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Moral and Economic Costs of Enforcement

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ABSTRACT *This article examines the Finnish enforcement system, focusing on the interplay between rehabilitative and social objectives, and the necessity of stringent measures to combat fraudulent debtors. It explores the challenges of designing enforcement policies that simultaneously protect honest, over-indebted individuals while effectively addressing artificial arrangements intended to evade financial obligations. Through an analysis of the psychological dimensions of enforcement, the study underscores the critical role of perceived fairness in fostering voluntary compliance and sustaining trust in the system. The findings suggest that a rehabilitative approach not only benefits debtors by facilitating financial recovery, but also serves the long-term interests of creditors by promoting higher repayment rates and economic stability. Ultimately, the study argues that rather than being inherently contradictory, rehabilitative and punitive measures can be strategically integrated to enhance the overall efficiency and legitimacy of enforcement legislation.*

KEYWORDS over-indebtedness, rehabilitative enforcement, Finnish enforcement system, perceived fairness, voluntary compliance, fraudulent debtors, psychology of enforcement

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1 INTRODUCTION

Rehabilitative and social aims in over-indebtedness matters have been strengthened in recent decades. At the same time, there are now more stringent instruments available to handle artificial arrangements and fraudulent debtors. Are there colliding trends in enforcement or are the target groups different? In other words, is it possible to protect debtors who are over-indebted but otherwise active and honest, while fraudulent debtors are found and treated differently? Both situations can be said to be effective. Namely, the prohibition of null and void enforcement is—in the long run—not beneficial to anyone, but it is in the interests of both debtors and creditors to remain as active economic actors. In these situations, being more lenient in enforcement matters is a question of efficiency. At the same time, there is a need for effective instruments to stop artificial arrangements and to treat fraudulent debtors more stringently. Additionally, there is also a psychological aspect to effective enforcement. If the parties feel that a procedure is fair, if they can accept the results of the proceedings even if they totally or partially lost the case and if they are committed to the decision, the demands are often met voluntarily, and enforcement is not even required. That is the most efficient way from all perspectives, both economic and moral. Therefore, settlements, for instance, which are based on win-win solutions and are not only compromises which the weaker party must accept, can be extremely effective from the perspective of enforcement, rendering enforcement unnecessary.

Economic downturns, pandemics, wars, or death, unemployment, and illness can cause human tragedies and lead to over-indebtedness through no fault of one's own or without risk-taking. These situations are largely periodical, and the same actors may receive rehabilitation and return to being active actors with their finances once again in balance. Therefore, there is a need to be reasonable in these situations to help debtors tackle over-indebtedness. It is not only human or decent to do so, there is also an economic interest at play. In other words, the aim is to help such debtors regain financial independence and become economically viable actors once again. In recent decades, we have experienced many of those situations. A war is raging in Europe which has affected the economy in many societies and caused many human tragedies, including in terms of people's financial situation. It is not only a problem for Ukraine, but also for entrepreneurs in Eastern Finland, for example, due to the lack of Russian clients in shops, bars and hotels. We have also experienced a pandemic and several downturns since the 1990s.

At the same time, recent decades have also seen many scandals of an economic nature. We have witnessed white-collar crimes, money laundering, tax offences, and twilight investments in tax havens, where even once-respectable banks have been involved.¹

¹ A Lehmusvirta, 'Nordealle sakot finanssivalvojalta – taustalla Panama-paperit' (*Kauppalehti*, 21 December 2017) <<https://www.kauppalehti.fi/uutiset/nordealle-sakot-finanssivalvojalta-taustalla-panama-paperit/3c85b6ad-e071-3ef3-8da4-37f491726459>> accessed 20 February 2025.

That is why there are two main trends in current enforcement legislation: to protect and rehabilitate debtors, and to secure efficient and effective enforcement whenever artificial arrangements and fraudulent debtors are concerned. From that perspective, traditional enforcement law has undergone an upheaval and is currently characterised by two aims: human considerations, on the one hand, and effectiveness, on the other. At first sight, these seem to be conflicting objectives. Still, they can be realised at the same time in enforcement legislation, as can be seen in Finland. In the end, these trends are not conflicting because both objectives serve efficiency. The problem may instead be how to distinguish between honest and rehabilitative debtors, and those who try to use the system or other means to hide their assets.

The solution may be found in the area of psychology. As soon as parties accept an outcome and feel that the process that led to the outcome was fair, there is good reason to believe that they will also comply with the decision voluntarily and that there will be no need for enforcement.² This is something that has not been properly discussed from a law enforcement perspective, even if it is often mentioned as a positive reason to promote settlements or mediation. Still, the psychological perspective, and how the process as well as its result are perceived as fulfilling expectations, may contain more wisdom than previously recognised.

