CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41585/98
by Kenneth LEHTINEN
against Finland

The European Court of Human Rights (Second Section), sitting on 13 December 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 2 April 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Kenneth Lehtinen, is a Finnish national, who was born in 1950 and lives in Järvenpää. The respondent Government are represented by their Agent, Mr Arto Kosonen, Director in the Ministry for Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

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.

On 2 April 1996 the applicant was interrogated by the police on suspicion of debtor's dishonesty committed in April 1992. On 28 November 1996 he was charged.

At a first hearing before the District Court (*käräjäoikeus, tingsrätten*) of Tuusula on 19 February 1997 charges were brought against P.L. and J.S. in relation to the 1992 transactions.

It appears from the case-file that on 12 February 1997 the applicant had received a summons to appear before the District Court as an additional defendant on 19 March 1997 at 9.00 a.m. The summons had wrongly indicated the Judicial Building in Vantaa as the hearing venue, as opposed to Tuusula. On 25 February 1997 the applicant had received another summons in which the hearing venue had been corrected. The officer in charge of summoning the applicant later testified that he had drawn the applicant's attention to this correction.

On 19 March 1997, the applicant nevertheless having presented himself at the Judicial Building in Vantaa, his counsel H.R., present in the District Court of Tuusula, requested the court to adjourn the case. The District Court refused this request, proceeded to the examination of witnesses and ordered that the applicant be brought to its next hearing.

The applicant challenged the manner in which he had been summoned to the hearing on 19 March 1997 and the impartiality of the public prosecutor in an extraordinary complaint (*kantelu, klagan*) to the Court of Appeal (*hovioikeus, hovrätten*) of Helsinki. This was dismissed on 1 April 1997 and leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*) was refused on 6 November 1997.

The applicant was brought by the police to the District Court's first hearing on 1 April 1997. He was not assisted by counsel. At the outset of the hearing presiding judge P.K. handed him a copy of the Court of

Appeal's aforementioned decision and asked whether he wished to pursue an allegation of bias, which he had raised concerning the District Court. He apparently did. The public prosecutor then presented the charges. In describing the manner in which the crime had been committed the prosecutor referred to a previous case in which the same District Court, on 16 October 1995, had convicted the applicant (and his two co-defendants) of aiding and abetting debtor's dishonesty and had sentenced him to one year's unconditional imprisonment. Lay judge L.H. sat in both cases.

After counsel for the complainants had presented their charges and the applicant his defence, the presiding judge noticed that she had not formally afforded him a possibility to request a decision in respect of his allegation of bias on the part of the District Court. On his maintaining his allegation, the presiding judge decided, apparently with the parties' agreement, that the applicant's procedural objection would be noted at the beginning of the hearing record as opposed to at the end. Having deliberated, the District Court dismissed the applicant's objection.

According to the record, the presiding judge had stated, in response to the applicant's objection, that "since you have now submitted an allegation of bias, we have to invalidate this morning's session and thereafter see how the District Court will decide your allegation of bias. Only thereafter can we actually examine [the merits of] the matter".

In response to the applicant's subsequent petition the Deputy Chancellor of Justice (*valtioneuvoston apulaisoikeuskansleri, justitiekanslersadjointen i statsrådet*), on 10 March 2000, expressed the view that although the record of the District Court's hearing on 1 April 1997 had not accurately reflected the order in which the matters had been dealt with, this did not amount to an offence in office on the part of the presiding judge. The parties had apparently consented to this and the fact that the applicant (at the time not assisted by lawyer) had been asked twice whether he maintained his allegation of bias had actually been in his interest. He had further had the opportunity to challenge in his subsequent appeal the lawfulness of the presiding judge's conduct. Neither did the Deputy Chancellor find any indication in the documents to the effect that the morning session on 1 April 1997 had been explicitly invalidated by the District Court so far as concerned the submissions made prior to its dismissal of the applicant's allegation of bias.

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

On 16 March 1998 the Enforcement Officer (*kihlakunnanvouti, häradsfogden*) of Järvenpää granted the applicant's request for postponement of a previously ordered prison sentence in order to allow him to defend himself against the charges pending before the District Court.

At its hearing on 28 April 1998 the District Court denied the applicant's request for cost-free proceedings and refused to appoint advocate P.V. as his legal counsel under the legal aid scheme. The applicant appealed.

