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## **DEBTOR PROTECTION AND ENFORCEMENT EFFICIENCY ACCORDING TO FINNISH LAW\***

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Summary: 1. Starting Points. – 2. Human approach. – 3. Debtor-biased or Creditor-biased System. 4. – Cooperation between Actors. – 5. The Role of Third Parties and Outsiders. – 6. Limitation Periods and Daily-life Protection. – 7. COVID-19 Protection. – 8. Conclusions.

*Human rights/ human considerations have started to carry more weight nowadays, especially in enforcement matters. Both rehabilitative and social aims in legal matters have been strengthened during recent decades. At the same time, increasingly intensive instruments to handle artificial arrangements and fraudulent debtors have emerged. Thus, the question arises whether the enforcement system embodies a creditor-biased or a debtor-biased framework. The present article debates this question in the context of Finnish legislation, focusing on two perspectives of the Finnish enforcement system: How are debtors protected? How can we ensure that the enforcement is efficient?*

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## 1. STARTING POINTS

Since the 1990s, the global economy has experienced instability. At the beginning of the 90s, many countries suffered economic downturns. This recession caused unemployment and led to human tragedies. European countries, like Spain, Italy, and Greece, experienced economic crises less than ten years ago. Since the whole world is fighting Covid-19, this pandemic represents not only a health problem but also deeply affects global and national economies, causing human tragedies, such as unemployment, deaths, and illness. When such difficulties accumulate, this can also result in economic fatalities. People who have invested a lot, for instance in their homes cannot pay their mortgages on time or at all. Therefore, a need has arisen to help debtors tackle indebtedness to realise financial rehabilitation. This compassion does exemplify not only human decency but also an economic interest. In other words, the aim is to help debtors regain financial independence and economic viability.

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

Hence, two primary enforcement law trends have emerged to protect and rehabilitate debtors and secure efficient, effective enforcement of artificial arrangements and fraudulent debtors. From that perspective, traditional enforcement law has undergone some turmoil, unmasking two countervailing aims: human considerations on the one side and effectiveness on the other side. How enforcement legislation can realize these conflicting objectives simultaneously has posed a pertinent question. This research, situated within the Finnish legislative context, postulates parallel solutions to human considerations and effective governance.

## 2. HUMAN APPROACH

Nowadays, human rights along with human considerations carry more weight in enforcement matters. This trend has persisted in Finland since 1995. Nevertheless, the idea does not depict a modern concept: the Code of 1734 already mandates fair enforcement.<sup>2</sup> However, some steps have been taken quite recently; for example the last resort of using custody as a coercive measure during the enforcement was abandoned in 1996.<sup>3</sup> During the enforcement, the most demanding coercive measure entails the debtor

1 ‘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 22 November 2020.

2 T Linna, ‘Ulosotto ja perusoikeudet’ (2000) 5 *Lakimies* 690–709.

3 Previously, custody could be used to ensure a defendant fulfilled an order on relevant enforcement grounds. (Payment orders were excepted from this practice, but other kinds of duties to fulfil could be thus enforced).

being summoned to a police enforcement inquiry.<sup>4</sup> It is, however, not legal to take him/her into custody beforehand in order to ensure the debtor attends the enforcement inquiry.<sup>5</sup>

Enforcement authorities must protect the interests of creditors and debtors.<sup>6</sup> The debtor does not usually need legal counsel because the enforcement authorities will take one's rights into consideration *ex officio*.<sup>7</sup> They must observe what is fair and guarantee the debtor does not suffer unduly from the judgment execution.<sup>8</sup> The principle of fairness includes a norm concerning conflicting interests. If a conflict exists, the debtor's interests supersede (*prima facie*) those of the creditor.<sup>9</sup>

The Enforcement Code emphasizes the primary principles defining fairness during enforcement.<sup>10</sup> According to the general fairness principle, the executive officer must act impartially and adequately when carrying out official duties. Additionally, the executive duties have to be performed rapidly, effectively and expediently. The procedures cannot harm the debtor or the third party more than required to achieve enforcement. The executive officer also has to promote the debtor's independent initiative and party readiness to conciliate.<sup>11</sup> This principle of due form balances executive powers and optional rules.<sup>12</sup> The fairness principle also encompasses the principle of proportionality.<sup>13</sup>

The fairness principle covers both procedural and material fairness.<sup>14</sup> Procedural fairness in the enforcement process is not identical to the fairness required at the trial stage. During the enforcement procedure, legal protection differs and is not subject to the same protection as civil litigation. Legal protection augments when investigating enforcement material basis during a trial. As enforcement entails one facet of justice administration, the required fairness is more relevant than administrative procedures.<sup>15</sup>

The primary fairness elements constitute 1) the right to be heard, 2) state office impartiality, 3) publicity restrictions, 4) the duty to give decision grounds, 5) the right to appeal, and 6) the right to use counsel or an attorney.<sup>16</sup>

For reasons of fairness, the enforcement must not draw unnecessary public attention and harm.<sup>17</sup> Any damage caused must relate to enforcement. Overly radical acts must be avoided, and enforcement measures must be executed discreetly. Also, business and neighbourhood relations and housing aspects must not be jeopardised unless essential. The party's wishes concerning the place and time of enforcement execution have to

4 Linna (n 2) 692.

5 The Enforcement Code of Finland (705/2007) Chapter 3, Section 59; Linna (n 2) 698.

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

7 Linna, Leppänen (n 6) 290.

8 The Enforcement Code (n 5) Chapter 1, Section 19.

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

10 Linna, Leppänen (n 6) 10 – 11.

11 The Enforcement Code (n 5) Chapter 1, Section 19.

12 Linna, Leppänen (n 6) 11.

13 Linna, Leppänen (n 6) 22.

14 Linna, Leppänen (n 6) 25.

15 Linna, Leppänen (n 6) p. 26.

16 Linna, Leppänen (n 6) 27 – 31.

17 Linna, Leppänen (n 6) 312.

be considered, if possible, without endangering the principle of judicial investigation. Moreover, the bailiff also must promote a conciliatory spirit amongst the parties.<sup>18</sup>

One of the essential principles of enforcement entails transparency. The executive officer must inform the debtor and protect the individual *ex officio*. The duty to inform the party gains complexity if the person does not retain legal counsel or an attorney. When informing the parties, the executive officer must maintain impartiality: the parties must be treated equally. Transparency constitutes one component in *executive service*.<sup>19</sup> Just like the administration of justice reflects a court service in Scandinavia, the executive authority in civil litigation serves the same purpose and functions as a *service* for clients, who, in this instance, comprise the creditor and the debtor.

