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

FOURTH SECTION

CASE OF BÄCK v. FINLAND

(Application no. 37598/97)

JUDGMENT

STRASBOURG

20 July 2004

FINAL

20/10/2004

In the case of Bäck v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 1 July 2003 and 29 June 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 37598/97) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Mr Tomas Bäck ("the applicant"), on 10 July 1997.

2. The applicant, who had been granted legal aid, was represented by Mr C. Näsman, a lawyer practising in Vasa. The Finnish Government ("the Government") were represented by their Agent, Mr A. Kosonen, Director at the Ministry of Foreign Affairs.

3. The applicant alleged a violation of his property rights under Article 1 of Protocol No. 1 on account of the almost total extinction – through a debt adjustment – of a claim he had had against another individual.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. By a decision of 22 October 2002, the Chamber declared the application partly admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1) and replied to those of the other party.

9. On 25 March 2003 the Court decided to hold a hearing on the merits (Rule 54 § 3).

10. In April 2003 third-party comments were received from the Governments of the Netherlands, Norway, Sweden and the United Kingdom, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The parties replied to those comments (Rule 44 § 5). The third-party comments are summarised below.

11. The hearing on the merits took place in public in the Human Rights Building, Strasbourg, on 1 July 2003 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr A. KOSONEN, Director, Ministry of Foreign Affairs, *Agent*,
Mr J. HEISKANEN, Special Adviser, Ministry of Justice, *Adviser*;

(b) *for the applicant*
Mr C. NÄSMAN, member of the Bar, *Counsel*.

The applicant also attended the hearing.

The Court heard addresses by Mr Kosonen and Mr Näsman.

12. Mr L. Garlicki later replaced Mr M. Fischbach, who was unable to take part in the further consideration of the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

13. The applicant was born in 1957 and lives in Karperö. In 1988 and 1989 he and another person contracted to guarantee a bank loan granted to N. As N. was eventually unable to meet the reimbursement conditions, the applicant and his co-guarantor each paid the bank approximately 113,000 Finnish markkas (FIM) (approximately 19,000 euros (EUR)), excluding interest, in 1991.

14. In 1995 N. applied for a debt adjustment in accordance with the 1993 Adjustment of Debts (Private Individuals) Act (*laki yksityishenkilön velkajärjestelystä, lag om skuldsanering för privatpersoner* 57/1993 – "the 1993 Act") and proposed a payment schedule for the court's approval.

The applicant opposed the request, arguing that such an adjustment could lead to an unjustified deprivation of his property, consisting of his claim against N. The applicant argued that N. was young and healthy and could be expected to be able to reimburse his debts to the guarantors in due course. In the alternative, the applicant requested that the adjustment of N.'s debts be postponed.

15. On 19 April 1996, after N. had found employment, the District Court (*käräjäoikeus, tingsrätten*) of Korsholm granted him a debt adjustment and adopted a payment schedule which was to take effect on 1 June 1996 and remain in force for five years. The applicant's claim against N. was reduced to FIM 2,168 (EUR 365). The District Court considered that N.'s solvency had been significantly weakened on account of his previous unemployment and unsuccessful business activities. Given that N. was already able to reimburse FIM 420 (EUR 71) per month to his creditors at the time of the court's examination, it was not possible under the 1993 Act to postpone the entry into force of the payment schedule. The District Court gave the following reasons:

> "... With reference to Tomas Bäck's submission, the District Court notes that under the Adjustment of Debts (Private Individuals) Act it is possible to reduce the amount of a claim and even to write a claim off. Considering that a guarantee always involves a risk as to the possible obligation to pay the creditor and the possibility of recourse against the principal debtor, the District Court finds that the claim in question cannot be considered as a possession that would enjoy inviolable protection under the European Convention on Human Rights. ..."

16. Among N.'s seventy other creditors was F. bank, with a claim amounting to FIM 231,722 (EUR 38,973), of which the District Court retained FIM 4,510 (EUR 759) as part of his payment schedule.

