



September 2012

## IRELAND

**1. Which are the procedures for the incorporation of Security Council resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations, or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case law?**

The manner of Ireland's incorporation of Security Council resolutions imposing sanctions is shaped by its membership of the European Union (EU).

The EU implements UN Security Council sanctions by adopting "restrictive measures" in the form of Council Decisions and, where necessary, Council Regulations and Commission Regulations. Depending on the type of sanctions imposed, Decisions and Regulations may be implemented in Ireland either administratively or by secondary legislation.

The following paragraphs outline the manner in which different types of sanctions are implemented in Ireland through secondary legislation and administrative action.

### ***Trade and exports (including arms embargoes)***

Trade sanctions are implemented in Ireland by the Minister for Jobs, Enterprise and Innovation under the authority of section 3 of the European Communities Act 1972 (EC Act), which is a general provision that grants all ministers of state the power to enact such regulations as are necessary to give binding effect to acts adopted by EU institutions.

Sanctions on exports can also be implemented under the more specific authority of the Control of Exports Act 2008 (COE Act). The COE Act empowers the Minister for Jobs, Enterprise and Innovation to make orders for the control of brokering activities; exports of goods and technology; and technical assistance.

The administration and enforcement of sanctions relating to trade is coordinated by the Department of Jobs, Enterprise and Innovation.

### ***Immigration, customs and travel***

Sanctions relating to the movement of people and goods are generally implemented in Ireland by administrative action. State agents directly apply many Council Decisions imposing restrictions on the movement of persons and goods.

The Garda (Police) National Immigration Bureau maintains a database that includes information on individuals subject to travel sanctions, and enforces those sanctions against individuals seeking to leave or enter the State (Irish immigration law allows for a non-national to be refused leave to land in the State where his entry into or presence in the State would pose a threat to national security or would be contrary to public policy). The Department of Foreign Affairs and Trade and the Department of Justice and Equality similarly enforce sanctions in the context of visa applications. The Customs Service and the Revenue Commissioners apply sanctions on the movement of goods.

Certain aspects of travel sanctions, such as restrictions on air operations, require implementation by

secondary legislation. This is made by the Minister for Transport, Tourism and Sport under section 3 of the EC Act.

### ***Finance and economic assets***

Financial and economic sanctions are implemented in Ireland by secondary legislation made under the authority of a number of different statutory provisions.

Section 4 of the Financial Transfers Act 1992 (FT Act) empowers the Minister for Finance to make orders restricting “financial transfers between the State and other countries”.

Section 42 of the Criminal Justice (Terrorist Offences) Act 2005 (CJ Act 2005) further empowers the Minister for Finance to make regulations to give full effect to acts “adopted by the institutions of the European Communities ... that, in the opinion of the Minister for Finance, are for the purpose of, or will contribute to, combating terrorism through the adoption of specific restrictive measures, directed at persons, groups or entities, for the identification, detection, freezing or seizure of their assets of any kind”.

Financial and economic sanctions imposed by Council Regulations may also be implemented under the more general authority of section 3 of the EC Act.

Section 4 of the FT Act, section 42 of the CJ Act 2005 and section 3 of the EC Act have been used extensively in implementing financial sanctions. Secondary legislation made under these statutory provisions empowers the Central Bank of Ireland to administer and enforce financial sanctions in collaboration with relevant government departments and public bodies.

### ***Legal problems and case law***

The relevant Irish case law is dealt with in the response to question 6 below.

#### **2. Does the choice depend on the content and the legal nature of the Security Council resolution?**

Yes, the means of implementation depends on the nature of the sanctions – see the answer to question 1.

#### **3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?**

EU Council Regulations implementing UN sanctions remain in force and require normative action to be repealed, if the Security Council does not renew them (see the contributions to CAHDI by the EU). Irish secondary legislation implementing Council Regulations mirrors the time periods set out in those regulations. If a Council Regulation sets no time period or expiration date, the corresponding Irish implementing measure will similarly be for an indefinite period, and a specific Irish law measure will be required to revoke the implementing measure.

#### **4. When a Security Council resolution imposing an export embargo provides for exceptions while not establishing a committee to authorise such exceptions, does the incorporation act appoint a national authority which is competent to authorise export?**

EU Council Regulations implementing UN export embargoes generally provide that national authorities of the Member States are competent to authorise exceptions to the embargoes. The Member States nominate one or more such authorities and details of the authorities are provided in websites that are listed in annexes to the Council Regulations. In Ireland the secondary legislation

implementing the regulations may elaborate on the role of the relevant competent authority. The Irish competent authority for export embargoes is the Export Licensing Unit within the Department of Jobs, Enterprise and Innovation.

**5. Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?**

Decisions of UN Sanctions Committees that change the sanctions regime are implemented at EU level through the adoption of appropriate legal measures. Where a Security Council resolution provides that certain decisions can only be taken by a UN Sanctions Committee, the corresponding EU Council Regulation is drafted accordingly, for example by empowering the European Commission to adopt further regulations amending the original regulation in order to implement decisions of the Sanctions Committee. Such amendments are implemented at national level in Ireland through secondary legislation and administrative action in accordance with the procedures outlined above in the answer to question 1.

