issued his decision in response to a petition by the Finnish Bar Association concerning, *inter alia*, the alleged unlawfulness of the coercive measures against the first applicant. He found it established that the tax inspector and the enforcement official had attended the search in their respective capacity as a witness and expert. He nevertheless concluded, *inter alia*, that from the point of view of foreseeability of domestic law, as required by Article 8 of the Convention, the relationship between the Coercive Measures Act (Chapter 4, section 2, subsection 2), the Code of Judicial Procedure (Chapter 17, section 23, subsection 1 (4)) and the Advocates Act (section 5 c) was somewhat unclear and permitted very diverging interpretations as to the extent to which privileged material could be subject to search and seizure. The Deputy Chancellor therefore requested the Ministry of Justice to consider whether there was a need to amend the relevant legislation.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### 1. General conditions for searches and seizures

30. Under the Coercive Measures Act (450/1987) the police may conduct a search, *inter alia*, if there is reason to suspect that an offence has been committed and provided the maximum sentence applicable exceeds six months' imprisonment (Chapter 5, section 1). The search warrant is issued by the police themselves.

31. A search may also be conducted on the premises of a person other than the one who is under reasonable (*todennäköinen, sannolik*) suspicion of having committed an offence of the aforementioned nature, provided the offence was committed on those premises or the suspect was apprehended there or if there are very strong reasons for assuming that a search of those premises will produce an object to be seized or other information pertaining to the offence (Chapter 5, section 2). In order for an object to qualify for seizure there must be a reason to presume that it may serve as evidence in

the criminal proceedings, that it may have been removed from someone by a criminal offence or that the court may order its forfeiture (Chapter 4, section 1).

32. A sealed letter or other private document which has been seized may only be opened by the head of investigation, by the prosecutor or by the court. In addition, only the investigators of the offence in question may examine such a document more closely. However, an expert or other person whose assistance is used in investigating the offence or who is otherwise heard in the case may examine the material, as directed by the head of investigation, by the prosecutor or by the court (Chapter 4, section 8).

33. Whenever possible, the officer in charge shall call a witness to attend the search. If deemed necessary, the officer may also seek the assistance of an expert or other person (Chapter 5, section 4, subsection 1).

34. The officer in charge may allow a complainant or his representative to attend a search in order to provide necessary information. The responsible officer must nonetheless ensure that a complainant or representative does not obtain any more information than necessary through the search (Chapter 5, section 4, subsection 3).

35. According to section 40 of the Pre-trial Investigation Act, only such evidence as may be considered relevant in the case shall be placed on record.

36. As regards other evidence, it is the respondent Government's view that a police officer is under an obligation to respect the confidentiality requirement stipulated by section 17 of the Civil Servants Act (*valtion virkamieslaki, statstjänstemannalagen* 750/94).

37. Section 8 of the Pre-Trial Investigation Act (*esitutkintalaki, förundersökningslagen* 449/1987) stipulates that in an investigation no one's rights shall be infringed any more than necessary for the achievement of its purpose. No one shall be placed under suspicion without due cause and no one shall be subjected to harm or inconvenience unnecessarily.

38. Chapter 7, section 1 a, of the Coercive Measures Act provides that only such measures may be used which can be deemed justified in light of the seriousness of the offence under investigation, the importance of the investigation and the degree of interference with the rights of the suspect or other persons subject to the measures, as well as in light of any other pertinent circumstances.

39. According to Chapter 4, section 11, a seizure shall be lifted as soon as it is no longer necessary. If charges have not been brought within four months of the seizure the court may extend it at the request of a police officer competent to issue arrest warrants.

## *2. Particular conditions in respect of privileged material*

40. Chapter 4, section 2, subsection 2 of the Coercive Measures Act provides that a document shall not be seized for evidential purposes if it

may be presumed to contain information in regard to which a person referred to in Chapter 17, section 23, of the Code of Judicial Procedure is not allowed to give evidence at a trial and provided that the document is in the possession of that person or the person for whose benefit the secrecy obligation has been prescribed. A document may nevertheless be seized if, under section 27, subsection 2 of the Pre-Trial Investigation Act, a person referred to in Chapter 17, Article 23, of the Code of Judicial Procedure would have been entitled or obliged to give evidence in the pre-trial investigation about the matter contained in the document.