The connection between psychological perspectives and normative procedural fairness is crucial in understanding how individuals perceive justice in legal processes. Psychological research highlights that people's perceptions of fairness strongly influence their trust in legal institutions and their willingness to comply with legal decisions. Factors such as voice (opportunity to be heard), neutrality (impartial decision-making), and respect (dignified treatment) shape how individuals view legal processes.³

This article examines the Finnish enforcement process not only from a normative perspective but also considers psychological aspects. While I have not conducted empirical research myself and do not claim expertise in psychology, the research questions are explored through procedural law literature and legislation.

The central hypothesis is that, in the long run, the efficiency of enforcement relies on moral costs and rehabilitation, particularly concerning honest debtors. The objective is to demonstrate how the Finnish legislator has opted for a rehabilitative approach to promote societal welfare, even if this sometimes occurs at the expense of individual creditors.

Additionally, Finnish legislation seeks to distinguish between honest debtors and contumacious debtors. The latter group is subjected to stricter measures and special enforcement rather than rehabilitation. This article discusses how efficiency in enforcement can be measured and realised for these different types of debtors from a procedural law perspective, with special attention to perceived fairness.

² TR Tyler, *Why People Obey the Law* (Yale University Press 1990) 170-173.

³ *ibid.*

2 THE MONETARY VALUE OF EFFICIENCY

Rolf Stürner has pointed out a worldwide lack of uniformity as far as enforcement instruments are concerned. According to him, the reason for the lack of uniform instruments in this field is not because there is no need for principles and harmonising guidelines. Stürner also underlines the efforts made by the EU. The EU has enacted the European Account Preservation Order Regulation to facilitate cross-border debt recovery and has initiated reports on the present status of the enforcement laws of the Member States of the European Union. All these activities document an increasing concern for the inefficient enforcement of decisions or other executable titles at a national and supranational level. The right to effective enforcement of judgments and arbitral awards is an integral part of the worldwide accepted fundamental right to a fair and effective procedure. This right embraces both fair decision-making and enforcement. Effective enforcement mechanisms are of great economic significance and, consequently, they are considered an important criterion for a national economy's standard and its evaluation for credit-rating purposes.⁴ For instance, the European Court of Human Rights has paid attention to effective enforcement in its case law based on article 6 of the European Convention on Human Rights.⁵ A fair trial is the main component of this article and includes effective enforcement. It is not enough to receive a fair trial and a judgment based on it without the possibility of having that judgment effectively enforced in any way. Without an effective enforcement, the judgment becomes "a document without any contents". To realise the substantive law and the contents in the judgment, effective enforcement is a fundamental part of access to justice.⁶

The Council of Europe has also issued guidelines on the effective enforcement of judicial decisions, particularly through the European Commission for the Efficiency of Justice (CEPEJ). One key document is the CEPEJ Enforcement Guidelines, adopted in 2009, which aim to improve the implementation of judicial decisions across Member States. These guidelines emphasise: 1) the importance of enforcement in maintaining the rule of law, 2) the responsibilities of national authorities in ensuring compliance, and 3) the need for fair and efficient enforcement mechanisms.⁷ Additionally, the Committee of

⁴ R Stürner, 'Preliminary feasibility study on possible additional work on the development of Principles of Transnational Civil Procedure relating to effective enforcement' (UNIDROIT Study LXXVI, Doc. 1, 2016) <<https://www.unidroit.org/english/documents/2016/study76/s-76-01-e.pdf>>.

⁵ The case *Hornsby v Greece* was decided by the European Court of Human Rights (ECtHR) on March 19, 1997. The court found that Greece had violated article 6(1) of the European Convention on Human Rights, which guarantees the right to a fair trial. The ECHR ruled that Greece's refusal to comply with its own court's decision constituted a breach of the applicants' rights. The judgment reinforced the principle that effective enforcement of judicial decisions is essential for the rule of law.

⁶ L Ervo, *Oikeudenkäynnin oikeudenmukaisuusvaatimus: Käsikirja lainkäyttäjille* (WSOYpro 2008) 194.

⁷ CEPEJ, 'Guidelines for a better implementation of the existing Council of Europe's Recommendation on enforcement' (CEPEJ(2009)11, 2009) <<https://rm.coe.int/ref/CEPEJ%282009%2911?form=MG0AV3>> accessed 6 May 2025.

