THE EFFECTIVENESS OF UNITED STATES ECONOMIC SANCTIONS IN FINLAND AND HOW THEY ARE ENFORCED

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Abstract

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Abstract: The purpose of this thesis is to determine how economic sanctions imposed by the United States and their Office of Foreign Assets Control are enforced and why they are strictly observed in countries and by entities not under the United States' jurisdiction. The focus is on Finland and how Finnish legislation enables this.

This thesis includes a historical and theoretical look into the use of economic sanctions and into how global economic factors affect the way United States economic sanctions function. The thesis also establishes an overall view of the main issuers of economic sanctions that affect Finland.

The effects of economic sanctions are analyzed by examining the legal case between Boris Rotenberg and four Finnish banks. Boris Rotenberg was placed under sanctions by the United States, which led to him being denied banking services and to his payments not being forwarded. This resulted in Boris Rotenberg suing the banks for the denial of the services. The case is important for demonstrating how the United States economic sanctions work in practice in Finland and how they affect entities not under the jurisdiction of the United States.

The conclusion of the thesis is that the fact that economic sanctions imposed by the United States are not legally enforceable in Finland is of very little consequence since the repercussions of non-compliance are harsh. The United States economic sanctions cannot be violated without violating Finnish legislation, which in practice means that United States economic sanctions can be seen to be enforceable in Finland as well.

1. Introduction

The inspiration for this thesis came both from the legal case involving the Russian oligarch Boris Rotenberg who sued four Finnish banks due to his transactions being blocked for being him sanctioned by the United States, and from my personal work experience related to economic sanctions. The subject has strong practical relevance and is current. The legal case between Boris Rotenberg and the banks is also interesting because it relates to the extra-territoriality of OFAC sanctions, and to how economic sanctions imposed by the United States are being observed in countries all over the world, Finland included. Examining the case gives good insight into the practical consequences and economic sanctions, the way they function, and the issues related to them. The relevance of economic sanctions both in the fields or economics and legislation will only increase in the future.

The legal case between Boris Rotenberg and the four Finnish banks is at the core of this thesis. In short, it involves Boris Rotenberg suing the Finnish banks due to him not being offered banking services. Rotenberg considers this to be against Finnish legislation and discriminatory. He argues that since he was place under the sanctions only by the United States and not by the European Union or the United Nations, the banks have no direct legal obligation to restrict or freeze his payments. Still, they have denied him access to banking services.

The purpose of this thesis is to examine the effectiveness of economic sanctions imposed by the United States in Finland and the consequences of a Finnish citizen or company being placed under sanctions by the United States. The aim is to find out why it is possible for the United States to impose sanctions that that have effect outside their factual jurisdiction. The focus of the thesis is mainly on the legal case between Boris Rotenberg and the four banks – Handelsbanken, Nordea, Osuuspankki and Danske Bank – that Rotenberg sued due to the banks refusing to process his payments based on the sanctions imposed on him. Other relevant issues and topics are discussed as well that provide more perspective and context for the subject matter and analysis. However, these are mainly discussed in the context of the case.

Economic sanctions are very political in nature and can have extraterritorial effects regarding legal rules both in terms of justification and application. For that reason, the method applied in this thesis is a very practical approach into economic sanctions and their functions, and the study is socio-legal in nature. The aim is to understand, in practical terms, how economic sanctions, particularly the

extraterritorial ones, work and what effects they have both on a national level in Finland and on the level of individuals. This approach reflects the description of socio-legal research as described by Webley (Webley, 2019, p. 59). The modern phenomena of economic sanctions include the use of legal tools to enforce goals that are often political in nature by placing restrictions on individuals and entities involved in the activities of individuals. As a result, these individuals face becoming a 'non-person' in society, as is later shown.

The thesis first presents a more general theoretical and historical perspective and progresses from an international perspective towards a national one, leading to the analysis of the legal case between Rotenberg and the banks. Other sanction regimes important in Finland are discussed to provide context. They are also connected to, and sometimes in competition with, the sanctions imposed by the United States.

Economic sanctions are defined in chapter two, and how they fit into the larger context of international sanctions is discussed. This includes taking into consideration the broader economic context and how both the historical and current global economic situation affects the use of economic sanctions. The second chapter concludes with an overview of the key sanction regimes relevant in Finland. The effect economic sanctions have in Finland and whether United States economic sanctions are in any way taken into consideration in Finnish legislation or other regulation are discussed in chapter three. The fourth chapter consists of an analysis of the legal case between Boris Rotenberg and the banks he sued. The objective is to establish how United States imposed economic sanctions function in practice. The case provides a good explanation the mechanisms with which the United States can exert its influence with economic sanctions. The fifth chapter comprises conclusions and discussion regarding possible future developments regarding sanctions.

2. What are economic sanctions?

Since economic sanctions and their effects are at the core of this thesis, it is first necessary to define and explain what economic sanctions are. By examining the evolution and practical use of economic sanctions it is easier to understand the current situation that enabled the legal case between Boris Rotenberg and the four Finnish financial institutions.

After defining economic sanctions, the thesis moves on to discuss sovereignty and the non-intervention principles. The purpose is to show how these principles, due to globalization and interconnectedness of the financial world can be seen as outdated. These principles can be seen to conflict with the modern use of economic sanctions. The interconnectedness of the global financial world is one of the key factors for the effectiveness of economic sanctions and gives power to those entities who can leverage their economic strength against others.

The last part of this chapter is an overview of the most relevant modern sanction regimes focusing on the economic sanctions that are most relevant for the legal case presented in this thesis. These are discussed from the context and perspective of Finland, giving a general overview of the sanctions landscape in Finland.

2.1 Definitions and history

It is not uncommon to see news about a country or an international organization having imposed some type of sanctions against some party, be it an individual or a company, due to some act that the imposer perceives as hostile or negative. However, it is often not specified in any extensive way what the imposing of these sanctions means and what the legal ramifications are for the targeted party, or third parties involved with the targeted party. It might be unclear what sanctions even are and what they do. It is therefore important to first provide a definition for sanctions, and to present the historical perspective of sanctions to better understand the present situation.

According to Ruys (2017, p.19), the basic view of sanctions in the context of international law is that they are measures taken against states by other states or international organizations to either punish the violating states for breaking international law or try to coerce them to follow international law. Ruys states that this can be viewed as a borrowed analogue from national legal systems, where people who break laws generally face legal consequences, or in other words, face

'sanctions' or punishments for their actions. This naturally presupposes that there is such a thing as international law as a legal system and that international law is true law (Ruys, 2017, p. 19). Sanctions can, or often are, used by individual nations as a means for achieving their foreign policy goals, so their use is not entirely necessary to be based on violations of international law (although violating international law might be a convenient reason for imposing them). Maybe the most obvious recent example of using economic sanctions as a purely political statement was the asset freezes directed towards the prosecutors of the International Criminal Court (ICC) by the United States due to ICC investigations into alleged war crimes by the United States (Human Rights Watch, 2020). It should be noted however that the Executive Order 13928 was revoked by President Biden and the ICC -related sanctions were lifted in April of 2021 (U.S. Department of State, 2021).

As with punishments in a national legal system, there also are multiple different types of sanctions that can be utilized. The sanctions are usually selected depending on the type of activity that is being targeted. A good overview of various modern international sanctions can be found on the website of the Finnish Ministry of Foreign Affairs. The Ministry listing includes import and export restrictions, restrictions in the banking, financial and insurance sectors, restrictions on entry and transit through European Union Member States, and other restrictions on traffic and transportation (Ministry for Foreign Affairs of Finland, 2020). It is notable and quickly apparent from this listing that most sanctions are economic penalties or hindrances. Lin has described economic sanctions as one of the 'analog financial weapons of war' (Lin, 2016, p. 1380). As stated, large part of modern international sanctions is related to suppressing the financial activities of the target, meaning they are usually economic sanctions. Other types of sanctions are not discussed in depth in this thesis, but it is good to recognize that they exist. When trying to prevent armed conflict, weapon embargoes might have more effect than other types of sanctions, although economic sanctions have versatile uses since many things become difficult to do without sufficient funding.

According to Drezner (2011 p.97), historically speaking sanctions were usually imposed on entire countries. Drezner calls these types of sanctions as comprehensive sanctions, which were often economic or trade sanctions and did not differentiate between the people of a country, and therefore led to undesirable consequences. According to Drezner, the end of the Cold War led to a significant increase in the use of economic sanctions by the United Nations. Drezner states that in the early 1990s, United Nations imposed comprehensive economic sanctions against former Yugoslavia, Haiti and Iraq, and these high-profile cases, in addition to military action, led to

moderate concessions. The sanctions were seen to have played a critical supporting role in achieving the desired goals (Drezner, 2011, p. 97).

According to Drezner (2011 p.97), despite this perceived success, the use of comprehensive economic sanctions had serious drawbacks. The case of Iraq is particularly noteworthy, as the comprehensive trade embargo imposed on the country was truly crippling, with billions of oil revenue lost, massive increases in food prices and estimated hundreds of thousands needless child deaths caused by the sanctions (Drezner, 2011, p. 97).

According to Drezner (2011 p.98), the sanctions did not seem to achieve the goals set out for them as Saddam was not ousted in a coup as was predicted, weapon inspections were consistently denied and the financial cost of the sanctions was massive, as Iraq's GDP was cut roughly in half. Drezner states that the blame for the humanitarian crisis caused in Iraq by the sanctions was placed on the United Nations and the United States, since both the United States and United Kingdom resisted any changes suggested to the sanctions by the other permanent members of the Security Council. Drezner observes that situation was not helped by the comments made by then United States Ambassador to the United Nations Madeleine Albright, who in an infamous 60 Minutes interview called the deaths of half a million Iraqi children 'a price worth paying'. In addition to this Drezner brings up the issue that a link was also established between sanctions and corruption, as punishing the normal market activity heavily incentivized entrepreneurs to engage in criminal activity and earn higher profits. Trade sanctions were found to encourage the creation of organized crime and smuggling and weaken the rule of law in the target country and in the neighboring countries, and this effect persisted after the sanctions were lifted (Drezner, 2011, p. 98).

According to Drezner (Drezner 2011, pp.98-99), this resulted in a lot of criticism towards sanctions from various human rights groups and from United Nations agencies, with United Nations Secretary Generals Kofi Annan and Boutros Boutros-Ghali both questioning whether the inflicted suffering was a legitimate means to pressure political leaders as they labeled comprehensive sanctions as 'blunt instruments'. This, along with the questions regarding the actual success rate of sanctions spurred the research and discussion that eventually led to the invention of 'smart sanctions' (Drezner, 2011, p. 99).

As Drezner (2011, p.100) observes, studies on sanctions have shown that in the last three decades, the majority of sanctions have been imposed on authoritarian regimes whose leaders and close

allies of the leaders had incentive to create societal systems that made them less vulnerable to comprehensive sanctions, with scholars arguing that broad economic sanctions would have little effect on authoritarian regimes. He continues by stating that smart sanctions aim to directly target the individuals, the companies that they own and the connected parties while avoiding being a complete 'blunt instrument' and hurting the general population, who in the case of authoritarian regimes, likely have no say in any policies or decisions the country they live in take on the world stage. Smart sanctions were agreeable to the key stakeholders in the international system, i.e., the permanent members of the Security Council, who all saw benefits in the smart sanctions approach for different reasons (Drezner, 2011, p. 100). Simply put, the idea behind 'smart sanctions' or 'targeted sanctions' is to target the offending party directly, usually the ruling class or the elite of an authoritarian regime, while trying to avoid causing collateral damage to innocent or vulnerable groups of citizens.

Today, smart sanctions are the norm and comprehensive sanctions are rarer. If sanctions are discussed, for example, in the news, it is usually related to a person or a company that has been sanctioned or 'listed'. Being 'listed' refers to the fact that the shift from comprehensive sanctions to targeted sanctions has resulted in the need to keep track and list all the individuals and companies that have been targeted by various sanctions. For international companies, and for financial companies like banks in particular, there might be numerous sanctions lists with different contents and purposes that need to be followed to make sure that all relevant sanctions lists are being observed to avoid any repercussions. The most important sanctions regimes and the repercussions for non-compliance are discussed in more detail later.

The listing of individual people or the use of smart sanctions are among the key factors that have enabled the legal case involving Boris Rotenberg. Without this invention or change in the way sanctions are imposed, Boris Rotenberg would have likely avoided being individually targeted and his case against the banks would not exist – at least not in the way as it does now. The shift from the 'countries sanctioning countries' scheme to the 'countries sanctioning individuals' scheme paves the way for these sorts of legal disputes involving individual people.

In practice, the bodies imposing the actual sanctions have sanctions lists, which contain information about the listed entities enabling their identification. The United Nations Security Council has a consolidated list that contains all the individuals and entities that have been subjected to measures by the United Nations Security Council and the list can be found on the United Nations Security

Council website (United Nations, 2020). Similarly, the Office of Foreign Assets Control (OFAC), the agency responsible for the administration and enforcement of economic and trade sanctions of the United States, makes their lists available on their website along with a search tool (Office of Foreign Assets Control, 2020). The European Union also has its own lists, and many individual countries keep their own sanction lists as well. This means that institutions such as banks and other financial entities need to have systems in place that enable them to keep up with the ever-changing sanctions landscape.

The following chapters provides a closer look at the world of global finance and how the concepts of non-intervention and sovereignty are being challenged by the interconnectedness of the financial world and by economic sanctions.

2.2 Sovereignty, non-intervention, and the global financial system

This section of the chapter discusses the modern global financial framework in the context of the principles of sovereignty and non-intervention, which are well known international legal principles. The concepts are presented first, followed by their applications. The goal is to discuss how these older international legal principles fit into the modern financial system in the context of economic sanctions. Sovereignty and non-intervention are sometimes invoked when economic sanctions and trade embargoes are involved, but it is unclear how much these arguments hold weight, particularly when dealing with the globalized and interconnected modern financial system. A similar argument is raised in the Rotenberg case since the core Rotenberg's defense is basically a reference to sovereignty. Unfortunately, as is shown later, this sort of argumentation seems somewhat outdated and ineffectual when it comes to economic sanctions.

2.2.1 Sovereignty and non-intervention

The concept of sovereignty is one of the fundamental ideas of international law and international law as a system revolves heavily around the idea of sovereignty of states, which is sometimes also referred to as Westphalian sovereignty (Crawford, 2019, p. 3). According to Crawford (2019, p. 431), in principle at least, states have uniform legal personalities and are in this way equal actors on the world stage. Sovereignty as a term or concept is in modern times generally used to describe the collection rights a state has, referring to the entitlement of control and jurisdiction over the territory

and the group of people that comprise the state and the capacity to represent said people and territory when it comes to international relationships with other states and international organizations (Crawford, 2019, p. 431).

This means that if all states are independent and sovereign, they are also equal in relation to each other. However, as is apparent from observing the world, in reality, this is not the case in, as states have different capabilities economically, politically and militarily-wise, and the ability to project power differs vastly between states (Crawford, 2019, p. 433). A human analogue would be the difference between a poor and a rich person. Both have intrinsic value and are equal as human beings, but the differences in their capacity to act and exert influence over the world can be staggering. This difference in real-life power becomes a very important factor later on when extraterritorial effects of economic sanctions are discussed.

According to Dubay (2014, para 1-2), a corollary to sovereingty is the principle of non-intervention, which was first presented by the Swiss legal philosopher Emmerich de Vatter in his treatise The Law of Nations, which was published in 1758. She continues by saying that similarly to how state sovereingty grants each nation territorial sovereingty, the principle of non-intervention restricts other sovereign states from interfering with the internal affairs of other states. The actual boundaries of the non-intervention principle are unclear and there are many areas where it is hard to determine what actually constitutes as interference and where the line between lawful and unlawful interference is (Dubay, 2014, para 7). This principle has also been included in Chapter I, Article 2(7) of the Charter of the United Nations, which states that nothing contained in the Charter authorizes the United Nations to interfere in matters that are within the domestic jurisdiction of any state (United Nations, 1945).

The principle of non-intervention, which is now seen as customary international law, was more substantially recognized by the United Nations in 1965 in the Declaration on the Inadmissibility of Intervention and Interference in the Domestic Affairs by States. In this resolution, the ideas of the principle were expanded and the document states that “no state has the right to intervene directly or indirectly, for any reason, in the internal or external affairs of another state”, or use any kind of coercion to gain advantages or subordination of the exercise of sovereign rights from other states. This includes armed force and political, economic and cultural intervention or subversion in the external or internal affairs of other states (UN resolution 2131, 1965).

This principle has been further solidified and expanded on in decisions issued by the International Court of Justice (ICJ). The Nicaragua case (The Republic of Nicaragua v. The United States of America, 1986) was brought by Nicaragua against the United States for the United States having allegedly supported the Contra-rebels in Nicaragua, who were waging war against the Nicaraguan government. In the summary of the ICJ's decision, the court stated that the principle of non-intervention means that it is prohibited for other states to intervene in matters that each individual state is, by the principle of state sovereignty, free to decide by themselves. According to the court, this includes things like choice of political, economic, social, and cultural systems and the formation of the state foreign policy. Intervention becomes unlawful when coercion, subversive action or, particularly, force is used to influence another state's choice in these matters (The Republic of Nicaragua v. The United States of America, 1986, p. 12).

In practice however, legal arguments or any moral considerations can be easily forgotten when states put more emphasis on realpolitik and geopolitical considerations in their foreign policies. This was also one of the factual end results of the Nicaragua case, as United States refused to participate in the merits phase of the proceedings, argued against the jurisdiction of the court, and did not pay the issued fine, even if eventually the litigation and publicity did have some effects (Nguyen & Vu, 2016, para 3). The United States also used its veto power in the Security Council to block any resolutions calling for compliance with the court's decision (List of veto votes in the Security Council 1982-1986, 2020).

References to state sovereingty and the principle of non-intervention can be used as a counterargument against sanctions, in vein of the the idea that the issued sanctions violate sovereingty and the non-intervention principle of the targeted state. Economic sanctions obviously hamper the targeted country's ability to conduct trade and to freely choose who to trade with. As discussed, the non-intervention principle is seen to only cover acts that are qualified as coercive – economic coercion is also specifically mentioned. Ruys (2017, p.25) brings up the fact that there are many instruments that specifically mention economic coercion being against the non-intervention principle, the United Nations General Assembly annually condemns the United States' embargo against Cuba and there are annual resolutions condemning economic measures taken against developing countries. When Obama, in his role as the President of the United States, imposed new economic sanctions with an Executive Order in 2015 on several Venezuelan government officials, the Union of South American Nations issued a statement condemning the move as an

‘interventionist threat to sovereingty and the principle of non-interference in the internal affairs of other countries’ (Ruys, 2017, p. 26).

