

THE LEGAL REGIME OF INTERNATIONAL SANCTIONS IN ROMANIA

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Abstract

This article analyzes the legal framework through which the Romanian state implements, in concrete terms, at national level, the acts with binding legal force of the United Nations and the European Union through which international sanctions are established. The paper focuses mainly on the interpretation of Romanian legal norms governing the legal regime of the application of international sanctions on the territory of Romania. In this sense, as a research methodology are used the systematic method and the historical method of interpreting the legal norms regarding the application of international sanctions in Romania. The research shows that the Romanian legislator is in line with the international trend to increase the effectiveness of targeted sanctions by regulating the way in which they are implemented on the national territory international sanctions established at the level of the United Nations or at the level of European Union.

Keywords: *international sanctions, legal regime, targeted sanctions.*

1. Introduction

Taking into account art. 39 of the Charter of the United Nations, according to which: “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”¹, international sanctions are binding restrictive measures for member states of the United Nations.

Until 1990, the UN Security Council imposed classical international sanctions (so-called comprehensive sanctions) - which affected the entire state or the entire population of a state or territory, for example - the embargo, the non-issuance of visas to all citizens of that state, and so on. They had a rather harmful effect on the population and not on the ruling elite of that state, which was responsible for those illicit acts that violated public international law.

After 1990, the practice of the Security Council and the practice of states focused mainly on so-called targeted sanctions, which more severely affect the ruling elite of states with illicit conduct. And here we have mainly sanctions such as freezing funds, withdrawing visas and residence permits for those in the ruling elite, banning the provision of funds or economic resources, and so on.

At the same time, by imposing targeted sanctions, states have a much greater role to play in implementing these sanctions and ensuring that such measures, which are taken in particular against natural or legal persons, are taken in compliance with all necessary rights and guarantees. -a democratic state.

Therefore, there was a need to create a legal framework consisting of several normative acts at

national level to regulate the following aspects: 1. What kind of international sanctions will be implemented by the state authorities at national level? 2. Which institutions will have the power to implement international sanctions? 3. What will be the procedure for implementing international sanctions? 4. What kind of legal acts will be issued for the implementation of international sanctions? 5. Can these legal acts be challenged in court by persons considered to be harmed by the application of international sanctions?

This article analyzes the legal regime of the implementation of international sanctions in Romania.

2. Relevant legal provisions

In Romania, the main normative act that regulates the implementation of international sanctions is the Government Emergency Ordinance no. 202/2008 on the implementation of international sanctions² approved by the Romanian Parliament by Law no. 217/2009 and entered into force on December 8, 2008.

In addition to this emergency ordinance, there are a series of infralegal normative acts that regulate the procedure for the application of international sanctions at the level of each institution that has been assigned attributions in this field:

- Regulation of the National Bank of Romania no. 28/2009 on the supervision of the implementation of international sanctions for blocking funds;³

- Government Decision no. 603/2011 for the approval of the Norms regarding the supervision by the National Office for Prevention and Combating Money Laundering of the manner of implementation of international sanctions;⁴

- The procedure regarding the manner of fulfilling the attributions of the National Agency for Fiscal

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¹ Art. 39 – UN Charter.

² Published in the Official Gazette, Part I no. 825 of December 8, 2008.

³ Published in the Official Gazette, Part I no. 891 of December 18, 2009.

⁴ Published in the Official Gazette, Part I no. 426 of June 17, 2011.

Administration in the field of international sanctions, from 14.09.2020 approved by the Order of the President of the National Agency for Fiscal Administration no. 3486/2020;⁵

- Regulation no. 25/2020 on the supervision of the implementation of international sanctions by the Financial Supervisory Authority and the entities regulated by it⁶, which repealed the Regulation of the National Securities Commission no. 9/2009 on the supervision of the implementation of international sanctions on the capital market, the Norm of the Insurance Supervisory Commission on the supervision procedure, in the field of insurance, of the application of international sanctions of 30.07.2009 and the Norm of the Commission for Supervision of the Private Pension System no. 11/2009 on the procedure for supervising the implementation of international sanctions in the private pension system.