Ministers has adopted various soft law instruments, including recommendations on enforcement and judicial protection.⁸

Stürner seems to mostly appreciate efficiency from the perspective of creditors or other plaintiffs (enforcement is not only about enforcing unpaid debts). Effective enforcement is one part of a system of fair trials and access to justice. He also underscores how effective enforcement affects the national economy.⁹ Still, there are also moral costs, and moral costs also have an economic value.¹⁰ Human rights do not only cover effective enforcement but also the rights of debtors. If it is—in some situations—better to choose a rehabilitative solution when a person is over-indebted, it is also an economic choice which can be effective both from the creditors' and society's point of view. If we, in addition, pay attention to the moral costs, this choice to be rehabilitative becomes even more valuable.¹¹

3 THE ENFORCEMENT OFFICER AS A BALANCE MAKER

In Finland, the role of the enforcement authorities¹² is akin to that of an estate agent. Namely, the enforcement authorities must protect the interests of both creditors and debtors, even if their first duty is to enforce the judgment as it stands.¹³ One of the most important tools in realising that is transparency throughout the enforcement process.

The enforcement officer has a duty to inform the debtor and to protect him/her *ex officio*. When informing the parties, the enforcement officer must, however, bear in mind that he is to remain impartial: the parties must be treated equally. Transparency is one component in this *executive service*.¹⁴ Just as the administration of justice is seen as a court service in Scandinavia today, the executive authority in civil litigation serves the same purpose and functions as a *service* for clients, who in this instance are the creditor and the debtor.

It is a major advantage if the debtor does not normally need legal counsel, because the enforcement authorities will take the debtor's rights into consideration *ex officio*.¹⁵ The duty to inform the party is, namely, broader if the debtor does not have legal counsel or an attorney. It is a duty of the enforcement authorities to observe that the debtor does not suffer unduly in connection with the enforcement

⁸ Council of Europe, 'Roundtable on Regulation in the 21st Century' (15 February 2021) <<https://www.coe.int/en/web/dlapil/-/roundtable-on-regulation-in-the-21st-century>> accessed 6 May 2025

⁹ Stürner (n 4).

¹⁰ MD Bayles, *Procedural Justice: Allocating to Individuals* (Kluwer Academic Publishers 1990).

¹¹ See for instance *ibid*.

¹² L Ervo, 'Debtor Protection and Enforcement Efficiency According to Finnish Law' (2020) 3 Access to Justice in Eastern Europe 265.

¹³ T Linna and T Leppänen, *Ulosottomenettely* (Talentum, 2003) 29.

¹⁴ *ibid* 35-36.

¹⁵ cf *ibid* 290.

of the judgment.¹⁶ It is forbidden to cause more harm to the debtor or to the third party than is necessary to achieve the aim of the enforcement.¹⁷

For reasons of fairness, the enforcement must be undertaken without unnecessary public attention and harm.¹⁸ Any harm caused must be related to the significance of the enforcement matter. Too radical acts must be avoided, and the enforcement measures must be conducted in a discreet manner. In addition, business relationships as well as neighbourhood relations and housing aspects may not be jeopardised unless it is necessary. The party's wishes concerning the time and place of the enforcement measures must be taken into consideration, if possible, without endangering the principle of judicial investigation.¹⁹

The debtor's interests take priority if they conflict with those of the creditor.²⁰ From that perspective, human dignity and rehabilitation possibilities seem to have more *prima facie* value than effective enforcement if efficiency has been understood in a traditional manner. However, according to a more modern type of efficiency, fairness, rehabilitation and moral costs are included and considered as one of the main components.²¹

The enforcement officer also has the duty to promote amicability between the creditor and the debtor. Even where a judgment orders a debt to be paid, it is not too late to find an amicable solution to the situation. At least, the parties might be able to find a solution to perform the duties included in the judgment voluntarily without the need for enforcement, or to reach an amicable solution concerning the schedule, or at least some parts of the enforcement procedure. Promoting those types of amicable solutions is also included in the remit of the enforcement authorities, which is interesting in itself.²² The duty to promote amicable solutions differs a great deal from the other duties in enforcement procedures. Promoting settlements is not the same as promoting a foreclosure or selling property thereafter. The professional or personal characteristics are not the same either. An effective enforcement authority, which is able to find the property and be effective in the inquiries or foreclosures, is not always skilled in diplomacy or negotiations or able to act as a peacemaker between the parties, or the other way round. The latter characteristics—like diplomacy—are an important element in providing the experimental fairness in enforcement procedure.

¹⁶ Enforcement Code 705/2007, ch 1 s 19.

¹⁷ R Koulu and H Lindfors, *Ulosotto-oikeus* (Edita 2009) 39-40.

¹⁸ Linna and Leppänen (n 13) 312.

¹⁹ Koulu and Lindfors (n 17) 136.

²⁰ *ibid* 39-40.

