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**TRIAL CHAMBERS**  
**CHAMBRES DE 1ère INSTANCE**

CC/PIO/297-E  
The Hague, 3 March 1998

## **BLAŠKIĆ CASE:** **BINDING ORDER ON THE REPUBLIC OF CROATIA** **TO BE ARGUED BEFORE TRIAL CHAMBER I**

On 26 February 1998 the Appeals Chamber, **granted** the Republic of Croatia's request for review of an order for the production of documents issued by Trial Chamber I in the *Blaškić* case.

The Appeals Chamber consisted of Judge McDonald (presiding), Judges Cassese, Vohrah, Wang and Nieto Navia.

### **The facts leading to the decision**

On 30 January 1998 Trial Chamber I (Judge Jorda, presiding, Judges Riad and Shahabuddeen) issued a confidential *ex parte* binding Order on the Republic of Croatia, requiring it to disclose specified documents to the Office of the Prosecutor by 27 February 1998.

On 13 February 1998, pursuant to Rule 108 *bis* of the Rules of Procedure and Evidence, Croatia requested a review of the Order on the following grounds:

- the Order is "*fundamentally inconsistent with the Appeals Chamber's Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997*" (the *Subpoena Appeal Decision* of 29 October 1997, see Press Release CC/PIO/253 of 29 October 1997);

- "*the Trial Chamber's Order (...) was issued on an ex parte basis [i.e. after hearing only the party making the application] without justification or authority in the (...) Rules of Procedure and Evidence*";

- "*the Trial Chamber's Order (...) raises the question of the binding and precedential effect of decisions of the Appeals Chamber on the Office of the Prosecutor and the Trial Chambers*".

The Republic of Croatia requested a stay of the binding Order pending resolution of its request for review. It also indicated that it "*would be pleased to present ... argument[s] to the Trial Chamber*".

.../...

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### **The Appeals Chamber's finding concerning Rule 108 bis and decision**

The Appeals Chamber stated that *“Rule 108 bis provides a mechanism by which a State affected by an interlocutory decision of a Trial Chamber may request review of that decision by the Appeals Chamber.*

*(...) It is clear from the wording of Rule 108 bis (A) that two conditions must be met before a State is entitled to relief. First, the State must show that it is directly affected by an interlocutory decision of the Trial Chamber. Secondly, the State must show that the interlocutory decision of the Trial Chamber concerns issues of general importance relating to the powers of the International Tribunal”.*

In the case at hand the Appeals Chamber found that the request for review was admissible, because:

*- “The Republic of Croatia is plainly affected by the binding Order issued by Trial Chamber I by virtue of its obligation under that Order to find, collect and produce the documents by the specified date”.*

*- “... the binding Order concerns the issue of whether a State third party is entitled to challenge an order for production of documents which it contends fails to comply with a decision of the Appeals Chamber. We conclude that this issue is of general importance to the International Tribunal because it raises questions regarding the scope and the extent of the rights to due process that a State third party has in such proceedings”.*

### **The Decision**

Accordingly, the Appeals Chamber suspended the execution of the binding Order and referred the matter to Trial Chamber I to hear oral arguments from the Republic of Croatia, the Prosecutor and the Defence in respect of the binding Order. *“When receiving these arguments, the Trial Chamber is to take into consideration the Appeals Chamber's decision of 29 October 1997 [the Subpoena Appeal Decision]”.* The date of the hearing has not yet been determined.

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*The full text of the document referred to in this Press Release is available from the Press and Information Office upon request*