



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

FOURTH SECTION

**CASE OF MARTTINEN v. FINLAND**

*(Application no. 19235/03)*

JUDGMENT

STRASBOURG

21 April 2009

**FINAL**

***21/07/2009***

*This judgment may be subject to editorial revision.*



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

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 31 March 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 19235/03) 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 Mikko Marttinen (“the applicant”), on 16 June 2003.

2. The applicant was represented by Ms T. Ylinen, 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 a violation of Article 6 on account of the fact that he was punished for refusing to give information about his economic situation in an enforcement inquiry.

4. On 29 March 2006 the President of the Fourth Section of the Court decided to give notice of 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). Having consulted the parties, the Chamber decided on the day of adoption of the judgment that no hearing was required (Rule 59 § 3 *in fine*).

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1945 and lives in Helsinki.

### **A. The pre-trial investigation**

6. In 2000 the applicant became suspected of debtor's fraud for allegedly not having provided correct information about his assets and possessions, including real estate, shares in two housing companies and cars, in debt recovery procedures on 14 January or 16 December 1994 and 5 December 1997 as well as in his bankruptcy proceedings on 13 November 1995 or 5 January 1996. His creditors, the Tax Office of Uusimaa and Osuuspankki Realum, a bank, were complainants in that pre-trial investigation, which was carried out by the Espoo police. The applicant was in detention from 26 January to 22 March 2000.

7. In their observations of 12 July 2006 the Government submitted that the pre-trial investigation had been terminated in 2005 and that the matter was pending before the public prosecutor for the consideration of the charges. It is not known whether charges have been preferred against the applicant.

### **B. The enforcement inquiry**

8. While the pre-trial investigation was pending the indebted applicant was, in another enforcement inquiry (*ulosottoselvitys, utsökningsutredning*) on 9 June 2000, ordered to provide information about his assets in order to enable the Helsinki Bailiff to seize those assets to secure payment of the applicant's debts. The enforcement inquiry is a formal procedure in which the debtor must, under threat of certain sanctions, give an overall account of his assets and other financial means for the purposes of enforcement. In order for the Bailiff to be able to decide whether there are assets which can be used to satisfy the creditor, the debtor must also provide information on assets handed over to others and about transactions carried out by him. An enforcement inquiry is resorted to if it has not been possible otherwise to establish the debtor's financial situation in a reliable manner.

9. On 19 June 2000 at the Helsinki enforcement office the applicant however refused, arguing that the enforcement inquiry concerned the same facts as were in issue in the pending pre-trial investigation into alleged debtor's frauds. He claimed that it would be contradictory if he were ordered to reveal information in the enforcement inquiry as he had a privilege to remain silent as regards these matters in the pre-trial investigation.

10. On the same day the Bailiff issued a decision ordering the applicant to provide this information on 28 June 2000 on pain of an administrative fine (*uhkasakko, vite*) in the amount of 200,000 Finnish marks (FIM; about 33,638 euros (EUR)). According to the decision, the enforcement inquiry was necessary because the applicant had debts amounting to FIM 9.7 million subject to debt recovery. The applicant had to provide

information about his assets and debts and about property disposed of and related transactions so that it could be ascertained whether or not assets were recoverable for the purposes of enforcement. The requested information was considered decisive in the search for the applicant's assets.

11. On 28 June 2000 the applicant failed to arrive at the enforcement inquiry at the Bailiff's office. Instead he submitted a letter, informing the Bailiff that he was not going to provide the information requested. He referred to Article 6 of the Convention and his rights to remain silent and not to incriminate himself. The pending pre-trial investigation concerned, *inter alia*, two earlier enforcement inquiries and also the current enforcement inquiry concerned these matters. It would be inconsistent if he had to give information in the enforcement inquiry when he had the right to remain silent about the same matters in the pre-trial investigation.

### **C. The imposition of an administrative fine**

#### *1. The Helsinki District Court*

12. On 6 July 2000 the Bailiff requested the Helsinki District Court (*käräjäoikeus, tingsrätten*) to order the applicant to pay the administrative fine. The applicant objected, maintaining that he had a right under the Convention to remain silent. As the Bailiff aimed to find out the applicant's existing assets, the matter concerned precisely the same matter as was under investigation in the criminal case if he were now to own something that he had owned already at the time of the earlier enforcement inquiries and the bankruptcy procedure and which he had not accounted for. Also, the fact that the Bailiff aimed to find assets which could be returned meant that the applicant would be required to give information about all assets previously owned by him and assets that had possibly replaced his previous assets, that is, facts which were at issue in the criminal investigation. Lastly, the Bailiff wished to find out the origin of assets already seized from the applicant which, too, was a fact to be examined in the criminal investigation.

13. On 10 November 2000 the District Court ordered payment of the fine albeit reducing its amount to FIM 50,000 (about 8,409.40 EUR).

14. The court noted the applicant's arguments under the Convention in which he relied, *inter alia*, upon the cases of *Saunders v. the United Kingdom* (judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI), *Funke v. France* ( judgment of 25 February 1993, Series A no. 256-A), and *John Murray v. the United Kingdom* (judgment of 8 February 1996, *Reports* 1996-I), to the effect that the enforcement inquiry breached his right to a fair trial as he had been put under threat of a fine to compel him to incriminate himself by providing information about his assets, although a criminal investigation into alleged debtor's fraud concerning the same assets was pending.

15. The court referred to the counter arguments presented by the Bailiff that the purpose of the enforcement inquiry was to obtain information on the applicant's assets in order to fulfil his obligations as a debtor, and concluded that in the present case the enforcement inquiry sought to protect the rights of the creditors. The court concluded that if facts indicating the guilt of the applicant in the pending criminal investigation were to be revealed during the enforcement inquiry, the authorities would be bound by professional secrecy.

