

**Pending cases against Finland**

<b>Application Number</b>	<b>English Case Title</b>	<b>Date of Judgment</b>	<b>Date of Final Judgment</b>	<b>Meeting Number</b>	<b>Meeting Section</b>
46602/99	A.H. v. Finland	10/05/2007	10/08/2007	1013	2
22508/02	F and M v. Finland	17/07/2007	17/10/2007	1013	2
14151/02	W v. Finland	24/04/2007	24/07/2007	1013	3.A
40412/98	V. v. Finland	24/04/2007	24/07/2007	1013	3.A, 4.2
45830/99	JUHA NUUTINEN v. Finland	24/04/2007	24/07/2007	1013	3.A, 5.3
70216/01	LAAKSONEN v. Finland	12/04/2007	12/07/2007	1013	3.A, 5.3
50882/99	Petri SALLINEN and Others v. Finland	27/09/2005	27/12/2005	1013	4.2
18249/02	C. v. Finland	09/05/2006	09/08/2006	1013	4.2
48339/99	KANGASLUOMA v. Finland and 17 other cases of excessive length of proceedings	20/01/2004	14/06/2004	1013	5.1
36065/97	H.K. v. Finland	26/09/2006	26/12/2006	1013	5.3
18358/02	MUTTILAINEN v. Finland	22/05/2007	22/08/2007	1020	5.3

**Cases against Finland the examination of which has been closed in principle on the basis of the execution information received and awaiting the preparation of a final resolution**

<b>Application Number</b>	<b>English Case Title</b>	<b>Date of Judgment</b>	<b>Date of Final Judgment</b>
27824/95	POSTI and RAHKO v. Finland	24/09/2002	21/05/2003
34141/96	R. v. Finland	30/05/2006	30/08/2006
38267/97	H.A.L. v. Finland	27/01/2004	07/07/2004
39481/98	MILD v. Finland	26/07/2005	26/10/2005
40847/98	TAMMINEN v. Finland	15/06/2004	05/07/2004
41673/98	BRUNCRONA v. Finland	16/11/2004, 25/04/2006	25/07/2006
45027/98	NARINEN v. Finland	01/06/2004	01/09/2004
45029/98	LOMASEITA OY and Others v. Finland	05/07/2005	05/10/2005
46601/99	M.S. v. Finland	22/03/2005	22/06/2005
53678/00	KARHUVAARA AND ILTALEHTI v. Finland	16/11/2004	16/02/2005
56767/00	SELISTO v. Finland	16/11/2004	16/02/2005

## Main pending cases against Finland

997 (June 2007) section 5.1

### **- 12 cases against Finland**

#### **- Cases of length of judicial proceedings**

#### **48339/99 Kangasluoma, judgment of 20/01/2004, final on 14/06/2004 and other similar cases**

These cases concern the excessive length of civil and criminal proceedings (violations of Article 6§1). Several cases also concern the absence of an effective remedy enabling the applicant to complain of the length of the proceedings (violation of Article 13).

**Individual measures:** None: all the proceedings are closed.

#### **General measures:**

**1) Violation of Article 6:** The Finnish authorities have confirmed that the judgments of the European Court have been translated, published on Finlex and widely disseminated with a covering letter to various authorities concerned (for example to the Parliamentary Ombudsman, the Chancellor of Justice, the Supreme Court, the Supreme Administrative Court, the appeal courts and district courts concerned, the Ministry of Justice, the Ministry of the Interior and the National Bureau of Investigation).

• **Assessment:** Taking into account the direct effect given by the national courts to the judgments of the European Court, these measures seem to be sufficient with a view to executing these judgments.

However, the Ministry of Justice has set up a working group to study measures to reduce the length of judicial proceedings. This working group handed over its report to the Minister of Justice on 14/02/2007. It proposes that proceedings may be shortened *inter alia* by making the supervision of the overall length of the cases more efficient, by making the provisions on the jurisdiction of the courts more flexible, by creating more varied compositions of chambers and by making courts' internal working methods and direction more efficient.

• **Information is awaited** on the follow-up given to these proposals.