Even if the enforcement involves liquidation, rehabilitative ideas have dominated recent reforms. One pertinent example encompasses enforcement time-limits now restrict enforcement, making it no longer valid indefinitely. The usual time limit is 15 – 20 years if the debtor is a natural person.<sup>20</sup> The idea aims to prevent unfair long-lasting enforcement.<sup>21</sup> Thus, modern enforcement shares some characteristics with loan arrangements, even if it represents liquidation.<sup>22</sup>

Debtors, who are legal persons, have realised the notion of the capacity to survive with the help of the right to *beneficium* and the protected portion, which – after the reform ensures legal persons' interests are served.<sup>23</sup>

The appeal is also examined as a whole in the first instance<sup>24</sup>, where the District Court may examine if an executive officer's decision stands entirely correct, and the Court is not bound to the complainant/plaintiff claims.<sup>25</sup> This premise exemplifies how the parties are protected *ex officio* during the enforcement procedure.

The right to be heard does not embody an absolute enforcement right like in a civil proceeding. The parties have already been heard during the proceedings when the grounds for the enforcement were obtained. Moreover, enforcement is based on judicial investigation, minimising the need to be heard. However, the debtor usually has a right to be heard. Various notices also serve as tools for delivering information to the debtor.<sup>26</sup>

With the reform of 2003, a general rule was introduced, covering party hearings in the Code of Enforcement. According to Chapter 3, Section 32, the person in question shall reserve an advanced opportunity to be heard suitably by a bailiff. An inability to obtain the individual's contact details or the inability to hear the person for another corresponding reason shall not prevent enforcement continuation. In other situations explicitly stated in law, the bailiff shall hear the parties and third parties if the matter

18 Koulu, Lindfors (n 9) 136.

19 Linna, Leppänen (n 6) 35 – 36.

20 The Enforcement Code (n 5) Chapter 2, Section 24.

21 Linna, Leppänen (n 6) 18.

22 Linna, Leppänen (n 6) 18.

23 The Enforcement Code (n 5) Chapter 4, Sections 21, 64, 65 and Linna, Leppänen (n 6) 22.

24 Only at the district court and no longer at the court of appeal.

25 The Enforcement Code (n 5) Chapter 11, Section 16.

26 Linna, Leppänen (n 6) 27 – 28.

is deemed considerably significant and does not impede the hearing. The person in question shall reserve an opportunity to be heard again if pertinent new evidence emerges regarding the matter. Furthermore, numerous striking paragraphs outline the right to be heard in various situations during enforcement.<sup>27</sup> In practice, the bailiff calls the debtor, and the individual gains the right to be heard immediately.<sup>28</sup>

The bailiff can even organize voluntary meetings for all parties in the enforcement case. Yet, no rules exist concerning this procedure. However, this process exemplifies the only way to encourage communication and discussion between parties; otherwise, they cannot meet. The creditor is not invited to the enforcement inquiry because the debtor must concentrate on relaying information. If the enforcement transpires at an individual's home, the creditor cannot attend<sup>29</sup>, as this infringes on the debtor's protection and privacy.<sup>30</sup>

The information also must be given via notices. Three legal *notices* exist when an enforcement ground is based on a liability to pay. First, the bailiff should contact the debtor and *notify* the person of the filing, declaring the enforcement matter. Secondly, *prior notice* is given to inform the debtor property that will be seized, called a declaration of an object. The third notice, *a notice after the fact*, refers to facts relevant to the situation, what has happened, and when. This notice can also be termed 'a second declaration of the matter'.<sup>31</sup>

The enforcement authorities aim for a voluntary payment after sending a collection letter. The assistant enforcement officer and the debtor may set up a payment schedule to establish a voluntary debt repayment. The schedule preconditions will be assessed on a case-by-case basis.<sup>32</sup>

Instead of salary or business income, the enforcement authority may create a payment schedule if the debtor can credibly guarantee repayment following the payment schedule. The payment schedule equals wage or business income garnishment. If a payment schedule is set up instead of assessing wages or business income, the same rules for awarding leniency applied to these constraint types are applied to the payment schedule. In addition to setting up the payment schedule, constraint will also be carried out to ensure schedule adherence. If the debtor fails to keep to the schedule, then the seized assets will be sold by compulsory auction. The officer in charge may decide the payment schedule has also lapsed if the debtor's new debts enter enforcement proceedings or if the debtor mismanages the seized assets. The alternatives involve establishing a new payment schedule to reflect the new circumstances or selling the seized assets.<sup>33</sup>

Every debtor has one personal District Bailiff and one personal assistant executive officer who deals with all the person's debts and other possible executive matters. The

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27 The Enforcement Code (n 5) Chapter 3, Section 32 and Linna, Leppänen (n 6) 407 – 410.

28 Linna, Leppänen (n 6) 408 – 409.

29 It is nowadays very rare that enforcement takes place in the debtor's home. Linna (n 2) 696.

30 Linna, Leppänen (n 6) 408 – 409.

31 The Enforcement Code (n 5) Chapter 3, Sections 33, 34 and 36 as well as Linna, Leppänen (n 6) 394.

32 The Enforcement Code (n 5) Chapter 4, Section 59 and 'Velan maksu' (Oikeus.fi, 16 July 2020) <<https://oikeus.fi/ulosotto/fi/index/vellallisenaulosotossa/maksusuunnitelma.html>> accessed 22 November 2020.

