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REGISTRY
GREFFE

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BLASKIC CASE: **THE PROSECUTOR SEEKS LEAVE TO APPEAL**

*It contends that the Trial Chamber I
“failed to give due weight to the importance of the protection
of victims and witnesses”.*

The Prosecutor has filed on Tuesday 8 October 1996 an application for leave to appeal against the decision of 2 October by Trial Chamber I to order, *inter alia*, the communication to the Defense of the full text of all Prosecutor's witnesses statements before 1 December.

The procedure

The Rule.

The application by the Prosecutor is based on *Rule 72 (B)(ii)* of the Rules of Procedure and Evidence (RPE). Adopted by the Judges during their last Plenary Session in June 1996, the point (ii) extends the possibility of appeal against decision on preliminary motions, which was so far restricted to the dismissal of an objection based on the lack of jurisdiction.

The paragraph (B) of the Rule 72 (General Provisions on Preliminary motions) reads in full:

(B) The Trial Chamber shall dispose of preliminary motions in limine litis and without interlocutory appeal, save

(i) in the case of dismissal of an objection based on lack of jurisdiction, where an appeal will lie as of right;

(ii) in other cases where leave is granted by a bench of three Judges of the Appeals Chamber, upon serious cause being shown, within seven days following the impugned decision.

Its implication.

The above-mentioned application for leave to appeal must be filed within 7 days after the decision and the applicant must demonstrate serious grounds.

The seriousness of the grounds for the application, and its recevability, are then determined by three Judges of the Appeals Chamber assigned on a case-by-case basis by the President of the International Tribunal, Judge Antonio Cassese.

It is only if the leave to appeal is granted by this Bench that the merits of the cause will be considered by the full Appeals Chamber.

The implementation of the Rule in this case

The President of the International Tribunal has assigned the following Judges to the bench called upon to consider the recevability of the Prosecutor's application:

Judge Antonio CASSESE (Presiding), Judge Saad Saood JAN and Judge Haopei LI.

The Defense Counsel has been invited to respond the Prosecutor's application. This response must be filed early next week.

The decision of the Appeals Bench is expected before the end of the week of 14 to 18 October 1996.

The Prosecutor's application.

The Prosecutor submits three grounds "*demonstrating serious cause*":

1. "*(...)In its effort to strike a balance between its duty to ensure that the accused is tried without undue delay and its duty to provide for the protection of victims and witnesses, the Trial Chamber (...) failed to give due weight to the importance of the protection of victims and witnesses and instead took a view of urgency of proceeding to trial which cannot be justified by reference to international standards pertaining to the permissible length of pre-trial detention*".

2. In ordering "*the full disclosure of prosecution statements, coupled with the sanction that the Prosecutor may not lead at trial the evidence of a witness whose statement has not been so disclosed*", the Trial Chamber places the Prosecutor "*in an impossible dilemma*", deprives "*the victims and witnesses of protective measures to which they are entitled*" and prematurely excludes (...) "*potentially relevant and admissible evidence which it has a duty to consider in the interests of justice*".

3. By dealing with witnesses *en bloc*, the Judges have "*precluded any further consideration of protective measures for individual witnesses*".

Furthermore, the Prosecutor informs the Appeals Bench that he will provide the Defence with "*a substantial number of witness statements in full and unredacted form*" within the time-frame set by the Trial Chamber. Nevertheless, the Prosecutor "*anticipates that there will remain a reduced number of witnesses whose evidence is indispensable but whose safety is at risk, who will meet the criteria for anonymity (...) and for whom further specific measures (...) may be sought justifiably*".

The Prosecutor finally submits that "*if the Trial Chamber's decision is allowed to stand it will prevent the proper administration of justice*".

The full text of the application referred to above is available upon request at the Press and Information Office

Le texte intégral de la décision résumée ci-dessus est disponible sur simple demande auprès du Bureau de Presse et d'Information.

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