## 2. The Helsinki Court of Appeal

16. The applicant requested the Helsinki Court of Appeal (*hovioikeus, hovrätten*) to issue interim measures, which were refused on 23 November 2000. He also filed an appeal.

17. On 22 February 2001 the Court of Appeal rejected his appeal. At the outset, it noted that in the spring of 2001 the applicant and his debtors had reached a friendly settlement and that [on 1 June 2001] having paid about 6.1 million Finnish marks to the Bailiff the applicant had been exempted from the remainder of his debts subject to debt recovery. However, as the friendly settlement had been reached only after the District Court had ordered payment of the administrative fine, the friendly settlement lacked relevance to the present case.

18. It referred to the cases of *I.J.L. and Others. v. the United Kingdom* (nos. 29522/95, 30056/96 and 30574/96, ECHR 2000-IX) and *Fayed v. the United Kingdom* (judgment of 21 September 1994, Series A no. 294-B) and found that:

“...the application of the right not to incriminate oneself [as provided for in the Convention] to the debt recovery procedure might hinder effective enforcement without cause. Given this and the above mentioned judgments of the Court, the Court of Appeal finds that the rights of a person charged guaranteed by Article 6 do not, as a starting point, apply to the debt recovery procedure, and the right of the person “charged” not to incriminate himself cannot be held as a valid reason not to be present in the enforcement inquiry or to refuse to answer the questions put to him in the inquiry. Furthermore, the Court of Appeal considers that nor can the Bailiff's right under Chapter 3, section 34(g), of the Enforcement Act (*ulosottolaki, utsökningslagen*) to give, under certain conditions, necessary information to other authorities as such be considered a valid reason for the refusal.

Therefore, the Court of Appeal finds that [the applicant] has not presented a valid reason, within the meaning of Chapter 3, section 40, of the Enforcement Act, not to fulfil his obligation, laid down by the same Chapter, section 33, to give information in the enforcement inquiry ....”

### 3. *The Supreme Court*

19. The applicant sought leave to appeal. On 3 October 2001 the Supreme Court (*korkein oikeus, högsta domstolen*) granted such leave. On 9 October 2001 it ordered interim measures.

20. On 19 December 2002 the Supreme Court issued its decision on the merits (precedent no. KKO 2002:116), rejecting the appeal by four votes to one. Even though the applicant alleged the contrary, the Supreme Court was not convinced that the purpose of the impugned enforcement inquiry in the present case was other than that provided for in the Enforcement Act.

21. At the outset, it noted the contents of the relevant domestic law provisions (sections 33, 34, 34(d) and 40(2) of the Enforcement Act; see paragraph 27 below). It also had regard to Article 14 § 3 of the United Nations Covenant on Civil and Political Rights and case-law concerning Article 6 § 1 of the Convention. The right of the accused not to be compelled to incriminate himself or to confess did not however mean that the accused would also have a right not to comply with an invitation to be present in interrogations or court hearings. The court noted that the applicant had the right not to contribute to the investigation of his possible guilt in the pending pre-trial investigation in which he was suspected of having committed debtor's frauds in connection with earlier debt recovery and bankruptcy procedures. It went on:

“Effective enforcement of decisions is part of a fair trial. In connection with the enforcement of financial claims, the debtor's obligation to contribute to the establishment of facts of relevance to the enforcement is of great importance. The concealing of property, the reporting of liabilities that are false [or based on a sham transaction], and the giving of other false or misleading information are established as criminal offences in Chapter 39, Articles 2-5, of the Penal Code. The purpose of the powers of enforcement authorities to oblige the debtor to provide an account of his property, and of the coercive means available to ensure compliance with this obligation, is to make enforcement more efficient. Although it is possible to impose a threat of a fine to secure compliance with the obligation to give the information requested in connection with the enforcement inquiry, and a sentence may be ordered on a person concealing information or giving false information, the debtor is not, when complying with his or her obligation to give information on his or her property for the purposes of enforcement, a person charged with a criminal offence within the meaning of Article 6 of the Convention, to whom the rights of the accused would apply.

The right of an accused to remain silent may exceptionally also have relevance in connection with an enforcement inquiry. It has relevance at least where it is apparent that the enforcement inquiry is carried out, contrary to the purpose of the Enforcement Act, for the purposes of obtaining evidence in support of a suspicion of a prior criminal offence. Even in such a case, however, the obligation of the debtor to contribute to the enforcement inquiry results in that he must be present in the enforcement inquiry and give in that connection such information required by law as has no relevance with regard to the suspicion regarding crime.

[The applicant] has argued that the sole purpose of the enforcement inquiry was to find evidence for the pending criminal investigation. In any event, when the pre-trial investigation and the criminal investigation concerned the same matters, or at least essentially the same matters, and the complainants in the suspected crime were the debtors in the debt recovery procedure, the information provided in the enforcement inquiry would be used as evidence in the criminal case.

[The applicant] had a considerable amount of debts subject to debt recovery. According to the Bailiff, the purpose of the enforcement inquiry was to establish whether [the applicant] had such assets as could be used for the payment of debts, and not to obtain information for the purposes of the pending criminal investigation. It cannot be concluded on the basis of the facts stated by [the applicant] alone that the enforcement inquiry would have been requested for a purpose other than within the meaning of the Enforcement Act. As [the applicant] has refused completely to contribute to the enforcement inquiry, it is not possible to assess whether he would have had the right, on account of the said suspicion of a criminal offence, to refuse to provide some of the information. Nor is it possible to decide in this case to what extent the facts established in connection with the enforcement inquiry can be used as evidence in eventual court proceedings concerning a prior criminal offence.

[The applicant] has refused completely to contribute to the enforcement inquiry and has failed to be present. In doing so, he has not complied with his obligation imposed under the threat of a fine. He has not shown the existence of a valid reason for his refusal. He may thus be ordered to pay a fine. No reasons have emerged to reduce the fine imposed by the Court of Appeal.”

