

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

FIFTH SECTION

CASE OF GÖTHLIN v. SWEDEN

(Application no. 8307/11)

JUDGMENT

STRASBOURG

16 October 2014

FINAL

16/02/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Göthlin v. Sweden,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Vincent A. De Gaetano,
André Potocki,
Helena Jäderblom, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 16 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 8307/11) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swedish national, Mr Sven Olof Göthlin ("the applicant"), on 9 November 2010.

2. The applicant, who had been granted legal aid, was represented by Mr A. Grahn, a lawyer practising in Falun. The Swedish Government ("the Government") were represented by their Agent, Mr O. Widgren, of the Ministry for Foreign Affairs.

3. The applicant complained, in particular, about the proportionality of the detention order under Article 5 § 1 of the Convention.

4. On 12 September 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1943 and lives in Sundborn.

A. The writ of execution

6. On 8 September 2009 the Enforcement Authority (*Kronofogdemyndigheten*) in Falun issued a writ of execution (*beslut om*

utmätning) attaching a mobile sawmill belonging to the applicant. It noted that the applicant's total enforceable tax debts amounted to SEK 246,199 (roughly EUR 27,300) and that the sawmill had an estimated value of SEK 300,000 (roughly EUR 33,400). The Authority decided to leave the sawmill in the applicant's possession but informed him that he was not allowed to sell or dispose of it or otherwise make use of it in a way that might negatively affect its value.

7. The applicant appealed against the decision to the District Court (*tingsrätten*) of Falun and also requested the Enforcement Authority to stay the sale of the sawmill while the court considered the case. The request for the interim measure was granted on 29 September 2009.

8. On 1 February 2010 the District Court rejected the applicant's appeal and upheld the writ of execution. The interim measure was consequently also lifted.

9. Upon further appeal by the applicant, both the Svea Court of Appeal (*hovrätten*) and the Supreme Court (*Högsta domstolen*) refused leave to appeal, the latter on 6 May 2010.

B. The applicant's detention

10. On 22 April 2010 the Enforcement Authority contacted the applicant in order to plan the sale of the attached sawmill. In his reply a few days later, the applicant stated that he had removed the sawmill from his property and hidden it. He also submitted a written statement specifying that he had removed and hidden the sawmill, alone when no one else was at home.

11. On 5 May 2010 the Enforcement Authority visited the applicant's property and confirmed that the sawmill was no longer there. The Authority also handed the applicant a summons for questioning on 7 May 2010 on its premises, as well as an injunction in which he was ordered to provide the Authority with the necessary information to be able to recuperate the sawmill. The injunction also informed the applicant that, according to Chapter 4, section 14, of the Enforcement Code (*Utsökningsbalken*), he was duty-bound to give information about his assets and their location. It further informed him of the Authority's intention to ask the District Court to detain him if he did not cooperate.

12. At the questioning, the applicant acknowledged that he knew that the sawmill was attached and that he was not allowed to dispose of it in any way. However, since he considered that the basis for the attachment was wrong, he had decided to hide it. He stated that he took full responsibility for his actions and that nobody but him had been involved or knew where the sawmill was. He refused to give any information about its whereabouts but admitted that he had driven some distance with it around mid-April 2010. He further claimed that it could be only partly in his possession and that he was not sure that he could retrieve it if he wanted to. He stated that

he had even considered setting fire to the sawmill. Meanwhile, the applicant's wife was also questioned. She informed the Enforcement Authority that she had no information about where the sawmill was hidden.

13. On 17 May 2010 the Enforcement Authority requested the District Court to detain the applicant because he had refused to cooperate and give the required information. It relied on Chapter 2, section 16, and Chapter 4, section 14, of the Enforcement Code. On the same day, the District Court assigned a public defender for the applicant.

14. The applicant opposed the measure and claimed that it would be in violation of Articles 3 and 5 of the Convention to detain him and that no extraordinary reasons for such a measure existed.