41. Under Chapter 17, section 23, subsection 1 of the Code of Judicial Procedure counsel may not testify in respect of what a client has told him or her for the purpose of pleading a case, unless the client consents to such testimony. Although subsection 3 provides for an exception to this secrecy obligation if the charges concern an offence carrying a minimum sentence of six years' imprisonment (or attempting or aiding and abetting such an offence), this exception does not extend to counsel for an accused.

42. Under section 5 c (626/1995) of the Advocates Act (*laki asianajajista, lagen om advokater*) an advocate or his assistant shall not without due permission disclose the secrets of an individual or family or business or professional secrets which have come to his knowledge in the course of his professional activity. Breach of this confidentiality obligation shall be punishable in accordance with Chapter 38, section 1 or 2, of the Penal Code (*rikslaki, strafflagen*), unless the law provides for a more severe punishment on another count.

43. In their book "Pre-trial investigation and coercive measures" (*Esitutkinta ja pakkokeinot*, Helsinki, 2002) Klaus Helminen, Kari Lehtola and Pertti Virolainen state (at page 742) that in the legal literature and in police practice a principle has been consistently followed whereby a search may not be performed in order for investigators to obtain documents that are subject to a seizure prohibition.

44. The Ministry of Justice appointed a Working Group on Internet Aided Crimes (*tietoverkkorikostyöryhmä, arbetsgruppen för IT brottslighet*) which also considered the question of searches and seizures of computer files and computers by the police. On June 2003 the Working Group issued a report, which was sent out for comments to various interest groups and experts. On the basis of the working group's report and the comments given, the Ministry of Justice is expected to prepare a government bill.

### 3. Remedies

45. Chapter 4, section 13, of the Coercive Measures Act provides that at the request of a person whom the case concerns the court shall decide whether the seizure shall remain in force. A request which has been submitted to the court before its examination of the charges shall be considered within a week from its reception by the court. The court shall

provide those with an interest in the matter an opportunity to be heard, but the absence of anyone shall not preclude a decision on the issue. A decision reviewing a seizure is subject to a separate appeal.

46. According to section 118, subsection 3 of the Constitution (*perustuslaki, grundlagen* 731/1999) everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public function shall have the right to request that the civil servant or other person in charge of the public function be sentenced to a punishment and that the public organisation, official or other person in charge of a public function be held liable for damages, as provided in more detail by an Act. This section is equivalent to section 93 of the repealed Constitution Act of Finland of 1918 (*Suomen Hallitusmuoto, Regeringsform för Finland*), as in force at the relevant time.

47. Until 31 December 1998, Chapter 24, section 2 of the Penal Code provided that if a search of premises was carried out by someone lacking the authority to do so, or if someone having such authority carried it out in an unlawful manner, he or she was to be sentenced to a fine or to imprisonment for a maximum of one year. According to Government Bill no. 6/1997, the provision was proposed to be repealed as “in cases where the above-mentioned act is committed by a public official in the performance of his or her official duties, Chapter 40, section 10 is applicable”.

48. Chapter 40, section 10, subsection 1 of the Penal Code provides that if a public official, when acting in his office, intentionally in a manner other than that provided above in this Chapter violates or neglects to fulfil his official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole, taking into consideration its detrimental and harmful effect and the other circumstances connected with the act, is not petty, he shall be sentenced for violation of official duties to a fine or to imprisonment for at most one year.

49. Chapter 40, section 11 of the Penal Code provides that if a public official, when acting in his office, through carelessness or lack of caution, in a manner other than that referred to in section 5, subsection 2, violates or neglects to fulfil his or her official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole, taking into consideration its detrimental and harmful effect and the other circumstances connected with the act, is not petty, he shall be sentenced for a negligent violation of official duties to a warning or to a fine.

50. According to Chapter 1, section 14 of the Criminal Procedure Act (*laki oikeudenkäynnistä rikosasioissa, lag om rättegång i brottmål* 689/1997), an injured party may bring a private prosecution only if the public prosecutor has decided not to press charges.

51. Under the 1974 Damage Compensation Act (*vahingonkorvauslaki, skadeståndslagen* 412/1974) proceedings may be brought against the State

in respect of damage resulting from fault or neglect by its employees in the performance of their duties (Chapters 3 and 4).

### C. Council of Europe recommendation

52. Recommendation (2000) 21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer provides, *inter alia*, as follows:

“Principle I - General principles on the freedom of exercise of the profession of lawyer

... 6. All necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the rule of law.”