17. The applicant appealed, contending that the almost total extinction of his claim against N. violated his property rights under the Convention. No legislation on debt adjustment had existed at the time when the applicant had contracted to guarantee N.'s debts. Furthermore, the extreme step of writing off his claim discriminated against him as a private creditor who, unlike creditor banks, would receive no compensation from the State.

18. On 14 October 1996 the Vasa Court of Appeal (*hovioikeus, hovrätten*) upheld the District Court's decision and its reasoning. The applicant was refused leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*) on 19 February 1997.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The 1993 Act was enacted during a recession in the Finnish economy, one of its purposes being to reduce the high volume of unpaid debts owing to banks. The banks received substantial subsidies from the State in compensation. Under the 1993 Act, a court may write off debts on

condition that the debtor agrees to a payment schedule in favour of the creditors determined by the court (section 25). The court assesses the income needed to cover the debtor's essential living expenses and to meet any obligation to pay allowances (sections 4-5). The excess income is to be used to pay off the creditors during a fixed period in amounts determined by the court (section 23).

20. If the debtor fails to comply with the payment schedule or contracts a new debt, the schedule may be annulled, thereby enabling all creditors to claim payment as if no debt adjustment had been granted (section 42). If the debtor's ability to pay or other conditions change significantly while the reimbursement scheme is in force, the debtor must inform the creditors within one month (section 7). Both the debtor and the creditors may seek to have the payment schedule amended, extended or annulled while it remains in force or, in certain circumstances, within five years from the adoption of the schedule (sections 30 and 61). If the payment schedule is amended in favour of the creditors, it may be extended by a period corresponding to the period during which the debtor's ability to pay had improved (section 44).

21. The court may hear submissions from one or several creditors, guarantors and co-debtors before deciding on the request for debt adjustment (section 52). An appeal lies to the relevant appellate court, unless it is specifically prohibited or concerns a procedural matter (section 63).

22. At the material time, the court could obtain, at the request of a creditor, the relevant information on the possible existence of circumstances which could lead to the refusal of an application for debt adjustment. Since 1997 the court can also obtain this information of its own motion.

23. In its parliamentary bill (no. 183/1992), the government noted that an insolvent private individual seldom had enough possessions to repay a creditor, as the bankruptcy costs had priority. Neither could a declaration of bankruptcy eliminate a natural person's future responsibility for his or her debts. Allowing an adjustment of the overall debts and fixing a payment schedule could help the debtor meet his or her future financial obligations, provided he or she complied with that schedule. Such assistance would also reduce the overall cost to society. The courts should seek to adjust a debt in the manner least detrimental to the creditor and only to the extent that such an adjustment was necessary to remedy the debtor's financial situation. Since underlying contractual terms should be interfered with as little as possible, the partial or total extinction of a claim should be considered as a very last resort. The possibility of ordering a payment schedule to remain in force for five years would enable the creditors to receive at least partial satisfaction. It was noted that somewhat similar legislation for debt adjustment had been, or was being, enacted in countries such as Denmark, France, Germany, Norway, Sweden and the United States of America.

24. In 1997 the 1993 Act was amended, *inter alia*, so as to tighten further the conditions for granting a debt adjustment (section 9a and section 10). A further amendment provided for the possibility of extending the payment schedule for a further two years, for exceptional reasons and provided the creditor was also a private individual (section 31a). These amendments were not applicable to the applicant's case.

III. THIRD-PARTY INTERVENTIONS

A. The Netherlands Government

25. The Netherlands Government agreed with the respondent Government's views and drew attention to the Debt Repayment (Natural Persons) Act (*Wet schuldsanering natuurlijke personen*) which came into force in the Netherlands in 1998 and was similar to the Finnish legislation.

26. In their view, declaring that the full or partial repayment of debts was no longer enforceable *ipso jure* at the end of a debt-repayment procedure did not contravene Article 1 of Protocol No. 1. Both the Finnish and Netherlands laws on debt adjustment served the public interest as they were aimed at preventing personal bankruptcy. As a result of bankruptcy, people were frequently discouraged from setting up an income-generating activity, since by so doing they would face claims from old creditors. Bankruptcies also placed a heavy burden on society and creditors did not benefit from having to pursue bankrupt debtors for years on end. Debt-adjustment procedures sought to satisfy all parties concerned by striking a proper balance between their respective interests. This complied with the letter and spirit of Article 1 of Protocol No. 1.

