INTERNATIONAL SANCTIONS IN THE ROMANIAN LEGAL ORDER. A CRITICAL ASSESSMENT OF CONSTITUTIONAL COMPATIBILITY

DOI: 10.62938/rdc-2025-2-0004

Dr. Adrian COROBANĂ
Doctoral School of Law, Bucharest University of Economic Studies
Attorney-at-Law, Member of the Bucharest Bar
E-mail: corobana.adrian@gmail.com

Abstract

This article examines the legal regime of the implementation of international sanctions in Romania from the point of view of their compliance with conventional and constitutional standards of fundamental rights protection. The main objective of the study is to assess whether the current legislative framework manages to adequately reconcile Romania's international obligations with constitutional and conventional requirements.

As a methodology, the paper uses established methods in legal research for the interpretation and examination of relevant national legislation in the field of implementation of international sanctions (logical, grammatical, historical, teleological and comparative methods). In order to identify the main conventional standards applicable in the matter, the article carries out a jurisprudential analysis of the decisions of the European Court of Human Rights and the Court of Justice of the European Union.

The study concludes on significant normative deficiencies in the current regulatory framework, in particular the absence of effective procedural guarantees capable of ensuring the effective protection of fundamental rights.

Finally, the article offers de lege ferenda proposals aimed at aligning the legal regime of the implementation of international sanctions in Romania with the requirements derived from constitutional law and the jurisprudence of international courts, the study thus contributing both to the doctrinal debate and to the development of a democratic normative framework in the matter of the implementation of international sanctions at the national level.

Keywords: *international sanctions, implementation of international sanctions in national legislation, constitutional compliance, fundamental rights, Government Emergency Ordinance No. 202/2008.*

Introduction

Regarding international sanctions, legal doctrine[1] states that this notion, increasingly popular these days, is the subject of research in the fields of international law, political science and international economics, not to mention that it could also be a subject of constitutional law.

There are authors[2] who include the emergence and consolidation of the legal institution of international sanctions among the main developments of the post-1945 international law system. This means that international sanctions are increasingly used in the international practice of states. However, they cannot exist only in international law, where they are adopted, but must be implemented by states, through domestic legislation, otherwise they cannot be effective.

In the years 2000-2010, legal doctrine abounded in articles[3] and studies[4] that dealt with how international sanctions should be implemented in national legislation, but in the last ten years, legal doctrine has increasingly analyzed international economic sanctions and how they are adopted, focusing very little[5] on how these international sanctions are implemented in national legal systems, without an analysis of the compatibility of the legal regime for the implementation of international sanctions with constitutional standards.

---

[1] Andrea Charron, Clara Portela, Mirko Sossai, *Elgar Encyclopedia of International Sanctions*, Edward Elgar Publishing, Cheltenham (UK), 2025, p. 1.

[2] Adrian Năstase, Bogdan Aurescu, *Drept internațional public. Sinteze,* C.H.Beck, Bucharest (Romania), 2025, p. 6.

[3] In this sense, see a series of well-known articles: Clara Portela, *National implementation of United Nations sanctions: Towards fragmentation,* International Journal, Vol. 65, No. 1, UN sanctions (Winter 2009-10), pp. 13-30; Iain Cameron, *UN Targeted Sanctions, Legal Safeguards and the European Convention on Human Rights*, Nordic Journal of International Law, Vol. 72, 2003, pp. 159–214; Fredrik Stenhammar, *United Nations Targeted Sanctions, the International Rule of Law and the European Court of Justice's Judgment in Kadi and al-Barakaat*, Nordic Journal of International Law Vol. 79, 2010, pp. 113–140; Michael Bothe, *Security Council's Targeted Sanctions against Presumed Terrorists. The Need to Comply with Human Rights Standards*, Journal of International Criminal Justice, Volume 6, Issue 3, 2008, pp. 541-555; Thomas J. Biersteker, *Targeted sanctions and individual human rights,* International Journal: Canada's Journal of Global Policy Analysis, Volume 65, Issue 1, 2010, pp. 65-99; Machiko Kanetake, *The Interfaces between the National and International Rule of Law: The Case of UN Targeted Sanctions,* International Organizations Law Review, Volume 9, Issue 2, 2012, pp. 267–338;

[4] In this sense, see the long cited study of national implementation of Security Council sanctions resolutions which bring together the research results of 29 academics and experts: Vera Gowland-Debbas (editor), *National Implementation of United Nations Sanctions.* A Comparative Study, Martinus Nijhoff Publishers, Leiden/Boston, 2004.

[5] Just a few articles focus on the national implementation of international sanctions, in the last decade, such as: Elena Carpanelli, *Italian Practice in the Implementation of International Targeted Sanctions: Enhanced Protection or Additional Complexities?,* The Italian Yearbook of International Law Online, Volume 27, Issue 1, 2018, pp. 93–114; Radka Druláková, Štěpánka Zemanová, *Why the implementation of multilateral sanctions does (not)work: lessons learned from the Czech Republic, European Security,* Vol. 29, No. 4, 2020, pp. 524–544; Radka Druláková, Štěpánka Zemanová,

Domestic implementation in Andrea Charron, Clara Portela, Mirko Sossai (editors), "Elgar Encyclopedia of International Sanctions", Edward Elgar Publishing, Cheltenham (UK), 2025, pp. 177-180;

Starting from the premise that international sanctions must be implemented in national legislation in compliance with the requirements of the rule of law and respect for fundamental rights and freedoms, this article analyzes the legal regime of the implementation of international sanctions in Romania, providing a critical analysis of the current legislative framework, by identifying the main non-compliant aspects and offering de *lege ferenda* solutions to bring this regulatory framework into line with the jurisprudence of international courts on the matter.