²¹ See for instance The United Nations Global Goals and how the mentioned elements are included into the sustainability. <https://www.globalgoals.org/goals/16-peace-justice-and-strong-institutions/>, accessed 6 May 2025; In the literature see for example L Ervo, 'Sustainability in East-Nordic Procedural Law' in E Kristoffersson & M Qandeel (eds.), *Law and Sustainable Development: Swedish Perspectives* (Iustus förlag 2021); and L Ervo, 'The Modern Rule of Law in Civil Proceedings – New Swedish and Finnish Components' in R Argren (ed.), *Rule of Law in a Transitional Spectrum* (Iustus förlag 2024).

²² Enforcement Code 705/2007, ch 1 s 19.

4 AIMING FOR FAIRNESS AND APPLYING THERAPEUTIC JURISPRUDENCE

In Finland, the main elements of fairness in enforcement²³ are: 1) the right to be heard, 2) the impartiality of the State Office, 3) restrictions on publicity, 4) the duty to give grounds for decisions, 5) the right to appeal, and 6) the right to use legal counsel or an attorney.²⁴ These are important elements in balancing powers.

The debtor is in a subordinate position both compared with the creditor and the enforcement authorities. In addition, the debtor's life situation can be difficult even outside this context, which makes the debtor vulnerable. In such a situation, a lack of fairness can have serious consequences, for instance, regarding the trust an individual has in the judiciary. Additionally, poor behaviour on the part of the authorities and a feeling of unfairness can cause much private harm and depression if an individual's life situation is generally demanding. Human dignity must always have *prima facie* value and priority in all adjudication and especially in enforcement, which is final, and often the most tragic step in the whole—often long—process. Also, from a rehabilitative perspective, it is extremely important that the enforcement period is as pleasant as possible so that the debtor does not lose heart and energy for rehabilitation in the future. This covers both individuals and legal entities as debtors. While the manner of enforcement may differ slightly depending on the situation, there are still human beings with feelings and needs behind the legal entities. Therefore, the enforcement situations are similar in terms of the effect they have on the people involved.

Therefore, the principles of *therapeutic jurisprudence*²⁵ play an important role in enforcement processes, despite being seldom applied in this context, and considering that it has mostly been seen as an instrument or approach used during a trial as far as procedural law is concerned. Therapeutic jurisprudence is a principle that originates from David Wexler's²⁶ idea that offenders will be more effectively tried in court when their dignity and mental health are respected. Considering a defendant's mental health and wellbeing could have a significant impact on the law and the rehabilitation of offenders.²⁷ In the enforcement phase, this kind of attitude is even more important and does not only cover the enforcement of criminal convictions but also the enforcement of civil judgments, as discussed in this article.

²³ See also Ervo (n 6) 266-269.

²⁴ Linna and Leppänen (n 13) 27–31.

²⁵ 'Therapeutic jurisprudence is a principle in today's legal system and in traditional legal proceedings that addresses the defendant's mental health and well-being beyond just the outward expression of their behaviors. It is where law and psychology meet in the application of justice.' J Shorey, 'Therapeutic Jurisprudence | TJ Definition & Example' (Study.com, 21 November 2023) <<https://study.com/academy/lesson/therapeutic-jurisprudence-definition-examples.html#:~:text=Therapeutic%20jurisprudence%20is%20a%20principle,in%20the%20application%20of%20justice>> accessed 12 March 2025.

²⁶ DB Wexler, 'The Development of Therapeutic Jurisprudence: from Theory to Practice' (1999) 68 *Revista Juridica Universidad de Puerto Rico* 691, 691.

²⁷ Shorey (n 23).

In addition, the principle of due form has been seen as an important tool in balancing the wide powers of the enforcement authority and optional rules on the procedure.²⁸ Procedural normative fairness in the enforcement process is not identical to fairness required at the trial stage. The need for legal protection is greater when the material basis for the enforcement is investigated during the trial. During enforcement, the matter has already been investigated in a fair manner and the decision should be clear, coherent, and corresponding to the legislation and the procedural truth. Still, the perceived fairness and therapeutic aspects of jurisprudence are even more important than during the trial. Being the debtor in an enforcement procedure is in itself a negative experience. Therefore, good conduct of enforcement officers and legislative protection are important to ensure that this harm is as little as possible, to appreciate human dignity even in these difficult conditions of enforcement and by doing all that, to maintain the power for rehabilitation. The needs from a psychological perspective are different from those during the trial, but are even more important, especially from the perspective of human dignity and rehabilitation.²⁹ Whenever rehabilitative aspects are stressed, the vitality of the debtor is important. The debtor should remain an active actor in society. It is vital to underline that therapeutic jurisprudence plays a major role, and that the enforcement authorities need to be aware of the effects that will be caused and the costs that the whole society will have to pay if it is neglected. To summarise, I would like to say that during the enforcement phase, the psychological needs and how to take them into consideration can be much more difficult and important than during the judiciary procedure. This is because the situation is final and there is no hope for a positive judgment, as during the trial and appeal, when the situation is still open and changes are possible.³⁰

