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 (No. 2)

(Application no. 41585/98)

JUDGMENT

STRASBOURG

8 June 2006

FINAL

08/09/2006

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 (No. 2),

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 13 December 2005 and on 16 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 41585/98) 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 2 April 1998.

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

3. The applicant alleged that the criminal proceedings against him had exceeded a reasonable time.

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 December 2005, the Court declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

8. The applicant's home as well as the office premises of his various companies were searched on 7, 9 and 14 February 1995 and various materials were seized. The search warrants referred to an investigation into debtor's dishonesty involving the company Lehtikarin Kirjapaino Oy as well as a book-keeping offence. Both offences were suspected to have been committed by the applicant between 5 June 1991 and 25 May 1994.

9. On 15 February 1995 the public prosecutor questioned the applicant in connection with other criminal proceedings which were pending against the applicant before the District Court (*käräjäoikeus, tingsrätten*) of Tuusula in respect of acts allegedly committed in April 1992 relating to the company UYP-Sijoitus Oy ("U.").

10. On 27 April 1995 the estates of three wound-up companies, including U, reported an offence against the applicant for alleged offences of debtor's dishonesty.

11. On 2 April 1996 the applicant was interrogated by the police. On 28 November 1996 he was charged with the offence of debtors' dishonesty, allegedly committed between 7 and 23 April 1992. The estate of the wound-up company U. was indicated as one of the complainants.

12. On 12 February 1997 he received a summons to appear before the District Court on 19 March 1997. The summons had wrongly indicated the Judicial Building in Vantaa as the hearing venue instead of Tuusula. On 1 April 1997 the applicant was brought to the hearing of the District Court of Tuusula, the court having found that the applicant had no legal excuse for not having been present at the first hearing.

13. At the hearing on 27 November 1997 the applicant demanded that the charges against him be adequately particularised.

14. In a further letter of indictment dated 29 April 1998 the prosecutor presented alternative charges of aggravated tax fraud and aiding and abetting that crime.

15. On 8 July 1998 the applicant initiated civil proceedings against bank V. and requested that they be joined to the criminal proceedings. The District Court rejected this request.

16. At the hearing on 27 July 1998 the prosecutor, basing himself on a letter of indictment of the same day, specified the charges.

17. On 31 December 1998, at its 13th hearing, the District Court issued its judgment. It convicted the applicant of debtor's dishonesty and sentenced him to eleven months' unconditional imprisonment. He was ordered to pay

some 10,000,000 Finnish Marks (FIM, almost 1,700,000 euros (EUR)) in damages.

18. The applicant appealed, appending his own writ of appeal to that of his counsel, P.V. In addition, he lodged numerous further submissions both within and outside the requisite time-limit, the last one in February 2002. Originally, the applicant requested an oral hearing and, in any case, that the Court of Appeal should reduce his sentence. In December 2001 he requested that the case be referred back to the District Court to be decided by a different composition of judges or, in the alternative, that the charges against him be dismissed as one judge had allegedly been partial and he had been refused leave to examine a witness.

19. In October 2001 the Court of Appeal, as requested, cancelled P.V.'s appointment and appointed P.I. as the applicant's new legal aid counsel.

20. In its judgment of 15 March 2002 the Court of Appeal rejected his appeal and increased the sentence to a term of imprisonment of one year and two months. Having regard to the contents of the applicant's appeal as filed within the time-limit, the Court of Appeal saw no need for an oral hearing. The court took into account three of the applicant's further submissions as well as four submissions lodged by his new counsel, in so far as the requests therein had not deviated from his original appeal as filed within the requisite time-limit. Insofar as the applicant had alleged procedural defects the Court of Appeal considered most of his submissions belated as they had not been lodged within six months of the judgment of the District Court.

21. On 3 September 2002 the Supreme Court refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Under Chapter 16, Article 4 (2) of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*, as amended by Act no. 1052/1991 and in force at the relevant time) 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 with a Court of Appeal within 30 days from the date of the adjournment. Under the said provision the district court could adjourn the case upon request by a party, for example if the said party wished to adduce further evidence. The court could not adjourn the hearing *proprio motu* save on special grounds. Chapter 16, section 4 (2) was repealed with effect from 1 October 1997, when new provisions generally prohibited adjournments.

23. Chapter 6 of the Penal Code (*rikoslaki, strafflagen*, Act no. 515/2003) was amended with the effect as of 1 January 2004. Section 6, Article 7 sets out the grounds mitigating the punishment that are to be taken into consideration, including "a considerably long period that has passed since the commission of the offence", if the punishment that accords with

established practice would for this reason lead to an unreasonable or exceptionally detrimental result.