On the other hand, as Ruys (2017, p.26-27) brings up, states are also free to choose who not to trade with. He continues by stating that it has been argued that the frequent and prevalent use of sanctions by the United States and other countries constitutes as evidence that there exists no clear norm in international law against the use of economic sanctions and that the principle of non-intervention has been eroded as a result of this, or at in relation to the use of sanctions. He also brings up the previously mentioned Nicaragua case in which Nicaragua argued that the actions of the United States – particularly the cessation of economic aid, the almost total stop of the import of sugar into the United States and the trade embargo – were a systematic violation of the principle of non-intervention. According to Ruys, the ICJ, however, did not agree and stated that it was unable to interpret the actions of the United States. as a breach of the customary law principle of non-intervention. It is overall unclear in what extent economic sanctions violate the principle of non-intervention, or whether they are prohibited and in what context. There seems to be no categorical declarations either way (Ruys, 2017, p. 27).

2.2.2 Global financial world

The financial aspect of economic sanctions and the implications that come with it must also be considered, along with the wider larger financial perspective. The modern financial system is very interconnected and interlinked, connecting most of the world together into a broad financial ecosystem, linking all the participants and products together (Lin, 2016, p. 1382).

According to Lin (2016, p. 1382-1383) the modern financial infrastructure is a ‘new battlefield in contemporary warfare’ and an ’international, high-tech, American-centric theater of commerce and conflict’. The America-centricity is quite easily observed. Lin cites a study conducted by the United States Treasury Department’s Office of Financial Research in 2015, in which the United States financial institution J.P Morgan Chase was found to be the most interconnected bank in the world having more cross-jurisdictional activities than any other bank and that United States based multinational investment banks Morgan Stanley and Goldman Sachs have held such large stakes in oil and aluminum that they could influence the global prices of these commodities. The influence of economy of the United States and the interconnectedness of the financial infrastructure was also

seen in the 2008 financial crisis, which begun in United States and spread around the world (Lin, 2016, pp. 1383-1384).

Another important financial factor is the way United States dollar is a dominant currency in global finance. As stated by Best (2020, para 5-7)) the United States dollar is the world reserve currency, the origin of which goes back to the beginning of the 20th century. He continues and states that during the World Wars, the United States was a major supplier of weapons and other goods needed in the war effort to the Allied Powers, and it was mostly paid for these supplies in gold. According to Best, due to this, the United States ended up owning a vast majority of the world's gold reserve (Best, 2020, para 5).

Best (2020, para 6) continues and states that a meeting took place in 1944 between 44 Allied delegates during which a system of foreign exchange was set up. He states that as the United States held most of the world's gold, it was decided that due to this, other currencies could not be linked to gold and instead the United States dollar would be linked to gold and other currencies could then be linked to the United States dollar. This arrangement was known as the Bretton Woods Agreement, and in it was established that central banks would maintain exchange rates between their currencies and the United States dollar, and the United States would redeem United States dollars for gold on demand (Best, 2020, para 7).

According to Best (2020, para 8-9) this effectively made the United States dollar a world reserve currency, as other countries would accumulate United States dollars instead of gold, storing their dollars in the United States Treasury Securities. He continues that ultimately, however, due to domestic troubles and the demand for these Treasury Securities, the United States begun to print more money. According to Best, his increased concerns regarding the stability of the dollar, which led to countries with dollar reserves starting to exchange their dollar reserves for gold. The demand on gold got so high that it ultimately led to President Nixon de-linking the United States dollar from gold, leading to the current floating exchange rates, and ending the Bretton Woods Agreement (Best, 2020, para 10).

Despite this, more than 61% of all foreign bank reserves and 40% of the debt in the world is denominated in United States dollars (Best, 2020, para 11). A total of 81% of the global trade financing is done using the United States dollar (Lin, 2016, p. 1387). The United States dollar's reserve status is based on the size and strength of the United States economy, on the United States'

dominance on the financial markets and because the United States Treasury Securities are still seen as the safest way to store money (Best, 2020, para 11-12). The United States dollar plays a key part in the effectiveness of the United States' financial sanctions, as will be discussed later.

According to Lin (2016, p 1387-1388), although the United States has a dominant role in the modern financial infrastructure, the system is not completely controlled by the United States. Other regional superpowers, such as China and the EU, act as challengers and counterparts to the United States dominance of the system (Lin, 2016, pp. 1387-1388). According to Simes (2020, para 4, 7-8) Russia and China have started to increasingly engage in bilateral trade in non-United States dollar currencies in order to reduce their dependence on the United States dollar. He states that this 'de-dollarization' has increased since the United States imposed sanctions against Russia in 2014 due to the annexation of Crimea, as any payments made in United States dollars can potentially be frozen by United States government. According to an economist Simes interviewed, The United States dollar's position as a currency is not under active threat, but long the term results of aggressive sanctions policies might drive other actors towards seeking alternative options, similar to Russia and China (Simes, 2020, para 19-21).

2.3 Economic sanctions; theory and practice

In this section, the international legal theory regarding responses to internationally unlawful or hostile acts against a state are discussed, after which the way economic sanctions fit in this framework and how they are generally used as part of international law and international relations is analyzed. The purpose is also to look at the most relevant issuers of economic sanctions in relation to the topic of this thesis.

2.3.1 International law theory

According to Crawford (2019, pp. 523-525), in international law, there are certain acts and recourses a state can take when it suffers negative consequences due to the acts of another state. These stem from historical notions of restitution and reparation and they have been further modernized and defined by the International Law Commission (ILC) in its Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) (Crawford, 2019, pp. 523–525). As its name suggests, these articles define the principles that govern the rules of how and when a state is held responsible for

breaking its international obligations. The articles further develop the responses a state can take against other states that break their obligations and determine when they can be taken. ARSIWA have not been made into a treaty, but they have gained prominence and citations particularly after they were published (Crawford, 2019, p. 524).

According to Crawford (2019, p. 566), state responsibility and the parties that can invoke that responsibility has been a hot topic since medieval times. He continues by saying that Grotius for example saw it as a right of the king or the ruler (meaning the sovereign) to impose punishments for violations of law even if they were not particularly affected by it, if the act had excessively violated the law of nature or the law of nations, which placed sovereigns as guardians of the natural order of things. Crawford states that this thought was further developed and after international law was consolidated in the 19th century, opinions shifted more towards the view that only the state that has suffered the injury can invoke the responsibility of the offending state. In the 'Reparations for Injuries' case, the International Court of Justice stated that when it comes to breaches of obligations owed to individual states, only the party whose obligations are due can invoke the responsibility and bring claims towards the breaching party, with the Articles 42(a) and (b)(i) of the ARSIWA reflecting this right (Crawford, 2019, p. 567).

If a country feels that another has breached its rights and wants to act, there are several measures available for the offended state recognized in international law. Naturally, the offended state could act in any way it deems fit, but this is in practice limited by the actual capabilities of said state.

According to Klabbers, (2017, pp. 180-181) the first option is a well-known principle in contract law, which is also applicable to international law, that states that when there is a treaty or other binding agreement between parties and the other party breaks its commitments, the other party also has no obligation to perform its duties under the agreement and can use the breach as grounds to decline from fulfilling its own responsibilities arising from the agreement. This naturally only applies when there is a binding agreement between the parties and has no application in situations where the conflict between the parties does not include previously agreed upon commitments that could be violated (Klabbers, 2017, pp. 180–181).

Klabbers (2017, p. 181-182) continues and states that the second option is to perform retorsions, which are unfriendly acts performed by the state towards another state that has harmed them in some way. He states that a retorsion is a legal response, meaning that the measures taken are within

the legal rights of the performing state as far as international law is concerned, but they are still unfriendly in nature. He continues and states that these acts can include things like recalling diplomats or severing diplomatic ties and imposing trade tariffs on specific countries or goods. Retorsions can be performed in response to legal or illegal breaches (Klabbers, 2017, pp. 181–182).

The third option is to take countermeasures. According to Crawford (2019, p. 572) this is where, international law shows its historical character as a system between sovereign equals. Countermeasures, which were earlier called reprisals, refer to the possibility of the offended state to take matters into their own hands and act in a way they deem fit if their demands are not met by the offending party (Crawford, 2019, p. 572). This implies the possibility of taking the law into your own hands and 'might makes right' type of scenarios, with the resources of the offended states being the only limit. Crawford (2019, p. 572-573) states that both Grotius and Vattel accepted reprisals as the right of nations ensure justice for themselves by enforcing right their rights. In the Hague Conference of 1907, it was agreed by the participating states that armed force should not be used in recovery of contract debts and the increased restrictions on the use of force led to the idea of reprisals to be replaced by the concepts of self-defense and countermeasures (Crawford, 2019, pp. 572-573). In modern times, the use of force and warfare is increasingly restricted or regulated, and other methods, such as various sanctions, have gained prominence.

According to Crawford (2019, p. 573), limits and further refinement of countermeasures are detailed in Article 22 and Part Three, and Articles 49, 50(1) and 52(1) of the ARSIWA. He states that in the previously mentioned Nicaragua case, the ICJ also stated that countermeasures do not provide the right to use force, and that the right to use force only applies when it is used as a response to an immediate armed attack. Crawford continues and says that based on the ARSIWA, it can be further stated that countermeasures are prohibited if they would affect matters in certain areas, such as in the protection of human rights or obligations under peremptory norms. According to Crawford, the Articles add the requirement of formal notice of decision to take countermeasures and the requirement to offer a chance of negotiations. The taken countermeasures must also be proportional to the wrongful conduct and only the state that has suffered an injury due to the wrongful conduct of another state can take countermeasures (Crawford, 2019, p. 574). There is a clear evolution of though towards restricting the use of force and placing restrictions in general on countermeasures.

According to Ruys (2017, p. 31-32), the increased amount of legislation on international relations has increased the occurrence of situations where an act by a state that previously would have only been an unfriendly retorsion, now in some way violates international law. He states that there is a 'sliding scale of self-help measures with a grey area between', meaning that various state measures are either retorsions, lawful countermeasures or unlawful acts and it is often not easy to define if economic sanctions are retorsions or countermeasures. Ruys says that the context and scope of the actions taken influence the assessment on whether certain acts can be counted as retorsions or not. These conflicts may include things such as immunity of states and foreign officials, violations of the IMF agreement, possible cases of abuse of rights, and issues raised under human rights law (Ruys, 2017, p. 31).

According to Ruys (2017, p. 44-45), there is also the controversial matter of the legality of third-party countermeasures, i.e., the permissibility of countermeasures by states or international organizations that are not themselves injured by an unlawful act conducted by another state. Since the Barcelona Traction decision of the ICJ, it has become acceptable for states or international organizations other than the injured party to invoke the responsibility of other states in the cases where the breached obligation protects a collective interest of the group or where the breached obligation is owed to the international community collectively (Ruys, 2017, p. 45).

Ruys (2017, p. 45-46) continues and says that this right is stated in Article 48 of ARSIWA and there is no consensus or express opinion juris regarding the matter and as stated, parties imposing sanctions generally do not explicitly express or qualify what their actions are. According to Ruys, this means that it is quite hard to determine what economic sanctions are in the first place, which also makes determining their permissibility under international law difficult. He states that there is a tendency to be accepting of these third state/third-party countermeasures, and these measures been used by states on all continents and by international organizations as well. The comprehensive sanctions against Iran have also been described as a possible precedent for other future instances of "unilateral coercive measures" (Ruys, 2017, p. 46).

The sanctions imposed on Boris Rotenberg are related to the illegal annexation of Crimea, and this matter is discussed later in more detail. Considering that the sanctions were imposed by the United States as a response to an illegal annexation of the territory of Ukraine by Russia, the reason for them is clear (U.S. Department of the Treasury, 2014a, para 1). However, whether they should be

considered as retorsions or third-party countermeasures cannot be clearly stated, and the United States has only said that they are in response to the illegal annexation.

Therefore, it seems that the use of sanctions from a theoretical legal perspective is an undefined practice. States utilize various means, such as economic sanctions, without necessarily giving too much thought to international law and by giving precedence to other factors, such as political or economic ones. This is apparent in the case of the aforementioned sanctions imposed on Cuba by the United States It is possible that sanctions-related practices are developed more through how they are used in practice and whether the practices are accepted, than through the application of any actual theoretical legal considerations or rules.

2.3.2 Economic sanctions and the parties imposing them

The most significant economic sanctions in the western world are issued either by large international organizations, such as the United Nations or the European Union, or by individual countries, such as the United States, as autonomous economic sanctions.

According to Ruys (2017, p. 22-23), from a purpose-oriented view, economic sanctions are used in attempt to change their target's behavior, or at least to constrain the target's access to certain resources and thus to prevent them from continuing of undesired activity. There is also an element of public condemnation and stigmatization, particularly when it comes to United Nations sanctions. It could be argued that there is a certain punitive element to sanctions, but both the United Nations Security Council and Court of Justice of the European Union have stressed that sanctions are preventive in nature. (Ruys, 2017, p. 23)

United Nations sanctions, economic or otherwise, are based on the provisions of the Charter of the United Nations (United Nations, 1945). Article 39 of the United Nation's Charter states that 'the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security'. Article 41 of the UN Charter enables the Security Council to decide on 'measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. According to the Article, these may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other

means of communication, and the severance of diplomatic relations (United Nations, 1945). This is the authorization for the United Nations Security Council to impose various sanctions, including economic and trade related restrictions, as responses to threats determined by the Security Council in accordance with Article 39 of the Charter.

The sanctions imposed by the United Nations on North Korea following North Korea's nuclear testing are a good example of United Nations sanctions in practice. A clear threat to peace was identified (nuclear proliferation) and in response, various ever-stricter United Nations Security Council resolutions were passed. At the beginning, the sanctions were more related to arms control, but they have since been expanded significantly, and now also include economic sanctions, such as freezing of funds and assets, prohibiting loans and credit, blocking bulk cash transfers and restricting access to international banking systems (Arms Control Association, 2018). As with any Security Council resolutions, United Nations sanctions are subject to the usual politicking that happens in connection to all controversial Security Council decision making, as seen with the Crimea-related sanctions discussed later.

According to the General Framework for EU Sanctions (2020, para 2-3), European Union has its own framework to implement sanctions imposed with United Nations Security Council resolutions, or as European Union's own autonomous sanctions. The Framework describes sanctions as 'restrictive measures' as per the Treaty on the Functioning of the European Union. The Framework states that Article 29 of the Treaty on the European Union – supported by Article 215 – allows the Council of the European Union to impose sanctions to ensure the uniform application of these decisions in all member states. According to the Framework the restrictive measures are meant to be targeted against governments of non-European Union countries, non-state actors and individuals who do not respect or who violate international law or human rights or pursue policies or actions that do not respect the rule of law or democratic principles. Restrictive measures are also intended to be 'preventive and non-punitive' (General Framework for EU Sanctions, 2020, para 3).

A relevant example of European Union's restrictive measures are the measures imposed on Russian individuals and entities following the annexation of the Crimean Peninsula in 2014. According to the Council of the European Union (2021), the measures program is still ongoing and includes various diplomatic measures, asset freezes and travel restrictions, restrictions on economic relations related to the areas of Crimea and Sevastopol and measures targeting exchanges with specific Russian economic sectors. The measures taken are largely economic in nature and have been continuously

extended and expanded since their introduction, with the latest individuals and entities subjected to restrictive measures in October 2020[1] (Council of the European Union, 2021). The annexation of the Crimean peninsula was the event that led to the United States imposing sanctions on Boris Rotenberg who was seen to be part of the Inner Circle of the Russian Leadership by the United States (U.S. Department of the Treasury, 2014, para 1). Not surprisingly, neither Russia nor Crimea were placed under any United Nations sanctions, as Russia used its veto right to block a United Nations resolution on Crimea and it is quite clear that Russia would not accept any sanctions imposed on itself by the Security Council anyway (New York Times, 2014).

The final source for economic sanctions is individual countries, who can use national legislation to place various economic sanctions or tariffs or otherwise restrict trade between their own country and other countries, companies, or individuals. Sovereign states are free to legislate as they deem fit and cannot legislate on behalf of other countries, although when it comes to sanctions, this line is muddled. The most relevant example of an individual country imposing sanctions in relation to this thesis is the United States due to its sheer influence.

According to Masters (2019, para 12), The United States' sanctions policies originate either from the executive or the legislative branch of the government. Executive Orders are issued by the President, which can include imposing sanctions as a response to threats or to the actions or policies of other governments, or they can modify existing sanctions. (Masters, 2019, para 1) The International Emergency Economic Powers Act (IEEPA) gives the president the ability to declare the existence of a 'unusual and extraordinary threat which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States' (50 U.S.C. §1701(a)).

Masters (2019, para 18) states that these powers were expanded with the Executive Order 13224 signed by the then United States President George W Bush following the 9/11 attacks on the World Trade Center. He continues and says that this enabled various United States federal agencies to designate individuals and entities that have or are in a significant risk of committing acts of terrorism. According to the U.S. Department of State description of Executive Order 13224 (2001, para 11), after the relevant designation, the Office of Foreign Assets Control (OFAC) takes the appropriate actions to block the assets of the designated entities and to add the designated entities

[1] At the time of writing this

to the relevant lists, such as the Specifically Designated Nationals (SDN) list. As The U.S. Department of State explains, other types of lists also exist, although the SDN list is the one with most serious repercussions since being on it means that the target's assets are blocked and/or frozen and legal entities under United States' jurisdiction ('U.S. Persons') are generally prohibited from dealing with them. These designations stay in effect unless they are revoked or terminated in accordance with United States Law or unless the Executive Order expires. (U.S Department of State, 2001, para 11) The Patriot Act, signed into law on 26 October 2001, increased the power of these designations by permitting the blocking of assets during the 'pendency of an investigation', effectively giving OFAC the capability to block assets without the being required to provide any proof other than that they are investigating the designated subject (USA PATRIOT Act H.R. 3162-6 Sec. 106. Presidential Authority).