33 The Enforcement Code (n 5) Chapter 4, Section 59 and 'Velan maksu' (n 32).

aim is to consider the debtor's entire situation all the time. Even though the creditor can file with any executive officer in the country, one person takes responsibility for one debtor's whole situation. After the opening tasks have been completed, the files will be transferred to the executive officer in charge, who will then remain responsible for the case henceforth.<sup>34</sup>

The attending executive officer usually works in the same residence area as the debtor. If this is not the case, the debtor's real possibilities to attend one's interest have to be otherwise taken into consideration. The other primary principle entails choosing the executive officer in charge to execute enforcement expediently.<sup>35</sup>

### 3. DEBTOR-BIASED OR CREDITOR-BIASED SYSTEM?

Due to recent extensive reforms in enforcement, debtors' protection is both modern and up to date. Enforcement authorities must protect the interests of debtors *ex officio*. The debtor, therefore, does not usually need an attorney. A bailiff must observe the debtor does not suffer more than necessary to execute the judgment and observe what is fair.

Even if the enforcement involves liquidation, rehabilitative ideas<sup>36</sup> have remained paramount during recent reforms. The voluntary payment objectives, time-limited execution, personal executive officer's systems and the protected portion protect debtors. Moreover, some property types may not be seized, for instance, social benefits and compensation of costs.<sup>37</sup> The newest reform in that sense is that the re-employment of a debtor is supported. If an unemployed debtor obtains a job, the enforcement can be suspended (maximum of six months).<sup>38</sup> In such situations, a robust social aim in enforcement exists. The State will pay any compensations based on pain and suffering or injury or compensation based on a temporary or permanent handicap because of the liberty deprivation of innocent persons kept outside of the enforcement. Physical force is not acceptable in the enforcement of a monetary claim.<sup>39</sup> The debtor is thus well-protected regarding integrity.

However, legal scholars have criticized the enforcement's data protection, especially from the debtor's viewpoint. The effective furnishing of information has traditionally signified a risk to a debtor, and it has been argued enforcement begins to resemble bankruptcy procedures. If the bailiff pools the information furnished from various sources, the bailiff gains a comprehensive overview of the debtor's financial situation.

34 Linna, Leppänen (n 6) 42.

35 The Enforcement Code (n 5) Chapter 3 Section 14.

36 Linna and Hupli have found three kinds of elements in the modern enforcement. First, it still is a liquidation procedure. Second, the enforcement authorities have to protect the debtor in a defensive way. Third, there is a rehabilitative function strongly involved in the current enforcement and other insolvency procedures. Bankruptcy is mainly a liquidation procedure when the reorganization proceedings or legal loan arrangements are based more on the rehabilitation. Still, there is a need for rehabilitation in the enforcement; the legal possibilities to get involved in reorganization procedures or the loan arrangement are not sufficient. On the other hand, those procedures can also be seen as liquidation. T Linna, T Hupli, *Ulosotto ja konkurssi lainkäytömenettelyinä* (Lakimies 2001) 596 – 625.

37 Koulu, Lindfors (n 9) 157 and pp. 212 – 213.

38 The Enforcement Code (n 5) Chapter 4, Section 51a, and the Government bill nr 150/2017.

39 Koulu, Lindfors (n 9) 157 and pp. 212 – 213.

Koulu and Lindfors are of opinion that the bailiff has better tools for that during the enforcement procedure compared with the bankruptcy procedure.<sup>40</sup> From the debtor's perspective, more effective tools existing in a single enforcement matter than general bankruptcy enforcement have been criticised.

The current dualism typifying this trend is expected to continue in the future. On the one hand, routine matters, such as cooperative salary earners or impecunious debtors, are handled automatically, minimising the enforcement work. In such situations, the enforcement somewhat resembles administration (in the bureaucracy sense) rather than justice administration.<sup>41</sup> However, the enforcement authorities must cooperate with the other authorities and the private sector. The aim is to consider the debtor's situation comprehensively. The bailiff has a new rehabilitative role as well. The second question constitutes, what is to be done with contumacious debtors. They engender current objects in effective and individual enforcement, *special enforcement*. In such cases, the enforcement procedure resembles more justice administration than administrative matters. Thus, the enforcement becomes long-lasting and inclusive mimicking bankruptcy proceedings.<sup>42</sup>

Havansi has also highlighted the same problem. He has asserted enforcement has become softer concerning the honest debtors facing genuine financial challenges. The opposite trend of intensive enforcement concerns the potentially but contumacious solvent debtor.<sup>43</sup>

#### 4. COOPERATION BETWEEN ACTORS

The debtor must cooperate. The debtor's obligation to provide information became more evident and concrete with the 2003 reform. The reform solidified this mandate.<sup>44</sup> The debtor must respond to the bailiff's questions, but otherwise, the debtor does not need to provide information.<sup>45</sup> The Enforcement Code lists the questions.<sup>46</sup> Otherwise, the debtor does not need to remain active, for the debtor has no duty to contact a bailiff if the person's income or wealth changes, and the information encompassing answering the bailiff's questions.<sup>47</sup> Therefore, a debtor's role embodies a passive information source rather than an active subject.

Upon the bailiff's request in an enforcement matter, the debtor shall truthfully provide the following information the bailiff needs for enforcement: (1) debtor's personal and contact details and, insofar as is necessary for the enforcement matter, information

40 Koulu, Lindfors (n 9) 416 – 417.

41 There has also been some discussion in Finnish legal literature whether the enforcement is included in administration or in the administration of justice. Havansi, Linna and Hupli see the enforcement as an administration of justice, whereas Tuori thinks it is only administration. Hidén finds characteristics of both elements. Linna, Hupli (n 36) 596 – 625 and T Linna, *Ulosotto-oikeuden yleiset opit – missä ja mitä?* (Lakimies 2009) 3 – 33.

