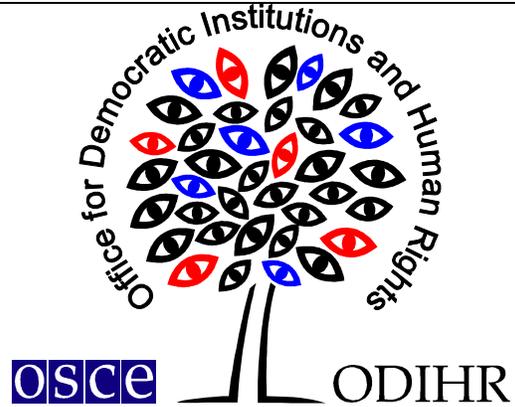


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**OPINION ON THE  
DRAFT LAW OF THE REPUBLIC OF SERBIA  
ON RESTRICTIONS ON DISPOSAL OF PROPERTY  
WITH THE AIM OF PREVENTING TERRORISM**

**Based on an unofficial English translation of the draft Law provided by the OSCE  
Mission to Serbia**

*This Opinion is based on comments provided by Dr. Alex Conte, Legal Expert, Switzerland*

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**Annex 1: Draft Law of the Republic of Serbia on Restrictions on Disposal of Property with the Aim of Preventing Terrorism**

## **I. INTRODUCTION**

1. *On 28 November 2011, the Director of the Administration for the Prevention of Money Laundering of the Serbian Ministry of Finance (hereinafter the “APML”) of the Republic of Serbia addressed the OSCE Office in Belgrade with a request for legal expertise on a new draft law of the Republic of Serbia on Restrictions on Disposal of Property with the Aim of Preventing Terrorism (hereinafter the “Draft Law”). The Draft Law was developed by the APML in order to implement relevant United Nations Security Council resolutions in relation to the freezing of terrorist assets.*
2. *As per established procedure, the OSCE Mission to Serbia forwarded English translations of both the request and the Draft Law to the OSCE/ODIHR. The current Opinion is provided in response to the above request.*

## **II. SCOPE OF REVIEW**

3. The Opinion covers only the above-mentioned Draft Law. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation regulating the disposal of property in relation to the prevention of terrorism in the Republic of Serbia.
4. The ensuing recommendations are based on international and domestic standards on suppressing the financing of terrorism, particularly with regard to the freezing of property or funds, as found in the international agreements and commitments ratified and entered into by the Republic of Serbia.<sup>1</sup>
5. The Opinion is based on an unofficial translation of the Draft Law, which has been attached to this document as Annex 1. Errors from translation may result.
6. This Opinion is without prejudice to any written or oral recommendations and comments to this or other related legal provisions that the OSCE/ODIHR may make in the future.

## **III. EXECUTIVE SUMMARY**

7. In order to ensure the compliance of the Draft Law with international and domestic human rights standards, it is recommended as follows:
  - A. to amend Article 2 par 1 to clarify the legal basis for restricting the use of property and funds [par 14];
  - B. to change the wording of Article 2 par 3 to clarify the legal basis for the inclusion of designated persons in the Government’s list [par 16];
  - C. to amend the provisions of Article 3 for the purpose of adhering to minimum safeguards pertaining to the implementation of sanctions against individuals or entities on any terrorist list so as to be in compliance with due process, property and privacy rights [par 29];

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<sup>1</sup> See below under Chapter 1.

- D. to amend Article 6 par 2 in order to include a requirement to inform designated persons of the reasons for freezing their assets [par 31];
- E. to amend the numeration of Parts V and VI of the Draft Law [pars 44 and 46];
- F. to extend the 30 days' time limit under Article 19 of the Draft Law to ensure that the Government can satisfy itself that listings under Article 3 are based on reasonable grounds to believe that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act [par 47]; and
- G. to extend the 30 days' time limit under Article 20 of the Draft Law for persons and bodies referred to in Article 4 to undertake a proper inspection of their business operations and records for the purpose of reporting [par 50].

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. International Standards on Restrictions on Disposal of Property with the Aim of Preventing Terrorism**

- 8. As explained in Article 1, the Draft Law sets out measures to implement UN Security Council resolutions on the suppression of terrorism through restrictions on the disposal of property, as well as to implement obligations undertaken in other organizations of which the Republic of Serbia is a member. It should be recalled, in this regard, that UN Security Council resolution 1373 (2001) requires UN Members to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or who participate in or facilitate the commission of terrorist acts, as well as of entities owned or controlled by such persons or acting on their behalf.<sup>2</sup>
- 9. The UN Global Counter-Terrorism Strategy (2006) resolves, amongst other things, to: take practical measures to ensure that State territories are not used for the preparation or organization of terrorist acts;<sup>3</sup> and to implement the Financial Action Task Force's Forty Recommendations on Money-Laundering and Nine Special Recommendations on Terrorist Financing.<sup>4</sup> Recommendation III of the latter Nine Special Recommendations calls on countries to implement measures to freeze without delay funds and other assets of terrorists, those who finance them, and terrorist organizations, including measures allowing competent authorities to seize and confiscate such property.