27. They noted, finally, that a guarantor voluntarily took the risk that not all the funds he or she might have to pay to a creditor could be recovered from the debtor. The Convention did not afford protection against such a risk.

B. The Norwegian Government

28. The Norwegian Government joined the respondent Government in arguing that the debt adjustment provided for in the respective States' legislation did not contravene the rights which Article 1 of Protocol No. 1 afforded to creditors.

29. The Norwegian Debt Settlement Act of 1992 (Act relating to Voluntary and Compulsory Debt Settlement for Private Individuals – *gjeldsordningsloven*) contained provisions similar to those found in the Finnish legislation. The Norwegian Act served vital societal goals and struck a balance between competing interests. The primary purpose of the

Act was to rehabilitate individuals with serious and permanent debt problems by affording them an opportunity to regain control over their financial affairs, in the absence of which they easily became dependent on the social welfare system on a permanent basis. In addition, the Act was intended to ensure that debtors would fulfil their obligations as far as possible and that the distribution of a debtor's assets would be organised properly. The position of creditors was not to be weakened any more than strictly necessarily.

C. The Swedish Government

30. The Swedish Government likewise agreed with the arguments of the respondent Government and referred to the Swedish Debt Adjustment Act (*skuldsaneringslagen*) of 1994. This legislation essentially corresponded to the Finnish legislation and was of vital importance to society as it sought to rehabilitate individuals with very large debts, affording them a chance to lead a decent life. The legislation applied to residents in a "qualified" state of insolvency who appeared unable to pay their debts within the foreseeable future. In the longer term, severe insolvency not only created suffering for the individual concerned but also resulted in a loss of production, an increased need for care and treatment, and an expansion of the grey sector of the economy.

31. The debt-adjustment legislation also had a preventive effect, as it lessened the interest of credit institutions and others in lending money without verifying the prospective debtor's solvency. This in turn reduced the risk of individuals facing a serious debt burden.

32. The rehabilitating purpose of the legislation was weighed against the individual creditors' interest in maintaining their claims. Hence a further purpose of the Swedish legislation was to protect the creditors as a group, since the debtor would be paying at least part of his or her debt to each of them. Creditors were thus likely to receive a better dividend on their claims than would otherwise have been the case.

33. By the end of 2002, over 32,000 applications had been lodged and some 12,000 persons had been granted a debt adjustment in Sweden.

34. When the Swedish legislation was being considered (Government Bill 1993/94:123), it was noted that debt adjustment would not amount to a deprivation of property, even though it would limit the creditor's possibility of asserting a claim or even extinguish it. A claim against a debtor in a "qualified" state of insolvency would largely be of a merely formal nature, as the creditor could hardly expect to receive any payment. Through debt adjustment, the creditor could obtain payment of at least part of the claim's nominal value. Against this background, and bearing in mind the significant general interest in favour of debt adjustment, the Swedish Government

concluded at the time of enacting the 1994 Act that a scheme to that effect would not contravene Article 1 of Protocol No. 1.

D. The United Kingdom Government

35. The United Kingdom Government considered that even if Article 1 of Protocol No. 1 came into play, any interference with the rights of creditors was justified as regards a bankruptcy system involving the cancellation of debts in whole or in part. Cancellation of debts was a common feature of many bankruptcy schemes in the western world, including that of the United Kingdom. Debtors could get into financial difficulties for reasons which were not of their own making. Bankruptcy schemes were aimed at rehabilitating the debtors, both financially and socially. The absence of these schemes could have adverse social consequences, as the very existence of debts might prevent an individual from carrying on certain activities. If debtors who had failed in business could not be discharged from their debts, this could act as a deterrent to entrepreneurship and responsible risk-taking.

