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CZECHIA, ESTONIA AND THE EU – DIFFERENT APPROACHES TO RUSSIAN SANCTIONS POLICY WITH REGARD TO THE RIGHT TO PROPERTY

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Abstract. This article examines the legal frameworks for restricting the right to property due to international sanctions, focusing on the sanctions policies of the European Union, Czechia, and Estonia. The research aims to explore how these jurisdictions balance the public interest with the individual right to property in response to Russia's aggression against Ukraine. The principal results highlight the coordinated approach of the European Union, which emphasizes a balance between the public interest and the individual right to property as established in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. This article analyses the asset freezing and partial release mechanisms in the Czech legal framework, while the Estonian legal framework, especially after recent amendments to its International Sanctions Act, is noted for its use of sanctioned assets in prepayment for damages caused by the aggressor state. In conclusion, the author compares these different approaches within the boundaries of European and national constitutions and evaluates their strengths and weaknesses. This comparative analysis provides insight into current and proposed restrictions on the right to property within European sanctions and national legal frameworks, with the aim of contributing to the discussion on the constitutionality of certain sanction measures.

Keywords: sanctions, EU, right to property, freezing, confiscation

Introduction

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The objective of this article is to examine the legal frameworks for restricting the right to property due to international sanctions, with a focus on the sanctions policies of the European Union (EU), Czechia, and Estonia. The article aims to explore how these jurisdictions balance the public interest with the individual right to property in response to Russia's aggression against Ukraine.

The methods used in this article include a comparative legal analysis of the relevant legal frameworks and policies in Czechia, Estonia and the EU. The analysis involves the examination of legislative texts, legal principles, and recent amendments to assess and evaluate the practical implementation and constitutional implications of these sanctions.

Sanctions policy has evolved significantly over time, becoming a crucial tool in international relations. Historically, sanctions have been used to achieve economic, political, and military objectives, with notable examples dating back to ancient Greece (Zamarovský, 2016) and the Napoleonic era (Druláková & Zemanová, 2012). The modern use of sanctions, particularly by international organizations like the United Nations and the EU, has become more targeted over time, focusing on specific sectors and individuals (rather than states) who violate international law (Druláková & Zemanová, 2012).

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[2] *Unity in diversity*.

The EU has emerged as one of the key Western players in sanctions policy, particularly following Russia's annexation of Crimea in 2014 and subsequent invasion of Ukraine in 2022. The EU's coordinated approach to a united sanctions policy emphasizes a balance between the public interest and the individual right to property, as established in the European Convention on Human Rights (ECHR, 1950) and the Charter of Fundamental Rights of the EU (2000).

This article first provides a detailed analysis of the Czech legal framework on asset freezing and partial release before comparing it with the Estonian legal framework, which, following amendments, plans to use sanctioned assets in prepayment for damages caused by the aggressor state. Through this comparison, the article evaluates the strengths and weaknesses of these approaches and considers their alignment with broader European as well as national legal standards. This comparative analysis aims to contribute to the discussion on the constitutionality of these proposed solutions and provide insight into current and proposed restrictions on the right to property within sanctions imposed by the EU or its Member States.

1. EU sanctions policy

1.1. The emergence of the Common Foreign and Security Policy

The Maastricht Treaty, signed in 1992, marked a significant milestone in European integration, leading to the creation of the EU and the establishment of the Common Foreign and Security Policy (CFSP). The CFSP allows EU Member States to coordinate their foreign policies and make joint decisions, including sanctions, against third countries or entities. The EU uses the term *restrictive measures*, while the Czech legal framework generally uses the term *sanctions* (European Union External Action, 2023). For simplicity, the author will use the general term *sanctions* or *sanctions policy*.

1.2. The legal framework of EU sanctions policy

The legal framework of EU sanctions policy is enshrined in several founding documents, particularly the Treaty on EU (TEU) and the Treaty on the Functioning of the EU (TFEU). Article 29 of the TEU states that the EU Council adopts decisions defining the Union's approach to a specific geographical or thematic issue, and Member States must ensure that their national policies align with the Union's positions. This allows the EU Council to adopt decisions on imposing sanctions against the governments of non-EU countries, non-state entities, and other individuals.

The TFEU, particularly Article 215, provides the legal basis for implementing these decisions to ensure their uniform application across all Member States. This article states that if a decision adopted under Chapter 2 of Title V of the TEU provides for the interruption or reduction of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures.

Other EU institutions also play crucial roles in this process. The European Council sets the strategic directions and priorities of the Union in foreign policy and security. As mentioned, the EU Council adopts decisions on sanctions. The European Commission ensures the implementation of these decisions and monitors their compliance within national states. The European Parliament has a consultative role, meaning that it is informed of the measures taken and can provide feedback and recommendations (European Council, n.d.).

In addition to these bodies, the proposed measures are assessed and discussed by the relevant preparatory bodies of the Council, which may include: (i) the Council working group responsible for the geographical area in which the affected country is located (e.g., the Working Group on Eastern Europe and Central Asia for Ukraine or Belarus, the Mashreq/Maghreb Working Group for Syria); (ii) the Working Group of Foreign Relations Counsellors; (iii) if necessary, the Political and Security Committee, and (iv) the Committee of Permanent Representatives (COREPER II) (European Commission, 2024c).

