

THE IMPLEMENTATION ON THE INTERNATIONAL RESTRICTIVE MEASURES ACCORDING TO THE MACEDONIAN LAW ON INTERNATIONAL RESTRICTIVE MEASURES: CHALLENGES AND SUGGESTIONS

Assistant Professor Ivica Simonovski

Co-founder of Cyber Security, Corporate Security and Crisis

Management Initiative – Skopje

Contact: ivceC3I@yahoo.com

Assistant Professor Kristina Misheva

Assistant Professor at the Faculty of Law, “Goce Delcev” Univeristy –

Stip

Contact: kristina.miseva@ugd.edu.mk

Abstract

Determining the rules of the game in international law and international relations from the point of view of all stakeholders, means establishment and maintenance of collective security on an internal and an external plan. Any violation, any distancing and denial of the existence of these rules is to be followed by adequate consequences. But, in conditions of existence of concentration of power, inherent and characteristic for the vertical and hierarchical structure of the state domestic laws, which is the

mechanism through which sanctions in international law are introduced, binding for all states. These rules do not depend on the desire of the entity in the international law. They are provided with an international instrument (resolution) or legal custom and they must be respected and implemented by the entity.

After declaring independence, the Republic of Macedonia has started the process of establishing and positioning on the international platform. The country created a profile of active and responsible factor in the promotion of international security, especially in the South-East Europe region. The membership in the United Nations which is based on the basic principles and tenets of the UN Charter imposes an obligation for the Republic of Macedonia to respect and implement the obligations deriving from one side, and the aspiration to give a contribution to collective security by respecting the decisions of the Security Council, on the other side.

Hence, this paper aims to provide an analysis of the current Law on international restrictive measures, the manner of introduction, implementation and controlling of decisions and the objectives and principles on which these decisions against entities that violate international rules are based. Furthermore, the conclusions of this paper would be a driver in the creation of amendments to the already existing law in order to fully respect international obligations and contribute to international security.

Keywords: *restrictive measures, international security, collective security, resolutions, international law*

1. INTRODUCTION

After entering into force, the Charter of the United Nations (1945) became the main accelerator and pillar of the process of maintenance of the international peace and world security and safety, developer and keeper of the good neighbour relations, economic cooperation, tolerance, and respect for the fundamental human rights and freedom.

Related to Article 24 and Article 39 of The United Nations Charter, the primary responsibility and basic duty of the Security Council is to maintain international peace and security, determining 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.

On the other side, the European Union, that promotes the basic principles: peace, democracy, rule of law, the fundamental human rights and international cooperation through the Common Foreign and Security Policy, may also impose measures, based on article 29 of the Treaty on the European Union and article 215 of the Treaty of the Functioning of the European Union (TFEU). *"Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof."*

Anthony (2002) explains that the EU may adopt all measures that are imposed by the UN. But, also it may be more restrictive in some of those imposed measures. Also, we must notice that EU may bring measures based on the decisions of the Council against natural or legal persons and groups or non-State entities.

The aim of this paper is to analyze the actual procedures and process of bringing and implementing the decisions for the restrictive measure that are imposed by the UN Council, the EU and any other international organization with which the Republic of Macedonia has signed an Agreement. So, the purpose is to see which are the advantages and the disadvantages of the existing Act on the international restrictive measures, to bring up the suggestions and the proposals for better efficiency on this Act, or to consider that the adoption of amendments of Act on the international restrictive measures is needed.

2. IMPLEMENTATION OF THE INTERNATIONAL RESTRICTIVE MEASURES BY THE REPUBLIC OF MACEDONIA

The legal base for full and consistent implementation of international restrictive measures in the Republic of Macedonia is the Law on International Restrictive Measures (Hereinafter: the Law). Through the realization of the Law, the Republic of Macedonia gives its contribution to the process of creating and maintaining international peace and security, respect for human rights and freedoms, development of democracy and the rule of law at the national, regional and global levels.