As the U.S. Department of Treasury informs on their webpages (2021, para 1) OFAC, operating under the United States Department of the Treasury, is responsible for administering and enforcing the economic and trade sanctions imposed by the United States. These sanctions are targeted against foreign countries and regimes, terrorists, international narcotics traffickers, parties engaged in the proliferation of weapons of mass destruction, and other parties posing a threat to the national security, foreign policy, or economy of United States. (U.S. Department of the Treasury, 2021, para 1) There is a clear difference in the description of the purpose of the sanctions in the statements issued by the United Nations, European Union and OFAC. OFAC descriptions make it clear that the purpose of the sanctions is to support various political goals of the United States as a country and, following the 9/11 attacks, economic sanctions have been actively used against known and suspected terrorists. This is to be expected but becomes slightly problematic when the practical application and effects of these sanctions are studied more closely.

United States' sanctions can be categorized into two different groups. According to Ruys & Cedric (2020, p. 7), there are the 'primary sanctions', referring to sanctions that are applied only to U.S. Persons or to transactions involving 'US Nexus'. Ruys & Cedric explain this 'US Nexus' as a connection to United States, such as a territorial connection, the involvement of United States dollar or technology originating from the United States. The OFAC FAQ states the following as a response to the question of who needs to comply with OFAC regulations: 'U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their

foreign branches. In the cases of certain programs, foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply.' (U.S Department of the Treasury, 2015, FAQ question 11).

According to Ruys & Cedric (2020, p. 7-8) there are also 'secondary sanctions', that differ from the primary sanctions which are applied only to U.S. Persons or when US Nexus is present. They continue and state that the purpose of secondary sanctions is to specifically target non-United States entities and they are applicable to relations between third countries or third-party operators and the foreign entities under sanctions. As the United States cannot directly legislate or impose laws on foreign entities with no ties to the United States, the secondary sanctions work more like threats or statements of possible repercussions for dealing with entities under economic sanctions imposed by the United States. According to Ruys & Cedric (2020, p.7) Secondary sanctions have been described as 'retaliatory' in United States sanctions literature and it can be said that, due to their effects, the term 'secondary sanctions' is synonymous with 'extraterritorial sanctions'. Secondary sanctions can be characterized as anti-circumvention measures, preventing third parties from assisting a sanctioned country or actor in their attempts to bypass any sanctions placed on them (Ruys & Cedric, 2020, p. 8).

In practice, this is achieved by including the United States sanctions legislation in provisions that enable the placement of sanctions on, for example, a foreign financial institution that has enabled transactions on behalf of the sanctioned entities. According to the Ukraine Freedom Support Act of 2014 Section 5, any foreign financial institution that facilitates financial transactions on behalf of the Specially Designated Nationals, i.e., persons listed on the SDN list, may have sanctions imposed on them by the President of the United States. In the case of this Act, sanctions imposed on foreign financial institutions refer to 'a prohibition on the opening, and a prohibition or the imposition of strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by the foreign financial institution' (Ukraine Freedom Support Act of 2014 Sec. 5., 2014). This effectively restricts the foreign financial institutions' access to the United States market and to the United States dollar.

This also means that being placed on the SDN list by OFAC makes the entity in question 'contagious' if secondary sanctions are applicable. Even without secondary sanctions existing, the possibility of regulatory action by OFAC exists. If an entity knowingly and willingly transacts with an entity included on the SDN list and ends up being targeted by OFAC, they themselves also become

‘contagious’ meaning that anyone afraid of OFAC regulatory action will likely not do any business with said entity, just to be safe. It does not even necessarily require that the entity in question is placed on any lists by OFAC; merely the anticipation or threat of action may suffice. There is a clear element of intimidation present, particularly with secondary sanctions.

As reported by Coppola (2018, para 1-3), a good real-life example of this is the fate of the Latvian ABLV Bank, which ended up in voluntary liquidation after facing liquidity problems arising from being targeted by United States sanctions due to accusations of money laundering, facilitating payments to listed North Korean entities and trying to conceal these actions. The imposer of the sanctions, the United States Treasury’s Financial Crimes Enforcement Network (FinCEN), stated that it intended ‘to prohibit the opening or maintaining of a correspondent account in the United States for, or on behalf of, ABLV Bank, AS.’ (Coppola, 2018, para 5). This is a similar penalty for foreign financial institutions as the one previously mentioned in the Ukraine Freedom Support Act of 2014. ABLV was effectively shut out of the global financial network and denied United States dollar funding, and other banks wanted nothing to do with it, as it was now ‘contagious’ with the incoming prohibitions looming over its head (Coppola, 2018, para 6). This is an extreme example, but it demonstrates the United States Treasury will not back down on issuing even the harshest of penalties available to them and that it is willing to target foreign entities as well.

The use of secondary sanctions and retaliatory legislative action combined with the economic status of the United States and the significance of the United States dollar as a currency gives United States. sanctions greatly more power and leverage as a foreign policy tool than most – if not all other countries in the world – have. Ruys & Cedric (2020, p. 112) observe that The United States weaponizes the economic sanctions legislation to enforce and support its foreign policy goals, with little regard towards the economic damage and erosion of political sovereignty of third states caused. By doing this, it also shows other large nations, such as China, the effectiveness of economic sanctions as political tools (Ruys & Cedric, 2020, pp. 112–113). Currently, the Nord Stream 2 gas pipeline from Russia to Germany is under pressure from the United States in relation to economic sanctions, which jeopardizes the entire project (Reuters, 2021). It seems unlikely that the power of economic sanctions in global politics would decrease any time soon and it would not be surprising if the role and use of economic sanctions would only grow larger in the future. Currently, various sanctions seem to be the go-to ‘tit for tat’ response of all states, which is well exemplified in the

ongoing back and forth placement of sanctions by countries regarding China's handling of their Uyghur population (Al Jazeera, 2021).

This look into economic sanctions is not comprehensive, as there are other imposers of economic sanctions as well. Arguably, including only the United Nations, the European Union and the United States provides a quite European/western-centric view into economic sanctions, but these are the main actors having influence in Finland in relation to economic sanctions and related to the case presented later. In the next chapter, the way economic sanctions are implemented in Finland, their effects in national legislation and whether the extraterritoriality of United States sanctions is somehow noted by legislation, regulators, or financial actors is discussed.

3. How do international economic sanctions affect Finland?

In this chapter the way the international economic sanctions are implemented nationally in Finland and the economic sanctions generally enforced in Finland are presented. This includes both the European Union and United Nations imposed sanctions, but whether any Finnish regulatory bodies have guidelines or comments related to the economic sanctions issued by OFAC is also examined, as their effects cannot be denied. This is relevant to the case as well, since Boris Rotenberg under sanctions issued by OFAC only, not by the European Union or the United Nations.

3.1 Implementation of international economic sanctions in Finland

As a member of both the United Nations and the European Union, sanctions, economic or otherwise, issued by either organization apply to Finland. As previously specified, the sanctions imposed by the United Nations Security Council resolutions based on the United Nations Charter Chapter VII are legally binding on all United Nations member countries – including Finland. As a member of the European Union, Finland is also bound by the European Union's sanctions legislature. This gives rise to interesting questions regarding the implementation and possible overlap of European Union and United Nations imposed sanctions.

The website of the Council of the European Union states that, in addition to autonomous European Union measures, 'the EU implements all sanctions adopted by the United Nations Security Council and is involved in a permanent dialogue with the UN to better coordinate EU member states' respective actions on sanctions' (Council of the European Union, 2019). The United Nations Charter does not allow the admission of international organizations or any other entities other than states into the United Nations (United Nations, 1945, Chapter II, Article 4). This means that member countries of the European Union are also members of the United Nations, but the European Union as an organization is not. Therefore, the European Union is not legally obliged to implement United Nations Security Council resolutions related to sanctions, but this naturally does not affect the responsibilities of the individual countries under the United Nations Charter. Article 103 of the United Nations Charter also states that in case of conflict between the United Nations Charter and any other international obligation, the United Nations Charter prevails (United Nations, 1945, Chapter XVI, Article 103). The Treaty on the European Union also contains mentions respecting and working with the principles laid out in the United Nations Charter several times. Overall, it is

beneficial for the European Union to implement the United Nations sanctions that its member states would need to implement anyway, since implementing them on the level of the European Union legislation ensures more uniform and timely application.

According to Biersteker& Portela (2015, p. 1-2) the European Union sanctions imposed due to United Nations Security Council sanctions can be categorized into three groups. The category they list is the most straightforward approach and simply is the European Union implementing the United Nations Security Council resolutions as they are, i.e., in effect simply giving the United Nations sanctions legal standing in European law. The second group of sanctions in their categorization are the autonomous sanctions extending beyond United Nations sanctions, which are meant as a supplementary measure to strengthen the existing United Nations sanctions and in this case, the European Union takes autonomous actions in addition to existing United Nations sanctions. Biersteker & Portela observe that there has been some debate regarding the legitimacy of these sorts of measures and whether the United Nations sanctions can be expanded in this way or not. Lastly in their listing, the third group of sanctions are the completely autonomous European Union sanctions applied in the absence of United Nations sanctions, generally due to some Permanent Security Council member opposing the planned sanctions. As previously mentioned, no Crimea related sanctions have been issued by the United Nations due to opposition by Russia but, the EU has imposed sanctions related to the situation in the Crimea (Council of the European Union, 2021). Autonomous European Union sanctions also signal and highlight the values of the European Union on the international stage (Biersteker & Portela, 2015, p. 2). Next, Finland's national legislation and how both the United Nations and European Union sanctions are enforced in it are discussed.

3.2 Implementation of United Nations and European Union sanctions in Finland's national legislation

The Act governing and enforcing sanctions in Finnish national legislation is the 'Act on the Enforcement of Certain Obligations of Finland as a member of the United Nations and of the European Union' (Pakotelaki, 2021; English translation of the Act available with amendments up to 504/2015, hereinafter the 'Sanctions Act'). The Act is quite short and consists only of six sections. The original Act of 1967 did not contain the references to European Union's sanctions, which have been added later. Originally, the Act only referred to United Nations Security Council resolutions.

The first section of the Sanctions Act states that to fulfill the obligations of Finland arising from the United Nations Security Council resolutions, the required measures of economic nature or related to communications or transportation may be provided by a decree (Pakotelaki 2021). This seems to specifically refer to Article 41 of the United Nations Charter, which states that the measures taken 'may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication' (United Nations, 1945). Considering that, the European Union implements the United Nations sanctions, this section is more of a backup measure, since Finland's United Nations sanction commitments are fulfilled through the European Union's legislation.

The second section of the Sanctions Act (2021) indicates simply that the Speaker of Parliament must be without delay be informed of any decrees issued in reference to this Act and that the Speaker must inform the Parliament of them immediately or as soon as it is possible. The decrees must be repealed if the Parliament so decides (Sanctions Act, 2021, section 2).

Sections 2a and 2b of the Sanctions Act (2021) refer to European Union's sanctions and are clearly more substantive than the United Nations part. Section 2a subsection 1 states, in a similar way as the first section regarding United Nations sanctions, 'that further provisions on the implementation of regulations adopted by virtue of the Treaty on the Functioning of the European Union Article 215 concerning the interruption of economic and financial relations with a third country or the adoption of restrictive measures against natural or legal persons, groups or non-State entities shall, when necessary, be issued by a decree'. Subsection 2 refers back to subsection 1 and states that information regarding the entry into force of the regulations and on the penal provisions applicable to violations of these regulations are given by an announcement of the Ministry of Foreign Affairs and are published in the Statutes of Finland.

For example, the European Union Council's Regulation 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine entered into force on 1 August 2014 and this information along with the applicable penal provisions was announced by the Ministry of Foreign Affairs (Ministry of Foreign Affairs Finland, 2014). The European Union does the heavy lifting here, and to form a full picture on what is degreed, it is necessary to go through the council decisions, as these announcements themselves are very short.

Section 2b of the Sanctions Act (2021) details that the actions taken, such as the freezing of funds of a specified natural or a legal person must be enforced by a bailiff upon the application of the Ministry of Foreign Affairs in compliance with the stated chapters of the Enforcement Code (705/2007). Interesting are also the parts that state that expenses incurred from the enforcement of the freezing of funds and from depositing and managing the frozen funds are the responsibility of the object of the decision, and that the regulation related to the freezing or the annulment of the freezing must be enforced regardless of an appeal. Other parts of the section place obligations on the specified parties to provide information to the bailiff as stated in the Act on Detecting and Preventing Money Laundering and Terrorist Financing (503/2008) and in the Enforcement Code. The last subsection of the section states that the responsibility in Finland regarding the duties listed in the Act and the measures taken under Article 29 of the Treaty on European Union and under UNSC Resolutions falls to the Ministry of Foreign Affairs, unless these duties fall under the responsibility of any other authority.

The third section of the Sanctions Act (2021) states that any commitments or agreements that are contrary to the provisions of the Act or any orders issued as a result of the Act, or any that are intended to circumvent the provisions or order, must not be enforced. Also, if the enforcement of any commitments or agreements that have been entered into are contrary to the provisions of the degree or orders issued by it, the enforcement of such commitments or agreements must be suspended without delay (Sanctions Act, 2021, section 3).

The fourth section of the Sanctions Act (2021) deals with the criminal penalties for violations or attempted violations related to the regulations issued in accordance with the Act. According to this Section, the penalties are listed in the Finnish Criminal Code (39/1889), Chapter 46, sections 1 to 3. The penalties range from fines to prison sentences, ranging from four months up to four years, depending on the severity of the committed crime (Finnish Criminal Code, 2021, Chapter 46, Section 1-3). The last two sections of the Sanctions Act detail the date of entry into force and that further provision on the application of the Act are issued by decree (Sanctions Act, 2021. sections 5-6).

The possible criminal penalties are not the only possible penalty, as they only come into consideration if the actual sanctions are violated. One of the more effective tools that is used with economic sanctions specifically, is asset freezes, which in general are quite extensive. According to the European Union's Best Practices for the effective implementation of restrictive measures, 'the freezing covers all funds and economic resources belonging to or owned by designated persons and

entities, and also to those held or controlled by such persons and entities' (EU Best Practices for the effective implementation of restrictive measures, 2018, p. 14). In Finland, this responsibility lies with the National Enforcement Authority Finland (Ulosottolaitos) that is responsible for handling the freezing of funds both regarding the Act on the Freezing of Funds with a View to Combating Terrorism and the Act on the Fulfilment of Certain Obligations of Finland as a Member of the United Nations and of the European Union (National Enforcement Agency, 2020, para 6).

As stated, the European Union does most of the heavy lifting when it comes to economic sanctions that are legally relevant to Finland. European Union Member states have decided that for the achievement of best results and to ensure uniform implementation, the United Nations sanctions are also enforced with European Union legislation though European Council Regulations (Hallituksen Esitys 288/2014, p. 4). As observed by Helwig, Jokela & Portela (2020, p. 163), the reality and a constant in Finland's existence is that Finland is a small country and has a relatively small economy, meaning that Finland has very limited influence in international politics. As a part of the European Union, Finland has some hope of having a sanctions policy that is at least on some level both meaningful and effective, in any case much more so than Finland could ever independently hope to achieve (Helwig, Jokela, & Portela, 2020, p. 163). The only individual countries that can have any hope of affecting the world through sanctions alone are superpowers with powerful military and economy capabilities and even then, it is predominantly the United States due to the economic and currency related factors discussed previously. The next subchapter will discuss the effects of OFAC economic sanctions in Finland.

3.3 Extraterritoriality of OFAC-issued economic sanctions

As can be observed, there is no mention of any other sanction regimes, such as OFAC sanctions, in Finland's national legislation. These are obviously not enforced legally in Finland, but one could argue that they can have the most serious consequences if violated. Therefore, this subchapter examines whether United States sanctions issued by OFAC are noted in any regulatory guidelines or agreements in Finland by Finnish entities, since although they are not legally enforceable, they cannot be ignored either.

First it should be noted that the European Union has tried to prevent the extraterritorial application of third-country laws by instituting a blocking statute to protect anyone operating in the European

Union (Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018, 2018). The blocking statute is a good example on how the United States' use of economic sanctions as a tool of foreign policy can conflict seriously with the goals of the European Union. Another example is the ongoing diplomatic event with the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran nuclear deal. As documented by Robinson (2021, para 1, 12), the core aspect of the deal was that Iran will voluntarily restrict their nuclear program and allow for monitoring and verification, giving IAEA inspectors unfettered access to Iranian nuclear facilities. According to Robinson (2021, para 14-15) in exchange, the European Union, the United Nations, and the United States would lift various nuclear related sanctions they had placed on Iran. As Robinson (2021, para 19) states, the deal got off to a good start, but when President Donald Trump withdrew the United States from the deal, the deal was brought to the brink of collapse as United States reinstated sanctions on the Iranian banking and oil sectors. According to Robinson (2021, para 20), Iran accused the United States on reneging on the deal commitments and faulted the European countries for submitting to United States'. unilateralism. Some European countries tried to circumvent the United States banking system by launching a barter system (INSTEX), but this has not had any significant effect (Robinson, 2021, para 20).

Following the targeted killing by United States of the Iranian general Qasem Soleimani, the attacks on the nuclear production facilities and the assassination of a nuclear scientist, Iran has, as a response, increasingly taken more steps away from the deal and increased nuclear production (Robinson, 2021, para 23). The all-but-collapse of the Iran nuclear deal due to United States' withdrawal is a good example of the dominance of the United States and the effect of their economic sanctions. The other parties of the deal cannot effectively fight or counter the United States' economic sanctions, even if they try.

The blocking statute by the European Union is the European Union's attempt at fighting, specifically, the United States' economic sanctions. The blocking statute, i.e., Council Regulation No.2271/96, was originally implemented in 1996 and is aimed to 'provide protection against and counteract the effects of the extra-territorial application of the laws', related to the laws specified in the Annex of the Regulation, with the provisions of the Annex being related to the United States economic sanctions against Cuba, Iran, and Libya (Council Regulation (EC) No 2271/96 of 22 November 1996, 1996).

