

## **Test Case**

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wants membership of the international community.

"The co-operation with the Tribunal is a necessary step for Croatia in terms

of its joining the international community and receiving development

assistance", the Office of the Prosecutor (OTP) spokesman, Paul Risley, told

IWPR last week.

Asked if he believed that Croatia's co-operation would improve once a new

government took office in that country, he replied positively but remained

cautious nevertheless. "The latest political developments in Croatia are

startling", he said expressing the hope that, "the complexities of the

political situation will be resolved and that Croatia will recognise the

benefits" to be derived from changing its attitude. "But the issue of

co-operation with the Tribunal still must be resolved," Risley added.

"It is one of the major outstanding issues" for Croatia and "it is not a

political matter but the matter of Croatia's standing in the international

community", he said.

Last year, the Tribunal reported Croatia to the UN Security Council

for non-compliance with the request to surrender Mladen Naletilic Tuta and co-operate in the investigation into possible crimes committed during operations Storm and Flash. "Until the non-compliance is resolved by either side--the Security Council or Croatia--we are frozen in the status quo", concluded Risley.

Dissatisfied with Croatia's "strategy of failing to honour obligations" and the small number of documents submitted so far, prosecutors in the Kordic/Cerkez case last week asked judges to either re-issue a request to Croatia to hand over documentation demanded some time ago. or to explain before the court why it was not possible to fulfil the request.

At a special hearing, the prosecutor reminded the judges that the Tribunal has been trying for three years to obtain a sizeable "package" of documents relevant in the first instance to the Blaskic case and now to the Kordic/Cerkez case. The prosecutors complained that the Croatian authorities had mostly responded that the documents are not in their possession or that to hand the documents over would threaten Croatian national security interests. The prosecutor alleged such action was a "strategy or campaign to obstruct and delay the work of the Tribunal."

"Unless the Court takes stern measures", the prosecutors fear the documents

might be produced too late - after the case of the prosecution is concluded.

In Blaskic case, heard before another Trial Chamber, the prosecution

received only a box of "mostly irrelevant documents", prosecutor Kenneth

Scott said.

The documents the prosecution has requested refer mostly to the linkage

between Croatia and the Bosnian Croats and should, among other things, prove

that the Croat-Bosnian conflict in B-H was international in character. If

Croatia claims that those documents are "lost or destroyed", the prosecution

asks that "a senior Croatian official come to the Court and give a full

account" of why the requested material cannot be produced.

Scott believes that the Croatian minister of defence or justice should

appear. He warns that lawyers--Croatia is represented by US lawyers David

Rivkin and Lee Casey in these hearings--cannot know the details about where

the documents are and that, in addition, they are not testifying under oath.

Claiming that Croatia fulfils court orders, representatives of the

(out-going) government in Zagreb maintain that the state should first review

the requested documents to ascertain whether any, like for example the

correspondence of late President Franjo Tudjman, would compromise interests

of national security.

"We are asking for more time in order to formulate possible objections,"

Casey said. The prosecutors, however, believe that "time has run out" and that Croatia could have formulated those objections already.

Judge Richard May has announced that the decision of the Trial Chamber on these requests will be announced following the return of judge Patrick Robinson, to The Hague next week. The judges will then announce the steps they intend to take in relation to non-compliance by the Bosniak-Croat entity of B-H.

A separate hearing, related to the failure to comply with Tribunal requests addressed to the government of the Federation of B-H, took place last week before the same Trial Chamber. Indicating that the prosecution had received in the last three years only "a handful of irrelevant documents" from the Federation, the prosecutor requested that the court take measures to enforce its orders.

Pointing out that the Bosniak side in the B-H Federation is co-operating with the Tribunal, the prosecutor warned that it is the Croatian side in the Federation that is, just like Croatia proper, obstructing the Tribunal's work. The Bosniak side, as was confirmed by its representative at this

hearing, does not have access to the archives of the HVO, Herceg-Bosna and the Croatian Democratic Union (HDZ).

The prosecutor requested that the court order several Federation ministers to appear before the Chamber in connection with the stated obstruction.

The defence in the Kordic/Cerkez case has for its part requested documents from several parties. The hearing was held with representatives from the European Community Monitoring Mission (ECMM) and the Netherlands. The defence requested the court to send binding orders to these two parties.

The defence wants to obtain the documents from the ECMM and UNPROFOR (United Nations Protection Force) linked to Kordic and events in some villages around Busovaca. However, given the volume of UNPROFOR's archive, it addressed its requests concretely to the Netherlands, whose battalion was located in central Bosnia. The Netherlands representative, however, believes that the defence's requests have too broad a scope and directed the defence back to the UNPROFOR archive. The Netherlands representative also deems that third states must be granted wider margins to invoke national security interests than the states of the former Yugoslavia.

The ECMM, however, warns that their archive is confidential and not subject

to disclosure to any court. The defence, however, does not accept that

argument, warning that the ECMM had previously granted prosecutors access to

the archive. The defence also requested documents from the British

government, which also had a battalion located in central Bosnia. The

defence pointed out that there is a chance it might obtain some of the

requested documents from that government.

**Location:** Balkans  
Croatia  
Bosnia and  
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**Focus:** International Criminal Tribunal for the former  
Yugoslavia

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