22. Dissenting from the majority, Justice M.A. was of the opinion that the applicant, whom he considered a person “charged”, had a valid reason not to fulfil the debt recovery obligations in the light of the Constitution and Article 6 of the Convention. He stressed that although the Bailiff was bound by professional secrecy in the proceedings, the creditors who also had standing as complainants in the criminal proceedings would become aware of the content of the enforcement inquiry. The pre-trial investigation and the enforcement inquiry concerned the same facts, that is, they aimed to find out the applicant’s economic situation and the origin of his assets. It was likely that information received in the enforcement inquiry would be used as evidence as regards the applicant’s guilt in the criminal proceedings. Section 23(3) of the Openness of Government Activities Act (*laki viranomasten toiminnan julkisuudesta, lagen om offentlighet i myndigheternas verksamhet*; Act no. 621/1999) did not, to his mind, prohibit the complainants from using this information in the pending criminal proceedings. Justice M.A. concluded that the applicant’s right not to incriminate himself was violated.

23. Meanwhile, on 16 January 2001 in another enforcement inquiry, the Bailiff ordered the applicant to provide information about his assets. The applicant refused, repeating his stance taken in the pending court proceedings, whereupon the Bailiff issued a decision ordering the applicant to provide this information on pain of an administrative fine. On 2 March 2001 the Bailiff requested the Helsinki District Court to order the

applicant to pay the administrative fine. On 27 March 2001 the applicant was again required to be present at an enforcement inquiry.

24. It appears that the Bailiff subsequently waived these measures.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Legislation

25. Section 21 of the Constitution (*Suomen perustuslaki, Finlands grundlag*; Act no. 1/1999) provides:

“Protection under the law - Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act.”

26. There are no explicit provisions of law concerning the right to silence and the right not to incriminate oneself. It has been left to the authorities applying the law to respect those rights. The Government Bill for the enactment of the act amending the previous Constitution Act (HE 309/1993 vp) noted that the right to legal protection also included the right of the accused not to testify against himself under the United Nations Covenant on Civil and Political Rights and the Convention.

27. At the material time, the provisions on enforcement inquiry were included in Chapter 3 of the Enforcement Act:

#### “Section 33 (Act no. 470/1986)

For the purpose of obtaining the necessary information for enforcement, the Bailiff may carry out an enforcement inquiry. In the enforcement inquiry, the debtor must provide information on his assets, debts and income, as well as his or her address and the name of his or her employer. He must also give information about the whereabouts of an object or a document regarding which he by a judgment has been ordered to give to another person or which by law has to be given to the enforcement authority.

In the enforcement inquiry, the debtor must provide such information as is necessary to establish whether property disposed of and related transactions can be recovered for the purposes of enforcement.

Where requested by the Bailiff the debtor shall in the enforcement inquiry prepare a list of assets, debts and income, or verify and confirm by signature such a list prepared by the Bailiff on the basis of information given by the debtor.

**Section 34 (Act no. 470/1986)**

The debtor must, where invited by the Bailiff, appear in person in the office of the Bailiff of his or her place of residence or stay for the purpose of an enforcement inquiry. Where the debtor fails to appear and there is probable reason to believe that he or she intends to evade enforcement, the police shall on the Bailiff's written request bring him or her to the enforcement inquiry.

**Section 34(a) (Act no. 470/1986)**

If the debtor is under an obligation to keep accounts, he or she must produce the accounts and related materials to be audited on the Bailiff's request for the purpose of obtaining the necessary information for enforcement.

...

**Section 34(c) (Act no. 470/1986)**

Before the enforcement inquiry, the debtor or his or her representative referred to in section 34(b) must be informed of sanctions that may be imposed on him or her in the case of a failure to provide information or provision of incorrect information. ...

**Section 34(d) (Act no. 792/1996)**

If the debtor or his or her representative referred to in section 34(b) fails to comply with his or her obligations under sections 33 or 34(a), the Bailiff may order the debtor to fulfil the obligations within a specified time-limit under threat of an administrative fine. The administrative fine is imposed and ordered to be paid in accordance with sections 39 to 41. ...

**Section 34(e) (Act no. 171/1997)**

For the purpose of enforcement and in order to receive necessary information in an individual debt recovery case a third person must notwithstanding the provisions on secrecy on request by the Bailiff provide information on:

1. whether or not he has in his possession or otherwise in his control assets belonging to the debtor and the nature of the assets;
2. whether the debtor has an outstanding account from him, the basis for it and its amount;
3. whether he and the debtor have entered into an agreement or arrangement which may be of relevance in the search for recoverable assets of the debtor and the closer content of the agreement or arrangement; and
4. data concerning the debtor's employment and salary as well as address and telephone number which he has in his capacity of the debtor's employer.

Any legal provision in another act about the Bailiff's right to receive information notwithstanding the secrecy obligation must be complied with.

The Bailiff has the right to receive the information mentioned in subsections 1 and 2 free of charge. This does not concern information provided by means of automatic data processing.

If the third party refuses to give information requested and mentioned in subsections 1 and 2, the Bailiff may order him to produce it within a given time on pain of an administrative fine. The fine is issued and payment of it is ordered in accordance with sections 39-41.

#### **Section 34(f) (Act no. 171/1997)**

For the purpose of enforcement and in order to receive necessary information in an individual debt recovery case an authority, a corporation having a public function and a company attending to telecommunications or postal activity must notwithstanding the provisions on secrecy and in addition to the information mentioned in section 34(e) on request by the Bailiff provide information on:

1. the debtor's income and property;
2. the debtor's employment or service relationships and pensions;
3. the debtor's address and telephone number as well as other contact information;

In the acquisition of the information mentioned in subsections 1 and 2, it must be seen to that sensitive personal information not relating to the handling of the debt recovery case is not delivered to the Bailiff.

