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CC/PIO/156-E
The Hague, 14 February 1997

BLAŠKIĆ CASE: CROATIA and BOSNIA AND HERZEGOVINA
ORDERED TO COMPLY WITH PROSECUTOR'S REQUEST
FOR PRODUCTION OF DOCUMENTARY EVIDENCE

International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

In two orders issued today, Judge Gabrielle Kirk McDonald directed the Governments of the Republic of Croatia and Bosnia and Herzegovina to comply fully with Subpoenas issued by the Tribunal on 15 January 1997 in which they are once again ordered to turn over to the Prosecution of the International Tribunal **documentary evidence** relating to the Blaškić case.

1. ORDER TO CROATIA

In the order directed to the Republic of Croatia, Judge McDonald directed its Minister of Defence, Gojko Šušak, to turn over to the Prosecutor evidence in the Blaškić case which is in Croatia's possession, and which it was earlier ordered to produce but did not. **If these documents are not handed over by 19 February 1997, Šušak or his representative and a representative of the Government of Croatia are ordered to appear before the Judge on that day to explain their Government's refusal to comply with the earlier Subpoena *duces tecum* (order to produce relevant documents).**

Background

In a "Subpoena *duces tecum*" served on the Republic of Croatia and its Defence Minister, Gojko Šušak, on 15 January 1997, Judge McDonald (pursuant to Articles 18(2) and 19(2) of the Statute and Rules 39(ii) and (iv) and 54) ordered that 13 specified categories of evidence relating to the Blaškić case be provided to the Prosecutor on or before 14 February 1997.

The Subpoena further directed that in the event of non-production of these documents, a representative of the Republic of Croatia and Šušak or his representative appear in court at 9 a.m. on 14 February to show cause why the order has not been complied with.

Croatia's failure to either hand over the requested documents or to appear in court to explain this refusal precipitated today's order.

• **The following is a summary of the documentary evidence requested by the Prosecutor:**

- All notes and writings of General Blaškić made between 1 April 1992 and 1 January 1994 and directed to the Croatian Ministry of Defence and its representatives;
- All notes and writings made by General Blaškić during the above time period and directed to Mate Boban and to the Ministry of Defence of the Croatian Community of Herceg Bosna and its military and civilian representatives;
- All military orders issued on behalf of General Blaškić while he was commander of the Operation Zone Central Bosnia;

.../...

- All directives and orders directed to Tihomir Blaškić personally or in his official capacity by Mate Boban, the General Staff of the HVO (The Croatia Defence Council) and the Ministry of Defence of the Croatian Community of Herceg Bosna between 27 June 1992 and 1 January 1994;
- All orders, communications and directives directed to Mate Boban, the General Staff of the HVO and the Ministry of Defence of the Croatian Community of Herceg Bosna and its representatives made between 1 April 1992 and 1 January 1994 ;
- All writings, memoranda, notes, reports and memoranda of understanding between Minister Šušak and his representatives and Mate Boban, the General Staff of the HVO and the Ministry of Defence of the Croatian Community of Herceg Bosna and its representatives made between 1 April 1992 and 1 January 1994;
- All reports and files of investigation and prosecution, conducted by the HVO or HV (The Army of the Republic of Croatia), or their representatives, into the attack on Ahmići and other villages in the Lašva Valley in April 1993, including the killing of civilians;
- The names of all persons disciplined in any way in Herceg Bosna or Croatia for the crimes which occurred during the above attack;
- Minutes of meeting between General Blaškić and HVO military and civilian personnel on 4 July 1992 in Kruscica (Vitez municipality);
- All Croatian Ministry of Defence records reflecting the supply of arms and ammunition by the Republic of Croatia to the HVO, the HZ H-B (the Croatian Community of Herceg-Bosna) or their representatives from November 1991 to January 1994;
- All Croatian Ministry of Defence documents, records, reports and orders reflecting the presence of HV military personnel and their activities in Bosnia and Herzegovina between 1 November and 1 July 1994;
- All Croatian Ministry of Defence documents and records reflecting the death, wounding or injury to HV military personnel in Bosnia between 1 January 1993 and 1 January 1994;
- Telephone toll call records between the Croatian Ministry of Defence and the Ministry of Defence of Herceg Bosna, from 1 April 1992 to 1 January 1994.