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<sup>2</sup> Security Council resolution 1373 (2001), UN Doc S/Res/1373 (2001), par 1(c). See also: Security Council resolution 1267 (1999), UN Doc S/Res/1267 (1999), par 4(b); and Security Council resolution 1390 (2002), UN Doc S/Res/1390 (2002), par 2(a).

<sup>3</sup> UN Global Counter-Terrorism Strategy, adopted under General Assembly Resolution 60/288, UN Doc A/Res/60/288 (2006), Pillar II, par 1.

<sup>4</sup> UN Global Counter-Terrorism Strategy, adopted under General Assembly Resolution 60/288, UN Doc A/Res/60/288 (2006), Pillar II, par 10.

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10. Furthermore, Article 8 of the International Convention for the Suppression of the Financing of Terrorism obliges the Republic of Serbia, as a party to the Convention<sup>5</sup>, to take appropriate measures, in accordance with its domestic legal principles, to identify, detect, freeze, seize, and forfeit any funds used or allocated for the purpose of committing the offences in Article 2 of the Convention (broadly speaking related to the collection or provision of funds for terrorist purposes).
11. Finally, OSCE participating States are also called on to take action to freeze terrorist assets, including in the context of the operation of entities that can be abused for the financing of terrorism.<sup>6</sup>
12. The above list of obligations is not exhaustive, but represents some key international counter-terrorism obligations affecting the Draft Law. In this context, it should be noted that the Draft Law will operate alongside an already existing Law in the Republic of Serbia, i.e. the Law on the Prevention of Money Laundering and the Financing of Terrorism. In relation to suppressing the financing of terrorism, the Draft Law specifically focuses on “imposing restrictions on the disposal of property held by designated persons” (Article 1), i.e. the freezing of assets.
13. It should further be recalled that all counter-terrorism measures must comply with a State’s international legal obligations, in particular international human rights law.<sup>7</sup> The European Court of Human Rights (hereinafter the “ECtHR”) also recently affirmed that when interpreting Security Council resolutions, it shall be presumed that the Security Council did not intend to impose obligations contrary to human rights. In the recent case of *Al-Jeddah v. the United Kingdom*, the ECtHR was therefore entitled to interpret a resolution in a manner that was most in harmony with the provisions of the European Convention on Human Rights (hereinafter “the ECHR”).<sup>8</sup> Particularly relevant in this regard are the rights to access to justice, as an aspect of the right to a fair trial and due process under Article 6 of the ECHR; the right to property under Protocol 1 to the ECHR; and

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<sup>5</sup> International Convention for the Suppression of the Financing of Terrorism (adopted on 9 December 1999, entry into force on 10 April 2002), United Nations, Treaty Series, vol. 2178, p. 197. The Republic of Serbia ratified the Convention on 10 October 2002. See also the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (adopted on 16 May 2005, entry into force on 1 May 2008) CETS No. 198, Article 2 par 2. The Republic of Serbia ratified this latter Convention on 14 April 2009.

<sup>6</sup> Bucharest Plan of Action for Combating Terrorism, OSCE Doc MC(9).DEC/1 (2001), par 24; OSCE Charter on Preventing and Combating Terrorism, OSCE Doc MC(10).JOUR/2 (2002), par 25; Decision No 617 on Further Measures to Suppress Terrorist Financing, OSCE Doc PC.DEC/617 (2004), pars 3 and 4.

<sup>7</sup> Including as mandated by the Security Council in its resolution 1624 (2005), UN Doc S/Res/1624 (2005), par 4; and as called for in the UN Global Counter-Terrorism Strategy, adopted under General Assembly Resolution 60/288, UN Doc A/Res/60/288 (2006), Pillar IV of the Strategy. Of particular relevance here, as regards the human rights obligations of the Republic of Serbia, is the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, (signed on 4 November 1950, entered into force on 3 September 1953, and ratified by the Republic of Serbia on 3 March 2004) (hereinafter “ECHR”) and the United Nations International Covenant on Civil and Political Rights (adopted by General Assembly resolution 2200A (XXI) on 16 December 1966, and ratified by the Republic of Serbia on 12 March 2001) (hereinafter “ICCPR”).

<sup>8</sup> *Al-Jeddah v United Kingdom* [2011] ECHR 1092 (7 July 2011), par 102.

the right to be free from unreasonable search and seizure as an aspect of the right to privacy under Article 8 of the ECHR.