As a country - member of the United Nations, the implementation of restrictive measures in accordance with Chapter VII of the Charter, is international legal obligation for the Republic of Macedonia.

Based on the conclusions of the Thessaloniki Summit of October 2003, the Council of the European Union approved a separate document for the implementation of the provisions of the political dialogue and cooperation in the field of the Common Foreign and Security Policy (CFSP) between

the EU and the countries of the Stabilization and association Process (SAP). Based on this document, the EU is inviting the SAP countries to align declarations and common positions in the CFSP, in which among other joining the documents in the domain of international restrictive measures is included.

The procedure for implementation includes several state institutions and agencies that undertake activities for the implementation of restrictive measures. In order to improve the overall implementation and coordination between the institutions involved, in 2007 the first Law on international restrictive measures was adopted, which defines the responsibility of each institution, depending on the type of the introduced restrictive measure.

Following the recommendation of the Moneyval Committee assessment mission in Macedonia in 2010, based on the shortcomings in the implementation of the above mentioned restrictive measures, in March 2011 the Assembly adopted new Law on implementation of international restrictive measures (36 of 2011) (Hereinafter: The Law). The law introduced several novelties such as:

- Harmonization to the internationally adopted definition for financial measures, property etc.
- Procedure for implementation of the financial measures;
- Introduction of the misdemeanours;
- Establishment of the National Coordination Body and Register of International Restrictive Measures.

2.1. Procedure for the introduction and abolition of international restrictive measures

Upon the proposal of the Ministry of Foreign Affairs, the Government of the Republic of Macedonia shall adopt a Decision introducing a restrictive measure. The decision shall specify the type of restrictive measure, the national authorities competent to implement it, the method of implementation and the time period within which the restrictive measure is to be applied. The Government decision for the introduced restrictive measures and the annex document with the entities for which the restrictive measures are applied, are published in the Official Gazette.

2.2. Shortcomings, recommendations and solutions to improve the national procedure

For the purposes of this paper, we conducted a survey and analysis of the procedure for implementation of the legal obligations arising from the international restrictive measures for the period between 2014 and 2015. Based on the research and the analysis we propose the following recommendations:

- 1. Need for establishing a Committee / Directorate for implementing restrictive measures.** Based on the analysis we found that the period since the introduction of restrictive measures by the Security Council at the UN and EU and the decision of the Government for the introduction of restrictive measures is large. The difference of this period is very important especially when required to introduce restrictive financial measures and freezing assets. Therefore, the entities under international sanctions which have property or funds in financial institutions in the country have enough time and space to transfer funds in locations safe for them or withdraw funds in cash and thus to lose further monitoring (Council of European Union, 2005, p. 12). The same goes for the

ban on entry / exit, the embargo of goods and services, the embargo of weapons etc. Considering the key element of resolution 1373 of the Security Council according to which, the states have the obligation for freezing without delay funds and assets linked to terrorism (Counter-Terrorism Committee Executive Directorate, 2009, p. 8). In fulfilling this obligation the private sector or financial institutions should be included to undertake activities to identify the customers (whether they are of sanction lists) identifying their property in order for it to be frozen. From here it is necessary to have a fast-track procedure in order to promptly freeze the assets and funds of entities which are under sanctions. We mentioned that sanctions imposed by the European Union are not legally binding for Macedonia. Macedonia can join them in a suitable way. But the resolutions adopted by the Security Council of the United Nations are legally binding for Member States (as well as the Republic of Macedonia). These decisions should be implemented immediately by Macedonia as a member country (United Nations Security Council. 2014. p. 4). According to the Guidelines on implementation and evaluation of restrictive measures under the CFSP of the EU, EU Member States may consider the possibility of introducing temporary national measures in relation to financial measures in cases of introduction of restrictive measures by the Security Council UN where the European Union has a obligation to decide on the implementation of resolutions of the Security Council of the United Nations within 30 days. There are two possible solutions to this shortcoming: the first is to form a separate Directorate for the implementation of international restrictive measures in the framework of the Ministry of Foreign Affairs, and the second solution is to establish a Committee for the implementation of international restrictive

measures under the jurisdiction of the Government. In both cases, the institutions mentioned would be responsible for the following:

- Submitting a proposal to the Government to implement the resolutions of the Security Council of the UN for the introduction of restrictive measures immediately upon their publication in the Official Gazette of the United Nations;
- Submitting a proposal to the government to join the restrictive measures imposed by the EU.
- Submitting a proposal to the government to join the restrictive measures imposed by other international organizations and third countries;
- Submitting a proposal to the Government for the introduction of restrictive measures for the entities that are proposed by the competent institutions in the country.
- Submitting a proposal to the Government for abolition of the restrictive measures which are previously introduced.
- Preparation of integrated sanction list (all lists of entities under sanctions in one integrated list) that will be managed (Procedure for listing and delisting by decision of the Government) by the Committee / Directorate.
- Procedure for submitting a request for listing / delisting of individuals or entities from the Republic of Macedonia which are suspects or there is a criminal proceedings for the person, group, organization or entity that is involved in the financing, planning, assistance, preparation or execution of acts or actions independently and on its own behalf or by, in conjunction with, under the name of, on behalf or in support of terrorist organizations (Al-Qaida, ISIS, etc.), according to the Criminal Code of the Republic of Macedonia (United Nations Security Council. 2015. p. 8).

- The Committee / Directorate will be the appointed authority to monitor the implementation of Resolutions 1267, 1373, 2178 and 2253.

2. **Integrated list of entities under restrictive measures.** According to Article 6 of the Law, the Government shall make a decision towards the implementation of international restrictive measures imposed on the basis of legally binding resolutions of the UN, the EU legal acts and other international organizations where the Republic of Macedonia is a member. In this section, the law does not give the possibility for the state to impose sanctions against persons in accordance with its domestic legislation. Bulgaria (Measures Against the Financing of Terrorism Act. 16 of 2003), Great Britain (Terrorist Assets - Freezing Act. 38 of 2010) and Israel (Prohibition on Terrorist Financing Law. 5765 of 2004) in accordance with its legislation may impose sanctions on entities which maintain criminal proceedings for acts of terrorism or for which the relevant authorities have a solid basis to prove that the persons are terrorists or involved in terrorist activities. In terms of keeping the preventive security policy, the next recommendation would be as follows: The Government on the proposal of the Committee / Directorate for implementing restrictive measures, after receiving a recommendation from the competent institutions on the basis of a reasonable belief that the person is a terrorist, finances, helps encourage terrorism or pursues terrorist activities, is to make judgment / decision for the introduction of restrictive measures. For the above mentioned proposals in the role of recommendations, it should contribute to amend the Act under which the Government upon the proposal of the Directorate for the

implementation of restrictive measures, in the framework of the Ministry of Foreign Affairs or the Committee for the implementation of restrictive measures under the authority of the government, to decide to introduce or terminate the sanctions to entities based on:

- Legally binding UNSC Resolution;
- Legal acts of EU;
- Legal acts of the other International Organizations in which the Republic of Macedonia is a member.
- To join the sanction imposed by third countries;
- Upon the proposal of the Committee/Directorate to implement the restrictive measures after previously received references with justifiable explanations from competent state institutions that the person, group, organization or entity is involved in the financing, planning, assistance, preparation or execution of acts or activities by in conjunction with, under the name of, on behalf or in support of a terrorist organization or independently in their own name;

For all persons for whom the government made the decision for introducing of restrictive measures, the Committee / Directorate will develop an integrated list. The list will be managed (entry and deletion from the sanction list) by the above mentioned institutions. The will be available for the public and will be posted on the website of the Commission / Directorate, where all persons, companies and institutions will be able to use it.