15. On 27 May 2010, after having held an oral hearing, the District Court rejected the Enforcement Authority's request. It first considered that Swedish legislation on this point did not contravene the said provisions in the Convention. The question was whether there were extraordinary reasons to detain the applicant. In this respect, the court noted that the writ of execution had gained legal force on 6 May 2010 when the Supreme Court refused leave to appeal. Thus, the court held, only a short time had passed since the matter had been finally resolved. It further observed that the Enforcement Authority had not resorted to any other measures in order to convince the applicant to reveal the location of the property, such as imposing a conditional fine. Whilst recognising that the applicant so far had been reluctant to give any information about the location of the sawmill, the court found that it could not be ruled out that a less severe coercive measure would alter his attitude. Consequently, the court concluded that currently there did not exist such extraordinary reasons to detain the applicant.

16. The Enforcement Authority appealed to the Court of Appeal, maintaining its claims and adding that, according to the preparatory works of the Enforcement Code, it was only necessary that the debtor had received an injunction but refused to comply with it. It further submitted that having regard to the applicant's stance on the matter, the imposition of a conditional fine would most likely have no effect. Lastly, the Authority stated that it had reported the applicant to the police on the ground that he had committed a breach of an official order when he had removed and hidden the sawmill.

17. The applicant opposed the appeal, maintaining his claims and adding that he considered that, if he were detained, it would amount to imprisonment to obtain a confession. In his view, it would be clearly disproportionate to the aim pursued to detain him.

18. On 28 June 2010 the Court of Appeal quashed the lower court's decision and granted the Enforcement Authority's request. It stated that a debtor had to give necessary information about his assets and failure to do so could result in the debtor being detained, if there were extraordinary reasons for detention. Moreover, it was not necessary to impose a fine

initially. Having regard to the size of the debts, the value of the hidden property and the fact that the applicant had maintained his refusal to reveal its location, the Court of Appeal found that there were extraordinary reasons to detain the applicant and that detention was proportionate to the aim pursued. In reaching its decision, the court found that the measure did not breach the Convention. Lastly, it noted that it should be informed as soon as the applicant had been detained in order to hold a hearing as to the continued detention.

19. The applicant was detained the following day. Consequently, on 30 June 2010, the Court of Appeal held an oral hearing and decided to maintain its earlier decision. At the hearing, the applicant stated that the taxes and the attachment had been imposed on him wrongly and that as long as these errors had not been corrected he would not cooperate to bring back the sawmill. The court reiterated its reasons as stated in its earlier decision and added that the applicant's detention should be reviewed every second week and that he should be released immediately if he revealed the location of the property. Moreover, under no circumstances could the applicant be kept in detention for more than three months.

20. The applicant appealed to the Supreme Court which, on 6 July 2010, refused leave to appeal.

21. On 13 July 2010 the District Court reviewed the applicant's detention and held a new hearing in the case as required by Chapter 2, section 16, of the Enforcement Code. The Enforcement Authority maintained that the applicant should be kept in detention since he still had not given any information about the location of the sawmill. It stated that it had not been able to undertake any investigative measures, since the applicant had stated that he had taken the sawmill far away from his property by car and its whereabouts thus were unknown to the Authority. The applicant, who requested his immediate release, maintained his refusal to give any information about the location of the sawmill and claimed, *inter alia*, that he suffered from high blood pressure and panic anxiety attacks, causing him difficulties sleeping. Moreover, he stated that he had recently been treated for prostate cancer and that he was not allowed to take his normal medication against his panic attacks since it contained narcotic substances. In its decision, the District Court noted that the applicant maintained his refusal to reveal the whereabouts of the sawmill and found, having regard to the proportionality of the measure, that there were extraordinary reasons for the applicant's continued detention. Hence, the District Court decided that he should remain in custody.

22. The applicant appealed to the Court of Appeal which, on 20 July 2010, rejected the appeal. Upon further appeal, the Supreme Court dismissed the appeal since a new decision had already been taken by the District Court at that time.

23. On 27 July 2010 the District Court again reviewed the detention and held a new hearing in the case. The Enforcement Authority maintained its earlier point of view and acknowledged that no investigative measure had been possible due to the applicant's continued refusal to cooperate. The applicant maintained his earlier position and added that he suffered from asthmatic symptoms due to the dry air in custody. Having regard to his age and health problems, he considered that it was clearly disproportionate to prolong his detention. The District Court found that there were still extraordinary reasons for the applicant's continued detention and that it was not disproportionate to the aim pursued. It thus ordered that he should remain in custody.

24. The applicant appealed to the Court of Appeal which, on 2 August 2010, rejected the appeal. On 5 August 2010 the Supreme Court refused leave to appeal.