## **2. Definition of Terms**

14. Article 2 par 1 of the Draft Law defines “restriction on the disposal or property and funds” to mean, in simple terms, the freezing of property and funds so that such property and funds may not be transferred, converted, disposed of, moved or managed. This definition confirms that such restrictions are “based on a decision of the competent state body”. For the sake of clarity, it would be useful if the above provision could be qualified to refer to the particular provisions under which such decisions are made, i.e. Article 6 of the Draft Law, or at least a cross-reference to Chapter II of the Draft Law.
15. Article 2 par 2 sets out a fairly standard definition of property and funds that may be made subject to freezing. Its wording is sufficiently precise and it is worth noting here that the Minister of Finance must confirm that property falls within this definition before issuing an order to restrict the use/disposal of property (see Articles 6 and 7 of the Draft Law). Moreover, a failure by the Minister to properly confirm this fact may constitute grounds for an administrative dispute under Article 10 par 2 (b) of the Draft Law.
16. Article 2 par 3 defines the term “designated person”, in other words owners of the frozen property or assets, in a way that relies on a designation and listing by the Government, based on relevant resolutions of the United Nations or other international organizations of which Serbia is a member. Again for the sake of clarity, it would be useful to qualify the wording of Article 2 par 3 to refer to the particular provision under which listings are made in Serbia, which would be Article 3 of the Draft Law.

## **3. Restrictions on the Disposal of Property and Funds of Designated Persons**

17. Chapter II of the Draft Law sets out operative provisions which deal with the listing of entities, reporting requirements, freezing orders and notification thereof, the duration of orders and management of frozen property and funds, rights of review and the revocation of freezing orders.

### ***3.1. Lists of Designated Persons***

18. Article 3 of the Draft Law contains three short subparagraphs by which the Government of the Republic of Serbia may list a person or group as a “designated person” for the purposes of the Draft Law. Including a designated person in this list under Article 3 may occur based on relevant UN Security Council resolutions or acts of international organizations of which Serbia is a member, or if a person is listed as a terrorist, terrorist organization or terrorist financier by another country.

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19. With regard to the first case, this would appear to be based on Article 2 par 3 of the Draft Law, which clarifies that the definition of a “designated person” relies on a designation and listing by the Government (under Article 3), “based on relevant United Nations Security Council resolutions or acts of international organizations of which Serbia is a member”. In this context, it should be noted that OSCE participating States have different practices in this regard. Canada, for example, adopts a model of automatic designation in the case of any person listed by the Security Council Resolution 1267 (1999) Sanctions Committee.<sup>9</sup> By virtue of Article 3 par 1 of the Draft Law, designations in Serbia rely on a further act of domestic listing by the Government.
20. The second reason for establishing an individual as a “designated person” may be found in Article 14 of the Draft Law. Article 14 anticipates the situation where a person is not already listed under Article 3 based on Security Council Resolutions or acts of international organizations, i.e. the person is not included in the UN Consolidated List or any other relevant international list. Instead, the person is nevertheless listed as a terrorist, terrorist organization or terrorist financier by another country. In such a situation, Article 14 par 1 allows this country to request that Serbia freeze the person’s property and funds. Where such a request is made, the Government may add the person to the list of designated persons under Article 3. According to Article 14 par 2, the Government shall decide on inclusion of the person in the list of designated persons only after receipt of the written position of certain relevant ministries and agencies in Serbia. Article 14 par 2 also requires the Government to subsequently inform the requesting country of the listing.
21. The decision by Serbia to adopt a model of domestic listing subsequent to international listing is to be commended. The former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has concluded that, even with the enhanced procedures for listing at the UN level, and the appointment of an Ombudsperson, there are several procedural inadequacies relating to the listing and delisting process for the Consolidated List.<sup>10</sup> It is therefore beneficial to include a second-tier listing mechanism at the domestic level, which is the approach adopted by the Republic of Serbia.
22. Bearing in mind the due process deficiencies in the UN listing process, the former Special Rapporteur has on several occasions expressed the view that, as long as there is no independent review of listings at the UN level, there must be access to domestic judicial review of any domestic implementing measures pertaining to persons on the Consolidated List. Together with the issue of judicial review, the Special Rapporteur has identified six minimum safeguards with regard to the

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<sup>9</sup> See the United Nations Al-Qaida and Taliban Regulations 1999, Canada, SOR/99-444.

<sup>10</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Compliance by the United Nations with international human rights law while countering terrorism*, UN Doc A/65/258 (2010), pars 55-58; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Ten areas of best practices in countering terrorism*, UN Doc A/HRC/16/51 (2010), par 33. See also *Kadi v European Commission (No 2)* Case T-85/09 (30 September 2010).

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- implementation of any sanctions against individuals or entities on any terrorist list:
- a) Sanctions against an individual or entity, including the terrorist listing of an individual or entity, shall be based on reasonable grounds to believe that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act, as properly defined;<sup>11</sup>
  - b) The listed individual or entity shall be promptly informed of the listing and its factual grounds, the consequences of such listing, and the rights pertaining to the listing (i.e. the guarantees identified in subparagraphs (c) to (f) of this paragraph);<sup>12</sup>
  - c) The listed individual or entity shall have the right to apply for delisting or non-implementation of the sanctions, and shall have a right to a judicial review of the decision resulting from the application for delisting or non-implementation, with due process applying to such review, including disclosure of the case against the person and such rules concerning the burden of proof that are commensurate with the severity of the sanctions;<sup>13</sup>
  - d) The listed individual or entity shall have the right to make a fresh application for delisting or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing;<sup>14</sup>
  - e) The listing of an individual or entity, and the sanctions resulting from it, shall lapse automatically after 12 months, unless renewed through a determination that meets the guarantees in subparagraphs (a) to (c) of this paragraph;<sup>15</sup> and
  - f) Compensation shall be available for persons and entities wrongly affected, including third parties.<sup>16</sup>
23. It should be noted that these safeguards are not only consistent with due process and property rights, but they are also consistent with the commitment of OSCE

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<sup>11</sup> UN Doc A/HRC/16/51 (2010), op. cit., note 10, Practice 9(1). See also, for example, Criminal Code 1985 (Canada), section 83.05(1).

