

16 October 1997

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D 5284 - D 5282

**UNITED
NATIONS**



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

Case No.: IT-96-21-T

Date: 16 October 1997

Original: English

IN THE TRIAL CHAMBER

Before: Judge Adolphus G. Karibi-Whyte, Presiding
Judge Elizabeth Odio Benito
Judge Saad Saood Jan

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Order of: 16 October 1997

PROSECUTOR

v.

**ZEJNIL DELALIĆ
ZDRAVKO MUCIĆ also known as "PAVO"
HAZIM DELIĆ
ESAD LANDŽO also known as "ZENGA"**

**ORDER ON THE PROSECUTION'S REQUEST FOR THE ISSUANCE OF
SUBPOENAE AD TESTIFICANDUM AND FOR AN ORDER TO THE
GOVERNMENT OF BOSNIA AND HERZEGOVINA**

The Office of the Prosecutor:

**Mr. Grant Niemann
Ms. Teresa McHenry
Mr. Giuliano Turone**

Counsel for the Accused:

**Ms. Edina Rešidović, Mr. Ekrem Galijatović, Mr. Eugene O'Sullivan, for Zejnil Delalić
Mr. Željko Olujić, Mr. Michael Greaves, for Zdravko Mucić
Mr. Salih Karabdić, Mr. Thomas Moran, for Hazim Delić
Mr. John Ackerman, Ms. Cynthia McMurrey, for Esad Landžo**

THIS TRIAL CHAMBER 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 (“International Tribunal”);

BEING SEISED of a motion dated 14 October 1997 filed by the Office of the Prosecutor (“Prosecution”) requesting the following:

- (i) the issuance of *subpoenae ad testificandum* to certain persons named therein; and
- (ii) an order to the Government of Bosnia and Herzegovina (Official Record at Registry Page (“RP”) D5258 - D5263) (“Motion”);

NOTING that one of the persons to whom the Prosecution requests that a *subpoena ad testificandum* be issued is a State Official, namely the Custodian of Public Records of the Government of Bosnia and Herzegovina;

NOTING the contents of an addendum to the Motion filed by the Prosecution on 14 October 1997 (RP D5265 - D5267);

NOTING the oral submissions of the Prosecution whilst speaking to the Motion at a hearing held on 15 October 1997;

NOTING FURTHER that during the said hearing, Counsel for the four accused persons addressed the Trial Chamber as *amici curiae*;

CONSIDERING that Article 29 of the Statute of the International Tribunal sets out the relationship of co-operation and judicial assistance between the International Tribunal and States;

CONSIDERING that the exact nature of the relationship referred to above is *sub judice* because it is under consideration by the Appeals Chamber of the International Tribunal in the case of *The Prosecutor v Tihomir Blaškić* (Case No.: IT-95-14-AR 108bis);

CONSIDERING that in the proceedings referred to above, the Appeals Chamber is also considering the related matter of the power of the International Tribunal to issue a subpoena to a State Official;

CONSIDERING HOWEVER that it appears that the International Tribunal, acting through a single Judge or Trial Chamber, may issue requests for assistance to a sovereign State;

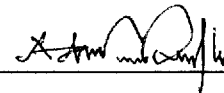
CONSIDERING that pursuant to Rule 54 of the Rules of Procedure and Evidence of the International Tribunal ("Rules"), the Trial Chamber may issue *subpoenae ad testificandum* to individuals in respect of knowledge they have gained in their personal capacity;

PURSUANT TO ARTICLE 29 AND RULE 54

HEREBY;

1. **DENIES** the Motion in so far as it relates to the issuance of an order to the Government of Bosnia and Herzegovina.
2. **DENIES** the Motion in so far as it requests the issuance of a *subpoena ad testificandum* to the Custodian(s) of Records of the Government of Bosnia and Herzegovina.
3. **ISSUES** the *subpoenae ad testificandum* attached hereto to the persons named therein.
4. **MAKES** the request attached hereto to the Government of Bosnia and Herzegovina.

Done in both English and French, the English text being authoritative.



Adolphus Godwin Karibi-Whyte
Presiding Judge

Dated this sixteenth day of October 1997
At The Hague,
The Netherlands.

[Seal of the Tribunal]