1.3. The mechanism for adopting sanctions in the EU

Sanctions within the EU are adopted through a structured decision-making process requiring consensus among Member States. The EU Council acts unanimously on proposals from the High Representative of the Union for Foreign Affairs and Security Policy or Member States, as outlined in relevant legislation (e.g., Act on Restrictive Measures against Certain Serious Acts in International Relations, 2023, § 4 et seq.; discussed in section 2.3.1 of this paper).

The stages of adopting sanctions in the EU can be summarized as follows (European Council, n.d.):

(i) **Submission of proposal** – Stakeholders submit proposals to specialized council working groups (e.g., COEST for Eastern Europe).
(ii) **Adoption of decision** – The EU Council adopts sanctions unanimously. This is followed by the EU Council regulation establishing the legal framework for implementation.
(iii) **Implementation and enforcement** – The implementation and enforcement of sanctions is primarily the responsibility of Member States.
(iv) **Notification and review** – Subjects of sanctions are informed of these measures individually by letter, or through a notice published in the Official Journal of the EU. All restrictive measures are regularly reviewed.
(v) **Legal protection** – Subjects affected by sanctions can request that the EU Council review the decision. They can also challenge the EU Council's decision under Articles 275 and 263 TFEU.

1.4. Types of sanctions imposed by the EU

EU sanctions fall into three main categories (European Commission, 2024c):

(i) **Economic sanctions:** Measures such as trade embargoes and financial restrictions targeting the economic activities of a country.
(ii) **Targeted sanctions:** Actions such as asset freezes and travel bans aimed at individuals and entities violating international law.
(iii) **Sectoral sanctions:** Restrictions on specific economic sectors (e.g., energy, technology) to hinder industrial and economic capabilities.

1.5. EU sanctions regimes against the Russian Federation

The EU has imposed extensive sanctions on Russia in response to the annexation of Crimea in 2014, the non-implementation of the Minsk agreements, and aggression against Ukraine since 2022 (Global Sanctions, n.d.). Fourteen packages of sanctions have been adopted, targeting approximately 1,800 individuals and entities through asset freezes, travel bans, and bans on the export and import of goods such as technology, energy, aviation, dual-use items, and industrial goods (Council Regulation (EU) No. 833/2014, 2014).

It can be argued that a unified legal framework has been adopted at the EU level, setting goals that Member States must achieve in enforcing these sanctions (e.g., banning the issuance of permits for movement and residence to certain persons or freezing assets). Individual states are then given the space to either: (i) be more proactive, like Estonia; (ii) enforce the adopted sanctions within national constitutional limits, like Czechia; or (iii) conduct a more independent sanctions policy that may not be as strict by blocking or postponing certain important decisions made at the EU level, like Hungary (Euronews, 2024).

Current sanctions measures adopted at the EU level can be categorized as follows (EU Sanctions Map, n.d.):

(i) **Sectoral sanctions**: The regulation on sectoral sanctions includes a wide range of measures aimed at restricting Russia's economic activities. Key measures include:
   a. **Export bans**: Arms, energy, dual-use goods, luxury goods, and industrial items.
   b. **Import bans**: Oil, coal, steel, seafood, wood, and other goods.
   c. **Service bans**: Technical, brokerage, and financing services.

d. **Broadcasting restrictions**: Bans on certain Russian media outlets.

(ii) **Targeted sanctions**: This regulation introduces targeted sanctions, including asset freezes and travel bans for subjects deemed responsible for undermining Ukraine's territorial integrity, sovereignty, and independence (Council Regulation (EU) No 269/2014, 2014). Key measures include:
   a. **Asset freezes/travel bans**: Subjects undermining Ukraine's sovereignty.
   b. **Sanctions on key subjects**.

(iii) **Sanctions related to Crimea and Sevastopol**: The regulation on Crimea and Sevastopol includes, among other things (Council Regulation (EU) No 692/2014):
   a. A ban on importing goods originating from Crimea or Sevastopol into the EU.
   b. A ban on providing financing, financial assistance, insurance, and reinsurance related to the import of goods originating from Crimea or Sevastopol.

(iv) **Sanctions related to some Ukrainian territories**: This regulation includes, among other things (Council Regulation (EU) 2022/263):
   a. A ban on importing goods originating from Russian-controlled areas in Ukraine, e.g., Donetsk, Kherson, Luhansk, and Zaporizhzhia.
   b. A ban on providing financing, financial assistance, insurance, and reinsurance related to the import of goods originating from these areas.

(v) **Human rights-related sanctions**: This regulation includes, among other things (Council Regulation (EU) 2024/1485, 2024):
   a. **Asset freezes/Export controls**: Targeting individuals involved in human rights violations and repression in the Russian Federation.

It is important to note that Council Regulations (EU) No. 833/2014 and No. 269/2014 represent the legal foundation for these measures, which are designed to weaken the Russian economy and deter further aggression while supporting efforts for peaceful conflict resolution.