<sup>12</sup> UN Doc A/HRC/16/51 (2010), op. cit., note 10, Practice 9(2). See also: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Mission to Turkey*, UN Doc A/HRC/4/26/Add.2 (2006), par 90(e); and Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Right to a fair trial in the fight against terrorism*, UN Doc A/63/223 (2008), pars 16 and 45(a).

<sup>13</sup> UN Doc A/HRC/16/51 (2010), op. cit., note 10, Practice 9(3). See also: UN Doc A/HRC/4/26/Add.2 (2006), op. cit., note 12, par 90(e); and UN Doc A/63/223 (2008), op. cit., note 12, pars 16 and 45(a).

<sup>14</sup> UN Doc A/HRC/16/51 (2010), op. cit., note 10, Practice 9(4). See also UN Doc A/63/223 (2008), op. cit., note 12, pars 16 and 45(a).

<sup>15</sup> UN Doc A/HRC/16/51 (2010), op.cit., note 10, Practice 9(5). See also UN Doc A/63/223 (2008), op. cit., note 12, pars 16 and 45(a).

<sup>16</sup> UN Doc A/HRC/16/51 (2010), op.cit., note 10, Practice 9(6). See also UN Doc A/63/223 (2008), op. cit., note 12, par 16.

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- participating States in which they take upon themselves to ensure that legitimate activities of non-profit organizations and charities are not restricted.<sup>17</sup>
24. In its current version, Article 3 of the Draft Law does not incorporate any of these minimum safeguards and therefore requires amendment so as to be in compliance with due process and property rights. It does not specify that inclusion in the list of designated persons shall only take place if there are reasonable grounds to believe that a person knowingly engaged in or facilitated terrorist acts, nor does Article 3 mention the obligation to inform the respective individuals, or their rights to appeal, due process, protection of private life, or compensation.
  25. It is noted that while the Draft Law does contain other safeguards, they are limited and insufficient. Notably, Article 6 par 1 of the Draft Law incorporates a checking mechanism pertaining to freezing orders, which requires the Minister for Finance to confirm that a reported person is a designated person. This does not, however, compel or allow for any further inquiry, such as whether the listing is accurate, current or contested.
  26. Also, Article 10 of the Draft Law allows for judicial review of a freezing order under Article 6. While the grounds for review are appropriately restricted to reflect the framework for decisions under Article 6, Article 10 of the Draft Law does not address the minimum safeguards pertaining to the listing of persons set out by the UN Special Rapporteur. In particular, judicial review under Article 10 is limited to the review of decisions ordering the freezing of property or funds, but does not permit review of the decision to list a person as a designated person. It thus fails to contemplate the situation where a person may have been incorrectly listed by the Government under Article 3, either because of mistaken identity or because there are no reasonable grounds to establish that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act, as properly defined. Moreover, Article 10 does not take into account situations where a person correctly listed under Article 3 should be delisted because that person has been delisted by, for example, the Security Council Resolution 1267 (1999) Sanctions Committee, or because there has been a material change of circumstances affecting the reasons for the listing. There is also no mention of compensation for persons improperly listed and whose property and funds have been subsequently frozen, or compensation for third parties wrongly affected by freezing orders. This is recommended to be rectified in the Draft Law.
  27. Article 11 of the Draft Law allows a designated person to institute proceedings for the purpose of seeking exclusion of part of the frozen property or funds for certain purposes. While this is a common qualification for freezing orders, and is compatible with the rights to property and subsistence, Article 11 does not touch on the minimum safeguards identified in paragraph 22 above.
  28. Article 13 of the Draft Law requires the Minister for Finance to terminate a freezing order if the reasons for the order cease to exist. However, Article 13 fails

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<sup>17</sup> Decision No 617 on Further Measures to Suppress Terrorist Financing, OSCE Doc PC.DEC/617 (2004), par 4.

- to contemplate situations where persons may have been incorrectly included in the Government's list, or situations where a person should be delisted, for the reasons set out in par 26 *supra*. This provision likewise does not cover compensation for persons improperly listed or third parties who have been wrongly affected by a freezing order.
29. For the reasons set out above, it is therefore recommended that Article 3 of the Draft Law be amended to include the minimum safeguards identified in par 22 above so as to be in compliance with international due process, property and privacy rights.