5 LIQUIDATION AS A REHABILITATIVE PROCESS

In the current Finnish enforcement process, several rehabilitative characteristics can be distinguished.³¹ Additionally, there are rehabilitative procedures instead of traditional enforcement procedures. However, even in the enforcement process, enforcement is not the only goal. Even if it is a liquidation process, rehabilitative ideas have been central to the reforms that have been introduced in enforcement law during the last 20 years. One pertinent example of this kind of thinking is that enforcement is now time-limited, its grounds no longer valid indefinitely. The usual time limit is 15–20 years if the debtor is a natural person.³² The idea is to prevent unfair, long-lasting enforcement.³³ Thus, modern enforcement shares

²⁸ Linna and Leppänen (n 13) 11.

²⁹ *ibid* 26.

³⁰ It would be interesting to get empirical studies to show if these hypothesis are correct.

³¹ See also Ervo (n 12).

³² Enforcement Code 705/2007, ch 2 s 24.

³³ Linna and Leppänen (n 13) 18.

some of the characteristics of loan arrangements even if it remains a liquidation procedure.³⁴

According to Linna and Hupli, there are three kinds of elements in modern enforcement. First, it is still a liquidation procedure. Second, the enforcement authorities must protect the debtor in a defensive way. Third, there is a rehabilitative function strongly involved in the current enforcement and other insolvency procedures. Even if the reorganisation proceedings or legal loan arrangements are based more on rehabilitation, there is also a need for rehabilitation in the enforcement process. The legal possibilities to get involved in reorganisation procedures or the loan arrangement are not sufficient. On the other hand, those procedures can also be seen as liquidation.³⁵ In other words, liquidation procedures contain rehabilitative elements and needs, just as rehabilitative procedures are also liquidation procedures despite the rehabilitative nature. Liquidation and rehabilitation are common elements in both.

The limitation period for enforcement³⁶ was already adopted in the Finnish enforcement legislation in 2003. This was a substantial reform for the rehabilitation of debtors, involving a total change of attitudes concerning the obligation of payment. There were some discussions and negative attitudes towards the novel change and the new thinking regarding debt forgiveness, because this kind of solution and way of thinking were totally new in Finnish legislation. The idea of a final limitation period was a novelty in Finnish culture. Still, this change was accepted quite quickly and without any major dissenting opinions. To my mind, this rather radical change was adopted surprisingly easily and rapidly.

Before that, there were only rules on the limitation period for enforcement in the Enforcement Act. This did not mean that there was a final statute of limitations on debt, only that the enforcement was limited while the debt was materially still valid even after this deadline. The enforcement was not possible after the limitation period had expired; however, the private collection of a debt was allowed, although there were not very many legal tools to do so.³⁷

The reason behind the rehabilitative reforms was the economic crisis in the 1990s. Since the legal possibility to obtain a loan arrangement or the voluntary releasing programme did not help, these rules on periods of limitation and a final statute of limitations were adopted into law in 2008.³⁸

A ground for enforcement imposing a payment obligation on *a natural person*³⁹ is enforceable for 15 years. The limitation period is extended to 20 years if the creditor is a natural person or if the debt is based on a crime for which the

³⁴ *ibid* 18.

³⁵ T Linna and T Hupli, 'Ulosotto ja konkurssi lainkäyttömenettelyinä' [2001] *Lakimies* 596.

³⁶ See also Ervo (n 6) 278-280.

³⁷ See in detail P Tuunainen, 'Täytäntöönpanon määräaikaistuminen ja velallisen kuolema' [2004] *Lakimies* 862, 882.

³⁸ Koulu and Lindfors (n 17) 112. For the reasons, see also Government Bill 83/2006 vp.

³⁹ It is, however, permitted for the debt to be based on business activities: Koulu and Lindfors (n 17) 113.

debtor has been sentenced to imprisonment or community service.⁴⁰ In the case of taxes and other public payment obligations, the final statute of limitations on debt provides that the limitation period is five years.⁴¹

The expiry of the period of limitation will also entail a final limitation of the debt.⁴² When the period of limitation for enforcement expires, the debt can no longer be collected through any means and the debt is permanently statute-barred, even in a material meaning. Thus, the debt can no longer be recovered, for instance, by a collection agency or from the assets of an estate of a deceased person. This limitation period cannot be interrupted.⁴³ The creditor, however, has the right to take legal action against the debtor and demand an extension of the limitation period for the enforcement order. The court may extend the period of limitation by ten years if the debtor has essentially complicated the receipt of the payment, for example, by concealing or donating his or her assets, by concealing information, or giving false information about his or her financial circumstances.⁴⁴ If the debtor has paid the debt after the final limitation of the debt, the debtor has a right to reimbursement of the payment. The bailiff controls *ex officio* that such mistakes do not occur.⁴⁵

