I. THE PARTIES

A. The Applicants

1a. **Surname:** Himmelstrand **2a. First Name:** Jonas

Sex: Male

3a. **Nationality:** Swedish **4a. Occupation:** consultant

5a. **Date and Place of Birth:** 25 March 1953, Uppsala, Sweden

1b. **Surname:** Himmelstrand **2b. First Name:** Tamara

Sex: Female

3b. **Nationality:** Swedish **4b. Occupation:** music teacher

5b. **Date and Place of Birth:** 12 February 1964, Lausanne, Switzerland

6. **Permanent Address:** Östansjövägen 12, AX-22340 Geta, The Aland Islands, Finland

7. **Tel. no.:** +358 18 493 74

8. **Present Address:** Östansjövägen 12, AX-22340 Geta, The Aland Islands, Finland

9. **Name of Representative:** Dr. Roger Kiska, Dr. Daniel Lipsic

10. **Occupation of Representative:** Attorneys at Law

11. **Address of Representative:** Landesgerichtsstraße 18/10, 1010 Wien, Austria

12. **Tel. no.:** +43 1 904 95 55 **Fax no.:** + 43 1 904 94 54

B. The High Contracting Party

13. Sweden

II. STATEMENT OF THE FACTS

The First and Second Applicants are the parents of [redacted] Himmelstrand, born on 29 October 1998. As of their daughter's school age, they began homeschooling [redacted] due to her diagnosis with Atypical Autism (Autism Spectrum Disorder), which made her school attendance problematic. Their requests for home education, however, have been denied by the Swedish authorities. In separate applications to this Court these decisions have been challenged in the context of Protocol 1, Article 2 and Article 8 of the European Convention of Human Rights (here and after "the Convention").

Following denial for home education, although legally available under Swedish domestic law at the material time, the Swedish authorities began to enforce their decisions through the imposition of fines related to [redacted] absence in school.

On 14 September 2010 the Child and Youth Board of the Uppsala Municipality (*Barn- och Ungdomsnämnden*) decided on a fine injunction of 1 000 Swedish crowns (SEK) per parent per day of [redacted] absence in school. Due to her obligation to attend school three times a week during the planned introduction period, the sum amounted to 6 000 SEK per week (for both parents), and for a whole school year of 40 weeks to a total of 240 000 SEK.

The fine injunction has been appealed by the Applicants to the County Administrative Court (*Förvaltningsrätten*). On 1 February 2011 the appeal has been denied by the first instance Administrative Court. The applicants subsequently filed an appeal to the appellate Administrative Court (*Kammarrätten*), which denied leave to appeal on 8 March 2011. On 10 June 2011 the Supreme Administrative Court denied leave to appeal the fine injunction.

Once the amount of the fine has been preliminarily set, the Swedish authorities moved to the phase of imposing the fine in order to collect it. Under Swedish domestic law, fine injunction and fine imposition are two distinctive legal instruments. The actual collection of the fine is dependent on a separate judicial decision on fine imposition. Therefore on 2 December 2011 the Child and Youth Board of the Uppsala Municipality (*Barn- och Ungdomsnämnden*) applied to the County Administrative Court in Uppsala (*Förvaltningsrätten i Uppsala*) for a fine imposition against the Applicants. The total sum of the fine has been calculated to 180 000 SEK for both applicants (1 000 SEK per day x three days every week x 30 weeks which amounts to 90 000 SEK for each parent) for the whole school year 2010-2011.

At the very same date, on 2 December 2011, the Applicants' daughter [redacted] was registered as a resident of Finland on Aland Islands and remains a Finnish resident, together with the Applicants, ever since.