36. Creditors such as the applicant could protect their position by not dealing with a particular debtor; by inquiring into the debtor's financial position; by asking for a security; by taking out an insurance policy; or by obtaining a guarantee from a third party. At any rate, creditors were presumed to be acting in the knowledge of insolvency law and its consequences.

THE LAW

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

37. The applicant claimed to be the victim of a breach of Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a 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."

A. The parties' submissions

1. The applicant

38. The applicant complained under Article 1 of Protocol No. 1 that N.'s debt adjustment had deprived him of his property without compensation and without serving a legitimate aim in the general interest. The adjustment had effectively transferred to N. an amount equal to the applicant's net income per year, thereby placing an unreasonable burden on the latter.

39. Whilst accepting that the interference was lawful, the applicant contended that it was disproportionate to the aim sought to be achieved. As a creditor he had been unable to avail himself effectively of his right to question the fairness of N.'s proposed payment schedule, being unable to obtain information on N.'s financial situation or to hear evidence from him under oath in respect of his debts. Equality of arms had not been ensured and the time available for opposing a request for debt adjustment had been short. Moreover, the duty under section 53 of the 1993 Act to investigate the debtor's financial situation had not been properly fulfilled by the enforcement authorities. Due to the substantial number of debt adjustments at the relevant time, the courts' examination of each request had been extremely summary in nature.

40. As a result of the adjustment, the applicant's claim had been reduced from FIM 118,500 (approximately EUR 20,000) to FIM 2,168.41 (EUR 365). The adoption of N.'s debt-adjustment scheme had therefore practically extinguished a claim on his part, the existence of which had already been confirmed by a court. As a rough guess concerning the market value of his possession before the debt adjustment, the applicant estimated that a transfer of his claim to a debt-collection agency would have yielded 50% of its nominal value.

41. In the applicant's view, it had been contrary to the 1993 Act to grant N. a debt adjustment. N.'s responsibility for his heavy debt burden was his alone and his debts had been only temporary in nature, given his age. Had the applicant's claim not been extinguished, he could have sought payment of N.'s debt in a few years.

42. While accepting, in general, that Article 1 of Protocol No. 1 and the public-interest considerations justified a wide margin of appreciation being granted to the Contracting States, the applicant was opposed to direct property transfers from one citizen to another as in the case of a debt adjustment. Finland's serious recession at the beginning of the 1990s did not justify such direct property transfers. Nor had the debt-adjustment legislation been repealed, even though the country was no longer facing a crisis of that kind. A more appropriate policy for supporting debtors and avoiding serious social consequences would be in the form of a State

allowance. If, as the Government argued, debt adjustment sought to alleviate and prevent social problems, the State should at least abandon its fiscal claims against debtors. In the payment schedule adopted for N., the county tax authority was to receive over FIM 3,000 (EUR 505) on a claim with a book-value of FIM 155,000 (EUR 26,069). Thus, through the almost total extinction of his own claim, the applicant had indirectly had to contribute to securing N.'s payment of a fiscal claim.

43. The applicant argued, moreover, that while the adjustment of N.'s debts may have saved him from "social misery", at the same time similar misery was created for creditors. The interference with the applicant's property rights had placed too heavy a burden on him in comparison with N. The applicant contested the Government's assertion that through the debt adjustment he had been ensured the reimbursement of an amount higher than that which he could have hoped to receive without such an adjustment. The amount which the applicant had been required to reimburse as co-guarantor of N.'s loan had amounted to roughly the applicant's annual salary. Whereas the applicant had been obliged to pay off for fifteen years the loan he had been forced to take out in order to reimburse half N.'s loan, N.'s responsibility for paying his court-reduced debts had been limited to a period of only five years. At the time, however, it had been estimated that N. would have thirty-one years left in which to work before retiring.

2. The Government

44. The Government recognised that the impugned measures constituted an interference with the applicant's right to the peaceful enjoyment of his possessions or, in the alternative, amounted to a deprivation of his property and thus fell to be considered under the second sentence of the first paragraph of Article 1 of Protocol No. 1. It was their view, however, that this provision had not been violated.

