

Money Collection Act voids the right to freedom of association

Electronic Frontier Finland – Effi ry

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Summary

Electronic Frontier Finland (Effi) is a non-governmental organization (registered association) that aims to promote public awareness about human rights in the digital world. Effi was founded in 2001 and has battled with fundraising legislation for its entire existence. In Finnish legislation, fundraising is subject to state approval and there are instances where the State takes advantage of its approval rights in order to selectively deny money collection licences to NGOs whose work it does not support. State approval is in practice handled by the National Police Board of Finland for the money collection licences and local police departments for small-scale money collections. Effi has been taken to court for illegal money collecting twice and is denied a money collection permit and small money collections.

At no point has there been any suggestion of any wrongdoing with the small amount of funds received in donations. At the heart of the trials is the judicial question about phrasing of money collection act: in particular, what actions constitute "appealing", as a licence is required in order to "appeal" to the general public for funds. From the 2006 Money Collection Act [1]:

"Section 3 – Definition of money collection

(1) Money collection means an activity in which money is collected without compensation by appealing to the public."

Effi believes that using the words "*if you want to donate*" is not appealing, whereas the views of the police and courts differ, and with courts the opinion has shifted between the court cases. Money Collection Act has changed over the years, but the section about "appealing" has remained the same.

Effi and money collection

The first investigation started in 2005, the District Court verdict was in 2007 and the Court of Appeals verdict in 2008; Effi won both cases. Effi applied for a money collection licence in 2014. The licence was denied in 2015 and Effi appealed the decision to the administrative court. Both the Administrative Court (2016) and the Supreme Administrative Court (2017) upheld the denial of licence, based on the views provided by the National Police Board of Finland, even though Effi had won the earlier court case.

Quoting from denial of money collection licence (our translation):

"It is presumed that the applicant, knowing the prohibitions and orders of the law, intentionally carries out money collecting without a valid money collection licence.

Accordingly, the National Police Board considers that the applicant for the licence does not meet the conditions for the issue of a money collection licence set out in section 12 of the Money Collection Act, as it is presumed that the applicant does not act in accordance with the rules on money collection."

Quoting from the verdict of the Supreme Administrative Court (our translation):

"Electronic Frontier Finland - Effi ry has continued the money collection activities deemed unauthorized by the National Police Board for several years in spite of the guidance of the National Police Board, and the association has not indicated any intention to stop such money collection activities. The activities carried out by Electronic Frontier Finland - Effi ry have been of such a nature that the National Board of Police has been justified in its view that activity would require applying for a money collection permit. When the association did not apply for a money collection permit when instructed and has continued its activities without proper licence, the National Police Board may reject the Electronic Frontier Finland - Effi ry's money collection licence application."

The National Police Board of Finland makes decisions on money collection licences. In an appeal, the courts rely on the statements of the National Police Board as the supervisory authority. Therefore, in practice, there is no way of impartial appeal. Within the National Police Board, same person may deny the money collection licence, provide information to courts if licence denial is appealed, and act as witness in the criminal court case.

A new investigation was started in April 2015 after Effi had appealed (in February) the National Police Board's decision to deny the money collection licence, also after the Big Brother awards granted in January. The investigation progressed very slowly until Effi started inquiring regularly about its progress. The investigation was finally finished in 2020 and the case went to court in 2021. In this second court case Effi lost in the District Court but has appealed the verdict. When these new cases have finally wounpermitd their way through the courts, Effi expects to be hit with yet another investigation, as the National Police Board has indicated during the investigation and trial that even the current page, without bank account number, constitutes illegal money collection.

The police and prosecutor allege that Effi has collected money illegally. Effi holds the view that the goal of the prosecutor and the police is to obstruct the funding of Effi as a human rights organisation that promotes freedom of expression online and that frequently criticises, among other institutions, the police. This conclusion is based on both the charges pressed against Effi and its board members. We will describe this in more detail below.

Examples of Effi's activism, especially towards police and/or money collection act:

- 2011: Effi demands changes to the money collection act and criticises the National Police Board
- 2011: Effi grants Big Brother award to Ministry of the Interior for the passport fingerprint register and the reform of Coercive Measures Act, granting the Finnish police probably one of the world's broadest rights to break into citizens' computers

- 2012: Effi requests the Chancellor of Justice to investigate police and district court actions in a copyright violation case
- 2013: Effi grants Big Brother award to police for registry management, and police's attempts to increase the amount of information to be registered and used, e.g. data from the passport fingerprint register
- 2013 & 2014: Effi issues statements about new draft for money collection act, criticising the licence process
- 2015: Effi grants Big Brother award to National Police Commissioner Mikko Paatero for his persistent work to turn Finland into a police state. Mr Paatero has adopted an unusually clear stance: the police are good, everybody else is more or less bad, so the police simply must have access to all information related to all people, and on the other hand, the police should not be unduly bothered with suspicions of abusing their powers or anything such. A Big Brother award was also granted to the National Police Board for collecting information related to innocent people in their suspects file without regard to legal or other limitations
- 2016-17: Effi participates in workshops about reforming the Money Collection Act
- 2017-18: Effi issues several statements about new civil and military intelligence legislation
- 2018: Effi issues a statement opposing changes to Assembly Act, requiring notification to police earlier
- 2020: Effi, yet again, criticises money collection act

Effi's donations web page

In essence, the donations web page has been the same for a long time, old version (before June 6, 2017, when the account number was removed based on police report), our translation:

"According to its rules, EFFI may accept donations to support its activities. However, they cannot be deducted, for example, in taxation. In practice, the easiest way to make a donation is to transfer it to the association's account: <bank account number>. Email jasenasiat@effi.org for a bank transfer reference number."