42 Koulu, Lindfors (n 9) 419.

43 E Havansi, *Ulosotto-oikeuden pääpiirteet*, 2nd ed (Helsingin yliopisto 2000) 13 – 14.

44 Linna, Leppänen (n 6) 449.

45 Koulu, Lindfors (n 9) 150.

46 The Enforcement Code (n 5) Chapter 3, Section 32.

47 Linna, Leppänen (n 6) 448.

regarding family and persons maintained by the individual, (2) information on one's property and other assets, income, debts, shareholdings and memberships in other corporations with a bearing on financial status, (3) information on any likely anticipated changes to the information in the following year, (4) information on how wages, salary, or other recurring income is determined, as well as information on the person's place of employment and employer contact details or other payer of wages or salary, (5) information on the whereabouts of an object or document subject to a relinquishing liability or a statutory duty of relinquishment to the bailiff, (6) information on contracts and commitments affecting the individual's financial status as well as assets administered or used by the person based on an assignment or a comparable basis, arrangement or contract, (7) information on assets conveyed, payments made and transactions concluded against consideration or without consideration, if the information is necessary to determine whether an action for recovery can be used to recuperate assets for enforcement, and on procedures, arrangements and other measures affecting comparable transactions (8) other comparable information on the person's financial status and operations.<sup>48</sup>

The list is not conclusive. Based on paragraph 8 of Chapter 3, Section 52 of the Enforcement Code, the bailiff can always pose additional similar questions to the debtor. However, the question has to concern the debtor's economic situation, and information must be necessary to execute the enforcement order.<sup>49</sup>

The obligation to provide information also covers contested property and property challenging to realise. Notably, whether the property can or cannot be seized remains irrelevant. The same also applies to property abroad, even if the Finnish bailiff lacks the competence to execute the enforcement where such property is concerned.<sup>50</sup>

A debtor who is a natural person shall provide the information oneself. If the debtor has a guardian, the guardian shall provide the information to administer the assets. Also, an individual managing the debtor's business or assets is required to provide the mandated information. Concerning a decedent's estate, an estate executor or administrator must provide information. If the estate shareholders are jointly in charge, every shareholder is subject to the same compulsion.<sup>51</sup>

If the debtor entails a corporation or a foundation, the information shall be provided by (1) a board of directors member or a comparable body, or chief executive officer or comparable position, (2) an individual personally liable for corporate commitments, (3) an individual entitled to sign for the corporation or foundation alone or jointly with another individual, (4) an individual who, given the circumstances<sup>52</sup>, is

48 The Enforcement Code (n 5) Chapter 3, Section 52.

49 However, other kinds of questions may be asked if the debtor has been informed responding to them remains voluntary. But even in that case, the questions must be deemed necessary to fulfil the pending enforcement execution. Linna, Leppänen (n 6) 456.

50 Linna, Leppänen (n 6) 457 – 458.

51 The Enforcement Code (n 5) Chapter 3, Section 53.

52 This refers to the various intermediary arrangements in the corporation or a foundation operation. This intermediary uses the operative power usually belonging to the corporation's organizational entities. These arrangements can be typical, for instance, in family businesses or in one-man companies. The internal hallmark of this arrangement can be, for example, the person has a corporate credit card in one's possession or in one's factual control. Linna, Leppänen (n 6) 454.

managing corporate or foundation operations or seeing to its administration or asset administration.<sup>53</sup> Moreover, a person holding one of these positions during the year preceding the request for information is subject to the obligation to provide information. If no one is available to provide information, the individual last occupying a comparable position is subject to the same mandate.<sup>54</sup>

Furthermore, upon request, a debtor employee and auditor shall provide the required information relating to their tasks. However, this mandate only applies if the bailiff considers the information essential for the enforcement and cannot be obtained in any other manner.<sup>55</sup> The first alternative involves asking the debtor directly. Thus, the role of employees and auditors represents a secondary option. The requirements for interviewing employees and auditors only apply if the information cannot be found otherwise, and this information must also be necessary for the enforcement's execution. The employee plays a significant role during the interviewing process. The employee can only be asked questions related to one's responsibilities. Providing information must not jeopardise an employee's position, for interviewing employees is only permitted as an ultimate means of obtaining information.<sup>56</sup> Furthermore, only higher-ranking employees should be questioned. Lower-ranking clerical employees or workers should not be interviewed.<sup>57</sup> Likewise, the auditor should only be questioned if necessary, and the auditor's privileged position as a debtor's trusted employee should be considered.<sup>58</sup>

The list of questions in the Enforcement Code<sup>59</sup> exclusively concerns the third parties who must give information to the bailiff based on the Enforcement Code. Third parties have no duty to respond to any additional questions.<sup>60</sup>

No particular order in the Enforcement Code list mandates how the bailiff should interview the persons with the duty to provide information. However, in practice, the first source of information remains the debtor or the creditor. This action is also based on the principle of fairness and the protection of privacy.<sup>61</sup>

The bailiff may procure information from a person subject to the compulsion either informally or by carrying out an enforcement inquiry. No rules exist regarding informal information procurement; thus, the fairness principle only suggests a guideline to follow.<sup>62</sup> The Government Bill stated the bailiff should avoid interviewing the debtor in all situations. Hence, casual information obtaining should not occur without the debtor's consent if colleagues, family members, neighbours, or other persons are

53 The person is obliged to give information like a debtor, and has a duty to attend in the enforcement inquiry. Thus, one's position can therefore be seen as a parallel to the debtor's position. (Linna, Leppänen (n 6) 452.)

54 The Enforcement Code (n 5) Chapter 3, Section 54.

55 The Enforcement Code (n 5) Section 55.

56 Linna, Leppänen (n 6) 452.

57 Linna, Leppänen (n 6) 455.

58 Linna, Leppänen (n 6) 456.

59 The Enforcement Code (n 5) Chapter 3, Section 52.

60 Linna, Leppänen (n 6) 482 and 456.

61 Linna, Leppänen (n 6) 446.

62 Linna, Leppänen (n 6) 447.

present. However, an exception exists if the debtor has attempted to avoid the bailiff. In such instances, third parties may be present when posing questions to the debtor.<sup>63</sup>

An enforcement inquiry may be aimed at an employee and the auditor only if a particular reason exists. If a said individual refuses to provide information, then the bailiff may, under threat of a fine, compel the individual to do so at once or within a time limit. In an enforcement inquiry and, when necessary, including information procured informally, the individual subject to the obligation shall be reminded of the duty to give truthful answers, and giving false or concealing information may result in punishment.<sup>64</sup> The offences based on debtor dishonesty should be found in the Criminal Code. The offenses comprise dishonesty by a debtor, aggravated dishonesty by a debtor, fraud by a debtor, aggravated fraud by a debtor, deceitfulness by a debtor, a debtor's violation, and favouring a creditor.<sup>65</sup> The debtor has the duty always to be truthful. This responsibility does not depend on whether the debtor is interviewed informally or if the bailiff carries out an enforcement inquiry. The mandate to remain honest covers many situations, even when the debtor is approached during a chance encounter.<sup>66</sup>