25. On 9 August 2010 the District Court once again reviewed the detention and held a hearing in the case. The parties maintained their earlier standpoints. The District Court found that continued detention of the applicant would be disproportionate to the measures he had taken. Hence, the District Court concluded that there were no extraordinary reasons for the applicant's continued detention. As a consequence, the District Court ordered his immediate release and the order was implemented the same day.

26. The Enforcement Authority appealed to the Court of Appeal which, on 13 August 2010, rejected the appeal.

27. On 7 September 2010 the Supreme Court dismissed the Enforcement Authority's further appeal and consequently, on 23 September 2010, the District Court struck the case out of its list of cases as the case was closed.

28. As concerns the Enforcement Authority's police report concerning the applicant's alleged breach of an official order pursuant to Chapter 17, section 13, of the Penal Code (*Brottsbalken*), the preliminary investigation was discontinued with reference to provisions on waiver of prosecution (*åtalsunderlåtelse*) on 13 April 2011.

29. On 4 October 2011 the Enforcement Authority decided to revoke the writ of execution concerning the sawmill since it considered that no additional circumstances had emerged that could reveal its location. Furthermore, it was considered that there were no other measures which could produce results to that end.

C. The complaint to the Chancellor of Justice

30. On 26 April 2012 the applicant submitted a claim for damages to the Chancellor of Justice (*Justitiekanslern*), pursuant to the Act on Compensation for Deprivation of Liberty and Other Coercive Measures (*Lagen om ersättning vid frihetsberövande och andra tvångsåtgärder*, 1998:714), in the amount of SEK 80,000 for the suffering he had endured

during the 42 days he was deprived of his liberty. He further demanded to be reimbursed SEK 2,940 for costs which had been deducted from his pension during his time in detention.

31. On 15 October 2012 the Chancellor of Justice rejected the claim. The Chancellor noted that the decision to detain the applicant had been taken by a court of law, in accordance with relevant legal provisions. Moreover, the examination of the case showed no basis for finding that the decision had been taken on erroneous grounds and therefore was incorrect.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. According to Chapter 4, section 14, of the Enforcement Code (*Utsökningsbalken*, 1981:774), a debtor is liable to provide the information about his assets that is needed in the case. The Enforcement Authority may order the debtor to submit a list of his assets and, if necessary, it may appoint an appropriate person to assist the debtor in the preparation of the list. The debtor may also be ordered to confirm in writing, on his honour and faith, the information about his assets that he has provided on questioning or in a list.

33. The preparatory works to this provision (Government Bill 1980/81:8, p. 405) specify that the debtor's liability not only applies to what assets he or she owns but also to their whereabouts. Moreover, this liability applies as long as the matter is under consideration by the Enforcement Authority.

34. It follows from Chapter 2, section 15, of the Enforcement Code that when the Enforcement Authority, in accordance with Chapter 4, section 14, orders the debtor to do or to cease doing something, the Authority may order the imposition of a conditional fine (*vite*) in the amount considered necessary. Issues concerning the confirmation of conditional fines that have been ordered in this manner are considered, upon request by the Enforcement Authority, by the District Court.

35. Chapter 2, section 16, of the Enforcement Code provides that if a debtor does not comply with an order pursuant to Chapter 4, section 14, he or she may be detained if there are extraordinary reasons. Following a request by the Enforcement Authority, the District Court shall examine the issue of detention. The court shall hold an oral hearing to which the Enforcement Authority and the debtor shall be summoned. The provisions of the Code of Judicial Procedure concerning defenders and concerning litigation costs in criminal cases shall apply correspondingly to issues concerning the right to counsel and costs in the case. Following the first hearing, the Court shall, at intervals of at most two weeks, hold hearings in order to consider whether the debtor should still be detained. If there are no longer reasons for detention, the Court shall immediately order the release of the debtor. No one may be kept in detention for longer than three months.

As regards the processing otherwise of matters concerning detention under this provision, the relevant rules in the Code of Judicial Procedure concerning detention of suspected persons shall apply.

36. In this respect, the preparatory works (Government Bill 1980/81:8, p. 246) state that there is no requirement that a conditional fine be imposed before the debtor may be detained pursuant to Chapter 2, section 16, of the Enforcement Code. Provided that extraordinary reasons for detention are considered to be at hand, it is sufficient that the debtor has been served, and has failed to comply with, an order to fulfil his obligations under Chapter 4, section 14, of the Code.

