

Hem>Domstolsförfaranden>Tvistemål>Erkännande och verkställighet av domar>Hur ser man till att domstolsavgöranden verkställs? How to enforce a court decision

Finland

1 What does 'enforcement' mean in civil and commercial matters?

Enforcement refers to compulsory enforcement of an obligation as ordered by a court or other authority. In most instances, this is the enforcement of judgment debts. A further key enforcement measure is eviction, i.e. the obligation to move out of a building or part of it. The basis for an enforcement can also be an obligation to transfer certain assets to another party, obligations to do something, and injunctions against doing something. These kinds of obligations and injunctions are enforced by means of coercive measures or penalty payments, depending on the circumstances. Court-ordered seizures or other precautionary measures can also be enforced. In Finland, enforced recovery of debts falls within the scope of the enforcement authority, which is a state authority. Enforcement is an independent legal activity and local enforcement authorities are independent and impartial in their decision making.

Enforcement in matters pertaining to legislation regarding children

In matters pertaining to legislation regarding children, enforcement refers to the implementation of court orders, such as handing over a child. An agreement confirmed by social services may also serve as the basis for enforcement. Another important detail is that in Finland, visitation rights are the rights of the child, not of the parent. Enforcement of a court decision concerning custody and/or visitation rights of a child is subject to the Act on the implementation of decisions on child custody and right of access (*Laki lapsen huoltoja tapaamisoikeutta koskevan päätöksen täytäntöönpanosta*) (619/1996). This Act is also applicable to enforcement of any temporary orders. Enforcement is also carried out in accordance with this Act in instances where a judgment or decision issued abroad is enforceable in Finland under Council Regulation (EC) No 2201/2003.

A bailiff may enforce an order concerning custody if the decision on the matter was issued within the last three months. In other situations, an enforcement order must be applied for from a court. A court may only reject an application concerning enforcement if the enforcement would go against the child's best interests. In the enforcement of orders concerning custody, the court obliges the other party to hand over the child to the claimant or face a penalty fine. An order may be issued for the child to be collected. In the enforcement of orders concerning visitation, the other party is obliged to permit visits and to commence other measures ordered in order to realise the visits.

2 Which authority or authorities are competent for enforcement?

In Finland, local enforcement authorities are responsible for enforcement. The competent local enforcement authority is determined based on the place of residence of the debtor. If no detailed information on their place of residence in Finland is available, the enforcement application may be submitted to any local enforcement authority, for example, Helsinki Enforcement Authority (*Helsingin ulosottovirasto*). Although applications are made to local enforcement authorities, their jurisdiction covers the entire country.

The contact details of local enforcement authorities can be found here: <https://oikeus.fi/ulosotto/fi/index/yhteystiedot.html>

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

Enforcement requires the creditor to apply for enforcement in writing by filling in an enforcement application and providing the grounds for enforcement. There is no enforcement fee to be paid by the creditor in advance. (The enforcement application is available on the website of the Judicial Administration, oikeus.fi)

<https://oikeus.fi/fi/index/lomakkeet/ulosottoasiat.html>

Bailiffs have a duty to enforce courts' judgments or other grounds for enforcement laid down in legislation and cannot question their content. In order for enforcement proceedings to commence, the creditor must have grounds for enforcement as specified in legislation, with an obligation imposed on the debtor. Bailiffs must check that the debt has not ceased to exist since the court's judgment was given, due to payment or the expiry of a statute of limitations. The right to be paid of holders of collateral rights (e.g. a mortgage) is covered by a separate provision.

3.2 The main conditions

In civil and commercial matters, enforcement is usually based on a judgment or ruling of a general court of law. There is no need for a specific enforcement order. General courts of law include district courts (*käräjäoikeus*) as courts of first instance and Courts of Appeal (*hovioikeus*) and the Supreme Court (*korkein oikeus*) as appellate courts. An arbitral award can also provide grounds for enforcement. In practice, one of the most important grounds for enforcement is a maintenance order confirmed by a municipal authority. On the other hand, Finland does not recognise contracts between private parties as grounds for enforcement.