Romania's international obligations to implement various sanctioning regimes adopted in international law and the constitutional requirements regarding the rule of law and respect for fundamental rights and freedoms create a tension between the two, with the Romanian state having to find legal formulas through which both obligations are respected. This issue is precisely the central thread of the analysis of this article, which attempts to cover the current doctrinal approaches that focus far too much on the compliance of international sanctions with international law, leaving almost unexplored the compliance of the legal regime of the implementation of international sanctions with constitutional law.

In this context, the paper represents an innovative doctrinal approach, as it transfers the object of analysis from the legitimacy of international sanctions in international law to the constitutionality of domestic legal norms in the matter of implementing international sanctions in the Romanian legal system. Methodologically, the article examines the main sources of law in the matter and the relevant case law of the European Court of Human Rights and the Court of Justice of the European Union.

In terms of the state of research, this article addresses a largely unexplored area of Romanian legal doctrine, offering one of the few – if not the only – systematic analysis of the legal regime governing the implementation of international sanctions in Romania, examined through the lens of constitutional law and the protection of fundamental rights.

The article is structured in several sections. After this introductory part, the first section presents the normative framework governing the implementation of international sanctions in Romania. The subsequent sections examine the constitutional requirements applicable to restrictive measures, with particular emphasis on legality, proportionality and access to an effective remedy and formulates a critical analysis of the current legal regime. The final section proposes concrete solutions de *lege ferenda*, aimed at increasing constitutional compliance and strengthening the protection of fundamental rights in the domestic implementation of international sanctions.

The present study draws on the author's doctoral dissertation, *"The Concept of Legal Sanction in International Law"*[6], while offering a revised, expanded, and critically

[6] The doctoral dissertation was publicly defended on 10 September 2025 at the Bucharest University of Economic Studies. The doctoral committee proposed the award of the PhD degree in Law with the qualification

refined analysis of the conclusions relating to the implementation of international sanctions in the Romanian legal order, with a particular focus on the compatibility of this legal regime with constitutional requirements.

1. Romanian normative framework governing the implementation of international sanctions

In Romania, the main normative act regulating the implementation of international sanctions is the Government Emergency Ordinance no. 202/2008 on the implementation of international sanctions approved by the Romanian Parliament through Law no. 217/2009, which entered into force on 8 December 2008.

As stated in the doctrine, the Government Emergency Ordinance no. 202/2008 has the character of a general law (*lex generalis*), creating the general framework for the implementation of international sanctions[7].

Emergency Ordinance no. 202/2008 was positively received by some authors in the doctrine, especially by those who found in practice some difficulties[8] in the procedure for implementing international sanctions regulated by Law no. 206/2005 on the implementation of international sanctions[9].

Considering that Law no. 206/2005 was extremely brief, in its only 9 (nine) articles not providing a precise regulation of the powers of the competent authorities in the application of international sanctions nor procedures regarding possible derogations from the international sanctions regime, O.U.G. no. 202/2008 repealed Law no. 206/2005.

So, the first aspect worth mentioning is the fact that an ordinary law was repealed by an emergency ordinance[10].

Government Emergency Ordinance No. 202/2008 on the implementation of international sanctions regulates the manner of application, at national level, of international sanctions established by:

1. resolutions of the United Nations Security Council or other acts adopted pursuant to art. 41 paragraph 1 of the United Nations Charter*;*

"very good". At the time of writing this article, the dissertation is undergoing the administrative review procedure provided for by the applicable legal framework before the National Council for the Attestation of Academic Titles, Diplomas and Certificates (CNATDCU).

[7] Daniel Ștefan Paraschiv, *Sistemul sancțiunilor în dreptul internațional public,* C.H.Beck, Bucharest, 2012, p. 304.

[8] For details see Ion Gâlea, *Adoptarea Legii nr. 206/2005 privind punerea în aplicare a unor sancțiuni internaționale. Evaluarea unor dificultăți de aplicare,* Romanian Journal of International Law, no. 2, January-June 2006, p. 116.

[9] Published in the Official Gazette, Part I no. 601 of July 12, 2005, in force from July 15, 2005 until December 7, 2008, being repealed and replaced by Emergency Ordinance 202/2008.

[10] Law No. 206/2005 had an ordinary character, according to the sheet of the normative act available on the official website of the Chamber of Deputies https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=6234, accessed on 22.12.2025.

2. regulations, decisions, common positions, joint actions and other legal instruments of the European Union;
3. legal acts of international organizations (non-binding international sanctions);
4. legal acts of other states (non-binding international sanctions);
5. unilateral decisions of Romania.