**2) Violation of Article 13:** The Ministry of Justice has set up a working group to study how an effective remedy in cases of excessive length of proceedings can be introduced into the Finnish legal system. The working group delivered its conclusions to the Minister of Justice on 19/01/2007. It proposes that the excessive length of proceedings be compensated by monetary compensation also covering non-pecuniary damages. As a preventive measure, applicants could also make a complaint to a higher court about the length of civil, criminal or administrative proceedings. The conclusions of the working group are now being commented by several authorities and the government's proposal for the draft law will be submitted to Parliament in autumn 2007.

• **Information is awaited** on the follow-up given to the legislative amendments.

The Deputies agreed to resume consideration of these items:

1. at their 1007th meeting (15-17 October 2007) (DH), in the light of further information to be provided concerning payment of the just satisfaction awarded, if necessary;
2. at the latest at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning general measures.

1007 (October 2007) section 2

#### **70216/01 Laaksonen, judgment of 12/04/2007, final on 12/07/2007**

#### **45830/99 Nuutinen Juha, judgment of 24/04/2007, final on 24/07/2007**

These cases concern the unfairness of certain criminal proceedings brought against the applicants due to the fact that they were not informed in detail of the accusations against them.

In the Laaksonen case, the appeal court found, with no oral hearing, that the applicant had been complicit in a fraudulent bankruptcy in June 1999, even though he had initially been charged with having committed the same offence, but acquitted at first instance. The European Court considered that in the circumstances of the case and given the outcome of the proceedings, the applicant should have been given the opportunity to contest the accusation laid against him (violation of Article 6§1).

In the Nuutinen case, the applicant had been charged with certain tax offences of which he was found guilty at first instance. The appeal court found rather that he had been complicit in these offences as well as in another which had not appeared on the initial list of charges. The European Court considered that his defence rights had been violated in that he had not been able properly to contest this new accusation (violations of Articles 6§1 and 6§3 (a) and (b)).

**Individual measures:** The European Court awarded just satisfaction in respect of the non-pecuniary damages suffered by the applicants. Furthermore, the applicants may apply for reopening of the cases (Chapter 31, Article 2, of the Code of Judicial Procedure).

*Assessment: No further individual measures seem to be needed.*

**General measures:** The new Code of Criminal Procedure, which came into force on 01/10/97, provides that an accused may not be convicted of an offence not mentioned in the bill of indictment. This provision was not observed in these cases, as the proceedings at issue began before the entry into force of the new Code and were conducted in conformity with the rules formerly in force.

As regards the lack of oral hearing in the Laaksonen case, even according to the provisions in force at the time, the appeal court could not change the district court's judgment without holding an oral hearing. The current Code of Judicial Procedure contains the same provision.

Furthermore, the judgments of the Court have been published in the legal database *Finlex* ([www.finlex.fi](http://www.finlex.fi)).

- *Confirmation of dissemination is awaited.*

The Deputies decided to resume consideration of these items:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of information to be provided concerning the payment of the just satisfaction, if necessary;
2. at the latest at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning the confirmation of dissemination of the European Court's judgment.

#### 1007 (October 2007) section 2

##### **14151/02 W., judgment of 24/04/2007, final on 24/07/2007**

The case concerns the unfairness of criminal proceedings brought against the applicant for sexual abuse of four children during the summer of 2000. Neither the applicant nor his counsel were given the opportunity to question the children and the applicant was convicted on the sole basis of video recordings of the children's evidence gathered before the proceedings began (violation of Article 6§1 taken together with Article 6§3 (d)).

**Individual measures:** The European Court awarded just satisfaction in respect of the non-pecuniary damage suffered by the applicant following the domestic proceedings at issue. The applicant may also apply for reopening of the case (Chapter 31, Article 2, of the Code of Judicial Procedure).

*Assessment: no further individual measure seems necessary.*

**General measures:** The Code of Judicial Procedure was amended on 01/10/2003 to the effect that the testimony of a person under 15 years of age, or a mentally disturbed person, recorded on audio or videotape during a pre-trial investigation may be used as evidence if the accused has been provided with an opportunity to have questions put to the person giving the testimony (chapter 17, Article 11(2)). Furthermore, the judgment of the Court has been published in the legal database *Finlex* ([www.finlex.fi](http://www.finlex.fi)).

