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United Nations
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APPEALS CHAMBER
CHAMBRE D'APPEL

CC/PIO/209-E
The Hague, 5 June 1997

International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

TADIĆ CASE UPDATE:

Application for appeal by Witness OPACIĆ rejected

In a Decision dated Tuesday 3 June 1997, an Appeals Bench rejected the application for leave to appeal filed by Witness Dragan OPACIĆ on Friday 30 May (see Press Release 207).

The Applicant sought leave to appeal against the Order of 27 May by which Trial Chamber II ordered that Witness OPACIĆ be returned to the custody of the Republic of Bosnia and Herzegovina.

The Decision of the Appeals Bench means that the challenged Order is upheld.

Appropriate arrangements are being made by the Registry for Dragan OPACIĆ to be remanded to the relevant Bosnian authorities.

No further details will be made available.

Background on the Appeals Bench

The Appeal filed on 30 May failed to specify the Article of the Statute or the Rule of Procedure and Evidence (RPE) upon which it was based.

The Appeals Chamber, presided over by Judge Antonio Cassese, determined that the Applicant had no standing to appeal to the full Appeals Chamber, bound by Rule 25 of the Statute to hear "*appeals from persons convicted [emphasis added] or from the Prosecutor*".

In the interests of justice, it was decided to treat the application as an application for leave to appeal pursuant to Rule 72 of the RPE whose paragraph B(ii) provides for the constitution of a Bench of three Judges from the Appeals Chamber to determine the admissibility of the application.

On 2 June, President Antonio Cassese assigned the following Judges to the Bench: Judge Cassese (presiding), Judge Li and Judge Jan.

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The Bench's Decision

1. The Bench notes that *"Rule 72 applies to preliminary motions filed by either party. The term "party" is defined in Rule 2 of the Rules of Procedure and Evidence as "The Prosecutor or the accused"*.

The Bench concludes that *"The detained witness, Dragan Opacic, who has not been indicted, being neither the Prosecutor nor the accused, is therefore not a party. Accordingly he has no standing to invoke Rule 72"*.

2. Furthermore, the Bench makes an important comment in the view of the development of the jurisprudence about the appellate proceedings before the International Tribunal: *"any other ruling would open up the Tribunal's appeals procedure to non-parties --witnesses, counsel, amicus curiae, even members of the public who might nurse a grievance against a Decision of the Trial Chamber. This could not be. The Tribunal has a limited appellate jurisdiction which categorically cannot be invoked by non-parties"*.

The full text of the Appeals Bench's Decision is available upon request at the Press and Information Office.