45. The Government noted that the adjustment of N.'s debt to the applicant had been granted pursuant to the 1993 Act, which constituted a law within the meaning of Article 1 of Protocol No. 1 that was adequately accessible and sufficiently precise. The aim of the 1993 Act was to ensure that an individual with financial difficulties would be able to improve his or her financial situation, thereby preventing the negative effects of insolvency on society as a whole, such as social exclusion, health and social problems and an expanding grey sector of the economy.

46. They explained that the large number of debt-adjustment cases at the relevant time had largely resulted from the unfavourable economic climate of the 1990s and the increase in borrowing by households and companies in previous years. The extensive marketing of credits, favourable economic developments and the general expectations of economic growth had encouraged some households to take out loans without sufficient guarantees of being able to repay them, and the credit institutions had not been

sufficiently interested in verifying the solvency of debtors. A sudden and strong increase in unemployment, a reduction in the net income of households, a significant rise in interest levels and a strong decrease in house prices had created strong social and political pressure to establish a system under which unreasonable debt burdens on private individuals could be resolved. As the debt problems of private individuals were prevented or resolved through debt adjustment, there was less need for the unfruitful use of the court system and enforcement authorities. The need for social assistance was also reduced.

47. The Government pointed out further that debt adjustments were implemented in accordance with a payment schedule fixed for several years, taking into account the *de facto* solvency of the debtor. That way, the debtor was afforded a way out of a hopeless debt situation and was able to plan his or her future in a sensible and realistic manner. The improvement of the debtor's financial situation also ensured that the creditors' claims were reimbursed to the fullest extent possible, albeit with a longer payment schedule. An arrangement which ensured a debtor's present and future capacity for earning an income also served the interests of creditors. Where a debtor failed to pursue actively the reimbursement of debts, due to financial difficulties which he or she found insurmountable, the creditors usually did not receive any payments. When account was taken of the debtor's *de facto* ability to repay his or her debts, the creditors could expect to have at least part of their claims satisfied. As a result of the assessment of the debtor's solvency, the creditors also avoided the useless and costly measures of recovering debts.

48. The Government concluded that the 1993 Act, which sought to ensure a balance between the interests of the parties concerned, undoubtedly served a legitimate "public interest" for the purposes of Article 1 of Protocol No. 1, even to the extent that it might imply the transfer of property from one individual to another. Debt-adjustment legislation was also common in other member States of the Council of Europe.

49. The Government submitted further that the interference with the applicant's property rights was in proportion to the legitimate aim sought to be realised. The issue of the proportionality of the 1993 Act had been discussed at length in the Standing Constitutional Law Committee of Parliament as well as in its Standing Legal Affairs Committee. They had emphasised the need to give due consideration to the protection of property provided for in the 1919 Constitution, meaning above all that the weakening of the creditors' position, although inevitable, should not lead to unreasonable results. It was noted that a private individual was not released from his or her liability to reimburse a debt even when declared bankrupt. The effects of debt adjustment on the position of creditors therefore had to be assessed in the light of their ability to obtain payment from the debtor's future income and assets. As the debt would be reduced and the debtor freed

from his or her liability to reimburse a debt only where debt adjustment by other means was not possible, such an adjustment would not in reality weaken the position of creditors.

50. The Government emphasised that, in the present case, N.'s total debt had amounted to FIM 1,391,375 (EUR 234,012) of which the applicant's share had been approximately FIM 113,000 (approximately EUR 19,000). In drawing up the payment schedule, it had been calculated that N. could afford to reimburse a total of approximately FIM 420 (EUR 71) per month. On the expiry of the five-year payment schedule, the applicant would have received a total of FIM 2,160 (EUR 363) from N. It was highly unlikely that N. would ever have reimbursed his whole debt to the applicant in the absence of a debt adjustment; on the contrary, the latter would not even have received the amount fixed by that adjustment. Furthermore, as there was in practice no market for individual claims against insolvent persons, there was no reasonable basis for believing that the applicant would, in the absence of the debt adjustment, have been able to sell his claim for a sum exceeding the sum he had received through the debt adjustment.