**6. Have there been cases where the act incorporating sanctions in the domestic legal order was challenged for being in violation of human rights? For example, have national courts assumed jurisdiction in cases where sanctions are challenged by individuals affected by sanctions?**

There have been two significant cases in Ireland, one of which is ongoing before the Irish and EU courts.

*Bosphorus Hava Yollari Turizem Ve Ticaret Anonim Sirketi v Minister for Transport, Energy and Communications, Ireland and the Attorney General*

This case related to Security Council Resolution 820/1993, which was implemented at EU level by Council Regulation (EC) No 990/93 and prohibited the export to or importation from the Federal Republic of Yugoslavia (Serbia and Montenegro) of any commodities or products. This regulation was implemented in Ireland by the European Communities (Prohibition of Trade with the Federal Republic of Yugoslavia (Serbia and Montenegro)) Regulations 1993. The Minister for Transport, Energy and Communications was designated as the competent authority for the purposes of Article 8 of the Council Regulation, which provided that "all vessels ... and aircraft in which a majority or controlling interest is held by a person or undertaking in or operating from the Federal Republic of Yugoslavia ... shall be impounded by the competent authorities of the Member States".

In April 1993 an aircraft operated by the applicant Turkish company, *Bosphorus Hava*, arrived in Dublin Airport for maintenance. The aircraft was registered with the Turkish Ministry of Transport and Communications General Directorate of Civil Aviation and according to the relevant certificates was owned by Yugoslav Airlines (JAT) and operated by the applicant. By a lease agreement made in 1992, JAT leased two aircraft to the applicant for a period of 48 months in return for a deposit for each aircraft and a monthly rental. The lease expressly provided that ownership stayed with the lessor, JAT. Subsequent to delivery, the applicant had complete control of the aircraft and the cabin and flight crew were employees of the applicant.

While the aircraft was at Dublin Airport the Minister for Transport, Energy and Communications ordered that it be impounded pursuant to Council Regulation (EC) 990/93. The Minister had been advised by the UN Sanctions Committee that the aircraft fell within the terms of Security Council Resolution 820/1993. In the High Court the applicant sought a declaration that the aircraft did not come within the terms of Article 8 of the Council Regulation and that the Minister was not empowered to impound the aircraft. The Court found that the relevant interest of the Yugoslav undertaking in the asset was the possession or the right to enjoy control or regulate the use of the asset, rather than the right to income derived from it. As the majority and controlling interest in the aircraft was held by the

applicant alone, the High Court held that the Minister had not been empowered to impound the aircraft. Following this decision, in a subsequent case it was held that the Minister was required to compensate the applicant for the delay in releasing the aircraft.<sup>1</sup>

On appeal the Supreme Court referred a question under the then Article 177 of the EEC Treaty to the European Court of Justice on whether the applicant's aircraft was covered by the Council Regulation. The Court ruled that it was and that the regulation had been correctly applied by the Irish authorities.<sup>2</sup> The Court also rejected the applicant's argument that such an interpretation would infringe its fundamental rights, in particular its right to peaceful enjoyment of its property and its freedom to pursue a commercial activity, and the principle of proportionality. The Court concluded that, as compared with the fundamental interest of the international community that the regulation sought to pursue, the impounding of the aircraft could not be regarded as inappropriate or disproportionate.

The applicant also brought a case before the European Court of Human Rights, claiming that Ireland had violated its right to peaceful enjoyment of its possessions under Article 1 of Protocol No. 1 of the European Convention on Human Rights. The Court found that the impoundment of the aircraft did not give rise to such violation.<sup>3</sup>

#### *Chafiq Ben Mohamed al Ayadi v Minister for Foreign Affairs, Ireland and the Attorney General*

In 2010 Mr Ayadi, an Irish resident, brought judicial review proceedings against the Minister for Foreign Affairs, Ireland and the Attorney General challenging the implementation of the UN Al-Qaida sanctions regime against him in Ireland. Although his name was removed from the Al-Qaida Sanctions List on 17 October 2011, Mr Ayadi has continued these proceedings. He is seeking damages and a declaration that the respondents acted in breach of principles of natural justice and fair procedures; violated his constitutional rights to the presumption of innocence, the protection of his good name from unjust attack, the protection of his property rights, his right to earn a living and his right to travel and violated his equivalent rights under the European Convention on Human Rights. This case is due to be heard by the Irish High Court on 8 November 2012.

Mr Ayadi has also brought proceedings in the EU courts that are ongoing (for details of these proceedings see the contributions to CAHDI by the EU). Ireland has applied for leave to intervene in Mr Ayadi's case against the European Commission

#### **7. Are there decisions of national courts or state practice concerning the relationship between sanctions towards individuals and human rights of these individuals?**

There have been two significant cases, which have been discussed in the answer to question 6.

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<sup>1</sup> *Bosphorus Hava Yollari Turizem Ve Ticaret Anonim Sirketi v Minister for Transport, Energy and Communications, Ireland and the Attorney General (No 2)* High Court, 22 January 1996.

<sup>2</sup> Case C-84/95 [1996] ECR I-3953.

<sup>3</sup> *Bosphorus Hava Yollari Turizem Ve Ticaret Anonim Sirketi v Ireland*, no. 45036/98, ECHR 2005-VI