After the United States' withdrawal from the JCPOA in 2018, the European Union updated the blocking statute to incorporate the newly re-imposed United States sanctions with the aim of protecting European Union entities and banning European entities from complying with United States extraterritorial sanctions (Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018, 2018). Article 5 of the blocking statue (2018) does permit entities to comply with the United States sanctions if non-compliance would seriously damage their interests or those of the Community. The main issue with the blocking statute is that there is very little legal precedent set by European courts related to the application or enforcement of the statute in practice.

According to the law firm Ronald Fletcher Baker LLP (2020), there is an ongoing case related to the United Kingdom-based Metro Bank restricting and closing accounts of their Iranian customers or people and companies having connections to Iran. One of the claims made against Metro Bank is that their policies and practices are specifically unlawful under the European Union blocking statute that targets the extra-territorial effects of the United States sanctions regulation (Ronald Flecther Baker LLP, 2020).

This case will hopefully shed some light to the practicalities related to the European Union blocking statute, but so far its effects have been very limited, and since United States secondary sanctions can have quite strict effects, it is possible that Metro Bank argues that ignoring the United States sanctions would seriously harm the interests of the Community and which would make their actions permissible under the previously discussed provisions of the blocking statute.

However, the European Union blocking statute does not apply to the Crimea-related sanctions, which are more relevant to the case discussed in this thesis. It would be odd for the European Union to fight against the Crimea related sanctions placed by the United States, since the European Union itself has placed sanctions on Russian actors for the annexation of Crimea. The next subchapters discuss the norms lower in the hierarchy, such as regulatory guidelines and contract clauses and whether they have provisions that refer to OFAC sanctions specifically.

3.3.1. Financial Supervisory Authority

As described by Financial Supervisory Authority (FSA) (2021a, para 1), the responsibility for supervising Finland's financial and insurance sectors has been assigned to the Financial Supervisory Authority with the Act on the Financial Supervisory Authority. The FSA states (2021a, para 1) that

their role is to supervise banks and insurance and pension institutions, all other companies operating in the insurance sector as well as investment firms, fund management companies and the Helsinki Stock Exchange. The goal is to enable balanced operations, protect the rights of the insured, foster public confidence in financial markets, and to promote compliance and good practice in financial markets (Financial Supervisiory Authority, 2021a, para 3).

Based on its authority provided by legislation and the purpose of the FSA, the FSA publishes guidelines and regulations related to various areas of their authority with the guidelines varying from legally binding regulations to non-binding recommendations (Financial Supervisory Authority, 2021c). OFAC economic sanctions are mentioned in the 'FSA Standard 2.4 Customer due diligence: Prevention of money laundering and terrorist financing' and as the name states, these regulations are related to customer due diligence and preventing and detecting money laundering and terrorist financing (Financial Supervisiory Authority, 2021b). The FSA Standard 2.4. has not been updated to include the latest amendments to the Anti-Money Laundering Act, but the current version does give some indication on the opinion of the FSA on the matter (Financial Supervisiory Authority, 2021b).

In the 'FSA Standard 2.4' (2016, p.40), OFAC is mentioned in parts 130–132. In the standard, parts 130 and 131 are justifications mainly in the context of what OFAC is, what it does and a list of the effects of OFAC sanctions. The standard mentions that it should be noted that intermediary banks in the payment chain may also freeze payments related to OFAC sanctions. This increases the effectiveness of OFAC sanctions since it takes only one financial institution or bank in the payment chain to make the decision to observe OFAC sanctions and stop the payment in fear of the very real and possible consequences for violating them.

The next part 132 in the standard (2016, p.40) is the recommendation issued by the FSA regarding OFAC sanctions and monitoring of OFAC lists. It states that even if the OFAC sanctions lists are not legally binding in Finland and place no obligations on the supervised entities to freeze assets, the monitoring of OFAC lists can be considered to fall within the obligation to obtain information. It also states that suspending transactions for making further enquiries can also be justified on the grounds of complying with the Anti-Money Laundering Act. Part 132 of the standard mentions that since United States banks are obliged to freeze any payments related to OFAC listed entities, the banks should account for this in their own risk management procedures. This part of the recommendation refers to an old version of the Act 503/2008, but the current Act 444/2017 has similar requirements related to knowing one's customers and monitoring suspicious transactions (Financial Supervisory

Authority, 2016, p. 40). Thus, it seems unlikely that the overall recommendation would change much when it is updated. This means that the FSA does recommend monitoring of OFAC sanctions from the perspective of Anti-Money Laundering, and due to other banks likely also complying with OFAC sanctions so OFAC sanctions should be taken into consideration in risk management.

OFAC sanctions can also be included in the various service agreements that, for example, banks make with their customers. This is one of the points raised in the case studied in the second half of this thesis. Although OFAC sanctions are not legally binding in Finland, financial institutions can try to make them contractually binding by including terms and conditions related to OFAC into their account and service agreements. The various contracts of the four Finnish banks involved in the legal case with Rotenberg and how OFAC sanctions are included in their terms and conditions are examined in the next section.

3.3.2 OFAC sanctions in banking contracts

This section will go through the general terms and conditions for payments, both in euro and other currencies, of the banks involved in the legal case analyzed below. The banks are Nordea, Osuuspankki, Handelsbanken and Danske Bank. This section discusses how economic sanctions, OFAC or otherwise, are taken into consideration in the terms and conditions for bank accounts, and in general on the websites of the banks or in other published information.

3.3.2.1 Nordea

Nordea has information and clauses regarding economic sanctions both on their website and included in their general terms and conditions. On their website (2021, para 1-2), the bank states that Nordea will screen payments against sanctions lists to ‘ensure that we comply with all sanctions’. This reference to ‘all sanctions’ is stated to include economic sanctions issued by the European Union, and national fund-freezing decisions. On the webpage Nordea also states that payments to and from Nordea are monitored in order to make sure that no payments are transmitted to sanctioned parties. The webpage explains that this is achieved by comparing payment information to the sanctions imposed by European Union, the United Nations Security Council and against the ‘sanctions, notices and orders of Finnish and foreign authorities’. This might

lead to requests of further information regarding payments (2021, para 3). OFAC is not mentioned directly on Nordea's website, but the reference to "foreign authorities" clearly also includes OFAC.

Nordea's 'general terms and conditions for euro-dominated payments transmitted within the Single Euro Payments Area'[2] (2018a) and Nordea's 'general terms and conditions for outgoing and incoming currency payments' (2018b) both contain references to economic sanctions, and more interestingly, directly to OFAC. In Clause 3 of the SEPA payment terms and conditions related to the issuance of payment orders, it is stated that the 'bank may compare the payment information against the financial and other sanctions issued by the European Union or the United Nations Security Council as well as against the sanctions, notices and orders of Finnish and foreign authorities and other corresponding parties, such as the Office of Foreign Assets Control (OFAC) (2018a, pp. 1–2). Clause 6 – related to the non-execution of payment orders – states that if the payment directly or indirectly violates sanctions, the bank has no obligation to transfer the payment, and that the payee's bank is entitled to return the payment to the payer's bank in case the payment breaches international sanctions (2018a, p. 2). The 'general terms and conditions for currency payments' contains the same clauses (2018b, p. 2).

It is interesting that Nordea does not directly mention OFAC on their webpages – refer only to 'foreign authorities', – while making a direct reference specifically to OFAC as a 'corresponding party' in the general terms and conditions for payments (both SEPA and currency). It seems likely that this is not a coincidence, or a random example provided of a 'corresponding party' or a 'foreign authority', but an intentional addition to specifically name OFAC as one of the entities whose guidelines are observed. As OFAC sanctions are not directly legally binding, the next best thing is to add them into contracts made between the bank and customers, and specifically mentioning OFAC leaves no room for interpretation or ambiguity in relation to the 'foreign entities' the sanctions imposed by whom are complied with., As be seen from the court case, not mentioning OFAC sanctions so publicly may help the bank avoid some uncomfortable questions regarding the extra-territorial application of OFAC regulation.

[2] SEPA

3.3.2.2 Osuuspankki

At the time of writing this[3], unlike Nordea, Osuuspankki (OP) does not have a dedicated page on their website related to international sanctions and what OP does regarding them. The only references to sanctions are in privacy statements that refer to personal information being used in the monitoring of international sanctions (OP Identity Service Broker's customer data file, 2021, clause 5).

Naturally, OP has both 'general terms and conditions for euro-dominated payments transmitted within the Single Euro Payments Area' (2019), and 'general terms and conditions for outgoing and incoming currency payments' (2018). Clause 2 of OP's terms and conditions, both for SEPA (2019, p. 1) and currency payments (2018, s. 6), defines international sanctions as any sanction, financial sanction, import or export ban, embargo, or other restrictive measure set, governed, approved or enforced by Finland, the United Kingdom, the European Union, the United States or the United Nations, or any organ or authority under these entities. Clause 3 in both terms and conditions refers to the necessity of asking for more information from the customer to comply with international sanctions (2019, pp. 1–2) (2018, pp. 6–7). Clause 6 refers to the right of the bank to not process the payment if the payer, the payer's bank, the payee, or the payees bank are under international sanctions that the banks involved in the payment must take into consideration due to legal, contractual or other reasons (2019, p. 2) (2018, p. 7).

International sanctions are defined in more detail in OP's contracts, and they also include the upcoming sanction program of the United Kingdom in addition to the usual suspects. The United States, i.e., in practice, OFAC, is also directly mentioned in these documents. It should also be noted that at least OP's general terms for a checking account includes a clause (Clause 10) that gives the bank a right to restrict account use or close the account if international sanctions are imposed on the owner of the account (2019b, p. 4). Overall, OP's approach to international sanctions is quite similar to Nordea's.

3.3.2.3 Handelsbanken

Similarly, to OP's website, Handelsbanken does not have any information regarding international sanctions on their website. Handelsbanken also has both 'general terms and conditions for euro-

[3] 10.2.2021

dominated payments transmitted within the Single Euro Payments Area' (2019) and 'general terms and conditions for outgoing and incoming currency payments' (2020). Clause 3 of both of these contracts states that the bank may compare the payment information to economic sanctions issued by the United Kingdom and the European Union, and to other sanctions or decisions issued by either domestic or foreign officials or similar actors, such as OFAC's regulations and the clause also gives the bank the right to limit payments to states where, based on the banks own risk assessment, the regulation for the prevention of money laundering and terrorist financing can be seen to be insufficient (2019a) (2020). Clause 6 of the terms and conditions gives the bank the right to refrain from executing any payment if it would violate or could violate international sanctions (2019a) (2020). OFAC is mentioned as an example in Handelsbanken's general terms for payment cards clause 7.2. (2019b). Handelsbanken mentions OFAC specifically as an example.

3.3.2.4 Danske Bank

Like OP and Handelsbanken, Danske Bank does not have any information on their website regarding international sanctions. Danske Bank has a single document outlining the terms and conditions for both accounts and payment services named 'Terms and conditions of accounts and Payment Services' (2020). This single document contains the 'General Terms and Conditions of Account, the General terms and conditions for euro-denominated payments transmitted within the Single Euro Payments Area', the 'General terms and conditions for Outgoing and Incoming Currency Payments' and the 'General terms and conditions for E-invoices and Direct Payments' (2020, p. 2).

Clause 3.1 of the 'General terms and conditions for euro-denominated payments transmitted within the Single Euro Payments Area' mentions the European Union and the United Nations Security Council, as well as 'other sanctions, notices and provisions issued by domestic and foreign authorities or other similar parties, such as the Office of Foreign Assets Control (OFAC)' (2020, pp. 14–15). The same wording is present in Clause 3.1 of the 'General terms and conditions for Outgoing and Incoming Currency Payments' (2020, p. 23). Clause 15 of the General Terms and Conditions of Account references sanctions imposed by the United Nations, the United Kingdom, the United States, the European Union or any EEA country or locally competent authority (2020, p. 10). The Clause ensures the bank the right to restrict the use of account or close it if the owner of the account is affected, directly or indirectly, by any sanctions imposed by these actors. Clause 3.1 of the 'General terms and conditions for Outgoing and Incoming Currency Payments' refers to same

authorities mentioned in Clause 15, giving the bank the right to not carry out payment orders if the user is under sanctions or if these sanctions have any impact on the user, directly or indirectly, according to the bank's estimation (2020, p. 23). OFAC is mentioned again as an example of a foreign actor.

3.3.2.5. Summary

Overall, there is not much information readily available on the banks' websites regarding international sanctions. Nordea is the only one of four banks that clearly explains that Nordea screens payments in relation to sanctions lists and that the screening may lead to requests for additional information. OFAC is not mentioned directly. However, all four banks make sure to mention OFAC by name in their account agreements, making sure there is no confusion on whether screening is done in relation to OFAC sanctions. Since these banks are the banks involved in the Rotenberg case and keeping in mind the serious possible consequences of violating OFAC sanctions, it was expected that OFAC sanctions would be referred to in some way. Including the OFAC sanctions into their various terms and conditions turns possible disputes and arguments into contractual disputes instead of disputes regarding the legality of extra-territorial sanctions. This strengthens the position of the banks in case of legal disputes.

4. Analysis of the case between Boris Rotenberg and Finnish banks

In this chapter, the case between Boris Rotenberg and the four Finnish banks he sued is analyzed. The District Court of Helsinki issued its decision on the case on 13 January 2020 (case number L18/48677). The decision was obtained from the Court and is used as the primary source for analysis and reference for this chapter. The contents of the decision are analyzed in the context of the framework established in the previous sections of this thesis. In the analysis, the ways in which United States OFAC issued economic sanctions are handled in practice and given effect by the Court via the application of Finnish legislation is discussed.

4.1 Background of the case

The core of the dispute between the parties is related to economic sanctions, dating back to 2014 and to the annexation of the Crimean Peninsula by the Russian Federation after the Russian Federation's military intervention in Crimea in the aftermath of the 2014 Ukrainian revolution and unrest in southern and eastern Ukraine. As described in Wikipedia (2021, para 1), The Russian Federation, after a questionable referendum held in Crimea, formally incorporated Crimea into the Federation on 18 March 2014, which led to international sanctions and other measures being imposed on Russia. Many countries and the United Nations considered Russia's actions to be a violation of international law and the many international agreements that Russia has signed as well as an illegal annexation of territory (Wikipedia 2021, para 3).

The plaintiff of the case, Boris Rotenberg, is a Russian businessman/oligarch and a close confidant of the current president of the Russian Federation, Vladimir Putin. According to Russian political opposition and their "Putin's List" -project (2021, para 4), he is suspected of having used his close ties to Putin to bypass competition and gaining numerous contracts with the government and state-owned companies, making him and his companies very wealthy. He is in general accused or suspected of corruption and shady business dealings (Free Russia Forum, 2021, para 3).

As stated, the annexation of Crimea led to sanctions being imposed against Russia and Russian entities and individuals involved in the conflict. This also involved sanctions by the United States against Boris Rotenberg as an individual. On 20 March 2014, pursuant to Executive Order 13661 signed by President Obama on 16 March 2014, United States Department of Treasury announced in a press release that the 'Treasury Sanctions Russian Officials, Members of The Russian Leadership's

Inner Circle, And an Entity for Involvement in The Situation in Ukraine' (2014a). In the press release Boris Rotenberg was designated for 'acting for or on behalf of or materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of, a senior official of the Government of the Russian Federation' (2014a, para 3). The more detailed reasoning in the release states that both Arkady Rotenberg and Boris Rotenberg have provided support for 'Putin's pet projects by receiving and executing high price contracts for the Sochi Olympic Games and state-controlled Gazprom' (2014a, para 23). The statement refers to the fact that both brothers have earned billions of dollars during Putin's rule from these various contracts and that they are major supporters of Putin. The listing states that 'any assets of the persons designated today that are within U.S. jurisdiction must be frozen. Additionally, transactions by U.S. persons or within the United States involving the individuals and entity designated today are generally prohibited' (2014a, para 27).

This means in practice, that Boris Rotenberg was placed on the SDN list and when the Ukraine Freedom Support Act of 2014 on 18 December 2014 was signed into law, secondary sanctions against foreign financial institutions were made possible on part of Boris Rotenberg (Ukraine Freedom Support Act of 2014, Sec. 5., 2014). From the perspective of international law, these sanctions are clearly a response by a third party to an internationally unlawful act, and in that sense are more acceptable than some of the other ways the United States has used sanctions. The United States' use of economic sanctions is also a clear example of using smart sanctions against the ruling elite of a country for violations of international law, so in essence a prime example of the intended use of smart sanctions.

It should be noted that Boris Rotenberg was not sanctioned by the United Nations or the European Union. United Nations sanctions were and still are practically impossible, as Russia is a permanent member of the Security Council and can veto any such measures. Boris Rotenberg was not placed under any restrictive measures by the European Union and the reason speculated by the Russian opposition in their "Putin's List" -project for this is possibly related to the fact that he has a Finnish citizenship, making him an European Union citizen (Free Russia Forum, 2021, para 5). Rotenberg invokes this fact as a part of his defense as an argument against the application of OFAC sanctions against him (L18/48677, p. 17).

The defendants in the case are four Finnish banks who provide, among other things, banking, and payment services both for private customers and businesses. Rotenberg's demands towards

Handelsbanken were more related to a contractual dispute between Handelsbanken and Rotenberg since Rotenberg had an account in Handelsbanken. The subject of case is listed as a 'Dispute regarding a service agreement' (L18/48677, p. 1). The three other banks – Nordea, OP and Danske Bank – had refused to accept payments from Rotenberg, who sued them because of this. Rotenberg argued that the banks should process the payments and that they had no legal right to refuse the payments. The core issues of the case are the fact that Rotenberg has been listed by OFAC and is under sanctions. Since OFAC sanctions are not legally enforced in Finland, the case revolves around a contractual dispute between Rotenberg and Handelsbanken, and around national legislation related to legal amounts of risk a financial institution can take, and whether the risk posed by OFAC sanctions to the defendant banks is something that can be used as a justification to refuse Rotenberg's payments.

It should be noted that as reported in the Finnish newspaper Satakunnan Kansa (2019), Rotenberg applied for an injunction from the District Court of Helsinki to compel the banks he sued to process his payments under a threat of a fine. However, his application was rejected by the court with the court stated that granting the injunction would cause the banks disproportionate harm compared to the right being secured (Satakunnan Kansa, 2019).

