



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

FOURTH SECTION

**CASE OF SORVISTO v. FINLAND**

*(Application no. 19348/04)*

JUDGMENT

STRASBOURG

13 January 2009

**FINAL**

***13/04/2009***

*This judgment may be subject to editorial revision.*



**In the case of Sorvisto v. Finland,**

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 December 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 19348/04) 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 a Finnish national, Mr Juha Sorvisto (“the applicant”), on 2 June 2004.

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

3. The applicant alleged under Articles 6 § 1 and 13 of the Convention that the length of the civil proceedings and two sets of criminal proceedings had been excessive and that there had been no effective remedy in this connection. Moreover, he alleged that the search and seizure of allegedly privileged material had violated his right to respect for his private life, home and correspondence, as guaranteed by Article 8 of the Convention.

4. On 21 June 2007 the President of the Fourth Section decided to communicate the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Espoo.

#### *1. The first set of criminal proceedings*

6. On 2 February 1995 the applicant, a member of the board of a wound-up company (“V.”), was detained on suspicion of involvement in offences of aggravated fraud, debtor dishonesty and false book-keeping, allegedly committed in 1991 and 1992, before the winding up of V.

7. The criminal proceedings against his four co-defendants began on 18 April 1996 before the Salo District Court (*käräjäoikeus, tingsrätten*). The charges were served on the applicant on 6 May 1996 and 16 December 1996, respectively, and the trial against him apparently began on 19 March 1997.

8. On 21 March 2006 the District Court gave its judgment. It convicted the applicant of aggravated fraud. The court found that the “reasonable time” requirement laid down in the Constitution and the Convention had not been respected and that the applicant was therefore entitled to redress. The court considered that the redress had to be significant and, having regard to the exceptionally lengthy nature of the proceedings, it should also be substantial. The applicant had not contributed to the length of the proceedings. The court stated that it would reduce the applicant’s sentence by half, owing to the breach of the “reasonable time” requirement. It sentenced the applicant to 18 months’ imprisonment.

9. The applicant and his co-defendants appealed to the Turku Appeal Court (*hovioikeus, hovrätten*).

10. One of the applicant’s co-defendants requested that the Appeal Court terminate the proceedings immediately in his respect and dismiss all charges against him. He based his request on the European Court’s judgment of 9 January 2007 in the case *Uoti v. Finland* (application no. 61222/00), in which the Court found a violation of Article 6 § 1 of the Convention due to the excessive length of proceedings.

11. On 16 January 2007 the Appeal Court rejected this request. The court found that the European Court had not requested in its judgment that the proceedings be terminated.

12. On 22 October 2007 the Appeal Court gave its judgment. It found that, taking into account the applicant’s previous conviction, the applicant should have been sentenced to imprisonment of three years and three months. However, due to the excessive length, this sentence should be mitigated and the redress had to be more significant than that granted by the District Court. The Appeal Court mitigated the applicant’s sentence by two-

thirds owing to the breach of the “reasonable time” requirement and sentenced him to 13 months’ imprisonment.

13. The applicant and his co-defendants appealed to the Supreme Court (*korkein oikeus, högsta domstolen*).

14. On 22 May 2008 the Supreme Court refused leave to appeal.

## *2. The civil proceedings*

15. On 29 June 1994 the bankruptcy estate of V. lodged claims for damages against the applicant and three other persons with the Helsinki District Court.

16. The court informed the applicant three times, the first being on 29 January 1996, that the case had been adjourned in anticipation of the outcome of the criminal proceedings pending before the Salo District Court (see above), which was based on the same facts as the civil proceedings. On 7 October 1999 and 2 June 2000 it issued decisions to the same effect.

17. The applicant objected and requested that the civil proceedings be continued. He also requested that the claims be dismissed because the length of the proceedings had already exceeded a reasonable time. On 1 April 2003 the court rejected his request. It stated that the length of the proceedings was due to the need to await the outcome of the pending criminal proceedings, and adjourned the case.

18. The applicant complained to the Parliamentary Ombudsman (*eduskunnan oikeusasiamies, riksdagens justitieombudsman*). On 22 June 2005 the Deputy Parliamentary Ombudsman found that the domestic legislation did not provide a possibility for the Finnish courts to dismiss civil claims because of the length of proceedings. The applicable domestic law and practice were unsatisfactory, also in the light of Article 13 of the Convention. However, as the instant case was pending before the domestic court and the European Court, he could not rule on the complaint.

