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REGISTRY  
GREFFE

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### BLAŠKIĆ CASE: UPDATE

On 27 January 1997, two documents were filed in the BLAŠKIĆ case with the Registry. They relate to the following matters:

#### NEW COMPOSITION OF TRIAL CHAMBER I

Judge DESCHENES being temporarily indisposed, President CASSESE has assigned Judge LI to Trial Chamber I. Until further notice, Trial Chamber I will thus be composed of Judges JORDA (Presiding), LI and RIAD.

#### DECISION ON THE PRODUCTION OF DISCOVERY MATERIALS

Trial Chamber I (composed of Judges JORDA (presiding), DESCHENES and RIAD) ruled on the Defence Motion "to Compel the Production of Discovery Materials". The Chamber heard the parties at a hearing held on 19 December 1996.

During the hearing, the Chamber noted the "points of agreement" between the parties and ruled on "several contested points". The Decision recalls these points before examining the "points still pending".

#### 1. "The motions which in the current case no longer present difficulties"

- The Chamber noted the agreement between the parties on the evidence submitted to the Tribunal in support of the indictment (point E of the Defence Motion) and on the Rule 61 materials (point K).
- It recalled the following rulings made during the hearing:
  - regarding the list of Prosecution witnesses (point D), it ordered the Prosecutor to disclose it to the Defence by 1 February 1997 at the latest.
  - regarding the lack of evidence (point G), and its possible consideration "as part of the (...) exculpatory evidence", the Chamber "concur[red] with the Prosecution's argument that the time and place to raise the possible question of the lack of evidence can only be at the trial on the merits".
  - concerning the evidence in the Prosecutor's possession submitted to the Tribunal in connection with the RAJIĆ, MARINIĆ and KUPREŠKIĆ indictments (points I and J), the Chamber "concur[red] with the position of the Prosecutor", basing its position on "the principle of the independence of prosecution cases in respect of one another".

## 2. "Points still pending"

- The Chamber first examined the question of the **statements of the Accused and of the witnesses** (points B and C of the Defence Motion). Of the opinion that "*no distinction*" should be drawn "*between the form or forms which these statements may have*", the Judges decided that "*all the previous statements of the accused which appear in the Prosecutor's file whether collected by the Prosecution or originating from any other source, must be disclosed to the Defence immediately*". The Chamber also held the view that **the "same criteria (...) must apply mutatis mutandis to the previous statements of the witnesses"**.

The Judges nevertheless subjected their decision to "*two conditions*". Pursuant to the first one, based on Rule 66(C), the Prosecutor would be permitted to apply to the Trial Chamber "*for relief from the obligation to disclose evidence which may prejudice further or ongoing investigations or be contrary to the public interest or affect the security interests of any State*". According to the second one, based on Article 70(A), "*the notes of interviews of the investigators, internal reports in the Office of the Prosecutor and previous statements from any expert witness, as well as books, articles and biographies of those same witnesses*" will not have to be disclosed to the Defence.

The Chamber rejected the request of the Defence for disclosure of "*all reports, affidavits or written statements from any investigator of the Tribunal who will testify at trial*".

- With regard to **exculpatory evidence** (points F and L of the Defence Motion), the Chamber questioned the scope and the conditions of application of Rule 68, specifically regarding, on one hand the contingent determination and type of the materials that the Prosecution would have in its possession, and on the other hand regarding the contingent right of inspection of the Defence of the materials which might exonerate the accused, and its conditions. The Chamber ordered the Prosecutor to inform the Defence by 14 February at the latest "*whether or not she in fact has that evidence or whether the evidence contains exculpatory material or whether she considers that although she does have exculpatory evidence, its confidentiality must be protected*".

Pointing out, however, its "*responsibility of ensuring (...) the balance of the respective rights of the parties*", the Chamber considered that "*if the Prosecution fulfils its above indicated obligations*" but the Defence considers it unsatisfactory, the Defence "*must present a prima facie case which would make probable the exculpatory nature of the materials sought*".

- The Judges rejected the request of the Defence relating to the **evidence gathered and provided to the Prosecution by Bosnia and Herzegovina**, being of the opinion, together with the Prosecutor, that "*the review of the questions regarding coercion, invention or misconduct in respect of [this] evidence (...) must take place during the trial on the merits*".
- Finally, "*as regards the request seeking nullification of the provisions restricting the right of the accused to review the evidence against him and the disclosure of the materials indicated in Sub-rule 66(B), the three Judges of the Trial Chamber consider that in this case they are neither qualified nor competent to rule on whether the provisions of the Rules of Procedure and Evidence conform to international customary law*".

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*The full text is available from the Press Office upon request*