These limitation periods cover debts with grounds for enforcement. If there is no ground for enforcement, the limitation period for the debt is 20–25 years from the due date.⁴⁶

Even if the enforcement is a liquidation process, rehabilitative ideas have been prioritised in recent reforms. The objectives of a voluntary payment,⁴⁷ time-limited enforcement, the systems of the personal enforcement officer,⁴⁸ and the

⁴⁰ Enforcement Code 705/2007, ch 2 s 24(1).

⁴¹ Act on the Enforcement of Taxes and Other Public Payments 706/2007, s 20.

⁴² Enforcement Code 705/2007, ch 2 s 27.

⁴³ Ulosottolaitos, 'Täytäntöönpanokelpoisuuden määräaika ja saatavan lopullinen vanhentuminen' (oikeus.fi) <<https://web.archive.org/web/20200915235508/oikeus.fi/ulosotto/fi/index/ulosotto/taytantonpanokelpoisuudenmaaraajakasaatavanlopullinenvanhentuminen.html>> accessed 17 February 2025.

⁴⁴ Enforcement Code 705/2007, ch 2 s 26.

⁴⁵ Koulu and Lindfors (n 17) 113.

⁴⁶ Act on the Limitation of Debts 728/2003, s 13a(1).

⁴⁷ <<https://ulosottolaitos.fi/fi/index/tietoaulosotosta/tietoavelalliselle/velanmaksaminen.html>> accessed 21 March 2025.

⁴⁸ The idea is that every debtor only has one personal District Bailiff and only one personal assistant executive officer who deals with all their debts and other possible executive matters (Enforcement Code 705/2007, ch 3 s 13). The aim is to take the debtor's situation into consideration at all times. Even though the creditor can file a claim with any enforcement officer in the country, only one person is responsible for one debtor's entire case. After the initial tasks are completed, the files will therefore be transferred to the executive officer in charge, who will be responsible for the case from then onwards. The executive officer in charge is usually one of the officers who works in the same area of residence as the debtor (Enforcement Code 705/2007, ch 3 s 14(1)). If this is not the case, the debtor's factual possibilities to attend their interests must otherwise be taken into consideration (Enforcement Code 705/2007, ch 3 s 14a(3)). The other main principle is to choose the executive officer in charge so that they can execute the enforcement in the most expedient way (Enforcement Code 705/2007, ch 3 s 14(4); Linna and Leppänen (n 13) 67).

protected portion⁴⁹ are very good protections for debtors. In addition, there are certain types of property that may not be seized,⁵⁰ for instance, social benefits and the compensation of costs.⁵¹ The newest reform in that context is that the re-employment of a debtor is supported. If a debtor who has been unemployed finds a job, the enforcement can be suspended (for a maximum of six months).⁵² In such situations, there is also a strong social aim in the enforcement. Any compensation based on pain and suffering or injury, or compensation based on a temporary or permanent disability, will be paid by the state, because the deprivation of liberty of innocent persons falls outside the scope of enforcement. It is also usually not acceptable to use physical force in the enforcement of a monetary claim.⁵³ The debtor is thus well-protected as regards their personal integrity.

The second question is what is to be done with contumacious debtors.⁵⁴ They are currently parties to a more effective and individual enforcement, called *special enforcement*. In such cases, the enforcement procedure more closely resembles the administration of justice than an administrative process. Thus, the enforcement becomes long-lasting and resembles bankruptcy proceedings.⁵⁵ The enforcement has become softer concerning for honest debtors who have genuine financial difficulties. The opposite trend of more intensive enforcement concerns the debtor who is probably solvent, but contumacious.⁵⁶

⁴⁹ The protected portion means that a certain minimum income is protected from the enforcement. The debtor's protected portion is 30.75 euro per day for themselves and 8.99 euro per day for a spouse, a child of the debtor, and a child of the spouse depending on their maintenance, until the date of payment of the next wages or salary. In the calculation of the protected portion, one month corresponds to 30 days. A spouse is defined as a married spouse or a person living in marriage-like circumstances. A person is deemed dependent on the debtor for maintenance if their income is less than the protected portion calculated for the debtor themselves or for a child/children, regardless of whether the spouse contributes to his or her maintenance. The maintenance paid by the debtor can also be taken into consideration. The amount of the protected portion shall be reviewed annually by a Decree of the Ministry of Justice. (Enforcement Code 705/2007, ch 4 s 48).

