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TRIAL CHAMBERS
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The Hague, 20 December 1996

BLAŠKIĆ CASE **MOTION FOR PROVISIONAL RELEASE REJECTED**

In a decision dated 20 December 1996, Trial Chamber I, consisting of Judges Claude JORDA (President), Jules DESCHENES and Fouad RIAD, rejected a motion for provisional release filed by General BLAŠKIĆ. (On the motion of the accused and the response of the Prosecutor see Press Releases 139 and 142).

FINDINGS OF THE CHAMBER

The Judges followed a three step approach:

- first, they considered the conditions concerning the provisional release of an accused set out in Rule 65 of the Rule of Procedure and Evidence (RPE);
- then, they examined the question of the length of the pretrial detention;
- lastly, they considered other arguments submitted by the Defence.

1. The conditions contained in Rule 65 RPE

Having underlined that the letter as well as the spirit of the Statute and the Rules of the Tribunal provide that the detention of persons indicted for serious violations of international humanitarian law is the principle, while release is exceptional, the Chamber noted that Rule 65 of the RPE sets out the three criteria for the provisional release of an accused to be granted:

- the release can only be granted in exceptional circumstances;
- the Chamber has to be convinced both that the accused will appear for his trial,
- and that, if released, he will not pose a danger to any victim, witness or other person.

Exceptional circumstances:

The Judges held that the fact the accused voluntarily surrendered to the Tribunal justified a modification of his detention conditions but did not constitute an exceptional circumstance.

Guarantees for the appearance of the accused:

The Judges held:

- that the guarantees for the appearance of the accused offered by the Republic of Croatia were not sufficient. In that regard, they noted that Croatia did not comply with its obligation to cooperate with the Tribunal in the RAJIĆ case, and, that in the present case, it neither transferred to the Tribunal the accused ALEKSOVSKI nor any of the other co-accused of General BLAŠKIĆ in the original indictment;

- and that the other guarantees offered by the accused, including the deposit of a high bail bond, were also insufficient, because of his desire to be released in his country and of the severeness of the penalty which may be imposed upon him.

The protection of witnesses and victims:

The Chamber considered that the Defence did not prove that the Accused, if released, would not pose a threat to witnesses, and moreover that the very fact of his release could discourage witnesses to appear before the Tribunal.

2. The duration of pretrial detention

The Judges first noted that neither the Statute nor the Rule provide for a specified period of time after which provisional release must be granted, and that because of the international character of the Tribunal, which tries particularly serious crimes, no reference to national provisions was appropriate.

Then, they held that the detention of the accused, which started on 1 April 1996, did not exceed nine months, and that this amount of time was not unreasonable with regard to the jurisprudence of the European Court of Human Rights, which held as reasonable periods of time from 19 months to 5 years.

The Chamber also noted the complexity of the BLAŠKIĆ case.

Lastly, it underlined that the postponement of the date of the trial not only came from the slowness of the Prosecutor in complying with her obligation of communication with the Defence, but also from the filing by the Defence of numerous preliminary motions.

3. Other arguments of the Defence

The fact that General BLAŠKIĆ already benefited from a privileged system of detention led the Chamber to reject his arguments regarding the positive effect that his release would have on his familial situation, and on his ability to prepare his defence.

The full text of the above-mentioned decision will be soon available upon request at the Press and Information Office.