2. Restricting the right to property through sanctions policy

2.1. The nature of the right to property

The right to property represents one of the (if not the most) fundamental legal institutions (Fruthová & Marek, 2018). This right can be described as the legal dominion of a person (natural or legal, as well as the state) over a specific thing, which is direct and exclusive (Bohuslav, 2011). It is the strongest and most extensive real right, which operates against all other persons (*erga omnes*) (Bělovský, 2021). The right to property consists of several partial rights that together form its content: (i) *ius possidendi* – the right to hold the thing; (ii) *ius utendi et fruendi* – the right to use the thing and enjoy its fruits and benefits; (iii) *ius abutendi* – the right to change or destroy the thing; and (iv) *ius disponendi* – the right to dispose of the thing, which includes the right to sell, donate, exchange, bequeath, etc. (Skřejpek & Urfus, 1995).

To summarize, this right expresses the entitlement of subjects to own, use, and dispose of property at their discretion. It includes the right to possession, sale, lease, or transfer of property to another person (Bohuslav, 2011). Ownership can include both tangible things, such as real estate, vehicles, or land, and intangible things, such as patents, copyrights, or trademarks. The right to property is the basis for other legal fields, such as contract law, inheritance law, or intellectual property law (Kratochvíl, 2008).

The history of the right to property dates back to ancient civilizations, where land and property ownership was a key element of social and economic life (Kincl, 2007). Roman law distinguished between different types of ownership and provided legal tools for protecting the right to property (Fruthová & Marek, 2018). Over the centuries, the concept of the right to property evolved and became the foundation of modern legal systems worldwide. In the European (continental) legal environment, the regulation of the right to property closely follows the Roman regulation of the right to property.

In modern times, the right to property is still understood as a fundamental right, but it is limited by various public law regulations and obligations (Bohuslav, 2011). Its restriction from the perspective of sanctions law will be the subject of the following chapters.

2.2. Interference with the right to property by sanctions policy

One of the key aspects of the EU's sanctions policy towards the Russian Federation is the restriction of the right to property of subjects associated with or linked to the Russian Federation, whether through the freezing of assets located within the territory of EU Member States or their intended confiscation (European Commission, 2024c).

2.2.1. The protection of the right to property at the EU level

To address the freezing or deprivation of the right to property, it is first necessary to present the scope of its protection, which is contained in the founding or related treaties of the EU.

The protection of the right to property is enshrined through a dual framework: the Charter of Fundamental Rights of the European Union and the ECHR. The Charter is a legally binding document for both the institutions and Member States of the EU, while the ECHR operates within the broader framework of the Council of Europe, encompassing a set of 46 Member States. It is important to note that all EU Member States are also parties to the ECHR, creating a dual responsibility to uphold the principles of both documents. This relationship is reflected in Article 6(3) of the TEU, which states that "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law". This duality strengthens the protection of property rights across the EU, as Member States are bound by both instruments.

Article 17(1) of the ECHR explicitly states that:

> Everyone has the right to own, use, dispose of, and bequeath lawfully acquired possessions. No one can be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time. The use of property may be regulated by law insofar as is necessary for the general interest.

This legal provision is based on Article 1 of the Additional Protocol to the ECHR, which states that:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties (Council of Europe, 1952).

These provisions create a legal boundary protecting the right to property at the EU level, and ensure that any interference with these rights is carried out only under these specified conditions. This strengthens legal certainty and the protection of individuals and legal entities throughout the EU.

From the paragraphs above, several imperatives essential for assessing whether the restriction of the right to property is carried out in accordance with the provisions for its protection can be derived. Thus, deprivation of the right to property is permissible, but it can only occur based on the public interest, in cases and under conditions provided by law, and with fair compensation in a reasonable time. In the context of sanctions policy, related considerations regarding the confiscation of the right to property arise. If we applied these considerations to the frozen assets of the Russian Federation within the territory of EU Member States and simultaneously used the imperatives of Article 17 of the ECHR, could we conclude that it is possible to deprive the Russian Federation of its right to property? Could such a process be considered confiscation?

In the author's opinion, the answer is no. Fair compensation is a key element following expropriation (almost its culmination) according to Article 17 of the ECHR, which ensures that individuals' right to property is protected even in cases where property is taken in the public interest. This principle requires that anyone

deprived of their property receives financial compensation corresponding to the value of the expropriated property, thus preventing financial harm to the owner (although the compensation may not equal the value of the property). Providing fair compensation ensures legal certainty, strengthens individuals' trust in the rule of law and state institutions, and protects individual rights by balancing the public interest with the protection of private property. Compensation must be adequate and provided in a reasonable time, ensuring that the expropriation process is not only legal but also fair and humane. It should also be noted that the notion of a reasonable time cannot be taken for granted, as will be discussed in the following chapters.