19. On 5 January 2007 the applicant renewed his request to the District Court that the claims be dismissed, arguing that during the pre-trial investigation the plaintiff’s (V.’s) lawyer had seen and read legally privileged documents which could not be used as evidence against him. He also maintained that the proceedings had exceeded a reasonable time.

20. The plaintiff objected. It gave an assurance that it would not use any privileged information in the forthcoming trial. It further stated that the appellate court would deliver its judgment in the criminal proceedings in August or September 2007. If the first-instance court’s judgment were upheld, there would be no grounds for continuing the civil proceedings against the applicant.

21. On 1 March 2007 the District Court rejected the applicant’s request. It noted the plaintiff’s submission that no prohibited privileged material would be used in the trial. Furthermore, the criminal proceedings were the main proceedings and consequently, in order to avoid unnecessary trial

costs, the civil proceedings should only be resumed once the criminal proceedings had come to an end.

22. By a letter of 11 June 2008, the plaintiff in the civil proceedings withdrew its action. The case was expected to be pending for a few weeks more as the District Court needed to decide on the costs and expenses.

### *3. The second set of criminal proceedings*

23. On 17 May 1999 the National Bureau of Investigation (*keskusrikospoliisi, centralkriminalpolisen*, “the police”) conducted a search of a storage facility, situated in Helsinki and rented by Mr O. The search was based on the suspicion that the applicant had not declared all his assets in debt recovery proceedings. The police seized a large number of documents belonging to some private persons, including, *inter alia*, correspondence between the applicant and his Spanish lawyer, C.

24. The applicant requested the Vantaa District Court to annul the seizure on grounds of its unlawfulness, since the documents seized contained privileged information between him and his lawyer. On 24 March 1999 the court upheld the seizure. It found that the material seized contained documents which were protected by legal professional privilege under Chapter 17, Article 23 of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*). Consequently, such documents could not be seized from the applicant’s or his lawyer’s possession. The court, however, went on to find that in the instant case the seized documents were not “in the possession” of the applicant or his lawyer within the meaning of Chapter 4, section 2, subsection 2, of the Coercive Measures Act (*pakkokeinolaki, tvångsmedelslagen*) as they had been stored in a storage facility together with other persons’ belongings. The seizure had therefore been lawful.

25. The applicant appealed to the Helsinki Appeal Court, claiming that the Coercive Measures Act had been interpreted in a manner that contradicted the Convention, given that he had sole authority over the seized documents. They were thus “in his possession” and had only been stored in the storage facility.

26. On 14 January 2000 the Appeal Court revoked the seizure in so far as it concerned the correspondence between the applicant and C. and ordered the documents to be returned to the applicant. It held that the correspondence had not been in the possession of a third party and was therefore protected by legal professional privilege. In its view, the domestic legislation had to be interpreted in the applicant’s favour.

27. On 24 March 2000 the Supreme Court refused the police leave to appeal.

28. Consequently, the police requested the District Court to prolong the seizure until 17 May 2000. In their view, the correspondence between the applicant and C. was not privileged material which had been drafted for the

applicant's defence in a pending trial but concerned his possessions abroad, thus falling outside legal professional privilege.

29. The District Court disagreed. In its decision of 3 April 2000, it held that the correspondence might have contained legally privileged information. Thus it was, as a whole, subject to a prohibition on seizure.

30. Upon the applicant's request, the bailiff ordered the police to return the documents. The documents were to be stored in the bailiff's office until the decision on seizure had acquired legal force.

31. The police appealed to the Appeal Court, maintaining that the seized documents did not concern legally privileged information that the applicant had passed to C. for the purpose of pleading a case before a trial. In addition C. was not, at the time, the applicant's defence lawyer.

32. On 25 May 2000 the Appeal Court upheld the decision.

33. Having granted interim measures, the Supreme Court granted the police leave to appeal on 8 August 2000. By decision of 9 April 2001 it quashed the Appeal Court's decision of 25 May 2000, finding that the revocation of the seizure had already acquired legal force on 24 March 2000 when the Supreme Court had refused leave to appeal. On that date the seizure was revoked and the documents were to be returned to the applicant. Consequently, it would not have been possible, even in theory, to prolong the seizure after that date. The court did not address the issue of whether the documents seized concerned legally privileged material. It also declined to examine the police's request to prolong the time-limit for prosecution as such a request should have been filed with the District Court.