24. The Government referred to the Supreme Court's precedent KKO 2005:73 concerning the relevance of the length of the proceedings when determining a sentence. In that case the defendants were sentenced to prison for one year and four months for aggravated tax-fraud. Their sentences were mitigated because of the length of the proceedings, which was 10 years.

THE LAW

I. SCOPE OF THE ISSSUES BEFORE THE COURT

25. In his memorial to the Court of 6 February 2006 the applicant renewed his complaints about the alleged partiality of lay judge L.H. of the District Court and that the charges were time-barred, invoking Articles 6 and 7 of the Convention.

26. The Court notes that the case has been delimited by the decision on admissibility which related to the alleged violation of Articles 6 § 1 and 13 of the Convention on the grounds of the excessive length of the proceedings and the lack of effective domestic remedies against the delay in those proceedings. Accordingly, it will limit its examination to these complaints.

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

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

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

A. Period to be taken into account

28. It is disputed when the proceedings started. It appears that the applicant's home and office premises were searched in February 1995. The Government considered that the period to be taken into account might have begun already at that time. The applicant submitted that he became *de facto* suspect of offences relating to the company U. on 15 February 1995, when the public prosecutor addressed questions to him in this respect in another court hearing. In any event, at the latest he became aware of the charges

against him when he was questioned in the pre-trial investigation on 2 April 1996.

29. 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". "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).

30. The Court observes that the search warrants in the present case referred to an investigation into alleged offences involving the company Lehtikarin Kirjapaino Oy. It has not been substantiated that the applicant became substantially affected at this time as concerns the charges of debtors' dishonesty, allegedly committed between 7 and 23 April 1992 and relating to the company U. It is, however, undisputed that on 2 April 1996 the applicant was first questioned by the police as a suspect regarding these matters. The Court finds that the proceedings began on that date. They ended on 3 September 2002 when the Supreme Court refused the applicant leave to appeal. Consequently, the Court finds that the proceedings against the applicant lasted for six years, five months and three days.

B. Reasonableness of the length of the proceedings

31. 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).

32. The Court observes that the case concerned economic crimes. The Government emphasised that the case included several indictments as well as several plaintiffs and two defendants. The case file was more voluminous than the average, consisting largely of extensive accounting materials, a thorough examination of which was time-consuming. The applicant contested this. He submitted that there was only one plaintiff (a combination of companies) and that it was incorrect to allege that there were several indictments: there were the principal charges and alternative charges. Further, only two witnesses were heard, both at the request of the prosecutor. The Court finds that the case was of some complexity: however, it cannot be said that this in itself justified the entire length of the proceedings.

33. As to the conduct of the authorities, the Court notes that the applicant was questioned by the police on 2 April 1996 and he was charged on 28 November 1996. The court proceedings began in March 1997 and having held 13 hearings, of which 12 concerned the applicant, the District Court delivered its judgment on 31 December 1998. The pre-trial proceedings and the proceedings before the District Court thus took about two years and nine months. The Court of Appeal gave its judgment on 15 March 2002, almost three years and three months after the District Court's judgment. The proceedings came to an end less than six months later, on 3 September 2002, when the Supreme Court refused leave to appeal.

34. In the Government's view the District Court acted as efficiently and expeditiously as possible, given the circumstances of the case. In their opinion the time passed before the appellate court, three years and three months, was not substantially longer than the average length of appeal proceedings. They also submitted that at no stage of the proceedings was the applicant under arrest or detained.

35. The applicant disagreed with the Government. He was of the opinion that the proceedings before the Court of Appeal were particularly excessive without any apparent explanation.

36. As to the conduct of the applicant, the Government submitted that the applicant presented new procedural claims on several occasions. Further, he presented new claims before the appellate court, withdrew some of his original claims and submitted a total of 15 additional observations to that court, including new evidence. Further, in the course of the proceedings he appointed a new legal counsel to represent him, who requested the case to be referred back to the first instance for fresh consideration in a new composition. All these additional observations and claims delayed the consideration of the case. They further argued that the delays had been in the applicant's interest as he could meanwhile invoke a new decision on taxation.

37. The applicant emphasised that he could not be blamed for fully using domestic procedures. Nor could his letters to the Court of Appeal be used as an excuse for the lengthy proceedings, given that the court did not even consider those submissions. In any event, in those submissions he also requested the court to proceed to a decision. He also contested the Government's argument that the delay was in his interest, as the taxation decision did not have any impact on the criminal proceedings.

38. The Court considers that the time taken by the pre-trial authorities and the District Court in examining the case does not appear exceptionable. However, noting especially that the Court of Appeal did not have an oral hearing, it finds the period of almost three years and three months time which elapsed before that court to be unreasonably lengthy.

