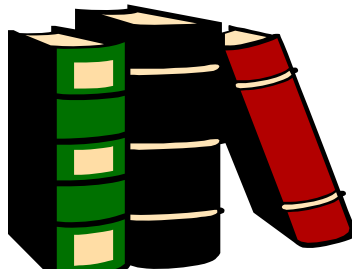




Emerika Bluma 1, 71000 Sarajevo

Tel. 28 35 00 Fax. 28 35 01

Department for Legal Affairs



LAW

ON APPLICATION OF CERTAIN TEMPORARY MEASURES IN SUPPORT OF EFFECTIVE IMPLEMENTATION OF THE MANDATE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, AND OTHER INTERNATIONAL RESTRICTIVE MEASURES

“Official Gazette of Bosnia and Herzegovina”, 25/06

Pursuant to Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the 75th session of the House of Representatives held on 7 March 2006 and at the 55th session of the House of Peoples held on 27 March 2006,

adopted

LAW

ON APPLICATION OF CERTAIN TEMPORARY MEASURES IN SUPPORT OF EFFECTIVE IMPLEMENTATION OF THE MANDATE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, AND OTHER INTERNATIONAL RESTRICTIVE MEASURES

CHAPTER I. BASIC PROVISIONS

Article 1

(Subject and Purpose of the Law)

(1) This Law regulates the application of international restrictive measures that, in accordance with the international law, Bosnia and Herzegovina applies against states, international organisations, territorial entities, movements or natural and legal persons, and other subjects covered by the international restrictive measures.

(2) This Law specifically regulates the introduction and application of certain temporary measures aimed to temporarily prevent any use, alienation or other disposal of property of persons indicted in front of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (in a short form: International Criminal Tribunal for the former Yugoslavia; hereinafter: ICTY), who are not available to that tribunal and their assistants in evading availability to that tribunal.

(3) The purpose of this Law is to regulate in Bosnia and Herzegovina the manner of implementation of United Nations Security Council resolutions or European Union decisions that foresee international restrictive measures, particularly United Nations Security Council Resolution 1503 (2003) through the application of certain measures in support of effective implementation of the ICTY mandate.

Article 2

(International Restrictive Measures)

(1) International restrictive measures include arms embargo, complete or partial restrictions on import or export, restrictions on admission into a country, financial restrictions, and other measures in accordance with international law.

(2) Bosnia and Herzegovina applies international restrictive measures due to implementation of decisions of the United Nations, which are binding under the

international law, or when it joins the restrictive measures of the European Union or in other cases in accordance with international law.

(3) The Council of Ministers of Bosnia and Herzegovina (hereinafter: the Council of Ministers) shall decide on the manner of introduction, implementation and termination of international restrictive measures not specifically regulated by this Law, after consultation with the Presidency of Bosnia and Herzegovina (hereinafter: the Presidency).

(4) The provisions of Chapters II and III of this Law shall apply to financial restrictions against persons other than persons indicted in front of the ICTY but unavailable to that tribunal and their assistants, unless otherwise envisaged by international law.

(5) As soon as international restrictive measures are determined, the Ministry of Foreign Affairs of Bosnia and Herzegovina (hereinafter: the Ministry of Foreign Affairs) and the Directorate for EU Integrations of the Council of Ministers (hereinafter: the Directorate for EU Integrations) shall inform the Council of Ministers and the Presidency.

Article 3 **(Definition of Terms in the Law)**

Particular terms used in this Law shall have the following meaning:

a) **Indicted person** is a person against whom the indictment has been brought in front of the ICTY and who is not available to that tribunal.

b) **Assistant to an indicted person** is any natural or legal person for which grounds for suspicion exist for providing assistance to an indicted person in evasion of availability to the ICTY, including marital or extramarital partner, first-line blood relative, brother or sister, adoptive parent or adopted child and their marital or extramarital partner. An assistant is also a defence lawyer, medical doctor or religious confessor of an indicted person, if there are grounds for suspicion that the assistance such a person provides to an indicted person is not the assistance within the scope of professional service, but an assistance in evading availability to the ICTY.

c) **Funds** mean financial assets and benefits of every kind, such as:

- 1) cash, cheques, claims on money, drafts, money orders and other payment instruments,
- 2) deposit with financial institutions or other entities, balances on accounts, debts and debt obligations;
- 3) securities subject to stock exchange or other type of trade, such as stocks or shares, certificates, bonds and other kinds of securities;
- 4) interest, dividends and other income on or value accruing from or generated by assets,
- 5) credit, right of set-off, guarantees and other financial commitments,
- 6) letters of credit, bills of lading, bills of sale,
- 7) documents evidencing an interest in funds or financial resources,

8) any other instrument of export financing.

d) **Economic resources** mean assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

CHAPTER II. TEMPORARY FINANCIAL MEASURES AGAINST PERSONS INDICTED IN FRONT OF ICTY AND THEIR ASSISTANTS

Article 4

(Types of Temporary Financial Measures under this Law)

(1) Temporary measures, which are applied pursuant to this Law, with the aim to temporarily prevent any use, alienation or other disposal of property, are:

- a) freezing of funds; and
- b) freezing of economic resources.

(2) Freezing of funds is preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.

(3) Freezing of economic resources is preventing their use to obtain funds, goods or services in any way, such as their selling, hiring or mortgaging.

Article 5

(Features of Temporary Measures)

(1) The application of temporary measures of freezing of funds and freezing of economic resources shall entail that:

- a) All funds and economic resources belonging to, or owned, possessed or held by the person against whom the measures are applied, shall be frozen;
- b) No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the person against whom the measures are applied; and
- c) Activities the object or effect of which is, directly or indirectly, to consciously circumvent the measures referred to in sub-paragraphs a) and b) of this paragraph shall be prohibited.

(2) The provision of sub-paragraph b) of paragraph (1) shall not apply to the addition to frozen accounts of interest or other earnings on those accounts, or payments due under contracts, agreements or obligations that were concluded or arose prior to the beginning of enforcement of the decision on application of measures against the particular person, provided that any such interest, other earnings and payments continue to be subject to sub-paragraph a) of paragraph (1) of this Article.

(3) Provision of sub-paragraph b) of paragraph (1) of this Article shall not prevent the crediting of the frozen accounts by financial institutions that receive funds transferred by

third parties to the account of the person against whom the measures are applied, provided that any such additions to such accounts will also be frozen.

Article 6
(Obligation to Deliver Information)

(1) Natural and legal persons, organisations, bodies and institutions shall without delay deliver to the Ministry of Security of Bosnia and Herzegovina (hereinafter: Ministry of Security) any information on the enforcement of the decision on application of the measures against the particular person, such as information on accounts and amounts frozen, and shall co-operate with the Ministry of Security in any verification of this information.

(2) The financial institutions shall especially inform the Ministry of Security about transactions referred to in Article 5 (*Features of Temporary Measures*) paragraph (3) of this Law.

(3) The Ministry of Security may use the information from this Article only for the purpose for which the information was provided.

Article 7
(Keeping Records)

(1) The Ministry of Security shall establish and keep records on persons against whom international restrictive measures or temporary measures under this Law have been introduced.

(2) The data from records shall be available to institutions of Bosnia and Herzegovina and other institutions or bodies that require such information in the scope of their competency or to perform authorised activities. The regulations on protection of personal data and on protection of secret data shall apply.

(3) Upon request, the Ministry of Security shall provide data from records to the United Nations and the European Union.

Article 8
(Exceptions for Living Expenses)

(1) By way of derogation from Article 5 (*Features of Temporary Measures*) paragraph (1) of this Law, the Court of Bosnia and Herzegovina (hereinafter: the Court of BiH) shall authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, if it determines that the funds or economic resources concerned are necessary for basic life expenses, including payments for food-stuffs, rent or lease or mortgage for the living place, medicines and medical treatment, taxes, insurance premiums, and public utility charges.

(2) By way of derogation from Article 5, paragraph (1) of this Law, the Court of BiH may also authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, if it determines that the funds or economic resources concerned are:

a) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or

b) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; or

c) necessary for extraordinary expenses.

