

The Court of Justice of the European Union: The New World Court?

Introduction

The International Court of Justice (ICJ) is often referred to as the “World Court” due to its broad competence to adjudicate international legal disputes. While the ICJ has not yet directly addressed the legality of unilateral economic sanctions,¹ a recent ruling by the Court of Justice of the European Union (CJEU) delivered on June 22, 2021, raises the prospect of a new legal avenue to contest their legality. In its judgment *Venezuela v. Council*, the CJEU recognized that non-EU member states have standing before EU courts. This means that non-member states may challenge the legality of unilateral economic sanctions adopted by the EU. The Court’s decision is groundbreaking because it opens the door for third countries to resolve disputes with the EU before the CJEU. More broadly, it also questions the traditional monopoly of the ICJ on adjudicating international legal disputes. This *Insight* summarizes the litigation to date and the opinions of other EU member states and the CJEU’s Advocate General.

The Sanctions of the European Union against Venezuela

The origins of the case date back to November 13, 2017, when the EU adopted sanctions (typically called “restrictive measures”) against Venezuela, given the continued deterioration of democracy, the rule of law, and human rights in the country. To this end, the Council of the European Union (comprised of national ministers from the 27 member states) adopted Decision (CFSP) 2017/2074, which bans the export of arms or any other equipment that might be used for intentional repression—surveillance equipment, technology, software. The decision also froze the funds of certain natural persons. The same day the Council also adopted Regulation (EU) 2017/2063, which prohibits any

natural or legal person, entity, or body from providing technical or financial assistance to Venezuela and other services related to the use of certain goods and technology of military use.

Under international law, economic sanctions may only be imposed by the Security Council under Chapter VII of the United Nations Charter when the Council determines there is a threat to or breach of the international peace or an act of aggression. To date, the Security Council has not adopted any such sanctions against Venezuela. However, as an international organization that is not a member of the United Nations, the EU is not so bound.² On the contrary, Article 215 of the Treaty on the Functioning of the European Union (TFEU) enables the Council to interrupt or reduce economic and financial relations with third countries. This being so, the EU may adopt autonomous sanctions to enforce its values (including democracy, human rights, and the rule of law) without determining the existence of a breach of the international peace.

At the same time, according to Article 263 of the TFEU, any natural or legal person can request the CJEU to annul an EU act provided the following conditions are met: (1) the reviewable act is legally binding, (2) the contested measure directly affects the legal situation of the applicant, (3) the action for annulment must be brought within two months, and (4) the act leaves no discretion to those responsible for its implementation. In other words, the application of the contested act is purely automatic and requires no other intermediate rules. This is important, for example, in the case of certain EU acts such as directives, which are normative acts addressed to the member states, requiring them to adopt the necessary national provisions within a specified deadline to give effects to the policy objectives set out in the directive.

Venezuela's Annulment Procedure

On February 6, 2018, Venezuela brought an action of annulment against Regulation (EU) 2017/2063, arguing that non-member states of the European Union are encompassed by the expression "any natural or legal person" enshrined in Article 263 TFEU. Venezuela also declared that the measures of the European Union prevented it from exercising its sovereign powers as it sees fit and directly affected its legal position.

The case was first heard by the EU's General Court, the first instance court of the CJEU. On September 20, 2019, the General Court dismissed the action as inadmissible, holding that Venezuela is not a legal person within the meaning of Article 263 and therefore had no standing before EU courts. Two arguments supported its opinion. First, the General Court reasoned that Regulation (EU) 2017/2063 did not target Venezuela but rather

natural persons who are nationals of an EU member state, legal persons constituted under the domestic law of an EU member state, as well as foreign companies whose business is done in whole or in part within the Union.³ Second, even though the General Court acknowledged that the sanctions limited the sources from which the applicant could obtain military goods and services, it considered that Venezuela was not directly affected because it could still purchase and import the prohibited equipment from other countries.⁴

Venezuela subsequently appealed the General Court's judgment to the CJEU. Before the Court ruled on the case, Advocate General (AG) Gerard Hogan presented his opinion on the matter: he argued that the General Court erred in law and urged the CJEU to hold the case admissible.⁵ In his view, sovereign states such as Venezuela could be regarded as legal persons from the standpoint of international law.⁶ The AG pointed to previous judgments of the General Court that had recognized the legal standing of third countries before EU Courts,⁷ including those that were not yet EU member states at the time (such as Poland).⁸ To deny a third state affected by an EU action the right to adequate judicial protection would be tantamount to adopting a restrictive view of the rule of law.⁹

The Court also invited the Council of the European Union, the European Commission, and member states to participate in the proceedings, as Article 24 of the CJEU Statute permits. Greece, Poland, Slovenia, Slovakia, and Sweden all rejected the idea that a third state may be equated to a legal person within the meaning of article 263(4) TFEU, except where specific rights have been conferred on it within the EU legal order pursuant to an agreement concluded with the EU. In their view, restrictive measures are, in accordance with article 215(2), adopted against natural or legal persons, groups, or non-state entities, but not against third states. Belgium, Bulgaria, Germany, Estonia, Latvia, Lithuania, and the Netherlands submitted observations opposing this view, arguing that states have legal personality under public international law. For purposes of article 263, then, Venezuela was a legal person.

