



ARE SANCTIONS NECESSARY? INTERNATIONAL COMMUNITY IN THE FACE OF WAR IN UKRAINE

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ABSTRACT

Crisis resulting from the refusal to sign association agreement between the European Union and Ukraine by Viktor Yanukovich's government was one of the most unpredictable events in the history of this country. The agreement was to be a symbolic confirmation of the development direction of Ukraine: economic modernisation and political democratisation. As a result of lengthy discussions over the content and validity of the understanding, a crisis arose that turned into an armed conflict. International community did not approve of this situation and imposed sanctions on the Russian Federation. A number of financial sanctions was imposed, assets were frozen, acquisition of financial funds was limited, embargo was imposed on a number of industrial and energy products and the Russian authorities were forbidden to cross the EU borders. The aim of this article is to present the outcomes of the sanctions and assessment of their effectiveness. For this purpose, the most adequate method was used namely institutional and legal analysis. Therefore, the subject of the research is a set of selected legal sources (notes, framework documents, research reports) concerning the regulation of sanctions towards Russia.

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INTRODUCTION

Pro-European politics of Ukraine was the effort of both political elites related with the Party of Regions of Viktor Yanukovich, Ukrainian president since 2010, as well as his opponents originating from the Orange Revolution camp. Rejection of association agreement with the European Union met with disapproval of pro-Western public opinion and the majority of media. Partners participating in Eastern Partnership in Vilnius were also surprised. Only later it turned out that the Ukrainian authorities acted on the behalf of its neighbouring country. Independence Square, central square of Kiev witnessed bloody riots while on the Eastern border the war broke out.

The signing of association agreement between Ukraine and European Union which took place on 21 March 2014 was a ground-breaking event. It reflected, at least

symbolically, the scale of the victory of Ukrainian supporters of relations with Western Europe, including the modernisation trend. Although nowadays it is considered to be a text referring to distant future, not being as important as expected, it is still thought to be a symbolic renouncement of Soviet heritage of Ukraine.

After the tragic events of January and February of 2014 on the Independence Square, outrageous killings of civilians, in the context of death of thousands of soldiers, it is difficult to understand that it is the very association agreement that was a direct excuse to start the riots in the centre of Kiev. Even the most pessimistic scenario could not foresee these events. The very place where the participants of Orange Revolution gathered in December 2004, requesting the repeat of the second round of fraudulent presidential elections, ten years later was a place where the authorities opened fire on protesters. Independence Square became an arena of vicious fights, and a place where a new chapter in history of Ukrainian political identity shaping process has begun. EU had to pass a solidarity exam with a country whose nation shed blood for values being the basis of United Europe.

Russian Federation started an armed conflict. In the initial phase, it sent troops of the so-called Little green men to start diversion and exploratory actions. It participated in destabilisation of situation by providing weapons to pro-Russian separatists in the Eastern oblasts of Ukraine who later proclaimed the Donetsk People's Republic and Luhansk People's Republic. It stood behind the Annexation of Crimea where it organised the controversial referendum. It started a vicious armed conflict that cost lives of hundreds of people and changed lives of millions of civilians, forced to coexist on the territories affected by the conflict, into a tragedy. In response to aggression, European Union and the United States took modest diplomatic steps. These actions were considered as insufficient. One of the examples worth referring to is the regular breach of prohibition to allow persons covered by political and economic sanctions to enter the Schengen Area.

THE AIM AND RESEARCH METHOD

The aim of this article is systematisation of the sanctions understood as deliberate persuasion mechanism, that the EU Member States and U.S. government imposed on Russian Federation. The subject of these considerations is thus the analysis of selected political and economic elements of sanctions imposed by EU Member States and U.S. government with indicating key problem areas, preventing full efficiency of the used mechanisms of legal, political and economic character. It will be done by way of institutional and legal analysis.

Joanna Ryszka, a researcher dealing with the issues concerning the use of sanctions by the European Union stated that: "The most frequent reaction to threats occurring on international scale or a response to breaches of international law is imposing international sanctions on the entity responsible for these threats or breaches. These can be economic sanctions, being mainly bans or limitations concerning trading in various goods or services, bans or limitations concerning access to funds or other financial means, as well as bans or limitations in transport or forbidding certain persons to enter own territory (Ryszka, 2008, p. 11)."

