



International Tribunal for the
Prosecution of Persons Responsible for
Serious Violations of International
Humanitarian Law Committed in the
Territory of Former Yugoslavia since
1991

Case No. IT-95-14-PT

Date: 6 June 1997

English

Original: French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Haopei Li
Judge Fouad Riad

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Decision of: 6 June 1997

THE PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

**DECISION OF TRIAL CHAMBER I ON THE REQUESTS OF
THE PROSECUTOR OF 12 AND 14 MAY 1997 IN RESPECT OF THE
PROTECTION OF WITNESSES**

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Andrew Cayley
Mr. Gregory Kehoe

Defence Counsel:

Mr. Anto Nobile
Mr. Russell Hayman

On 12 May 1997, the Prosecutor submitted to the Trial Chamber a "Request for *in camera* hearing and for additional protective measures in respect of the identities of witnesses and the statements provided to the Defence" (hereinafter the "Request of 12 May 1997"). On 14 May 1997, the Prosecutor filed a second Request "for an emergency stay of execution in respect of the production of witness identities and witness statements" (hereinafter the "Request of 14 May 1997"). General Blaškić's defence counsel (hereinafter "the Defence") in a consolidated opposition dated 16 May 1997 (hereinafter "the Response") responded to the requests. The Trial Chamber heard the parties at a hearing on 23 May 1997.

The Trial Chamber will first analyse the arguments of the parties and then discuss all the contested points of fact and law.

I. ANALYSIS OF THE ARGUMENTS AND CLAIMS OF THE PARTIES

2. Further to the disclosure on 9 May 1997 of Mr. Stipe Mesić's testimony in two Croatian newspapers - the "Vecernji List" the "Vjesnik", in a request dated 12 May 1997, the Prosecutor requested that the Judges of Trial Chamber I adopt a set of additional protective measures in respect of the identity of the witnesses and the statements disclosed to the Defence¹. Four types of measures are requested. Firstly, that the Defence be required to maintain a log which will identify the name, position and address of each individual to whom a copy of a witness statement will be provided. Second, that those individuals not be permitted to make copies of the statements - under pain of being held in contempt of the Tribunal - and that they return them to the Defence as soon as they are no longer required. Third, that the Defence ascertain whether those individuals have made copies of the said statements or permitted them to be made. Lastly, that it ascertain the identities of all persons who have received copies of those statements and provide this information immediately to the Trial Chamber.

The Prosecutor also requested that the terms of the Decision of Trial Chamber I of 2 October 1996 in respect of the non-disclosure of the identity and the statements of the witnesses be expanded to all the witness statements which have been and which will be provided to the accused and his counsel.²

¹ Request of 12 May 1997, pp. 5 and 6.

² *ibid* p. 6.

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¹ Request of 12 May 1997, pp. 5 and 6.

² *ibid* p. 6.

The Prosecutor deemed furthermore that the Trial Chamber should conduct a full examination of the circumstances surrounding the receipt and dissemination of Mr. Mesić's statement³.

3. In its Request of 14 May 1997, the Prosecutor requested that the Trial Chamber issue an emergency stay of execution relieving her of further discovery production to the Defence pending a hearing and decision, if any, on her Request of 12 May 1997⁴.

4. The Defence insisted that no form of protection for the identity of the witness Stipe Misić had been requested by the Prosecutor and ordered by the Trial Chamber⁵. It objected to any additional protective measures for witnesses as suggested by the Prosecution and stated that they had no legal basis⁶ or that they amounted to a "witch hunt"⁷.

In addition, the Defence strongly objected to the request for an expansion of the effects of the Decision of 2 October 1996 "regardless of where they reside and whether disclosure of their identities would create any danger or significant hardship for them⁸." In this respect, the Defence recalled that the measures taken further to the Decision of 2 October 1996 were directed at ensuring the protection of the witnesses living in a particularly unstable region, that is, central Bosnia, whose lives were thus in danger⁹.

5. The Defence also opposed the temporary suspension of the Prosecutor's discovery obligation so that it would not suffer additional delay in the preparation of its case¹⁰.

II. DISCUSSION

6. The Trial Chamber will first deal with the Prosecutor's request for an examination. It will then review one by one the issues related to the expansion of the terms of the Decision of

³ *ibid* p. 5.

⁴ Request of 14 May 1997, p. 4.

⁵ Response of the Defence, p. 5.

⁶ Defence counsel statement at the hearing of 23 May 1997, p. 19 of the French version of the provisional transcript.

⁷ *ibid* p. 21.

⁸ Defence Response of 16 May 1997, p. 7.

⁹ *ibid* p. 7.

¹⁰ Defence Response pp. 9,10.

2 October 1996 on the protection of witnesses to include all the statements already provided to the Defence and to the additional protective measures requested by the Prosecution. Lastly, it will consider the Request of 14 May 1997 “for an emergency stay of execution in respect of the production of witness identities and witness statements”.

A. The Examination

7. As regards the disclosure of the identity and statement of the witness Stipe Mesić to two Croatian newspapers, the Trial Chamber notes that the said witness was not covered by any protective measures insofar as no request was made that he be covered and no decision granting such request was ever issued. In this respect, the Judges point out that the terms of the Decision of 2 October 1996 regarding witness protection did not apply to him since the Decision was directed only at persons residing in central Bosnia.

Furthermore, the Judges state that it would be extremely difficult to determine who is responsible for such disclosure.

The Trial Chamber considers finally that the start of the trial should not be further postponed.

The conclusion of the Trial Chamber is that conducting an examination into the circumstances under which the identity and statement of the witness Stipe Mesić were disclosed would therefore be inappropriate and consequently rejects this request.

