

Violation of the rights of consumers of financial services by Scandinavian banks and the closure in Finland of bank accounts of companies with Russian shareholders

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Abstract. The article examines the violation of the rights of consumers of banking services in Finland by companies with Russian shareholders. In accordance with the current Finnish banking policy and internal bank regulations, the provision of basic banking services is carried out to clients with a permanent residence in the European Economic Area. In violation of the Law on Credit Institutions, banks in Finland stop banking services to companies with Russian shareholders, including those not subject to EU or US sanctions, permanently residing in the EEA and having dual Russian and Finnish citizenship. Closing bank accounts makes it impossible to exercise the right to work guaranteed by the Finnish Constitution. While the US dollar is one of the main currencies in settlements between states, the US Treasury will control not only dollar transactions, but also the very principle of the functioning of the world banking system. To counter the influence of the United States from American institutions and reduce their dominance in the EU financial system, it is necessary to create a European Monetary Fund, a SWIFT system with an increase in the share of the euro in international settlements as an alternative world currency.

There is a need to reform the Finnish justice system, based on international human rights standards and instruments, with an effective, impartial and accountable judiciary and mechanisms to oversee the justice system.

Keywords: rule of law, right to banking, conflict between international and national law, US sanctions.

In early 2019, the Scandinavian banks Nordea Bank and SEB AB received a request from the New York Department of Financial Services (NYDFS) on the money laundering investigation at Danske Bank, as well as on the bank's relationship with Mossack Fonseca. Particular attention was paid to bank accounts with Russian capital. Some branches of Scandinavian banks in Latvia and Estonia also became the epicenter of financial scandals, investigations in which led to a chain reaction of claims against banks in Finland, Sweden and Denmark. According to the report of the international law firm Clifford Chance, in 2014–2019, clients of the Swedish bank Swedbank

made bank transfers in the Baltic countries in the amount of over 37 billion euros¹.

And at the same time, Russian companies in Finland began to receive messages about the closure of bank accounts without explanation.

With reference to the Law on the Prevention of Money Laundering and the Financing of Terrorism (444/2017), the bank may close the account and refuse to provide banking services. Pursuant to the Law on the Implementation of Certain Obligations by Finland as a Member of the United Nations and the European Union (659/1967), no obligations or temporary injunctions made in violation of this Law or any provision based on or circumventing it shall be enforceable².

According to the Finnish Credit Institutions Act, banks are required to provide basic banking services to individuals residing in the EU or the European Economic Area (EEA). Section 15, § 6, paragraph 1, states that a payment service bank must provide an account for basic payments in euros and provide payment services to individuals legally residing in an EEA country, subject to subparagraphs 6a and 6b of this paragraph.

In reality, however, the political dimension plays a role in the decision by banks to close accounts for foreign-owned companies, regardless of whether they have permanent residence, Finnish citizenship or tax residency in the EU or EEA.

In accordance with the current Finnish banking policy and the internal instructions of banks, the provision of banking services is carried out to customers permanently residing in the European Economic Area³.

So, in 2017-2018, the Scandinavian banks Svenska Handelsbanken AB, Nordea Bank Abp, Danske Bank and OP Yrityspankki Oyj banks refused to service private payments of the former co-owner of Hartwall Arena Helsinki and the Finnish hockey team Jokerit Boris Rotenberg, who is under US sanctions. The Helsinki County Court, by a decision of January 13, 2020, dismissed Boris Rotenberg's claim against the above banks. The court ruled that Boris Rotenberg was included in the SDN and OFAC's Foreign Assets Control List of special categories and prohibited persons and did not reside permanently in the European Economic Area and recognized the financial risks of Scandinavian banks⁴.

Section 15 § 1 point 6 of the Credit Institutions Act states that a bank providing payment services must provide an account for basic payments in euros and provide payment services to persons legally residing in an EEA country, subject to subparagraphs 6a and 6b of this paragraph.

¹ Swedbank epäonnistui rahanpesun torjunnassa – epäilyttävää rahaa kulki pankin tilien kautta vähintään 37 miljardia euroa. YLE. 23.3.2020. URL: <https://yle.fi/uutiset/3-11271107>. (appeal date:15.5.2021)

² Laki eräiden Suomelle Yhdistyneiden Kansakuntien jäsenenä kuuluvien velvoitusten täyttämisestä. 659/1967. URL: <https://www.finlex.fi/fi/laki/alkup/1967/19670659>. (appeal date:16.5.2021)

³ Finnish Credit Institutions Act, section 6 (1) chapter 15.