34. On 30 May 2001 the police again seized the same documents on the basis that they could be used as evidence in forthcoming criminal proceedings against the applicant.

35. On 24 July 2001 the police requested the District Court to prolong the time-limit for bringing charges against the applicant and for the seizure of the documents, as they had not been allowed to examine the content of the seized documents due to the pending complaints concerning their allegedly privileged nature. The applicant objected, claiming that the police should not have seized the same documents twice. He further maintained that the material was privileged and could not be seized. In his view, the seizure was in breach of Article 8 of the Convention.

36. The District Court revoked the seizure on 10 August 2001, referring to the Appeal Court's decision of 14 January 2000 and finding that legal privilege applied to the correspondence.

37. The police appealed to the Appeal Court, renewing their argument that the documents seized did not concern information which the applicant had passed to C. for the purpose of pleading a case before a trial, and which, for that reason, could be covered by legal professional privilege.

38. On 21 May 2002 the Appeal Court upheld the decision, rejecting the police's appeal.

39. Having granted the police leave to appeal, the Supreme Court quashed the decision by nine votes to two on 5 December 2003. The decision became a precedent (no. KKO 2003:119). The majority found that the main issue in the proceedings was whether counsel's right not to testify against his client and the consequent prohibition on seizure extended also to material passing between a client and his lawyer if that material did not relate to a pending or forthcoming trial. They found the domestic legislation in this respect somewhat open to interpretation but concluded, having assessed the Court's case-law, that as the seized documents did not concern information which the applicant had given to his lawyer in order to assist him in a trial, they could have been subject to seizure. Two of the Justices dissented, finding that the seizure had interfered with the applicant's fundamental rights. However, the applicable domestic legislation was not clear and unambiguous, and therefore it should have been applied with due regard to fundamental rights and the requirements of legal professional privilege. The dissenting Justices interpreted the domestic law to the effect that the correspondence between the applicant and C. was covered by the prohibition on seizure.

40. The documents seized were returned to the police and it appears that the seizure was prolonged a number of times until summer 2005.

41. On 6 July 2006 the criminal proceedings started in the Vantaa District Court. On 23 August 2006 the charges, three counts of aggravated debtor fraud, were served on the applicant. On 25 August 2006 the District Court dismissed the first count as it was already statute-barred. This decision was upheld by the Appeal Court on 19 October 2006 and by the Supreme Court on 24 October 2007.

42. On 23 April 2008 the District Court convicted the applicant on two counts of aggravated debtor fraud and sentenced him to a six-month term of imprisonment. The court found that the pre-trial investigation had been excessively long in the applicant's case. The applicant would have been sentenced to 18 months' imprisonment but as he had already been sentenced to imprisonment on 29 November 2006 and on 22 October 2007, his sentence was mitigated by twelve months.

43. The applicant and the public prosecutor appealed to the Appeal Court where the case is apparently still pending.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### *1. Excessive length and effective remedy*

44. Chapter 6, Article 7, point 3, of the Penal Code (*rikoslaki, strafflagen*; as amended by Act No. 515/2003 which took effect on 1 January 2004) reads:



“In addition to what is provided above in section 6, grounds for mitigating the sentence that are also to be taken into consideration are

...

(3) a considerably long period that has passed since the commission of the offence;

if the punishment that accords with established practice would for these reasons lead to an unreasonable or exceptionally detrimental result.”

45. In its judgment of 11 June 2004 (KKO 2004:58), the Supreme Court noted that, although there were no legal provisions justifying the dismissal of a criminal charge due to unreasonably long proceedings, such a dismissal or declaring a case inadmissible might in some exceptional circumstances, for example if their duration ruled out a good defence, be the only effective remedy satisfying the requirements of Article 13 of the Convention. That was, however, not the case here. In considering whether there were grounds for applying Chapter 6, Article 7, point 3, of the Penal Code, the Supreme Court held that it had to be decided *in casu* whether the duration of the proceedings (here over 5.5 years) had been unreasonable. It concluded that in this case there were no grounds not to impose a sentence or to mitigate the sentence owing to the duration of the proceedings.

46. In its judgment of 15 June 2005 (KKO 2005:73) the Supreme Court, applying Chapter 6, Article 7, point 3, of the Penal Code, reduced the sentence by six months owing to the lengthy proceedings (some ten years). It imposed an immediate term of ten months’ imprisonment, finding that it was not justifiable to further mitigate the sentence by suspending the term of imprisonment.