Before 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 and enforcement had been terminated because of a lack of means. Usually, the enforcement inquiry was carried out because there were doubts about whether the debtor had hidden some property. With the reform, the enforcement inquiries became a standard way to search property and maintain contact with the debtor. There is thus a substantial change in the ratio of the law.<sup>67</sup>

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 debtor's financial circumstance has not been credibly ascertained.<sup>68</sup> This rule represents the traditional starting point concerning when the enforcement inquiry becomes obligatory, namely when it is ruled.<sup>69</sup> In practice, the enforcement inquiry embodies the usual way to search for assets and maintain contact with the debtor.<sup>70</sup> The legislator's desire to change the situation thus seems to have been successful.

If an enforcement inquiry has already been carried out while the matter is pending and (1) no more than six months have passed since the inquiry, no need for a new enforcement inquiry exists unless circumstances have changed, (2) more than six months but no more than one year has passed since the inquiry, a new enforcement inquiry shall be executed if deemed justified given the circumstances, (3) more than one year has passed since the inquiry, a new enforcement inquiry shall be carried out unless

63 Government Bill 216/2001, p. 152.

64 The Enforcement Code (n 5) Chapter 3, Section 56.

65 Criminal Code, Chapter 39, Sections 1 – 6.

66 Linna, Leppänen (n 6) 447.

67 Linna, Leppänen (n 6) 464.

68 The Enforcement Code (n 5) Chapter 3, Section 57.

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

70 The Enforcement Code (n 5) Chapter 3, Section 57, Paragraph1 and Koulu, Lindfors (n 9) 151.

manifestly unnecessary. If the wages, salary, or other recurring income of the debtor have been attached, an enforcement inquiry shall be carried out if necessary, owing to new applications or some other reason. At least once a year, the bailiff shall verify the amount of the recurring income paid to the debtor, unless this is obviously unnecessary.<sup>71</sup> The creditor may also request a bailiff to perform an enforcement inquiry, but the bailiff ultimately decides. The creditor then has no right to evoke the enforcement inquiry.<sup>72</sup> An enforcement inquiry may also be carried out very frequently, as often as every week or even every day, if a valid reason for doing exists, like the conditions concerning the debtor's financial status change very abruptly. However, an enforcement inquiry cannot be utilized as a sanction, even when the debtor is contumacious. Such activities would contradict the fairness principle.<sup>73</sup>

The enforcement inquiry epitomises the most formal act of enforcement execution. The debtor must be summoned at least two days before the inquiry. The individual has to appear in person and is not allowed to use a representative. Being fetched by the police or a threat of a fine can be used as coercive measures.<sup>74</sup> The presence of legal counsel may also be prohibited, or attendance may be subject to rules if counsel's attendance would considerably hamper the enforcement. However, legal scholars have viewed this dynamic as unjust because the debtor must be truthful and correct the given information.<sup>75</sup>

The enforcement inquiry shall be carried out following response protocol to the bailiff's questions. Moreover, the person giving the information may be required to compile a list of the debtor's property and assets, income, and debts or to provide the information needed for such a list. The protocol and list shall be given for review to the person subject to the obligation to provide information, and the corrections and additions shall be noted. The person subject to the mandate to provide information shall sign a statement stating they provided correct information; this statement shall then be added to the protocol and list. The enforcement inquiry may be conducted via telephone or some other suitable contact manner in a simple matter. In this situation, the necessary entries concerning the enforcement inquiry shall be recorded.<sup>76</sup>

An enforcement inquiry shall neither last longer than is needed to procure the necessary information nor for longer than six hours without interruption unless the person subject to the information obligation consents to this. If the inquiry is *essential for the enforcement, a person who has been brought to the enforcement inquiry by the police or who attends under threat of being fetched by the police* may be prevented from leaving the inquiry. Also, *another person* subject to the information mandate may be prevented from leaving the inquiry if *a fundamental reason* related to the enforcement exists *and if the prevention cannot be deemed unreasonable* given the circumstances.

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71 The Enforcement Code (n 5) Chapter 3, Section 57.

72 Linna, Leppänen (n 6) 465.

73 Linna, Leppänen (n 6) 467.

74 Coercive measures cannot be used where they is not necessary to carry out an enforcement inquiry even though the debtor is being evasive. Linna, Leppänen (n 6) 471.

75 The Enforcement Code (n 5) Chapter 3, Sections 58 and 59; see also Koulu, Lindfors (n 9) 152.

76 The Enforcement Code (n 5) Chapter 3, Section 60.

The inquiry shall be postponed in full or in part if the bailiff deems the person subject to the information obligation cannot reasonably do so, especially illness or some other comparable reason.<sup>77</sup>

Preventing a person from leaving the inquiry poses a complicated question regarding fundamental rights. The legal literature stipulates a bailiff should be careful if a debtor is deprived of liberty, even for only a short period. A person prohibiting another from leaving by depriving liberty tests a state's constitutional limits. Careful attention to procedural correctness and fairness remains imperative.<sup>78</sup>

A person in possession or in charge of accounting data belonging to a debtor liable to keep accounts shall submit the following at the bailiff's request and for enforcement inquiry purposes: (1) accounting journals, receipts, and other accounting material, (2) documents and other records relating to the management and agreements of a corporation or foundation, (3) other documents and records concerning the debtor's business or professional activity.<sup>79</sup> If a person subject to the information obligation refuses to do so in an enforcement inquiry or refuses to submit mandated data, the bailiff may, under threat of a fine, require the individual to fulfil the obligation at once or within a time limit.<sup>80</sup>

## 5. THE ROLE OF THIRD PARTIES AND OUTSIDERS

The bailiff's right to obtain information from other authorities or third parties was considerably expanded in 1997. While obtaining information remains necessary in various enforcement types, impressive collection garners the most significance.<sup>81</sup>

According to the Enforcement Code's fundamental norm, the bailiff has the right to acquire specifically-outlined information, documents, and materials if they are necessary for enforcement in a given matter.<sup>82</sup> This rule completes attaining information based on other legislative acts. Rules included in other acts. Other possibilities exist to obtain confidential information. The cited rule is, therefore, only a minimum guarantee to obtain information. Also, the bailiff can, of course, collect publicly available information.<sup>83</sup>

The third party is obliged to provide information when asked and therefore has no obligation to provide information actively on one's initiative. The individual must answer the questions and remain truthful. If the third party gives false information or conceals information, the person could commit a criminal offence or remain liable to pay compensation.<sup>84</sup> The enforcement inquiry does not represent a measure against the third party, but a person as a debtor representative remains subject to such an inquiry. However, the third party can be viewed as a debtor if the bailiff suspects

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77 The Enforcement Code (n 5) Chapter 3, Section 61.