A year later, on 10 December 2012, the application for a fine imposition has been granted by the County Administrative Court in Uppsala (*Förvaltningsrätten i Uppsala*) in the sum of 100 000 SEK for both Applicants. The court has reached this decision in spite of citing § 9 of the Swedish Law on Fines which creates an important legal obstacle for the imposition of a fine – namely a fine must not be imposed if the purpose of the fine has ceased to exist. This legal provision is in line with the main purpose of a fine – the purpose being the prevention of illegal conduct, not retribution for past deeds. The purpose of the fine in this context should have been to force the Applicants to allow school attendance of their daughter in Sweden. However, as of December 2011, a year preceding the cited court decision, [redacted] Himmelstrand has been a legal resident of a different country (Finland), being legally home educated there. It is therefore crystal clear that the main purpose for imposing a fine on the Applicants – namely to make sure the Applicants' daughter fulfills her school obligation in Sweden – is wholly absent in the present case.

The Applicants appealed this decision to the higher Administrative court (*Kammarrätten*), which decided on 12 March 2013 not to grant leave to appeal. On 14 August 2014 all domestic remedies were exhausted by the decision of the Supreme Administrative Court not to grant leave to appeal. The fine in the amount of 100 000 SEK (approximately 11 218 EUR) has become enforceable against the Applicants and has since been paid in full to avoid forced sale of their property.

III. STATEMENT OF ALLEGED VIOLATIONS OF THE CONVENTION AND PROTOCOLS AND OF RELEVANT ARGUMENTS

Introduction

It is submitted that by imposing a fine on the Applicants in direct contradiction with the purpose of the domestic law, as interpreted by the domestic judicial authorities, and in a strikingly disproportionate amount — the High Contracting party has violated the Applicants' substantive rights under Article 1 of Protocol No. 1 of the Convention.

Article 1 of Protocol No. 1

Article 1 of Protocol No. 1 states:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 1 of Protocol No. 1 provides qualified protections to the right of property. The Article covers three basic principles:

1. the entitlement to peaceful enjoyment of possessions,
2. the prohibition of deprivation of possessions, subject to specified conditions, and
3. the right of the Contracting Party to control the use of the property, subject to specified conditions.

These principles are inter-related: the second and third rules are to be construed in the light of the general principle contained in the first principle.

The decisions of the Swedish authorities on the imposition of a fine in the present case constitute an interference with the peaceful enjoyment of Applicants' possessions. The interference had been made under the state's power to "secure the payment of penalties". It is therefore the second paragraph of Article 1 of Protocol No. 1 which is applicable in the present case.

Lawfulness of the interference

The first and most important requirement of Article 1 of Protocol No. 1, whichever the applicable rule thereof, is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorizes a deprivation of possessions only "subject to conditions provided for by law" and the second paragraph, relevant in the present case, recognizes that the States have the right to control the use of property, or to secure the payment of penalties, by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all Articles of the Convention.[1]

The requirement of lawfulness, within the meaning of the Convention, means not only compliance with the relevant provisions of domestic law, but also compatibility with the rule of law. It thus presupposes that the rules of domestic law must be sufficiently precise and foreseeable.[2] It also implies that the law must provide a measure of legal protection against arbitrary interferences by public authorities with the rights

[1] See e.g. ECHR, *Carbonara and Ventura v. Italy*, Judgment of 30 May 2000, App. No. 24638/94, § 34.
[2] ECHR, *Hentrich v. France*, Judgment of 22 September 1994, App. No. 13616, § 42.

safeguarded by the Convention.[3] It would be contrary to the rule of law for the legal discretion granted to the authorities in areas affecting fundamental rights to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion and the manner of its exercise with sufficient clarity, so as to give the affected individuals and entities adequate protection against arbitrary interference.[4] In other words, while a system to secure the payment of penalties does not lend itself to criticism as an attribute of the State's sovereignty, the same is not true where the exercise of it is discretionary.[5]

Indeed, it is not the role of the Court to usurp the function of the national courts and make authoritative statements on issues of domestic law. The Court is, however, required under the Convention to determine whether that law lays down with reasonable clarity the essential elements of the domestic authorities' powers.[6] It follows that a legal rule in order to satisfy the requirement of lawfulness must be applied consistently by the domestic authorities, because an inconsistent application could result in unforeseeable and arbitrary outcomes and thus deprive natural and legal persons of effective protection of their rights. The Court has reiterated on several occasions that conflicting judicial decisions without a reasonable explanation for the divergence smack of arbitrariness.[7] In *Valová, Slezák and Slezák v. Slovakia*, the Court evaluated the application of domestic legislation by the national authorities. The case concerned a restitution claim, which was initially granted by the local authorities and the applicants acquired property rights. The State, however, subsequently moved to reopen the proceedings, although the legal prerequisite for reopening the proceedings has been that the applicants acted in bad faith. As there was no *prima facie* indication that the applicants acted in bad faith when applying for the property in the initial proceedings, the Court concluded that "the decision to reopen the original restitution proceedings cannot be regarded as having been 'subject to the conditions provided for by law.'"[8]