3. Categories of international sanctions

Government Emergency Ordinance no. 202/2008 on the implementation of international sanctions regulates the manner of implementation, at national level, of international sanctions established by: 1. resolutions of the United Nations Security Council or other acts adopted pursuant to art. 41 of the Charter of the United Nations; 2. regulations, decisions, common positions, joint actions and other legal instruments of the European Union; 3. Legal acts of international organizations (non-binding international sanctions); 4. Legal acts of other states (non-binding international sanctions); 5. Unilateral decisions of Romania.

Therefore, we note that the Government Emergency Ordinance no. 202/2008 delimits between two types of international sanctions: binding international sanctions (those adopted by the Security Council of the United Nations and those adopted by the European Union) and non-binding international sanctions (adopted by other international organizations, adopted unilaterally by Romania or those adopted by other states).

With regard to non-binding international sanctions, they must fulfill the purposes provided by art. 2 lit. a) of the Government Emergency Ordinance no. 202/2008:

- maintaining international peace and security;
- preventing and combating terrorism;
- ensuring respect for human rights and fundamental freedoms;
- ensuring the development and consolidation of democracy and the rule of law;
- the pursuit of other purposes, in accordance with the objectives of the international community, international law and European Union law.

These sanctions, which are not adopted by the United Nations Security Council or by the European

Union, shall become binding in national law by the adoption of a normative act, which shall also establish the necessary implementing measures, including the criminalization of their violation, as appropriate.

The types of international sanctions to be implemented by Romania are as follows:

1. blocking of funds and economic resources;
2. trade restrictions;
3. restrictions on operations with dual-use and military products and technologies;
4. travel restrictions;
5. transport and communications restrictions;
6. diplomatic sanctions;
7. sanctions in the technical-scientific, cultural or sports fields.

4. Public authorities which are competent to implement international sanctions

Legal acts by which international sanctions have been adopted are binding in domestic law for all public authorities and institutions in Romania, as well as for Romanian natural or legal persons or located in Romania, under the regulations establishing the legal regime of each category of acts.

Therefore, any person who has data and information about persons or entities that are subject to international sanctions, who owns or has control over goods or who has data and information about them, about transactions related to goods or in which persons or entities are involved has the obligation to notify the competent authority as soon as it becomes aware of the existence of the situation requiring notification.

Any person may notify the competent authority in writing of any identification error concerning the designated persons or entities, as well as the assets.

The competent authorities to receive and resolve notifications are the following:

- National Agency for Fiscal Administration (in case of sanctions for blocking funds or economic resources);
 - National Office for the Prevention and Combating of Money Laundering (in case of restrictions on certain transfers of funds and financial services and aimed at preventing nuclear proliferation);
- At the same time, the competent authorities to supervise the implementation of international sanctions are:
- National Agency for Fiscal Administration;
 - National Office for Preventing and Combating Money Laundering;
 - The National Bank of Romania;
 - Financial Supervisory Authority;
 - the management structures of the liberal professions;
 - Ministry of National Defense.

⁵ Published in the Official Gazette, Part I no. 881 of September 28, 2020.

⁶ Published in the Official Gazette, Part I no. 1169 of December 3, 2020.

Each of the competent authorities listed above has adopted a number of illegal sub-legal acts setting out their powers in detail.

Thus, the National Agency for Fiscal Administration adopted the Procedure on how to carry out the duties of the National Agency for Fiscal Administration in the field of international sanctions, from 14.09.2020 approved by Order of the President of the National Agency for Fiscal Administration no. 3486/2020.

The activity of the National Office for Preventing and Combating Money Laundering in the field of application of international sanctions is also regulated by Government Decision no. 603/2011 for the approval of the Norms regarding the supervision by the National Office for Prevention and Combating Money Laundering of the manner of implementation of international sanctions.