78 Koulu, Lindfors (n 9) 153 and Linna (n 2) 699.

79 The Enforcement Code (n 5) Chapter 3, Section 62.

80 The Enforcement Code (n 5) Chapter 3, Section 63.

81 Linna, Leppänen (n 6) 482.

82 The Enforcement Code (n 5) Chapter 3, Section 64.

83 Linna, Leppänen (n 6) 483 and 485.

84 Linna, Leppänen (n 6) 492 – 493.

artificial arrangements. In such a case, the third party is subject to the same duties to give information like the debtor.<sup>85</sup>

As the third party holds no general obligation to help the bailiff and give information, a third party's role differs from a witness's role in court proceedings. The third-party can voluntarily offer additional information.<sup>86</sup> Otherwise, for instance, a spouse, a neighbour, or another third party who knows the debtor's information has no general obligation to provide information based on their position.<sup>87</sup> Unlike a witness exception, if a relative or other close person must give information based on the Enforcement Code, the individual has no right to refuse.<sup>88</sup> The third-party also has no right to refuse to give information even if the information may be self-incriminating. Accordingly, it is argued in the legal literature that the third party is obliged to incriminate him/herself if necessary in order to fulfil the obligation to provide information.<sup>89</sup> However, the latter duty can be contested on the grounds of human rights and the European Court of Human Rights' case law.

If a third party refuses to provide information, the bailiff may compel the individual to provide it at once or within a time limit, and the failure to do so may result in the imposition of a fine. If information cannot be obtained from the third party in any other manner, the bailiff may compel the person, under threat of a fine, to arrive at the bailiff's office or at another suitable location to provide the information.<sup>90</sup> No need exists to use coercive measures against the third party who holds a minor interest or the information is not paramount. The situation as a whole is taken into consideration. The same is also true for circumstances where it is not clear if the third party must give information or not.<sup>91</sup>

*An authority and a party performing a public task* shall, upon request, provide the bailiff with all information in its possession relating to (1) the debtor's property and assets, income, debts, and another financial status and banking information, (2) the debtor's employment and service relationships, pensions and economic activity, (3) the debtor's address, telephone numbers, and other contact details.<sup>92</sup>

The bailiff cannot use the threat of a fine against an authority. However, an authority would be committing a criminal offence if it does not fulfil its duties to give information.<sup>93</sup>

In other words, every person, including outsiders without any specific interest in the case, has the right to receive, from the local enforcement authority, a certificate from the enforcement register concerning a person specified by the individual as a respondent in an enforcement matter. All the data entered into the Enforcement Register may be included on a certificate are public; the other data stored in the register remain confidential. The certificate will include the following information: 1) applicant and respondent names

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85 Linna, Leppänen (n 6) 489.

86 Linna, Leppänen (n 6) 483 - 484.

87 Linna, Leppänen (n 6) 489.

88 Code of Judicial Procedure, Chapter 17, Section 20.

89 Linna, Leppänen (n 6) 491 - 492.

90 The Enforcement Code, Chapter 3, Section 68.

91 Linna, Leppänen (n 6) 499.

92 It is not significant if the contact details are confidential or not. Linna, Leppänen (n 6) 496.

93 Linna, Leppänen (n 6) 501.

and respondent's date of birth and the place of residence, 2) the enforcement matter, when it became pending, and passive receivable registration, 3) amount of the applicant's receivable and the amount remitted to the applicant, 4) nature and date of a certificate of impediment. The certificate shall be given as a print-out from the Enforcement Information System. If no register notations exist, a certificate to this effect shall also be issued. A certificate may usually be given covering the two years preceding the request. However, it can be issued covering up to four years if the requester demonstrates the information is necessary for their livelihood or otherwise to safeguard their vital personal or public interest. Before a certificate is issued, the name, profession, and residence of the person requesting the certificate and the essential justification shall be entered into the Enforcement Information System. At the registered person's request, the individual shall be informed of any certificates concerning the registered person having been issued from the enforcement register during the preceding six months.<sup>94</sup> This process aims to control unnecessary requests and to act reasonably concerning the debtor. However, information can be attained based only on the requesting party's inquisitiveness.<sup>95</sup>

## 6. LIMITATION PERIODS AND DAILY-LIFE PROTECTION

Many protective rules exist in Finnish legislation. For instance, the debtor's necessary living costs are considered with the protected portion system's help, meaning an individual minimum income is protected from enforcement. The debtor's protected portion is 22.63 Euro per day for oneself and 8.12 Euro per day<sup>96</sup> for a spouse, a debtor's child, and a spouse's child depending on one's maintenance payment date of the next wages or salary. In the calculation of the protected share, a month corresponds to 30 days. A spouse engenders a married spouse or a person living in marriage-like circumstances. A person is deemed to depend on the debtor for maintenance if one's income is less than the protected portion calculated for the debtor, or a child/children, regardless of whether or not the spouse contributes to sustenance. Debtor-paid maintenance can also be considered. The amount of the protected portion shall be reviewed annually by a Decree of the Ministry of Justice.<sup>97</sup>

The following shall not be garnished from the base income: 1) the debtor's protected portion and one-third of the amount of the wages or salary exceeding the protected portion (*income limit garnishment*), 2) two-thirds of the wages or salary if the wages or salary exceed twice the amount of the debtor's protected portion, 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 more than four times the amount of the debtor's protected portion. The Ministry of Justice's Decree will give more detailed provisions covering the third situation.<sup>98</sup>

Furthermore, the debtor's assets can be repossessed. Nevertheless, the assets the debtor and the debtor's family need for everyday life (tools and educational materials)

<sup>94</sup> The Enforcement Code (n 5) Chapter 1, Sections 30 and 31.