## 2. Seizure of privileged materials

47. According to Chapter 5, section 1, of the Coercive Measures Act (Act No. 450/1987, as in force at the relevant time), 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. The search warrant is issued by the police themselves.

48. 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, Article 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 (*esitutkintalaki, förundersökningslagen*; Act No. 449/1987), 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.

49. Under Chapter 17, Article 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.

50. Under section 5c (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, Article 1 or 2, of the Penal Code, unless the law provides for a more severe punishment on another count.

51. According to section 40 of the Pre-trial Investigation Act, only such evidence as may be considered relevant in the case shall be entered in the records of investigation. As regards other evidence, any police officer is under an obligation to respect the confidentiality requirement.

52. The Supreme Court issued on 5 December 2003 a precedent on the interpretation of Chapter 17, Article 23, of the Code of Judicial Procedure (*KKO 2003:119*, no. 3010, votes 9–2). The decision concerned specifically the course of events in the present case. According to the decision of the Supreme Court, the documents seized from the applicant, related to the commission relationship between himself and his Spanish legal counsel, did not contain information entrusted by the applicant to his legal counsel for the pursuit of a case as referred to in Chapter 17, Article 23, subsections 1 and 4, of the Code of Judicial Procedure. Therefore, there was no obstacle to seizing the documents from the applicant. The Supreme Court ruled on the case by nine votes to two, sitting as an enlarged chamber presided by the President of the Court.

53. The Supreme Court reiterated this position in its other precedent case, *KKO 2003:137*.

### III. OTHER RELEVANT MATERIALS

#### **Council of Europe Recommendation**

54. Recommendation Rec(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. ”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

55. The applicant complained that the length of the civil proceedings and two sets of criminal proceedings had been excessive and that there had been no effective remedy in this connection.

56. Article 6 § 1 reads insofar as relevant:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

57. Article 13 reads:

“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.”

58. The Government contested those arguments.

#### A. Admissibility

##### *1. The first set of criminal proceedings*

59. As to the length of the first set of criminal proceedings, the Government argued that the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention on the following grounds. In its judgment the District Court had mitigated the applicant’s sentence by half, whereas the Appeal Court, after its own proceedings lasting 18 months, afforded further redress in reducing further the sentence, that is, by two thirds of the standard sentence. The District Court found that an ordinary sentence for the applicant would have been three years’ imprisonment. However, the Appeal Court found, taking into account the applicant’s previous conviction, that an appropriate punishment would have been three years and three months’ imprisonment. It mitigated this sentence by two-thirds and sentenced him to 13 months’ imprisonment. The Appeal

Court found no grounds to sentence the applicant to a suspended term of imprisonment.

60. The Government stressed that when mitigating the sentence, the Appeal Court applied Chapter 6, Article 7, point 3, of the Penal Code containing the grounds for mitigating a sentence. The Appeal Court expressly discussed the length of the proceedings both generally and then separately for each defendant. It clearly stated what the standard sentence would be for each defendant and then noted the reduction it was making to their sentences due to the unreasonable length of the proceedings. The way in which the length of the proceedings was taken into account provided adequate redress for the alleged violation. The Appeal Court's judgment became final when the Supreme Court, in its own proceedings lasting only five months, refused leave to appeal. The applicant had been afforded express and quantifiable redress, which was sufficient to make good any violation for the entire length of the proceedings.

61. As to the Article 13 complaint, the Government submitted that Chapter 6, Article 7, point 3, of the Penal Code, generally and in the manner applied in the present case, constituted an effective remedy. The effectiveness of the remedy did not depend on the certainty of a favourable outcome. Thus, this part of the application was manifestly ill-founded.

62. The applicant argued that even if the mitigation of the sentence was measurable it could not be considered as sufficient redress for the serious breach of the reasonable-time requirement. Rendering a domestic court judgment just before the European Court's judgment – taking into consideration that the proceedings had already lasted over twelve and a half years – could not deprive the applicant of victim status at this stage. At any rate, the redress granted in such an exceptional case should be a complete waiver of the sentence.

63. The Court notes that the period to be taken into consideration for the purposes of the "reasonable time" requirement began on 2 February 1995 when the applicant was detained on suspicion of involvement in offences of aggravated fraud, debtor dishonesty and false book-keeping. It ended on 22 May 2008 when the Supreme Court refused leave to appeal. The proceedings thus lasted some 13 years and 4 months.