Also, the Financial Supervisory Authority adopted Regulation no. 25/2020 on the supervision of the implementation of international sanctions, regulation entered into force on January 2, 2021.

As a rule, these infralegal normative acts establish obligations on economic operators and persons exercising a liberal profession (lawyers, accountants, notaries, bailiffs).

Therefore, those obligations are established to adopt internal policies, procedures and mechanisms for the implementation of international sanctions, which include at least the following elements: a) the detection of persons or entities subject to international sanctions and operations involving goods, applicable to potential customers and applicants for occasional transactions; b) acceptance as a customer, including in the case of occasional transactions, for persons or entities subject to international sanctions or for persons or entities requesting the performance of operations in which goods are involved; c) the detection of the persons or entities that are the object of international sanctions and of the operations in which goods are involved, applicable to the existing clientele in the context of the modification and/or completion of the international sanctioning regimes; d) the regime applicable to customers who have been identified as persons or entities subject to international sanctions, starting with the date on which they no longer fall under international sanctions, as well as the regime applicable to persons or entities that have requested operations in which goods are involved; e) the modalities of drawing up and keeping records regarding the persons or entities that are the object of international sanctions and the persons or entities that have requested the performance of operations in which goods are involved; f) the standards for employment and the verifications carried out in this respect, as well as the training programs for the personnel with attributions in the field of international sanctions and for the training and regular evaluation of the employees; g) the access of the persons with attributions in the field to the records of the regulated entity in order to examine the operations carried out in

the past with persons or entities detected as persons or entities that are the object of international sanctions; h) the competences of the persons with responsibilities in the implementation of the internal norms for the implementation of the international sanctions; i) the measures applicable to internal control, risk assessment and management, compliance management and communication; j) the obligations incumbent on professionals from the perspective of blocking the property belonging to the person or entity that is the subject of an international sanction; k) the regime applicable to the persons or entities that have requested the performance of operations in which goods are involved according to Government Emergency Ordinance no. 202/2008; l) the procedures for reporting, internally and to the competent authorities, as well as for the prompt provision of data at their request, in the format and methodology established by the authorities.

From our point of view, these infralegal normative acts establish some burdensome obligations. If banks had the necessary architecture to draw up and implement such procedures, when we talk about professionals practicing the liberal professions (lawyers, accountants, notaries, bailiffs), these infralegal normative acts establish some obligations for them that can lead to block the activity of these professionals, as these people often work on their own, without hiring other people.

At the same time, the issue of respecting professional secrecy arises from these professionals, especially among lawyers.

Unfortunately, non-compliance with these obligations imposed on professionals attracts sanctions in their charge: from 10,000 to 30,000 lei.

Compliance with the obligations imposed by these infralegal acts and in particular the obligation to notify the competent authorities when entering into a legal relationship with a person subject to an international sanction is hampered by the competent authorities who often do not comply with their obligations by art. 5 of the Government Emergency Ordinance no. 202/2008 for publishing on its own website the legal acts by which international sanctions are established.

Our *de lege ferenda* proposal would be for the Ministry of Foreign Affairs to establish the obligation to publish on its website a daily updated document that would include a list of all individuals and legal persons and all entities subject to international sanctions. It is necessary for this document to be drafted by the Ministry of Foreign Affairs and not just to publish United Nations resolutions or European Union regulations in this field, as professionals who are required to verify these normative acts would be much more effective in detecting persons or entities which are subject to international sanctions.

5. Legal acts issued for the implementation of international sanctions

Among the legal acts issued by the competent authorities for the application of international sanctions, we notice that the order of the President of the National Agency for Fiscal Administration and decisions of the other competent authorities are included.