***3.2. Reporting Requirements and Consequences Leading to the Imposition of Restrictions***

30. The reporting requirements of legal and natural persons, in connection with the property or funds of a designated person, are succinctly dealt with in Article 4 of the Draft Law. Article 5 then explains the procedure to be followed by those bodies that have received the report described under Article 4.
31. Article 6 of the Draft Law constitutes one of the central operative provisions of the Draft Law, giving the Minister for Finance the authority to order the restriction on disposal of property and funds of a designated person. The terms of such a decision, and its notification, are governed by subparagraphs 2 and 3 in precise and certain terms. This is especially important given the offences that might follow for non-compliance with such an order, as set out under Part V of the Draft Law. It is noted, however, that the required contents of the Article 6 par 2 do not include a requirement to inform designated persons of the reasons for freezing their assets. Such justification should be required and is also necessary should the designated persons wish to contest the freezing of property or assets in an administrative dispute (see par 26 *supra* and subchapter 3.3 *infra*). It is recommended to amend Article 6 par 2 accordingly.
32. A decision by the Minister of Finance not to make such an order, i.e. where it is found that a report under Article 4 does not relate to a designated person or to property and funds capable of being subject to restrictions, will be subject to written notification under Article 7 informing the reporting authority that it may proceed with hitherto suspended activities. Article 6 par 1 includes a checking mechanism within this process, i.e. the Minister must, before making an order restricting disposal of property or funds, establish that "the reported person constitutes a designated person". This obliges the Minister to confirm that the person is listed, but does not compel or even allow for any further inquiry, such as whether the listing is correct or contested.
33. Article 8 of the Draft Law confirms that restrictions on the disposal of property or funds, as ordered under Article 6, will continue for as long as either the designated person is listed as such by the Government of Serbia under Article 3, or until court orders decide otherwise pursuant to other provisions in the Draft Law. Article 9 of the Draft Law stipulates that property and funds whose disposal

- has been restricted will be managed by Serbia's Seized/Confiscated Assets Management Directorate.
34. Aside from the issues raised under par 31 *supra*, these provisions raise no further human rights implications, provided that the designation(s), upon which reporting and subsequent action is based, is itself sound (as considered in the analysis of Article 3 of the Draft Law, above).

### ***3.3. Appeal Against the Decision Restricting Property and Funds***

35. Article 10 par 1 of the Draft Law makes it clear that a decision to restrict the disposal of property or funds, under Article 6 of the Draft Law, may not be appealed. It may, however, be the subject of an "administrative dispute" before a competent court. It should be made clear that this involves review of the decision ordering the freezing of property or funds (Article 6), not a review of the decision to list the designated person in the first place (Article 3). As already discussed under par 26 *supra*, Article 10 does not rectify the deficiencies identified in Article 3.
36. The grounds on which an administrative dispute may be instituted under Article 10 are set out in subparagraphs 2 (a) and (b), namely: where the person whose property has been affected is not a designated person; or where the property or funds do not fall within the definition of "property or funds" under Article 2 par 2 and thus do not constitute property or funds that are capable of being restricted based on the Draft Law. Given the framework under which decisions to freeze property or funds are issued under Article 6 of the Draft Law, these grounds are appropriately restricted. However, the limited nature of the grounds of review further emphasizes the need for revision of the listing mechanism under Article 3 (see par 26 *supra*).
37. However, while a designated person may not contest a freezing order itself, a designated person may institute proceedings for the purpose of seeking exclusion of a part of the property or funds "for the purposes of family subsistence, medical assistance tax payments and other liabilities and debts originating from contractual relations". This is a common qualification to legal regimes for the freezing of assets within OSCE participating States, and is compatible with the rights to property and subsistence, and general humanitarian standards.

### ***3.4. Enforcement and Revoking of Court Decisions***

38. Article 12 of the Draft Law concerns the enforcement of court decisions, including those concerning the confiscation of property or funds that are subject to criminal proceedings.
39. Article 13 of the Draft Law requires that, if the reasons for a freezing order under Article 6 cease to exist – i.e. if the property or funds do not fall within the definition in Article 2 par 2 and are not owned or controlled by a person listed under Article 3 – the Minister or Finance must terminate the freezing order and

must subsequently notify persons served with the freezing order (Article 13 par 1) and return without delay the affected property or funds to the designated person (Article 13 par 2).

40. The discovery that the reasons for a freezing order under Article 6 have ceased to exist will presumably come about as a result of an administrative dispute under Article 10 of the Draft Law. It is noted, however, that neither Article 10 nor Article 13 contemplate the situation where a person may have been incorrectly listed by the Government under Article 3, or where a person correctly listed under Article 3 should be delisted because he or she has been delisted by, for example, the Security Council Resolution 1267 (1999) Sanctions Committee. Furthermore, Articles 10 and 13 do not contemplate the provision of compensation to persons improperly listed and whose property and funds have been subsequently frozen. These deficiencies can be rectified by amending Article 3, as recommended earlier in this Opinion (see par 29 *supra*).

