



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

Case No. IT-98-33-PT

Date: 6 May 1999

English

Original: French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Fouad Riad
Judge Almiro Simões Rodrigues

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Decision of: 6 May 1999

THE PROSECUTOR

v.

RADISLAV KRSTIĆ

**DECISION ON THE DEFENCE PRELIMINARY MOTION
ON THE FORM OF THE INDICTMENT**

The Office of the Prosecutor:

**Mr. Mark Harmon
Mr. Peter W. McClosky**

Defence Counsel:

Mr. Nenad Petrušić

TRIAL CHAMBER I of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991,

NOTING the Defence preliminary motion on the form of the indictment dated 1 March 1999;

NOTING the Response of the Prosecutor to the Defence preliminary motion on the form of the indictment;

NOTING the Decision of 4 April 1997 on the Defence Motion to dismiss the indictment based upon defects in the form thereof in the case "*The Prosecutor v. Blaškić* (hereinafter the "Decision of 4 April 1997");

PURSUANT to Articles 7, 18 and 21 of the Statute and Rules 47 and 72 of the Rules of Procedure and Evidence;

CONSIDERING that the Defence submits that the indictment does not specifically indicate the time period when the crimes ascribed to the accused allegedly occurred nor his functions and responsibilities at the time of the facts;

CONSIDERING that the Defence also wishes to know the number of Miroslav Krstić's co-accused and their share of responsibility alleged in the events with which he is charged;

CONSIDERING that the Prosecutor maintains that the preliminary motion should be rejected on the grounds that, at this stage of the proceedings, she is not bound to state the exact date the crimes occurred so long as the period in which they are said to have occurred is sufficiently limited as in the case in point; that she set out precisely the accused's responsibilities as chief-of-staff and/or deputy commander; and lastly, that she is not required to disclose the number of Miroslav Krstić's co-accused and their share of responsibility in the acts with which he is charged because such disclosure is not necessary to prepare the defence of a person charged with individual criminal responsibility and also because such disclosure would jeopardise future arrests by SFOR;

CONSIDERING that, as stated in the Decision of 4 April 1997, an indictment is, by its very nature, necessarily concise and succinct;

CONSIDERING that the accused is charged with having committed crimes during the period 11 July 1995 to 1 November 1995 at least; considering however that the nature and very scope of the crimes being prosecuted as well as the type of responsibility charged are sufficient to justify the fact that when they began and when they ended cannot be precisely identified;

CONSIDERING therefore that the Prosecutor cannot be blamed for not having been sufficiently precise as to the period during which the events occurred when, for each count, she specified the months and, more frequently, the days they occurred albeit somewhat imprecisely;

CONSIDERING however “the general need to avoid using overly vague and open-ended expressions or formulas in the indictment which might give rise to different interpretations”, as affirmed in the Decision of 4 April 1997,”;

CONSIDERING that in view of the offences ascribed to the accused and the type of responsibility alleged in the indictment (command responsibility under Articles 7(1) and 7(3) of the Statute), it is imperative that, insofar as possible, his functions be described precisely and unambiguously;

CONSIDERING that the indictment and, in particular, the paragraphs concerning the accused himself and his command authority do not clearly state the accused’s precise function at the time of the events covered in the indictment, the manner he was able to carry them out or the chain of command in which he exercised his authority;

CONSIDERING lastly that as regards the point concerning Miroslav Krstić’s co-accused, the Motion must be partially granted by asking the Prosecutor to specify precisely the military ranks of the co-accused in the command structure; that, in any case, the Prosecutor is requested to indicate, even succinctly, whether the accused, in fact or law, exercised command authority over those individuals;

FOR THE FOREGOING REASONS,

STATES that, subject to the following specifications, there is no reason to reject the indictment;

REJECTS the point of the request concerning the time of the alleged events;

ORDERS the Prosecutor to specify or to clarify the indictment in respect of the points relating to the responsibility of the accused and his co-accused and to their share of responsibility without, however, disclosing the names of the co-accused within the limits defined above and by 7 June 1999 at the latest;

STATES that the Defence shall then have 30 days to present any further motions.

Done in French and English, the French version being authoritative.

Done this sixth day of May
At The Hague
The Netherlands

(signed)

Claude Jorda
Presiding Judge, Trial Chamber I

(Seal of the Tribunal)