

The sanctions adopted by the European Union against Syria

In the early spring of 2011, thousands of Syrians have staged protests in several cities, in order to contest the legitimacy of the dictatorial regime in power and demand an immediate transition to a more democratic political system. The people, inspired by a general sense of mistrust in the authorities and a deep sense of anger and frustration for decades of repression of their political and civil rights, have finally expressed their dissent through peaceful demonstrations. However, President Bashar al-Assad, who came to power in 2000 after three decades of rule by his father Hafez, has responded with a brutal repression, killing several protesters and imprisoning many others. In spite of the regime's reaction, the uprising has not ended. On the contrary, the conflict gradually morphed from popular protests to an armed rebellion after months of military sieges. Bashar al-Assad has continued to alternate the violent repression of protesters to inadequate concessions, becoming a less and less credible interlocutor for both internal oppositions and international actors.

In front of the Syrian crisis, the European Union has immediately condemned the violence perpetrated by the regime, exhorting the authorities to respond urgently to people's requests through an inclusive political dialogue and to start a clear and credible program of reforms. However, since the violence against the civilian population did not end, the European Union decided to adopt restrictive measures against Syria. In particular, the Council decided to adopt targeted sanctions against certain persons and entities belonging to or associated with the Syrian regime and therefore considered responsible, directly or indirectly, for the conduct of the State.

The purpose of this thesis is to analyse the system of restrictive measures adopted by the European Union against Syria in order to highlight whether the Syrian case presents some specific element with respect to the practice and the jurisprudence in the field of sanctions imposed by the European Union.

This thesis has been developed in the following way. In the first chapter, the position of the European Union concerning the situation in Syria has been analysed. Furthermore, an overview of restrictive measures adopted by the European Union against Syria has been provided and the characteristics of these sanctions have been highlighted. From a strictly juridical point of view, the question of the European Union's competence to adopt

restrictive measures has been debated.

In the second chapter, the issue concerning the protection of fundamental rights of persons or entities affected by targeted sanctions has been discussed. In particular, certain judgement of the General Court, delivered in response to actions brought by individuals and entities to denounce a violation of their fundamental rights, have been analysed.

In the third chapter, the adoption of exemptions from the restrictive measures has been examined. In fact, the European Union has the power to impose sanctions against persons or entities, as the freezing of funds and economic resources, but, at the same time, the Council can adopt some exemptions. Referring to the Syrian situation, it has been highlighted a particular exemption from the freezing of funds adopted by the Council in order to release the necessary funds to make payments on behalf of the Syrian Arab Republic to support the activities of the Organization for the Prohibition of Chemical Weapons for the decommissioning of Syrian chemical arsenal.

The restrictive measures adopted by the European Union against Syria are in continuity with the practice about sanctions. Although, in most cases, the European Union operates to give effect to United Nations Security Council resolutions, as happened against Libya, the practise about sanctions shows many other cases in which the European Union adopts restrictive measures independently, as occurred against Syria and, more recently, against Russia.

The opportunity to impose restrictive measures against third States is one of the instruments that the European Union has in order to promote the objectives of common foreign and security policy (CFSP), according to article 21 of the Treaty on European Union, including the maintenance of peace, the reinforcement of international security, the consolidation of democracy, the respect for humans rights and international law.

In particular, the European Union adopts restrictive measures in order to generate a change in policies or activities of the State, entities or persons to whom these sanctions are directed. To achieve this aim, the European Union can impose various restrictive measures, including political sanctions (such as diplomatic sanctions or the boycott of sporting events), commercial sanctions (such as the embargo on weapons), financial sanctions (such as the freezing of funds and economic resources of certain persons or entities) and restrictions on transports. Moreover, the European Union can impose visa and travel ban in order to prohibit certain persons from entering and passing within the

territory of the European Union.

In order to help Syrian population, the European Union adopted restrictive measures against the President Bashar al-Assad's regime for the purpose of persuade the government to put an end to the violent repressions of protesters. The sanctions adopted by the Council are included among the typical measures that are imposed to punish a certain state policy, such as the embargo on weapons and oil. In addition, the Council has adopted targeted sanctions against Syrian entities and individuals that are considered closely linked with the Syrian regime, such as the freezing of funds and economic resources and the travel ban. The targeted sanctions, also called smart sanctions, are frequently used in order to damage only certain persons or entities and protect the civilian population from the negative consequences that may result from the application of generalized and indiscriminate measures.

The targeted sanction are capable to compromise the fundamental rights of persons and entities, therefore the adoption procedure of these sanctions must be accompanied by adequate guarantees for the protection of their fundamental rights, in accordance with article 6 of the Treaty on European Union. In particular, the Council has to transmit to the persons and the entities affected by targeted sanctions the motivation of listing procedure. By this way, these persons and entities may ask the Council for reconsider its decision. Furthermore, they may contest the Council's decision in front of the European Court of Justice, in accordance with the article 275 of the Treaty on the Functioning of the European Union.

Every year, several persons and entities ask the General Court of the European Union for obtain the annulment of the Council's acts that contain restrictive measures, based on a violation of their fundamental rights. Even in the context of the restrictive measures taken by the European Union against Syria there have been several persons and entities who have contested Council's decisions imposing targeted sanctions against them. These persons and entities have denounced a violation of their rights of defence, in particular a violation of the right to effective judicial protection, and they have contested the validity of Council's motivation.

The judgements of the General Court of the European Union are situated in a position of substantial accordance with the jurisprudence on the protection of fundamental rights. In fact, the General Court of the European Union has frequently referenced considerations already expressed by the Court of Justice in several important judgements, primarily in

the judicial case *Kadi*.