As a result of the Ukrainian crisis, the abovementioned forms of sanctions were imposed. Political, financial and commercial limits were defined. A list of persons who were forbidden to enter the EU territory was drawn up. The reaction of the Russian Federation was clear and consistent: "Vladimir Putin referred to Ukrainian army as foreign NATO troops, and he defined the actions of the West as an attempt of geographic and political restraint towards Russia. Valentina Matviyenko, Chairman of the Federation Council, assured that all steps taken by Russia aim to achieve stabilisation in the region, as opposed to systematic military operations of Ukrainian soldiers, supported by U.S. government and Western European Countries (Kuczyńska-Zonik, 2016)."

Both sides of the conflict pointed to the breaches of international law by their opponents and accused one another of conflict escalation. International community, however, could not be manipulated and – at least officially – has taken clear action. Whether it was successful is another matter altogether.

EU SANCTIONS

The European Union for years now has been trying to promote the values being the foundations of its cultural heritage. It very often presents its identity in opposition to undemocratic systems violating human rights. It draws from Greek philosophy, Roman law and Christian axiology; the traditions of individuality and humanism; it expressly condemns violence and war. The speeches of EU leaders can be bombast in their style and very often their declarations are not aligned with the reality.

In November 2015, European Union issued information note concerning relations with EU and Ukraine, containing guarantees concerning help in maintaining integrity and sovereignty of Ukraine, strengthening the partnership relations, creating free trade area (DCFTA) guaranteeing political and financial support in the amount of 7 trillion Euro in the scope of reforms being carried out, liberalisation of visa movement and energy partnership (EEAS, 2015). It also paid attention to support Ukraine in the scope of armed conflict in Donbass and annexation of Crimea, establishment of Monitoring Mission (OSCE) and support for humanitarian missions (Berlińska, 2016, p. 69).

Sanctions were to change Russian politics towards Ukraine. Their use is considered by Russian authorities as enforcement of changes and modifications in the area of order characteristic for Russian Federation. Activities of the EU and U.S. are targeting Russian establishment. They also cover assets freezing and visa limitations for 149 persons and 37 entities due to their responsibility for actions undermining territorial integrity, sovereignty and independence of Ukraine, that were prolonged by European Council till 15 March 2016 (Europa.eu, 2015) as well as protests against electoral fraud in 2011 and its political consequences for the Russian opposition. Further succession of power is guaranteed by regular restrictions to individual liberties, marginalisation of opposition, pacification of civic and artistic activities, Internet censorship and promotion of the so-called *Ruskiy Mir*, traditional cultural model functioning as an opposition to liberal cultural model characteristic for the West (Berlińska, 2016, p. 70).

During a meeting on 17 March 2014 of European Council on Foreign Relations European ministers condemned the Crimean referendum and did not acknowledge its results. They imposed economic sanctions on 21 persons. They covered visa ban and assets freezing. During the Council meeting of 21 March, another 12 persons were added to the list, and during the meeting of 15 April – another 4. This meeting also decided to grant 1 billion Euro to support economic stabilisation and programme of structural reforms. A milestone in the EU politics was the use of sanction on goods import coming from Crimea and Sevastopol – subject that the Ukrainian authorities acknowledge the licence of goods origin. In time, the tourist movement was banned as well as investment development in Crimea and Sevastopol. Once the association agreement with Ukraine was signed, on 16 July 2014 new sanctions were imposed, covering, among others, suspension of new financing operations run by EIB in Russia (transactions closed between 1 August 2014 and 12 September 2016 when the financial decisions maturity time could not exceed 90 days, while for transactions closed after 12 September 2014 - 30 days). The EU programs for bilateral and regional cooperation with Russia were re-assessed, considering their cancellation. Moreover, on 25 July the restrictions in banking sector and goods trade were imposed and the dual-use technology and weapon transport before 1 August 2014 was limited (CID, 2014).

Within sectoral sanctions, the access to primary and secondary capital market for five major Russian financial institutions, three major energy companies and three companies of military industry was limited, and export and import of weapons, export of dual-use goods for military purposes or military users were banned. The access to technologies and services related to manufacture and deep level mining of oil was limited, at the same time introducing exceptions for nuclear and space sector. During the Council meeting of 10 March 2016, by way of Council decision the limiting sanctions towards persons and entities were prolonged till 15 September 2016 (Berlińska, 2016, p. 70).

U.S. SANCTIONS

United States of America also decided to impose sanctions. In the area of economic sanctions, sectoral sanctions are indicated, taking into account financial, energy and technological area. For the implementation of restrictions, their control and supervision both governmental administration sectors (Department of Treasury, Department of Energy and Department of State) as well as Agencies and Federal Bureau are responsible. One needs to remember, that as the Russian aggression towards Ukraine escalated, the sanctions changed. And so, the scope of imposed financial sanctions covered two thresholds of acceptable debt. First of them, concerning mainly bank sector, prohibits the entities to be in debt for a period longer than 30 days, while the other covering energy sector entities, prohibits debt period longer than 90 days (USaid.gov, 2015). However, the entities listed on the list of sanctions are not prohibited from performing other activities.