51. The Government pointed out that a distinction had to be made between the nominal value of a claim, on the one hand, and the real value of such a claim, on the other. The latter depended crucially on the prospect of recovering the amount, that is, on the actual credit risk. In the present case, the applicant's claim had been unsecured. Moreover, as a guarantor, the applicant had taken on a special role in that he had specifically assumed the risk of the debtor's insolvency.

B. The Court's assessment

1. General principles

52. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule. Both forms of interference defined must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim

sought to be realised (see *Jokela v. Finland*, no. 28856/95, §§ 44 and 48, ECHR 2002-IV).

53. The notion of "public interest" is necessarily extensive. In particular, the decision to enact property laws will commonly involve consideration of political, economic and social issues. The taking of property in pursuance of legitimate social, economic or other policies may be in the public interest even if the community at large has no direct use or enjoyment of the property. The national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *The former King of Greece and Others v. Greece* [GC], no. 25701/94, § 87, ECHR 2000-XII, and *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 31-32, §§ 45-46).

54. The possible existence of alternative solutions does not in itself render the contested legislation unjustified. Provided that the legislature remains within the bounds of its margin of appreciation, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way (see *James and Others*, cited above, p. 35, § 51).

55. An interference with peaceful enjoyment of possessions must nevertheless strike a "fair balance" between the demands of the public or general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions or controlling their use. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicant (see *The former King of Greece and Others*, cited above, § 89).

56. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, the proceedings in issue must also afford the individual a reasonable opportunity of putting his or her case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (see *Jokela*, cited above, § 45).

2. Application in the present case

57. It is common ground that the applicant's claim constituted a "possession" within the meaning of Article 1 of Protocol No. 1. It is likewise undisputed that the 1993 Act interfered with the applicant's property rights. The Court notes that under Finnish law the applicant's claim against N. was based on the right of recourse he had against N. by virtue of having reimbursed part of his debts. The Court is satisfied that the applicant's claim therefore constituted a "possession" within the meaning of Article 1 of Protocol No. 1 (see, for example, *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, §§ 30-31). Likewise, the Court sees no reason to differ in so far as the parties consider that the application of the 1993 Act constituted an interference with the applicant's property rights.

58. The Court observes that the adjustment of N.'s debts under the 1993 Act almost extinguished the applicant's claim. The facts of this case bear resemblance both to deprivation and to control of property, but they cannot easily be classified as a matter to be examined solely under the second or the third rule contained in Article 1 of Protocol No. 1. Moreover, the situations envisaged in the second sentence of the first paragraph of Article 1 and in its second paragraph are only particular instances of interference with the right to peaceful enjoyment of property as guaranteed by the general rule set forth in the first sentence of the first paragraph. The Court will therefore examine whether the alleged interference with the applicant's property rights was compatible with the general rule in the first sentence of the first paragraph of Article 1.

59. Turning to the question whether the interference with the applicant's property rights could be considered justified by a public or general interest, the Court notes that a legislative framework for permitting the adjustment of private individuals' debts on certain conditions has been put in place in a number of Contracting States. It has no reason to doubt the Finnish legislature's judgment that there was, at the relevant time, an urgent and compelling public interest in affording debtors the possibility of seeking a debt adjustment in certain circumscribed situations. The Court can likewise accept that there was, in principle, a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

60. The Court agrees with the applicant that a transfer of property effected for no reason other than to confer a benefit on a private party cannot be "in the public interest". Nonetheless, it is settled case-law that the compulsory transfer of property from one individual to another may, depending upon the circumstances, constitute a legitimate means of promoting the public interest. Thus, a transfer of property effected in pursuance of legitimate social, economic or other policies may be "in the

public interest", even if the community at large has no direct use or enjoyment of the property transferred (see *James and Others*, cited above, pp. 30-32, § 40-45). The debt-adjustment legislation clearly serves legitimate social and economic policies and is not *ipso facto* an infringement of Article 1 of Protocol No. 1.

61. The Court must, however, also satisfy itself that the application of the 1993 Act in the case before it did not impose an excessive burden on the applicant.