Any legal provision in another act about the Bailiff's right to receive information notwithstanding the secrecy obligation must be complied with.

The Bailiff has the right to receive the information mentioned in subsections 1 and 3 free of charge. This does not concern information provided by means of automatic data processing.

#### **Section 34(g) (Act no. 649/1999)**

Notwithstanding the secrecy obligation provided for in the Openness of Government Activities Act, the Bailiff may disclose necessary information to another enforcement authority and, if there is reason to believe that a debtor may have committed an offence, to the prosecuting and investigative authorities. The Bailiff may also give information to the prosecuting authority for the purpose of consideration of conversion imprisonment for non-payment of fines. In addition, the Bailiff may give necessary information about the debtor's observed malpractice to the tax authority, labour authority, bankruptcy ombudsman or other authority. However, information on misconduct by a debtor received from a person who, in court proceedings, would have the right or obligation to refuse to testify on the facts in question, as well as information received from a third person concerning his or her own misconduct may not be disclosed by the Bailiff.

...

**Section 40 (Act no. 792/1996)**

... Payment of the administrative fine is ordered if the obligations have not been fulfilled or have been contravened without a valid reason. ...

**Section 41 (Act no. 792/1996)**

Prior to issuing an administrative fine, the Bailiff must afford the debtor an opportunity to be heard in a proper manner, unless the enforcement is thereby substantially impeded. ...”

28. Chapter 2a, section 4 (Act no. 550/1999, in force at the relevant time), of the Penal Code (*rikoslaki, strafflagen*) provided that a conversion sentence be passed for an unpaid threat of a fine if the collection of it had failed.

29. Section 23(2-3) of the Openness of Government Activities Act reads:

“[...] A party, his/her representative or counsel must not disclose to third parties secret information obtained by virtue of party status and concerning other persons than the party himself.

A person referred to above in paragraph (1) or (2) must not use secret information for personal benefit or the benefit of another, nor to the detriment of another. However, a party, his/her representative and counsel may use information concerning a person other than the party himself/herself, where the matter concerns the right, interest or obligation on which the access of the party to the information is based.”

30. According to the Government Bill for the enactment of the Openness of Government Activities Act (HE 30/1998 vp, p. 85) there is an exception to the prohibition for a party to use secret information obtained in the framework of proceedings to which he is a party. That is the case when the party is attending to a matter concerning his right, benefit or obligation and on which his right to receive information has been based. This means that such information can be used in an appeal procedure concerning the same matter or in proceedings instituted before another authority if the matter concerns attending to the same right, obligation or benefit. Thus, a creditor applying for enforcement, for example, could use information obtained as a party to the enforcement procedure in recovery of assets or bankruptcy procedures relating to the same claims. In this connection, the Bill is silent on whether a creditor applying for enforcement may use such information in criminal proceedings relating to the same claims.

31. Section 35 of the Act states that a breach of the secrecy obligation and the prohibition of misuse of information based on section 23 is punishable.

32. Concealment of property and provision of incorrect information in an enforcement inquiry are punishable offences under the Penal Code (Act no. 769/1990).

33. Chapter 3 of the Enforcement Act was amended by Act no. 679/2003 with effect from 1 March 2004. The Bailiff is proscribed from transmitting to other authorities incriminating information under Chapter 3, section 73:

“The Bailiff must not disclose information which has to an essential extent been received from:

1) a person who as a witness in the proceedings has an obligation or a right to refuse to testify on the fact in question, unless this person gives his consent to the disclosure of the information;

2) the debtor, when asked about a fact referred to in paragraphs 6 to 8 of section 52, if the answer indicates that the debtor may have committed an offence in a context other than the enforcement procedure, and the disclosure of the information entails a risk of charges on the debtor; or

3) a third person, if the information concerns misconduct by this third person.

The right of the Bailiff to disclose information to a creditor is provided for in Chapter 3, section 91. The foregoing provisions apply irrespective of whether the information would otherwise be confidential.”

34. The right of the Bailiff to transmit information to the creditor applying for enforcement is regulated by Chapter 3, section 91:

“The Bailiff must without delay inform the creditor applying for enforcement, if they are evidently relevant having regard to the size of the claim, of circumstances perceived by him which may give rise to the need to institute recovery proceedings, to apply for bankruptcy or to another similar special measure in order to collect the claim. The creditor must also receive the minutes from a possible enforcement inquiry and other necessary documents. The Bailiff may also provide information mentioned in section 73(1), point 1 and 2. The creditor applying for enforcement must not use this information in order to circumvent the provisions on testimony in the Code of Judicial Procedure or in order to have the debtor charged with a criminal offence. The Bailiff must remind the creditor of the said restrictions.”

35. In its report the Law Committee (LaVM 34/2002) emphasised the importance of respecting the right not to incriminate oneself but also underlined that such protection should not be extended to the detriment of effective enforcement to situations where there was no risk of a breach of that principle.

36. The Enforcement Act was with effect from 1 January 2008 replaced by the Code of Enforcement (*ulosottokaari, utsökningsbalken*; Act no. 705/2007). The contents of the relevant provisions essentially remain the same.

## **B. Supreme Court practice**

37. The Government relied on a Supreme Court judgment of 23 December 2002 (precedent no. KKO 2002:122): A partner of a limited partnership company committed aggravated debtor's dishonesty. A. received part of the moneys involved. In his personal bankruptcy proceedings A. concealed those assets which he had received through aiding and abetting in the said offence. The Supreme Court held that the obligation of debtors to provide information exclusively served the interests of the enforcement procedure and was necessary for the purposes of protecting the interests of creditors. The purpose was that the administrator of the bankruptcy estate and the creditors got, through the debtor's cooperation, as reliable a picture as possible of the estate's assets and debts. The provision of information was not as such related to any criminal case or to the search for evidence relating to a suspected offence, and nor was the debtor providing information in the capacity of a suspect of an offence. Accordingly, the debtor had no right to conceal assets of the bankruptcy estate in the bankruptcy proceedings on the ground that he believed that by declaring the assets, he would have revealed that he had committed an offence relating to the origin of the assets or some other offence. A. had not therefore had any right not to declare the said assets in the bankruptcy procedure and he was accordingly convicted of debtor's fraud.