Current page (March 30, 2022), our translation:

"According to its rules, Effi may accept donations to support its activities. If you want to donate, you can send an email to the email address <email as image>."

Effi will not be granted a money collection licence, with the reform of the money collection act, small-scale money collection became possible in the spring of 2020. The association made a small-scale money collection notification in the spring of 2020, but police banned the small-scale money collection. Due to an earlier version of this page, the association has been charged with illegal money collection, and the association lost the case in the Helsinki

District Court. The judgment of the District Court was given on 14 January 2022. The association has applied the verdict R 21/2425. Read the full Effi money collection saga[2]."

Human rights issues

We believe that the lawsuit filed against Effi constitutes a SLAPP, a strategic lawsuit against public participation. That is, it is a form of legal harassment intended to discourage speaking out in the public interest and criticism of some elements of the Finnish society. The winning of a case is not the primary aim of SLAPP. SLAPPs are filed in order to intimidate, harass and exhaust the financial and psychological resources of the targeted organization or individual. SLAPPs exercise a chilling effect on the freedom of expression and association of the targeted organization, and of society as a whole. As noted by the UN Special Rapporteur on Peaceful Assembly and Freedom of Association:

"Often based upon ambiguous and elastic provisions of law, SLAPPs use a range of tactics to exhaust resources, campaign capacity and morale:

- They resort to motions, injunctions and other procedurally onerous processes (particularly the expensive and resource-intensive discovery/disclosure process) to impose heavy burdens on activists and civil society organizations*
- They often target individual campaigners, as well as the organizations they work for, to maximize the SLAPP's capacity to intimidate."* [3]

It is well-established that the judicial processes in Finland are slow. By raising the lawsuit against Effi, multiple times, the NGO is in practice deprived of its ability to raise funds, since the ongoing judicial process can be used by the police as a reason to deny any further requests for fundraising permits. Effi is not the only organisation targeted, for example Elonvaalijat, an organisation supporting grassroots environmental activism, is currently undergoing the same problems with money collecting. It is also not just the fact that the NGO is prevented from raising money, but being dragged in courts for years for an alleged crime harms an NGO's reputation and credibility, too.

The ability of the police to prevent NGOs from raising funds on the basis of an ongoing criminal investigation or judicial process constitutes a penalty that is served prior to a proper trial. Regardless of the outcome of the trial, Effi will be less effective in fulfilling its purpose of defending human rights in a digital world, possibly for years to come. Additionally, the long judicial process makes it hard to ensure the continuity of the NGO as potential new members of the NGO are discouraged from participating. Of course the existing members are even more affected: One Effi board member has quit explicitly because of the ongoing case and another was told by the police with a confidential letterhead that his participation in the board of a registered political party endangers the party's chances of getting a permit for fundraising, resulting in losing those political responsibilities, quite visibly.

There is also evidence suggesting that criminal investigations on money collection offences are started selectively. That is, some NGOs are more likely investigated than others. Many other organisations have similar wording or even direct appeals on their pages but they are not investigated nor prosecuted. Politicians, even members of parliament, also do not seem to bother to follow the rules on money collecting. With regards to Effi, there is a trail of

evidence that points to systematic repression on the part of the police which violates the basic human rights of those targeted.

Finland has ratified the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR guarantees the right of freedom of expression, while Article 22 ICCPR guarantees the right to freedom of association. By preventing the funding of popular movements the right to freedom of association becomes an empty letter. Every movement needs money. As the commentary to the declaration on human rights defenders [4] puts it: *"When individuals are free to exercise their right to associate, but are denied the resources to carry out activities and operate an organization, the right to freedom of association becomes void."*

Effi is denied the right to solicit, receive and utilize resources for the purpose of protecting human rights. Effi's funding is based on membership dues and all work has been done on volunteer basis. As everything is getting digital, this is no longer enough. Effi needs funding to be able to hire people to do a better job.

Proposed recommendations

Finland has a positive obligation to facilitate the exercise of the rights of freedom of expression, peaceful assembly and association which includes a duty to establish and maintain an enabling environment in which civil society can operate freely and without fear that they may be subject to harassment, including legal harassment, when carrying out their work.

We recommend that Finland:

- refrain from arbitrarily applying its money collection law, selectively denying money collection licences to NGOs, and abusing civil lawsuits, as a means of shutting down public participation, debate and critical human rights advocacy
- abolish restrictive sections of the Money Collection Act that currently impose an excessive burden on NGOs seeking to raise funds for their public interest work
- remove National Police Board of Finland and local police departments as arbiters who get to decide who is or is not allowed to collect money, and allow money collection with just notification

References:

1: Money Collection Act of 2006

<https://www.finlex.fi/en/laki/kaannokset/2006/en20060255.pdf>

2. Effi and money collecting saga (in Finnish): <https://effi.org/effin-rahankerayssaaga/>

3. Citation from: SLAPPS and FoAA rights, Report by the Special Rapporteur on Peaceful Assembly and Freedom of Association, Ms. Annalisa Ciampi (2017), available at: <https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPSFoAA.docx>

4. Commentary to the Declaration on human rights defenders

<https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>