Judgments that have been appealed may be enforced, if the creditor provides the security specified by the bailiff for any damage that may befall the debtor. However, the funds may not be paid to the creditor until both the grounds for enforcement and any distraint and garnishment decision are final.

The key provisions on the enforceability of judgments issued outside of Finland can be found in EU law (e.g. the Brussels I Regulation (No 44/2001) and the Brussels IIa Regulation (2201/2003)) and the convention on the recognition and enforcement of judgments in the Nordic countries.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

When enforcement proceedings commence, the debtor is sent a notice of filing and a demand for payment. If the debtor does not pay in accordance with the demand for payment and does not make contact regarding the payment of the enforcement fee of their own accord, the enforcement will begin with investigating and establishing the debtor's income and assets on the basis of register data.

Making bank enquiries is an essential part of this investigatory work. Most often, employment income and funds in bank accounts are garnished. Instead of withholding a sum from wages paid at regular intervals, a payment plan may also be confirmed. Measures for establishing the debtor's income and assets, as well as any further investigations, are regulated by law. Bailiffs have wide-ranging rights set out in law, enabling them to access information about the financial situation of debtors through a number of registers. Bailiffs are also obliged to seek out assets belonging to the debtor. Enforcement measures must be carried out without undue delay. For example, if the debtor receives regular income, the first payment is normally released to the creditor within two months of the commencement of proceedings. The debtor has the right to appeal, but collection of payment will not be interrupted unless ordered otherwise by a court.

Applications can be for full enforcement or limited enforcement. Creditors can also ask enforcement authorities to monitor a debt for a period of two years, through so-called passive registration, if it is not possible to collect the debt immediately. There is no need to hire a lawyer or a legal adviser for the purpose of enforcement.

All kinds of movable and immovable assets belonging to the debtor and that are not protected or within the scope of the right to exclusion, may be distrained, as may rights, receivables or objects with monetary value. If the creditor has applied for limited enforcement, only assets ascertainable from registers that do not require liquidation can be distrained. If distrained assets need to be liquidated, they are usually sold at enforcement sales, which are usually announced in local newspapers and online.

Links to sale announcements:

<https://oikeus.fi/ulosotto/fi/index/ajankohtaista/myynti-ilmoitukset.html>

<https://huutokaupat.com/ulosotto/>

The Finnish Enforcement Act (*Ulosottolaki*) also features a special provision, whereby the supervisor of an enforcement department may make a decision to disregard artificial arrangement of assets. A claim that assets belong to a third party shall not prevent the distraint of assets if:

- 1) it is found that the status of the third party is based on asset or other arrangements with a legal status that does not correspond to their true nature or purpose, taking into account the debtor's authority being equivalent to that of the owner's authority, acts equivalent to those of an owner, and benefits and other equivalent benefits enjoyed by the debtor as a result of the arrangement, and
- 2) the legal status is clearly being used to prevent enforcement or to ensure assets are kept inaccessible to creditors, and
- 3) the debt owed to the creditor is otherwise unlikely to be recovered from the debtor within a reasonable timeframe.

However, distraint may not be carried out if the third party involved in the arrangement shows clear evidence that their genuine rights could be violated by the distraint. The bailiff must consult the debtor and third party, as well as the creditor if necessary, in an appropriate way, unless doing so will render enforcement considerably more difficult.

4.2 What are the effects of enforcement measures?

Commencement of the enforcement proceedings has some effects, but garnishment and distraint bring with them significant legal effects. Once assets have been distrained, the debtor may not destroy, dispose of or pawn the distrained assets or make other decisions concerning the same to the detriment of the creditor. Any action taken in violation of this injunction has no legal power over the creditor. However, the transferee or a third party may enjoy bona fide protection. Bailiffs enjoy extensive access to information not only from the debtor but also from third parties, such as banks. Once a bank has been informed of a debtor's funds having been frozen, the bank must not release funds from the debtor's bank account to anyone except the bailiff. Paying a receivable or wages or salaries in violation of this injunction is a criminal offence.

As a result of the sale of assets carried out during the enforcement procedure, ownership rights to objects will change. Funds accrued as the purchase price will be transferred to the creditor as soon as possible.