B. Protective Measures

8. The Trial Chamber wishes first to emphasise its concern for ensuring real protection for victims and witnesses. In this respect, it notes that the Statute affirms this principle and that the Rules of Procedure and Evidence (hereinafter “Rules”) state how this shall be arranged. Article 20(1) of the Statute states that the protection of victims and witnesses must be given “due regard” and Article 22 of the Statute invites the Judges to provide this protection in their Rules. Sub-rule 69(A) of the Rules therefore permits the non-disclosure before the trial of the identity of a victim or witness who may be in danger until such a witness is brought under the protection of the Tribunal. Sub-rule 75(A) of the Rules states

that a Judge or Trial Chamber may “order appropriate measures for the privacy and protection of victims and witnesses”. Lastly, Sub-rule 79(A)(ii) of the Rules asserts that “the press and the public may be excluded from all or part of the proceedings” for various reasons, including the wish to avoid the disclosure of the identity of a victim or witness.

Furthermore, the Trial Chamber must ensure that the rights of the accused enjoy “full respect” (Article 20(1) of the Statute). It must therefore guarantee that the protective measures are compatible with the right of the accused to a fair and public” trial (Article 21(2) of the Statute) and, more particularly, with his right to prepare a proper defence.

The Judges also recall their sovereign right to evaluate those measures which they consider the most appropriate to ensure this protection¹¹ and emphasise - as did Trial Chamber II in the case *The Prosecutor v. Tadić*¹² - that the list of measures provided in Rule 75 of the Rules is not exhaustive.

9. As regards the steps already taken by both counsels for the Defence - who declared that they were very aware of the need to guarantee appropriate protection for the witnesses¹³ - to ensure the safety of the confidential information transmitted to them by the Prosecutor, the Trial Chamber notes the measures taken by the parties to ensure, as they stated during the hearings¹⁴, that the confidential documents are protected. According to Mr. Hayman, “anyone who is working with me on this matter has to keep the case materials under lock and key. (...) In addition, the number of people working on the matter consulting with me is limited. Anyone who works with me, including technical support people, such as computer persons, have been personally advised by me of the Court’s Order regarding the 87 witnesses and to the extent summaries or extracts of that material are made for work within my office there is a caption which I put on this material which states: “Unauthorised disclosure of the material herein is subject to order of contempt by the Tribunal¹⁵

10. In respect of the further measures which the Prosecutor has requested, because of the disclosure and publication to the Croatian press of Mr. Mesić’s statement and because of the

¹¹ Article 22 of the Statute and Rule 75 of the Rules.

¹² Decision on the Prosecutor’s Motion requesting Protective Measures for Victims and Witnesses, 10 August 1995.

¹³ Statement of the Defence counsels at the hearing of 23 May 1997, French version of the provisional transcripts, pp. 17, 18, 26 and 27.

¹⁴ *ibid.*

¹⁵ *ibid.*

general conditions currently prevailing in the territory of the former Yugoslavia, the Trial Chamber is extremely concerned about the security of the witnesses who may be called to make a statement before it during the trial.

It therefore deems that the accused, his counsels and their representatives must not disclose to the public or to the media the name of the witnesses from certain areas of the former Yugoslavia or any information which might make it possible to identify them, unless this is absolutely necessary for preparing the defence.

The Trial Chamber also considers that additional measures must be implemented by both parties in order to guarantee satisfactory protection of the witnesses. It therefore orders both the Prosecution and the Defence to:

- 1) - maintain a log indicating the name, address and position of each individual who has received a copy of a witness' statement as well as the date such statement was given and to submit the log to the Trial Chamber whenever the Trial Chamber so requests;
- 2) - instruct those individuals who have received a copy of the statements not to reproduce them - under pain of being held in contempt of the Tribunal - and to return the documents as soon as they are no longer required; and
- 3) - verify that those individuals comply strictly with the above orders.

Lastly, the Trial Chamber recalls that if the Prosecutor or Defence wish for other measures, they must present to the Trial Chamber a specific request containing the reasons therefor.

C. Suspension of the disclosure obligation

11. Although suspension of the obligation to disclose statements has *de facto* been in effect ever since the Prosecution filed its Request of 14 May 1997, the Trial Chamber considers it appropriate to order the immediate resumption of disclosure, in accordance with the above-indicated measures, the terms of Rule 66 of the Rules and the Decision of 27 January 1997.

III. DISPOSITION

12. FOR THE FOREGOING REASONS,

Trial Chamber I

Ruling *inter partes* and unanimously,

REJECTS the request for an examination;

ORDERS that, as of the date of this order, the accused, his counsels and their representatives not disclose to the public or to the media the name of the witnesses residing in the territory of the former Yugoslavia or any information which would permit them to be identified, unless absolutely necessary for the preparation of the defence;

ORDERS the Prosecutor and the Defence to maintain a log indicating the name, address and position of each person who has received a copy of a witness statement as well as the date it occurred and to submit the log to the Trial Chamber whenever it so requests;

ORDERS the Prosecutor and the Defence to instruct those persons who have received a copy of the statements not to reproduce them - under pain of sanction for contempt of the Tribunal - and to return the said documents as soon as they are no longer required;

ORDERS the Prosecutor and the Defence to verify that those individuals who have received a copy of the statements comply strictly with their obligation not to reproduce them and to return them as soon as they are no longer required;

ORDERS the Prosecutor to comply immediately with the obligation, provided for in Rule 66 of the Rules and repeated in the Decision of 27 January 1997, to ensure that the statements be disclosed to the Defence.

Done in French and English, the French version being authoritative.
This sixth day of June 1997
At The Hague

The Netherlands

(signed)

Claude Jorda, Presiding
Trial Chamber I

(SEAL OF THE TRIBUNAL)