### III. THIRD PARTY INTERVENTION

53. The Finnish Bar Association (*Finlands Advokatförbund, Finlands Advokatförbund*) noted that the case did not meet a single criterion for the lawful execution of search and seizure as set out in the case law of the Court. Further, under Finnish legislation, there are no provisions affording a legal remedy against a search warrant issued by the police. A search may be carried out on the premises of a person to whom a confidentiality obligation applies provided that the object to be seized may be found there. The threshold for the execution of a search is low in the extreme and the execution of a search in and of itself interferes with the right and obligation of secrecy of a person to whom a confidentiality obligation applies.

54. The wording of the instructions pertaining to the search in the present case was rather expansive and no attempt was made to attend to the advocate's confidentiality obligation. Disregard of this obligation is particularly manifest in the participation of a tax inspector and an enforcement official in the search. The confidentiality obligation of advocates was also disregarded in respect of the seizures executed in connection with the search. The hard disks of the law office's computers, floppy disks and several notebooks pertaining to meetings with clients were seized in connection with the latter search, in addition to which data on the office secretary's computer was copied. Subsequent to the seizure, the material was not e.g. sealed and consigned for safekeeping until a court could rule on the lawfulness of the seizure.

55. In terms of the confidentiality obligation, the possibility of submitting the issue of a seizure to the court for review as provided for in the Coercive Measures Act had in this case remained a dead letter. All the information deemed confidential by the advocate and his clients had been

disclosed prior to the court proceedings, as the authorities examined the seized material without waiting for a court to rule on the issue.

56. The Association further maintained that the police could have availed themselves of the procedure provided for in the Advocates Act, wherein the searched material would have been examined by an outside advocate who would have determined which material was related to the pre-trial investigation being conducted by the police and which was not. This procedure would have allowed for the upholding of the advocate's confidentiality obligation as well as the client's right to confidentiality.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

57. The applicants complained that the search and seizure of privileged material had breached Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### A. The parties' submissions

##### *1. The applicants*

58. The first applicant complained under Article 8 of the Convention that the search and seizure of privileged material violated his right to respect for his private life, home and correspondence. Apart from documents relating to his clients' instructions, his private notes and electronic messages were also seized.

59. The applicants nos. 1-3 and 8 complained that the search and seizure, including the retention by the police of a copy of the fourth hard disk violated their right to respect for their private life, family life and correspondence. The other applicants complained that the search and the short-term seizure which the police revoked of its own motion violated their right to respect for their private life, family life and correspondence.

60. The applicants did not base their complaint on the possibility that the police might have used the information obtained through the search. They argued that their uncertainty in this respect must be taken into account in assessing the compatibility of the search with the requirements of Article 8.

61. In so far as the seizure extended to material containing information in respect of which the first applicant was not allowed to testify, the applicants alleged that it was not in accordance with domestic law. In so far as the search sought to obtain such material for seizure, that interference was likewise in breach of domestic law. They referred to Chapter 4, section 2 of the Coercive Measures Act, which obliges the police to show circumspection when conducting a seizure. They argued that since a search may only be performed to find potentially admissible evidence the police are not authorised by law to conduct a search if the purpose is to find a document which is arguably of a privileged character.

62. The applicants further argued that in the present circumstances the assistance which the tax inspector and enforcement official provided during the search raised a further question under Article 8. Further, the police did not fully respect its duty of secrecy as it disclosed some of that material in its appeal to the Court of Appeal.

63. The applicants concluded that Finnish practice in coercive measures was very deficient in terms of oversight and legal safeguards. In the present case the authorities did not adhere to the procedure recommended in the legal literature. The applicants noted that in Finland no provision was made for involving an appointed representative of the Bar in any search and seizure of material relating to a member's practice.

## *2. The Government*

64. The Government submitted that in respect of the first applicant, a search performed in his office may have constituted an interference within the meaning of Article 8 of the Convention. As regards the client applicants, the Government noted that correspondence with a lawyer falls under the protection of Article 8. However, the Government contested that there were any interference with the client applicants' rights. The Government argued that the applicants had not sufficiently substantiated their allegation that the retained copy of the fourth hard disk contained material which was unrelated to the offence under investigation. Furthermore, even if the disk did contain any material irrelevant to the investigated offence, that material could not have been used by the police.