3. **Procedure for listing and delisting** (United Nations Security Council. 2002. p. 4-8). In accordance with Resolutions 1267.1983, 2083 and 2253 of the Security Council of the United Nations, in

cases where individuals or entities for which there is a reasonable belief that they are linked to terrorist organizations ISIL (Da'esh) and Al -Qaida, Macedonia is obliged to submit an application to the special committees in the security Council, in order for these people to be placed on the sanction list. The basis for the application for an individual, a group or an entity to be placed on the sanction list is as follows:

- To be included in the financing, planning, assistance, preparation or execution of acts or activities by, in conjunction with, under the name of, on behalf or in support of terrorist organizations ISIL (Da'esh) and Al-Qaida;
- Purchase, sale or transfer of arms and related material to the terrorist or terrorist organizations;
- Recruiting for, or other supporting acts or activities of ISIL (Da'esh) and Al-Qaida, or any cell, splinter group or supporters.

Here it should be noted that the funds involved in financing terrorist activities are not limited as a funds only from illegal sources acquired through criminal activity or sale of drugs and other intoxicants, but also covers assets acquired from legal sources. Also, the basis for listing on the list will have the person, group, organization or any legal entity that is owned, co-owned or controlled, directly or indirectly, by, or otherwise supported by any individual, group, or entity associated with the ISIL (Da'esh) or Al-Qaida.

The Republic of Macedonia will submit to the Committee of the Security Council the application with the proposal for the person, group, organization or entity, through the Permanent Mission. The application should be in the standard form prescribed by the

Committee on the Security Council, (1999). At the same time the Republic of Macedonia will provide information to INTERPOL as a responsible institution to issue a special reminder which must contain the following information:

- For person: surname, first name, other relevant names, date of birth, place of birth, nationality, citizenship, gender, aliases, employment, Country on residence, passport or other travel document or national identification number (ID Number), current and previous address, current status (sought, detained or convicted) possible location.
- For a group, organization or entity: name, registered name, short name (acronym), other names under which the entity is known or was known, address, headquarters, activities, organizational relationships, country, countries of operation, owners and managers, registration number, current status (in liquidation, bankruptcy or active), web address.

After completion of the listing, Committee on the Security Council shall inform the country (in this case the mission of the Republic of Macedonia) that the proposed person is included on a sanction list. For these persons, if the Committee / Directorate previously does not submit a proposal request for the introduction of restrictive measures, it is obliged to submit a proposal / request to the Government to adopt a decision for introducing restrictive measures and to place these persons / entities on the integrated sanction list.

The same procedure also applies to submission of an application for delisting or removing the person, group or entity from the sanction list of ISIL (Da'esh) Al-Qaida adopted by United Nations.

Also, persons that have been placed on the list can submit requests to the Ombudsman in the Committee on the Security Council in order to remove from the sanction list.

4. Procedure for submitting a request for the introduction of restrictive measures against persons for which criminal proceedings are initiated or are suspected of being terrorists or finance terrorism.

As we mentioned above, the Committee / Directorate will be able, upon the proposal of a competent authority, to submit a request / proposal to the Government for the introduction of restrictive measures against individual, group, organization or entity for whom there are justified doubts or initiated criminal proceedings for crime in the area of terrorism in accordance with the provisions of the criminal Code of the Republic of Macedonia. In cases when the Government decides on the introduction of restrictive measures in accordance with a proposal request, it will be obliged to inform the Committee / Directorate which has a duty to listing the person to the integrated list. The person, group or the entity will be able to appeal the decision of the Government before the Administrative Court of the Republic of Macedonia. The Administrative Court, on the basis of the request, will submit a proposal to the Government for delisting person, group, organization or entity from the list. If the Government adopts a decision for abolition of the sanctions, the decision should be submitted to the Committee / Directorate in order to delist the designated entities.