4.2 Demands and arguments of the parties

In this section, the demands and arguments of the parties involved in the case are analyzed. What the parties try to achieve with their demands and how their arguments are justified are examined, since there are some interesting points raised regarding sanctions and extra-territoriality. Parts that have less relevance when it comes to sanctions are given less attention but are still discussed where relevant. The key arguments of the case revolve around the fact that Boris Rotenberg has been denied banking services due to him being listed by OFAC and the question of whether this has violated Rotenberg's rights or gone against the legal obligations of the banks.

4.2.1. Boris Rotenberg's demands and arguments

Boris Rotenberg's demands can be split into two categories. Demands against Handelsbanken with whom Rotenberg had an account agreement, and the demands against the other three banks that have refused to accept his payments.

First, Rotenberg demands that the District Court of Finland confirms that the account agreement between Rotenberg and Handelsbanken, signed 4 October 2017, does not contain a clause that forbids cross-border payments and that Handelsbanken did not have the right to refuse to process payments made by Rotenberg (L18/48677, p. 1). Rotenberg demands that Handelsbanken should accept the payments he makes from his foreign accounts, if there is no legal basis to refuse such payments based on the Act on Detecting and Preventing Money Laundering and Terrorist Financing (503/2008) or any other acceptable reason arising from any applicable Act (p. 1). Rotenberg also demands that Handelsbanken should accept certain large individual payments he has tried to make and demands compensation from Handelsbanken based on section 23 of the Non-Discrimination Act (p. 1–2). This section states that 'A person who has been discriminated against or victimized is entitled to receive compensation from the authority, employer or education provider or supplier of goods or services who has discriminated against or victimized the person contrary to this Act (Non-Discrimination Act 1325/2014, 2021).'

Rotenberg bases his arguments on the account agreement between him and Handelsbanken and argues that neither the account agreement or the general terms and conditions for euro-dominated payments transmitted within the Single Euro Payments Area at the time had a clause that prevented him from making cross-border payments (L18/48677, p. 3). He further argues there existed no verbal agreement on the matter either (p. 3). Handelsbanken had received the requested explanations on the origin of the funds and had still refused to accept the payments (p. 3). Based on this, Rotenberg states that Handelsbanken had no legal right to refuse the payments specified, or any other payments in the future, as the agreement between them did not include any limitations on the matter (p. 3–4). Rotenberg states that Handelsbanken has violated their obligations based on the agreement and based on the Act on Credit Institutions, since access and the ability to deposit funds are essential prerequisites for the use and purpose of an account (p. 4).

Rotenberg claims that he has been discriminated against in a way that violates the Non-discrimination Act and that Handelsbanken has directly discriminated against him and treated him differently as a customer within the meaning of section 8 of the Non-discrimination Act, and that there was no acceptable justification for this discrimination as per section 11 of the Non-discrimination Act (L18/48677, p. 4). There is also a prohibition against discrimination in Chapter 15 Section 6 of the Act on Credit Institutions, which refers to the right of a customer to basic banking

services, which according to Rotenberg, Handelsbanken has violated and thus had no legal justification to deny him the services (p. 4).

Rotenberg claims that Chapter 9 of the Act on Credit Institutions, which contains the obligations of financial institutions to control their risks, is not applicable in his case, as the case relates more to the bank's obligation to offer basic banking services and the other services related to fulfilling this obligation, such as accepting deposits to accounts (L18/48677, p. 4). Rotenberg tries to raise the point that banks cannot refer to their obligation to control their risks to deny him banking services and that there are no factual prerequisites for denying him services (p. 4). Rotenberg's customer relationship with Handelsbanken has also existed for an extended period of time and Rotenberg claims that his account activity has not significantly changed compared to before and that the payments that Handelsbanken had refused to process were not out of the ordinary for him (p. 4).

In relation to Handelsbanken, Rotenberg's arguments are that Handelsbanken has violated the agreement that they had with him and Finnish legislation, both from the perspective of discrimination and the obligations that legislation places on Handelsbanken. When discussing compensation, Rotenberg claims that Handelsbanken has knowingly and purposefully violated Rotenberg's rights and their own legal obligations based on their own subjective risk analysis regarding the possible repercussions for violating OFAC sanctions, even after being notified of this by Rotenberg (L18/48677, pp. 4–5).

As Rotenberg did not have an account agreement with Nordea, Osuuspankki or Danske Bank, he cannot use the same argument as a part of his demands. Instead, his demands and arguments against the other three banks differ from the demands and arguments against Handelsbanken.

Against these three banks, Rotenberg demands that the court affirms that they do not have the right to not accept the payments made by Rotenberg to the accounts of the banks' customers based on the fact that Rotenberg has been placed on the Specially Designated Nationals and Blocked Persons List by OFAC (L18/48677, p. 2). Related to this, he demands that the court affirms that the banks did not have the right based on the Act on Detecting and Preventing Money Laundering and Terrorist Financing or any other stated argument, to not accept the payments Rotenberg made to the banks' customers (p. 2). The case file contains a listing of the payments in, which mostly seems to contain payments of mundane purpose, such as payments to the Finnish Tax Authority, waste services, City of Hanko, and various collection companies (p. 2-3). Rotenberg claims that the banks

are obligated to forward these payments unless there is a section in the Act on Detecting and Preventing Money Laundering and Terrorist Financing or in any other applicable Act that gives an acceptable reason to refuse to accept these payments (p. 3). In addition, he claims compensation based on discrimination based on Section 23 of the Non-discrimination Act and demands that all the banks pay for his legal fees with applicable interest jointly (p. 3).

Rotenberg states that all the three banks have stopped, at varying times, accepting Rotenberg's payments and claims that they have no legally acceptable reason recognized by the Finnish legal system to stop accepting these payments (L18/48677, p. 5). This is a clear reference to the extra-territoriality of the OFAC sanctions and that OFAC issued sanctions are not legally enforceable in Finland but that the banks have still ultimately based their actions on these sanctions. According to Rotenberg this has caused him significant financial harm and damage and there is an immediate danger that Rotenberg will lose his Finnish property to his debtors, as he is unable to pay his bills (L18/48677, p. 5). Services providers might also stop providing services due to non-payment (p. 5). According to Rotenberg, this behavior by the banks has been especially intentionally maliciously planned and purposeful, as the banks have invested in IT systems and personnel to specifically do sanctions screening in case of sanctioned individuals and entities (p. 5). Rotenberg claims that these three banks have also must have known the limits for their actions under Finnish law but have purposefully violated these limits and obligations when it comes to Rotenberg based again on their own subjective risk analysis of OFAC sanctions (p. 5). Rotenberg's point here seems to be that by employing personnel and IT systems to specifically screen for OFAC sanctions, the banks have gone beyond the law as OFAC sanctions are not legally binding in Finland. Rotenberg also claims that this behavior is direct discrimination, referring to the same sections of the Non-discrimination Act than in the arguments against Handelsbanken (L18/48677, pp. 5–6).

Rotenberg claims that all three banks have a general responsibility as banks to accept Rotenberg's ordinary payments as participants in the overall payment system and as a licensed credit institution which has been given a permission to operate as a payment service provider under Act on Payment Institutions (L18/48677, p. 6). The fact that all the three banks have a clause in their framework agreements that states that the banks can refuse payments if the payee has been listed by United States OFAC, conflicts with the compelling Finnish regulation (p. 6). He also refers again to the Non-discrimination Act regarding his payments not being accepted and Act on Credit Institutions on his

right to banking services and that the banks actions cannot be justified with law and are against the Finnish regulations that the banks are obliged to follow (p. 6).

Rotenberg's legal arguments indicate that he aims to challenge the banks actions by continuously referring to Finland's national legislation and the banks obligations arising from it. He argues that the banks should not base their actions on OFAC issued regulations, since they are not legally binding in Finland. By observing OFAC sanctions, Rotenberg argues, the banks have violated Finland's national legislation and their own legally binding obligations under the law. Rotenberg states that he considers the bank's actions as direct discrimination against him. Purely from Rotenberg's perspective, the situation must be quite annoying and frustrating. He is being denied services based on ultimately extra-territorial regulation by a United States regulator, so is not very surprising that he took this matter to court or feels discriminated against. The bank's replies to Rotenberg's claims are presented in the following subsections.

4.2.2 Handelsbanken's reply to demands

Handelsbanken's reply to Rotenberg's demands and claims is unsurprising. Handelsbanken demands that the court either will not investigate Rotenberg's demands due to process-related issues or it will reject them (L18/48677, p. 6). Lastly, Handelsbanken demands that Rotenberg is ordered to pay their legal fees with interest (p. 6). The process-related claims are related to Rotenberg's statements involving the payments he mentioned that Handelsbanken had refused to accept (p. 6). Handelsbanken's reply states that either Rotenberg's claims related to these individual payments are not enforceable or they would not solve the related issue (p. 6-7).

Handelsbanken begins by stating that they have the right to refuse the payments both based on Finnish and Swedish legislation, as only a branch of Handelsbanken operates in Finland and their main operations are based in Sweden (L18/48677, p. 7). Handelsbanken states that both the Finnish Act on Credit Institutions and the Swedish equivalent, *Lag om bank- och finansieringsrörelse* (2004:97), should be applied in this case (p. 7). This is a slightly odd claim as the connection to Sweden is non-existent. The court rejected this notion as even the agreement between Rotenberg and Handelsbanken states that the laws of Finland are applied to the agreement (L18/48677, p. 22).

Handelsbanken's next argument refers to the Act on Credit Institutions Chapter 9 Section 1 and Chapter 18 Section 4 (L18/48677, p. 7). Chapter 9 is entitled "Risk Control" and Chapter 18 is entitled

“Special Provisions on foreign credit institutions” (Luottolaitoslaki 610/2014, 2021). Both chapters referred to involve the amount and type of risk a financial institution can legally take. Chapter 9 Section 1 of the Act on Credit Institutions clearly states that ‘A credit institution may not, in the course of its activities, incur a risk that fundamentally endangers the solvency or the liquidity of the credit institution’ (Luottolaitoslaki 610/2014, 2021).

Handelsbanken then states that since Rotenberg has been sanctioned by OFAC, any financial institution acting on his behalf risks being targeted by OFAC investigations, penalties, or sanctions themselves (L18/48677, p. 7). According to Handelsbanken, any financial institution that ends up being targeted by either OFAC’s primary or secondary sanctions would likely face financial losses and difficulties in continuing their operations (p. 7). Even being investigated by OFAC might cause disruptions in Handelsbanken’s daily operations (p. 7). Handelsbanken’s intent here may be to refer to the fate of the ABLV bank which was previously discussed.

Handelsbanken states that the ambiguity related to the sanctions regulations increases risks and that there is a possibility that even the payments (or similar payments to these) Rotenberg claimed should have been accepted by Handelsbanken may constitute a ‘significant transaction’ in the eyes of OFAC, triggering possible regulatory action (L18/48677, p. 7). Even if the payments do not constitute as a ‘significant transaction’, the ambiguous nature of the regulations makes it very risky to accept any payments from entities listed by OFAC (p. 7). Handelsbanken states that the fact that OFAC regulations are not legally enforceable in Finland does not remove the possibility of being targeted by OFAC for violating their sanctions and therefore the actual risk of consequences exists regardless of the enforceability of the sanctions in question (p. 7).

Handelsbanken refers to a United States Act –, the Countering America’s Adversaries Through Sanctions Act (CAATSA) – which made certain sanctions related to Russia, Iran and North Korea stricter and widened their scope, and to the term ‘significant transaction’ mentioned above (L18/48677, p. 7). According to the Ukraine Freedom Support Act of 2014 Section 5b, sanctions may be placed on foreign financial institutions that have ‘knowingly facilitated a significant financial transaction on behalf of any Russian person included on the list of specifically designated nationals and blocked persons’ (Ukraine Freedom Support Act of 2014 Sec. 5., 2014). The term ‘significant financial transaction’ is not defined in the Act.

When Handelsbanken stated that the CAATSA significantly increased the risk of sanctions, they were likely specifically referring to Section 226 of CAATSA, which is titled 'Imposition of sanctions with respect to Russian and other foreign financial institutions' (Countering America's Advesaries Through Sanctions Act, Section 226., 2017). Section 226 amended Section 5 of the Ukraine Freedom Support Act of 2014. Previously, the President could impose sanctions (wording used was 'may impose'), CAATSA changed this to 'shall impose', meaning that after CAATSA entered into force, if a foreign financial institution violated OFAC sanctions, the President of the United States must impose sanctions on that entity, unless the President determines that it is not in the national interest of the United States to do so (Countering America's Advesaries Through Sanctions Act, Section 226., 2017). As the wording implies, CAATSA does increase the possibility of repercussions, or even makes them mandatory.

Next, Handelsbanken refers to the agreement that the bank concluded with Rotenberg when his account was opened and that this account in question was agreed to be a checking account for ordinary day-to-day payments and that there was an agreement that any incoming cross border SEPA payments would be agreed on a case-by-case basis (L18/48677, p. 8). Handelsbanken brings up these framework agreements and argues against Rotenberg's view by stating that they have the right to refuse Rotenberg's payments based on the agreement, since Rotenberg being listed as a OFAC SDN constituting an acceptable reason (p. 8). The bank argues that the sanctions in question do not have to be legally enforceable in Finland for them to be binding in relation to the contract between Rotenberg and Handelsbanken (p. 8). Handelsbanken invokes Section 41 of the Payment Services Act (*Maksupalvelulaki*, 290/2010) to support their defense (p. 8). The Section states that the payment provider may decline payments only when the conditions for processing payments listed in the framework agreement are not met or if other conditions for declining provided in law exist (p. 8). According to Handelsbanken, it had the right to refuse accepting payments based on this Section and on various anti-money laundering provisions, since the origin of the funds was also unclear (p. 8).

Handelsbanken refutes Rotenberg's argument that the account Rotenberg had falls under Chapter 15, Section 6 of the Act on Credit Institutions and stated that this Chapter of the Act is not relevant when it comes to Rotenberg's argument on essential services related to the use of an account (L18/48677, p. 8). Handelsbanken states that Rotenberg does not reside in the European Economic Area (EEA), which is directly invalidates Rotenberg's reference to Chapter 15, Section 6 of the Act

on Credit Institutions, since it only applies to individuals who reside in the EEA (p. 8). Handelsbanken continues that if the court disagrees with Handelsbanken's view on the agreement between the parties related to the contract and the court's view is that the terms of the framework agreement do not give the right to refuse payments, that the contract between Handelsbanken and Rotenberg has already expired according to the contract-interpretation rules applicable in Finland (p. 8–9).

Handelsbanken ends their response by refuting Rotenberg's claim that their actions are discriminative and by stating that being placed on the OFAC SDN list is not a reason related to Rotenberg's personal characteristics within the meaning of Section 8 of the Non-Discrimination Act (L18/48677, p. 9). Handelsbanken considers their actions to be in accordance with legislation and states that they had an acceptable reason for their actions when it comes to Section 11 of the Non-Discrimination Act (p. 9). The bank also completely refutes Rotenberg's claims for compensation and states that they have not violated any laws and that the claims are against common legal practice (p. 9).

From a sanctions-oriented perspective, Handelsbanken's reply does highlight the way extra-territorial sanctions can be effective in a third county even if they are not legally binding. They can be included into framework agreements as clauses, as all the banks in the case at hand have done. Or, if the sanctions in question have quantifiable, realistic risks associated with them, this likely conflicts any risk-control related legislation the country in question has adopted. This naturally presupposes that the actualization of the risks in question can be shown to be possible and not just theoretical. The focus then moves more towards showing that such a risk exists and proving it, and then on to using the existing risk to refer to national legislation, if it contains laws regarding risk management and control. Handelsbanken is seemingly preparing for the possibility that they will lose the contractual argument with Rotenberg with statements of the contract being invalid anyway and referring to the CAATSA sanctions as a reason for the contract being invalid, again with references to significant risks. It is very likely that the risk-related arguments will be key in the future as well.

4.2.3 Nordea's reply to the demands

Nordea's replies are similar to Handelsbanken's and overall include the same arguments and points, with a few interesting additions. Nordea refutes all claims or demands presented by Rotenberg,

demands that the case is dismissed and also demands that Rotenberg pays their legal fees including interest (L18/48677, p. 10).

One of Rotenberg's demands (5a) stated that he wants the court to confirm that Nordea, Osuuspankki and Danske Bank have no right to refuse the payments he sends to the banks' customers based on the fact that he has been placed on the OFAC SDN list (L18/48677, p. 2). Nordea states that this demand is inadmissible and that the demand is related to a question of abstract legal interpretation that the District Court cannot confirm (L18/48677, p. 10). In addition, Nordea states that one of the other demands is a non-specified and non-enforceable (p. 10).

Nordea clearly aims to directly refute Rotenberg's sanctions-related claims by stating that the District Court does not have jurisdiction or the capability to decide on the matter. This statement is interesting because it cuts to the core of the whole issue. On the surface level, it is clear that OFAC sanctions are not legally enforceable in Finland, but as Handelsbanken stated, this does not mean that the repercussions for violating the sanctions would not exist. This shifts the focus more on proving the existence of the risks involved and the extent of the repercussions. The matter is not so simple as to state that OFAC sanctions are not legally enforceable so they should not be observed. The reality is more complex, and this is what Nordea seems to try to convey with its counterargument. Based on what has previously been discussed in this thesis, it is hard not to agree with this sentiment.

Otherwise, Nordea's arguments against Rotenberg's claims are similar to Handelsbanken's. Nordea states that they had and have the right to refuse accepting Rotenberg's payments based on their framework agreements, Nordea's 'general terms and conditions for euro-dominated payments transmitted within the Single Euro Payments Area' and on Section 41 of the Payment Services Act, as Rotenberg's payments meet the criteria (L18/48677, p. 10). Nordea states that Rotenberg's claims related to the access to basic banking services do not matter in this case since Rotenberg does not live in the EEA (p. 10).

Nordea states that they face the possibility of being sanctioned by OFAC and being placed on the SDN list if they accept Rotenberg's payments (L18/48677, p. 11). Here Nordea refers to the possible triggering of secondary sanctions, which is a real possibility in this instance as this previously discussed. Nordea states that this would significantly hinder Nordea's activities in the United States

and everywhere where OFAC sanctions are given relevance and that the fact that OFAC SDN sanctions are not legally enforceable in Finland is not relevant to the case (L18/48677, p. 11).