The National Agency for Fiscal Administration orders, by order of the President, without delay, the blocking of funds or economic resources that are owned, held or under the control, directly or indirectly, of natural or legal persons who have been identified as being designated persons or entities. This is done also for funds or economic resources derived or generated from assets owned or controlled by natural or legal persons targeted by these sanctions or for funds or economic resources owned or controlled, individually or jointly, by persons targeted by these international sanctions.

In the process of implementing international sanctions, the other competent authorities shall carry out any further inquiries they deem necessary, taking into account the situation, including, if necessary, consulting the competent authorities of any other State, issuing decisions.

In accordance with art. 9 para. (3) of the Government Emergency Ordinance no. 202/2008, the decisions issued by the competent authorities in the field of application of international sanctions can be challenged in court, in the contentious-administrative procedure.

Also, in accordance with art. 19 para. (5) of the Government Emergency Ordinance no. 202/2008, the order of the President of the National Agency for Fiscal Administration can be challenged in court, in the contentious-administrative procedure.

Therefore, we note that the legal acts issued by the competent authorities in the process of implementing international sanctions are considered to be administrative acts, as they can be challenged in court in accordance with the contentious-administrative procedure regulated by Law no. 554/2004.

References

- Lucia Ratcu, Sancțiuni internaționale adoptate împotriva persoanelor, sub auspiciile Națiunilor Unite sau prin acte ale Uniunii Europene, în lupta împotriva terorismului. Unele aspecte privind implicațiile adoptării acestora din perspectiva respectării drepturilor omului, Pandectele Romane - Supliment din 2008;
- UN Charter;
- Government Emergency Ordinance no. 202/2008 on the implementation of international sanctions;
- Regulation of the National Bank of Romania no. 28/2009 on the supervision of the implementation of international sanctions for blocking funds;
- Government Decision no. 603/2011 for the approval of the Norms regarding the supervision by the National Office for Prevention and Combating Money Laundering of the manner of implementation of international sanctions;

However, the right to apply to a court is only illusory, as long as the national court checks only whether that person is on the lists of United Nations resolutions or on the lists of European Union regulations, the person cannot challenge the list of sanctions itself and how who got on those lists. Moreover, the case law of the Court of Justice of the European Communities has stated that "*where there is a threat to a nation, measures may be taken that derogate from the right to an effective remedy before a court.*"⁷

6. Conclusions

In this article we tried to present the legal regime of the implementation of international sanctions in Romania, analyzing the legal provisions of the Government Emergency Ordinance no. 202/2008 and the provisions of the infralegal normative acts adopted by the Government, the National Agency for Fiscal Administration and the Financial Supervision Authority.

In our approach, we answered some of the questions posed in the introductory part of the article.

The research shows that the Romanian legislator is in line with the international trend to increase the effectiveness of targeted sanctions by regulating the way in which they are implemented on the national territory international sanctions established at the level of the United Nations or at the level of European Union.

However, we note that the entire architecture of the legal regime analyzed focuses on a series of burdensome obligations that are imposed on professionals in the banking and financial field, as well as on professionals practicing the liberal professions (lawyers, notaries, accountants, bailiffs).

As an identified *de lege ferenda* proposal, it would be the task of the Ministry of Foreign Affairs to establish on its website a daily updated document that would include a list of all individuals and legal entities and all entities subject to sanctions. international.

⁷ Lucia Ratcu, Sancțiuni internaționale adoptate împotriva persoanelor, sub auspiciile Națiunilor Unite sau prin acte ale Uniunii Europene, în lupta împotriva terorismului. Unele aspecte privind implicațiile adoptării acestora din perspectiva respectării drepturilor omului, Pandectele Romane - Supliment din 2008.

- The procedure regarding the manner of fulfilling the attributions of the National Agency for Fiscal Administration in the field of international sanctions, from 14.09.2020 approved by the Order of the President of the National Agency for Fiscal Administration no. 3486/2020;
- Regulation no. 25/2020 on the supervision of the implementation of international sanctions by the Financial Supervisory Authority.