64. The question is whether the applicant may continue to claim to be a victim of a violation of Article 6 § 1 of the Convention on the grounds of the length of the criminal proceedings against him in view of the fact that his sentence was mitigated owing to the excessive length.

65. An individual can no longer claim to be a victim of a violation of the Convention when the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51, for the application of this principle in the context of Article 6, see *Liidi v.*

*Switzerland*, 15 June 1992, § 34, Series A no. 238, and *Schlader v. Austria* (dec.), no. 31093/96, 7 March 2000).

66. In this regard the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable-time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see *Eckle v. Germany*, cited above, § 66, *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001, *Cocchiarella v. Italy* [GC], no. 64886/01, § 77, ECHR 2006-, and *Morby v. Luxembourg* (dec.), no. 27156/02, ECHR 2003-XI).

67. Applying these principles in the present case, the Court notes that the District Court expressly upheld the substance of the applicant's length complaint when it stated that it was taking into account the length of the proceedings in reducing his sentence by half of the appropriate punishment. The Appeal Court, concurring with the lower court that the "reasonable time" requirement had not been met, stated that it reduced the applicant's sentence by two-thirds of the appropriate punishment. It can therefore be said that the applicant was afforded express and quantifiable redress for the breach of the reasonable-time requirement (see *Beck v. Norway*, cited above, §§ 27-29; also *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X). The Appeal Court's judgment took into account the various possibilities and explained how it afforded the applicant redress for the excessively lengthy proceedings. The Court, exercising its supervisory function, is satisfied that the redress given was sufficient.

68. Therefore, the applicant can no longer claim to be a victim of a breach of the "reasonable time" requirement as required by Article 34 of the Convention.

69. As to the Article 13 complaint, the Court has found above that the applicant has been afforded redress for the breach of the "reasonable time" requirement. In the circumstances, this must be considered as disclosing effective redress also for the purposes of Article 13 (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 186, ECHR 2006-...).

70. It follows that both complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

*2. The civil proceedings and the second set of criminal proceedings*

71. The Court notes that the complaints concerning the length of the civil proceedings and the second set of criminal proceedings are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

**B. Merits**

*1. The civil proceedings*

72. The period to be taken into consideration began on 29 June 1994 when the bankruptcy estate of V. initiated compensation proceedings in the District Court which are still pending. The proceedings have thus lasted to date over 14 years and 6 months for one level of jurisdiction.

73. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

74. The applicant maintained that, even if the suspension of the civil proceedings pending the outcome of the criminal proceedings might in many cases be seen as appropriate and necessary, it had no significant relevance when assessing the overall length of the civil proceedings. In any event, the Government were responsible for the excessive length of such civil proceedings. Even if the Court considered the redress afforded in the context of the criminal proceedings to be express, quantifiable and sufficient, this could not offer any redress as regards the civil proceedings.

75. As to the Article 13 complaint, the applicant pointed out that the Court had already, in its well-established case law, found that under Finnish law there was no effective remedy as regards the excessive length of the proceedings.

76. The Government noted that under Finnish law a case could be suspended pending the outcome of other proceedings. In the present case, the suspension of the civil case pending the conclusion of the criminal proceedings was justifiable for the proper conduct of the proceedings and was reasonable under Article 6 § 1 of the Convention. It was not possible to resolve the civil case before the criminal case as the civil proceedings were based on the same facts as the criminal proceedings. Moreover, the Government argued that the case was undoubtedly complex.

77. The Court notes that the District Court on 29 January 1996, 7 October 1999 and 2 June 2000 adjourned the civil proceedings pending the outcome of the first set of criminal proceedings, which were based on the same facts as the civil proceedings. The criminal proceedings became final on 22 May 2008 when the Supreme Court refused leave to appeal, that is, almost 12 years and 4 months after the “initial” adjournment. The Court understands that the civil case was adjourned in anticipation of the final criminal judgment, which might have affected the civil liability of the applicant and his co-defendants. However, the Court observes in this connection that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II).

78. The Court notes in this connection that the domestic courts themselves found that the first set of criminal proceedings did not comply with the reasonable-time requirement (see paragraph 67 above). While the applicant’s complaint in respect of the length of the criminal proceedings was redressed at the domestic level, this however had no consequences whatsoever for the suspended civil proceedings. The fact is that the dilatory conduct of the criminal proceedings contaminated the handling of the civil action, and continues to do so. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the civil proceedings was excessive and failed to meet the “reasonable time” requirement.