Pursuant to § 9 of the Swedish Law on Fines a fine must not be imposed if the purpose of the fine has ceased to exist. The trial court (County Administrative Court in Uppsala – *Förvaltningsrätten i Uppsala*) in its decision of 10 December 2012 made it clear that "the purpose of the fine is that the parents make sure that their daughter

[3] ECHR, *Capital Bank AD v. Bulgaria*, Judgment of 24 November 2005, App. No. 49429/99, § 134.
[4] See, *mutatis mutandis*, ECHR, *Hasan and Chaush v. Bulgaria*, Judgment of 26 October 2000, App. No. 30985/96, § 84.
[5] ECHR, *Hentrich v. France*, at § 42.
[6] ECHR, *Malone v. the United Kingdom*, Judgment of 2 August 1984, App. No. 8691/79, § 79.
[7] See e.g. ECHR, *Vinčić and Others v. Serbia*, Judgment of 1 December 2009, App. No. 44698/06, § 56.
[8] ECHR, *Valová, Slezák and Slezák v. Slovakia*, Judgment of 1 June 2004, App. No. 44925/98, § 54.

[redacted] fulfills her school obligation." This verdict handed down more than a year after [redacted] Himmelstrand has moved, together with her parents, to Finland where they still legally reside. [redacted] school obligation is thus governed by Finnish law and the "fulfillment of her school obligation" falls outside the jurisdiction of the Swedish authorities. Therefore the cited decision of the County Administrative Court lacks not only common sense, but is outside the purview of the cited provision of the Swedish law and thus unlawful in terms of the domestic law.

The jurisprudence of the Swedish courts makes clear that the fine itself becomes redundant when the desired goal of the fine (i.e. fulfillment of [redacted] school obligation in Sweden) no longer exists due to: (1) actions the addressee of the fine has no control over, or (2) the addressee of the fine has taken said actions due to another pressing reason.[9] The latter is pertinent to the case at hand. The Himmelstrand family has moved to Aland in the best interest of their daughter. Their actions – move to Finland – were not motivated by an effort to avoid the fine, but to create an environment to legally home-school their daughter. Thus leaving the fine to be redundant.

Based on the aforementioned arguments the imposition of the fine, under the cited circumstances, has to be considered arbitrary and capricious.

Proportionality of the interference

The condition of proportionality in the context of property rights mandates a "fair balance which should be struck between the protection of the right of property and the requirements of the general interest".[10] Despite the margin of appreciation given to the State, it is for this Court, in the exercise of its power of review, to determine whether the requisite balance was maintained in a manner consonant with the Applicants' right to property.[11] As the Court highlighted in its decision in *Moskal v. Poland* "[t]he concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 to the Convention as a whole … which is to be read in the light of the general principle enunciated in the first sentence".[12] It therefore directly follows that even the State's legitimate power to secure the payment of penalties has to survive the test of proportionality. The balance, however, to be maintained between the demands of the general interest of the community and the requirements of fundamental rights is upset if the person concerned has to bear a "disproportionate burden".[13]

[9] Judgment of the Supreme Administrative Court, RÅ 2002, ref. 62.
[10] ECHR, *Sporrong and Lönnroth v. Sweden*, Judgment of 23 September 1982, App. No. 7151/75, § 73.
[11] ECHR, *Rosinski v. Poland*, Judgment of 17 July 2007, App. No. 17373/02, § 78.
[12] ECHR, *Moskal v. Poland*, Judgment of 15 September 2009, App. No. 10373/05, § 64.
[13] See e.g. ECHR, *The Holy Monasteries v. Greece*, Judgment of 9 December 1994, App. No. 13092/87, § 70-71.

