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APPEALS CHAMBER  
CHAMBRE D'APPEL

CC/PIO/118-E  
The Hague, 15 October 1996

### **BLAŠKIĆ CASE:** **APPEALS BENCH REJECTS THE PROSECUTOR'S** **APPLICATION FOR LEAVE TO APPEAL**

A bench of three Appeals Chamber's Judges, namely Judges CASSESE (Presiding), LI and JAN, rejected on Monday 14 October 1996 the application by the Prosecutor for leave to appeal against the Decision of Trial Chamber I dated 2 October 1996.

This decision ordered, *inter alia*, the disclosure to the Defence of the full text of all Prosecutor's witnesses statements (see Press Release 114).

On 8 October, the Prosecutor filed an application for leave to appeal under Rule 72(B)(ii) of the Rules of Procedure and Evidence.

#### **The scope of Rule 72(B)(ii).**

Referring to the interpretation of Rule 72(B)(ii) laid down in the *Delalić Case* (Decision dated 14 October denying the accused's application for leave to appeal, see Press Release 117), the Appeals Bench recalls that "*a three-fold test of cumulative conditions is to be applied whenever an application for leave to appeal(...)is concerned*". Namely:

- 1. The application must relate to one of the five issues covered by the Rule on preliminary motions** (lack of jurisdiction, defects in the form of the indictment, exclusion of evidence, severance of crimes in one indictment or separate trial, denial of a request for assignment of counsel);
- 2. The application must pass a "negative" test:** it must not be frivolous, vexatious, manifestly ill-founded, an abuse of the process of court, or vague and imprecise;
- 3. The application must show a "serious cause",** i.e. "*either show a grave error which would cause substantial prejudice to the accused or is detrimental to the interests of justice, or raise issues which are not only of general importance but are also directly material to the future development of trial proceedings(...)*".

According to the Appeals Bench, "*these three conditions (...), which should be read in conjunction, must be met for the showing of "serious cause" as required by Rule 72(B)(ii).*"

.../...

**The application of Rule 72(B)(ii) to the present case.**

Applying these tests to the Prosecutor's application, the Appeals Bench has considered:

1. that the Prosecutor's application does not relate to the issue of preliminary motions but to the protection of witnesses and victims, and thus is not admissible,
2. that the Prosecutor's application does not raise a "serious cause" as defined above. The Appeals Judges instead reiterate that: "*The nature of protection which should be given to a particular witness is primarily a matter for the Trial Chamber to decide. While the Tribunal has a responsibility (...) with regard to the protection of victims and witnesses, it has also to keep in mind the paramount consideration that the accused is entitled to a fair and expeditious trial*".

For the above reasons, the Prosecutor's application is rejected.

However, the Judges found it appropriate to point out that their Decision does not preclude the Prosecutor from asking the Trial Chamber for "*specific protective measures (...) either in respect of a change of circumstances or for a reduced number of witnesses*". They also noted that the "*Prosecutor may consult the Victims and Witnesses Unit (...) on the issue of which specific protective measures to propose*".

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The full text of the above-summarized decision is available upon request at the Press and Information Office.