### ***3.5. Requests Made by Other Countries***

41. As explained in the analysis of the listing regime under Article 3 of the Draft Law (par 20 *supra*), one of the two reasons for being included in the Government's list under Article 3 is to be found in Article 14 of the Draft Law. Article 14 anticipates the situation where a person is not already listed under Article 3, i.e. the person is not included in the UN Consolidated List or any other relevant international list, but where the person is nevertheless listed as a terrorist, terrorist organization or terrorist financier in another country. In such a situation, Article 14 par 1 allows that country to request that Serbia freeze the respective person's property and funds. Where such a request is made, the Government may add the person to the list of designated persons under Article 3. Article 14 par 2 requires that such a decision shall be taken after the Government has received written position from certain ministries and agencies in Serbia. Article 14 par 2 also requires the Government to subsequently inform the requesting country of the person's inclusion in the Government list.
42. Given that various different standards will apply to the listing of individuals or entities in other countries, it is again important to emphasize the need for amendments to the listing procedure stipulated in Article 3 to incorporate the minimum standards identified in par 22 above (see par 29 above).

## **4. Supervision and Penal Provisions**

43. Article 15 of the Draft Law sets out the authority and responsibility of Government agencies for supervising compliance with reporting obligations and freezing orders under the Draft Law by referring to the competent authorities in the Law on the Prevention of Money Laundering and the Financing of Terrorism.

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44. While this may also be a translation error, it is noted that the numbering of the chapter on penal provisions appears to be erroneous – it should be Chapter IV, not Chapter V.
45. Articles 16 and 17 of the Draft Law set out economic offences and misdemeanors aimed at giving effect to the reporting obligations and freezing orders under the Draft Law.

**5. Transitional and Final Provisions**

46. As in the case of Chapter V, which should more correctly be titled Chapter IV, Chapter VI on Transitional and Final Provisions should more appropriately be titled Chapter V, provided that both cases of erroneous numbering are not due to translation errors.
47. Article 19 of the Draft Law requires the Government of the Republic of Serbia to establish the list of designated entities under Article 3 within 30 days of the entry into force of the Law. To ensure that listings under Article 3 are based on reasonable grounds to believe that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act – in adherence with the minimum standard in par 22 above – it is recommended that Article 19 be amended to grant the Government a longer period of time to satisfy itself that listings under Article 3 are indeed based on reasonable grounds.
48. Pursuant to Article 20 of the Draft Law, all persons and bodies referred to in Article 4 (concerning reporting obligations) must inspect their business operations and records for the purpose of detecting any links with designated persons “within 30 days of publishing of the list of designated persons”.
49. Given that the UN Consolidated List currently identifies 252 individuals and 91 entities, which will constitute the bulk of listings under Article 3 of the Draft Law, it seems unreasonable to oblige persons and bodies referred to in Article 4 to undertake a proper inspection of their business operations and records for the purpose of reporting in only 30 days. To promote a thorough and thus effective inspection of business operations and records, more time would be needed. This will in turn guarantee full compliance with Security Council resolutions and acts of other organizations concerning the imposition of restrictions on the disposal of property held by terrorists, terrorist organizations and terrorist financiers – which is the aim of the Draft Law, as explained in Article 1. The unfamiliar nature to persons in Serbia of many of the Arabic or other foreign names, and the varying spellings of those names included in the UN Consolidated List, would also indicate that more time is needed for a proper inspection. Moreover, a longer time period for initial inspections and reporting could help avoid potentially inaccurate reporting and subsequent inaccurate freezing of property and funds. While such inaccuracies may be resolved through recourse to the review procedure under Article 10 of the Draft Law, this would impose costs and burdens on the affected person that could be avoided by granting persons and bodies referred to in Article 20 longer time period for inspection of business operations and records.

50. Against this background, it is recommended that also Article 20 of the Draft Law be amended to provide a longer period of time for persons and bodies referred to in Article 4 to undertake a proper inspection of their business operations and records for the purpose of reporting. In this context, it may perhaps be helpful to adopt a two-tiered system of time limits. The first tier would involve a period of 2-3 months, or 60-90 days, following the first publication of the list of designated persons under Article 19. This would be appropriate given the lengthy nature of the list and the considerable time and effort that the persons and bodies under Article 4 will need to invest to adequately examine their business operations and records. The second tier would involve a shorter time period of perhaps 30 days to subsequently update the list of designated persons under Article 3, which would require less time and effort than the first review of operations and records. Given the considerable fines that will follow from the failure to detect the existence of a link or business operation with a designated person, such amendment of Article 20 would be both necessary and proportionate.

*[END OF TEXT]*

**Annex 1**

**DRAFT**

**LAW ON RESTRICTIONS ON DISPOSAL OF PROPERTY WITH THE AIM OF PREVENTING TERRORISM**

**I PRELIMINARY PROVISIONS**

**Article 1  
Subject matter**

This Law lays down actions and measures to implement the United Nations Security Council resolutions and acts of other organizations of which the Republic of Serbia is a member, by imposing restrictions on the disposal of property held by designated persons; competences of state bodies concerning the application of such measures; and rights and obligations of natural and legal persons in the application of this Law.