Therefore, we note that Government Emergency Ordinance (G.E.O.) no. 202/2008 delimits between two types of international sanctions: mandatory international sanctions (those adopted by the United Nations Security Council and those adopted by the European Union) provided for in art. 1 para. (1) of G.E.O. no. 202/2008 and non-mandatory international sanctions (adopted by other international organizations, adopted unilaterally by Romania or adopted by other states) provided for in art. 1 para. (2) of G.E.O. no. 202/2008.

This delimitation is obvious, since the legislator uses in art. 1 para. (2) of G.E.O no. 202/2008 the phrase *"international sanctions, which are not mandatory*", *per a contrario*, as we will demonstrate below, the international sanctions adopted by the United Nations Security Council and those adopted by the European Union, expressly mentioned in art. 1 para. (1) of G.E.O. no. 202/2008, are mandatory for the Romanian state.

Moreover, in a different article of the Government Emergency Ordinance no. 202/2008, it is expressly provided that the resolutions of the UN Security Council and the regulations, decisions and common positions of the European Union are *"binding in domestic law for all public authorities and institutions in Romania, as well as for Romanian natural or legal persons or those located on the territory of Romania"*[11], no domestic provision can be invoked to justify the non-implementation of these international sanctions adopted by the UN Security Council or the EU.

The binding nature of international sanctions adopted by the UN Security Council stems from Article 25 of the United Nations Charter, which provides that *"the Members of the United Nations agree to accept and carry out the decisions of the Security Council"*[12], an aspect also clarified by the International Court of Justice in one of its Advisory Opinions: *"the decisions (of the Security Council) are binding on all Member States of the United Nations, which are thus obliged to accept and carry them out"*[13].

As regards the binding nature of international sanctions adopted by the European Union on the 27 Member States of the European Union, this follows from the entire

[11] Art. 3 para. (1) of *Emergency Ordinance no. 202/2008 on the implementation of international sanctions.*

[12] Art. 25 of the Charter of the United Nations adopted on 26 June 1945 at the United Nations Conference in San Francisco (April-June 1945) and entered into force on 24 October 1945.

[13] Advisory Opinion of the International Court of Justice of 21 June 1971, *Legal Consequences For States Of The Continued Presence Of South Africa In Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970),* I.C.J. Reports 1971, p. 41, paragraph 115, available at the official address of the International Court of Justice https://www.icj-cij.org/sites/default/files/case-related/53/053-19710621-ADV-01-00-EN.pdf, accessed on 22.12.2025.

institutional mechanism regulated by the Treaty on European Union[14] and the Treaty on the Functioning of the European Union[15].

It is clear that international sanctions adopted unilaterally by the European Union are an aspect of foreign policy and, therefore, they are part of what is called the Common Foreign and Security Policy (CFSP). According to the provisions of art. 2 para. (4) of the Treaty on the Functioning of the European Union: *"The Union shall be competent, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy"*[16].

Therefore, the implementation of restrictive measures at EU level will always start with a CFSP decision, as follows from art. 29 of the Treaty on European Union: *"The Council shall adopt decisions defining the Union's position on a specific matter of a geographical or thematic nature. Member States shall ensure that their national policies are consistent with the Union's positions"*, which means that once adopted, they are binding on EU Member States.

Once the CFSP decision is adopted, depending on the exclusive competence of the European Union, international sanctions will be implemented either at EU level through a Regulation or directly by the Member States at national level. An example cited at length in the doctrine is travel bans, *"which do not fall within the legislative competence of the EU and are therefore implemented directly by the Member States"*[17]. Instead, in accordance with art. 215 of the Treaty on the Functioning of the European Union, those international economic sanctions that provide for the interruption or restriction, total or partial, of economic and financial relations fall under the competence of the EU.

Therefore, in most cases of adopting international sanctions, given that most international sanctions are of an economic and commercial nature, they will be implemented through the adoption of a Regulation by the European Parliament and the Council. As Professor Augustin Fuerea states, *"the regulation is the legal act through which the Union exercises its powers, especially the exclusive ones, at the level of the Member States"*[18].

However, in view of the provisions of art. 288 of the Treaty on the Functioning of the European Union, regulations have general applicability, being binding on all Member States and directly applicable in them. Moreover, according to the consistent case law of the European Union bodies, treaties and legal acts adopted by the EU have priority over the internal legislation of the Member States.

[14] Consolidated version published in Official Journal of the European Union C 202/1, pp. 1-47.

[15] Consolidated version published in Official Journal of the European Union C 202/1, pp. 47-335.

[16] Art. 2 paragraph (4) of the Treaty on the Functioning of the European Union.

[17] Richard Gordon, Michael Smyth, Tom Cornell, *Sanctions Law*, Hart Publishing, Oxford (UK), 2019, p. 38.

[18] Augustin Fuerea, *Dreptul Uniunii Europene – principii, acțiuni, libertăți*, Universul Juridic, Bucharest (Romania), 2016, p. 45.

For all these reasons, the international sanctions adopted by the European Union are mandatory to be implemented in Romania, which is why the Romanian legislator included them among the mandatory sanctions, along with those adopted by the UN Security Council.

As for non-mandatory international sanctions, they must fulfill the purposes set out in art. 2 letter a) of Government Emergency Ordinance no. 202/2008:

- maintaining international peace and security;
- preventing and combating terrorism;
- ensuring respect for human rights and fundamental freedoms;
- ensuring the development and consolidation of democracy and the rule of law;
- pursuing other purposes, in accordance with the objectives of the international community, international law and European Union law.