38. The applicant considered the precedent irrelevant to his case, as A. had not been "charged" within the meaning of Article 6 when he had given an account of his assets.

## **THE LAW**

### **I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION**

39. The applicant complained under Article 6 § 1 of the Convention about the unfairness of the proceedings in that he was put under compulsion to submit information about his assets in the enforcement inquiry which could have incriminated him. The imposition of the fine violated his right to remain silent and not to contribute to his criminal conviction.

Article 6 § 1 reads as follows:

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

40. The Government contested that argument.

### A. Admissibility

41. The Government argued that the applicant could not claim to be a victim within the meaning of Article 34 of the Convention for the following reasons. First, following a friendly settlement, the applicant had been exempted from liability for the remainder of his debts subject to the debt recovery procedure. Second, the criminal case was still pending before the prosecutor and no court proceedings concerning the offences investigated in the pre-trial investigation had been instituted. Thirdly, the applicant had not been present at the Bailiff's office in order to give information about his assets but had only informed the Bailiff that he was unable to be present owing to his right to remain silent. No incriminating information had been given. There had thus not been any use of compulsion for the purpose of obtaining information which might incriminate the applicant in pending or anticipated criminal proceedings against him, and no use of incriminating information compulsorily obtained outside the context of criminal proceedings in a subsequent criminal prosecution (see *Weh v. Austria*, no. 38544/97, §§ 42-43, 8 April 2004). The application should thus be declared inadmissible under Articles 34 and 35 § 3 of the Convention.

42. The Government also submitted that the execution of a judgment must be regarded as an integral part of the "trial" for the purposes of Article 6 (see, *Hornsby v. Greece*, judgment of 19 March 1997, application no. 18357/91, § 40). An enforcement inquiry was carried out when the enforcement of a judgment was not successful due to the debtor's unwillingness to comply with it. It was the creditor's right in a democratic society to request enforcement and the authorities' obligation to secure this right. In case the debtor was not compelled to co-cooperate, the execution was put at risk. It could therefore be argued that the obligation to give an overall account of one's assets and other financial means for the purposes of enforcement was to be regarded as forming part of normal civic duties in a democratic society. Consequently, the enforcement inquiry in the instant case could not be regarded as falling within the scope of Article 6 under its civil head which was thus not applicable.

43. The Government also argued that Article 6 was inapplicable under its criminal head for the following reasons. The right not to incriminate oneself was primarily concerned with respecting the will of an accused person to remain silent in the context of criminal proceedings and the use made of compulsorily obtained information in such proceedings. Enforcement again was a civil law procedure and did not imply any criminal suspicion against the debtor. The fine attached to the enforcement inquiry was of an administrative nature and the enforcement inquiry in no way amounted to a disguised form of criminal proceedings. The obligation to disclose income and capital for the purposes of the calculation and assessment of tax fell outside the scope of Article 6 as it would be difficult

to envisage the Contracting States functioning effectively without it. The obligation to disclose income and capital for the purposes of the calculation of seizable assets in order to enforce the payment of debts formed an integral part of the execution of a judgment. The interests of a creditor to have a judgment executed were not less important in a democratic society than the interests of the tax authorities (the State) in obtaining appropriate information for taxation purposes.

44. The applicant maintained that he had victim status in his application and that Article 6 was applicable under its criminal head as he had been a person “charged” at the time of the enforcement inquiry. The fact that the criminal case, for the time being, lay dormant with the public prosecutor lacked relevance in the present case.

45. The Court finds that the Government’s objections under Articles 34 and 35 of the Convention are so closely connected with the merits of the case that they should be joined to them.

46. The Court notes that the application 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*

47. The applicant argued that the enforcement system had its limits and that it could not be used as an extra-effective means to obtain incriminating information from a person “charged”.

48. Contrary to the Government’s submission, the applicant took the view that at the material time, there had been no legislation forbidding the use in criminal proceedings of information gathered in an enforcement inquiry.

49. The applicant submitted that it transpired from the Bailiff’s submission of 15 May 2000 to the District Court in a separate enforcement procedure that he had been in close contact with the police on this matter before the applicant had been summoned to appear before the Bailiff in June 2000 and that he had aimed at discovering the applicant’s assets while the criminal investigation had lasted. In his submission of 5 July 2000 to the District Court, in another enforcement procedure, the Bailiff had in fact stated to the court that the criminal investigation and the enforcement procedure related to the same matter.

50. The applicant argued that the creditors requesting enforcement had a right to the information provided to the Bailiff and that they could have made use of it in the pending criminal proceedings.

51. The applicant submitted that effective enforcement worked as follows. Creditors had a right to have the debtor summoned to appear before the Bailiff, who could force the debtor to give necessary information about his assets whereupon enforcement could be executed. If the debtor failed to fulfil his obligations he could be charged with the offence of debtor's fraud. The issue in the present case was not whether the applicant had a right to remain silent in the enforcement inquiries during the period from 1994 to 1997. The question was whether he had that right in the debt recovery procedure starting on 6 June 2000 when he at the same time had been "charged".

52. The applicant found his case analogous to the case of *Shannon v. the United Kingdom* (no. 6563/03, 4 October 2005). In both cases, the criminal proceedings had been frozen by the authorities. What was relevant was that the authorities were not allowed to use compulsion to obtain information that might incriminate the person concerned in criminal proceedings. For this reason the applicant could complain of an interference with his right not to incriminate himself, even though no self-incriminating evidence, or reliance on a failure to provide information, had been used in other, substantive criminal proceedings.

