

Countries under International Sanctions

Judicial Procedures and Remedies

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United Nations

Lists « Usama bin Laden, Al Qaida and Taliban », SC Resolution 1267 (2009)

In principle, no remedy

Office of the Ombudsperson, CS Resolution 1904 (2009)

In Kadi Judgment, Joined Cases C-402/05 P and C-415/05 P, the European Court overruled the judgments of the Court of First Instance and annulled Council Regulation 881/2002

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European Union

Decision of the Council (of Ministers) : political

Regulations*; Decisions of execution → lists, reviewed regularly

Judicial remedy : Application for Annulment before the TFI EU

Efficient legal means : lack of motivation of the decision

As of March 2012, some thirty separate restrictive measures regimes !

Steady stream of case law; March 2012 : 120 cases pending before ECJ !

*A *regulation* is a legislative act of the *European Union* that becomes immediately enforceable as *law* in all member states simultaneously

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Switzerland

International law cannot apply directly when it comes to criminal sanctions (ATF 128 117 c. 3b). Eg: Oil for Food

Art. 271 Crim Code : Prohibited acts for a Foreign State

Art. 272 Crim Code : Economic Intelligence Service

Countries under International Sanctions Judicial Procedures and Remedies

- Law on Embargoes , LEmb (946.231)
- Law on War Material, LFMG (514.51)
- Law on Control of Goods, LCB (eg: double civil and military use) (946.202)
- Law on Atomic Energy, LEA (732.0)
- Law on Customs (LD) (631.0)
- Law on Foreign Economic Measures (946.201)

Countries under International Sanctions Judicial Procedures and Remedies

- **946.206 Ordonnance du 7 août 1990 instituant des mesures économiques envers la République d'Irak (état au 29.03.2006)**

- | Chronologie | Date | Source |
|--------------------------------------|------------------|---------------------|
| Modifié par un autre acte législatif | 18 août 2005 | <u>RO 2005 4325</u> |
| Modifié par un autre acte législatif | 3 novembre 2004 | <u>RO 2004 4553</u> |
| Modifié par un autre acte législatif | 22 juin 2004 | <u>RO 2004 3125</u> |
| Modifié par un autre acte législatif | 18 mai 2004 | <u>RO 2004 2581</u> |
| Modifié par un autre acte législatif | 12 mai 2004 | <u>RO 2004 2455</u> |
| Modifié par un autre acte législatif | 20 avril 2004 | <u>RO 2004 2121</u> |
| Modifié par un autre acte législatif | 2 juillet 2003 | <u>RO 2003 2207</u> |
| Modifié par un autre acte législatif | 2 juillet 2003 | <u>RO 2003 2222</u> |
| Modifié par un autre acte législatif | 28 mai 2003 | <u>RO 2003 1887</u> |
| Modifié par un autre acte législatif | 9 avril 2003 | <u>RO 2003 864</u> |
| Modifié par un autre acte législatif | 30 octobre 2002 | <u>RO 2002 3959</u> |
| Modifié par un autre acte législatif | 3 juillet 2002 | <u>RO 2002 2138</u> |
| Modifié par un autre acte législatif | 17 novembre 1999 | <u>RO 2000 187</u> |
| Modifié par un autre acte législatif | 27 avril 1998 | <u>RO 1998 1487</u> |
| Modifié par un autre acte législatif | 26 juin 1996 | <u>RO 1996 1995</u> |
| Modifié par un autre acte législatif | 16 octobre 1991 | <u>RO 1991 2210</u> |
| Modifié par un autre acte législatif | 11 mars 1991 | <u>RO 1991 784</u> |
| Entrée en vigueur | 7 août 1990 | <u>RO 1990 1316</u> |

Countries under International Sanctions Judicial Procedures and Remedies

- **Procedure**
- Autorisation + control (eg. LFMG, LCB)
- Decisions (eg. lists);
- **judicial remedy : Fed. Admin. Tribunal**
- Sanctions: Federal Public Prosecutor / Federal Dept(s)

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Criminal Sanctions (Switzerland)

- **Some questions on the applicable criminal law**
- LEmb = Lex specialis and derogates from Crim Code
- But general part of Crim Code modified in 2007
- ... and LEmb dates back to 2002 (modified in 2004)

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Art. 333 Crim Code → General provisions of Crim Code applicable to secondary criminal law

- Principle of legality [art. 1 Crim Code] : formal law
- Ne bis in idem [art. 1 Crim Code]
- No retroactivity [art. 2 par. 1 Crim Code]
- Concept of intent, negligence [art. 12 Crim Code]
- Factual error [art.13 Crim Code], error on the law [art. 21 Crim Code]

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- Art. 12 LEmb (crimes committed within companies) refers to Admin Crim Code; compare with art. 102 Crim Code
- Art. 14 par. 1 LEmb Lemb (jurisdiction) refer to art. Admin Crim Code
- See also special laws, such as:
 - Law on War Material, LFMG (514.51)
 - Law on Control of Goods, LCB (eg: double civil and military use) (946.202)
 - Law on Atomic Energy, LEA (732.0)
 - Law on Customs (LD) (631.0)
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Counsel, defense and representation

USA:

Without a license provided by the US Department of Treasury, US citizens cannot act as counsel or experts on behalf of Iranian clients (providing legal services to them). See 31 CFR § 560.525(b) (Exportation of Certain Legal Services). There are exceptions to this general rule, e.g. with regard to proceedings before the US-Iran claims tribunal. See 31 CFR § 560.525(a). US citizens are however free to provide legal services to parties acting against Iranian citizens or the Iranian government. See 31 CFR § 560.510(c)(3).

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European Union

Based on a joint application of articles 1 (a to d)and 5 of EU Council Regulation 267/201, and although the said Regulation does not specifically prohibit such activities, it is arguable that counselling activities provided to certain companies or with respect to certain activities (the petrol, gas and nuclear industries and their financing) are to be excluded if they allow to circumvent the embargo

Legal Fees !

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