(3) When deciding pursuant to paragraphs (1) and (2) of this Article, the Court of BiH may determine conditions under which it authorises the release or making available of funds or economic resources.

(4) The Court of BiH shall inform the Ministry of Security of any authorisation granted under this Article no later than eight days prior to the granting of authorisation.

(5) The Ministry of Security shall inform the competent bodies of international organisations and of states that apply the same restrictive measures against the same persons of any authorisation granted under this Article.

Article 9

(Exceptions for Certain Obligations)

(1) By way of derogation from Article 5 (*Features of Temporary Measures*) paragraph (1) of this Law, the Court of BiH may also authorise the release of certain frozen funds or economic resources, if the following conditions are met:

a) if the funds or economic resources became objects of obligation under a judicial, administrative or arbitral decision prior to the beginning of implementation of the decision on application of measures against a particular person; and

b) if the funds or economic resources will be used exclusively to satisfy such a obligation; and

c) if a judicial, administrative or arbitral decision has not been rendered for the benefit of a person against whom the temporary measures of freezing of funds and economic resources are applied; and

d) if recognising such an obligation is not contrary to the legal system of Bosnia and Herzegovina.

(2) The Court of BiH shall inform the Ministry of Security of any authorisation granted under this Article no later than eight days prior to the granting of authorisation.

(3) The Ministry of Security shall inform the competent bodies of international organisations and of states that apply the same restrictive measures against the same persons of any authorisation granted under this Article.

CHAPTER III. IMPOSING TEMPORARY FINANCIAL MEASURES ON PERSONS INDICTED IN FRONT OF ICTY AND THEIR ASSISTANTS

Article 10

(Application to Indicted Persons)

(1) Temporary measures of freezing of funds and of freezing of economic resources of persons indicted by the ICTY but unavailable to that tribunal shall be applied in Bosnia and Herzegovina.

(2) The list of persons referred to in paragraph (1) of this Article against whom certain measures apply, imposed by the United Nations or the European Union, including amendments thereto, shall be applied in Bosnia and Herzegovina, in accordance with paragraph (3) of this Article.

(3) The Council of Minister shall render a decision introducing the temporary measures from paragraph (1) against persons indicted in front of the ICTY but unavailable to that tribunal, on the basis of the list from paragraph (2) of this Article, and shall publish it in the “Official Gazette of BiH”.

(4) Against the decision of the Council of Ministers referred to in paragraph (3) of this Article, a procedure in front of the Court of BiH may be initiated.

(5) The Ministry of Foreign Affairs and the Directorate for EU Integration are obliged to immediately inform the Council of Ministers about the imposition of the list of persons from paragraph (2) of this Article.

Article 11 **(Application to Assistants)**

(1) Temporary measures of freezing of funds and of freezing of economic resources of assistants of persons indicted in front of the ICTY but unavailable to that tribunal shall be applied pursuant to the Criminal Procedure Code of Bosnia and Herzegovina (“Official Gazette of BiH”, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05 and 48/05; hereinafter: the Criminal Procedure Code).

(2) In accordance with paragraph (1) of this Article, against assistants of persons indicted in front of the ICTY but unavailable to that tribunal the Chief Prosecutor of Bosnia and Herzegovina (hereinafter: the Prosecutor) proceeds in particular under Article 35 (*Rights and Duties*) and Article 216 (*Order for Conducting an Investigation*) of the Criminal Procedure Code. To issuing and enforcing of temporary measures against these persons, Article 65 (*Order for Seizure of Objects*), Article 66 (*Seizure without the Seizure Warrant*), Article 72 (*Order Issued to a Bank or to Another Legal Person*) and Article 73 (*Temporary Seizure of Illicitly Gained Property and Arrest in Property*), as well as other provisions of the Criminal Procedure Code shall apply.

(3) When the United Nations, another international organisation or the European Union decide on application of certain restrictive measure towards a citizen of Bosnia and Herzegovina, or towards another person but in relation with the existence of grounds for suspicion that a criminal offence was perpetrated on the territory of Bosnia and Herzegovina, the Prosecutor proceeds under Article 35 and 216, as well as under other provisions of the Criminal Procedure Code, as soon as he becomes aware that the restrictive measure has been imposed.

