

Non-execution of a payment to a non-profit association due to sanctions

Topic: **Payment transactions** Case number: **2022/09**

The Ombudsman was contacted by a lawyer representing a client of a global bank that refused to process a donation payment to a charitable society whose interests the lawyer also represented. The reason for this was that the charity was associated with a country that was subject to various international sanctions. During the ombudsman proceedings, the bank insisted on its refusal, but was prepared to explain its position in more detail.

The present case was submitted to the Ombudsman before Russia's invasion of Ukraine, which gave the issue of "sanctions" and their implementation a new scope. The case centred on a non-profit, tax-exempt association in Switzerland that relies on donations for its activities. The aim of the association is to promote human rights in country X, to provide aid to refugees and to help victims of torture. According to the lawyer, most of the members and exponents of the charity are victims of the coercive regime in country X. The charity's members are not tax-exempt.

The client complained that the bank did not execute a donation payment to the association. The bank justified its refusal with internal directives, which were not explained in detail, and with general references to legal and regulatory provisions. According to the client, a bank employee also remarked that the charity was on a "watch list". The client was of the opinion that the bank had no right not to execute an unambiguous payment order. His lawyer also pointed out that the bank's behaviour was seriously damaging to the charity's reputation.

The Ombudsman contacted the bank and drew its attention to the fact that, on the basis of the documents available to him, it was not clear which sanctions the donation payment specifically violated and asked it either to adjust its position or to explain it in more detail. He asked the bank whether there was a contractual basis for refusing to execute a specific payment order in the context of an existing business relationship and asked it to specify the legal and regulatory provisions it had invoked in general terms.

After a detailed discussion about the problem, the bank explained in a written statement that it was subject to a large number of legal and regulatory provisions, which it had to strictly comply with. Therefore, payments were monitored, and possible risks clarified in each case. Payments that were directly or indirectly related to country X were subject to restrictions due to internal sanction guidelines and would not be executed without further ado. The contractual basis for such non-execution was a provision in the bank's payment transaction conditions, which was entitled "Violation of legal and internal regulations" and gave the bank the right, among other things, to refuse payments in the event of a violation of internal and external embargo regulations. It was not prepared to revert to its decision in the specific case.

The Ombudsman could well understand that the bank's refusal to pay the donation was unpleasant and annoying both for the client concerned and for the charity as payee. He explained the bank's position to the lawyer and pointed out that, from a civil law perspective, principles of contract law were decisive for the case at hand. The fact that an agent may refuse to accept and execute an order in individual cases could not be objected to in principle. It would be different if the bank had

undertaken to execute payment orders in any case within the framework of an ongoing account relationship. However, this was not the case in view of the cited provision from the bank's payment transaction conditions.

Moreover, in the circumstances of the present case, it could be assumed that it was not Swiss but foreign sanctions that had led the bank to refuse to execute the payments. The Ombudsman advised the lawyer that a globally active bank is regularly confronted with a large number of sanction provisions, which may be contradictory and sometimes do not correspond to Swiss practice either in terms of content or territorial application. There was therefore a tendency to interpret such provisions rather broadly. In addition, software-supported monitoring systems are used in the mass business of payment transactions. The results of these systems would hardly do justice to every individual case.

In view of the bank's intransigent attitude, the Ombudsman assessed further mediation efforts in the present case as futile. He recommended that the lawyer advise the donors to use alternative channels for their donation payments.