<sup>95</sup> Linna, Leppänen (n 6) 516.

<sup>96</sup> The Decree of the Ministry of Justice 1123/2019 (came into force on 1 January 2020).

<sup>97</sup> The Enforcement Code (n 5) Chapter 4, Section 48.

<sup>98</sup> The Enforcement Code (n 5) Chapter 4 Section 49.

are protected from repossession. This is called the right to *beneficium* and has to be taken into consideration *ex officio*.<sup>99</sup> This right may also not be renounced; even if the debtor wants to give these items to the executive officer voluntarily, the official cannot accept them. The debtor could sell these items and then give the money to the executive officer.<sup>100</sup>

The enforcement limitation period was adopted in the Finnish enforcement legislation in 2003. This substantial reform towards debtors' rehabilitation reflected altered attitudes concerning payment obligations. Negative attitudes emerged towards the change and the new debut release mindset. The Enforcement Act only contained an enforcement limitation period. It did not outline a final debt limitation statute. Hence, only the enforcement was limited, while materially, the debt was still valid even after this time-limit. The enforcement was not possible after the limitation period had expired. However, private debt collection was permitted, although few legal tools existed to do so. A set-off was possible, as well as taking the debt from the security. Payment could legally be retrieved from a decedent's estate.<sup>101</sup> In practice, the debtor held only a moral obligation to pay. As a whole, the debtor situation remained unclear about how this debt affected taxes and social benefits. The legislator saw this situation as unsatisfactory and took action. With 2008 amendments, the final debt limitation was included in the new Enforcement Code. The economic crisis at the beginning of the 1990s reason precipitated these reforms. As the legal possibility to get a loan or the voluntary release programme did not help, these rules limiting the duration and final limitation statute were adopted into law.<sup>102</sup>

The maximum limitation period now equals 32 years. After that time, no tools exist to continue debt collection. Essentially, the debt no longer exists.<sup>103</sup> A ground for enforcement imposing the payment liability to *a natural person*<sup>104</sup> remains enforceable for 15 years. The first debts based on this amended rule will expire soon. The limitation extends to 20 years if the creditor embodies a natural person or if the debt is based on a crime for which the debtor has been sentenced to imprisonment or community service. If the debtor illustrates before issuing the ground for enforcements, the debt had been transferred to a natural person by someone other than a natural person, the time limit equals 15 years.<sup>105</sup> The duration is calculated from the judgment date by default or the final judgment or other final ground for enforcement.<sup>106</sup> In the case of taxes and other public payment obligations, the debt's final limitation statute provides duration equals

99 On the interpretation of the *beneficium*, see the case law of the Supreme Court 1997:168, 1999:5, 2001:100 and 2004:136.

100 The Enforcement Code (n 5) Chapter 4, Section 21 and Linna, Leppänen (n 6) 67.

101 This complicated possibility was very laborious for creditors to collect the estate payment. At the same time, they had the most unsure and the smallest possibility of obtaining the payment compared with the other creditors. This situation was also seen as a disadvantage to debtor rehabilitation. The individual did not want to become active economically because it benefitted only creditors and not one's heirs. Therefore the debtor usually funneled the credit directly to the heir. See P Tuunainen, *Täytäntöönpanon määritäjä ja velallisen kuolema* (Lakimies 2004) 862 – 882.

102 Koulu, Lindfors (n 9) 112. For the reasons, see also the Government Bill 83/2006.

103 Koulu, Lindfors (n 9) 114.

104 Debt can be based on the business activities. Koulu, Lindfors (n 9) 113.

105 The Enforcement Code (n 5) Chapter 2, Section 24.

106 The Enforcement Code (n 5) Chapter 2, Section 25.

five years, based on the particular Act on the Enforcement on Taxes.<sup>107</sup> This Act has been professed to be older but more modern than the Enforcement Code even though it has undergone several reforms.<sup>108</sup>

The limitation expiry will also delineate a final debt limitation.<sup>109</sup> This amendment came into force on 1 March 2008. When the limitation for enforcement expires, the debt can no longer be collected through any means, and the debt is permanently statute-barred even materially. Thus, the debt can no longer be recovered, for instance, by a collection agency or from a decedent's estate. This limitation period cannot be interrupted.<sup>110</sup> Yet, set-off is usually possible, permitted to take debt from security.<sup>111</sup> Nowadays, the heir is released from the debt as well.<sup>112</sup>

However, the creditor has the right to take legal action against the debtor and require an extension to the enforcement limitation period. The court may extend the duration by ten years from the original limitation period's expiry if the debtor has a complicated payment receipt, for example, concealing or donating assets or circumstances. The creditor must take such actions at the latest within two years of the original limitation period's expiry.<sup>113</sup>

In case the debtor has paid the debt after the final debt limitation, the individual has a right to reimbursement. The bailiff controls *ex officio* preventing such mistakes.<sup>114</sup>

Whether the limitation periods cover foreign judgments and other foreign grounds for enforcement remains unclear in the legal literature. The legislator believes the limitations can be executed based on enforcement's foreign grounds. However, Linna and Leppänen dissented: the foreign enforcement grounds cannot be put at a more advantageous position than the Finnish ones. Creditors should always apply the foreign enforcement ground in such situations. Linna and Leppänen however, contended the circumstances differed if international rules bound Finland. They demonstrated if enforcement grounds were valid for execution in the original country, enforcement could be denied in Finland. This would encompass all the situations where no *exequatur* is needed. If the *exequatur* is needed, the Finnish statutes on the limitation for enforcement and the final statute of debt limitations will be applied.<sup>115</sup>

However, the debtor will not be released if the creditor has not attained grounds for enforcement. For instance, the debt will not fall under the limitation statute if the debtor and creditor have agreed upon and adhere to the payment schedule.<sup>116</sup>

<sup>107</sup> The Act on Enforcement Taxes and Other Public Payments Section 20.