Long-term strategy of politics against the Vladimir Putin regime does not cover the mentioned sanctions as tool labile and dependent on social and political situation in Ukraine. It, however, has unquestionable impact on the economic stand in Russia. The principle of extraterritoriality dominates in the sanctions being imposed by the U.S.

Political sanctions are targeted to decision-makers and advisers of Vladimir Putin, financial, energy and army sector entities of Russia, which were to be engaged in the escalation of armed conflict in Ukraine. The sanctions cover also persons who by law can represent the mentioned entities or render agency services in the contacts between the entities. Perhaps one of the most painful blows by Barack Obama government was freezing of assets of persons related personally to Vladimir Putin and his administration. Some of the names include: Aleksey Pushkov, head of the Foreign Affairs Committee in the State Duma, Dmitry Kozak, deputy prime minister or Vyacheslav Volodin, deputy Chief of Staff of the Presidential Administration. The mutual discussion cycle concerning the economic cooperation between Russia and the U.S. was also slowed down. Office of Foreign Assets Control prepared a list of Russian political worthies who were covered by prohibition to enter the U.S. territory. Despite numerous guarantees of the final nature of the imposed political sanctions, some of them were not given legal effect. Parallel to the introduction of political sanctions towards Vladimir Putin government, the U.S. increased the humanitarian and economic aid. Among others, credit guarantees were granted amounting to USD 1 billion for the Ukrainian government for the ad-hoc objectives (Berlińska, 2016, p. 71).

Separate regulations concern military sector and dual-use technologies (weaponry and military equipment, weapons of mass destruction technologies etc.). Sanctions prohibiting trading in technologies without licences apply also to civil sector, for example in terms of the so-called supercomputers. The American system makes it possible to apply for a licence, it however does not guarantee that it will be maintained. A list of entities that can expect refusals in terms of licences granting was published (USaid.gov, 2015). The sanctions may concern new contracts; the contract concluded so far will be executed on the basis of the already applicable terms and conditions.

In case of energy sector, the sanctions imposed by the U.S. cover a list of goods that cannot be exported to Russia. Moreover, the ban covers also a list of services (excluding financial services), related to oil and gas extraction, rights to raw materials extraction and provision of vehicles or vessels that could be used for that purpose. However the right to deposits extractions were not taken away. The United States entered the European energy market, which is perceived as a step towards weakening Russian gas domination in the Old Continent (Treasury.gov, 2014).

Sanctions towards Russian Federation were criticised by American entrepreneurs' organisations. A campaign presenting economic consequences of the sanctions was funded. It is difficult to assess the influence of this environment on the final political effect, it, however, must be noted that political sympathies concern only one side of the conflict.

CONCLUSIONS

International community reacted to the Russian aggression towards Ukraine. It was decided to impose sanctions of different types: assets were frozen, the extraction of raw materials and use of funds was made more difficult, representatives of Russian authorities were banned from entering the EU. The conviction of the effectiveness of sanctions imposed on countries that breach basic cooperation rules and standards adopted by international community is still a source of controversy. The conflict of Russian Federation with Ukraine is a cause for reflection on the lack of effective tools

that could be used to stop tendencies aiming to solve conflict by way of military actions. Political and economic sanctions imposed by EU Member States were flagrantly violated. The media informed and alarmed the public opinion about this fact. Particular national interests dominated the broader perspective of common values for which the Ukrainian citizens fought and died for on Independence Square. The situation was even worse in the U.S., where the entrepreneurs' organisations fought against the sanctions. An informational campaign was financed aimed to abstain from prosecuting the Russian Federation. International community should start a detailed discussion on the effectiveness of sanctions in terms of shaping international relations. It will be, however, very difficult. From among major advisers of Donald Trump there are many supporters of close ties with Russia. Some of them were already dismissed as they were hiding their contacts with officers and politicians of this country. Columnists inform that just like it happened during the U.S. elections, also during the elections that will take place in 2017 in the EU Member States, Putin administration will support far right candidates who aim to disintegrate the European Union. Elections in Austria, Netherlands and in France were a proof of evident support towards nationalistic parties and candidates. Sanctions towards Russia will have long-term consequences. Are they necessary? An answer to this question is still open.

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