If we compare the legal regulation of expropriation with that of confiscation, the latter does not include the element of compensation. Confiscation is carried out without compensation, and often serves as a criminal sanction. A historical example of confiscation is the seizure of nobles' property during the French Revolution (Doyle, 2003). In 1792, a series of decrees were adopted that allowed the confiscation of the property of emigrants and enemies of the revolution without any compensation. This act was motivated by political and ideological reasons and led to the extensive redistribution of property in favour of the state and revolutionary forces. Therefore, the question arises as to whether the current political establishment will resort to adopting ad hoc norms serving to distort the legal order to allow confiscation despite the imperative of fair compensation in a reasonable time expressed in Article 17 of the ECHR.

Hypothetically, Article 17 of the ECHR could also be amended, but it is questionable whether such an amendment (i) would be accepted by the creator (the Council of Europe) of the ECHR, and (ii) would be accepted by the courts applying the ECHR. In this context, it is worth mentioning the judgment of the Czech Constitutional Court of 25 June 2002, file no. Pl. ÚS 36/01, one of the key ideas of which can be expressed as follows: the achieved level of protection of human rights and freedoms must not be reduced (Ústavní soud, 2002). The Constitutional Court emphasized in this judgment that the constitutional maxim according to Article 9(2)[3] of the Constitution has consequences not only for the constitutional legislator, but also for the Constitutional Court. The impermissibility of changing the essential requirement of maintaining a democratic state governed by the rule of law also contains an instruction to the Constitutional Court that no amendment to the Constitution can be interpreted in such a way that its consequence would involve a reduction in the already achieved procedural level of protection of fundamental rights and freedoms. This principle is crucial to ensuring that any legislative changes do not result in weakening the protection of fundamental rights and freedoms, which is in line with the principle of the rule of law and the protection of human rights.

At the common European level, a similar conclusion can be found in the judgment of the European Court of Human Rights in the case of *Soering v. the United Kingdom* (1989), which, among other things, established that states must not reduce the achieved level of human rights protection by allowing extradition to countries where the person would face a real risk of inhuman or degrading treatment. This principle ensures that states adhere to their obligations and do not endanger the achieved level of human rights protection (i.e., by extraditing a citizen to a country applying the death penalty).

The potential introduction of the confiscation of individuals' property without compensation would thus not be possible under the current legal framework, or it would face challenges in a potential review.

2.2.2. The use of proceeds from frozen assets owned by the Russian Federation – a forerunner to confiscation?

After Russia's invasion of Ukraine in 2022, the EU, in cooperation with international partners, decided to freeze the assets and reserves of the Russian Central Bank (CBR) held in the jurisdictions of EU Member States. These measures include a ban on any transactions related to the management of these reserves and assets, leading to their freezing (Reuters, 2024).

In February 2024, the EU Council adopted decisions and regulations clarifying the obligations of central securities depositories (CSDs) holding CBR assets and reserves. CSDs must separately record extraordinary cash balances resulting from EU restrictive measures and must also separately record corresponding income.

[3] For non-Czech readers, the author also cites the relevant provision of the Czech Constitution, namely Article 9(2), which states: "Changing the essential elements of a democratic state governed by the rule of law is inadmissible".

CSDs are prohibited from disposing of net profits from these assets. This decision lays the groundwork for a possible financial contribution to the EU budget, which would be obtained from these net profits and used to support Ukraine and its reconstruction.

In February 2024, negotiators of the European Parliament and the EU Council reached an agreement on the establishment of the so-called Ukraine Facility, meaning a package of €50 billion to support the recovery and modernization of Ukraine from 2024 to 2027 (European Commission, 2024a). This package includes €33 billion in loans and €17 billion in grants. The agreement emphasizes that Russia must bear full responsibility and pay for the damages caused by its aggression against Ukraine. The text of the agreement also highlights the importance of cooperation with international allies in achieving this goal, including the use of immobilized Russian assets to support Ukraine's recovery.

In July 2024, the EU announced the first transfer of €1.5 billion from the proceeds of immobilized Russian assets to support Ukraine (European Commission, 2024b). These extraordinary revenues were generated by EU CSDs and held by CSDs from immobilized Russian state assets. This step represents a significant milestone in the EU's efforts and a step towards using the assets of one state to rebuild another state.

The above example of using frozen CBR assets can serve as an exemplary case of restricting the right to property of a foreign state (the Russian Federation) adopted at the EU level. This measure was carried out exclusively based on a Council regulation that sets rules for managing immobilized assets. Currently, these rules apply only to Euroclear Belgium, as only this CSD holds CBR reserves and assets exceeding €1 million (European Commission, 2024b). The regulation stipulates that only CSDs meeting this condition are required to separate extraordinary income and report it to the Commission. This ensures that only relevant entities are subject to these specific obligations, allowing for the effective management and use of these funds to support Ukraine.

The above regulations, however, impact other assets located within the territory of EU Member States. The following sections aim to compare the constitutional limits on freezing or directly confiscating assets in selected EU Member States and assess how states handle these limits when implementing sanctions policy.

2.3. Constitutional protection of the right to property in Czechia

The constitutional protection of the right to property in Czechia is enshrined in both the Constitution of Czechia and the Charter of Fundamental Rights and Freedoms (Charter).

