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BLASKIC CASE
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PROSECUTOR REQUESTS AND DEFENCE OPPOSES POSTPONEMENT OF BLAŠKIĆ TRIAL UNTIL APRIL 1997

International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

The Prosecutor has requested a postponement of the trial of General Tihomir BLAŠKIĆ from 8 January until 21 April 1997.

The Prosecutor applied for the adjournment on 27 November 1996 in order to permit her more time to investigate the case.

In its response, filed on 2 December 1996, the Defence opposed the application, claiming that there is nothing in the Statute or Rules which would justify any delay in the commencement of the trial, and that if the application succeeds, General BLAŠKIĆ should be provisionally released.

The Prosecutor's Application

An amended indictment against General BLAŠKIĆ was submitted on 15 November 1996 to the confirming Judge, Gabrielle Kirk McDonald, who confirmed it on 22 November 1996. According to the Prosecutor, this amended indictment, which charges the defendant with six additional counts of crimes against humanity, grave breaches and violations of the laws and customs of war, "*more appropriately reflects the accused's alleged conduct*".

In her application, the Prosecutor explains that factors beyond her control have hampered her ability to be ready for trial by 8 January 1997, as ordered by Trial Chamber I on 2 October 1996. In particular, the fact that the case involves "*numerous criminal acts committed by various military units over a large geographical area*" necessitates the collection of evidence to establish, first, that each of the separate crimes alleged occurred and, second, to establish the accused's command responsibility. According to the Prosecutor: "*This is and remains a difficult and complex endeavour.*"

The Prosecution team has also been hindered by the continuing poor relationship between the authorities of Herceg-Bosna and those of Bosnia and Herzegovina, which has stymied the tracing and interviewing of witnesses and the collection of relevant documentation.

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Since Trial Chamber I's decision of 2 October relating to the Prosecutor's application for protective measures for victims and witnesses, at least 19 "significant" witnesses who had previously agreed to testify have now withdrawn and the Prosecutor is currently seeking other potential witnesses.

The Prosecution argues that her application is well-founded as it is not envisaged by either the Statute or the Rules that a case will be ready for trial when an indictment is confirmed, but that additional time will be required. Further, she claims that the accused's right to a trial within a reasonable time would not be compromised by a postponement of trial.

The Defence's Response

The Defence submits that the Prosecutor's application for an adjournment so that she can continue her investigations "*is improper and should be denied*".

The Prosecutor has had ample opportunity to prepare her case, according to the Defence, alluding to the fact that General BLAŠKIĆ was indicted in November 1995 and made his first initial appearance before Trial Chamber I in April 1996. Additionally, in September 1996, the Prosecutor indicated to the Trial Chamber that she would be ready to commence trial no later than 1 February 1997. Any further delay in the trial would be prejudicial to the accused and would violate his right to be tried without undue delay.

The Defence asserts that neither the Statute nor the Rules support an adjournment of trial to allow the Prosecutor to investigate her own allegations. "*Rather, the Prosecutor is to conduct her investigation prior to preparing an indictment. (. . .) Nowhere do the Rules provide for any delay (. . .) in order for the Prosecutor to return the case to the preliminary investigative phase.*"

The amendment of the original indictment does not constitute grounds for postponing trial. "*[A] postponement is proper only to ensure that the accused has adequate time to prepare his defence.*" The Defence seeks no such delay. Moreover, the Prosecutor fails to specify what new evidence she has uncovered which would justify any delay, nor what steps she intends to take to obtain the evidence the lack of which renders her unable to proceed to trial on schedule.

If the Prosecutor is not now possessed of sufficient evidence to proceed to trial, she has "*a statutory (and perhaps ethical) obligation to seek leave to withdraw the indictment*".

Were the indictment to be withdrawn, there would be no basis for the accused's continued detention. The exceptional circumstances justifying provisional release under Rule 65 exist in this case. If the Prosecutor were to seek to reindict the accused at some future date, General Blaskic is prepared to give assurances that he will voluntarily appear before the Tribunal when requested.

The full texts of the application and response are available from the Press and Information Office.