<sup>108</sup> Koulu, Lindfors (n 9) 116.

<sup>109</sup> The Enforcement Code (n 5) Chapter 2, Section 27.

<sup>110</sup> 'Täytäntöönpanokelpoisuuden määräaika ja saatavan lopullisen vanhentuminen' (*Oikeus.fi*, 14 July 2020) <<https://oikeus.fi/ulosotto/fi/index/ulosotto/taytantoonpanokelpoisuudenmaaraaikajaasataavanlopullinenvanhentuminen.html>> accessed 22 November 2020.

<sup>111</sup> Government bill 83/2006.

<sup>112</sup> Koulu, Lindfors (n 9) 113.

<sup>113</sup> The Enforcement Code (n 5) Chapter 2, Section 26.

<sup>114</sup> Koulu, Lindfors (n 9) 113.

<sup>115</sup> Linna, Leppänen (n 6) 177 – 179.

<sup>116</sup> Koulu, Lindfors (n 9) 112.

## 7. COVID-19 PROTECTION

Due to the Covid-19 pandemic, there are temporary changes in the Enforcement Code. These are put in place to protect those debtors who are economically suffering from the pandemic's consequences. The objective is to make their recovery easier during the period of transition. This temporary legislation came into force in April 2020, and the Finnish government aims to extend the period of the validity of the legislation and the related relief arrangements until the end of April 2021.

The mitigations made possible by the temporary law have already been actively used in the execution of enforcement. Significantly, the applications for grace-free months and relief applications have increased. It is expected that those applications will keep increasing because the economic effects of the pandemic happen with an in-built delay; first, there is a pandemic, and even when it is over, its economic consequences are still there.<sup>117</sup>

The tools that are used to protect debtors during the pandemic and to help them recover economically are, for instance, grace-free months or relief arrangements. Also, the postponement of the execution of enforcement is possible based on the temporary law. This covers both debts and evictions, in which the postponement of the removal date is made possible concerning Covid-19-related problems. Naturally, the urgency requirement stipulates that the foreclosure procedure be carried out without undue delay.<sup>118</sup> One other tool is that the foreclosure procedure does not default in credit records as quickly as usual.<sup>119</sup>

The bailiff must inform a debtor of these mitigation possibilities *ex officio*. It is included in the principle of transparency.<sup>120</sup> However, the bailiff retains case-by-case discretion to change or limit the granting of additional time and relief.<sup>121</sup>

## 8. CONCLUSIONS

The relatively well-protected debtors' situation can be seen as a problem from the creditors' side and a comparative perspective when the significant monetary collection is seen as the most crucial aim.<sup>122</sup> The Finnish enforcement system and legislation are mainly based on the idea of rehabilitation of a debtor, and, following this kind of thinking, the interests of debtors have to yield to the interests of creditors. However,

<sup>117</sup> 'Ulosottolain väliaikaisiin muutoksiin esitetään jatkoa' (*Ministry of Justice*, 8 October 2020) <<https://oikeusministerio.fi/en/-/ulosottolain-valiaikaisiin-muutoksiin-esitetaan-jatkoa>> accessed 22 November 2020.

<sup>118</sup> Act on Temporary Modification of the Enforcement Code 289/2020, Chapter 4, Sections 6, 51, 52, 64 and Chapter 7, Section 4.

<sup>119</sup> Act on Temporary Modification of the Enforcement Code 289/2020, Chapter 3, Section 21.

<sup>120</sup> Act on Temporary Modification of the Enforcement Code 289/2020, Chapter 1, Section 20.

<sup>121</sup> Act on Temporary Modification of the Enforcement Code 289/2020.

<sup>122</sup> On the other hand, Linna has seen the Finnish enforcement system as quite neutral concerning both parties. She thinks that, especially from the normative perspective, the applicant and the debtor are in the same that is neutral position. The debtor is not seen as a weaker party, like the employee in employment legislation or consumer in consumer legislation. *Linna*, 2009, p. 18. However, I see the situation as a little bit different, especially from the normative perspective. The debtor is protected by very many rules and the strong objective of rehabilitation is included. In my opinion, it is mostly the applicant who will lose in such situations where creditor's interest and debtor's interest are in collision.

in the long run, society as a whole will arguably benefit more when debtors can later continue their lives or businesses as usual again. On the other hand, the promotion of creditors' interests contributes to the credit and financial markets.<sup>123</sup> Linna thinks that the most critical function of the enforcement is, still, the liquidation, which is also, at the same time, the most vital tool to promote trustworthiness in the whole system.<sup>124</sup> For this reason, it is the State's vital duty to organize enforcement effectively. Simultaneously, Linna reminds us that ineffective enforcement is a different matter than the regulation of the enforcement's intensity. There must be a balance between intensive enforcement and judicial relief. The ineffective enforcement, however, does not fulfil those aims.<sup>125</sup>

Still, honest debtors who have experienced hardship in their lives are worthy of rehabilitative measures, especially when societal needs are considered. Society and debtors benefit more in the long run if the enforcement is more rehabilitative than focused upon liquidation. Of course, in such a system, creditors need to pay for the common good and participate in establishing social benefits stemming from their private funds, which can sound unfair depending on the existing values. Furthermore, what is fair to one actor is not always fair to the opposite party. However, rehabilitative enforcement can benefit creditors when s/he 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, for debtors and creditors alike, and especially for society when viewed as a whole. Whenever there is humanity in liquidation procedures, no one can lose. The economic value should, as it were, be placed on a par with moral values, as *Michael Bayles* has shown by his calculations already in 1990.<sup>126</sup>

123 Linna, Hupli (n 36) 600.

124 The liquidation is of course the main function of the enforcement procedure and therefore it is also important that the general audience has a feeling that they can rely on the enforcement system and, when they have a ground for enforcement, that garnishment is done in an effective way. This is crucial to fulfilling the access to the justice. L Ervo, *Perustuslaki ja oikeuden saatavuus* (Lakimies 2000) 1085 – 1105.

125 Linna, 2009, pp. 20 – 21.

126 MD Bayles, *Procedural justice: allocating to individuals* (1990).