5. Procedure to join the restrictive measures introduced by third countries. Upon a request of a third country, which under its domestic legislation has introduced restrictive measures against certain individuals, groups, organizations or entities, the State may

submit a proposal to the Ministry of Foreign Affairs of the Republic of Macedonia to join the restrictive measures imposed by that State. Together with a proposal request, the state should submit reasonable belief that the person is a terrorist, financing, supporting, encouraging terrorism or pursuing terrorists. The Ministry of Foreign Affairs will submit a proposal request for the introduction of restrictive measures introduced by third country to the Government. In the case when the Government decided to join the restrictive measures imposed by third countries, it shall inform the Committee/Directorate who shall make the update of the integrated list.

6. Freezing of the funds and other financial assets or economic resources. Based on the Government decision for introducing financial restrictive measures, all funds derived from property owned or controlled directly or indirectly, by them or by person acting on their behalf or at their direction should be frozen. The Government shall submit the decision to the Commission / Directorate which will be obliged update the integrated list and to submit the decision to the relevant competent institution which is obliged to implement. All financial institutions and Agencies for Real Estate Cadastre and Central Securities Depository are obliged to froze all funds and property of the designated entities. In cases where any of the persons for whom the government decided to introduce restrictive measures, wishes to establish business relationship with the above mentioned institutions, they shall refuse to establish such relations. In case where the abovementioned institutions detect a clients who is on the sanction list, they are obliged to freeze all funds and assets and to inform the Committee/Directorate for that. The Committee/Directorate is obliged upon the proposal of International Organization or third country to

submit information about that case. For each case of frozen funds and property, the Committee/Directorate will keep a separate register.

7. **Procedure for unfreezing part of the funds.** The person, group, organization or entity whose property and assets are frozen by a Government decision, will be able to apply to the competent court, in this case the Administrative Court of the Republic of Macedonia. For this purpose, part of the funds and property are to be available. The Administrative Court will consider the request and will decide for the grounds of using part of the funds or property of the person, group or entity. With the decision, the Administrative Court specifies the conditions of the part of the funds and property to be used. Then Administrative Court is obliged to inform the Committee / Directorate for the adopted decision. The Committee / Directorate notes the decision in the registry. It is also obliged to inform the international organization or a third country that for a specific person, group or entity partial use of funds is approved.

8. **Supervision of the implementation of the restrictive measures.** Supervising the implementation of the restrictive measures shall perform special teams composed of representatives from the Commission / Directorate, except when supervising financial restrictive measure implementation of financial restrictive measures, where a combined team from representatives of the Commission / DG and representatives of the Financial Intelligence Unit shall be formed. At the same time the Financial Intelligence Unit has an inspection for supervision of implementation of measures and activities for prevention of money laundering and terrorist financing over financial and nonfinancial institutions.

CONCLUSION

An important precondition is to have faith in the system of the collective security and participate together in the building of the system for its better functioning. The system for implementing restrictive measures is also an important precondition in building a system of collective security. This system should be effective. After analyzing over the manner of the implementation of restrictive measures in the country, we provide specific proposals in order to address the shortcomings.

Therefore, we suggest the establishment of a special committee who will be responsible for a procedure of introduction and abolition of restrictive measures, their implementation, coordination of implementation of restrictive measures, records keeping and other issues relating to restrictive measures. A novelty is the proposed preparation of an integrated list that shall include all entities for which the Government has introduced restrictive measures. The committee will manage the integrated list. It also suggests joining of the restrictive measures at the request of third countries in accordance with the recommendations by MONEYVAL and in accordance with international legislation, and opportunity for the Government on the proposal of the Committee and after the previously received justified knowledge that the person is a terrorist or involved in a terrorist organization, group or cell or finances terrorism, restrictive measures are to be introduced. In line with the international documents, the Republic of Macedonia with new proposals for new legislation will have an opportunity to propose persons of sanction lists established by the international organizations and proposes to third countries to introduce restrictive measures against certain

individuals, groups, organizations and entities which are terrorist, terrorist organization, financing of terrorism, etc.

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