In particular, in the judgement *Syrian Lebanese Commercial Bank SAL v. Council*, the General Court of the European Union reiterated the obligation for the Council to respect the fundamental rights of the subjects damaged by targeted sanctions, such as the right of defence and the right to effective judicial protection, according to article 6 of the Treaty on European Union. In effect, this article affirms that fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, constitute general principles of the European Union law.

In order to guarantee the respect for these rights, the General Court of the European Union also reiterated the obligation for the Council to notify the person or entity of the motivation behind the listing procedure, when the decision containing restrictive measures is taken or, at least, as soon as possible after that decision, indicating the specific and tangible reasons of that decision.

In the recent judgements *Alchaar v. Council* and *Hassan v. Council*, referring to what the Court of Justice affirmed in the legal case *Kadi II*, the General Court of the European Union reiterated that the judge of the European Union cannot merely establish the abstract verisimilitude of Council's motivation. On the contrary, the judge should confirm the validity of Council's reasons, based on the evidences that the Council has produced in front of the General Court of the European Union.

In conclusion, the judgements of the General Court of the European Union have reinforced a rich and complex jurisprudence, which has stated the obligation for the European institutions to guarantee the full protection of fundamental rights of persons and entities damaged by restrictive measures.

However, the system of restrictive measures adopted by the European Union against Syria also presents an important innovation, concerning the exemptions introduced by the Council to face an emergency that is the use of chemical weapons in Syria.

Following the chemical attack of 21 August 2013, the international community, until then uncertain and divided regarding the possibility to intervene in the Syrian conflict, has found the unanimity required to act. In fact, on 14 September 2013, the United States and Russia have reached an agreement about the destruction of Syrian chemical weapons and Putin has applied pressure to Bashar al-Assad in order to persuade him to collaborate. By this way, the international community has achieved a diplomatic solution to combat and

prevent the use of chemical weapons against the civilian population. In particular, the Security Council of the United Nations has adopted the Resolution 2118 (2013), which affirmed that the use of chemical weapons in Syria was a threat to peace and international security. By this resolution, the Security Council of the United Nations has decided to secure and destroy the Syrian chemical weapons, according to the Decision EC-M-33/Dec.1 of the Organization for the Prohibition of Chemical Weapons (OPCW).

According to the European Union's strategy on non-proliferation of weapons of mass destructions, the Council has decided to execute the United Nations Security Council Resolution 2118 (2013) through the introduction of several exemptions from the restrictive measures taken against Syria. In particular, the Council has decided to introduce in Decision 2013/255/CFSP, concerning restrictive measures against Syria, some exemptions enabling Member States to provide support to the activities undertaken by the Organization for the Prohibition of Chemical Weapons (OPCW) for the elimination of the chemical weapons in Syria, in accordance with paragraph 10 of the United Nation Security Council Resolution 2118 (2013).

Through the Decision 2013/760/CFSP, the Council has introduced an exemption from the embargo on weapons in order to permit to Member States to import or transport chemical weapons or related material from Syria. Furthermore, through the Decision 2014/74/CFSP, the Council has introduced an exemption from the asset freeze to allow the release of funds and economic resources of the Central Bank of Syria and other Syrian State-owned entities, in order to make payments on behalf of the Syrian Arab Republic to the Organization for the Prohibition of Chemical Weapons (OPCW) for activities related to the destruction of Syrian chemical weapons.

To conclude, from a juridical point of view, the restrictive measures taken by the European Union against Syria does not present any peculiarities with respect to the practice and the jurisprudence about sanctions. However, it has been possible to highlight a peculiarity represented by the introduction of specific exemptions from the restrictive measures taken against Syria, in order to support the activities of the UN-OPCW mission for the destruction of Syrian chemical weapons.

While the adoption of restrictive measures against Syria represents an action taken unilaterally by the European Union in a fragmented and hesitant international context, the introduction of several exemptions from sanctions represents the contribute of the

European Union to a multilateral strategy of intervention against the proliferation of chemical weapons, which is shared from the entire international community.

The difference between unilateral and multilateral action has conditioned the effect of restrictive measures taken by the European Union against Syria on the Syrian crisis. The sanctions adopted by the Council against Bashar al-Assad government has not given the hoped-for results because the regime, remained in power with the support of the army, continued its repressive actions against the population. In order to understand the failure of the restrictive measures adopted by the European Union against Syria, it should be taken into consideration the fact that the international community was fragmented and hesitant. In fact, only few States, such as the United States, decided to adopt sanctions against Syria while the United Nations Security Council was incapable to adopt a resolution imposing restrictive measure, according to chapter VII of the United Nations Charter.

On the contrary, after the intervention of the United Nations Security Council and the adoption of the Resolution 2118 (2013) against the use of chemical weapons, all the Member States participated in the destruction of the Syrian chemical weapons. Consequently, the activities of the Organization for the Prohibition of Chemical Weapons seems to have achieved the expected results. In fact, in spite of the difficulties, the 1th October 2014 the Director of the Organization for the Prohibition of Chemical Weapons announced the success of the joint mission UN-OPCW, in other words the complete destruction of chemical weapons of Bashar al-Assad's regime.

Despite this success, the Syrian crisis has not been resolved and it seems difficult to imagine a resolution in the near future. President Bashar al-Assad remains in power and, actually, it seems that the recent developments have reinforced its position. In fact, the extremist Islamic group called Isis (Islamic State of Iraq and Grater Syria), which fights against the Syrian regime but also against the other rebels to create a new Islamic State, represents a new threat for the international system.

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