(4) Provisions of this Article shall not influence the implementation of the decision of the United Nations, which Bosnia and Herzegovina is bound to implement under international law, nor shall it affect the international obligations of Bosnia and Herzegovina (Article 2, *International Restrictive Measures*).

Article 12
(Obligations of Institutions)

(1) In accordance with the decision from Article 10 (*Application to Indicted Persons*) paragraph (3) or Article 11 (*Application to Assistants*) paragraph (1) and (2) on the application of temporary measures towards a particular person, and with the provisions of Article 5 (*Features of Temporary Measures*) and decisions from Article 8 (*Exceptions for Living Expenses*) and Article 9 (*Exceptions for Certain Obligations*) of this Law, the following obligations particularly exist:

a) All competent institutions in Bosnia and Herzegovina that have data on property of a person against whom the measures are applied, shall be obliged to take within the scope of their competencies concrete actions with the purpose of application of temporary measures.

b) All banks and other financial institutions, as well as insurance companies in Bosnia and Herzegovina, with whom the person against whom the measures are applied has an account, shall be obliged to disable financial transactions from the account of that person.

c) All bodies and institutions in Bosnia and Herzegovina, who pursuant to the law keep records on property, shall be obliged to disable, within their competencies, any change of ownership, transfer of the right of ownership or possession and encumbering of property.

(2) In the context of sub-paragraph c) of paragraph (1) of this Article, the competent bodies and institutions that keep records on property, shall record by an official note the temporary measure, and registry courts shall disable any change of status of businesses and other entities owned or co-owned by the person against whom the measures are applied, or if otherwise determined that that person participates in property of those entities, in the owner's, co-owner's or other share of that person.

Article 13
(Cessation of Application of Measures to Indicted Persons)

(1) The application of temporary measures of freezing of funds and of freezing of economic resources towards a particular person indicted in front of the ICTY but unavailable to that tribunal, shall cease to apply when the cessation of the application of the measure against that person is determined.

(2) The decision on cessation of the application of a measure against an indicted person shall be passed by the Council of Ministers, on the basis of the list of persons subject to certain measures, which is imposed by the United Nations or the European Union. The decision shall be passed by amending the list or otherwise, and shall be published in the "Official Gazette of BiH".

(3) The reasons for cessation of the application of a measure against a persons indicted in front of the ICTY but unavailable to that tribunal are:

a) if the indicted person against whom the temporary measures are imposed became available to the institutions of Bosnia and Herzegovina or directly to the ICTY; or

b) if it is established that the indicted person against whom the temporary measures are imposed is deceased; or

c) in other circumstances in accordance with the international law.

(4) In order to establish the existence of reasons for the cessation of the application of the measures, the Council of Ministers shall consider the list of indicted persons subject to such measures in the shortest period possible following the occurrence of any of the reason listed in paragraph (3) of this Article, but at least every three months from the day of the beginning of application of the measures. However, a temporary measure may not cease to apply in Bosnia and Herzegovina prior to the cessation of its application at international level.

Article 14

(Cessation of Application of Measures to Assistants)

(1) To the cessation of application of the measures against an assistant, the Criminal Procedure Code shall apply.

(2) A temporary measure against an assistant that was imposed pursuant to this Law, shall be terminated in the cases referred to in Article 13 (*Cessation of Application of Measures to Indicted Persons*) paragraph (3), sub-paragraph a) and b), unless there is another reason for its application pursuant to the criminal legislation of Bosnia and Herzegovina.

CHAPTER IV. MINOR OFFENCE PROVISIONS

Article 15

(Violations of Provisions of Article 5 and 12 of this Law)

(1) A legal person shall be punished for a minor offence by a fine of not less than 50.000 up to 150.000 KM if it:

a) in violation of provisions of Article 5 (*Features of Temporary Measures*) and Article 12 (*Obligations of Institutions*) paragraph (1) sub-paragraph b), and in accordance with decisions from Article 8 (*Exceptions for Living Expenses*) paragraphs (1) and (2), Article 9 (*Exceptions for Certain Obligations*) paragraph (1), Article 10 (*Application to Indicted Persons*) paragraph (3) or Article 11 (*Application to Assistants*) paragraphs (1) and (2) of this Law, does not freeze funds or economic resources belonging to, or owned, possessed or held by the person against whom the measures are applied; or

b) in violation of provisions of Article 5 and Article 12 paragraph (1) sub-paragraph b), and in accordance with decisions from Article 8 paragraphs (1) and (2), Article 9 paragraph (1), Article 10 paragraph (3) or Article 11 paragraphs (1) and (2) of this Law, makes available funds or economic resources, directly or indirectly, to or for the benefit of the person against whom the measures are applied.