The right to property is considered one of the fundamental human rights. In the preamble and Article 1 of the Constitution, Czechia is described as a "democratic state, based on respect for human rights". In the Charter, the right to property is regulated within the second chapter (human rights and fundamental freedoms). Article 11(1) of the Charter states that "everyone has the right to own property". This provision ensures the equality of all owners before the law. Article 11(4) of the Charter then states that "expropriation or compulsory restriction of the right to property is possible in the public interest, based on law, and for compensation". Expropriation is therefore possible only under strictly defined conditions, including the public interest, a legal basis, and compensation. The wording of the Czech Charter is similar to the wording of the ECHR, except for the reasonable time requirement. The principle expressed in Article 11(4) of the Charter is crucial for the protection of the right to property and ensures that interference with these rights is carried out fairly. This means that the state can interfere with an individual's right to property only if it is necessary for the public interest and if appropriate compensation is provided (alongside legal authorization).

In concluding, the author would also mention the decision of the Constitutional Court dated 28 July 2004, in which the Constitutional Court confirmed that the protection of the right to property includes protection against unauthorized interference, and emphasized that right to property must also be protected against interference by public authorities (Ústavní soud, 2004).

2.3.1. Restriction of the right to property by the sanctions policy of Czechia

The sanctions policy of Czechia is implemented through two legal regulations, specifically (i) the Act on the Implementation of International Sanctions (2006), and (ii) the Act on Restrictive Measures against Certain Serious Acts in International Relations (the Sanctions Act, 2023). The Sanctions Act can be described as a predominantly procedural norm adopted after the Russian aggression against Ukraine, as the existing Czech legal framework allowed for the implementation of sanctions measures adopted outside the republic (by the UN Security Council or the EU) in a rigid and insufficient manner. Therefore, the Czech Parliament adopted a separate Sanctions Act effective from 1 January 2023, which introduced a national sanctions list, institutionalized the proposal of entities for inclusion on the EU sanctions list, and established rules for adopting national restrictive measures against certain entities for conduct punishable under the relevant EU regulation.

The Act on the Implementation of International Sanctions sets out the procedures and powers of the Czech state in implementing international sanctions necessary for maintaining or restoring international peace and security, combating terrorism, complying with international law, protecting human rights and freedoms, and supporting democracy and the rule of law.

Regarding property, the third part of the Act on the Implementation of International Sanctions (§§ 10–11) regulates obligations concerning property subject to international sanctions, and the fourth part (§§ 12–13c) addresses the powers and duties of state authorities and the Czech National Bank. The Financial Analytical Office (the Authority) based in Prague is the competent authority responsible for implementing sanctions policy. The Authority issues general measures imposing restrictions, prohibitions, or orders involving asset freezes or other targeted financial sanctions.

The Authority may decide on the following concerning property subject to sanctions:

(i) restriction or prohibition of dealing with such property;
(ii) seizure of property for management by the Authority if it was not surrendered upon a previous request;
(iii) taking over property for state management purposes;
(iv) sale of property or part thereof, with the proceeds, after deducting management costs, belonging to the owner of the property;
(v) exceptional use of property for reasons of special consideration (maintenance, care, and other reasons specifically listed in the Act on the Implementation of International Sanctions);
(vi) decision to create a so-called protective barrier, which means limited exercise of the right to property. This barrier is created if the application of international sanctions prevents or significantly hinders the operation of a business enterprise. The Authority may decide to create a protective barrier upon request if it is permissible and does not undermine the purpose of international sanctions.

The Sanctions Act, together with the Act on the Implementation of International Sanctions, provides a framework for implementing sanctions measures, including mechanisms for asset freezes and granting exceptions, ensuring that these measures comply with Czechia's international obligations. As illustrated above, Czech legal regulations do not allow the deprivation of the right to property without further ado (i.e., the confiscation of property), as expropriation can only be carried out for compensation, and even sanctions regulations explicitly provide that the sale of property will not be an exception in this case.

Beyond the scope discussed in this section, the author adds that Article 39 of the Charter allows for the deprivation of the right to property under criminal law. This provision states that only the law can determine what constitutes a criminal act and the penalties, including other deprivations of rights or property, that can be imposed for committing such acts. The Constitutional Court, in its ruling Pl. ÚS 16/93, further emphasized that the legal system recognizes another form of forced deprivation of the right to property in the public interest and based on law, but without compensation (Ústavní soud, 1994). This is the institution of confiscation under criminal law, the admissibility of which is established precisely in Article 39 of the Charter.

Therefore, financial penalties and property forfeiture are not covered by Article 11(1) of the Charter, as they have a constitutional basis in Article 39. However, this does not mean that the affected person cannot seek

protection of the right to property under Article 11(1) of the Charter (Kühn et al., 2022). It is important to note that this represents a theoretical departure from the strict protection of the right to property, as this penalty (property forfeiture) is imposed by courts rather exceptionally (Kovačiková, 2019). Similar forms of this penalty can be found in other European countries, such as Germany or Russia (Adamov, 2023).