37. According to Chapter 4, section 29, of the Enforcement Code, when attachment has been decided the debtor may not to the detriment of the creditor control the property by a transfer or in any other way, unless the Enforcement Service after hearing the creditor allows this for special reasons.

38. To follow on from this, Chapter 17, section 13, of the Penal Code (*Brottsbalken*, 1962:700) states that a person who unlawfully moves, damages or otherwise disposes of property that has been, *inter alia*, seized or attached shall be convicted of breach of an official order and sentenced to a fine or imprisonment for at most one year.

39. The Code of Judicial Procedure (*Rättegångsbalken*, 1942:740) provides in Chapter 20, section 7, that a prosecutor may waive prosecution (waiver of prosecution, [*åtalsunderlåtelse*]), provided that no compelling public or private interest is disregarded, *inter alia*, if it may be presumed that the offence would not result in a sanction other than a fine or the sanction would be a conditional sentence and special reasons justify waiver of prosecution. Moreover, prosecution may be waived in cases other than those mentioned above if it is manifest by reason of special circumstances that no sanction is required to prevent the suspect from engaging in further criminal activity and that, in view of the circumstances, the institution of a prosecution is not required for other reasons.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

40. The applicant complained that his detention from 29 June 2010 until 9 August 2010 violated Article 5 § 1 of the Convention, which, in its relevant parts, reads 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:

...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

..."

A. Admissibility

41. The Government submitted that the application should be declared inadmissible for non-exhaustion of domestic remedies. They noted that following the rejection of the applicant's claim by the Chancellor of Justice on 15 October 2012, the applicant had not initiated proceedings before the general courts regarding compensation for the alleged violation of the Convention. This option still remained open to him and, in the Government's view, should be used before lodging an application before the Court.

42. The applicant claimed that he must be considered to have exhausted domestic remedies. He had argued that his detention was in violation of the Convention during the proceedings before the domestic courts and he had also lodged a complaint concerning his detention with the Chancellor of Justice.

43. The Court reiterates that the purpose of the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in the domestic system in respect of the alleged breach. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, with further references).

44. In this respect the Court notes that, in Sweden, it is possible to lodge a complaint with the Chancellor of Justice and/or sue the State before the ordinary courts as regards alleged violations of the Convention and that the Court has found this to constitute an effective remedy. Thus, potential applicants may, as a general rule, be expected to lodge a domestic claim to seek compensation for alleged breaches of the Convention before applying to the Court (see, *Eriksson v. Sweden*, no. 60437/08, §§ 42-53, 12 April 2012; *Ruminski v. Sweden* (dec.), no. 10404/10, 21 May 2013; and *Marinkovic v. Sweden* (dec.), no. 43570/10, § 39, 10 December 2013).

45. However, the Court has also established that, if more than one potentially effective remedy is available, an applicant is only required to have used one remedy of his or her own choice (see, amongst other authorities, *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999, and *Karakó v. Hungary*, no. 39311/05, § 14, 28 April 2009). Consequently, applicants may choose which of the two avenues available in Sweden to take (see *Ruminski*, cited above, § 38, and *Marinkovic*, cited above, § 40).

46. The Court observes that the applicant lodged a claim for compensation regarding his detention with the Chancellor of Justice and that this claim was rejected on 15 October 2012. It follows that the applicant must be considered to have exhausted domestic remedies in this respect and the Government's objection must consequently be dismissed.

47. Furthermore, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

(a) The applicant

48. The applicant maintained that his deprivation of liberty was in violation of Article 5 § 1 of the Convention. Although he acknowledged that his detention had been carried out in accordance with the law, he contested that it had been proportionate to the aim pursued. In the applicant's view, the authorities should have resorted to less intrusive measures before using the most intrusive measure available. Moreover, during his detention, he was not interrogated or asked to submit any information and neither was his family or anyone else. Furthermore, the Enforcement Authority had not investigated the whereabouts of the sawmill; instead it had stated that it had no intention of searching for it. In this respect the applicant admitted to having hidden it at an unknown location far away from Falun, the closest city. However, detaining him had served no purpose since there was no risk of him hindering the investigation to find the sawmill. Thus, the applicant submitted that the sole reason for the detention was to force him to reveal the location of the property and that this measure was clearly disproportionate to that aim.