⁴ Zhilkin V.A. "US sanctions and the right to use bank accounts in European banks for foreign citizens not residing in the European Economic Area." Russian Journal of Legal Research. Volume 7, №1 2020. P. 86-93.

In the Rotenberg case, the court stated that the plaintiff was unable to prove that he lived in the EEA, and therefore could not be guaranteed to receive banking services from banks in Finland. According to the Law on Payment of Payments, "The bank may refuse to execute a payment order only if the conditions for the execution of the payment order agreed in the agreement are not met or are not otherwise provided for by law"⁵.

In violation of the same Law on Credit Institutions and in a series of many similar cases of violations of rights to banking services in November 2020, the Finnish bank OP Yrityspankki Oyj stopped banking services for Indeq Oy, a company registered in Finland in 1996, whose shareholders and management are not included in the sanctions list. OFAC, not subject to EU or US sanctions, permanently resided in the EEA and held Finnish and Russian citizenship. The company's management, as well as all business partners, underwent due diligence.

The bank did not indicate the reasons for termination of the agreement, referring only to clause 1.10 of article 19 of the standard agreement with the bank "Term and termination of the agreement". This condition gives the bank the right to terminate the agreement with one month's notice under any circumstances without giving reasons and without taking into account the situation and interests of the bank's client.

The company is a distributor of the international company Boart Longyear, which mainly imports mining equipment from the USA and Canada to Finland and then sells it to other countries. The annual turnover of the company was more than 10 million euros per year with a constant high and stable profit.

At the same time, OP Yrityspankki Oyj closed the right to use the account and a subsidiary in central Finland, through whose accounts only sales of Boart Longyear products were carried out within Finland, which led to the dismissal of all employees, grossly violating the right to work guaranteed by the Finnish Constitution and to support oneself on the income from his chosen work⁶.

The company will face many years of litigation with review of decisions in Finland. But taking into account the lengthy litigation in Finland⁷ new Western companies will appear on the market.

Earlier, on September 23, 2020, the US Treasury Department imposed sanctions against Finnish citizen Nikita Kovalevsky and Optima Freight Oy registered in Finland and three other

⁵ Maksupalvelulaki, 30.4.2010/290. §41.

⁶ The Constitution of Finland. 11 June 199. Chapter 2. Section 18. Everyone has the right, as provided by an Act, to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice.

⁷ Case of Kari Uoti v. Finland, Judgment of 23 October 2007. The ECHR found a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the excessive length of the proceedings of 11 years and 7 months.

companies, which also led to the impossibility of further activities of companies in Finland and the dismissal of more than 100 employees.

Now, referring to the case of Boris Rotenberg, the bank stopped servicing company accounts and personal accounts of a Finnish citizen permanently residing in the EU, who moved with his family as a teenager to Finland in the early 90s.

Representatives of the US Bureau of Industry and Security (BIS), which promotes the economic interests and national security of US high technology, spoke with Optima Freight Oy customers in 2012 and 2014 on the basis that US goods are shipped to Russia via Finland.

In the spring of 2019, BIS representatives worked for three days in the office of Kovalevsky's company and reported that the company was transporting American cargo, so the company's activities must comply with American laws.

Finnish logistics and forwarding companies and their owner Nikita Kovalevsky were included in the US sanctions list in the fall of 2020. The bank also closed Nikita Kovalevsky's access to the account and even to the savings account of his daughter.

In response to his appeal to the President of Finland, Kovalevsky received a response from the President's Legal Adviser that the President does not have the authority to resolve such issues.

Earlier, in September 2018, one of the major police operations to detain employees and seize property of the Finnish company Airiston Helmi Oy by Russian businessman Pavel Melnikov was planned for several months, as the President of Finland and the Prime Minister were informed about in advance. The operation involved about 400 members of the Central Criminal Police (KRP), the Southwest Finland Police and the Defense Forces. The police carried out a series of searches of the home and company, examinations and seizures of evidence were carried out in 17 sites on the islands and in Turku. The owner and member of the Board of Directors of the company were arrested 3.5 million euros in cash.

During his visit to New York, Finnish President Sauli Niinistö said that "he has long been concerned about the acquisition of real estate by Russians in the strategically important territories of Finland." However, the President said that the Finnish state has no reason to confiscate the territory belonging to Airiston Helmi Oy in cases where transactions were made several years ago⁸.