'Everywhere where OFAC sanctions are given relevance' likely refers to the way OFAC sanctions are 'contagious' discussed previously, meaning that any entities ending up in the SDN list or that are under threat of OFAC regulatory action will likely be avoided by any other entity that fears the repercussions of OFAC sanctions. Given the financial dominance of the United States, this is likely not a small number of entities. Like Handelsbanken, Nordea also points to the fact that legal unenforceability does not remove the possibility of repercussions (L18/48677, p. 11).

Nordea also uses Rotenberg's own statement as an argument against accepting his payments. Rotenberg had stated that Handelsbanken had accepted his funds without asking any questions, which means that the origin of the funds is unclear, which in turn obliges Nordea to refuse the payments Rotenberg had made under Chapter 4, Section 5 of the Act on Detecting and Preventing Money Laundering and Terrorist Financing (503/2008) (L18/48677, p. 11). Knowing the origin of funds is also important from the perspective of sanctions, as money laundering can be, among other things, used to evade sanctions.

Nordea states that it has not discriminated against Rotenberg and that its refusal to accept his payments is not related to any reason involving Rotenberg's person but instead, the reason for refusal is based on Rotenberg's actions (L18/48677, p. 11). Nordea states that the fact that a person has been placed on the OFAC SDN list and the person's payments not being accepted because of this, is not discrimination, since the basis for the refusal lies in the individuals own actions, i.e., in this case, in Rotenberg's connections to the leadership of the Russian Federation (p. 11). Nordea states that the 'other personal characteristics' mentioned in Section 8 of the Non-Discrimination Act are characteristics that are similar to the other factors listed in the Section and that differences in individual's factual circumstances, actions or behaviors do not usually constitute a comparable factor (p. 11).

This seems to be directly referencing the detailed rationale of the Government Proposal for the Non-Discrimination Act (Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräiksi siihen liittyviksi laeiksi, HE 19/2014, p. 67). Rotenberg was placed on the SDN list due to his actions and not because of any inherent personal characteristics. Nordea concludes by referring to having an acceptable reason for their actions based on Section 41 of the Payment Services Act and by stating

that as a financial institution, they are forbidden from taking undue risks under Chapter 9, Section 1 of Act on Credit Institutions (L18/48677, p. 12).

The reasons for Rotenberg's SDN listing were previously clearly stated by United States Treasury to be related to his connections to the Russian leadership. Rotenberg's claim of being discriminated against seems tenuous at best, as Rotenberg has not presented any convincing arguments on the matter, and the fact that he is close to the Russian leadership cannot really be seen as anything other than a result of his own behavior. This makes the situation not comparable to the 'other personal characteristics' referred to in Section 8 of the Non-Discrimination Act.

4.2.4 Osuuspankki's reply to demands

Osuuspankki (OP) starts by refuting all Rotenberg's claims and by stating that the case should be dismissed and OP also demands that Rotenberg pays their legal fees with interest (L18/48677, p. 12). OP states that they had and have the right to refuse Rotenberg's payments based on their contracts and framework agreements with the account holders who are receiving Rotenberg's payments (p. 12). This refers to a clause in OP's agreements that gives it the right to refuse accepting payments from entities under international sanctions, including OFAC sanctions. Like Nordea, OP also refers to the unclear origin of Rotenberg's funds as a justification for not accepting his payments under Chapter 4, Section 5 of the Act on Detecting and Preventing Money Laundering and Terrorist Financing (503/2008) (L18/48677, p. 13). OP also invokes Section 41 of the Payment Services Act in addition to their own 'general terms and conditions for euro-dominated payments transmitted within the Single Euro Payments Area' as additional grounds for not to accepting Rotenberg's payments (p. 13). OP states that Rotenberg's claims regarding right to basic banking services does not influence OP's rights to decide on the matter (p. 13). According to OP, they cannot be made to accept payments from Rotenberg under these conditions (p. 13).

OP continues by stating that the possible repercussions for performing transactions on behalf of OFAC SDN listed entities, such as being placed on the SDN list itself, and that any commercial activity with an SDN listed entity contains this risk (L18/48677, p. 13). If OP would be listed as an SDN, it would result in significant reputational and financial losses and could possibly lead to end of OP's banking operations (p. 13). This is likely a refence to the situation the previously mentioned ABLV bank faced and would possibly result in liquidity issues for OP. Legal, reputational, and financial consequences are cited as a possible result for accepting funds of unclear origin from Rotenberg (p.

13). OP also refers to Chapter 9, Section 1 of the Act on Credit Institutions without actually mentioning the Act itself, by stating that they cannot take actions that would pose a risk to their solvency or liquidity (p. 13).

OP denies any planned or malicious intent when it comes to Rotenberg (L18/48677, p. 13). OP states that they ensure compliance with legislation related to terrorist financing, money laundering and sanctions regulations by monitoring payments and transactions both manually and with supporting systems, likely referring to some IT-based solution (p. 13). The intent, according to OP, is to meet the requirements of compelling legislation, FSA guidance and OP's own risk control guidance (p. 13). OP is the only defendant who refers to the FSA guidance related to OFAC sanctions (p. 13). OP's intent seems to be to state that even if OP has some sort of list screening system in place, it does not exist to only screen and prevent Rotenberg's payments, but to comprehensively fulfill the requirements placed on OP by legislation and other regulations. OP concludes by denying having discriminated against Rotenberg and by referring to the Non-Discrimination Act by stating, similarly to Nordea, that being placed on the SDN list is not a reason within the meaning of Section 8 of the Non-Discrimination Act and that in any case, Section 11 of the Non-Discrimination Act would apply (L18/48677, p. 14).

OP's arguments are in line with the other defendants' arguments. It comprises the same points and laws and highlights the risk posed by possible violations of OFAC regulations. The interesting parts of OP's response are that they also refer to the FSA regulations and that make a statement about how they 'screen' for entities placed on the sanction lists. Granted, it is not much, but it is nevertheless an interesting insight and a rebuttal for Rotenberg's argument that by employing such systems, the banks have in some way acted maliciously. Rotenberg's initial claim seemed to insinuate that by employing personnel and IT systems to screen for payments related to OFAC sanctions, the banks are going beyond their jurisdiction. As was previously discussed, due to 'smart sanctions' the various sanction lists published by entities issuing sanctions can be quite extensive and they can change at a moment's notice, so it is not unreasonable to assume that some IT-based solutions would be used to keep track of these.

4.2.5 Danske Bank's reply to demands

Danske Bank refutes all Rotenberg's claims, demands that the case is dismissed and Danske Bank also demands that Rotenberg pays their legal fees (L18/48677, p. 14). Danske Bank's arguments

follow the same route as the other banks'. In its reply, Danske Bank directly states that the reason for it observing OFAC sanctions is that transactions in dollar currency are very important for Danske Bank since, even though they are primarily a Nordic financial institution, they do have two subsidiaries in the United States (L18/48677, p. 14). Danske Bank directly states that the possible repercussion for enabling transactions of the SDN listed Rotenberg might result in Danske Bank not being able to do transactions using the United States dollar, directly referring to the possible repercussions stated in the Ukraine Freedom Support Act of 2014 (p. 14). Danske Bank states that Rotenberg is not a customer of Danske Bank, does not have an account in Danske Bank and that Rotenberg does not live in the EEA (p .15).

Danske Bank's counterargument is constructed a bit differently, essentially stating that they are a third party in the matter, as Handelsbanken is the service provider for Rotenberg within the meaning of Section 8 of the Payment Services Act (L18/48677, p. 15). Danske Bank states since they do not have any service agreements or other agreements with Rotenberg, they are a third party in the matter and that establishing obligations on third parties always requires a legal basis (p. 15). Danske Bank states that the Payment Services Act or any other applicable Act do not contain any provisions that would establish obligations on Danske Bank to accept Rotenberg's payments and therefore all of Rotenberg's claims are baseless and should be dismissed (p. 15).

Danske Bank then refers to Chapter 9, Section 1 of the Act on Credit Institutions laying down risk control requirements on liquidity and solvency, and states that accepting Rotenberg's payments would result in Danske Bank taking risks that are forbidden under the referenced legislation (L18/48677, p. 16). Danske Bank also states that Act on Detecting and Preventing Money Laundering and Terrorist Financing also gives them a justification to refuse Rotenberg's payments, which is likely a reference to the unclear origin of the funds (p. 16). Danske Bank states that the type of Rotenberg's account in Handelsbanken is of no consequence for the case and his claims related to access to basic banking services do not apply (p. 16). Lastly, Danske Bank naturally also refutes Rotenberg's claims of discrimination and states that Rotenberg has not been discriminated against or treated in any way differently than any other SDN listed entity (p. 16). Danske Bank states that being on the SDN list does not qualifying as the 'other personal characteristics' referred to in Section 8 of the Non-Discrimination Act and that Danske Bank's actions have been based on law and have also been acceptable in relation to the intended goal, and that there has not been any specific or malicious intent behind Danske's actions (p. 16).

4.2.6. Rotenberg's response to the defendant banks

Rotenberg naturally refutes and disputes the banks' arguments. Rotenberg begins by stating that being included on the OFAC SDN list should be considered an 'other personal characteristic' within the meaning of Section 8 of the Non-Discrimination Act, and it should not be considered as an extralegal 'factual circumstance' (L18/48677, p. 17). Related to this, Rotenberg states that the Payment Services Act does not contain any provisions that give banks a legal right to discriminate in accordance with Section 1 of the Non-Discrimination Act and that this right does not exist based on the fact that the banks have added a clause regarding not accepting payments from entities on international sanction lists (p. 17). However, there are no mentions of the detailed rationale of Government Proposal to which Nordea referred to in their reply that detailed the intended content for the 'other personal characteristics' part of Section 8 of the Non-Discrimination Act. No convincing arguments are presented as to why the inclusion of an individual on the SDN list should be interpreted to be a similar factor as gender or race when it comes to discrimination.

Rotenberg states that all the defendant banks have clauses in their framework agreements stating that the banks can refuse accepting payments if an entity related to the payment is listed on an OFAC list, even if all the other conditions for the payment are fulfilled (L18/48677, p. 17). According to Rotenberg, with Handelsbanken, OP and Danske Bank, the sanctions in question have to be sanctions that the banks are obliged to follow either due to legal or contractual obligation (p. 17). The point of this argument seems to be again to question the overall legality of observing OFAC sanctions outside United States jurisdiction, but the whole argument is somewhat confusing. Nordea is not mentioned in this part of the argument for reasons which are not clear, and this statement again does not contain any convincing arguments on why the banks would not be able to include OFAC sanctions in their framework agreements in this way under Finnish contract law. As Danske Bank argued and what also applies to OP, they are third parties in the relationship between Rotenberg and Handelsbanken, and if the framework agreements that they had with the customers Rotenberg tried to send money to also include this clause related to United States sanctions, then under their contracts they are able to refuse accepting these payments without violating any legal or contractual obligations. Forcing the banks to accept Rotenberg's payments under their framework agreements including a clause regarding U.S. sanctions would likely violate the banks' contractual rights instead.

Rotenberg also states that observing OFAC sanctions cannot be considered as an acceptable reason for discrimination or as an acceptable reason in relation to basic and human rights within the meaning of Section 11 of the Non-Discrimination Act, particularly in the case of Rotenberg who, as previously stated, was not included in any European Union lists or targeted by European Union restrictive measures (L18/48677, p. 17). Rotenberg continues to invoke the idea that refusing to accept payments based on a person being on the OFAC list is indeed discrimination that is not acceptable under the Non-Discrimination Act.

Rotenberg further states that there are no arguments or evidence that OFAC would require the banks to block Rotenberg's 'ordinary payments', referring likely to payments such as the ones listed in Rotenberg's claims related to his payments to waste disposal and collection agencies (L18/48677, p. 17). Rotenberg states that theoretical possibilities regarding ambiguous sanctions regulations are not an acceptable reason for discrimination and that Chapter 9, Section 1 of the Act on Credit Institutions does not apply to his case (p. 17). Rotenberg also states that OFAC has said that 'ordinary payments' are not considered significant when it comes to sanctions (p.17). This is likely a reference to the OFAC statement included in the correspondence presented as evidence, as there is nothing related to this found on OFAC's FAQ or similar sources. The term 'ordinary payments' is also again very ambiguous and, in the context, and purpose of OFAC sanctions, it seems like an odd exception. On the other hand, European Union, for example, has stated in their 'Best practices -guidelines' for the effective implementation of restrictive measures that fundamental rights of designated persons and entities should be taken into consideration when granting exceptions to restrictive measures. This includes things like basic needs of designated persons, such as food, rent, mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges (EU Best Practices for the effective implementation of restrictive measures, 2018, pp. 26–27). It could very well be possible that OFAC would consider these same things, but all the financial institutions in the payment chain would likely then require explicit written permission from OFAC to execute such payments, and even then some financial institutions might decide to play it safe if there is no legal or contractual obligation to accept or forward payments from a sanctioned entity.

Rotenberg denies that the origin of the funds he has deposited to Handelsbanken was unclear and that the origin of the funds has been clarified to Handelsbanken (L18/48677, p. 18). The rest of Rotenberg's reply focuses mainly on challenging the application of OFAC sanctions due to them not being legally enforceable in Finland. According to Rotenberg, Handelsbanken has terminated

Rotenberg's account agreement due to Rotenberg being listed by OFAC and the signing of CAATSA into law is not the kind of significant change in circumstances Handelsbanken could invoke (p. 18). Rotenberg states that OFAC sanctions do not create legal obligations for anyone in Finland and that they are not legally enforceable under Finnish or European Union law, or under any international agreement (p. 18). According to Rotenberg, the legal relationship between Handelsbanken and Rotenberg should be evaluated using Finnish and European Union law and any directive-based national legislation should be subjected to evaluation to the European Union's courts (p.18). Here it is again clear that Rotenberg tries to argue that OFAC regulations should not be taken into consideration at all on any level as it is not legally binding or any way enforceable, which is theoretically correct, but forgets or omits the practical implications and repercussions from the evaluation completely.

Overall, the fact that the banks refer to OFAC sanctions seems to be Rotenberg's main argument, and likely the reason the case was taken to court in the first place, since Rotenberg could not challenge the legitimacy of United Nations or European Union sanctions in a similar way.

The next subchapter focuses on analyzing the expert witness statements and the court's deliberation and ultimately the court's assessment and decision. The witness statements particularly contain interesting insight into OFAC sanctions.

4.3 Expert witness statements and the Court's assessment, and decision

The expert witness statements, and the court's assessment of the case and its decision are discussed in the following subchapters. The expert witness called in by Nordea and the insight he provided about OFAC sanctions are the key to this section.

It should also be noted that before the main hearing, the District Court gave the Non-Discrimination Ombudsman a chance to state her opinion on the matter in accordance with Section 27 of the Non-Discrimination Act (L18/48677, p. 21). This Section lays down the obligation for the court to reserve an opportunity for the Non-Discrimination Ombudsman to be heard in all cases related to the authority of the Ombudsman. Since Rotenberg has consistently expressed that being placed on the SDN list by OFAC is an 'other personal characteristic' within the meaning of Section 8 of the in the Non-Discrimination, the Non-Discrimination Ombudsman was given an opportunity to state her opinion or views on the matter. The Non-Discrimination Ombudsman simply stated that she has no

comments on the matter (p. 21). This is likely due to the matter being clear-cut and not needing any statements or clarifications from the Ombudsman. This likely means that Rotenberg's argument regarding discrimination does not hold much weight since Rotenberg has not provided any convincing arguments explaining why his inclusion on the SDN list should be treated as an 'other personal characteristic' instead of a factor caused by Rotenberg's own behavior.

The District Court analyses different parts of the case and the arguments of the parties in different sections. The court begins by assessing the contractual relationship and matters related to the agreement between Rotenberg and Handelsbanken, and whether the parties have agreed on restrictions regarding SEPA payments. This is followed by an analysis regarding Rotenberg's right to basic banking services under the Act on Credit institutions and an assessment on whether Handelsbanken has the right to reject payments based on the terms of the agreement between Handelsbanken and Rotenberg. The most extensive and possibly most important section is the court's assessment on the financial risks related to OFAC sanctions and on whether such risks exist and in what capacity. Lastly, the court assesses the right of the banks to refuse payments in relation to the Act on Detecting and Preventing Money Laundering and Terrorist Financing and then gives its judgement on the matter.

For consistency and clarity, this thesis will follow the same structure as the court's decision, providing commentary and analysis on the court's assessments, by focusing again most on the matters related directly to sanctions.

4.3.1 Regarding the contractual relationship between Handelsbanken and Rotenberg

The District Court begins by assessing the contractual relationship between Handelsbanken and Rotenberg. According to its assessment, Handelsbanken and Rotenberg had concluded an agreement on a checking account before Rotenberg was placed on the OFAC SDN list (L18/48677, p. 22). Soon after Rotenberg was placed under sanctions, Handelsbanken terminated the checking account agreement (p. 22). This is not surprising due to the obvious risks involved.

Rotenberg disputed this termination of his account and took the matter to the Finnish Financial Ombudsman Bureau (FINE), who provide their customers with advice and issue recommendations on various disputes related to insurance policies, banking and securities (The Finnish Financial Ombudsman Bureau, 2021). FINE issued a recommendation regarding the matter, stating that the

matter is related to basic banking services and that Rotenberg's account can be terminated only with compelling reasons, which Handelsbanken had failed to provide (L18/48677, p. 22). FINE then recommended that Handelsbanken cancels the termination of Rotenberg's account (p. 22).

According to the FINE recommendation (FINE-002538, 2017, para 1) the District Court refers to, Rotenberg had two accounts in Handelsbanken for over ten years. The reason given for the termination of these accounts by Handelsbanken was the fact that Rotenberg was placed on the SDN list by OFAC (2017, para 1). According to the FINE recommendation, Rotenberg stated that Handelsbanken's decision violates his right to basic banking services as a natural person lawfully residing in the EEA and that for this reason, the usual one-sided termination policy cannot be invoked. Rotenberg stated that he has not been provided a compelling reason for the termination (2017, para 2). Handelsbanken responded by stating that they had acted in accordance with applicable legislation in force at the time of the termination and that they have operations in the United States, which means that violating OFAC sanctions could result in them or their partners being sanctioned by OFAC (2017, para 3).