These sanctions, which are not adopted by the United Nations Security Council or the European Union, become binding in domestic law through the adoption of a regulatory act, which also establishes the necessary implementing measures, including the criminalization of their violation, where appropriate[19].

A shortcoming of the Government Emergency Ordinance no. 202/2008 is that it does not expressly provide what type of normative act must be issued in such a situation. This is of particular importance given the fact that in the matter of international sanctions, the reaction of the Romanian state is based on the realities of the international political environment, which requires urgent measures to be taken. The urgent nature is provided for in the Government Emergency Ordinance no. 202/2008 itself: national normative acts are drafted at the initiative of the Ministry of Foreign Affairs, being adopted in an emergency procedure[20].

Therefore, given the experience of the last 20 years, it is possible that such a normative act to be an emergency ordinance, and not an organic law, which may render the respective normative act unconstitutional. We consider that the only normative act that can be adopted in order to impose international sanctions on Romania, establish the necessary implementation measures and criminalize the violation of the unilateral sanctions regime is the organic law, since art. 115 para. (6) of the Romanian Constitution provides that emergency ordinances *"may not affect the rights, freedoms and duties provided for by the Constitution, electoral rights and may not concern measures for the forced transfer of assets into public ownership"*.

However, an emergency ordinance that establishes international sanctions that practically mean trade restrictions (economic freedom is affected), travel restrictions

[19] Art. 4 para. (4) of *Governmenet Emergency Ordinance no. 202/2008 on the implementation of international sanctions.*

[20] Art. 4 para. (5) of *Governmenet Emergency Ordinance no. 202/2008 on the implementation of international sanctions.*

(freedom of movement is affected) and the blocking of funds and economic resources, that is, *"preventing the use of economic resources to obtain funds, products or services in any way, including through sale, rental or mortgage"*[21] (private property rights are affected) violates art. 115 paragraph (6) of the Romanian Constitution by affecting several rights and freedoms named in the brackets of this paragraph.

Therefore, given that such a normative act would also criminalize acts of non-compliance with international sanctions, in accordance with art. 73 para. (3) letter h) of the Romanian Constitution, this normative act can only be an organic law.

At the same time, G.E.O. no. 202/2008 refers to and defines several types of international sanctions, depending on the field of activity in which it operates, the following types of international sanctions can be identified: 1. freezing of funds; 2. freezing of economic resources; 3. trade restrictions; 4. restrictions on operations with dual-use and military goods and technologies; 5. travel restrictions; 6. restrictions on transport and communications; 7. diplomatic sanctions; 8. sanctions in the technical-scientific, cultural or sporting fields.

2. Requirements regarding the respect of fundamental rights and freedoms in the matter of the implementation of international sanctions

The Romanian legislator has chosen not to incorporate in any way solutions to the criticisms of the Court of Justice of the European Union in the Kadi I and Kadi II cases or from the jurisprudence of the European Court of Human Rights.

The Romanian legislator faces a genuine normative dilemma when tasked with implementing international sanctions adopted by the UN Security Council. On the one hand, it is bound to give full and faithful effect to Security Council resolutions. On the other hand, it must also guarantee the protection of the fundamental rights and freedoms of individuals targeted by such sanctions, a duty arising from Romania's obligations under the European Convention on Human Rights.

Although it may initially appear that conflicts between international norms arising from the implementation of UN Security Council sanctions can be readily settled by relying on Article 103 of the UN Charter22, practice reveals that identifying a dependable and consistent resolution remains considerably more complex.

In this regard, the Judgment on the case of *Al-Jedda v. The United Kingdom*[23] offers an approach oriented towards respecting fundamental rights and freedoms

[21] Art. 2 lit. g) of *Government Emergency Ordinance no. 202/2008 on the implementation of international sanctions.*

[22] Article 103 of the Charter of the United Nations provides: *„In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".*

[23] Judgment of 7 July 2011 of the European Court of Human Rights, case *Al-jdedda v. Great Britain*, available online at https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-105612%22]}, accessed on 24.11.2025.

even in the situation of implementing international sanctions adopted by the UN Security Council.

Thus, in this case, the European Court of Human Rights did not accept the argument of the Government of United Kingdom according to which the applicability of Article 5 of the European Convention on Human Rights had been removed by the legal regime provided for by Resolution 1546 (2004) due to the application of Articles 25 and 103 of the UN Charter, the Court appealing not only to the purpose of the UN to ensure international peace and security, but also to the purpose of developing and encouraging respect for human rights and fundamental freedoms, the UN Security Council being obliged in accordance with Article 24 para. (2) of the United Nations Charter to take any decision in accordance with the purposes and principles of the United Nations.