According to Mikko Kärnä, a former border guard officer and reserve deputy of the Finnish Center Party, and according to information he received from the Finnish Defense Ministry, it is possible to repair Russian submarines in the Baltic Sea in this port. Mikko Kärnä also reported on the information received from official sources that the management of Airiston

⁸ Petri Burtsov. Presidentti Niinistö: "Olin tietoinen Turun saariston operaatiosta jo pitkään". YLE. 24.9.2018. URL: <https://yle.fi/uutiset/3-10420627>. (appeal date:16.5.2021)

Helmi Oy has strong ties with the FSB"⁹. However, no references to sources or contacts supporting this assumption were provided.

The Russian businessman is suspected of a tax crime and money laundering and denies the charges. The defense immediately filed a lawsuit to cancel the seizure of property. On 19.09.2019, the Turku Court of Appeal ruled on the secrecy of the case for a period of 25 years and upheld the seizure of property.

When considering the claim for the cancellation of the arrest on January 15.01.2021, the county court in a closed court session extended the term of the property arrest and the period for the investigation of financial crimes until 17.01.2022.

The role of the Finnish media in reporting on violations of basic human rights and the rights of users of banking services should be emphasized. The publication of articles in the media and interviews with Russian shareholders of companies in Finland raised the discussion of the state of the right-wing system in Finland and the right of a citizen to work enshrined in the Constitution. It is emphasized that it is the state's responsibility to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, as well as internationally recognized human rights in the framework of its activities.

One of the first large and lengthy investigations with the seizure of property and the closure of accounts of Russian companies in Finland began in 2001. According to the Finnish tax department, entrepreneur Larisa Lisitsyna topped the list of the richest women in 2004 and was eighth in the list of all taxpayers in Finland.

The preliminary investigation began in January 2001 after two statements by the police on suspicions of serious accounting crimes in the Finnish firms of the Lisitsyn family. At the very beginning of the investigation, the Central Criminal Police informed 48 partners from 12 countries that the Lisitsyn companies were suspected of money laundering and accounting crimes. Western partners immediately announced the suspension of the joint business pending the end of the investigation.

The result of a long-term preliminary investigation and a three-day trial with the examination of all the evidence presented by the defense, the testimony of witnesses and experts was the message of the county prosecutor about the complete rejection of the previously brought charges and the complete termination of the criminal case. On 21.12.2017 the Lappeenranta County Court issued an acquittal on all charges¹⁰.

⁹ Minna Ala-Heikkilä. Entinen rajaupseeri väittää saaneensa sisäpiiritietoa KRP:n suuroperaatiosta: ”Venäjällä on tutkikalustoa ja sotasatama Airistolla”. Satakunnan kansa. 23.9.2018.

URL:<https://www.satakunnankansa.fi/kotimaa/art-2000007055396.html>. (appeal date:16.5.2021)

¹⁰ Lappeenranta County Court Decision R 06/16 dated 21.12.2007. The author took part in the preparation of materials for the defense of this case.

It should be noted that the analysis of statistical data in Finland shows that the closure of bank accounts with the impossibility of further doing business leads to an outflow of foreign investment from companies with Russian owners, as well as companies with owners from China and Arab countries. But the political component, sanctions diktat and national interests in countries strategically important for US interests turn out to be decisive in making decisions by Finnish banks and closing accounts of foreigners from the list of countries that threaten America's interests.

According to Kari Kuusiniemi, President of the Supreme Administrative Court, Finland should also be prepared for the fact that those in power at some point in the future may encroach on the rule of law. "A large group of people believed in the falsification of the US election results and were ready for an uprising. If this can happen in the United States, should we be prepared for it as well? We are not insured against the fact that something similar can happen here (in Finland)"¹¹.

The Finnish government made the judiciary loyal by dramatically increasing the number of judges and forcing the old judiciary to resign, lowering the retirement age. According to Kari Kuusiniemi, non-democratic decision makers can also unduly influence the courts in Finland if the independence of the courts is not properly enshrined in the Constitution. A similar procedure is possible in Finland, since the Constitution does not determine the retirement age of judges or the number of judges of the highest courts.

According to the judge from Finland to the ECHR Pauliine Koskelo,¹² "the rejection of the rule of law in several European countries over the past decade is a very serious problem." Pauliine Koskelo believes that they may inappropriately try to influence the courts, including through funding. Budgetary power is vested in the government and Parliament, and funding for the judiciary is not sufficiently secured¹³.