However, in the decision recommendation (FINE-002538, 2017, para 9) FINE states that the matter at hand was related to the right to basic banking services and that Handelsbanken can only refuse providing services if they have a compelling reason to do so. FINE states that Handelsbanken has not referred to any compelling reasons within the meaning of the Finnish law or the detailed rationale regarding the matter, and that Handelsbanken's argument regarding OFAC sanctions and the risk they possess cannot be construed a compelling reason as intended by law (2017, para 15). FINE recommended that Handelsbanken reverses the decision to terminate Rotenberg's accounts (2017, para 17).

FINE's decision is not surprising as they are a national ombudsman. This means that they will primarily assess the matter from the context of Finnish legislation, and it is not surprising that sanctions, especially OFAC sanctions are not listed as something that could be construed a compelling reason for account termination. FINE's decision somewhat highlights the fact that OFAC sanctions particularly hold an ambiguous position in relation to actual binding legislation conflicting with observing OFAC sanctions.

Nevertheless, Handelsbanken decided to follow the FINE recommendation issued and set up a meeting with Rotenberg regarding the opening of a new account a few months after FINE issued its

recommendation (L18/48677, p. 22). The account was opened, but one of the disputes in the case at hand is related to the terms of this new account agreement on the restrictions and terms related to SEPA payments made to/from the new account. Handelsbanken stated that the account was opened for ordinary daily payments and that if any SEPA payments were going to be made, the bank required Rotenberg to provide a notice and the payment information beforehand (L18/48677, p. 23). The bank stated that these restrictions were put in place due to sanctions, specifically CAATSA. Handelsbanken stated that they would retain the right to decide if they are willing to execute the payment based on the information that Rotenberg would provide beforehand (p. 23-24). Rotenberg denied all this or that anything was agreed upon (p. 23). On this matter, the court sided with Handelsbanken, deeming it reasonable that since Handelsbanken opened an account for Rotenberg, who is a sanctioned individual, they would take precautions to protect themselves from possible sanctions-related repercussions (p. 24-25). Rotenberg's expert witness was not seen as credible enough to challenge the bank's expert witnesses (p. 24).

Handelsbanken was taking a clear risk by knowingly and willingly opening an account for an SDN sanctioned individual and there is no reason provided publicly why this was done. This is noteworthy particularly since, in connection with the FINE recommendation, they themselves referred to their operations in the United States possibly facing difficulties if they have approved an SDN listed customer. One reason could be that the FINE decision – which was heavily in Rotenberg's favor – implied, that there is a possibility of Rotenberg suing Handelsbanken for their violations of Finnish law, which Handelsbanken could have interpreted as a risk and further complications on the matter were not desired. The OFAC-related risk was possibly internally seen as manageable, if Rotenberg's payments were only related to ordinary daily expenses, like the payments listed in Rotenberg's claims, and if the payments in question were only domestic euro-denominated payments, not under OFAC's jurisdiction. Based on the contents of the court case at hand, Handelsbanken may have not expected the other Finnish banks to refuse the payments, or it decided that the matter could be dealt with. But as previously stated, it takes only one bank in the payment chain to comply with OFAC sanctions for the payments to fail, demonstrating again the peer-pressure element of OFAC sanctions.

4.3.2. Regarding Rotenberg's right to basic banking services

Next the District Court assessed Rotenberg's right to basic banking services. This is an important detail in the dispute between Handelsbanken and Rotenberg, starting from the complaint Rotenberg originally made to FINE. Rotenberg stated in his claim that Handelsbanken is legally obliged to accept his payments, since the matter is related to the right to basic banking services as referred to in Chapter 15, Section 6 of the Act on Credit Institutions (L18/48677, p. 25). The section in question states that a savings bank offering payment services must offer them equitably and without discrimination to all natural persons lawfully residing in the EEA (p. 25). The services in question are those that Rotenberg had agreed on with Handelsbanken, such as a basic payment account and payment services related to the account (p. 25). Rotenberg's argument then continues to state that as the provision of these services is a legal obligation, his rights have been violated (p. 25).

This Section of the Act on Credit Institutions originates from the European Union Directive 2014/92/EU creating the obligation for the provision of the access to banking services (HE 123/2016 vp, 2016, pp. 4–5). The Directive is nationally implemented in Finland with the Act on Credit Institutions. The reasons for the right of the bank to refuse are laid down in Section 6 of the the Act on Credit Institutions and include any responsibilities arising from Act on the Enforcement of Certain Obligations of Finland as a member of the United Nations and of the European Union and the Act on Detecting and Preventing Money Laundering and Terrorist Financing. This means that banks have the right to refuse payments if the related person is listed under United Nations/European Union sanctions. However, naturally, OFAC sanctions or any other sanctions are not mentioned.

Since Rotenberg's accounts were originally terminated due to him being placed under sanctions by OFAC and as this also is the reason for the subsequent problems and refusals to accept payments, it does seem that at least against Handelsbanken, Rotenberg would have a viable argument on the bank violating his right to basic banking services. Unfortunately for Rotenberg, his actual personal situation works against him. The District Court states that according to the documents provided as evidence and the documents presented in the account opening meeting between Rotenberg and Handelsbanken, no evidence exists that would indicate that Rotenberg permanently resides in the EEA, which is a prerequisite to be eligible for the right to access to basic banking services as intended by the relevant legislation (L18/48677, p. 25). In the provided documents, Rotenberg's residence is listed being either in the Russian Federation or the Principality of Monaco, neither of which is part

of the EEA (p. 25). Rotenberg arrived at the account opening meeting from Monaco and went back to Monaco after the meeting (p. 25).

This is both unfortunate for Rotenberg and at the same time, quite frustrating from the point of view of sanctions as the situation with Rotenberg is unique in the sense that he is only sanctioned by OFAC but not by the United Nations or the European Union. If Rotenberg would have been eligible for basic banking services, the court case would have been more interesting, since the court would have had to evaluate the relationship between the right to basic banking services and the risks the financial institutions would have to take if they offered these basic banking services to OFAC sanctioned individuals. Chapter 9, Section 1 of the Act on Credit Institutions contains the prohibition of risk that endangers the liquidity and solvency of the credit institution and refers to – in addition to national legislation – the European Union Regulation 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance[4]. If Rotenberg was an EEA resident, there could be a need to involve European Union Courts in the matter, which is something that Rotenberg stated in his claim previously. However, that conversation unfortunately is not relevant regarding this case.

As Rotenberg does not qualify for the right to basic banking services as stated in the relevant legislation, the relationship between Rotenberg and Handelsbanken must be evaluated based on the contractual agreement that they had. Previously, the District Court sided with Handelsbanken in the matter of SEPA payments and its requirements that Rotenberg provides information about his payments beforehand, and the fact that Handelsbanken reserved the right to refuse accepting payments (L18/48677, p. 25). Rotenberg was also provided with a copy of Handelsbanken's 'General terms and conditions for euro-dominated payments transmitted within the Single Euro Payments Area', which included a clause for refusing payments (L18/48677, p. 26). This clause includes lack of funds and the use of an account being restricted, or another compelling reason existing not to accept the payment as acceptable reasons (p. 26). Handelsbanken is of the opinion that this 'other compelling reason' clause includes the risk, financial and otherwise, associated with Rotenberg's SDN listing (p. 26). Handelsbanken invokes Chapter 9, Section 1 and Chapter 18, Section 4 of the Act on Credit Institutions, which relate to the solvency and liquidity requirements and the obligation on financial institutions to act responsibly (p. 26). Handelsbanken states that these Acts would be

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violated if they would accept payments from Rotenberg due to the risk associated with the SDN listing (p. 26). Rotenberg naturally disagrees, and states that there is no significant risk associated with his SDN status (p.26).

Whether the risk Handelsbanken refers to regarding OFAC SDN sanctions is real, and if it is significant enough to be something that Handelsbanken and the other banks can use as a reason to not accept Rotenberg's payments are discussed next. The assessment of the District Court and the accompanying expert witness statements are, sanctions-wise, the most interesting part of the case, providing insight into OFAC sanctions.

4.3.3 Regarding the financial risk associated with OFAC sanctions

The existence of the claimed financial risk related to OFAC sanctions is determined by interviewing expert witnesses and by trying to determine the way OFAC operates in practice and whether this poses the claimed financial risk to the defendant banks (L18/48677, p. 27). The defendant banks have called in their own witnesses, but the District Court states that due to the general nature of the matter, the expert witness statements can be generalized to apply to all the defendants (p. 27). All the parties have brought their own witnesses with varying levels of competence on the matter. The statements of these witnesses will be assessed and analyzed next.

Nordea's expert witness was John E. Smith, who worked for the United States Treasury and specifically for OFAC for 20 years, first as a lawyer and later as the Director of OFAC (L18/48677, p. 27). He was involved in making the decisions on the implementation of sanctions and who gets put on sanction lists (p. 27). In 2018, he moved on to a law firm where he specializes on sanctions (p. 27). As his resume indicates, he has extensive background knowledge on OFAC's operations and decision-making processes. Based on the credibility of their expert witness and that Nordea spent over USD 40,000 for this witness statement alone, it is safe to say that Nordea took the case quite seriously (L18/48677, p. 39).

Smith gives a comprehensive statement regarding the functioning of OFAC's sanctions. He begins by describing the situation that led to Rotenberg being placed under sanctions, which was described in this thesis at the beginning of the case analysis (L18/48677, p. 27). Smith states that in practice the 'blocking sanctions' in question mean that any U.S. Person or non-U.S. Person under the jurisdiction of the United States are forbidden from participating in any significant transactions

which include Rotenberg without explicit permission from OFAC (p. 27). This part refers to the primary sanctions. In addition, the sanctions in question forbid any non-U.S. Person from acting in such a way that causes other U.S. Persons to violate sanctions (L18/48677, p. 28). This latter part refers to the extra-territorial secondary sanctions. According to Smith, the violations of primary sanctions have strict liability, meaning that OFAC does not have to prove intent, only that the violations happened (p. 28). The civil penalties range from USD 300,000 per infraction to twice the amount of the transaction that violated sanctions, whichever is higher (p. 28). Imposing criminal penalties require that the United States Treasury proves intent and that the violating party knew or that they should have known that the transaction in question is illegal (p. 28).

Smith continues and states that in the case of the payments between Nordea and Rotenberg, primary sanctions would likely not be violated as no U.S. Persons would be involved in the domestic euro -currency payments between Nordea and Rotenberg. However, if there would have been any USD payments between Nordea and Rotenberg, they would eventually be cleared through a United States financial institution or bank. The United States financial institution then would be obliged to freeze the payment in question according to their obligations arising from the Ukraine Related Sanctions Regulations (USRS). Smith states that if any entity with its actions causes a United States entity to violate the United States sanctions program, it commits a sanctions violation and the entity that enabled the violation is the one to blame. This means that if Nordea would accept payments from Rotenberg that would cause a U.S. Person, or in this example a United States financial institution, to violate sanctions, then Nordea would have been seen to have violated sanctions (L18/48677, p. 28).

This is quite far reaching and clearly extraterritorial in the sense that in the previously mentioned example, the only party that violates any laws is the United States financial institution if it clears a USD payment to which Rotenberg is involved. However, in the eyes of OFAC, the Nordea would be the culprit and would bear the blame. Section 5(a) of the Executive Order 13661 (2014, p. 2), pursuant to which Rotenberg was sanctioned, states that ‘Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited’. Section 5(b) states that ‘Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited’.

This possibility is not only theoretical since OFAC has successfully brought enforcement action against non-United States entities in this manner. As reported by OFAC, they successfully brought

enforcement action against TransTel, a telecommunications company which, despite its assurances, engaged in prohibited USD transactions to pay third parties for services and equipment that were related to its Iran projects (OFAC TransTel settlement information, 2017, p. 1). According to OFAC, this resulted in United States financial institutions to process payments related directly to Iran as the payment information did not contain any references to Iran or the prohibited projects. OFAC states that TransTel did not disclose this conduct to OFAC and based on their actions and descriptions of the situation by OFAC, it seems that they tried to intentionally circumvent OFAC sanctions. In this case, OFAC did not go after the United States banks that had processed the payments, but instead brought enforcement action against TransTel, resulting in a settlement of approximately USD 12 million.

The settlement information states that TransTel had violated Section 1705(a) of IEEPA, which states that it is '... unlawful for a person to violate ... or cause a violation of any ... regulation, or prohibition issued under this chapter,' and that they had also violated Section 560.203 of the Iranian Transactions and Sanctions Regulations (ITSR) containing similar prohibitions, when they originated USD wire transfers involving Iran (OFAC TransTel settlement information, 2017, p. 2). If Nordea or any of the Finnish banks would act in a same way, they could face similar penalties and it would be very likely that in order to successfully facilitate his transactions, the Finnish banks would have to hide Rotenberg's involvement in the payments since the United States financial institutions would not process them otherwise. This would probably result in a situation comparable to TransTel's.

Smith continues by stating the same argument that the banks used as their defense, i.e., that any entity giving assistance to sanctioned parties, that is, Rotenberg, might be targeted by asset freezes if the assistance is seen as essential in the context of sanctions regulations (L18/48677, p. 28). Smith states that the fact that 'essential assistance' is not defined in the Executive Order 13661 or in anywhere else, gives OFAC extensive discretionary power to decide what is considered essential (p. 28). This makes the matter very ambiguous and increases the risk of any transactions being labeled as essential and therefore in violation of sanctions. Smith states that the sanctions risk involving "essential assistance" overlaps with the sanctions risk regarding secondary sanctions, meaning multiple possible ways of triggering similar sanctions effects (L18/48677, p. 28). The lack of clarity regarding "essential assistance" likely is intentional since ambiguity and unpredictability make the sanctions more effective as deterrents and tools.

Smith then describes the provisions of CAATSA which he considers as imposing probable risks in this case (L18/48677, p. 29). First is the previously mentioned CAATSA 226 that obliges the President to issue sanctions against foreign financial institutions transacting on behalf of listed Russian entities, with the penalties being the prohibition of opening or maintaining correspondence accounts in the United States (p. 29). Smith states that these sorts of penalties are an existential threat to large financial institutions (p. 29). His assessment is backed up by the fate of the previously mentioned ABLV bank, which ended up in liquidation due to similar restrictions. The second CAATSA section Smith considers as giving rise to probable risk is CAATSA 228, which requires that the President order the assets of any foreign person facilitating a significant transaction or significant transactions on behalf of persons targeted by the United States Russia-related sanctions to be frozen (L18/48677, p. 29). According to Smith's assessment, it is very likely that OFAC would consider Nordea to be a foreign financial institution within the meaning of the Federal Regulation 31 CFR § 561.308 containing a definition for the term 'foreign financial institution' (p. 29).

Smith also mentions Section 2(7) of the UFSA, which provides definitions, in reference to what 'knowingly' means (L18/48677, p. 29). This Section in the context of the relationship between Rotenberg and Nordea means that to violate sanctions, the violating party should be aware or knows that the transactions are from Rotenberg or made on behalf of Rotenberg (p. 29). The bank's knowing who made payments is quite evident in this case, since it is the reason why this matter was taken to court in the first place and it would be impossible for them to feign ignorance. The UFSA Section would thus only be relevant if the payments were somehow stripped of the relevant information, in a similar fashion to what TransTel did with their Iran-related payments. Stripping them of the information might then also possibly violate some Know Your Customer (KYC) regulation or legislation and other customer identification rules, which are very relevant when it comes to money laundering and terrorist financing, but also to sanctions as demonstrated here.

Smith continues with an assessment regarding the possibility of the payments listed in Rotenberg's claim being interpreted significant by OFAC. According to Smith, OFAC seeing them as significant depends on the overall situation which comprises seven factors (L18/48677, p. 30). These factors range from facts related to payments such as the amounts and frequency of the payments and whether they are consistent, the nature of the payments, and their relation to the sanctions in question (p. 30). It should be noted here that the seventh factor is once again an ambiguous 'and possibly everything else' clause, which basically gives the United States Treasury the chance to

consider any other factors they seem to be relevant in the matter (p. 30). Smith then gives his personal assessment on the matter, which boils down to the payments 'maybe' being considered significant (p. 30). He states that it is reasonable to assume, based on the factual set of circumstances, that OFAC would consider the payments significant transactions (p.30). However, Smith also says that it is possible that OFAC would not consider them significant, because the assessment criteria have been purposefully created to give OFAC the greatest possible discretion when considering secondary sanctions (p. 30).

At this point it is quite safe to say that the ambiguous nature and construction of the United States sanctions legislation is intentionally vague and obscure, in a sense to 'rule with fear'. A previously mentioned, if United States sanctions can be described as retaliatory, then the intent seems to be to 'rule with fear of retaliation'. When a person who has worked in the highest positions in OFAC with almost two decades of experience cannot predict what OFAC would decide, such predictions are practically impossible for foreign financial institutions to make. This further contributes to the previously presented idea of sanctions being 'contagious'.

Smith tacitly confirms this assessment by stating that OFAC rarely needs to officially determine secondary sanctions liability in this manner since non-United States banks often observe United States secondary sanctions very faithfully since the possible consequences are so severe (L18/48677, pp. 30–31). Smith states that being sanctioned might lead to the collapse of the bank being targeted and that this result would be 'catastrophic' for the bank, its home country, its customers, and its employees (pp. 30–31). Again, this assessment can be seen as fair, considering Smith's experience and the fate of ABLV bank.

Smith ends by restating a thing he previously has already mentioned; he mentions again the existential threat of the sanctions and that the civil settlement figures run in the millions of dollars (L18/48677, p. 31). He emphasizes the risk of the situation again (p. 31). Interestingly he also mentions that the fact that Rotenberg and his lawyer sent emails to OFAC which stated that they should keep an eye out for Rotenberg's payments mentioned in the claim, increased the risk of secondary sanctions against the defendant banks (p. 31). Without knowing the full context of the emails, this seems somewhat odd.

One final interesting point raised by Smith is the fact that in the current climate where the United States continues to increase financial pressure towards the Russian Federation by using sanctions,

any transactions related to Russia, and, particularly, to Russian citizens who are under sanctions, are increasingly more risky (L18/48677, p. 31). Smith states that the number of sanctions issued is expected to increase (p. 31). He was not wrong in his assessment. At the time of writing this[5], President Biden of the United Stated Biden recently announced new sanctions to be issued against Russia, China, and Iran due to suspected influencing operations related to the United States 2020 Presidential elections, where it is alleged that Russia tried to undermine President Biden's candidacy. These sanctions were implemented a month later with Executive Order 14024 (Executive Order 14024, 2021).