Assets are distrained up to the amount that is necessary to pay the debt to the creditor. In cases where enforcement has been requested by several creditors or the distrained assets are subject to mortgages, for example, the funds are divided among the creditors in order of priority as set out in legislation. The fees collected by the State for enforcement are usually charged to the debtor. If the enforcement attempt fails, the creditor will have to pay a small handling fee. Similarly, a fee will be charged to the creditor for funds to be transferred. In maintenance allowance matters, a fee will not be charged and the maintenance allowance shall take priority. Payments transferred to the creditor may vary each month on the basis of fluctuations in the debtor's income and amount of debt.

Further information on enforcement fees can be found at: <https://oikeus.fi/ulosotto/fi/index/ulosotto/ulosottomaksut.html>

4.3 What is the validity of such measures?

In accordance with legislation, bailiffs have an obligation to carry out their duties expeditiously and without unnecessary delay. If the debtor does not have any assets or income that can be distrained or garnished, the case will be returned to the creditor as barred due to one of the following: lacking in means, lacking in means and unknown, or informed of another, separately specified, obstacle to recovery. In such situations, details of income and assets must always be established using the principal registers. The enforcement proceedings will end, but the creditor may request that the enforcement is restarted at a later date, and in such situations the debtor's financial situation is investigated once more. For example, the creditor may request enforcement of a decision by submitting a new application in a timely manner, in order to ensure garnishment from a source such as the debtor's end of year tax rebate. The creditor may also request that the debt be entered into the so-called passive register. If, during the investigation of another case, it is revealed that the debtor has garnishable income or distrainable assets, or that they may be receiving a tax rebate, a debt entered into the passive register will be taken into consideration in the enforcement proceedings. The passive registration will remain in effect for two years from the date of the certificate of lack of means.

5 Is there a possibility of appeal against the decision granting such a measure?

Bailiffs' enforcement measures and decisions can be appealed by anyone whose interests are affected by said measure or decision. Appeals are handled by the district court (*käräjäoikeus*). Appeals must be filed within three weeks of the date on which the decision is issued or the date on which the interested party receives notice of the decision.

Filing an appeal does not usually suspend the enforcement process, unless the court rules otherwise. If the appeal is granted, the court will overrule or amend the bailiff's decision. In some cases bailiffs can also correct any obvious errors themselves.

If resolving an argument or claim presented in connection with enforcement requires the extensive taking of oral evidence, the matter may need to be decided in a civil proceeding in a court of law (*enforcement dispute*).

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

The legislation provides provisions on enforcement prohibitions, for example on social grounds. A number of social benefits cannot be garnished. If the debtor to the proceedings is a natural person, objects, benefits and rights separately provided for in law must be set apart from the distraint. Additionally, assets may not be distrained if, taking into account the value of the assets and other conditions, the creditor or creditors would only gain an amount considered minor following the payment of enforcement costs, enforcement fees, and debts owing on the assets.

The debtor's statutory protected portion of their income must always be taken into consideration in the garnishing and payment plans: this amount must be excluded to allow the debtor their living costs. Generally, no more than one third of a debtor's net wage or salary can be garnished. The confirmed protected portions of income, along with example cases, can be found at:

<https://oikeus.fi/ulosotto/fi/index/velallisenauelosotossa/palkanulosmittaus.html>

Grounds for enforcement, where a natural person has been issued with a payment obligation, remain enforceable for 15 years (*time limit for grounds for enforcement*). This time limit is 20 years if the creditor specified in the grounds for enforcement is a natural person or if the claim is based on a crime for which the debtor was sentenced to imprisonment or community service. A court judgment or other grounds for enforcement cannot be enforced if the right conferred by the same has subsequently lapsed due to the debt having been paid or the statute of limitations having expired, or for some other reason.

For further information: <https://oikeus.fi/ulosotto/fi/index.html>

<https://valtakunnanvoudinvirasto.fi/fi/>

<http://www.finlex.fi/en/laki/kaannokset/2007/en20070705?search%5btype%5d=pika&search%5bpika%25>

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