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BLASKIĆ CASE: **DEFENCE OBJECTION TO THE ADMISSION OF HEARSAY IS REJECTED**

In a Decision rendered on 21 January 1998, Trial Chamber I (consisting of Judge Jorda, presiding, Judge Riad and Judge Shahabuddeen) rejected a motion filed on 30 September 1997 by Defence counsel for Defendant objecting to the admission of hearsay evidence with no previous inquiry as to its reliability.

Hearsay evidence is admissible

In its Decision, Trial Chamber I recalled the provisions relevant to the issue of hearsay evidence:

- Firstly, Sub-Rule 89(A) of the Rules of Procedure and Evidence, which explicitly states that: The Chambers shall not be bound by national rules of evidence.

The Chamber held that "*neither the rules issuing from the common law tradition in respect of the admissibility of hearsay evidence nor the general principle prevailing in the civil law systems, according to which, barring exceptions, all relevant evidence is admissible, including hearsay evidence, because it is the judge who finally takes a decision on the weight to ascribe to it, are directly applicable before this Tribunal. The International Tribunal is, in fact, a sui generis institution with its own rules of procedure which do not merely constitute a transposition of national legal systems. The same holds for the conduct of the trial which, contrary to the Defence arguments, is not similar to an adversarial trial, but is moving towards a more hybrid system*".

- Secondly, Sub-Rule 89 (C) regarding the admissibility of evidence provides that: a Chamber may admit any relevant evidence which it deems to have probative value.

"*This provision*", the Chamber held, "*applies whether the evidence is direct or hearsay*". As a consequence, the Trial Chamber considered "*that the admissibility of hearsay evidence may not be subject to any prohibition in principle since the proceedings are conducted before professional Judges who possess the necessary ability to begin by hearing hearsay evidence and then to evaluate it, so that they make a ruling as to its relevance and probative value*".

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It therefore is up to each of the parties to provide the elements it deems necessary in order to allow the Trial Chamber to identify clearly what falls within the category of hearsay. *“In particular, the Defence is free to demonstrate that a hearsay testimony which was declared admissible must, in the end, be excluded because its probative value is insufficient”.*

The accused’s rights are not endangered

Furthermore, the Trial Chamber held that the admission of hearsay evidence without prior inquiry as to its reliability does not endanger the need to ensure a fair trial, nor, in particular, the accused’s right to cross-examination, which is guaranteed by Article 21(4)(e) of the Statute, in application of several international human rights instruments. Such right *“applies to the witness testifying before the Trial Chamber and not to the initial declarant whose statement has been transmitted to the Trial Chamber by the witness”.*

The Trial Chamber noted *“that the right to cross-examine the witness in court may be used to challenge the importance to be given to hearsay testimony, for example, by clearly indicating the number of intermediaries who transmitted the testimony and by seeking to determine the identity and other characteristics of the initial declarant as well as the possibilities for that declarant to have learned the relevant elements or even by bringing out the other facts or circumstances which might assist the Trial Chamber in its evaluation of such evidence”.*

Background

On 5 August 1996, Trial Chamber II hearing the TADIĆ case also rejected a Defence motion seeking to exclude in principle hearsay evidence (See Press Release 102-E of 7 August 1996).

The full text of the Decision is available upon request from the Press and Information Office