(b) The Government

49. The Government submitted that the applicant's detention fell within Article 5 § 1 (b) of the Convention and that it had been consistent with its requirements of lawfulness and proportionality.

50. As concerned the lawfulness, they noted that the relevant provisions in the Enforcement Code were clear and that the applicant's detention was in conformity with a procedure prescribed in law and subject to appeal and review. The Government underlined that the legal ground for his detention was his failure to fulfil his obligation to provide information about the property and that, in their view, this contained no punitive elements.

51. As regards the proportionality of the applicant's detention, the Government first noted that the domestic courts had explicitly assessed the proportionality of the measure in their decisions. They then submitted that the applicant had been detained in order to induce him to provide information vital for the enforcement of the writ of execution relating to a substantial tax debt. It was essential that such decisions could be enforced in order to secure the payment of taxes and it was therefore a legitimate aim of great importance.

52. The Government further argued that the applicant had obstructed justice by not complying with the writ of execution and the injunction to provide information about the sawmill, fully aware that his action was against the law and might lead to his detention. In their view, it would not have been possible to induce the applicant to provide the information needed with a less intrusive measure than detention since he had refused to submit any information for nearly two months after the writ of execution had gained legal force. Moreover, the Government stated that it had not emerged that the applicant had any other assets which could be attached to cover a conditional fine.

53. Furthermore, the Government submitted that consideration must be given to the fact that the applicant, during the domestic proceedings, had stated that he had removed the attached property to a fairly distant location in order to make it impossible for the Enforcement Authority to enforce the writ of execution. It would therefore have been virtually impossible for the Enforcement Authority to find the property without allocating an unreasonable amount of resources for this purpose. Other investigative measures, *inter alia,* an asset investigation and formal questioning of the applicant and his wife, had been conducted and thus no other reasonable and potentially effective measures, besides detention, remained.

54. As regards the length of the detention, the Government noted that the applicant had been detained for 42 days, that is less than half of the maximum detention time permitted by law. They also claimed that certain restrictions had to be accepted by a detainee and that it was unavoidable that this could give rise to certain inconvenience without the measure thereby becoming disproportionate. Thus, the Government concluded that the applicant's detention had been consistent with the principle of proportionality contained in Article 5 § 1 of the Convention.

2. The Court's assessment

55. The Court notes from the outset that it is not disputed in the case that the applicant was "deprived of his liberty" within the meaning of Article 5 § 1 of the Convention. Moreover, the parties also agree that the measure was lawful under domestic law, namely Chapter 4, section 14, and Chapter 2, section 16, of the Enforcement Code. The Court further observes that the applicant's detention as such was in accordance with a procedure prescribed by Swedish law. He was provided with legal counsel, his detention was reviewed, and an oral hearing was held every second week and each time he could, and did, appeal to the appellate courts against the District Court's decision.

56. The Government have further submitted that the applicant's detention should be considered under Article 5 § 1 (b) since the applicant refused to comply with the writ of execution and the injunction to provide information about the whereabouts of the sawmill. The applicant has not objected to this classification in his observations and the Court finds that the complaint should indeed be examined under this sub-paragraph.

57. In this respect, the Court reiterates that detention is authorised under sub-paragraph (b) of Article 5 § 1 only to "secure the fulfilment" of the obligation prescribed by law. It follows that, at the very least, there must be an unfulfilled obligation incumbent on the person concerned and the arrest and detention must be for the purpose of securing its fulfilment and not punitive in character. As soon as the relevant obligation has been fulfilled, the basis for detention under Article 5 § 1 (b) ceases to exist (see *Vasileva v. Denmark*, no. 52792/99, § 36, 25 September 2003).

58. Moreover, a balance must be struck between the importance in a democratic society of securing the immediate fulfilment of the obligation in question, and the importance of the right to liberty. The duration of detention is also a relevant factor in drawing such a balance (see, *inter alia*, *Vasileva*, cited above, §37, with further references).