*Assessment: No further general measures seem to be needed.*

The Deputies,

1. decided to resume consideration of this item at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning the payment of the just satisfaction, if necessary;
2. recalled that all other execution measures have already been taken.

#### 992 (April 2007) section 4.2

##### **50882/99 Sallinen Petri and others, judgment of 27/09/2005, final on 27/12/2005**

The case concerns search and seizure of privileged material at the first applicant's law firm in the course of police investigation and also affecting the rights of his clients (violation of Article 8).

The European Court found that the Finnish law did not provide proper legal safeguards in that it was unclear about the circumstances in which privileged material could be subject to search and seizure. The interference in question was not thus "in accordance with the law" in the meaning of Article 8 and the applicants were therefore deprived of the protection to which they were entitled.

**Individual measures:** Taking into account that seized material has either returned to the first applicant or destroyed and that the other consequences of the violation found in this case have been redressed by the Court through the award of a just satisfaction compensating the non-pecuniary damage suffered by the applicants, no further individual measure seems necessary.

**General measures:** The Deputy Chancellor of Justice has invited the Ministry of Justice to examine whether there is need to amend the legislation in order to clarify the relationship between the Coercive

Measures Act, the Code of Judicial Procedure and the Advocates Act. A working group will be appointed in March 2007 to examine the overall renewal of the Coercive Measures Act. In this context it will also examine what kind of measures should be taken on the basis of the present judgment and on the jurisprudence of the European Court in general. An extensive preliminary report has already been made on this issue also referring to the present judgment.

The judgment of the European Court has been translated and published on the Finlex database and sent out to several national authorities.

- *Additional information awaited on the results of the working group, on the nature of the measures to be taken and on the proposed timetable for their adoption.*

The Deputies decided to resume consideration of this item at the latest at their 1013th meeting (4-5 December 2007) (DH), in the light of further information to be provided concerning general measures.

992 (April 2007) section 4.2

**18249/02 C., judgment of 09/05/2006, final on 09/08/2006<sup>1</sup>**

This case concerns a violation of the applicant's right to respect for his family life due to a Supreme Court decision reversing two judgments of lower courts awarding the applicant custody of his children (violation of Article 8).

The custody had initially been awarded to the children's mother, who lived in Finland with her female partner. Following the mother's death in 1999, a District Court decision, confirmed at appeal, awarded custody to the father, who lives in Switzerland. However, the Supreme Court reversed these judgments, instead awarding custody to the mother's partner, with whom the children had been living since 1993 and with whom they had continuously expressed the wish to live.

The European Court found that the Supreme Court, in giving exclusive weight to the children's views without considering any other factors, in particular the applicant's rights as a father, had effectively given the children, both of whom were at least 12, an unconditional power of veto. Moreover, the European Court found that the Supreme Court had acted without holding a hearing and without requiring any investigation or expert testimony which might have clarified the parties' positions.

**Individual measures:** The applicant may apply for reopening of the case (Chapter 31, Article 2, of the Code of Judicial Procedure); it should be noted in this context that the children are now 17 and 19. In addition the European Court awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained.

However, the just satisfaction in respect of costs and expenses was seized by the Finnish authorities against previous debts of the applicant. The applicant has complained about this situation.

- *Bilateral contacts are under way concerning this issue.*

**General measures:** In view of the direct effect of the Convention and its case-law in Finnish law, the publication and dissemination of the European Court's judgment to all judicial authorities appears useful to prevent new, similar violations.

- *Information provided by the Finnish authorities:*

**1) Publication and dissemination:** The judgment of the European Court has been published in the judicial database *Finlex* ([www.finlex.fi](http://www.finlex.fi)) and it has been widely disseminated *inter alia* to the Supreme Court, Supreme Administrative Court, Ministry of Justice and the Ombudsman for Children.