62. It is true that at the time when the applicant agreed to guarantee N.'s loan he could not foresee the economic recession and the subsequent legislation allowing for the adjustment of N.'s debts. The detriment which this adjustment caused to the applicant was no doubt significant in financial terms. It is equally true, however, that when guaranteeing N.'s loan the applicant had to assess the risk that N. would fail to comply with his payment obligation. He also had to consider the possibility that N. might be declared bankrupt, in which case his claim against N. would most likely become worthless. The fact that in the case of a bankruptcy the applicant's claims would have remained legally valid and enforceable at a later stage does not alter the fact that by entering into the guarantee agreement the applicant accepted a risk of financial loss.

63. The Court would not exclude the possibility that the court-ordered irrevocable extinction of a debt, as opposed to the scheduling of payments of a debt over a longer period of time or the bankruptcy of a private individual, could in some circumstances result in the placing of an excessive burden on a creditor. The question whether such a burden was placed on the applicant also depends on whether the procedure applied provided him with a fair possibility of defending his interests as one of some seventy creditors.

64. In this connection, the Court notes that submissions from the applicant were heard by the District Court and he was thus able to put forward his views on N.'s request for a debt adjustment and the proposed payment scheme. The Court is satisfied that the District Court carried out a thorough and careful assessment of the case and finds no indication of any arbitrariness in the conclusions reached. The applicant was further entitled to a full review by an appellate court as regards both the decision to grant the debt adjustment and the details of the adopted payment scheme. Finally, the applicant was able to seek leave to appeal to the Supreme Court.

65. The Court further notes that N.'s payment schedule and the resultant virtual extinction of the applicant's claim did not acquire legal force when the court proceedings ended in February 1997. Until the payment schedule ceased to be in force on 1 June 2001, the applicant could have sought to have it extended or to have the payments to himself increased if he considered, for instance, that N.'s ability to pay had improved significantly.

66. Admittedly, the applicant had no way of verifying that the information provided by N. in his application for a debt adjustment, or later

on, was correct. This can nevertheless be considered to have been offset by the fact that N. was under an obligation to give accurate information, that obligation being subject to criminal sanctions.

67. The Court finds no indication that the domestic courts arbitrarily failed to consider the arguments put forward by the applicant or that the adjustment of N.'s debts and the fixing of his payment schedule were based on arbitrary or unreasonable considerations. Thus, the proceedings viewed as a whole afforded him a reasonable opportunity of putting his case to the competent authorities with a view to establishing a fair balance between the conflicting interests at stake.

68. Turning to the retroactive effect of the 1993 Act, the Court notes that neither the Convention nor its Protocols preclude the legislature from interfering with existing contracts (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, § 50). The Court considers that a special justification is required for such interference, but accepts that in the context of the 1993 Act there were special grounds of sufficient importance to warrant it. The Court observes that in remedial social legislation and in particular in the field of debt adjustment, which is the subject of the present case, it must be open to the legislature to take measures affecting the further execution of previously concluded contracts in order to attain the aim of the policy adopted. Furthermore, other Council of Europe member States such as Norway and Sweden have introduced legislation allowing for the adjustment of debts contracted prior to its entry into force.

69. It is undoubtedly true that the reduction in the applicant's nominal claim is striking in its amount. However, the burden imposed by N.'s debt adjustment was shared by several creditors, the applicant's nominal claim representing merely 8.4% of the total amount of the claims. Moreover, it is obvious that, even before the 1993 Act was passed, the "market value", if any, of the applicant's claim, that is, the amount which anyone willing to buy the claim would have been ready to pay for it, was much less than its nominal value.

70. Bearing in mind also that by 1995, when N.'s state of insolvency led him to seek a debt adjustment, he had effectively not repaid his debt during those four years, apart from the sum of FIM 2,964 (EUR 499) which he had paid by September 1992, the Court concludes that the applicant's claim had already been rendered highly precarious before the debt adjustment for reasons not attributable to the State under the Convention. In these circumstances, the burden imposed on the applicant by the 1993 Act cannot be regarded as excessive.

71. Accordingly, there has been no violation of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 1 of Protocol No. 1.

Done in English, and notified in writing on 20 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President