Therefore, the Court considers that *„in interpreting its resolutions, there must be a presumption that the Security Council does not intend to impose any obligation on member States to breach fundamental principles of human rights and in the event of any ambiguity in the terms of a United Nations Security Council resolution, the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations. In the light of the United Nations' important role in promoting and encouraging respect for human rights, it is to be expected that clear and explicit language would be used were the Security Council to intend States to take particular measures which would conflict with their obligations under international human rights law"*[24]. For these general reasons, as well as in the circumstances of the case, the Court considered that *"neither Resolution 1546 nor any other United Nations Security Council resolution explicitly or implicitly required the United Kingdom to place an individual whom its authorities considered to constitute a risk to the security of Iraq in indefinite detention without charge. In these circumstances, in the absence of a binding obligation to use internment, there was no conflict between the United Kingdom's obligations under the Charter of the United Nations and its obligations under Article 5 § 1 of the Convention"*[25].

Moreover, as is evident from the Judgment in the case of *Nada v. Switzerland*[26], The Court embraces the conclusions of the International Law Commission, citing in para. 81 of the report entitled*"Fragmentation of international law: difficulties arising from the diversification and expansion of international law"*, according to which *"in international law, there is a strong presumption against normative conflict"*[27].

[24] *idem*, para. 102.

[25] *idem*, para. 109.

[26] Judgment of 12 September 2012 of the European Court of Human Rights, case Nada v. Switzerland, available online at https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22Nada%22],%22itemid%22:[%22001-113118%22]}, accessed on 24.11.2025.

[27] International Law Commission, *Report of the Study Group of the International Law Commission, Fragmentation Of International Law: Difficulties Arising From The Diversification And Expansion Of International Law*, Document A/CN.4/L.682, p. 25, parag. 37, available online at the official address of the United Nations https://documents.un.org/doc/undoc/ltd/g06/610/77/pdf/g0661077.pdf?token=PdDGci099DFX3eWq3x&fe=true, accessed on 24.11.2025.

Moreover, the Court concludes that *"when creating new international obligations, States are assumed not to derogate from their previous obligations and where a number of apparently contradictory instruments are simultaneously applicable, international case-law and academic opinion endeavour to construe them in such a way as to coordinate their effects and avoid any opposition between them. Two diverging commitments must therefore be harmonised as far as possible so that they produce effects that are fully in accordance with existing law"*[28].

Although, in the case of Nada v. Switzerland, the European Court of Human Rights accepted that the presumption that the UN Security Council would not impose any obligation that expressly violates fundamental rights and freedoms is removed by the provisions of Resolution 1390 (2002), which expressly required States to prevent entry into and transit through their territory, the Court also considered that neither the Resolution nor the UN Charter imposed on States a particular model for the implementation of resolutions adopted by the Security Council under Chapter VII, but instead allowed them free choice regarding the possible models for implementing those resolutions in the national legal order[29]. It therefore concluded that Switzerland had a limited, but existing, margin of appreciation in implementing the relevant binding resolutions[30].

Therefore, we note that states must demonstrate a certain flexibility in implementing international sanctions, always starting in their procedures from the principle of respecting fundamental rights and freedoms, which will be restricted only under the conditions of compliance with the European Convention on Human Rights or when these conditions are expressly removed as a result of art. 103 of the United Nations Charter only under the express conditions of the UN Security Council Resolutions. Even when the resolutions expressly provide for the removal of certain guarantees, states must not have an extreme interpretation, removing all guarantees, but must choose an implementation model as close as possible to the ECHR standard.

As the Court of Justice of the European Community also appreciated in the Kadi I case[31], the United Nations Charter imposes an obligation of result on states, with the means of implementing international sanctions belonging entirely to them.

In its Kadi II judgment, the Court of Justice of the European Union reiterated that fundamental rights–particularly the right to effective judicial protection–are embedded within the constitutional and overarching principles of EU law. The Court emphasized that such core rights cannot be set aside by international agreements, including the

[28] Judgment of 12 September 2012 of the European Court of Human Rights, case *Nada v. Switzerland*, para. 170.

[29] *Idem*, para. 176.

[30] *Idem*, para. 180.

[31] Judgment of the European Court of Justice of 3 September 2008, case *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council and Commission* (joined cases C-402/05 P and C-415/05 P), parag. 298, available online at https://curia.europa.eu/juris/document/document.jsf?docid=67611&doclang=RO, accessed on 10.12.2025.

UN Charter or any other treaty, even if those agreements continue to enjoy primacy in international law[32].

More specifically, the case law of European courts, along with a number of scholarly contributions addressing this issue, identifies the following requirements:

i) Providing reasons for listing

Sanctioned individuals must be given a clear and sufficiently detailed explanation of why they were placed on a sanctions list, so they can meaningfully challenge the measure. A full disclosure of the underlying evidence is not required, but the summary of reasons must be concrete enough to make a real defence possible.

As noted by the authors Juliane Kokott and Christoph Sobotta[33], problems can arise when a sanctions listing cannot rest entirely on open, non-classified sources and instead draws, even partially, on confidential intelligence. The European Court of Human Rights has repeatedly stressed that fair-trial guarantees lose their substance when detention decisions rely solely–or predominantly–on secret evidence, confirming that procedural fairness cannot truly survive where a loss of liberty is determined, to a decisive extent, by material the affected person is not allowed to see or challenge[34].

ii) right to respond after listing

The right to be heard becomes relevant only after a person is listed, and the reasons must be shared without unnecessary delay–ideally as soon as possible. Importantly, states are not required to wait for the end of criminal proceedings before proposing a listing[35].

iii) An impartial, individualized assessment

As argued by Kadelbach and Roth-Isigkeit[36], so long as procedural and substantive safeguards within the UN sanctions system continue to fall short of fundamental rights standards, domestic courts are not only entitled, but required, to conduct meaningful

[32] Judgment ot the Court of Justice of the European Union of the of 18 July 2013, case *Commission and other v. Kadi* (joined Cases C-584/10 P, C-593/10 P and C-595/10 P), available online at https://curia.europa.eu/juris/document/document.jsf;jsessionid=C877C52C82C4CE57B5B7EFB716624392?text=&docid=139745&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2706471, accessed on 10.12.2025.