**2) Additional measures:** The Ministry of Justice is planning to modify the Law on Seizure so that the seizure of just satisfaction awarded by the European Court would no longer be possible. The working group which has been appointed to examine the problem of length of proceedings and the lack of an effective remedy has already proposed a similar amendment to the Law on Seizure.

- *Additional information is awaited on the results of the working group.*

The Deputies decided to resume consideration of this item at the latest at their 1007th DH meeting (16-17 October 2007) (DH), in the light of information to be provided on general measures as well as on possible individual measures.

1007 (October 2007) section 2

**40412/98 V., judgment of 24/04/2007, final on 24/07/2007**

<sup>1</sup> The Secretariat proposes to postpone this case to the 1013th DH meeting (3-5 December 2007).

The case concerns the unfairness of the criminal proceedings instituted against the applicant due to the fact that he had been unable to argue fully and in due time his allegations that he had been entrapped by the police into committing the drug offences he was charged with (violation of Article 6§1). The European Court noted in particular that by refusing to disclose the telephone metering information concerning the applicant's telephone the police denied him the opportunity to prove that the drugs in question were ordered by a person being held in police custody.

As a result of the proceedings in question the applicant was convicted in 1996 for drug related offences and sentenced to three years and six months' imprisonment.

**Individual measures:** In 2000, the applicant's request for reopening of his case was refused.

- *Clarification is awaited as to whether the applicant may once more request reopening following the European Court's judgment.*

**General measures:** The Police Act was amended in 2001 and in 2005, adding explicit provisions on certain unconventional preventive methods and investigative techniques, including undercover operations and induced deals. The legislation on telephone tapping has also been amended subsequently and now contains specific rules. Permission for telephone tapping is given by a court for a limited time only and only in relation to the most serious crimes. It is not allowed to intercept conversations between a suspect and their lawyer, doctor or priest. At the conclusion of the preliminary investigation, the suspect must be informed about the telephone tapping and all irrelevant information gathered must be destroyed.

Furthermore, the judgment of the Court has been published in the legal database *Finlex* ([www.finlex.fi](http://www.finlex.fi)).

- *Information is awaited as to whether any further general measures have been taken or are envisaged.*

The Deputies decided to resume consideration of this item:

1. at their 1013th meeting (3-5 December 2007) (DH), in the light of further information to be provided concerning the payment of the just satisfaction, if necessary;
2. at the latest at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning the general measures.

1007 (October 2007) section 2

**18358/02 Muttilainen, judgment of 22/05/2007, final on 22/08/2007**

The case concerns the lack of an oral hearing before the Court of Appeal in criminal proceedings instituted against the applicant in 1998 (violation of Article 6§1). The applicant was convicted of attempted theft and violent resistance to a public official and sentenced to six months of imprisonment, by the District Court, with an oral hearing. The Court of Appeal upheld the conviction, reducing the sentence to three months of imprisonment, without holding an oral hearing, even though the applicant had requested it so.

The European Court found that an oral hearing was necessary before the Court of Appeal, as it had to make a full assessment of the applicant's guilt or innocence and his intention and the credibility of his statements could not have been properly determined without a direct assessment of the evidence given in person by the applicant and by one of the witnesses.

**Individual measures:** The European Court awarded the applicant just satisfaction of non-pecuniary damages. Furthermore, the applicant may apply for reopening of the proceedings (Chapter 31, Article 2, of the Code of Judicial Procedure).

- *Assessment: No further individual measures seem to be needed.*

**General measures:** The provisions of the Code of Judicial Procedure (Chapter 26, Section 15), state that the Court of Appeal shall hold an oral hearing if the credibility of the testimony admitted in the District Court is an issue. In consequence, it appears that the violation found in this case is due to a wrongful application of this provision by the Court of Appeal.

- *Assessment: in these circumstances, publication and dissemination of the judgment of the European Court to the relevant authorities appear to be sufficient measures for execution.*

- *Their confirmation is expected.*

The Deputies decided to resume consideration of this item at the latest at their 1020th meeting (4-6 March 2008) (DH), in the light of further information to be provided concerning general measures, namely confirmation of the publication and dissemination of the judgment of the European Court.