⁵⁰ The following shall not be garnished from the base income: 1) the debtor's protected portion and, in addition, one-third of the amount of the wages or salary that exceeds the protected portion (*income limit garnishment*); 2) two-thirds of the wages or salary if the wages or salary are greater than twice the amount of the debtor's protected portion; and 3) less than the amount referred to in subparagraph 2, but at least one-half of the wages or salary, if the wages or salary are greater than four times the amount of the debtor's protected portion. More detailed provisions covering the third situation (3) will be given by the Decree of the Ministry of Justice (Enforcement Code 705/2007, ch 4 s 49). Furthermore, the debtor's assets can be repossessed, although, the assets necessary for the debtor and their family's normal lives, such as tools and educational materials, are protected from repossession (Enforcement Code 705/2007, ch 4 s 21). This is called the right to *beneficium* and must be taken into consideration *ex officio*. This right may also not be renounced; in fact, even if the debtor would like to give these kinds of items to the executive officer voluntarily, they cannot accept them. The only possibility for the debtor is to sell these items and then to give the money to the executive officer. Linna and Leppänen (n 13) 67.

⁵¹ Koulu and Lindfors (n 17) 157, 212-213.

⁵² Enforcement Code 705/2007, ch 4 s 51a and Government Bill 150/2017 vp.

⁵³ Koulu and Lindfors (n 17) 157, 212-213.

⁵⁴ See also Ervo (n 6) 271.

⁵⁵ *ibid* 419.

⁵⁶ E Havansi, *Ulosotto-oikeuden pääpiirteet* (2nd edn, Helsingin yliopisto 2000) 13-14.

6 CONTUMACIOUS DEBTORS AND SPECIAL ENFORCEMENT

The national enforcement authority in Finland has a national unit for special enforcement. The special enforcement unit is responsible for the implementation of enforcement cases that require time and special expertise, as well as for the related cooperation between authorities. The tasks of the unit include, *inter alia*, enforcement in cases where the debtor seeks to avoid the payment of their debts through various artificial arrangements and irregularities. If needed, the debtor's enforcement cases can be transferred to the special enforcement process.⁵⁷

One of the main concrete tools used to find properties and assets is co-operation with the debtor who needs to be truthful. The debtor has a duty to respond to the questions posed by a bailiff, but otherwise there is no active obligation to provide information.⁵⁸ The debtor has no duty to contact a bailiff in the event that their income or wealth changes, and the obligation to provide information is also limited to answering the questions posed by a bailiff.⁵⁹ The role of a debtor can therefore be seen as that of a passive source of information rather than an active subject, which places demands on the professional skills of enforcement authorities.

The Enforcement Code includes an illustrative list of the information that the bailiff can request and the debtor must then truthfully provide.⁶⁰ The list is not conclusive. The factual limit to questions is that they must concern the financial situation of the debtor and the information must be necessary to fulfil the enforcement of the enforcement order.⁶¹

The bailiff may procure information from a person subject to the obligation either informally or by carrying out an enforcement inquiry. There are no rules as to the informal procurement of information, thus, the fairness principle is the only guideline to follow.⁶² In the Government Bill, it was stated that the bailiff should avoid interviewing the debtor in all situations. Thus, the informal procurement of information should not take place without the debtor's consent if colleagues, family members, neighbours, or other persons are present. However, an exception exists where the debtor has attempted to avoid the bailiff. In such instances, third parties may be present when questions are posed to the debtor.⁶³ This is one example of how the protection of a debtor will be set aside and where more stringent tools are allowed as soon as there is reason to suspect the debtor is contumacious.

⁵⁷ Rules of Procedure of the National Enforcement Authority 810/2020, s 12.

⁵⁸ Koulu and Lindfors (n 17) 150.

⁵⁹ Linna and Leppänen (n 13) 448.

⁶⁰ Enforcement Code 705/2007, ch 3 s 52.

⁶¹ However, it is not forbidden to ask other kinds of questions if the debtor has been informed that responding to them is voluntary. But even in that case, the questions must be deemed necessary in order to fulfill the pending enforcement of enforcement. Linna and Leppänen (n 13) 456.

⁶² *ibid* 447.

⁶³ Government Bill 216/2001 vp 152.