59. In the present case, the Court notes that the writ of execution attaching the applicant's sawmill gained legal force when his appeal to the Supreme Court was refused on 6 May 2010. It further observes that the Enforcement Authority summoned the applicant for questioning on 7 May 2010 and then also handed him an injunction ordering him to provide the Authority with the necessary information to be able to recuperate the sawmill and sell it. Moreover, the injunction explicitly stated that, according to Chapter 4, section 14, of the Enforcement Code, the applicant was duty-bound to give the required information, failing which the Authority intended to request the District Court to detain him. It is thus clear to the Court that the applicant was detained for the purpose of securing the fulfilment of the obligation prescribed by law, namely, to tell the Enforcement Authority where he had hidden the sawmill. The circumstances of the case do not reveal that this measure was of punitive or

other character. Here, it finds it worth emphasising that the preliminary investigation initiated against the applicant, and later discontinued, concerned the criminal act of hiding the sawmill and did not relate to the applicant's refusal to disclose its location.

60. Moreover, it is clear from Chapter 2, section 16, of the Enforcement Code that if the applicant had provided the information necessary to locate the sawmill, he would have been immediately released from detention, as required by Article 5 § 1 (b).

61. Thus, what remains for the Court is to decide whether the measure of depriving the applicant of his liberty was proportionate to the aim pursued by the authorities, namely to get information about where the attached property was located. In this assessment the Court considers the following points relevant: the nature of the obligation arising from the relevant legislation including its underlying object and purpose; the person being detained and the particular circumstances leading to detention; and the length of the detention (see, *Vasileva*, cited above, § 38).

62. In so far as concerns the nature of the obligation and its underlying object and purpose, the Court reiterates that the applicant was arrested exclusively because he consistently refused to give information about the attached property, thereby failing to fulfil the obligation prescribed in Chapter 4, section 14, of the Enforcement Code. However, the underlying object and purpose of the obligation can be found in the decision to attach and sell the applicant's property in order to recover his quite substantial tax debt to the State and thereby secure the payment of taxes. In this context the Court underlines that Article 1 of Protocol No. 1 to the Convention concedes wide powers to the State "to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties" (see also *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 59, Series A no. 306-B). Thus, it is clear to the Court that measures of that kind, taken in order to facilitate the enforcement of tax debts and secure tax revenue to the State, are in the general interest and of significant importance, especially when, like in the present case, the debtor has sufficient assets to cover the debt but does not want to use them to pay.

63. Turning to the person being detained and the particular circumstances leading to the detention, the Court notes that the applicant was 67 years old at the time of his detention. It further notes that the applicant has claimed that he had certain health problems for which he was taking medication when detained. However, he has submitted no medical certificates or other evidence to substantiate this claim, nor is there any evidence that he complained thereof to the prison authorities. Thus, on the basis of the case-file, the Court does not find the applicant to have been particularly vulnerable or otherwise unfit to be detained. As to the particular circumstances leading to the detention, the Court first observes that the

applicant acknowledged that he had hidden the sawmill and that he underlined that he had done so by himself and that his wife and other family members did not know its whereabouts. Moreover, the Enforcement Authority visited the applicant's home to look for the sawmill and found that it was missing. It further questioned both the applicant and his wife without result, having informed the applicant of his obligation to cooperate. It had also served the injunction upon him, which made it clear that the Authority intended to take further action against him if he failed to cooperate, by requesting the District Court to detain him. Thus, the applicant was aware of the possible consequences if he insisted on not fulfilling the legal obligation to give the required information.

64. Here, the Court notes that the applicant has argued that the authorities should have tried less intrusive measures before detaining him, such as the imposition of a conditional fine. While the Court agrees that less intrusive measures in principle should be resorted to first, it observes that in the present case the applicant was in the situation at hand because he did not have money to pay his tax debts and, as stated by the Government, he had no other assets to cover further debts. In the Court's view, ordering the applicant to comply with his obligation to cooperate with the Enforcement Authority by imposing a conditional fine would in these circumstances have served no purpose, in particular as, during the questioning on 7 May 2010, he had stated that he took full responsibility for his actions and that he refused to cooperate with the Enforcement Authority, knowing that the refusal might lead to him being detained.

65. Lastly, the Court notes that the detention lasted for 42 days, which must be considered a relatively long time (see, *Gatt v. Malta*, no. 28221/08, ECHR 2010, with further references). However, it must be taken into account that the applicant would have been released earlier, and immediately, if he had fulfilled the obligation incumbent on him. Moreover, the lawfulness and reasonableness of his continued detention was reviewed every other week by the District Court, where the applicant was heard in person and the applicant could, and did, appeal against its decision to the appellate courts. Furthermore, according to the relevant provision in domestic law, the detention could have continued up to three months if the District Court had not found that it was no longer justified to keep the applicant detained, in its decision of 9 August 2010.