In a further letter of indictment dated 29 April 1998 the prosecutor charged the applicant and P.L. with debtor's dishonesty against the estates of the wound-up companies UYP-Sijoitus Oy, FE-Capital Oy and Uudenmaan Liikepalvelu Oy. According to the terms of the indictment, its purpose was to place on record the original charges concerning debtor's dishonesty which the prosecutor had elaborated orally on 27 November 1997.

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 dismissed this request.

At the hearing on 27 July 1998 the prosecutor, basing himself on a letter of indictment of the same day, charged the defendants with debtor's dishonesty against the estates of the wound-up companies UYP-Sijoitus Oy, FE-Capital Oy and Uudenmaan Liikepalvelu Oy.

In a further letter of indictment of 27 July 1998 the prosecutor, in the alternative, also charged the defendants with aggravated tax fraud and aiding and abetting that crime.

On 11 August 1998 the Chief Enforcement Officer, without adducing any reasons, refused the applicant's request for a further postponement of the execution of his previously ordered prison sentence. The refusal was upheld by the Prison Department of the Ministry of Justice on 25 August 1998 since according to the domestic legislation no appeal lay.

The applicant complained to the Deputy Chancellor of Justice who, on 22 December 1999, noted that the applicant had no absolute right to have the enforcement of his sentence postponed. He nonetheless recalled the need to provide adequate reasons in support of a refusal to that end.

The applicant was eventually granted legal aid and P.V. was appointed counsel, the Court of Appeal having accepted his appeal on this point. Counsel was able to assist the applicant at the hearing before the District Court on 28 October 1998.

According to the applicant, the prosecutor stated his impressions to a reporter at a regional daily newspaper at the end of each hearing before the District Court, without referring to the applicant's arguments in defence.

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. The District Court found, *inter alia*, that the State (in its capacity as tax authority) could be considered a creditor in respect of a "latent tax debt". This debt had been imposed on the applicant more than a year after

the transaction of shares in 1992, considering that he had profited from the transaction in the form of a hidden dividend.

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. In this context he invoked alleged bias on the part of lay judge L.H. and objected to not having been able to examine witness M.L., who had been heard in his absence on 11 March 1998.

In March 2000 the applicant initiated private prosecution proceedings before the Court of Appeal against the District Court judges who had convicted him. On 18 December 2001 the charges were dismissed (by a panel composed of judges A., K. and L.). Having found on the basis of the file that the applicant had suffered no unfairness from the alleged falsification of the District Court's minutes, the Court of Appeal held no oral hearing for the examination of the witnesses proposed by the applicant. He apparently appealed, but it is not known whether his appeal is still pending.

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

Further, in a petition to the Minister of Justice dated 21 March 2001 the applicant objected to having been described by the minister in the media as one of the principal white-collar criminals of the 1990s. The Minister's statement had concerned the need to correct an error in the date of the entry into force of legislation time-barring prosecutions for certain white-collar crime. The statement had allegedly been reported on television and in a newspaper, in connection with which the pictures of the applicant and four others had been shown or published.

In his reply of 8 August 2001 the Minister stated that the reference to the applicant and certain others had been entirely attributable to the media and not to the Ministry.

In its judgment of 15 March 2002 the Court of Appeal (composed of judges A., K. and L.) rejected his appeal and increased the sentence to a term of imprisonment of one year and two months. It further stated that it had taken 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.

The Court of Appeal dismissed the applicant's allegation of bias, noting that the previous case in which the lay judge L.H. had participated had concerned other facts and complainants.

In so far as the applicant had alleged other procedural defaults the Court of Appeal considered his submissions belated as they had not been lodged within six months of the judgment of the District Court. 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. It also dismissed the applicant's argument that the prosecutor's alternative charge should not have been retained. It further noted that the applicant had attended the two hearings in which witness J. had been examined in relation to the financial state of company P. As this fact had also been established through other evidence the fact that the applicant had been unable to examine witness M.L. had not been relevant to the outcome of the case.

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

According to the applicant, as a response to the requests made by the Banking Supervision Office (*pankkitarkastusvirasto*, *bankinspektionen*) and the Finnish Savings Bank – SSP Oy in 1992, concerning whether the applicant's acts had amounted to an offence, the National Bureau of Investigation *(keskusrikospoliisi, centralkriminalpolisen)* decided on 12 February 2003 not to begin a pre-trial investigation against the applicant.