79. There has accordingly been a breach of Article 6 § 1 of the Convention.

80. As to the Article 13 complaint, the Court sees no reason to depart from its findings that no specific remedy against unreasonable length of civil proceedings is available under Finnish law (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 82, ECHR 2007-...).

81. In this connection it notes that, under Finnish law, the applicant was at no stage of the proceedings able to request a domestic court to expedite the conduct of the proceedings or to file a claim for compensation either during their course or following their termination (see, for example, *Scordino v. Italy (no. 1)* [GC], cited above, § 186).

82. There has accordingly been a breach of Article 13 of the Convention.

## *2. The second set of criminal proceeding*

83. The period to be taken into consideration began on 17 May 1999 when the police conducted a search of a storage facility. The proceedings are still pending and they have thus lasted to date 9 years and 8 months at two levels of jurisdiction.

84. The applicant maintained that these proceedings had also been excessively long and that there was no effective remedy in this respect.

85. The Government pointed out that the proceedings in question did not relate to the above-mentioned criminal proceedings but to other criminal proceedings brought against the applicant.

86. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the ones in the present case (see *Pélissier and Sassi*, cited above).

87. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of this set of criminal proceedings was excessive and failed to meet the “reasonable time” requirement.

88. There has accordingly been a breach of Article 6 § 1 of the Convention.

89. As to the Article 13 complaint, the Court notes that the District Court did not acknowledge in any way that the length of the proceedings was excessive and did not afford any redress by reducing the applicant’s sentence in an express and measurable manner under Chapter 6, Article 7, point 3, of the Penal Code (see paragraphs 44-46 above). The Court also reiterates that the Finnish law does not provide the applicant with any other effective means of recourse (see paragraph 81 above). The applicant thus did not have an effective remedy in the present case.

90. There has accordingly been a breach of Article 13 of the Convention.

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

91. The applicant complained that the search and seizure of allegedly privileged material violated his right to respect for his private life, home and correspondence. He relied on Article 8 of the Convention which reads as follows:

“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.”

92. The Government contested that argument.



## A. Admissibility

93. The Government did not contest the applicability of Article 8 to the present case.

94. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### 1. *The parties' submissions*

#### (a) *The applicant*

95. The applicant claimed that there had been an interference with the exercise of his right to respect for his private life, home and correspondence. As to the interference with his private life and home, the applicant stated that he had had access to the storage facility, which had been rented at his request. He argued that a separate storage facility, where one deposited goods of a private nature, could be regarded as private premises and that he had had a reasonable expectation of privacy regarding the correspondence which had been stored in that facility. He referred to the Court's recent judgment in the case of *van Vondel v. the Netherlands* (no. 38258/03, § 48, 25 October 2007) in which the Court found that there was no reason of principle to justify excluding activities of a professional or business nature from the notion of "private life" and that there was therefore a zone of interaction of a person with others, even in a public context, which might fall within the scope of "private life". In any event, the applicant claimed that there had been an interference with his right to respect for his correspondence.

96. The applicant acknowledged that the search and seizure had had a legal basis in Finnish law but argued that the quality of that law was questionable due to the lack of foreseeability. In the *Sallinen* case (see *Sallinen and Others v. Finland*, no. 50882/99, § 87, 27 September 2005) the Court had found that the relevant provision of the Code of Judicial Procedure was unclear as it did not state with requisite clarity whether the notion of "pleading a case" covered only the relationship between a lawyer and his or her clients in a particular case or their relationship generally.

97. Should the Court find that the quality of law was sufficient, the applicant accepted that the interference in question had had a legitimate aim within the meaning of Article 8.

98. As to the necessity of the measure in question, the applicant pointed out that the case at hand concerned a very fundamental aspect of a

democratic society and that the lawyer-client privilege was, as a starting point, inviolable. The applicant argued that Recommendation Rec(2000)21 (see paragraph 54 above) gave strong support for a broad interpretation of the lawyer-client privilege and that the domestic provisions should also have been interpreted broadly in the light of Article 8. In any event, there had not been any pressing social need in the present case to seize privileged documents.