53. The applicant concluded that the Finnish Government had been after the same information in both sets of proceedings, wishing to obtain information about his assets both through the pre-trial investigation and the debt recovery procedure. As the legislation in place at the material time did not restrict the use of information provided by the debtor in an enforcement inquiry, the applicant could not take the risk that the Bailiff would forward any incriminating information. What was more, the Bailiff and the police had co-operated in his case and the creditors could have made use in the criminal proceedings of information provided in the enforcement inquiry.

54. The Government submitted that in an enforcement inquiry, the debtor was by law under an obligation to provide the information required. However, the debtor enjoyed effective protection against criminal charges that may be related to such information. The applicant had not alleged that any incriminating information had been used against him in criminal proceedings. The question is whether the present case concerned the use of compulsion for the purpose of obtaining information which might incriminate the person concerned in pending or anticipated criminal proceedings against him (see *Weh v. Austria*, cited above, §§ 41-44). An enforcement inquiry had no connection to criminal proceedings. This was also evident from the legislation hindering the use of information gathered in connection with an enforcement inquiry for any other purpose. The use of information obtained within enforcement procedures was prohibited in another context or for a purpose other than that serving the enforcement. Firstly, it resulted from the explicit provisions of the Enforcement Act that an enforcement inquiry may only be carried out to obtain the necessary

information for the purpose of enforcement. The principle according to which any measures must be related to their purpose had also in other respects been applied to enforcement. In accordance with this principle, the Bailiff may only use his powers for their intended purpose. Secondly, his right to transmit information to other authorities, such as investigative authorities, was restricted by Chapter 3, section 34(g), of the Enforcement Act. This meant that the Bailiff could not disclose to prosecuting or investigative authorities information received from the debtor in an enforcement inquiry where the debtor could refuse to give such information in criminal proceedings due to a risk of criminal charges (compare and contrast *Shannon v. United Kingdom*, cited above, §§ 39-40) where it had been open to the investigators to forward information to the police. Thirdly, the minutes from the enforcement inquiry was a confidential document. However, creditors who had applied for enforcement had, as parties to the debt recovery procedure, the right of access to the minutes. Section 23 of the Openness of Government Activities Act, however, meant that the creditor could use such information, for example for the purpose of instituting action for the recovery of assets, but it could not be used for the purpose of bringing charges against the debtor. It must be emphasised that the applicant had not been present when the enforcement inquiry was to be made. Thus, he gave no information whatsoever and consequently, no such information could be used against him. The mere fact that the applicant failed to arrive at the Bailiff's office, thus not replying to any possible questions - whether or not allegedly having any relevance to the present examination - motivated the administrative fine (see *Allen v. the United Kingdom* (dec.), no. 76574/01, ECHR 2002-VIII). The Supreme Court noted in its judgment that the applicant alleged that the information from the enforcement inquiry would be used against him in the criminal investigation. The Supreme Court, however, found that this would be against the law, noting that according to the Bailiff, the inquiry would solely serve the purpose defined in the Enforcement Act. There had been no use of compulsion for the purposes of obtaining information which might incriminate the applicant in pending or anticipated criminal proceedings.

55. The Government submitted that, contrary to the applicant's allegation, an enforcement inquiry was not carried out on request by the creditor, who could only request enforcement, but it was for the Bailiff to decide whether an enforcement inquiry was necessary. Also contrary to the applicant's allegation that the Government had referred to legislation from 2004 and therefore irrelevant to his case when stating that the Bailiff had no right to forward information to the police in order for that information to be used in the pre-trial investigation, the Government submitted that the law in force at the relevant time also restricted the use of information gathered in the enforcement procedure (section 34(g) of the Enforcement Act (Act no. 649/1999, see paragraph 27 above). As to the allegation that the

Bailiff and the police had been co-operating, the applicant had not shown that the aim of the enforcement inquiry was - contrary to the law - to obtain evidence for the criminal proceedings. As to the applicant's view that the creditors could have used in the criminal proceedings information received by the Bailiff, the Government argued that the creditors had no right to use any information in such a way.

56. The Government took the view that the case could be distinguished from the case of *Shannon v. the United Kingdom* (cited above) as the facts differed. In *Shannon* there was an investigation into whether any person had benefited from theft or false accounting, contributing to the resources of a proscribed organisation or from contraventions of betting regulations, or tracing and confiscation of proceeds of criminal conduct, whereas in the applicant's case assets were sought for the collection of debts. In *Shannon* the Court noted that if the applicant had attended the interview and if he had subsequently wished to prevent the use of the information in criminal proceedings, it would have been open to the investigators to forward information to the police. This manner of proceeding was not possible under Finnish law. The Court also noted that information obtained from the applicant at an interview could have been used at a subsequent criminal trial if he had relied on evidence inconsistent with this information. This was not allowed under Finnish law either.

57. Finally, the Government submitted that the purpose of an enforcement inquiry was by law simply to acquire information about seizable property in order to collect debts, not to acquire evidence for the purposes of criminal proceedings. Execution presupposed that the debtor was obliged to provide the Bailiff with information concerning his assets. The Bailiff did not have the right to give any incriminating information to the police. Nor did the creditors have a right to use such information in criminal proceedings against the debtor. In no case had the debtor the right to refuse to attend the enforcement inquiry.

## 2. *The Court's assessment*

### A. *Applicability of Article 6 of the Convention*

58. The Court reiterates at the outset that in proceedings originating in an individual application it has to confine itself, as far as possible, to an examination of the concrete case before it (see *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, § 35). Accordingly, what is at stake in the present case is not the fairness of the proceedings which were instituted against the applicant as such. Rather, the Court is called upon to examine whether or not the imposition of a fine on the applicant for having failed to provide certain information complied with the requirements of the Convention when at the same time he was subject to a criminal investigation. It follows that the Court is not deciding in the present case the

issue of whether a State can oblige a debtor to attend an enforcement inquiry and to give information for the sole purpose of securing enforcement of payment of debts.