**Article 2  
Definition of terms**

For the purposes of this Law, the following terms are defined as follows:

- 1) *Restriction on the disposal of property and funds* means temporary prohibition of transfer, conversion, disposal and movement of property or funds, or temporary management of such property and funds based on a decision of the competent state body.
- 2) *Property and funds* means financial instruments, property of any kind, moveable or immoveable, tangible or intangible, however acquired, and documents or instruments in any form, including electronic or digital, evidencing the title or interest with respect to such funds or property, including bank loans, traveller and bank cheques, money orders, shares, securities, bonds, bills of exchange, letters of credit, as well as any interests, dividends, or any other proceeds collected based on or from such funds or property.
- 3) *Designated person* means natural person, legal person, or a group or an association of citizens, whether registered or not, designated and listed as a terrorist, terrorist organisation or terrorist financier, based on the relevant United Nations Security Council resolutions or acts of international organisations of which Serbia is a member.

## **II RESTRICTION ON DISPOSAL OF PROPERTY AND FUNDS OF DESIGNATED PERSONS**

### **Article 3**

#### **List of designated persons**

The Government, at the proposal of the minister for foreign affairs, shall develop the list of designated persons.

The list referred to in Para 1 of this Article shall be published in the *Official Gazette of the Republic of Serbia*.

Any amendments to the list of designated persons referred to in Para 1 of this Article shall be made immediately after learning of any facts that are relevant for its amendment.

### **Article 4**

#### **Direct reporting requirement**

Any legal and natural person shall detect existence of any links or business transactions with the designated person.

If any legal and natural person detects any links or business transactions with the designated person they shall suspend any without delay related activity and inform the Administration for the Prevention of Money Laundering (hereinafter: 'APML') promptly thereof, but no later than within 24 hours.

The legal and natural person referred to in Para 1 of this Article shall enclose with its report any pertinent written or electronic documentation and other relevant information (e.g. identification of the designated person, identification of property and transaction or relationship, etc).

Reports and information referred to in this Article shall be sent in writing or electronically, and in case that they are sent by telephone, such reports shall be confirmed in writing.

The state body competent for registration of business entities, body competent for registration of non-governmental organisations (associations, endowments, funds, and foundations), courts and other bodies shall consult the list of designated persons before registering a company or non-governmental organisation, or authenticating a real estate transaction contract. If the designated person is nominated as the director, responsible person, or majority owner of the company or non-governmental organisation or if the designated person appears as a contracting party in a real estate transaction, the state body shall reject the request for registration or authentication of contract. Such state body shall send to the APML, without delay, information concerning the facts and circumstances of the transactions referred to in this Paragraph.

The minister for finance, at the proposal of the director of the APML, shall stipulate in more detail the procedure for fulfilling the requirements referred to in this Article, as well as the manner of informing legal and natural persons about the existence of requirements under this Law.

**Procedure after receiving a report  
Article 5**

State bodies, organisations, and persons entrusted with public authorities, shall report to the APML, without delay, any data that they hold concerning the designated person and his/her property.

The APML shall make a report containing the data reported under Article 4 of this Law, and the data concerning the identity of the reported person and his/her property obtained from the body referred to in Para 1 of this Article, as well as a conclusion on whether the reported person constitutes a designated person.

The APML shall send the report referred to in Para 2 of this Article to the minister for finance, without delay.

**Article 6  
Authorisation to impose restriction on disposal of property and funds**

If, upon receipt of the report referred to in Article 5 of this Law, the minister for finance establishes that the reported person constitutes a designated person, he/she shall pass, without delay, a decision ordering the restriction on disposal of property and funds of such person, based on the powers assigned under this Law.

The decision referred to in Para 1 of this Article shall contain:

- 1) Data on the designated person;
- 2) Designation of property and funds whose disposal is restricted and data relevant for identification;
- 3) Designation of persons or bodies for managing the property and funds, in accordance with law;
- 4) Designation of persons to be served the decision.

The decision referred to in Para 1 of this Article shall be served to the legal or natural person holding the property and funds, designated person or his/her attorney, person or body for managing the property and funds, APML, competent public prosecutor's office, body competent for security and intelligence, ministry competent for foreign affairs, as well as to any other state body that may be linked to the property and funds designated in the decision.

The decision shall be served in line with the rules of the general administrative procedure.

The Ministry of Finance shall keep the register of decisions passed under this Law.

**Article 7**  
**Notification of no decision**

If, upon receipt of the report referred to in Article 5 of this Law, the minister of finance finds no designated person or property and funds subject to restriction on disposal, i.e. that conditions to restrict the disposal of property and funds have not been met, he/she shall send, without delay, a written notice to the reporting legal or natural that it may proceed with the activities that it has suspended under Article 4 Para 1 of this Law.

**Article 8**  
**Duration of restriction of disposal**

Restriction on disposal of property and funds based on a decision referred to in Article 6 of this Law shall last until the designated person is listed on the list referred to in Article 3 of this Law, or until the competent court passes a decision pursuant to this Law.