And already in April 2021, the Ministry of Justice of Finland announced that it considers it possible that in the future an attempt may be made to undermine the rule of law in Finland as well. The Ministry of Justice intends to assess whether the independence of the judiciary in Finland will be ensured if non-democratic political forces come to power and whether the courts will retain their independence even if the future government questions the rule of law¹⁴.

¹¹ Lasse Kerkelä. Suomen tuomioistuinten riippumattomuus ei välttämättä kestäisi epä-demokraattisesti toimivaa hallitusta – KHO:n presidentin mielestä asiasta on käynnistettävä pikaisesti selvitys. Helsingin Sanomat. 6.4.2021. URL: <https://www.hs.fi/kotimaa/art-2000007901640.html>. (appeal date:12.5.2021)

¹² Former Head of the Legal Directorate of the European Investment Bank EIB, Judge of the Supreme Court (2000-2005) and Chief Justice of the Supreme Court of Finland (2006-2015). Since January 2016 Judge of the ECHR from Finland.

¹³ Kerkelä Lasse. Tuomioistuinten riippumattomuus voi murentua. Helsingin Sanomat. Sivut A6-7. 6.4.2021.

¹⁴ Ibid.

We also note that the legislation of Finland, Sweden and Denmark does not give national banks the right to unilaterally close client accounts or refuse to carry out financial transactions due to the requirements of American law.

In Finland, as well as in the United States, conflicts between the Constitution and an international treaty are resolved in favor of the Constitution. In accordance with the supremacy of the Finnish Constitution, if a regulation or other by-law is in conflict with the Constitution or another law, its application by a court or other authority is not allowed (Article 107).

The US sanctions regulations are not legally binding in Finland, but in practice banks are also guided by minimizing their own risks of disconnection from using the services of US correspondent banks paid in US dollars.

But while transactions in dollars pass through the US banking system, the Ministry of Finance will control, block transactions and oblige banks to pay fines. European banks are not under US sanctions, but each year they agree and pay billions in fines.

It is necessary to reform the justice system in Finland, based on international standards and human rights documents, to create an effective, impartial and accountable judicial system, to develop an integrated approach to criminal justice and to establish mechanisms to control the justice system.

By closing accounts for foreign investors and depriving them of the right to work, at the same time, under the slogan of a shortage of labor and within the framework of quotas for granting refugees in the European Union, Finland accepts a huge number of refugees, providing them with full social support, paying subsidies and shortening the time for obtaining a permit for residence.

According to official statistics, the number of all migrants in Finland in 2019 was 383116¹⁵.

According to the Minister of the Interior of Finland Maria Ohisalo, it is impossible to determine the exact number of illegal foreigners in Finland. According to the University of Turku, in 2018, the number of illegal immigrants who received MIGRI's refusal to grant asylum and a decision to expel, but did not leave the country, could reach up to 8000 people.

International law contains sufficient grounds for declaring unlawful unilateral measures. And Finland, as a UN Member State, must observe and support only those sanctions that are provided for by a decision of the UN Security Council in accordance with Chapter VII of the UN Charter¹⁶.

¹⁵ Source: <https://www.globaldetentionproject.org/wp-content/uploads/2020/11/Finland-Detention-Data-Profile-2020.pdf>. (appeal date: 12.5.2021)

¹⁶ UN Charter. Article 39 Chapter VII.

URL: <https://www.un.org/ru/sections/un-charter/chapter-vii/index.html>. (appeal date: 4.5.2021)

And in conclusion, it is necessary to note an important judicial precedent for Russian owners of foreign companies in the field of sanctions disputes in the United States with the application of the Brady Doctrine (*Brady v. Maryland*, 373 U.S. 83, 87-88, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) in the case of *United States v. Ali Sadr Hashemi Nejad*, 18 Cr.224 (AJN), which establishes the inadmissibility of the prosecution's concealment of evidence in criminal proceedings.¹⁷

So, on July 17, 2020, Ali Sadr achieved the termination of the proceedings against him with the use of prejudice and the cancellation of the jury's verdict on finding Sadr guilty and began the process to recover damages from European regulators and restore his business reputation.

This judicial precedent is also possible to be applied in Finland in cases of Russian citizens who are at various stages of criminal prosecution for violations of sanctions or export control rules in the United States.

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¹⁷ Unites States Attorney. Southern District of New York. Case 1:18-cr-00224-AJN Document 348. June 5, 2020.