Handelsbanken's expert witness was Aleksi Pursiainen, who has a master's degree in law and extensive work experience related to international sanctions (L18/48677, p. 32). He works for the Finnish Ministry of Foreign Affairs and was a member of the Financial Action Task Force organization (p. 32). In his statement, Pursiainen provides the same arguments and reasoning that Smith did, pointing out that Handelsbanken would expose themselves to significant risk if they would accept Rotenberg's payments (p. 32). He states that United States officials have been given great discretion to decide on the use of secondary sanctions which makes it hard to evaluate or anticipate what is going to happen (p. 32). Pursiainen states that even if the possibility of repercussions is deemed to be very small, the actual repercussions themselves are so damaging that it is necessary for Handelsbanken to refuse accepting Rotenberg's payments to fulfill their legal obligations (p. 32).

Handelsbanken had another expert witness, Richard Nephew, who was one of the leading officials in the planning and execution of the United States sanctions programs (L18/48677, p. 33). He has also published a lot of literature related to the subject of sanctions (p. 33). His statements are in line with both Smith's and Pursiainen's; he states that a risk does exist and the possible repercussions could be devastating and possibly lead to the banks being sanctioned and barred from doing business or having correspondence accounts in the United States (p. 33). They could even face criminal charges in the United States (p. 33).

Rotenberg had requested an expert witness statement from Frey Nybergh, who is a Doctor of Law and an Adjunct professor in Civil and Commercial Law (L18/48677, p. 34). He stated that the issue at hand is related to basic banking services and the services the customer is entitled to when discussing the basic banking services referred to in Chapter 15, Section 6 of the Act on Credit

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Institutions (p. 34). Nybergh refers to acceptable reasons to refuse service (p. 34). The District Court quite flatly refutes these arguments by referring to the fact that it was not proven that Rotenberg resides in the EEA, and thus arguments lose quite a lot of weight (p. 34). Nybergh's argumentation likely would have been given a lot more weight if Rotenberg was living in the EEA.

Nybergh assessed the risk posed to Handelsbanken for associating with Rotenberg by describing it as 'distant and unlikely', but he apparently did not really provide any grounds for his view, according to the District Court's assessment (L18/48677, p. 34). The District Court states that Nybergh's expert witness statement is based on false premises and the risk assessment is not justified in any meaningful way, and that Nybergh's statement does not hold much weight when compared to the defendant banks' expert witness statements (p. 34). Naturally, Nybergh's full statement before the court is not available, but from the District Court's comments on the matter it seems that Nybergh did not have sufficient knowledge on United States sanctions or sanctions in general to comment or to challenge, the defendant banks' witnesses or argue in favor of Rotenberg when it came to the risk posed by United States sanctions.

4.3.4. Decision of the District Court

Considering all the arguments presented by the parties and the witness statements, it is unsurprising that the District Court sided with the defendant banks in their decision. The witness statements particularly seem to have convinced the District Court on the existence of a threat posed by the OFAC sanctions and the District Court considered all the witness statements to apply to all the defendant banks, even if they spoke on behalf of only one (L18/48677, p. 34).

The District Court states that based on the witness statements and arguments presented by the banks, it was shown that the violations of OFAC sanctions would pose a significant financial risk for Handelsbanken, and that the possibility of this risk materializing is not insignificant (L18/48677, pp. 34–35). The actual consequences for violations of OFAC sanctions would be severe for international financial institutions (pp. 34–35). Therefore, the District Court considered it acceptable based on Handelsbanken's 'General terms and conditions for euro-dominated payments transmitted within the Single Euro Payments Area' for Handelsbanken to refuse accepting Rotenberg's payments (pp. 34–35). The District Court considers the risk posed by OFAC sanctions to be acceptable as an 'other relevant reason' within the meaning of Handelsbanken's terms (pp. 34–35). The District Court also considers violations of OFAC sanctions to be a significant financial risk that could possibly endanger

the liquidity and solvency of Handelsbanken, which goes against Chapter 18, Section 4 of the Act on Credit Institutions (pp. 34–35). In addition to this the District Court states that Handelsbanken did not receive enough information from Rotenberg regarding the origin of the funds he tried to deposit and that the bank had an acceptable reason to refuse accepting the payments Rotenberg tried to make based on the Act on Detecting and Preventing Money Laundering and Terrorist Financing (pp. 34–35). Based on these arguments, the District Court dismissed any claims Rotenberg had against Handelsbanken (pp. 34–35).

The District Court continues by assessing Rotenberg's claims of discrimination. Rotenberg claimed that he had been treated differently and directly discriminated against as a customer due to him being on the OFAC SDN list and that this goes directly against Section 8 of the Non-Discrimination Act (L18/48677, pp. 35–36). This Section of the Non-Discrimination Act states that 'No one may be discriminated against on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics' (L18/48677, p. 36). The Non-Discrimination Act states that the discrimination is direct if the person is being treated differently than any other person in a similar situation (p. 36). The District Court states that when assessing claims of direct discrimination, it is relevant to assess what sort of harm has the situation caused to the claimant, whether the basis for the discrimination is relevant in relation to the Non-Discrimination Act, whether the chosen comparison is relevant and whether the situations are comparable (p. 36).

The District Court states that the reason Rotenberg's payments are not accepted is due to him being on the SDN list. This has not been disputed by anyone at any point. According to the District Court, no other reason than Rotenberg's own actions has been given as the reason to why he has been placed on the OFAC SDN list. Both Richard Nephew and John Smith have stated that the reason for including him on the list is Rotenberg's own actions and the United States Treasury stated that the reason is Rotenberg's shady business dealings and close connections to Vladimir Putin. The District Court states that there are no indications or reasons given that would indicate that Rotenberg being on the SDN list would constitute as a fact which would violate Section 8 of the Non-Discrimination Act. Thus, as a result, the District Court dismisses Rotenberg's claim of discrimination. (L18/48677, p. 36)

Next, the District Court assesses Rotenberg's claims involving the rest of the banks and the demands for them to accept his payments. Rotenberg's claim stated that the clauses in the framework

agreements of the banks stating that the payment can be refused due to the payer being sanctioned by the United States go against compelling Finnish legislation, specifically the Payment Services Act, which includes the acceptable reasons for declining payments (L18/48677, pp. 36–37). According to Rotenberg, these acceptable reasons are not present in his situation (pp. 36–37). The District Court goes through and assesses the relevant sections of the Payment Services Act and states that the type of payments in question and the roles of the parties do match the relevant provisions of the Payment Services Act (pp. 36–37). Unfortunately for Rotenberg, the District Court states that according to the Payment Services Act, the application of the sections that list the acceptable reasons for declining payments require that there is an agreement between either the payer and payer's service provider or the payee and payee's service provider (p. 37). As in this case there is no agreement between Rotenberg and Nordea, Danske Bank or OP, the sections of the Payment Services Act which mandate the acceptance of payments is not applied in this case, and Rotenberg cannot demand that the banks, effectively third parties in this case, should accept his payments (p. 37). Instead, the District Court confirms that according to their framework agreements, Nordea, Danske Bank and OP have the right to refuse accepting such payments when it comes to their own customers (p. 37). This is in addition to what was previously stated regarding the financial risk posed by violations of OFAC sanctions when it comes to Handelsbanken, which also apply to the other defendant banks (p. 37). Undue financial risk is forbidden under Chapter 9, Section 1 Act on Credit Institutions (p. 37–38). This then led to the District Court dismissing Rotenberg's demands for Nordea, Danske Bank and OP to accept his payments (p. 38).

The District Court then concludes that as there was no evidence that Rotenberg would have been discriminated against, any compensation claims regarding this discrimination are dismissed, and as the losing party in the case, Rotenberg is obliged to pay the legal fees of all the defendant banks (L18/48677, pp. 38, 43–44). Appropriate amount according to the District Court is around EUR 530,000 (p. 43–44). The District Court's decision was unanimous (p. 44).

4.3.5. Analysis of the judgement and commentary regarding the case

After studying and analyzing the case it is not unsurprising that the District Court sided with the defendant banks. Overall, the idea of observing United States regulations in Europe seems counterintuitive and obviously something that is not legally enforceable. The idea of relinquishing political and legal sovereignty is something that can easily be problematic for many people. For

example, Euroscepticism and withdrawal from the EU are very current themes in politics in many countries, including Finland and critical comments often relate to the erosion of national sovereignty and increasing federalization (European Union Policy of the Finns Party, 2019). However, this point is moot since the effects of OFAC sanctions are achieved through the application of blunt force and intimidation, echoing the sentiment expressed by the United States President George W. Bush in his speech after the 9/11 attacks:' You are either with us, or with the terrorists' (CNN, 2001). The questions about legality or sovereignty of third countries seems like a secondary consideration at best.

This case between Rotenberg and the defendant banks indeed shows that if there is no mandatory legislation or contractual obligation stating otherwise, OFAC sanctions in essence are enforced in Finland. This is of course a simplification of the matter but in essence that is what the case tells us. If you cannot violate OFAC sanctions without violating the laws of Finland or the European Union, then Rotenberg's argument that OFAC sanctions are not legally enforceable is irrelevant. Rotenberg tried to argue that clauses added to framework agreements that enforce OFAC sanctions cannot be used as a reason to not accept his payments. Rotenberg's argument directly stated that 'Nordea, OP and Danske Bank have no compelling reason recognized by the Finnish legal system not to accept payments made by Rotenberg to their customers' (L18/48677, p. 5). The banks on the other hand quite effectively argued that OFAC sanctions are an actual threat to the operations and stability of any financial institution violating them. Now, this has been established in a court of law in Finland, at least on the District Court level. The banks did not argue for the legality of OFAC sanctions. Instead, their defense was built around that which mattered – the blunt force repercussions for violating OFAC sanctions.

Rotenberg could have had a better case against the banks, but his factual circumstances were against him. It seems somewhat careless to miss the fact that you need to reside in the EEA to be eligible for the basic banking services that Rotenberg argued the banks should provide to him. In the FINE decision FINE-002538 that was issued before the trial and which sided with Rotenberg, this matter was resolved in favor of Rotenberg. This is because the decision involved matters that had happened when the Act of Credit Institutions stated that the basic banking services need to be offered to any natural persons **legally staying** in the EEA (Act on Credit Institutions [original Act 610/2014], 2014). The Act on Credit Institutions was amended and from 2017 onwards and this section was changed to state that the basic banking services need to be offered to any natural

persons **legally residing** in the EEA (Act amending the Act on Credit Institutions 1054/2016, 2016). It is possible that this change was missed or overlooked, as it was a key factor in deciding the matter on behalf of the banks. This change removed the legal obligation to offer basic banking services for Rotenberg as he apparently had apartments or similar living arrangements in Finland and therefore likely stayed in Finland on occasion but failed to prove to the court that he resides in Finland or the EEA in any permanent fashion.

Rotenberg's claims of discrimination were unsurprisingly rejected, and the matter seemed quite clear cut from the beginning as there was nothing to indicate that Rotenberg being on the SDN list would have constituted as a discriminatory factor. Rotenberg being added on the sanctions list due to his close connections to Vladimir Putin is a prime example of the use of targeted sanctions. Here, a high-level individual and his close connections are targeted to apply pressure to change the behavior of the targeted parties.

Although the case provides an expansive explanation of the dangers of violating OFAC sanctions, it is disappointing that it does not resolve or comment on any of the interesting conflicts related to sanctions. If Rotenberg would have resided permanently in the EEA, the banks would have been obliged to offer him basic banking services, but the requirement for risk management mandated by the law would still also exist. This would create a conflict between individuals' rights for access to basic banking services and the financial institutions' obligation to manage risks. However, a similar conflict is bound to arise. This and the overall conclusions of this thesis will be discussed in the next chapter.

5. Conclusions

The overall conclusion that can be drawn from all of the above is that economic sanctions, and sanctions overall, are a part of an ever-shifting landscape which is heavily connected to politics and financial factors. The case shows that despite not necessarily making it public information, the defendant banks apply United States regulation in practice, since the real-life repercussions are something that cannot be ignored. The way United States economic sanctions are constructed and applied creates a climate of ambiguity and unpredictability and this combined with possibly catastrophic end results for non-compliance make the legality of their extraterritorial nature more of a theoretical consideration. The considerations of legality were not even relevant, as the case was solved by applying Finnish legislation. Even if the United States economic sanctions are not constructed to specifically induce violations of the national law of a third country, this seems to be the practical conclusion in the presented case. You cannot violate United States sanctions without violating the laws of Finland, which makes United States sanctions, if not legally enforced, at least effectively enforced.

As stated previously, Finland as a country is quite small with a small economy, small military force, and limited political influence on the international stage. This means that for an effective sanctions policy, Finland needs to be a part of something bigger, like the European Union, to have any effect on the international stage. Thus, as a member of the European Union, Finland naturally follows the European Union's sanctions policy. This means that as a small country, Finland inevitably gets tangled up and drawn into various conflicts between larger nations and the European Union, which are reflected by and in various sanctions-related actions. To have effective sanctions, they need to be backed up by something more than legal rules like the analyzed case indicates. In addition, the European Union so far has not been able to effectively counter United States sanctions, which means Finland as an individual country has no other realistic option but to go along with them.

As this thesis and the case analysis within it have shown, the United States is likely the most powerful individual actor when it comes to financial sanctions and their enforcement, since they can make third parties observe their regulations without any legal or contractual agreements. The analysis of the case shows why this is the case and why it is likely that the situation will not change very soon. So far, the European Union has been unable to counter the application of United States sanctions and, as was pointed out, it is possible that even the blocking statue provides rules to avoid its application due to the actual effects of the United States financial sanctions being so severe. The

case between Rotenberg and the banks was decided in favor of the banks but Rotenberg has appealed the verdict and the case is moving to the Courts of Appeal (Turun Sanomat, 2020). It can be expected that the banks will continue to fight this with the same intensity as before.

There is another similar case from September 2020, where a Finnish citizen and his company, Optima Freight, were placed under economic sanctions by the United States. The reason given by the United States Department of the Treasury was that 'Nikita Kovalevskij, and his company, Optima Freight, through an illicit scheme, violated U.S. export laws in the acquisition of sensitive, controlled U.S. maritime technologies' (U.S. Department of the Treasury, 2020). An interview with Kovalevskji and a news article about his experiences on living in Finland while being sanctioned by the United States was published in Helsingin Sanomat on 15 March 2021 (Helsingin Sanomat, 2021). The article also discussed the practical effects of being sanctioned, the OFAC sanctions overall and how they work (Helsingin Sanomat, 2021). Kovalevskij's description of his situation is very similar to Rotenberg's: inability to pay bills, taxes, and overall inability to use any banking services. Kovalevskji states that he had an account in OP and the bank terminated all banking and insurance services they had with him. In addition, according to Kovalevskij, the owner of his company's property has terminated the rent agreement and Optima Freight has had to lay off all its employees. Kovalevskji says that he has become a 'non-person' (Helsingin Sanomat, 2021). This description matches the description of 'la muerte civil' or civil death, given to OFAC sanctions by a listed narcotics trafficker (U.S. Department of Treasury, 2014b).

All this is very similar to Rotenberg's situation and indeed the case between the banks and Rotenberg is brought up in the article by Kovalevskji's lawyer Anu Mattila (Helsingin Sanomat, 2021). According to the article, OP has apparently referred to the Rotenberg case when they closed Kovalevskji's accounts but as pointed out by Mattila, Kovalevskji actually does live in the EEA, which means that banks must, in accordance with Chapter 15, Section 6 of the Act on Credit Institutions, offer him basic banking services (Helsingin Sanomat, 2021). The article states that the only right for refusal is related to the prevention of money laundering and terrorist financing, to which OP has not referred to. This is a major difference between the two, and if Kovalevskji's case goes to court, it will be very interesting, since then the discussion regarding the relationship between the right to access to basic banking services and the legal obligation of banks to limit risks will have to be assessed. It would not be surprising if the European Union's courts would have to eventually be involved.

The Helsingin Sanomat article refers to the 'Kafkaesque"' situation of Kovalevskji as no-one really seems to have the jurisdiction in the case and the parties are apparently in negotiations with OFAC on how to proceed (Helsingin Sanomat, 2021). OFAC has no official jurisdiction towards euro-nominated payments and no European officials do not have any jurisdiction when it comes to OFAC, so Kovalevskji has very limited avenues for appeal (Helsingin Sanomat, 2021). The matter would likely be quicker to be solved through negotiations with OFAC, as it can be expected that if the case actually goes to court, the defendant bank will fight it until the end and the case would likely drag out for a quite long time.

The question is that if one bank is legally obliged to offer basic banking services to an OFAC sanctioned individual, does it then mean that the payee's banks are obliged to accept such payments even if their own framework agreements with their own customers state that they can refuse accepting payments from sanctioned entities? According to Chapter 15, Section 6a, point 4 of the Act on Credit Institutions, a payment account with basic features includes 'payment transactions as direct debits, through a payment card, credit transfers, terminals and counters and via the online facilities of the credit institution'. It seems that the right to basic banking services would include the right to make payments even as a sanctioned individual (if it is deemed that basic banking services should be offered to such individuals) but then it seems quite likely that the payee's banks would refuse accepting such payments based on their own framework agreements, leading to possible new legal battles regarding the matter. De-listing is likely the only action which will completely remove the issue and even then, it is possible that the shadow of being formerly listed would still follow the de-listed entity, particularly in the case of single individuals where there has been a clear reason for listing in the first place.

From a legal point of view, it is quite terrifying that such effective and devastating sanctions are ultimately issued by officials in a third country and observed in Finland. If you are targeted, you can expect very little help or support from your own legislators, with it being even unclear where and to who you should appeal to. When it comes to European Union's sanctions and Finland, there exists an avenue to challenge, appeal and possibly annul the restrictive measures and the European Union sanctions processes have seen refinement through judicial review of restrictive measures imposed by the European Union (Chachko, 2019, p. 4). OFAC sanctions on the other hand are quite a different tale, one which hopefully sees more clarity and refinement in the future. However, the economic

sanctions are a powerful tool for the United States, and it seems very unlikely that they would give it up anytime soon, which encourages others to attempt a similar active use of sanctions.

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