B. Relevant domestic law and practice

Under Chapter 16, section 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.

Under chapter 2, section 1 (c) of the Act on the Enforcement of Sentences (*laki rangaistusten täytäntöönpanosta, lag om verkställighet av straff*) reprieve of a prison sentence could be granted if the planned enforcement would engender exceptional and significant losses or difficulties to the applicant, his family, his employer or to society. Under chapter 2, section 1 (d), subsection 4 no appeal lay against such a decision.

COMPLAINTS

1. Alleged partiality of the courts

The applicant complained that he was not tried by an impartial tribunal within the meaning of Article 6 § 1 of the Convention. He alleged that the District Court (presiding judge P.K. and lay judges J.K., M.K. and L.H.) had shown prejudice by ordering him to be brought to the hearing on 1 April 1997, whereas his co-defendants were ordered to attend that hearing on pain of a fine. He further considered L.H. was partial as he had also previously sat on a similar criminal case against the applicant.

In his observations of 25 February 2003 the applicant further complained that L.H. was also biased on account of his opposing political views and that the appellate judges A., K. and L. who dismissed his appeal on 15 March 2002 were biased as his petition to the Chancellor of Justice concerning the same panel's decision of 18 December 2001 remained pending.

2. Alleged unfairness of the proceedings

The applicant complained:

(i) that in the criminal proceedings he was unable to defend himself in person against allegedly vague charges. He had also been unable to examine certain witnesses heard in his absence, that absence resulting from the public prosecutor's error in summoning him to two different hearings at the same time;

(ii) that he was unable properly to prepare his defence in response to a memorandum drawn up by the county taxation office and received by the administrator of the estate of Uudenmaan Liikepalvelu Oy but forwarded to the applicant only on the eve of the hearing on 8 January 1998;

(iii) that the public prosecutor, moreover, failed in his obligation to remain impartial, having asserted without proper substantiation that the applicant was guilty of crimes committed in Järvenpää. At the end of each hearing the prosecutor also gave his impressions to a reporter at a regional daily, without any objective reference to the defence arguments.

On 4 June 2000 the applicant also complained:

(iv) that by denying him a further postponement of the enforcement of his prison sentence his defence against the charges brought by the public prosecutor and UYP-Sijoitus Oy had been hampered, thereby also discriminating against him and denying him an effective remedy;

(v) that the tapes from the District Court's hearings on 1 April and 27 November 1997 as well as 28-29 April 1998 were allegedly destroyed in order to exclude any record of testimonies supporting his innocence.

On 13 August 2001 the applicant further complained:

(vi) that the District Court's record of its hearing on 1 April 1997 was "falsified", as allegedly confirmed by the Deputy Chancellor of Justice in his opinion of 10 March 2000. As a result of this, the morning session on that day was not invalidated, contrary to the presiding judge's own statement at the hearing, and the charges brought by companies FE-Capital Oy and Uudenmaan Liikepalvelu Oy were retained, even though they were not initiated anew before becoming time-barred;

(vii) that he was unable properly to defend himself before the District Court both against the initial charges and the alternative charges brought in open court on 27 July 1998, such alternative charges also being excluded by law at the relevant time;

(viii) that the District Court denied his request for cost-free proceedings and for the appointment of advocate P.V. as his legal counsel under the legal aid scheme. Although P.V. was eventually appointed on appeal, the applicant's defence had already been hampered as counsel was able to attend only the last hearing on 28 October 1998;

(ix) that the Minister of Justice, in a public statement in March 2001, described him as one of the five most significant white collar criminals in the country; and

(x) that the District Court refused to join to the criminal proceedings his civil counter claim against bank V.

The applicant invoked Article 6 § 3 (a), (b) and (c) and Articles 13 and 14 of the Convention in these respects.

In his submissions of 25 February 2003 the applicant further complained under Article 6 and/or 7:

(xi) that the Court of Appeal increased his sentence without appropriately reasoning its judgment;

(xii) that he was wrongly convicted and that his sentence was excessive, considering that he was a first-time offender. The courts failed to consider his request for a conditional sentence in case of a conviction;

(xiii) that the damages he was ordered to pay were incorrectly calculated;

(xiv) that the charges were time-barred on 23 April 1997, not having been specified to the applicant until 29 April 1998;

(xv) that the Supreme Court's referendary's memorandum included false information;

(xvi) that it was not until February 2003 that he became aware of the fact that the National Bureau of Investigation had investigated whether some of his acts of 1992 had amounted to an offence.

