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OFFICE OF THE PROSECUTOR
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BLAŠKIĆ CASE: PROSECUTOR OPPOSES DEFENCE'S MOTION FOR PROVISIONAL RELEASE

In a response filed on 16 December 1996, the Prosecutor opposes a motion filed by the defendant Tihomir BLAŠKIĆ requesting provisional release, and requests Trial Chamber II to reject it on the grounds that "*[t]he defendant has failed to meet his burden of establishing that exceptional circumstances warrant his provisional release*".

The response directs the Trial Chamber's attention to a decision on provisional release in the Delalić case where it was found that "*[i]n determining whether an accused has established exceptional circumstances the Trial Chamber looks to determine whether there is reasonable suspicion that he committed the crime or crimes as charged, his alleged role in the said crime or crimes, and the length of the accused's detention.*"

Applying this interpretation to the extant case, the Prosecutor makes the following assertions:

1. Reasonable Suspicion: According to the Prosecutor, "*there are not only reasonable grounds for believing that he has committed the crimes (. . .), but after confirmation of the amended indictment, there are reasonable grounds to believe that his criminal liability is more extensive than at the time of his previous application for provisional release*", made on 24 April 1996 and rejected the next day.

2. Role of the Accused: The response points out that the accused was the Commander of the HVO in Central Bosnia during the time the crimes alleged were committed by his subordinates. "*His role in these violations was significant and does not justify a finding of exceptional circumstances.*"

3. Length of Detention: "*The time he has spent in pre-trial detention is not unreasonable under the circumstances of the case and does not violate international standards under either the International Covenant on Civil and Political Rights (. . .) or the European Convention on Human Rights.*"

The Prosecutor's response proceeds to counter each of the arguments raised in the Defence motion [see Press Release 139]:

.../...

1. That the accused will voluntarily appear for trial: The Prosecutor asserts that any restrictions which might be imposed by the Trial Chamber on the accused's ability to travel would be "*unenforceable*". His offer to surrender his passport is "*meaningless*" given that he could remain a fugitive in the Republic of Croatia. His proposal to stay in daily contact with the Tribunal by phone or in person is "*unenforceable and impractical and is only worthwhile in a jurisdiction where a failure to report will result in immediate police and judicial consequences. That simply is not the situation in the Republic of Croatia (. . .)*"

Croatia's guarantee to return the accused should he fail to do so voluntarily "*is problematic at best*" and has already been rejected by the Trial Chamber in the accused's first application for provisional release. Similar guarantees have been rejected by the Trial Chambers in other cases. The Prosecutor concludes that "*[i]n light of the Republic of Croatia's abysmal record in respect of persons indicted by the Tribunal, any guarantees offered by them would be worthless.*"

Finally, the Prosecutor asserts that Blaškić's offer to post a bail bond would be, in the words of the Trial Chamber during the first application, "*in no way sufficient to ensure that, if released, he would appear before International Tribunal*".

2. That the accused poses no threat to victims or witnesses: The Prosecutor draws the Chamber's attention to its previous decision rejecting such contention and adds that "*now that in excess of 115 witness statements have been provided to him, the risks to victims and witnesses are increased*".

3. That other considerations favour the accused's release: According to the Prosecutor, the accused's family situation is "*not unique*" and does not justify granting his application. Further, the conditions of modified detention which have been granted to the defendant "*are generous by any measure and are in excess of those enjoyed by other detainees (. . .)*"

The Prosecutor refutes the Defence argument that provisional release will assist him in preparing his Defence. "*His detention does not interfere with his right to consult with counsel and leaves him similarly situated to other individuals in the Tribunal's custody. Indeed, his detention cannot have impeded his ability to prepare his defence since he has repeatedly insisted on proceeding with the 8 January 1997 trial date.*"

Finally, the Prosecutor contends that the accused's release would dissuade witnesses and victims from testifying and would "*further erode the available number of witnesses willing to appear to testify at trial*".

The Prosecutor concludes that provisional release under Rule 65 of the Tribunal's Rules of Procedure and Evidence "*should be ordered only in very rare cases. This is not such a case.*"

The Defence and the Prosecution will argue orally the provisional release motion and response during a hearing on Thursday 19 December. This hearing is public and begins at 9.30 a.m.

The full texts of both motion and response are available upon request at the Press Office.