**(b) The Government**

99. As to the interference, the Government submitted that there was a significant difference between the aforementioned *Sallinen and Others v. Finland* judgment (cited above) and the applicant's case. In the former case, the documents were in legal counsel's possession and the search and seizure were conducted on his premises, while in the present case the search was conducted outside the applicant's home, more specifically in a separate storage facility. There had thus been no interference with respect for the applicant's home or private life. However, the Government acknowledged that there had been an interference with the right to respect for his correspondence.

100. The Government maintained that the search and seizure had been in accordance with the law, namely Chapter 5, section 1 of the Coercive Measures Act. As to the quality of the law, the Government referred to the Court's findings in the *Sallinen* case (cited above, § 87) but maintained that the question of lack of foreseeability of domestic law had to be assessed in another manner.

101. They argued that the question of foreseeability in the present case had to be solved on the basis of Chapter 4, section 2 of the Coercive Measures Act and Chapter 17, Article 23 of the Code of Judicial Procedure. The wording "*has entrusted to him or her for the pursuit of the case*" in the latter provision could be given either a broad or a narrow interpretation but the fact that the legal literature contained different views on this question did not, as such, render the provision imprecise. Moreover, after the precedent decision of the Supreme Court (KKO 2003:119), issued by an enlarged Chamber with eleven members instead of the normal composition of five, the expression "*pleading a case*" had been given a precise meaning. This position of the Supreme Court was reiterated in its other precedent case, KKO 2003:137. Furthermore, Chapter 4, sections 1 and 2 of the Coercive Measures Act contained precise provisions on the conditions for seizure and the reference to Chapter 17, Article 23 of the Code of Judicial Procedure made in section 2 of the Coercive Measures Act was also clear.

102. As to the legitimate aim, the Government submitted that the search had been performed for the purposes of prevention of crime and for the protection of the rights and freedoms of others, and that it thus pursued a legitimate aim.

103. As to whether the said interference was “necessary in a democratic society”, the Government stated that, even though the confidentiality of the lawyer-client relationship had to be protected, it was not unlimited, and did not apply, for instance, when legal counsel was being used for hiding documents from authorities. However, the Government admitted that this was not the issue in the present case. Still, in their view, the necessity requirement had been complied with in the present case as the police needed to examine the material in the storage facility in order to investigate the offence, and the search and seizure were proportionate to the legitimate aims pursued.

## *2. The Court’s assessment*

### **(a) Whether there was an interference**

104. For the purposes of Article 8 it is necessary to establish whether there was an interference with the applicant’s rights under that Article. As the parties agree that there was such interference in respect of the applicant’s right to respect for his correspondence with his lawyer, the Court sees no reason to differ on that point. Consequently, the Court finds it unnecessary to determine whether there has also been an interference with the applicant’s right to respect for his home or private life as guaranteed by Article 8 § 1.

105. 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.

### **(b) Was the interference justified?**

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

106. 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, *inter alia*, *Kopp v. Switzerland*, 25 March 1998, *Reports of Judgments and Decisions* 1998-II, § 55).

#### **(α) Was there a legal basis in Finnish law?**

107. The Court reiterates 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 notes 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 v. the United Kingdom*, 30 March 1989, § 54, Series A no. 152-A).

108. 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 had a basis in the Coercive Measures Act and in the Code on Judicial Procedure.

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

(β) “Quality of the law”

110. 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.

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

112. 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 search and seizure, 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*, cited above, § 64; *Liberty and Others v. the United Kingdom*, no. 58243/00, § 62, 1 July 2008).

113. The Court must examine the “quality” of the legal rules applicable to the applicant in the instant case. It 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. Under the Code of Judicial Procedure, Chapter 17, Article 23, counsel may not testify in respect of what a client has told him or her for the purpose of pleading a case.

114. 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 or 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.

115. The Government sought to resolve this by noting that, in the applicant's case, the question of foreseeability must be solved on the basis of Chapter 4, section 2 of the Coercive Measures Act and Chapter 17, Article 23 of the Code of Judicial Procedure and that since the precedent decisions of the Supreme Court, the expression "pleading a case" has been given a precise meaning.

116. The Court, however, is not convinced by these arguments. The precedent decisions of the Supreme Court were given only in December 2003 whereas the seizure in the present case took place on 17 May 1999. Even if the Supreme Court decisions were capable of clarifying the provisions in question, this does not change the fact that at the time of the seizure, the applicant could not benefit from this new interpretation.

