

Judicial review of EU restrictive measures against individuals

Abstract

This thesis explores the topic of review conducted by the Court of Justice of the European Union (“CJEU”) of restrictive measures against individuals adopted by the Council of the EU (“Council”) within the EU’s Common Foreign and Security Policy (“CFSP”). These measures seek to achieve the EU’s objectives of international security, peace, or the rule of law, and encompass, for example, asset freezes, travel bans or trade restrictions. However, they come with the inevitable effect of limiting fundamental rights of the targeted individuals. The question addressed is therefore whether the manner and intensity of the CJEU’s review constitutes a sufficient safeguard of those rights. It is particularly relevant since the CFSP is distinct from other areas of EU policy by its significantly intergovernmental nature and the limited competences of the CJEU within its realms. Thus, when reviewing targeted sanctions, the CJEU is faced with a unique challenge. On one hand, it must respect the EU’s policy choices and the constitutional restraints placed on its judicial powers over them, and on the other, it must ensure that sufficient protection is provided to the fundamental rights of targeted persons.

The answer to that question is sought by a thorough analysis of the principles developed in the CJEU’s restrictive measures case-law. First, with respect to the question of how far the CJEU’s limited jurisdiction stems, and, therefore, what means of effective judicial protection targeted individuals have at their disposal. The action for annulment is addressed, as well as preliminary rulings, actions for damages and applications for interim measures. Second, with respect to the standard applied by the CJEU in the review of the restrictive measures’ legality, specifically what requirements are placed onto the Council when deciding whether a specific individual will be targeted. And third, with respect to the balancing conducted by the CJEU between the objectives of the restrictive measures imposed and specific fundamental rights.

Key Words: restrictive measures, sanctions, EU Common Foreign and Security Policy, Court of Justice of the European Union, EU law, fundamental rights