65. Were the Court to find that there was an interference with the right protected under Article 8, the Government noted that the first applicant was suspected of aggravated debtor's fraud and of aiding and abetting aggravated debtor's dishonesty. As the maximum penalty for an aggravated debtor's fraud is four years' imprisonment the search and seizure were in accordance with the law. In the Government's view a lawyer suspected of a

severe offence cannot be treated differently from other suspects. The search and the seizure were carried out with a view to investigating a serious offence, which justified the interference with the privileged client-lawyer relationship.

66. As regards the other applicants, the Government referred to section 34 of the Police Act, under which information concerning exclusively a person unrelated to the investigation shall be destroyed without delay, unless the material is needed for the investigation of the offence. They further noted that the police often resorted to the expertise of tax inspectors when investigating matters relating to accounting. Subject to the instructions given by the head of the investigation, such an expert or assistant could examine a sealed letter or other document. The impugned measures were therefore in accordance with law also in this respect.

67. The Government further opined that the interference pursued the legitimate aim of preventing crime and protecting the rights and freedoms of others. The measures were proportionate to those aims, corresponded to a pressing social need and were accompanied by adequate and effective safeguards. They argued that it was necessary for the police to examine all of the material in the first applicant's office in order to find out which part of it was relevant to the investigation of the offence. The hard disks were subjected to a targeted search and only the potentially relevant client files in the law office were perused. The reason for retaining a copy of the fourth hard disk was thoroughly explained and reviewed in the national proceedings, and was relevant and sufficient also for the purposes of Article 8 § 2. Moreover, police officers were under an obligation to respect confidentiality.

## **B. The Court's assessment**

### *1. Whether there was an interference*

68. The first applicant claimed that the search of his business and residential premises and the seizure of several documents had interfered with his right to respect for his private life, home and correspondence as guaranteed by Article 8 § 1. In this respect, the Government agreed that a search may have constituted an interference.

69. The client applicants claimed that the search and seizure of privileged material interfered with their rights under Article 8 of the Convention. The Government contested the other applicants' view, arguing that even though the correspondence with a lawyer falls under the protection of Article 8, there had not been any interference with their rights within the meaning of Article 8 of the Convention.

70. The Court would point out that, as it has now repeatedly held, the notion of "home" in Article 8 § 1 encompasses not only a private

individual's home. It recalls that the word “*domicile*” in the French version of Article 8 has a broader connotation than the word “home” and may extend, for example, to a professional person's office. Consequently, “home” is to be construed as including also the registered office of a company run by a private individual, as well as a juristic person's registered office, branches and other business premises (see, *inter alia*, *Buck v. Germany*, no. 41604/98, § 31, 28 April 2005, *Chappell v. the United Kingdom*, judgment of 30 March 1989, Series A no. 152-A, pp. 12-13 and 21-22, §§ 26 and 51; *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, §§ 29-31).

71. In the present case, the searches and seizure ordered by the police concerned, *inter alia*, the law office owned and managed by the first applicant. The search warrants were issued by the officer in charge of the police investigation, in which the first applicant was first considered as a witness, but the second search warrant was based on the suspicion that he was suspected of having aided and abetted an offence of aggravated debtor's fraud allegedly committed by two of his clients (who are not applicants before the Court). It is undisputed that the police had copied a hard disk from one of the first applicant's computers and that the copy was kept by the police until a final court decision. The Court finds that the search by the police of the residential premises and the business premises of the first applicant, and the seizure of hard disks there, amounted to an interference with the right to respect for the first applicant's “home” and “correspondence”, as those terms have been interpreted in the Court's case-law (*Niemietz*, cited above, § 30). It follows that the search and seizure also amounted to an interference with the right to respect for the client applicants' “correspondence” (see *Niemietz*, cited above, § 32).

72. Consequently, the Court finds it unnecessary to determine whether, as it has found in several comparable cases (see, *inter alia*, *Chappell*, cited above, § 51; *Niemietz*, cited above, §§ 29-31), there has also been an interference with the applicants' right to respect for their private life as guaranteed by Article 8 § 1.

73. The Court must therefore examine whether this interference was in conformity with the requirements of the second paragraph of Article 8, in other words whether it was “in accordance with the law”, pursued one or more of the legitimate aims set out in that paragraph and was “necessary in a democratic society” to achieve the aim or aims in question.