3. Allegedly excessive length of proceedings

In his submissions of 13 August 2001 the applicant further complained under Article 6 § 1 of the Convention about the excessive length of the proceedings against him, both as regards the suspected aggravated tax fraud and the offence of debtor's dishonesty.

4. Alleged lack of effective remedy against length of proceedings

On 13 August 2001 the applicant also complained that there was no effective remedy within the meaning of Article 13 of the Convention whereby he could challenge the already excessive length of the proceedings.

5. Allegedly unforeseeable conviction

On 13 August 2001 the applicant complained under Article 7 of the Convention that he had been convicted of a criminal offence (debtor's dishonesty), although such a conviction had not been foreseeable to him at the relevant time.

6. Allegedly unlawful deprivation of liberty

The applicant further complained of a violation of Article 5 § 1 of the Convention on account of his having been brought by the police to the District Court's hearing on 1 April 1997.

7. Refusal to postpone enforcement of prison sentence

In his submissions of 4 June 2000 the applicant complained that his request for a further postponement of the execution of his prison sentence was refused without reasons, although he had met all of the conditions stated in the relevant legal provision.

The applicant invokes Articles 13 and 14 of the Convention.

8. Lack of oral hearing in the court of first instance

In his submissions of 25 February 2003 the applicant furthermore complained, invoking Article 6 of the Convention, that in the private prosecution proceedings he initiated against judges A., K. and L. the Court of Appeal denied him the right to have witnesses examined at a public hearing.

THE LAW

1. Alleged partiality of the courts

The applicant complained that he was not tried by an impartial tribunal within the meaning of Article 6 § 1 of the Convention, alleging that the District Court had prejudged the applicant by ordering him to be brought to the hearing on 1 April 1997; that having sat on a similar criminal case against him, judge L.H. was partial; and that appellate judges A., K. and L. were biased as his petition to the Chancellor of Justice concerning them was pending when they decided his case.

Article 6 reads, as far as relevant, as follows:

> "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. ...

The Court refers to its well-established case law (see, *inter alia*, *Fey v. Austria*, judgment of 24 February 1993, Series A no. 255, p. 12, §§ 28 et seq.), which notes that the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test, that is to say whether the judge held any personal prejudice or bias in a given case, and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. The fact that a judge has participated in previous proceedings concerning the same party does not in itself justify doubts as to his or her impartiality (see, *e.g.* no. 11879/85, 6.12.1989, D. R. 65, p. 232, and no. 17722/91, 8.4.1991, D. R. 69, p. 345). The objective impartiality may, however, be jeopardised if a judge takes part in several consecutive stages of the same set of proceedings (see, *e.g.*, *Piersack v. Belgium*, judgment of 1 October 1982, Series A no. 53, pp. 14-15, § 30). However, the mere fact that a judge has already taken pre-trial decisions cannot by itself be regarded as justifying concerns about his impartiality. What matters is the scope and nature of the measures taken by the judge before the trial. In this case the mere fact that the applicant was ordered to be brought to the hearing does not raise doubts as to the impartiality of the District Court. The Court further finds that the fact that a lay judge L.H. had previously sat on a previous criminal case against the applicant and had apparently expressed political views opposite to the applicant's own, does not, in the circumstances of this case, disclose any legitimate ground for impugning the court's impartiality on subjective or objective grounds. Nor does the Court detect any risk of such partiality on the part of the Court of Appeal flowing from the applicant's simultaneous petition to the Chancellor of Justice.

Accordingly, there is no indication of any violation of Article 6 in this respect and this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Alleged unfairness of the proceedings

The applicant has made numerous complaints invoking the above–cited Article 6 § 1 as well as Article 6 § 3 to the effect that the proceedings were not fair. Article 6 § 3 reads as follows:

> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (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 or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

The Court will deal with these grievances in turn:

(a) The applicant complained that he was allegedly unable to defend himself properly as the charges against him had been too vague, consisting not only of the initial charges in the indictment but of alternative charges brought in open court on 27 July 1998, though such alternative charges had been excluded by law.