39. The Court finds that even though the applicant lodged additional submissions to the Court of Appeal both before and after the expiry of the time-limit to appeal, there is no evidence to demonstrate that the applicant was, at any stage of the proceedings, guilty of dilatory conduct or that he otherwise upset the proper conduct of the trial. Nor can the making of submissions in his defence be held against him. The Court does not consider that his conduct in this respect explains the length of the proceedings. Consequently, it finds no apparent explanation for the time which elapsed while the case was under consideration in the Court of Appeal.

40. 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 in the Court of Appeal, was excessive and failed to satisfy the reasonable time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

41. The applicant also submitted that he did not have an effective remedy in respect of the excessive length of the proceedings within the meaning of 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."

1. The parties' submissions

42. The applicant argued that complaints to the appellate court on the adjournments would not have been successful as his case was adjourned for only one or two months at a time. Further, neither the Parliamentary Ombudsman nor the Chancellor of Justice will examine complaints if they concern cases still pending before the domestic courts.

43. The Government submitted that there had been no violation of Article 13 of the Convention. They argued that in addition to complaining to a higher court the applicant could have complained to the Parliamentary Ombudsman or the Chancellor of Justice in the course of the proceedings, who may, as necessary, draw the court's attention to the delay in the proceedings. They also referred to the amended Penal Code, which in its Article 7 (3) provides that the lapse of a considerably long period since the commission of the offence may be considered as a ground mitigating the punishment.

2. The Court's assessment

44. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI, *Kangasluoma v. Finland*, no. 48339/99, § 46, 20 January 2004, *Cocchiarella v. Italy* [GC], no. 64886/01, § 74-79, ECHR 2006-...).

45. The Court notes that the provisions on sentencing in Chapter 6 of the Penal Code have been amended with effect from 1 January 2004, so that the lapse of a considerably long period since the commission of the offence may be taken into consideration as a ground mitigating the punishment. The Court however finds that the present application concerns the period before that date and accordingly, the new provisions of the Penal Code were not applied in the domestic proceedings.

46. As to other means available to the applicant in Finnish law, namely the raising of a complaint to the Chancellor of Justice or to the Parliamentary Ombudsman about the length of proceedings, the Court recalls its finding in the above-mentioned case *Kangasluoma v. Finland* (§§ 47-49). Having found no reasons to distinguish the present application from that case, the Court finds that the remedies referred to do not meet the standard of "effectiveness" for the purposes of Article 13.

47. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy in respect of the violation of his right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. Under the head of pecuniary damage, the applicant claimed a sum of 30,000 euros (EUR) based on his loss of income during the three years of excessively lengthy proceedings.

50. Under the head of non-pecuniary damage the applicant asked the Court to award him EUR 20,000 for suffering and distress resulting from the publicity and length of the proceedings.

51. As to pecuniary damage, the Government argued that there was no causal link between the facts of the alleged violations and any pecuniary damage. In this respect they pointed out that the present case before the Court concerned the length of the proceedings under Articles 6 § 1 and 13 of the Convention. They also noted that there was no justification for making any award under this heading.

52. 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 and/or 13 of the Convention. However, in their view, the amount to be awarded should not exceed EUR 1,000.

53. 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.

54. 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 1,500 under this head.

B. Costs and expenses

55. The applicant, who represented himself during the proceedings before the Court, sought reimbursement for his own work, loss of time and costs in the total amount of EUR 4,226.60 in respect of the national proceedings and the proceedings before the Court.

56. In their memorial the Government argued that the claim for compensation in respect of his own work is not supported by national

legislation or by the Court's case law. They further recalled that only two of the applicant's eight complaints were declared admissible by the Court. While the applicant had provided documentation to support his claims for the translation costs amounting to EUR 1,748.37, the Government noted that two of the three invoices related to translation into Russia (and only one into Finnish). The Government took the view that the amount to be awarded under this head should not exceed EUR 600.

57. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, *among other authorities*, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63). Furthermore, the Court reiterates that under Article 41 of the Convention no awards are made in respect of the time or work put into an application by the applicant as this cannot be regarded as monetary costs actually incurred by him or her.

58. 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.

59. It however finds that the translation costs under this head covering the Strasbourg proceedings can be considered to have been actually and necessarily incurred. However, the Court has declared most of the applicant's complaints inadmissible. Thus, an award can only be made relating to the remaining complaint concerning the lengthy proceedings and the lack of effective domestic remedies. Taking into account all the circumstances, the Court awards EUR 600 net of value-added tax for his costs and expenses in connection with the proceedings before the Court.

C. Default interest

60. 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* that there has been a violation of Article 13 of the Convention;

3. *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 1,500 (one thousand and five hundred euros) in respect of non-pecuniary damage;

(ii) EUR 600 (six hundred euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President