## 2. *Was the interference justified*

### (a) *Was the interference “in accordance with the law”?*

74. The parties disagreed as to the description of domestic law. The applicants maintained that the search warrant was not in accordance with domestic law, as Chapter 4, section 2 of the Coercive Measures Act required

the police to show circumspection when a lawyer was involved in the seizure. They further maintained that since a search could only be performed to find something which could be seized and used as evidence (*see* Coercive Measures Act, Chapter 5, section 1), the police were not authorised under the law to conduct a search if the purpose was to find a document in respect of which an evidential or seizure prohibition might be applied.

75. The Government contested this view, arguing that according to Chapter 5, section 1 of the Coercive Measures Act, a search could be carried out in order to seize an object which might be relevant in investigating an offence for which a penalty of more than six months' imprisonment was provided. In the present case where the first applicant was suspected of aggravated debtor's fraud and of aiding and abetting an offence of aggravated debtor's dishonesty, the search and seizure had been carried out for the purposes of investigating such a serious offence, which they submitted justified any interference with the confidentiality of the client-lawyer relationship that would normally enjoy special protection. In the Government's view, it was of no relevance in this context that the first applicant was a lawyer and that the search was carried out in his office.

As regards the other applicants, the Government submitted that, according to section 34 of the Police Act, information exclusively concerning third parties had to be destroyed after review without delay, unless it was needed for the investigation of the offence. In their view, the impugned measures were in accordance with the law also in this respect.

76. The Court notes that the expression "in accordance with the law", within the meaning of Article 8 § 2 requires firstly that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law (*see eg. Kopp v. Switzerland*, judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, § 55).

– Whether there was a legal basis in Finnish law

77. The Court recalls that in accordance with the case-law of the Convention institutions, in relation to Article 8 § 2 of the Convention, the term "law" is to be understood in its "substantive" sense, not its "formal" one. In a sphere covered by written law, the "law" is the enactment in force as the competent courts have interpreted it (*see, inter alia, Société Colas Est and Others v. France*, no. 37971/97, § 43, ECHR 2002-III). In this respect, the Court reiterates that its power to review compliance with domestic law is limited, it being in the first place for the national authorities, notably the courts, to interpret and apply that law (*see, inter alia, Chappell*, cited above, p. 23, § 54).

78. In principle, therefore, it is not for the Court to express an opinion contrary to that of the domestic courts, which found that the search and seizure were based on the Coercive Measures Act and the Code on Judicial Procedure.

79. In short, the interference complained of had a legal basis in Finnish law.

– “Quality of the law”

80. The second requirement which emerges from the phrase “in accordance with the law” – the accessibility of the law – does not raise any problem in the instant case.

81. The same is not true of the third requirement, the “foreseeability” of the meaning and nature of the applicable measures.

82. The Court reiterates in that connection that Article 8 § 2 requires the law in question to be “compatible with the rule of law”. In the context of searches and seizures, the domestic law must provide some protection to the individual against arbitrary interference with Article 8 rights. Thus, the domestic law must be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in and conditions on which public authorities are empowered to resort to any such measures (see *mutatis mutandis*, *Kopp v. Switzerland*, judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 541, § 64).

83. The Court must examine the “quality” of the legal rules applicable to the applicants in the instant case.

84. The Court notes in the first place that under the Coercive Measures Act, Chapter 4, section 2, subsection 2, a document shall not be seized for evidential purposes if it may be presumed to contain information in regard to which a person is not allowed to give evidence.

85. Under Code of Judicial Procedure, Chapter 15, section 23, counsel may not testify in respect of what a client has told him or her for the purpose of pleading a case.

86. Under the Advocates Act, section 5 c, an advocate shall not without due permission disclose the secrets of an individual or family or business or professional secrets which have come to his knowledge in the course of his professional activity.

87. On the face of the above-mentioned provision of the Code of Judicial Procedure, the Court finds the text unclear as far as it concerns confidentiality. The above-mentioned domestic law does not state with the requisite clarity whether the notion of “pleading a case” covers only the relationship between a lawyer and his/her clients in a particular case or their relationship generally. The Court refers to a lawyer's general obligation of professional secrecy and confidentiality. In this respect the Court refers to the Recommendation (REC 2000/21) of the Committee of Ministers,

according to which States should take all necessary measures to ensure the respect of the confidentiality of the client-lawyer relationship.