66. The applicant has claimed that the duration was excessive having regard to the fact that the Enforcement Authority took no action during this period to locate the sawmill, such as questioning him and his family members or searching for it. The Court notes, however, that the applicant had been questioned but had refused to give any information. Moreover, he had expressly stated that he alone was responsible for removing the property and that no one in his family knew of its whereabouts. Still, his wife had also been questioned on 7 May 2010 but had said that she did not know

where the sawmill was. In these circumstances, the Court cannot discern any reason for the Enforcement Authority to repeat the questioning, in particular as the applicant was heard before the District Court every other week when his detention was reviewed and he thus had the possibility to give the required information on these occasions or, for that matter, at any moment during his detention. As concerns an obligation on the Enforcement Authority to search for the property, the Court observes that the applicant had told the Authority, during questioning on 7 May 2010, that he had driven some distance with it and that he was not sure if he could retrieve it if he wanted to. With so little information, it is difficult to imagine that the Enforcement Authority would have been able to carry out any useful or effective search for the property.

67. The foregoing considerations are sufficient to enable the Court to conclude that in the circumstances of the present case, the measure to detain the applicant was in accordance with Article 5 § 1 (b) as it was proportionate to the legitimate aim to induce him to fulfil his legal obligation to cooperate with the authorities and give them the necessary information about his property so that they could secure the payment of his tax debt.

68. There has accordingly been no violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

69. The applicant further complained that the conditions of his detention amounted to inhuman and degrading treatment, contrary to Article 3 of the Convention. This provision reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

70. The Government contested that argument.

71. The Court notes that the applicant claims that he was held in isolation for long periods, without being allowed his normal medication, and that he was detained with dangerous criminals. However, he has submitted no evidence to the Court to substantiate his claims or to show that he complained about these matters to the personnel at the detention centre or to the Swedish Prison and Probation Service (*Kriminalvården*).

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 5 § 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 16 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Mark Villiger
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Power-Forde is annexed to this judgment.

M.V.
C.W.

CONCURRING OPINION OF JUDGE POWER-FORDE

1. It was with some unease that I cast my vote in the instant case. There is something disconcerting about the imprisonment of a sixty-seven-year-old man with medical complications for failure to pay a tax debt.

2. The Court of Appeal on the 28th of June 2010 found that there were 'extraordinary reasons' that warranted the detention of the applicant. Those reasons were said to be (i) the size of the debt, (ii) the value of the hidden property and (iii) the fact that the applicant had maintained his refusal to reveal the property's location (§ 18).

3. The first review of his detention took place on 30 June 2010 (see § 19). The court reiterated its reasons for detaining the applicant. A second review took place on 13 July 2010. On this date, the applicant, in seeking to be released, informed the district court that he suffered from high blood pressure, panic and anxiety attacks which caused him difficulties in sleeping. He apprised the court of the fact that he had recently been treated for prostate cancer and that he was not permitted to take his normal medication for panic attacks. Somewhat disconcertingly, the district court did not address the applicant's medical condition. It maintained that there remained 'extraordinary reasons' for the applicant's continued detention (see § 21).

4. A third review of detention took place on 27 July 2010. An additional medical complication exacerbated by incarceration was brought to the district court's attention, namely, the applicant's asthmatic condition. Once again, he called attention to his general health problems and submitted that, having regard to his age and his medical condition, his detention was disproportionate to the aim pursued. The district court failed, again, to consider and/or respond to these submissions. It continued to find that there were 'extraordinary reasons' for the applicant's detention.

5. On 9 August 2010 a fourth review took place and the district court concluded that there were no longer 'extraordinary reasons' for the applicant's detention. To where, one wonders, did those 'extraordinary reasons' that had justified his incarceration for 42 days disappear? The size of the debt, the value of the hidden property, and the applicant's attitude to disclosing its whereabouts had not changed.

6. I accept that the applicant was obliged to obey the law and that his own conduct contributed to the events that unfolded. Nevertheless, having regard to the foregoing and, in particular, to the failure of the domestic courts to address issues pertaining to the applicant's health, I cannot but have doubts about the proportionality of the coercive measure deployed in this case.