2.3.2. Reflections on how Czech sanctions policy restricts the right to property

Czechia's independent sanctions policy has undergone long and complex development, culminating in the adoption of a new Sanctions Act and a comprehensive amendment to the Act on the Implementation of International Sanctions after 2020. The Authority received new powers to manage frozen assets, including their sale. The proceeds from these assets, as well as the assets themselves during the freeze period, still belong to the sanctioned entity. Both international sanctions (by the UN Security Council or the EU) and new national sanctions can be imposed on them. However, confiscation of property is not possible due to the wording of Article 11(4) of the Charter, as compensation for confiscation goes against its purpose. The current government is also not in favour of adopting ad hoc legislation that would undermine one of the fundamental rights as guaranteed by the Charter to all residents without distinction – the right to property (Vláda České republiky, 2020).

A separate area for reflection is the issue of establishing so-called protective barriers under the Act on the Implementation of International Sanctions. There is no legal entitlement to the creation of these barriers. The author believes that this opens up a significant space for subjective differentiation by the Authority when granting these exceptions. Such an environment could be conducive to the emergence of corruption. The author attempted to establish the reasons for granting or not granting a protective barrier by submitting a request under the Czech Information Act on Free Access to Information. The request concerned two hotels with very similar names located approximately 50 km apart, both owned by different owners, and both subject to restrictive measures imposed by the EU. The Authority froze them as part of the assets of sanctioned persons. In one case, the Savoy Westend Hotel in Karlovy Vary was granted a protective barrier, while in the case of the Savoy Hotel in the spa town of Mariánské Lázně, no protective barrier was established, and the company operating the hotel went bankrupt.

The author leaves aside the question of why his nearly year-long legal dispute with the Authority, in which he successfully appealed three times against the Authority's negative decisions to the Ministry of Finance as the superior authority, has so far been unsuccessful. The Authority has long unlawfully refused to disclose its decisions and allow access to its decision-making process. This may indicate a lack of publicity and an element of public control over the Authority's activities. Such differentiation, however, has no place in a democratic legal state such as Czechia.

In the context of expert assessments of the current legal regulation on restricting the right to property, it is also necessary to mention the issue of flow-through accounts and ownership structure control. Flow-through accounts, often used to circumvent sanctions, allow the transfer of funds between different entities without leaving a clear trace of the actual owner or the origin of the money (Hayes, 2024). To make sanctions policy more effective, it is necessary to introduce stricter control of these accounts and ensure the transparency of financial flows. Discussions are ongoing on the issue of reversing the burden of proof, where the account owner must prove the legal acquisition of suspicious funds (Rekonstrukce státu, 2023). The Ministry of Justice is preparing a law that would allow for the prosecution of highly suspicious transactions even without knowledge of the source crime, and that would permit the potential seizure of money. Ownership structure control is another key measure. Many sanctioned entities use complex ownership structures to hide the actual owners and circumvent sanctions. In Czechia, there is a register of beneficial owners. However, this register is often not updated and is thus uninformative. Sanctions should ideally be tightened to motivate entities to update the register. Otherwise, this is just another bureaucratic tool of the state, which is an administrative burden for law-abiding Czech companies.

2.4. The protection of the right to property in Estonia

The right to property in Estonia is protected at both the constitutional and statutory levels. At the statutory level, the right to property is defined within the Property Act (1993), which sets out owners, forms of ownership, reasons for the creation of the right to property, the content and objects of the right to property, and the principles of exercising and protecting the right to property. The Estonian Constitution extensively addresses the protection of the right to property as follows:

> The property of every person is inviolable and equally protected. Property may be taken from the owner without his or her consent only in the public interest, in the cases and pursuant to a procedure provided by law, and for fair and immediate compensation. Everyone whose property has been taken from him or her without his or her consent has the right to bring an action in the courts to contest the taking of the property, the compensation, or the amount of the compensation. Everyone has the right to freedom from interference in possessing or using his or her property or making dispositions regarding the same. Limitations of this right are provided by law. Property may not be used in a manner that contravenes the public interest. On public interest grounds, the law may provide classes of property which may be acquired in Estonia only by citizens of Estonia, by certain categories of legal persons, by local authorities, or by the Estonian government. (§ 32)

The protection of property rights in Estonia is very similar to protection under the Czech Charter or the ECHR, which it closely resembles (thanks to the inclusion of the time aspect for compensation for the expropriation proceedings). The Estonian Constitution guarantees the inviolability and equal protection of property. The right to property can be restricted in accordance with the law, and under § 32 of the Estonian Constitution, property can be taken in the public interest if provided for by law and if fair compensation is paid immediately. One of these laws for the deprivation of the right to property is the Estonian International Sanctions Act.

2.4.1. Restriction of the right to property by the sanctions policy of Estonia

The right to property in Estonia can be restricted if such a restriction is carried out in accordance with the Estonian Constitution (for reference, see the previous paragraph). This wording may give the impression that confiscation of property is not possible.

The right to property can be restricted in Estonia based on the International Sanctions Act (2019), which was extensively amended on 17 June 2024. According to § 3(3) of the International Sanctions Act, international sanctions can "ban the entry of a subject of an international sanction into the state, restrict international trade and international transactions, and impose other prohibitions or obligations". These other prohibitions or restrictions include limitations on the right to property.