88. The Government sought to resolve this by noting that in any case, the search and seizure were carried out for the purposes of investigation of a serious offence. A lawyer suspected of a severe crime could not, on their view, be treated differently from other suspects.

89. The Court, however, is not persuaded by this argument. In the present case, hard disks were searched, copied and seized. They contained information passing between the first applicant and his clients, who had no role in the investigated offence. While the seized hard disks were returned to the first applicant, however, a copy of the fourth hard disk remained with the police for some considerable time. The Court notes that the search and seizure were rather extensive and is struck by the fact that there was no independent or judicial supervision.

90. The Court would emphasise that search and seizure represent a serious interference with private life, home and correspondence and must accordingly be based on a “law” that is particularly precise. It is essential to have clear, detailed rules on the subject.

91. In that connection, the Court notes that the relationship between the Coercive Measures Act, the Code of Judicial Procedure and the Advocates Act (read together) was somewhat unclear and gave rise to diverging views on the extent of the protection afforded to privileged material in searches and seizures, a situation which was identified also by the Deputy Chancellor of Justice of Finland.

92. In sum, the Court finds that the search and seizure measures in the present case were implemented without proper legal safeguards. The Court concludes that, even if there could be said to be a general legal basis for the measures provided for in Finnish law, the absence of applicable regulations specifying with an appropriate degree of precision the circumstances in which privileged material could be subject to search and seizure deprived the applicants of the minimum degree of protection to which they were entitled under the rule of law in a democratic society (see, *mutatis mutandis*, *Narinen v. Finland*, no. 45027/98, § 36, 1 June 2004).

93. The Court finds that in these circumstances it cannot be said that the interference in question was “in accordance with the law” as required by Article 8 § 2 of the Convention.

94. There has therefore been a violation of Article 8 of the Convention.

**(b) Purpose and necessity of the interference**

95. Having regard to the above conclusion, the Court does not consider it necessary to review compliance with the other requirements of Article 8 § 2 in this case (see *e.g. Kopp*, cited above, § 76).

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

96. The client applicants complained that the search and perusal of privileged material had breached Article 6 of the Convention, which provides:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

3. Everyone charged with a criminal offence has the following minimum rights: ...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing ....”

### A. The parties' submissions

#### *1. The applicant*

97. The client applicants complained under Article 6 of the Convention and notably under § 3 (b) and (c) that the search and perusal of privileged material relating to their respective instructions violated their right to a fair hearing and an effective defence. Some of the applicants had instructed the first applicant to assist them in criminal proceedings in which the police investigation had been conducted by officers also participating in the search.

98. As the same fairness guarantees in principle also apply prior to the actual court proceedings as well as in other than criminal proceedings, the search and seizure also violated the rights under Article 6 of those client applicants who had not already been charged at that moment. A situation whereby public officials can study privileged material relating to cases not yet heard by the courts and other authorities waters down the guarantee of equality of arms between the parties.

99. The applicants relied on the wholesale character of the coercive measures, which were conducted without resorting to the assistance of an independent counsel appointed by the Bar Association, as recommended in the legal literature.

#### *2. The Government*

100. The Government accepted that in theory where a lawyer is involved in a search, an encroachment on professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6. In the present case however it was necessary for the police to examine all of the material in the first applicant's office in order to identify those of relevance to the investigation. Only those documents were

examined more closely and under domestic law no other material was to be entered into the investigation record. The police officers were – and remain – under an obligation to respect confidentiality. Moreover, officials who obtain information in the context of a seizure are not allowed to use that information for purposes other than a criminal investigation.

101. The Government considered unsubstantiated the applicants' allegation that information gleaned from the seized material was being used against the applicants in other proceedings.

### **B. The Court's assessment**

102. In view of the above finding of a violation of Article 8 based on the lack of foreseeability of the domestic law the Court considers that in the circumstances of this case there is no need to examine separately the additional complaints under Article 6 of the Convention.

## **III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION**

103. The applicants complained that the lack of effective remedy against the interference had breached Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

### **A. The parties' submissions**

#### *1. The applicant*

104. The applicants complained under Article 13 of the Convention that they had no effective remedy against the interference (search) other than the possibility of seeking a review of the lawfulness of the seizure. Even if the District Court did order the seizure to be revoked in response to such a request, that decision was overturned on appeal before the copied hard disk could be restored. Even assuming that the applicants had been successful in having that copy restored, the police had had ample time to peruse the documents thereon.