Offences based on the dishonesty of a debtor are to be found in the Criminal Code. The offences are dishonesty by a debtor, aggravated dishonesty by a debtor, fraud by a debtor, aggravated fraud by a debtor, deceitfulness by a debtor, a violation by a debtor and favouring a creditor.⁶⁴ The debtor has the duty to always be truthful; that is, this duty does not depend on whether the debtor is interviewed informally or if the bailiff carries out an enforcement inquiry. The duty to be truthful thus covers all kinds of situations, even when the debtor is approached during a chance encounter.⁶⁵

Prior to the reform in 2003, the enforcement inquiry was mostly only the *ex post facto* possibility to establish the reasons why the debt had not been collected and why enforcement had been terminated because of a lack of means. Usually, the enforcement inquiry was carried out because there were doubts as to whether the debtor had hidden some property. With the reform, the enforcement inquiries became a normal way to search for property and to maintain contact with the debtor. There is thus a substantial change in the ratio of the law.⁶⁶ Despite the rehabilitative nature in almost all recent reforms concerning liquidation procedures, there are also new, more effective and concrete tools included in the current legislation so as not to enable contumacious debtors to hide property and avoid foreclosure.

According to the current Enforcement Code, the bailiff shall carry out an enforcement inquiry if the creditor's receivable cannot be collected in full and the financial situation of the debtor has not been credibly ascertained in some other manner.⁶⁷ This rule has been seen as being based on the traditional starting point concerning when the enforcement inquiry is obligatory, namely when it is ruled as such.⁶⁸ In practice, the enforcement inquiry is nowadays the usual way to search for assets and to maintain contact with the debtor.⁶⁹

An enforcement inquiry may also be carried out very frequently; as often as every week or even every day if there is a valid reason for doing so, for example, if the circumstances concerning the debtor's financial status change very abruptly. However, an enforcement inquiry cannot be utilised as a sanction, even when the debtor is contumacious. Such activities would be contrary to the fairness principle.⁷⁰

7 CONCLUSIONS

The Finnish enforcement system and legislation are mainly based on the idea of the rehabilitation of a debtor and, following this kind of thinking, the interests of

⁶⁴ Criminal Code 39/1889, ch 39 ss 1-6.

⁶⁵ Linna and Leppänen (n 13) 447.

⁶⁶ Linna and Leppänen (n 13) 464.

⁶⁷ Enforcement Code 705/2007, ch 3 s 57.

⁶⁸ This is because the enforcement inquiry is a time-consuming task and it would serve no purpose to carry it out for no reason.

⁶⁹ Koulu and Lindfors (n 17) 151.

⁷⁰ Linna and Leppänen (n 13) 467.

debtors must yield to the interests of creditors. However, in the long run, society will arguably benefit more when debtors are thereafter able to continue their lives or businesses as before. On the other hand, the promotion of creditors' interests contributes to the credit and financial markets as a whole.⁷¹ The most important function of enforcement is, still, liquidation, which is also at the same time the most important tool for the promotion of trustworthiness in the whole system.⁷² For this reason, it is the state's important duty to organise enforcement in an effective way. Still, ineffective enforcement is a different matter compared to the regulation of the enforcement's intensity. There must be a balance.⁷³

There are more effective tools and specialised expertise in the Finnish enforcement system that can be used to handle contumacious debtors. The legislator's starting point is that, in many cases, the debtor's protection recedes as soon as the debtor is suspected of being contumacious. The rehabilitative and protective parts of the Enforcement Code are for honest and insolvent debtors who do not try to make the enforcement difficult through artificial arrangements or by hiding property and assets.

Honest debtors who have experienced hardship in their lives are worthy of rehabilitative measures. Society as well as debtors benefit more in the long run if the enforcement is more rehabilitative than focused on liquidation. Of course, in such a system, creditors need to pay for the common good and by doing so participate in establishing social benefits stemming from their private funds, which may sound unfair depending on the existing values. In addition, what is fair to one actor is not always fair to the opposite party. However, rehabilitative enforcement can benefit creditors too in cases where they would not otherwise obtain any recompense, or only very little recompense, from an over-indebted debtor. Therefore, rehabilitative enforcement with non-fraudulent debtors can be a win-win situation for all actors. Whenever humanity is included in liquidation procedures, there are no losers. Moral values have an economic value.⁷⁴ If you are insolvent, it does not mean that you should lose your human dignity or chances to rehabilitate yourself. It lies in the common interest to have self-respecting members of society whose finances are in balance. Therefore, rehabilitation is the best liquidation.

⁷¹ Linna and Hupli (n 35) 600.

⁷² Liquidation is of course the main function of the enforcement procedure and, therefore, it is also important that the general public feels that it can rely on the enforcement system and, when the enforcement authorities have a ground for enforcement, that garnishment is carried out in an effective way. This is crucial to maintaining access to justice. L Ervo, 'Perustuslaki ja oikeuden saatavuus' [2000] *Lakimies* 1085, 1102.

⁷³ T Linna, 'Ulosotto-oikeuden yleiset opit – missä ja mitä?' [2009] *Lakimies* 3, 20-21.

⁷⁴ Bayles (n 10).