In this context, § 6 of the International Sanctions Act on liability is also interesting:

> A natural or legal person, entity, or body is not held liable for applying international sanctions if they acted in good faith. The application of international sanctions is in good faith if the person, entity, or body did not know and did not have to know that their action is not in compliance with the measures provided in the legislation imposing the international sanctions.

This amended wording of the law seems to prioritize good faith in implementing sanctions policy over the wording of the sanctions policy itself. It will be interesting to see what practical consequences this provision will have.

Key restrictions on the right to property include § 14 et seq. regarding financial sanctions. Measures aimed at restricting the financial and economic activities of entities listed on the sanctions list can include:

(i) the freezing of financial assets and economic resources – a measure ensuring that sanctioned entities cannot dispose of their financial assets and economic resources;

(ii) a ban on opening and using accounts (point 5 of the law) and a ban on transactions with securities (point 6 of the law), ensuring that sanctioned entities cannot use financial institutions to circumvent sanctions. The purpose here is to prevent money laundering and terrorist financing.

The author would like to focus primarily on § 29 et seq. of the International Sanctions Act on "using assets of subject of international sanctions as prepayment of compensation for damage". In this case, the state for the first time receives the possibility to deprive sanctioned entities of their right to property without further ado (i.e., without providing corresponding compensation as required by the constitution).

According to §§ 291–292 of the International Sanctions Act, the Estonian Ministry of Foreign Affairs can decide to use the financial or other assets of a subject of international sanctions as prepayment for compensation for damage caused to a foreign state. Financial assets are used without further ado; other assets are sold, and the proceeds go towards the reconstruction of the affected state. This mechanism is activated if the damage was caused by a violation of the prohibition on the use of armed force (under Article 2(4) of the UN Charter) or a violation of the rules of the law of war. The process begins with an administrative procedure during which the Ministry of Foreign Affairs verifies whether an unlawful act causing damage occurred and whether the affected state (or an international organization or compensation fund or other mechanism on behalf of the affected state) submitted a claim for compensation that was not satisfied within a reasonable time by the aggressor state. An agreement between Estonia and the affected state should be concluded regarding the use of such seized financial assets. If all conditions are met, including a request to use the assets as a prepayment for compensation, the Ministry of Foreign Affairs can decide to seize the assets. This decision must include detailed information about the owner of the assets, a description and the value of the assets, and justification for using the assets as a prepayment for compensation. The owner of the assets is informed of this decision electronically, by mail, or by other means, and if this is not possible, the decision is published in national newspapers and the official publication. If the owner of the assets challenges the decision in administrative court, the validity of the decision is suspended during the court proceedings. This mechanism ensures that the assets of subjects of international sanctions can be effectively used to compensate for damages caused by unlawful acts.

A subject whose assets can be seized can be either (i) an entity or a legal person established in this state that is under the control of the respective state or of which more than 50% is owned by that state and which has financially or materially supported the commission of the unlawful act, or (ii) a natural or legal person whose connection or contribution to the commission of an unlawful act has been identified and proven sufficiently. The decision to use the assets for the reconstruction of the affected state is preceded by a non-public administrative procedure by the Estonian state.

This amendment to the law is an important step in sanctions policy and an ingenious solution for seizing the assets of the aggressor state and its affiliated persons for their war crimes and refusal to pay reparations.

2.4.2. Reflections on how Estonian sanctions policy restricts the right to property and its comparison with the Czech legal framework

In comparing these two jurisdictions, it is necessary to reflect on the amendment to the International Sanctions Act, which, among other things, states that in exceptional circumstances the interests of the asset owner may outweigh the need to implement the sanction measure of asset seizure for reconstruction reparations. These exceptional circumstances, however, are not specified, which can lead to ambiguities and the inconsistent application of the International Sanctions Act, similarly to the situation with the Czech Act on the Implementation of International Sanctions and the approval of protective barriers. It is also necessary to point out that during the legislative process in the Estonian parliament, a significant change occurred, where the original proposal of the amendment suggested that the sanction measure of asset seizure would be decided by an administrative court, while an amendment in parliament adopted a change that specified that the seizure and subsequent sale of assets would be decided by the Ministry of Foreign Affairs (Riigikogu, 2024). Administrative proceedings conducted by the Ministry of Foreign Affairs can be abused for political purposes, whereas proceedings conducted by administrative courts would inspire more trust in the impartiality of decision-making. A lack of independence and transparency in this process can lead to unfair asset seizures. The amendment also

does not address the protection of the rights of third parties who may be affected by the asset seizure, such as creditors or co-owners who may be negatively impacted by the forced sale or seizure of assets.