As for the Council, it argued that a third state, although subject to international law, cannot be subject to EU law, which is limited to the Union's member states. Under international law, there is no automatic right to a judicial remedy before the courts of other states.¹⁰ On the contrary, states have the right not to submit to the jurisdiction of another state or an international tribunal unless they have consented to it. Moreover, the Council argued that recognizing a third state as having legal standing to challenge acts of the Union would create a legal avenue that could put the EU at a disadvantage vis-à-vis its international partners, whose sovereign decisions pertaining to their international relations, trade, or economic policies cannot be similarly challenged before their courts. This, in turn, would unduly restrict the EU's competence to conduct its policies. On the contrary, the European

Commission, the executive institution representing the general interest of the Union, argued in favor of declaring the case admissible, contending that if a third state “chooses to bring an action against that measure before the EU Courts, rather than using an international dispute-settlement mechanism, there is no reason why the EU Courts should refuse to hear such a case as a matter of principle.”¹¹

The Court of Justice’s Judgment

The CJEU determined that Venezuela, as a subject of international law, has standing to bring an action for annulment as a legal person. Its interpretation was based on two grounds. First, the primary law of the EU—essentially its founding treaties—does not prohibit such actions. Second, if the European legislator considered that Venezuela could be the object of restrictive measures, it must also acknowledge that it may challenge them. The rule of law is one of the EU’s founding values; hence, access to EU courts cannot be made subject to a condition of reciprocity.

For this reason, the Court of Justice, following the opinion of AG Hogan, declared admissible the appeal of Venezuela and set aside the previous judgment of the General Court. The CJEU recognized that Venezuela has an interest in bringing proceedings because the prohibitions contained in Regulation 2017/2063 are liable to harm its economic interest.¹² Second, it ruled that the prohibitions laid down by the provisions of Regulation 2017/2063 apply without leaving any discretion to the addresses responsible for implementing them.¹³ As a result, it considered that the conditions to launch an action of annulment were fulfilled. However, the case is not over, as it has now been referred back to the General Court for judgment on the merits.

The question of standing in *Venezuela v. Council* constitutes a significant development in international law. On the one hand, the Court of Justice equated states outside the EU to legal persons under article 263 TFEU.¹⁴ Moreover, given the potential ramifications of its ruling, the decision suggests that the CJEU aspires to become a new World Court with judicial powers similar to the ICJ. In theory, third countries could now resolve their disputes with the EU before the CJEU instead of resorting to an international dispute resolution mechanism. Some authors have correctly identified the extraterritorial influence of EU law as the so-called “Brussels effect.”¹⁵ With this ruling, one might also now speak of a “Luxembourg effect” to describe the CJEU’s role in enhancing both the global reach of EU law and the influence of its judgments on international law.

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¹ This issue will be addressed in the pending case before the ICJ. Case: Certain Iranian Assets (*Islamic Republic of Iran v. United States of America*), <https://www.icj-cij.org/en/case/164>.

² TAMÁS SZABADOS, ECONOMIC SANCTIONS IN EU PRIVATE INTERNATIONAL LAW 17 (2020); Joined Cases C-402/05 and C-415/05, C and P, ECLI:EU:C:2008:461, ¶¶ 280–286 (Sept. 3, 2008).

³ Case T-65/18, ECLI:EU:T:2019:649, ¶ 32 (Sept. 20, 2019).

⁴ *Id.* ¶ 43.

⁵ The Court of Justice currently consists of 11 Advocates General and 27 judges (one from each member state). The role of an Advocate General is to deliver impartial and independent opinions in cases that raise new points of law. Their opinions are not legally binding on the Court, but they provide valuable assistance in the analysis of cases, particularly as CJEU judges must achieve consensus. They do not have the right to write dissenting opinions.

⁶ Case C-872/19 P, Opinion of Advocate General Hogan, ECLI:EU:C:2021:37, ¶ 64 (Jan. 20, 2021).

⁷ Case T-246/19, ECLI:EU:T:2020:415, ¶ 51 (Sept. 10, 2020).

⁸ Case T-257/04, ECLI:EU:T:2009:182, ¶ 51 (June 10, 2009).

⁹ Case C-872/19 P, *supra* note 6, ¶ 41.

¹⁰ Case C-872/19 P, ECLI:EU:C:2021:507, ¶ 27 (June 22, 2021).

¹¹ *Id.* ¶ 38.

¹² *Id.* ¶ 83.

¹³ *Id.* ¶ 90.

¹⁴ *Id.* ¶ 53.

¹⁵ ANU BRADFORD, THE BRUSSELS EFFECT: HOW THE EUROPEAN UNION RULES THE WORLD (2020).