

Garantías judiciales y sanciones antiterroristas del Consejo de Seguridad de Naciones Unidas [Judicial Guarantees and UN Security Council Antiterrorist Sanctions]. By Asier GARRIDO MUÑOZ (Tirant lo Blanch, Valencia, 2013) 478 pp.

This work makes a significant contribution to the many pages that the European and international doctrine has dedicated to the Kadi saga, a group of scholars that the author qualifies as 'Radiologists' (p. 29) without perhaps noticing that with this book he becomes one of us! The monograph is the result of a PhD study directed by Prof. Gonzalez Alonso, whose good judgment and common sense patently imbue the work.

The summary is detailed and extensive, with short sections that reveal an ordered and Cartesian mentality. After an introductory chapter, there are eight additional chapters distributed in three parts: first, the theoretical and legal framework of Security Council (SC) sanctions; second, smart sanctions and jurisdictional protection in international law, and third, antiterrorist black lists in the European Union.

In the first part of the monograph, chapter one describes in detail the system of sanctions established by the SC to fight against Al Qaeda, its scope of application, the procedure to enter and exit the list of designated persons, the humanitarian derogations of the freezing measures and the role of the ombudsperson created to assist the SC sanctions committee. Chapter two analyses the concept of smart sanction and places it within the framework of the general theory of international sanctions. In particular, the author explores the nature of the SC's coercive powers under Chapter VII of the Charter and its limits.

The second part of this work begins with a study of the notion of due process in international law and its scope (Chapter three) to identify the parameters necessary to judge whether the SC has infringed the previously identified standards (Chapter four), and whether UN member states have thereby violated this fundamental right either directly or indirectly as a consequence of the implementation of SC sanctions (Chapter five).

The third part of the book is dedicated to the consequences in the European legal order of this system of sanctions. Chapter six deals with the legal regime established in the EU to implement sanctions, although the analysis also extends to the autonomous sanctions articulated by the EU to fight other terrorists groups on the basis of SC Resolution 1373 (2001). Chapters seven and eight constitute the culmination of the book and contain its main doctrinal contributions after the previous founding work. Chapter seven explains the author's vision on the state of the relationship between the European and the international legal order after the Kadi judgment of 2008. The book was published in 2013 and does not take into account the second Kadi judgment of the ECJ¹ that to a great extent closes the circle and definitively delimits the legal regime of implementation of Security Council sanctions against individual terrorists by the EU. This makes the title of the first section of Chapter

¹ Joined Cases C-584/10 P, C-593/10 P y C-595/10 P, Kadi, judgement of 18 July 2013, not yet reported.

VII 'Judicial epilogue of the debate: the General Court decision in Kadi (III), *Curia locuta, causa finita*' somewhat unfortunate when there were at the time three pending appeals before the ECJ. Most likely, this section should have been placed at the end of the Chapter and not preceding it. Nevertheless, after the rigorous and thorough analysis developed in the study, it is easy to deduce the position of the author after this last development and its conclusions are not damaged by this posterior case-law. Chapter eight basically reviews the guarantees that the right to an effective judicial protection (although the author does not use this expression –see pages 38-39) provides the designated persons under EU law after the Kadi saga and deals with some collateral effects as regards third parties.

With this work, Asier Garrido places himself within the mainstream of 'Radiologists' who defend the ECJ's approach in Kadi for protecting in practice the values² enshrined in the right to effective judicial protection without formally disavowing the SC's authority. He praises the 'pragmatic' perspective of the ECJ which has found the way 'to take into account the interests of the maintenance of peace while keeping the core values of the European order, without violating the primacy of the [UN] Charter' (p. 454).

I do not entirely share this statement because I think that paying a greater attention to international human rights law could have given stronger arguments to the ECJ to protect alleged terrorists rights, rather than reviewing ('full reviewing' as the Court says) the assessment of the Security Council to identify who constitutes a threat to international security on the basis of European human rights standards. By construing the enforcement of the sanctions as a problem of internal validity, the ECJ is just saying that a norm of secondary law has to respect European constitutional values enshrined in the constituent Treaties, without the primacy of a Security Council resolution at the international level thereby being called into question. However, from my point of view, this statement is not tenable when we are talking of the literal implementation of sanctions with no margin of discretion. When the ECJ takes refuge in a classic concept of effective judicial protection which is almost impossible to reconcile with the global context in which the Security Council operates, its well-meaning reasoning opens cracks in the coherence of the international legal system and de facto reduces to the minimum the relevance of Article 103 of the UN Charter.

There is another highly debatable issue in which Asier Garrido takes a firm and risky position when he affirms that the SC sanctions against Al Qaeda have a criminal and not an administrative nature (pages 108-113 and above all 229-244). This statement is based on solid doctrinal and jurisprudential research that takes into account the case-law of the UN Human Rights Committee and the European Court of Human Rights and it is very useful in depicting the legal framework in which these sanctions need to be analysed.

The potential violation of *jus cogens* by the SC is another contentious and delicate issue that the author addresses with rigor and skill. He first demonstrates that the right to judicial protection is imperative (even if not all its elements are) (pages 163-178). Later, he convincingly argues that *jus cogens* establishes a legal limit to the powers of the SC under the UN Charter (pages 201-211) and

² The author warns from the beginning that his approach is not only based on legal techniques but also on his interest in defending determinate values (p. 30).

submits that the SC has progressively violated jus cogens norms: 'more than a static determination of illegality, smart sanctions must be analysed as a process of perception and reform of the illegality of such sanctioning measures' (pages 225-251 and 451). Finally, the author hints cautiously that States could legally disobey the SC in such circumstances (pages 212-225).

In sum, we find in this book a rigorous analysis of the UN system of sanctions against Al Qaeda and its consequences under EU law. The catalogue of doctrinal and jurisprudential sources is complete. General concepts of international law are handled with solidity, prudence and without 'droit-de-l'hommeisme', a danger that the author explicitly tries to avoid. The measured and interesting conclusions of the study allow us to envisage a promising career for this young researcher who has reached the title of Kadiologist with honours.

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