The Court observes that the provisions of Article 6 § 3 (a) point to the need for special attention to be paid to the notification of the "accusation" to the defendant. In criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair. At the same time however Article 6 § 3 (a) does not impose any special formal requirement as to the manner in which the accused is to be informed of the nature and cause of the accusation against him. The right to be informed of the nature and the cause of the accusation must be considered in the light of the accused's right to prepare his defence (see *e.g. Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 51-54, ECHR 1999-II).

As to the present case, the Court notes that the Convention does not prevent the prosecutor from presenting alternative charges provided that the accused is given an opportunity to defend himself against those charges as

required by Article 6. The Court finds that in the present case there is no indication that the alternative charges or the procedure applied in the applicant's case rendered the trial unfair. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) As to his complaint that the Minister of Justice's public statement in March 2001 on white-collar criminality violated his presumption of innocence, the Court recalls that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial guaranteed by Article 6 § 1. Where a civil servant, without any qualification or reservation, makes a declaration with the effect of encouraging the public to believe that an accused is guilty and, secondly, prejudging the assessment of the facts by the competent judicial authority, there may a breach of the right of the accused to remain innocent until proved guilty according to law (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, § 41).

In light of the evidence on the case-file the Court, however, finds that the reference in the media to the applicant and certain others was entirely attributable to the media and not to the minister himself or the Ministry as a public authority. Nor is there any indication that the publicity in any way impinged on the fairness of his trial. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(c) As to the rest of his complaints under this heading the Court finds them to be either unsubstantiated or related to the outcome of the proceedings. It recalls that, in accordance with Article 19 of the Convention, its task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not its function to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any rights and freedoms set out in the Convention. The Court refers on this point to its established case-law (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 25, § 45). It further notes that interpretation and application of domestic law is primarily a matter for the assessment of the national courts.

The examination of the case-file in the present case does not disclose any appearance of a violation of a fair trial in these respects or as regards the reasoning or outcome of the judgments. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Allegedly excessive length of proceedings

1. The Government's preliminary objection

The Government submitted that the applicant had not exhausted domestic remedies as he never complained to the domestic courts about the length of the proceedings. He also failed to complain against any of the District Court's nine decisions between 19 March 1997 and 28 October 1998, whereby it adjourned the case. The applicant contested the Government's submission, arguing that the domestic legislation did not afford an effective remedy against the adjournments.

As for this Government's preliminary objection, the Court notes that it has found in the context of Article 13 that no effective remedy existed for the enforcement of a right to hearing within a reasonable time (*Kangasluoma v. Finland*, no. 48339/99, § 49, 20 January 2004). In that case the Court rejected the Government's argument, raised also in this application, that effective redress was provided by the provisions of the Code of Judicial Procedure. The preliminary objection must therefore be dismissed.

2. The parties' submissions

The Government argued that the length of the proceedings was reasonable. The case was complex, the courts acted with all due diligence and there were no unjustified periods of inactivity on their part. They considered that the proceedings began on 19 March 1997 with the first hearing before the District Court. The case involved financial offences and included various indictments and several complainants, defendants and witnesses. The file was more extensive than the average one, consisting mainly of extensive accounting materials.

The Government observed that the conduct of the defendants, including that of the applicant, significantly affected the length of the proceedings. The applicant presented procedural objections on several occasions. At the District Court hearing on 8 July 1998 he also requested the court to join the criminal law case with a civil case, which request was nevertheless dismissed. In the appellate proceedings he repeatedly confused facts relating to different sets of proceedings, which made it difficult for the court to make an overall assessment of the case. He also presented new claims, withdrew some of his original claims and submitted fifteen additional letters, in which he adduced a considerable amount of new evidence such as taxation documents the examination of which took time. Moreover, on 4 July 2000, for example, the applicant withdrew some of his original claims but on 16 January 2001 he reiterated those claims. In the autumn of 2001 he appointed a new legal counsel, who again presented new claims to the Court of Appeal and relied on new facts. For example, in additional observations dated 12

December 2001, his counsel requested the appellate court to refer the case back to the District Court to be considered by a different composition of judges. The additional observations and claims delayed the consideration of the case. The case was to be examined by the Court of Appeal in 2001 but due to the new observations, its examination was further delayed.