59. The Court notes that the present case concerns solely the use of coercion to obtain information and not the use made in criminal proceedings against the applicant of statements made during the enforcement inquiry. It is not known whether such proceedings have been instituted before a court.

60. The Court reiterates its case-law on the use of coercion to obtain information: although not specifically mentioned in Article 6 of the Convention, the rights relied on by the applicant, the right to silence and the right not to incriminate oneself, are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6. Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6. The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In this sense the right in question is closely linked to the presumption of innocence contained in Article 6 § 2 of the Convention (see *Saunders v. the United Kingdom*, cited above, § 68).

61. The Court observes that the applicant complained under Article 6 of the Convention about having been punished, through the application of Chapter 3, sections 34(d) and 40, of the Enforcement Act, for relying on his rights to silence and against self-incrimination.

62. The Court points out that the autonomous meaning of the expression “charge” in Article 6 § 1 of the Convention means that a person can be considered to have been “charged” for the purposes of that Article when that individual’s situation has been “substantially affected” (see *Serves v. France*, 20 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). In the present case, a pre-trial investigation had been opened into whether the applicant was guilty of having provided false accounts of his assets in enforcement inquiries and bankruptcy proceedings in 1994-1997 (see paragraph 6 above). The applicant was therefore “charged” with having previously given false accounts of his assets at the time when coercion was used to obtain information from him in the enforcement inquiry.

63. It is however also true that, while the applicant was so charged within the meaning of Article 6 when the coercion was used against him, the public prosecutor has not yet preferred charges against him. The Government conclude from this that the right not to incriminate oneself cannot be at issue in the present case because, in the event, there have been no substantive proceedings in which the evidence could have been used in

an incriminating way. The Court is not so convinced for the following reasons.

64. While, for example, an accused's acquittal in general precludes that person from claiming to be a victim of a violation of the procedural guarantees of Article 6 (see, for example, *Byrn v. Denmark*, application no. 13156/87, Commission decision of 1 July 1992, Decisions and Reports 73, p. 5), the Court notes that this principle has been refined in certain circumstances. In the case of *Alenet de Ribemont v. France* (10 February 1995, § 35, Series A no. 308) the Court explained this refinement, pointing out that the Convention must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory. Applying this approach to the present case, the Court observes that, if the applicant were unable to rely on Article 6, the waiving of charges or his acquittal in the substantive proceedings would exclude any consideration under Article 6 of his complaint that he had already been punished for having defended what he considered to be his rights guaranteed by Article 6 of the Convention. The Court points out that in previous cases it has expressly found that there is no requirement for allegedly incriminating evidence obtained by coercion to be actually used in criminal proceedings before the right not to incriminate oneself applies. In particular, in the case of *Heaney and McGuinness v. Ireland* (no. 34720/97, §§ 43-46, ECHR 2000-XII) it found that the applicants could rely on Article 6 §§ 1 and 2 in respect of their conviction and imprisonment for failing to reply to questions, even though they were subsequently acquitted of the underlying offence. Indeed, in the case of *Funke v. France* (cited above, §§ 39-40), the Court found a violation of the right not to incriminate oneself even though no underlying proceedings were brought, and by the time of the Strasbourg proceedings none could be.

65. The Court finds that the applicant can rely on Article 6 § 1 under its criminal head in respect of the imposition of an administrative fine under the Enforcement Act in his complaint about an interference with his right not to incriminate himself, even though no self-incriminating evidence, or as in this case, reliance on a failure to provide information has been used in other, substantive criminal proceedings. The Court also finds that the friendly settlement reached with the creditors lacks relevance to the present case (see paragraph 17 above). It notes that the settlement only concerned the applicant's situation with respect to the creditors and had no bearing on his requirement to pay the fine which had been imposed on him by the District Court as a result of his refusal to co-operate. The applicant's victim status is accordingly not affected by the friendly settlement.

66. For these reasons the Court dismisses the Government's various preliminary objections (see paragraph 45 above).

### **B. Compliance with Article 6 § 1 of the Convention**

67. The applicable principles have been outlined in, for example, the case of *O'Halloran and Francis v. the United Kingdom* [GC], (nos. 15809/02 and 25624/02, ECHR 2007-...).

68. Obligations to inform the authorities are a common feature of the Contracting States' legal orders and may concern a wide range of issues (see for instance, regarding the obligation to reveal one's identity to the police in certain situations, *Vasileva v. Denmark*, no. 52792/99, § 34, 25 September 2003) or to produce information for the purposes of taxation (see *Allen v. the United Kingdom*, cited above). The obligation to disclose income and capital for the purposes of the calculation and assessment of tax, for example, is a common feature of the taxation systems of Contracting States and it would be difficult to envisage them functioning effectively without it.

69. As to a justification for the coercive measures imposed on the applicant in the debt recovery procedure, the Court points out that not all coercive measures give rise to the conclusion of an unjustified interference with the right not to incriminate oneself. In *Saunders*, for example, the Court listed types of material which exist independently of the will of a suspect and which fall outside the scope of the right (such as documents acquired pursuant to a warrant, breath, blood, DNA and urine samples – see the *Saunders* judgment cited above, § 69). In other cases, where no proceedings (other than the “coercive” proceedings) were pending or anticipated, the Court found no violation of the right not to incriminate oneself (see the *Weh* judgment and the *Allen* decision, both cited above).

70. As to the Government's argument that notwithstanding the alleged risk of self-incrimination the applicant should have appeared at the enforcement inquiry, the Court notes that the applicant attended the first enforcement inquiry and, relying on his rights under the Convention, refused to answer questions. When the Bailiff repeated the order, the applicant refused to attend but sent a letter maintaining his reasons for his refusing to give information. Without prejudice to the question whether the applicant was obliged to attend the enforcement inquiry, the Court considers the distinction made by the Government technical. What the Bailiff sought to achieve was that the applicant produce information, he did not seek to secure his presence for any other reason.