117. Moreover, as the Court already found in the *Sallinen* case (cited above, § 89), there was no independent or judicial supervision when granting the search warrant as the decision to authorise the order was taken by the police themselves (see *mutatis mutandis*, *Kruslin v. France*, 24 April 1990, §§ 34-35, Series A no. 176-A; *Silver and Others v. the United Kingdom*, 25 March 1983, § 90, Series A no. 61).

118. The Court would emphasise in this connection that search and seizure represent a serious interference with Article 8 rights, in the instant case correspondence, and must accordingly be based on a law that is particularly precise. It is essential to have clear, detailed rules on the subject, setting out safeguards against possible abuse or arbitrariness.

119. In that connection, the Court reiterates that the relationship between the Coercive Measures Act and the Code of Judicial Procedure (read together) was somewhat unclear and gave rise to diverging views on the extent of the protection afforded to privileged material in search and seizure, a situation which was identified also by the Deputy Chancellor of Justice of Finland (*valtioneuvoston apulaisoikeuskansleri, justitiekansleradjointen i statsrådet*) in the context of the *Sallinen* case (cited above, § 91).

120. The Court concludes that, even if there could be said to be a general legal basis for the measures provided for in Finnish law, that law does not indicate with sufficient clarity the circumstances in which privileged material could be subject to search and seizure. The applicant was thus deprived of the minimum degree of protection to which he was entitled under the rule of law in a democratic society (see *Sallinen and Others*, § 92). The Court has thus no reason to reach a different conclusion in the present case than in the *Sallinen* case.

121. 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.

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

(ii) *Legitimate aim and necessity of the interference*

123. 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).

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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

125. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage for all proceedings having lasted an excessively long time. He claimed EUR 10,000 in respect of non-pecuniary damage suffered for the violation of Article 8.

126. As far as the first set of criminal proceedings were concerned, the Government invited the Court to award the applicant reasonable monetary compensation due to their long duration, should it find that he was entitled to further redress in addition to the mitigation of his sentence. However, they maintained that the part of this complaint which related to Article 13 of the Convention and the complaint concerning the civil proceedings were inadmissible and thus, at any rate, no compensation could be awarded in this respect. As regards the violation of Article 8, the Government considered the sum claimed for non-pecuniary damage excessive. In their view, the amount to be awarded should not exceed EUR 2,500.

127. With respect to Articles 6 § 1 and 13 in the context of the civil proceedings and the second set of criminal proceedings, the Court considers that the applicant must have sustained non-pecuniary damage in regard to the breaches found. Ruling on an equitable basis, it awards him EUR 10,000 under that head.

128. As to the Article 8 violation, the Court accepts that the applicant has suffered non-pecuniary damage – such as distress and frustration resulting from the search and seizure – which is not sufficiently compensated by the finding of violation of the Convention. The Court awards the applicant EUR 2,500 under this head.

## B. Costs and expenses

129. The applicant claimed EUR 9,806.62 (including value added tax, “VAT”) for the costs and expenses incurred before the Court. An itemised invoice for the same amount was submitted to the Court together with the applicant’s final observations in the case.

130. The Government noted that the costs and expenses itemised in the invoice came to EUR 6,898.81 (inclusive of VAT). They referred to the domestic legal aid scales in which an hourly rate of EUR 91 and an alternative supplemented rate of EUR 109.20 for more complicated proceedings are set out. Although the Court is not bound by domestic scales and practices, it may derive assistance from them (see, among other authorities, *Kutzner v. Germany*, no. 46544/99, § 90, ECHR 2002-I). If the Court were to find all the violations alleged by the applicant to have taken place, the Government considered that the total amount of compensation for costs and expenses, assessed on an equitable basis, should not exceed EUR 5,700 (including VAT) in the present case. If the number of violations found were lower, the compensation awarded to the applicant should be reduced accordingly.

131. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 9,000 (including VAT) covering costs and expenses under all heads in the proceedings before the Court.

## C. Default interest

132. 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. *Declares* the complaint concerning the length of the first set of criminal proceedings and the lack of an effective remedy in that respect inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention on account of the excessive length of the civil proceedings and the lack of an effective remedy in that respect;

3. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention on account of the excessive length of the second set of criminal proceedings and the lack of an effective remedy in that respect;
4. *Holds* that there has been a violation of Article 8 of the Convention in regard to the search and seizure measures;
5. *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 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable to the applicant, 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President