**Article 9**  
**Management of property and funds whose disposal is restricted**

Property and funds whose disposal is restricted under this Law shall be managed by the Seized/Confiscated Assets Management Directorate, in accordance with law.

**Article 10**  
**Appeal against the decision restricting the disposal of property and funds**

Appeal against a decision referred to in Article 6 of this Law shall not be permitted; however, it may be contested in an administrative dispute.

The administrative dispute may be instituted before the competent court if the:

- a) person whose property disposal was restricted is not a designated person;
- б) property and funds whose disposal is restricted do not constitute property and funds whose disposal must be restricted under this Law.

Under this Law, an administrative dispute may be instituted within the period of restriction on disposal of property and funds.

Institution of administrative proceedings shall not postpone the execution of decision referred to in Article 6 of this Law.

**Article 11**  
**Permitted use of a part of property and funds**

The designated person whose disposal of property and funds has been restricted is entitled to institute proceedings before a court of general jurisdiction with the aim of excluding a part of the property or funds for the purposes of family subsistence, medical assistance, tax payments and other liabilities and debts originating from contractual relations.

The proceedings under Para 1 of this Article shall be deemed urgent.

**Article 12**  
**Enforcement of court decisions**

The property and funds whose disposal is restricted in compliance with this Law may be subject to enforcement upon the final court decision.

If the property and funds referred to in Para 1 of this Article are subject to criminal proceedings that have not ended in a final decision confiscating such property and funds, whereas the reasons for restricting the disposal of the property and funds under this Law still exist, the decision referred to in Article 6 of this Law shall remain in force, if already rendered.

**Article 13**  
**Revoking a decision to restrict disposal of property and funds**

If the reasons for rendering the decision referred to in Article 6 of this Law cease to exist, the minister for finance shall notify the persons served with the decision of the termination of validity of such decision.

When the Decision referred to in Article 6 of this Law ceases to exist, the property shall be returned to the designated person without delay.

**Article 14**  
**Requests made by other countries**

A request to restrict the disposal of property and funds made by another country, which does not refer to any person considered to be a designated person under this Law, but is a person against whom that other country can apply the identical measures, shall be referred to the Government.

Government, having obtained the written position of the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Interior, Security and Information Agency, Ministry of Defence and the Ministry of Finance, shall decide on whether to include the person on the List referred to in Article 3 of this Law, and shall inform the requesting country thereof, through the Ministry of Foreign Affairs.

### **III SUPERVISION**

#### **Article 15**

Supervision of the compliance with this Law by the obligors referred to in the law governing the prevention of money laundering and terrorism financing will be conducted by the authorities competent for supervision of compliance with such law.

The ministry competent for internal affairs and the supervisory authorities, within their remits, shall supervise the compliance with this Law by legal and natural persons other than obligors under the law governing the prevention of money laundering and terrorism financing.

### **V PENAL PROVISIONS**

#### **Article 16**

##### **Economic offences**

A legal entity shall be fined the amount of RSD 45,000 to 3,000,000 for economic offence if it:

- 1) fails to detect the existence of a link or business operations with a designated person although at the time when the link was established or business operations occurred the list of designated persons referred to in Article 4 has been published;
- 2) fails to terminate any activity with the designated person;
- 3) fails to report to the APML;
- 4) fails to report to the APML within the specified time;
- 5) fails to provide all written and electronic documentation.

For the economic offence referred to in Para 1 of this Article a fine in the amount of RSD 3,000 to 200,000 shall also be imposed on the responsible person in the legal person.

#### **Article 17**

##### **Misdemeanours**

The authority's employee and responsible person shall be fined an amount of RSD 5,000 to 500,000 for misdemeanour if they:

- 1) register a business entity or non-governmental organization or if they authenticate a real estate trade contract;
- 2) fail to provide the APML with the information concerning the facts and circumstances of their business operations;
- 3) fail to provide the APML with the information concerning the facts and circumstances of their business operations within the specified time.

The natural person shall be fined an amount of RSD 5,000 to 500,000 for misdemeanour if he/she:

- 1) fails to detect the existence of a link or business operations with a designated person although at the time when the link was established or business operations occurred the list of designated persons referred to in Article 4 has been published;
- 2) fails to terminate any activity with the designated person;
- 3) fails to report to the APML;
- 4) fails to report to the APML within the specified time;
- 5) fails to provide the entire written and electronic documentation;
- 6) fails to complete an action referred to in Article 16 of this Law.

## **VI TRANSITIONAL AND FINAL PROVISIONS**

### **Article 18**

This Law shall enter into force on the eighth day following its publication in the *Official Gazette of the Republic of Serbia*.

### **Article 19**

Government, at the proposal of the minister for foreign affairs, shall establish the list of designated persons within 30 days of entering into force of this Law.

### **Article 20**

Natural and legal persons, as well as the bodies referred to in Article 4 of this Law, shall inspect their business operations, and records that they hold under the law, and detect any links with designated persons, within 30 days of publishing of the list of designated persons.