The case-law of the Swedish courts makes it clear that the fine needs to be proportional to the purpose of the fine and to the economic conditions of the addressee of the fine.[14] The fine of 100 000 SEK for both parents (11 322 EUR), having regard to the net average monthly salary in Sweden being 2 013 EUR, is disproportionally high considering the economic conditions of the Applicants.

Conclusion

The Applicants herein submit their application to this esteemed Court under Article 1 of Protocol No. 1 of the Convention. The case begs the question as to how loving parents in the Applicants' situation can serve the best interests of their child without fear of unconscionable fines. The fines imposed against the Applicants serve no legitimate purpose under Swedish law, since the sole purpose of the fine – to have Applicant's daughter [redacted] attend school in Sweden – has "lost its significance" due to the fact, that the Applicants and their daughter are legally residing in Finland and are thus no more subject to a mandatory obligation stemming from Swedish law on school attendance. The imposition of the fine under these factual circumstances thus contravenes the clear language of the Swedish Law on Fines. Moreover, the excessive nature of the imposed fine is grossly disproportionate to the aim sought by its imposition – especially in view of the fact that the whole family no longer resides in Sweden.

IV. STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

16. Final decision (date, court or authority and nature of decision)

14 August 2013 – Högsta Förvaltnings-Domstollen (Supreme Administrative Court); decision not to grant leave to appeal re fine imposition.

17. Other decisions (listed in chronological order)

a. 14 September 2010; Uppsala Kommun, Kontoret för Barn, Ungdom och Arbetsmarknad (Uppsala Municipality, Board of Children and Youth); decision on fine injunction,
b. 1 February 2011; Förvaltingsrätten I Uppsala (County Administrative Court in Uppsala); rejection of appeal re fine injunction,
c. 8 March 2011; Kammarrätten I Stockholm (Higher Administrative Court in Stockholm); decision not to grant leave to appeal re fine injunction,
d. 10 June 2011; Högsta Förvaltnings-Domstollen (Supreme Administrative Court); decision not to grant leave to appeal re fine injunction,

[14] See e.g. Supreme Court, NJA 1951, s. 116; Land and Environment Court of Appeal, MÖD 2008:19.

e. 2 December 2011; Uppsala Kommun, Kontoret för Barn, Ungdom och Arbetsmarknad (Uppsala Municipality, Board of Children and Youth); application for a fine imposition,
f. 10 December 2012; Förvaltingsrätten I Uppsala (County Administrative Court in Uppsala); decision on fine (decreasing it to 100 000 SEK),
g. 12 March 2013; Kammarrätten I Stockholm (Higher Administrative Court in Stockholm); decision not to grant leave to appeal re fine imposition,

18. Is there or was there any other appeal or other remedy available to you which you have not used?

All domestic remedies were exhausted. No other remedy or possibility of appeal is available to the Applicants.

V. STATEMENT OF THE OBJECT OF THE APPLICATION

19. Applicants seek just satisfaction, pecuniary and non-pecuniary damages, and costs as relates to the imposition of a fine for home schooling in contradiction with the Swedish Law on Fines.
It is submitted that by deciding on the imposition of a fine, no longer serving a legitimate purpose under domestic law – the High Contracting party has violated the property rights under Article 1, Protocol No. 1 of the Convention.

VI. STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

20. No other submissions have been made to any other international tribunal or procedure.

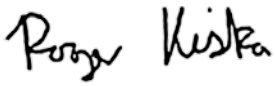
VII. LIST OF DOCUMENTS

21.
a. 10 December 2012; Förvaltingsrätten I Uppsala (County Administrative Court in Uppsala); decision on fine imposition (English translation),

VIII. DECLARATION AND SIGNATURE

We hereby declare that to the best of our knowledge and belief, the information we have given in the present application form is correct.

Place: Vienna, Austria
Date: 12 February 2014



Dr. Roger Kiska
Attorney at Law

Dr. Daniel Lipšic
Attorney at Law

Attachment: Authority