The Government considered that the proceedings before the District Court, consisting of ten hearings and lasting a total of one year and ten months, were not unreasonable in the circumstances. As is evident from the District Court's minutes the prosecution's requests for adjournment were made with the agreement of the parties. The proceedings before the Court of Appeal lasted three years and three months, which was not unreasonably longer than the average. The delays were also regarded by the applicant as in his interest as, following the tax authorities' modification of a decision on 28 March 2001, he argued that the estates had no status as a party to the proceedings and that the court proceedings were unfounded.

The Government finally observed that at no stage of the proceedings was the applicant arrested or detained on account of the offences in question.

The applicant maintained his complaint. In his opinion the case was not complex. The District Court held thirteen hearings, mostly in response to the prosecution's repeated requests for adjournment. As a suspect the applicant was substantially affected by the prosecutor's statement of 15 February 1995 in which he stated to the District Court that the applicant had also committed debtor's fraud against the company UYP-Sijoitus Oy. The prosecutor's statement had been reported by a regional newspaper and other media. At any rate, the applicant's office and home had been searched previously on 7 February 1995.

The applicant further submitted that the proceedings before the Court of Appeal took over three years for no convincing reason.

2. The Court's assessment

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

4. Alleged lack of effective remedy against length of proceedings

The applicant also complained that he had been denied an effective remedy within the meaning of Article 13 of the Convention whereby he could have challenged the excessive length of the proceedings. This provision reads as follows:

> "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."

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

5. Allegedly unforeseeable conviction

The applicant further complained of a violation of Article 7 of the Convention in that he had been convicted of debtor's dishonesty, although the possibility of such a conviction had not been foreseeable to him at the relevant time.

Article 7 reads, as far as relevant, as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. ..."

In the light of the above principles concerning the scope of its supervision, the Court observes that it is not its task to rule on the applicants' individual criminal responsibility, that being primarily a matter for the assessment of the domestic courts, but to consider, from the standpoint of Article 7 § 1 of the Convention, whether the applicants' acts, at the time when they were committed, constituted offences defined with sufficient accessibility and foreseeability by the [domestic] law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it and appropriate legal advice, what acts or omissions will make him criminally liable (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, §§ 50-51, ECHR 2001-II).

The Court considers that the applicant's complaint is, essentially, that he was wrongfully convicted by the domestic courts. The Court notes that the applicant's conviction was based on section 39 of the Criminal Code (in force since 1 January 1991), which defines the offence of debtor's dishonesty. The said provision cannot be regarded as vague and imprecise to the point of becoming unforeseeable as to its meaning and effects. The Court thus finds no basis on which to hold that the applicant's act did not constitute an offence defined with sufficient precision in Finnish law. Nor do the facts relied on in support of this complaint disclose any retrospective imposition of a criminal offence or penalty within the meaning of Article 7 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

6. Allegedly unlawful deprivation of liberty

The applicant has further complained that his having been brought by the police to the District Court's hearing on 1 April 1997 violated Article 5 § 1 of the Convention. This provision reads, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

Under Article 35 § 1 of the Convention the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken or the event forming the subject-matter of the grievance took place.

The applicant was brought to court in April 1997 but introduced this complaint in April 1998, that is to say more than six months later. Even assuming that there existed domestic remedies in this respect, the complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

7. Refusal to postpone enforcement of prison sentence

The applicant, invoking the above-cited Article 13 as well as Article 14 of the Convention, complained that his request for a further postponement of the execution of his prison sentence was refused without reasons, although he had met all of the conditions stated in the relevant legal provision.

Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court notes that the final decision for the purposes of the six-month rule in Article 35 dates back to the Prison Department refusal of 25 August 1998, whereas this complaint was introduced only in June 2000. In the circumstances of the case the Chancellor of Justice cannot be considered an effective remedy to be exhausted for the purposes of Article 35.

Consequently, the Deputy Chancellor's decision of 22 December 1999 cannot be taken into account for the purpose of the six-month rule.

It follows that this complaint is also introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

8. Lack of oral hearing in the court of first instance

The applicant complained that the Court of Appeal did not hold an oral hearing in the private prosecution proceedings he instituted against three appellate court judges.

The Court recalls that these proceedings did not involve the determination of a criminal charge against the applicant or any of his civil rights within the meaning of Article 6. Accordingly, Article 6 is not applicable.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention, and must therefore be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints that the criminal proceedings against him were unreasonably lengthy and that he was denied an effective remedy against the delay in those proceedings;

Declares inadmissible the remainder of the application.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President