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TRIAL CHAMBERS  
CHAMBRES DE 1ERE INSTANCE

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The Hague, 21 March 1997

### **BLAŠKIĆ CASE:** **DEFENCE MOTION TO COMPEL BOSNIA AND HERZEGOVINA TO** **PRODUCE DOCUMENTS SAID TO BE EXCULPATORY REFERRED TO** **TRIAL CHAMBER II**

In an decision dated 18 March 1997, Trial Chamber I - composed of Judges JORDA (presiding), LI and RIAD - decided on the motion presented by the Defence of the Accused BLAŠKIĆ during the hearing held last 12 March.

The purpose of this motion was that the Chamber issue "a subpoena duces tecum to the Republic of Bosnia and Herzegovina" compelling the production of documents said to be exculpatory for the Accused. (see PR 162-E).

The Chamber ordered that this motion be referred to Judge McDonald, President of Trial Chamber II, who has before her a related proceeding, regarding *subpoenas* issued at the request of the Prosecutor. (see PR 156, 158, 160, 163 and 166).

#### **Reasons for the decision**

The Chamber considered that "it is in the interest of the proper administration of justice" that the related requests of the Defence and of the Prosecution "be heard together by the same Judge". It based its decision on the followings grounds:

1. "firstly, (...) uniformity of approach in decisions on similar questions should be ensured and any contradiction thus avoided;"
2. "second, (...) if (...) prior to the trial on the merits, the Trial Chamber (...) were to review the evidence submitted to the Defence by the third party in possession of that evidence (...), the review might be tainted in such a way as to permit the parties to challenge the impartiality of that Trial Chamber ...;"
3. given the existence of "ex parte proceedings" before Judge McDonald who "invited the parties (...) to file briefs in respect of several theoretical questions of principle", the Chamber considered that "in respect of the above it appears preferable that the request submitted to this Trial Chamber be reviewed and ruled on by the same Judge in view of a hearing (...) which, when the Defence is also involved, would also permit holding inter partes proceedings". .../ ...

### Other developments

In an order dated 14 March 1997, Judge McDonald decided that the above mentioned proceeding will be heard by the full Trial Chamber II, "considering the significance of the issues to be addressed". During the hearing, scheduled for Wednesday 16 April at 10.00, the following issues will be addressed:

- the power of a Judge or Trial Chamber of the International Tribunal to issue a *subpoena duces tecum* to a sovereign State (emphasis added);
- the power of a Judge or Trial Chamber to make a request or issue a *subpoena duces tecum* to a high government official or State (emphasis added);
- the appropriate remedies to be taken if there is non-compliance with a *subpoena duces tecum* or request of a Judge or Trial Chamber.

However, in a request filed on 20 March 1997, the Prosecutor asks Trial Chamber II "to narrow the issues to be briefed by the parties", in order "to focus on the facts at issue in the present litigation". In the view of the Prosecution, the briefs, which the parties will present on 16 April 1997, should specifically address the question of the issuance of *subpoenas* with respect to Croatia and Bosnia-Herzegovina.

"Given the unique mandate of the Tribunal in respect of the territory of the former Yugoslavia, (...), and given that the subpoenae were issued in relation to a criminal trial that is due to start imminently", the Prosecutor suggested the following new formulation:

- the power of a Judge or Trial Chamber of the International Tribunal to issue *subpoenas duces tecum* to Croatia and to Bosnia and Herzegovina (emphasis added);
- the power of a Judge or Trial Chamber to make a request or issue a *subpoena duces tecum* to a high government official of Croatia and of Bosnia and Herzegovina (emphasis added);
- the appropriate remedies to be taken against Croatia and Bosnia and Herzegovina and against high government officials of said States (emphasis added) if there is non-compliance of a *subpoena duces tecum* or request of a Judge or Trial Chamber.

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*The full text of the Decision rendered by Trial Chamber I and of the Prosecutor's request are available upon request from the Press and Information Office.*