- The position of Croatia

In a letter to the Registrar of the Tribunal dated 13 February 1997, Dr. Srećko Jelinić, on behalf of the Croatian Government replied to the Subpoena duces tecum and stated its position.

It noted that the Subpoena *duces tecum* of 15 January, while addressed both to Mr. Šušak and to the Republic of Croatia, directed Mr. Šušak to provide the requested evidence to the Prosecutor and commented: *"The assistance request can be directed to a state, but not to a specifically named high government official to appear on behalf of the state. (. . .) any order directed to Minister Gojko Šušak, as well as to any government official personally, is considered unfounded. Likewise, under the provision of Article 8 of the Rules (. . .) a request for the forwarding of relevant information is to be directed to a state, not to an individual."*

The letter states that nowhere in the Statute or Rules is there *"a mention of a possibility of directing a "subpoena" to sovereign states. (. . .) Therefore, the Republic of Croatia, as a sovereign state, cannot accept to comply with the order of "subpoena duces tecum", but respecting its obligations under the Tribunal's Statute reiterates its readiness for full cooperation under the terms applicable to all states.*

.../...

“(. . .) The number of information and documents [requested] is huge and surprising due to the fact that some of the requested documents do not even exist, others do exist but cannot be related to the case of General Blaskic, and yet others perhaps do exist but are not in the possession of the authorities of the Republic of Croatia because they relate to the activities in Bosnia-Herzegovina.”

Croatia, it pointed out, can exercise jurisdiction only in relation to its own territory. The letter concluded by stating Croatia's commitment to cooperation with the Tribunal, based on international law and the Constitutional Act of the Republic of Croatia. *“Specific requests related to specific cases are expected. Like any other sovereign state the Republic of Croatia reserves the right to observe the interests of its national security when assisting the Tribunal.”*

2. ORDER TO BOSNIA AND HERZEGOVINA

An order similar to the one above was issued in respect of the State of Bosnia and Herzegovina, which has only partially complied with a Subpoena *duces tecum* issued on 15 January 1997.

The Minister of Defence of the Federation of Bosnia and Herzegovina, Ante Jelavić, was ordered to produce the evidence requested in the Subpoena of 15 January by 2 p.m. on Wednesday 19 February 1997. In case of failure to do so, Mr. Jelavić or a qualified representative is summoned to appear before the Tribunal on that date to describe the location and content of the archives and to explain what steps have been taken to comply with the Subpoena. In addition, Bosnia and Herzegovina was directed to make an assurance of its compliance with the Subpoena by that date.

Background

The aforementioned Subpoena *duces tecum* was sent on 15 January 1997 to Bosnia and Herzegovina and to the Custodian of the Records of the Central Archive of what was formerly the Ministry of Defence of the Croatian Community of Herceg Bosna. It directed the latter to turn over to the Prosecutor 19 separate bundles of documentary evidence concerning the Blaškić case, of a similar nature to the evidence requested of Croatia but including additional items.

The documents appear to be contained in the above-mentioned Archives, whose legal successor is the BH Federation Central Archives.

On 11 February 1997, Federation Minister of Defence Jelavić wrote to Madame Vasvije Vidović, the Minister-Counsellor representing Bosnia before the Chamber, to inform her that he had asked the HVO, to facilitate contact between the director of the War Archives of the former Ministry of Defence of Herceg Bosna and the International Criminal Tribunal. He added that custodian of the Archives died recently and has not yet been replaced.

Thus far, 11 items, consisting of short orders prepared by General Blaškić, have been supplied to the Prosecutor (either pursuant to item 5 of the request, or to an earlier request for cooperation). Mme. Vidović agreed with the Prosecutor that the documents so far furnished only comply with one part of the request. The Prosecutor characterised the response of the custodian of the records of the archives as one of “substantial non-compliance” and asked that this be noted in the order issued today by Judge McDonald. He requested that Mr. Jelavić be called to account for this failure, as the person with effective control over the Archives.

Copies of the Order and Subpoenas can be obtained upon request from the PIO.