[33] Juliane Kokott, Christoph Sobotta, *The Kadi Case – Constitutional Core Values and International Law – Finding the Balance?*, The European Journal of International Law, Vol. 23, no. 4, 2012, p. 1022.

[34] Judgment of 19 February 2009 of the European Court of Human Rights, case *A and others v. The United Kingdom*, available online at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-91403%22]}, accessed on 10.12.2025.

[35] Erika deWet, *From Kadi to Nada: Judicial Techniques Favouring Human Rights over United Nations Security Council Sanctions*, Chinese Journal of International Law, Volume 12, Issue 4, December 2013, p. 795.

[36] Stefan Kadelbach, David Roth-Isigkeit, *The Right to Invoke Rights as a Limit to Sovereignty – Security Interests, State of Emergency and Review of UN Sanctions by Domestic Courts under the European Convention on Human Rights*, 86 Nordic Journal of International Law, vol. 86, 2017, p. 289.

judicial review. The authors emphasize that where UN-level rights protection remains structurally inadequate, national courts must step in to fill the gap, exercising oversight to prevent sovereignty from eclipsing individual rights. In their view, judicial review by domestic courts remains indispensable for as long as the UN system fails to provide equivalent and effective rights-based remedies.

Domestic authorities are expected to examine the grounds for listing with care and neutrality. This review must consider the person's counter-arguments, any exonerating evidence they can provide, the actual length of time the sanctions have been in place – especially when they exceed ten years and can no longer be treated as temporary – and the real-world impact on the person, including age, health conditions, geographic isolation, ability to access medical care, and restrictions on movement.

iv) Proactive steps to request evidence from the UN

European courts have implicitly acknowledged that domestic institutions may rely on information held by UN member states or sanctions committees. Authorities implementing sanctions should actively seek such information when it is needed for a well-informed review. That said, the UN and listing states are not legally bound to disclose evidence. A lack of disclosure is not automatically a violation of the right to judicial protection, but if no competent authority – domestic or UN-level – can provide evidence to substantiate the reasons for listing, then the sanctions cannot reasonably be maintained.

v) A proportional and individualized application of humanitarian exemptions

In *Nada v. Switzerland* case, the European Court of Human Rights criticized Switzerland for interpreting humanitarian exceptions too narrowly. The Court stressed that these exemptions should be applied in a broader and more personalized way, based on the individual's real circumstances. The four-year delay by Switzerland in submitting its domestic findings to the UN sanctions body was deemed a failure of due diligence, one that unnecessarily prolonged the interference with the individual's private and family life under Article 8 of the Convention[37].

3. Critical Assessment of Government Emergency Ordinance No. 202/2008

As Romania's principal framework for implementing international sanctions, Government Emergency Ordinance (GEO) No. 202/2008 reveals a set of structural shortcomings, both from a constitutional standpoint and from the perspective of effective fundamental-rights protection. These deficiencies affect the legality, accessibility,

[37] Judgment of 12 September 2012 of the European Court of Human Rights, case *Nada v. Switzerland*, paras. 190-192.

predictability, and practical fairness of a legal regime that authorizes restrictive measures with significant consequences for individuals and private entities.

3.1. Constitutional concerns and legislative technique

First, Government Emergency Ordinance (GEO) No. 202/2008 raises serious concerns under Article 115 para. (6) of the Romanian Constitution, which prohibits the adoption of emergency ordinances where they affect fundamental rights and freedoms. The ordinance empowers public authorities to issue administrative acts – orders or decisions – capable of freezing funds and economic resources and of implementing international sanctions such as travel bans or commercial restrictions. By their very nature, these measures may interfere with constitutionally protected rights, including the right to property (through asset freezing), freedom of movement (through travel restrictions), and economic freedom (through trade-related sanctions). In this context, and in light of Article 53 of the Constitution on the conditions for restricting fundamental rights, the subject matter ought to be regulated by law adopted by Parliament, rather than by executive emergency legislation.

Second, the ordinance includes a provision that risks infringing the principle of non-retroactivity. Article 4 para. (7) provides that the relevant sanctioning instruments (UN Security Council resolutions, EU regulations or other EU legal instruments, and domestic measures implementing non-mandatory international sanctions) prevail over contracts concluded before or after the entry into force of those instruments, unless otherwise specified. Such a rule may undermine legal certainty and conflicts with Article 15 para. (2) of the Constitution, which enshrines the general principle that the law applies only for the future.