When comparing the Czech and Estonian legal regulations for implementing sanctions measures, it can be stated that § 14 of the International Sanctions Act provides a legal framework for restricting the financial activities of sanctioned entities by allowing the closure of bank accounts. The International Sanctions Act goes far beyond the Czech legal framework. In the Czech legal environment, the bet was made that banks, as regulated financial institutions, would regulate the opening and closing of bank accounts through their own autonomous regulatory rules. In his legal practice, the author has encountered situations where, although these autonomous rules may have good intentions, their implementation can deprive bank accounts of entities that are not subject to sanctions measures. Affected persons have practically no chance to legally fight or protest against the perceived unjustified closure of accounts. A bank, as a private law entity, does not have to comply with everyone in opening a bank account or maintaining it for an indefinite period. If a bank account is not opened or if the bank decides to close it, the weaker party (the client) has practically no means through which to disagree with and defend against this decision. However, in the 21st century, the existence of a bank account is essential not only for legal persons, but also for individuals. In Czechia, for example, logging into a specialized government portal (*datové schránky*) can be done through a bank account, which is the most widespread method. By not opening a bank account or closing it, legal and natural persons can lose one of the easiest ways to communicate with the state and other private law entities with established data boxes. If the regulation of bank accounts was introduced within the legislation of the Czech sanctions, it would ensure the possibility of review, as it would be a form of administrative decision (in the case of the International Sanctions Act, see § 14).

In a potential review of the constitutionality of this amendment, it is necessary to assess whether it will be found unconstitutional for violating:

- **(i)** **the right to own property** (i.e., the right to property) under Protocol No. 1 to the ECHR, which states that everyone has the right to the peaceful enjoyment of their possessions. Any restriction of this right must be lawful, legitimate, and proportionate. The absence of compensation for seized assets may violate this right, and it will also be necessary to assess the attribution of alleged violations to persons under point (ii) below, i.e., natural and legal persons;
- **(ii)** **the right to a fair trial**, which is guaranteed under Article 6 of the ECHR (i.e., the insufficient protection of the rights of asset owners affected by the sale after the proceedings at the Estonian Ministry of Foreign Affairs may thus violate this right);
- **(iii)** **the proportionality of the sanction** of deprivation of the right to property, where, according to the case law of the European Court of Human Rights, any restriction of rights must be proportionate. While the proportionality of asset seizure for legal entities controlled by the Russian state may seem relatively acceptable and worthy of approval, the mere alleged attribution of acts to natural and legal persons may not be considered proportionate.

Concerns regarding the constitutionality of the adopted International Sanctions Act have already been raised (News ERR, 2024a, 2024b).

Conclusion

The Czech Charter, the Estonian Constitution, and the ECHR do not allow for the deprivation of the right to property of sanctioned entities without further ado. In all affected cases, these constitutional documents require compensation for the deprivation of the right to property. However, providing compensation would sharply contradict the purpose of confiscation. Nevertheless, there are growing discussions and ongoing attempts to constitutionally implement the confiscation of certain assets, which are often already frozen. The first attempts in this regard can be seen at both the European level (see the seizure of proceeds from frozen assets) and in legislative activities in the field of sanctions policy in the case of the amendment to the International Sanctions Act.

Czechia, Estonia and the EU have different approaches to asset confiscation within the framework of sanctions policy, although all three jurisdictions are based on similar fundamental principles of the right to property

protection. The EU establishes a union-wide framework for sanctions measures through regulations that are directly binding on Member States. These regulations are then implemented by the states and brought to life. Measures from these regulations include asset freezes and financial sanctions aimed at restricting the economic activities of sanctioned entities.

Czechia implements sanctions measures through asset freezes, always emphasizing that this freezing is temporary. Estonia, on the other hand, adopted an amendment to the International Sanctions Act, which allows the use of the assets of sanctioned entities as prepayment for compensation for damage caused by unlawful acts, representing a stricter approach to asset confiscation. However, this mechanism may raise questions about the constitutionality and proportionality of the right to property protection, especially in the context of the case law of the ECHR. For instance, in *Hentrich v. France* (1995), the ECHR highlighted that interferences with property rights must strike a fair balance between the general interest and the individual's rights. Although this case did not involve sanctions, it underscores the necessity of proportionality when state actions limit property rights. Applying this reasoning to sanctions, one could argue that measures must be precisely tailored to achieve their aims without placing an excessive burden on individuals. This tension aligns with the judicial principle articulated by the ECHR in *J. A. Pye (Oxford) Ltd v. United Kingdom* (2007), which underscores that property rights, while not absolute, require careful balancing against collective objectives to avoid disproportionate outcomes. In conclusion, the author can state that while the Czech and European approaches emphasize the protection of the right to property and the provision of compensation, the Estonian approach represents an innovative but potentially controversial solution in the field of sanctions policy. Time will tell how well this bold solution pays off.

To address the research problem, the following recommendations can be made:

- Firstly, the EU Member States should harmonize their legal standards for sanctions across the EU in order to ensure consistency and fairness in sanction policy (i.e., the application of sanctions).
- Secondly, it is essential to enhance transparency and accountability in the implementation of sanctions policy by providing clear guidelines for the use of protective barriers and mechanisms to prevent their misuse, amongst other measures.
- Lastly, judicial review mechanisms should be strengthened to ensure that sanctions policy complies with constitutional and human rights standards. This should include providing affected parties with effective legal remedies.

These recommendations aim to improve the implementation and effectiveness of sanctions policies while ensuring the protection of the right to property and adherence to legal standards.

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