105. They maintained that as Finnish law stood at the time there seemed to be no effective remedy against the revelation of confidential information.

#### *2. The Government*

106. The Government reiterated that, according to section 118 of the Constitution, everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or

other person performing a public function may bring charges against a civil servant or other person in charge of a public function, and also claim damages. Moreover, the Tort Liability Act also entitles an individual to institute proceedings against investigative authorities or against a court of law, before a district court, on the ground that he or she has suffered damage due to the performance of a public function.

107. Finally, anyone affected by a seizure may challenge its lawfulness before a court of law under Chapter 4 section 13 of the Coercive Measures Act, as was done by four of the applicants. One may also petition the Ombudsman or the Chancellor of Justice or the regional or supreme police command of the Ministry of the Interior.

108. As regards the destruction of property which has allegedly been seized unlawfully, including copies made of seized documents, the person affected by the seizure may request a court to issue a civil law order, whereby the investigative authorities are placed under an obligation to destroy the said material.

#### **B. The Court's assessment**

109. The Court recalls that the applicants complained in essence about the search and seizure of privileged material.

110. In view of the submissions of the applicant in the present case and of the grounds on which it has found a violation of Article 8 of the Convention, the Court considers that there is no need to examine separately the complaints under Article 13 of the Convention.

### **IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

111. 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**

112. Under the head of non-pecuniary damage the applicants asked the Court to award each of the 18 applicants 2,500 euros (EUR), totalling EUR 45,000, for suffering and distress resulting from the alleged violations.

113. The Government found the sum claimed for non-pecuniary damage excessive. In their view, the mere finding of a violation would suffice for the client applicants. In the case of the first applicant, the amount to be awarded should not exceed EUR 2,000.

114. The Court accepts that the first applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the search and seizure – which is not sufficiently compensated by the findings of violation of the Convention. The Court awards the first applicant EUR 2,500 under this head, whereas it considers that the finding of a violation of Article 8 constitutes sufficient just satisfaction for the client applicants.

### **B. Costs and expenses**

115. The applicants requested reimbursement of the balance of the legal expenses incurred by them in the Supreme Court by EUR 870.65, including value-added tax (VAT). The Supreme Court awarded those applicants who were part of the proceedings before the Supreme Court EUR 3,500 for costs and expenses. This was EUR 870.65 less than the costs incurred.

116. They also claimed the reimbursement of their legal costs and expenses incurred in the proceedings before this Court, amounting to EUR 6,135.84 (including VAT).

117. The Court recalls that the established principle in relation to domestic legal costs is that an applicant is entitled to be reimbursed those costs actually and necessarily incurred to prevent or redress the breach of the Convention, to the extent that the costs are reasonable as to quantum (see, for example, *I.J.L., G.M.R. and A.K.P. v. the United Kingdom* (Article 41), nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001). It finds that the proceedings brought by the applicants nos. 2-3 and 8 against the seizure may be regarded as incurred to redress the breach of Article 8 of the Convention complained of by the applicants. The Court observes that in the Supreme Court's judgment of 18 October 2002 it was mentioned that the said applicants requested reimbursement of their legal expenses before the domestic proceedings. Having regard to all the circumstances, the Court awards the applicants nos. 2-3 and 8 EUR 870.

118. As for the proceedings before this Court the applicants' bill of costs and expenses of 26 January 2004 totalled EUR 6,135.84 (including VAT). Having regard to all the circumstances, the Court awards the applicants EUR 6,000 under this head.

### **C. Default interest**

119. 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 8 of the Convention;
2. *Holds* that there is no need to examine separately the complaints under Article 6 of the Convention;
3. *Holds* that there is no need to examine separately the complaints under Article 13 of the Convention;
4. *Holds*:
  - (a) that the respondent State is to pay, 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 2,500 (two thousand five hundred euros) to the first applicant in respect of non-pecuniary damage;
    - (ii) EUR 870 (eight hundred seventy euros) to applicant nos. 2, 3 and 8 in respect of costs and expenses incurred before the national proceedings;
    - (iii) EUR 6,000 (six thousand euros) to the applicants jointly in respect of costs and expenses incurred in Strasbourg;
    - (iv) any tax that may be chargeable on the above amounts;
  - (b) that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the client applicants;
  - (c) 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS  
Deputy Registrar

Nicolas BRATZA  
President