3.2. Publicity deficits: accessibility, foreseeability, and the reality of compliance

A third set of concerns relates to publicity and foreseeability. GEO No. 202/2008 imposes obligations on private actors and provides for administrative penalties for non-compliance with UN sanctions regimes. If compliance is to be realistic, the legal content of the applicable UN Security Council resolutions must be accessible to the persons subject to Romanian jurisdiction. However, Security Council resolutions are not officially published in Romanian at the international level. This makes official translation and publication in Romania essential, as a matter of legal certainty and basic fairness.

The ordinance does contain a mechanism in Article 5 para. (2), requiring publication in the Official Gazette within five days of adoption of the international act, through an order of the Minister of Foreign Affairs. The drafting, however, is imprecise: it does not articulate a robust, enforceable duty, nor does it attach any legal consequence to non-publication (whether by way of institutional liability, or by recognising a defence for private actors who could not reasonably have known the content of the applicable sanctions). Moreover, the practical implementation appears inconsistent and, at

times, selective: some resolutions are not translated and published at all, while others are published with significant delay. Equally problematic, publication does not systematically cover extensions of sanctions or the introduction of exceptions and derogations – although these elements may be decisive for ensuring proportionality and for avoiding unnecessary rights-interferences.

3.3. Overbroad liability shields

Further, the ordinance provides for an exceptionally broad exemption from liability for those who apply sanctions "in good faith". Given that good faith is generally presumed, this effectively shifts onto the affected person the burden of proving bad faith in order to obtain any form of accountability. In practice, this may become a *probatio diabolica* and may facilitate abuse, particularly in a domain where the administrative margin of appreciation is already wide and where information asymmetries are structurally significant.

3.4. Minimal safeguards and the risk of merely formal judicial review

The Romanian legislator has nowhere in the normative act provided procedures for the implementation of international sanctions, which would allow for the implementation of the UN Security Council resolutions in accordance with the *in concreto* observance of fundamental rights and freedoms, i.e. procedures through which the state would demonstrate that it *"did everything in its power to adapt the sanctions to the applicant's situation"*[38].

Finally, while the preamble refers to the protection of the rights and legitimate interests of persons affected by restrictive measures, GEO No. 202/2008 provides only schematic guarantees. Although administrative acts issued under the ordinance may be challenged in court through administrative litigation, this remedy risks remaining purely formal if domestic courts are limited to verifying whether a person appears on UN or EU lists, without any meaningful ability to examine the factual basis of a listing, the proportionality of the interference, or the individualised impact of the measure. In light of European jurisprudence confirming that asset freezes and travel bans can amount to serious interferences with Convention rights (including property and private/family life), the absence of robust domestic safeguards is particularly problematic. The Romanian framework does not adequately incorporate the lessons stemming from the Kadi line of case-law or from the ECtHR's insistence on effective judicial protection where international sanctions regimes provide insufficient remedies at UN level.

We observe how often in domestic legislation, the Romanian legislator uses general language in the matter of restricting fundamental rights and freedoms, wishing to leave the impression of their legislative consecration, without taking into account the

[38] Richard Gordon, Michael Smyth, Tom Cornell, *op. cit.*, p. 217.

fact that *"fundamental rights cannot be annulled through general words, this can only be done through express language or by necessary implication"*[39].

Conclusions and proposals de *lege ferenda*

Romania's legal infrastructure for enforcing international sanctions, primarily governed by Government Emergency Ordinance No. 202/2008, reflects a tension inherent to all national systems implementing UN Security Council restrictive regimes: the duty to ensure immediate and full compliance with international peace-and-security obligations, while simultaneously safeguarding the fundamental rights of listed individuals under constitutional and european standards.

Against this background, the Romanian system requires a set of reforms aimed at restoring constitutional coherence, ensuring legal certainty, and aligning implementation practice with fundamental-rights standards.

First, we appreciate that a new law – adopted by Parliament and capable of regulating sanctions-related contraventions and criminal offences – should replace the reliance on emergency executive legislation.

Second, we propose the creation of a National Register of International Sanctions, updated daily and searchable. The register should be managed by the Romanian Ministry of Foreign Affairs and interoperable with the websites of key institutions (including the National Bank, the tax administration, and the anti-money laundering authority). It should include not only initial UN Security Council resolutions, but also extensions, amendments, exceptions, and derogations. Accessibility and practical usability (search functions, structured data, and free access) should be treated as core legal guarantees, not merely administrative conveniences.

Third, we propose the replacement of the current inter-institutional council with a specialised governmental agency established to coordinate international sanctions implementation. A dedicated governmental agency with specialised civil servants should be established to coordinate sanctions implementation, develop coherent operational standards, communicate with relevant UN sanctions committees, and require institutional support from other public authorities. This would enhance administrative capacity, legal consistency, and accountability.

Fourth, in addition to adopting a framework normative act on the implementation of international sanctions in Romania, a distinct normative act should be adopted for each type of sanctioning regime. We appreciate that each sanctioning regime is unique, comprising particularities that we do not find in other sanctioning regimes, which is why the existence of only one framework normative act on the implementation of

[39] Judgment of 27 January 2010 delivered by the Supreme Court of Great Britain, case *Ahmed and Others v HM Treasury*, para. 75, available at https://www.supremecourt.uk/cases/docs/uksc-2009-0015-judgment-02-1.pdf, accessed on 15.12.2025.

international sanctions in Romania cannot create favorable legislative conditions for the creation of national mechanisms to ensure the fundamental rights and freedoms of persons subject to international sanctions. Therefore, we propose the adoption of normative acts in an emergency regime, which can be adapted to each individual situation in accordance with the rules on the respect of fundamental rights and freedoms.