71. The Court must give due weight to the fact that the Finnish Supreme Court did not deny the applicant's argument that the pre-trial investigation and the enforcement inquiry concerned the same facts. The dissenting opinion of Justice M.A. is clear on this point, stating expressly that the facts in issue were the same. While it is not for the Court to speculate about whether or not the applicant's assets were the same at the material time as during the period from 1994 to 1997, the applicant could not rule out that, if it transpired from his declaration that he had assets which had not been

declared in the previous enforcement inquiries and bankruptcy proceedings, he might be charged with the offence of debtor's fraud (compare *J.B. v. Switzerland*, no. 31827/96, § 66, ECHR 2001-III).

72. The Government pointed out that the obligation to provide information in the enforcement inquiry should be considered against the background of the protection by the provisions on confidentiality of any incriminating information received. The Court notes that it is true that the Bailiff was bound by professional secrecy. However, it is not apparent that the creditors applying for enforcement were prohibited from using any information received to their personal benefit in the pending criminal proceedings. Thus, the application of the Openness of Government Activities Act could not change the choice presented by Chapter 3, section 34(d), of the Enforcement Act: either the applicant provided the information requested or he faced the imposition of an administrative fine. The Court also notes that the Government did not refer to any domestic case-law which would have authoritatively excluded the later admission in evidence against the applicant of any statements made by him in the enforcement inquiry.

73. Accordingly, the Court finds that the "degree of compulsion" imposed on the applicant by the application of Chapter 3, section 34(d), of the Enforcement Act with a view to compelling him to provide information in the enforcement inquiry destroyed the very essence of his privilege against self-incrimination and his right to remain silent as a pre-trial investigation had been opened against him and both the enforcement procedure and the pre-trial investigation concerned the same facts (compare *Shannon v. United Kingdom*, cited above, § 41).

74. As to the concerns detailed by the Government regarding the effective functioning of the enforcement procedure, the Court notes that in the case of *Saunders v. the United Kingdom* (cited above, § 74) it found that the argument of the respondent government that the complexity of corporate fraud and the vital public interest in the investigation of such fraud and the punishment of those responsible could not justify such a marked departure from one of the basic principles of a fair procedure. It considered that the general requirements of fairness contained in Article 6, including the right not to incriminate oneself, "apply to criminal proceedings in respect of all types of criminal offences without distinction from the most simple to the most complex". It concluded that the public interest could not be relied on to justify the use of answers compulsorily obtained in a non-judicial investigation to incriminate the accused during the trial proceedings. Likewise, in the case of *Funke v. France* (cited above, § 44) the special features of customs law were found insufficient by the Court to justify such an infringement of the right of anyone charged with a criminal offence, within the autonomous meaning of that expression in Article 6, to remain silent and not to incriminate himself.

75. The Court, accordingly, finds that the concerns for the effective functioning of the debt recovery procedure relied on by the Finnish Government cannot justify a provision which extinguishes the very essence of the applicant's rights to silence and against self-incrimination guaranteed by the Convention. This was the situation in the applicant's case at the material time. The mechanism introduced by a subsequent amendment to the legislation prohibiting the use of incriminating information in order to circumvent provisions on testimony or in order to have the debtor charged with a criminal offence, came too late for the applicant (see paragraph 34 above).

76. The Court concludes, therefore, that there has been a violation of the applicant's right to silence and his right not to incriminate himself guaranteed by Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. Under the head of pecuniary damage the applicant claimed 8,409.40 euros (EUR) for the administrative fine imposed on him. Under the head of non-pecuniary damage he claimed EUR 10,000 for distress and frustration arising from the alleged violation.

79. The Government argued that the first claim should be rejected on the ground that the applicant has not paid the fine. Were the Court to find a violation, the Government considered that the compensation for non-pecuniary damages should not exceed EUR 1,500.

80. The Court notes that the applicant has not paid the fine; it therefore rejects the claim for pecuniary damages. As to the claim for non-pecuniary damage, it considers that in the circumstances of this case the finding of a violation constitutes sufficient just satisfaction.

### B. Costs and expenses

81. The applicant also claimed EUR 9,724.74 for costs incurred in the relevant debt recovery procedure, EUR 808.87 for those incurred in a subsequent enforcement procedure and EUR 8,413.78 for costs incurred before the Court.

82. The Government submitted that invoice no. 4053 contained some unnecessary costs, such as the use of a consulting firm for the writing of observations (EUR 3,629.50). At any rate, the hourly rate and the hours claimed appeared excessive. Also invoice no. 3729 included costs for the use of a courier service for sending the observations (EUR 128.72) and invoice no. 4053 mentioned telephone conversations between the courier service and the Court. These sums could not be considered necessary. There was no specification attached to invoice no. 3729 concerning the writing of the application and related negotiations during the period from 2 May to 16 June 2003, but only a lump sum of EUR 1,300. Thus, the Government left it to the Court's discretion whether the applicant had submitted such documents to support his claims for costs and expenses as were normally required. The total amount of compensation for costs and expenses should not exceed EUR 6,000 (inclusive of VAT).

83. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, *among other authorities*, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63). 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 total sum of EUR 12,000 (inclusive of VAT) for costs and expenses in the domestic proceedings and the proceedings before the Court.

### C. Default interest

84. 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. *Joins* to the merits the Government's preliminary objections under Articles 34 and 35 of the Convention and *declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and *dismisses* in consequence the Government's preliminary objections;
3. *Holds* that the finding of violation of the Convention constitutes in itself sufficient just satisfaction for the alleged non-pecuniary damage;

4. *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 EUR 12,000 (twelve thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

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

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

Done in English, and notified in writing on 21 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President