(2) For the minor offences prescribed in paragraph (1) of this Article, a responsible person in a legal person shall also be punished, by a fine of not less than 5.000 up to 15.000 KM.

(3) A natural person shall be punished by a fine of not less than 2.000 up to 5.000 KM for the minor offences prescribed in paragraph (1), if natural person may legally conduct relevant activities.

Article 16
(Violations of Provisions of Article 6 of this Law)

(1) A legal person shall be punished for a minor offence by a fine of not less than 5.000 up to 15.000 KM if it:

a) in violation of the provision of Article 6 (*Obligation to Deliver Information*) paragraph (1) of this Law, does not deliver without delay to the Ministry of Security any information on the enforcement of the decision on application of the measures against the particular person, or does not co-operate with the Ministry of Security in a verification of such information; or

b) in violation of the provision of Article 6 paragraph (2) of this Law, does not inform the Ministry of Security about transactions referred to in Article 5 (*Features of Temporary Measures*) paragraph (3) of this Law.

(2) For the minor offences prescribed in paragraph (1) of this Article, a responsible person in a legal person shall also be punished, by a fine of not less than 500 up to 1.500 KM.

(3) A natural person shall be punished by a fine of not less than 300 up to 900 KM for the minor offences prescribed in paragraph (1), if natural person may legally conduct relevant activities.

CHAPTER V. TRANSITIONAL AND FINAL PROVISIONS

Article 17
(Monitoring of Application of Temporary Financial Measures Against Indicted Persons and Assistants)

(1) The Ministry of Security shall monitor the application of temporary measures against persons indicted in front of the ICTY but unavailable to that tribunal and their assistants, and report thereupon to the Council of Ministers as required, but at least every three months, or at the request of the Council of Ministers.

(2) The Ministry of Security shall take appropriate measures within its authority to prevent actions that might lead to consequences contrary to the contents of the temporary measures.

Article 18
(Monitoring of Implementation of International Restrictive Measures)

(1) For the monitoring of implementation of the international restrictive measures referred to in Article 2 of this Law, at the request of the Presidency or on the proposal of the Ministry of Foreign Affairs or Ministry of Security, the Council of Ministers shall establish an Inter-ministerial Group for Monitoring of Application of International Restrictive Measures (hereinafter: the Inter-ministerial Group).

- (2) The Inter-ministerial Group shall be a standing working body.
- (3) The Inter-ministerial Group shall include representatives of the ministries of foreign affairs, security, defence, finance, economic relations, and justice.
- (4) Expert and administrative support to the Inter-ministerial Group shall be provided by the Ministry of Foreign Affairs.
- (5) The method of work of the Inter-ministerial Group shall be regulated by the Rules of Procedure to be issued by the Group itself.

Article 19
(Harmonisation of Previous Regulation)

The Council of Ministers shall harmonise its "Decision by which Persons Accused by the International Criminal Tribunal for the Former Yugoslavia, who are not Available to the Tribunal, are Prevented to Use their Property in Bosnia and Herzegovina", No. 274/04 of 19 November 2004 ("Official Gazette of BiH", 60/04) with the provisions of this Law.

Article 20
(Entry into force of the Law)

This Law shall enter into force on the eighth day after the date of its publication in the "Official Gazette of BiH".

PA BiH No. 288/06
27 March 2006
Sarajevo

Chairman
of the House of Representatives
of the Parliamentary Assembly of BiH
PhD **Nikola Špirić**, *m.p.*

Chairman
of the House of Peoples
of the Parliamentary Assembly of BiH
Mustafa Pamuk, *m.p.*