Fifthly, the normative framework act regulating the implementation of international sanctions in Romania should contain express provisions regarding the implementation of national mechanisms to ensure the fundamental rights and freedoms of persons subject to international sanctions.

As we have shown at length, it emerges from the case law of the European Court of Human Rights that states must demonstrate a certain flexibility in implementing international sanctions, always starting in its procedures from the principle of respect for fundamental rights and freedoms, which will be restricted only under the conditions of compliance with the European Convention on Human Rights or when these conditions are expressly removed as a result of art. 103 of the Charter of the United Nations, only under the express conditions of the UN Security Council Resolutions. Even when the resolutions expressly provide for the removal of certain guarantees, states must not have an extreme interpretation, removing all guarantees, but must choose an implementation model as close as possible to the ECtHR standard. As the Court of Justice of the European Community also appreciated in the Kadi cases, the United Nations Charter imposes an obligation of result on states, the means of implementing international sanctions belonging entirely to them.

Therefore, it is necessary for Romanian legislation to provide for express procedures through which the state can demonstrate that it has done everything possible to adapt the sanctions to the applicant's situation, by creating institutional and even judicial mechanisms through which the particular situation of an applicant can be analyzed based on objective criteria by persons with an appearance of impartiality and independence.

BIBLIOGRAPHY

1. Biersteker, Thomas J. – *Targeted sanctions and individual human rights*, International Journal: Canada's Journal of Global Policy Analysis, 65(1), 2010.

2. Bothe, Michael – *Security Council's Targeted Sanctions against Presumed Terrorists. The Need to Comply with Human Rights Standards*, Journal of International Criminal Justice, 6(3), 2008.

3. Bothe, Michael – *Security Council's targeted sanctions against presumed terrorists: The need to comply with human rights standards*, Journal of International Criminal Justice, 6(3), 2008.

4. Carpanelli, Elena – *Italian Practice in the Implementation of International Targeted Sanctions: Enhanced Protection or Additional Complexities?*, The Italian Yearbook of International Law Online, 27(1), 2018.

5. Charron, Andrea; Portela, Clara; Sossai, Mirko (eds.) – *Elgar Encyclopedia of International Sanctions*, Edward Elgar Publishing, 2025.

6. Druláková, Radka; Zemanová, Štěpánka – *Why the implementation of multilateral sanctions does (not) work: lessons learned from the Czech Republic*, European Security, 29(4), 2020.

7. Gowlland-Debbas, Vera (eds.) – *National Implementation of United Nations Sanctions. A Comparative Study*, Martinus Nijhoff Publishers, 2004.

8. Gordon, Richard; Smyth, Michael; Cornell, Tom; Cornell, Tom (eds.) – *Sanctions Law*, Hart Publishing, 2019.

9. Gâlea, Ion – *Adoptarea Legii nr. 206/2005 privind punerea în aplicare a unor sancțiuni internaționale. Evaluarea unor dificultăți de aplicare*, Romanian Journal of International Law, 2, 2006.

10. Kadelbach, Stefan & Roth-Isigkeit, David – *The Right to Invoke Rights as a Limit to Sovereignty – Security Interests, State of Emergency and Review of UN Sanctions by Domestic Courts under the European Convention on Human Rights*, Nordic Journal of International Law, 86, 2017.

11. Kanetake, Machiko – *The Interfaces between the National and International Rule of Law: The Case of UN Targeted Sanctions*, International Organizations Law Review, 9(2), 2012.

12. Iain, Cameron – *UN Targeted Sanctions, Legal Safeguards and the European Convention on Human Rights*, Nordic Journal of International Law, 72, 2003.

13. Portela, Clara – *National implementation of United Nations sanctions: Towards fragmentation*, International Journal, 65(1), 2010.

14. Stenhammar, Fredrik – *United Nations Targeted Sanctions, the International Rule of Law and the ECJ's Judgment in Kadi and al-Barakaat*, Nordic Journal of International Law, 79, 2010.

15. Zemanová, Štěpánka & Druláková, Radka – *Why the implementation of multilateral sanctions does (not) work*, European Security, 29(4), 2020.

16. *Ahmed and Others v. HM Treasury* case, Judgment of 27 January 2010, Supreme Court of the United Kingdom.

17. *Nada v. Switzerland* case, Judgment of 12 September 2012, European Court of Human Rights.

18. *Al-Jeddah v. United Kingdom* case, Judgment of 7 July 2011, European Court of Human Rights.

19. *A and others v. United Kingdom* case, Judgment of 19 February 2009, European Court of Human Rights.

20. ICJ Advisory Opinion (Namibia), 21 June 1971, *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970)*, I.C.J. Reports 1971.

21. Charter of the United Nations.

22. Treaty on the Functioning of the European Union (TFEU)

23. Constitution of Romania

24. Government Emergency Ordinance No. 202/2008, on the implementation of international sanctions.

25. Law No. 206/2005, on the implementation of certain international sanctions.