



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-95-14-T

Date: 3 September 1998

English
Original: French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Fouad Riad
Judge Mohamed Shahabuddeen

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Decision of: 3 September 1998

THE PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

**DECISION ON THE PROSECUTOR'S MOTION
FOR SEVEN (7) DAYS ADVANCE DISCLOSURE OF DEFENCE WITNESSES AND
DEFENCE WITNESS STATEMENTS**

The Office of the Prosecutor

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

Defence Counsel:

Mr. Anto Nobile
Mr. Russell Hayman

TRIAL CHAMBER I of the International Criminal Tribunal for the former Yugoslavia,

NOTING the Prosecutor's motion for seven (7) days advance disclosure of defence witnesses and defence witness statements, filed on 9 July 1998 (hereinafter "the Motion");

NOTING the Defence's response to the Motion, dated 28 July 1998 (hereinafter "the Response");

NOTING the Prosecutor's reply to the Response, dated 4 August 1998 (hereinafter "the Reply");

NOTING the Defence's response to the Reply, dated 10 August 1998 (hereinafter "the Rejoinder");

NOTING the status conference of 24 August 1998 at which the Trial Chamber heard the oral arguments of the parties;

PURSUANT to Sub-Rule 6(C) and Rules 54 and 73 *ter* of the Rules of Procedure and Evidence (hereinafter "the Rules");

CONSIDERING that Rule 73 *ter* of the Rules sets forth that the Trial Chamber may order the Defence, before the commencement of its case, to file, *inter alia*, a list of the witnesses it intends to call¹ as well as a summary of the facts in respect of which each witness will testify²;

CONSIDERING that Rule 73 *ter* of the Rules was adopted at the plenary session of the Judges which was held on 9 and 10 July 1998;

CONSIDERING that the Defence maintains that the application of the procedure in Rule 73 *ter* of the Rules might prejudice the accused; that, therefore, pursuant to Sub-rule 6(C) of the Rules, it cannot be applied to the present case;

¹ Sub-rule 73 *ter* (B)(iii)

² Sub-rule 73 *ter* (B)(iii)(b)

CONSIDERING that it is not necessary to rule on that argument, assuming it is founded, insofar as, subject to the limitations described below, the Prosecutor's Motion may be examined in view of Rule 54 of the Rules;

CONSIDERING that, pursuant to Rule 54 of the Rules, the Trial Chamber must take the appropriate measures to ensure that the truth is ascertained in a fair and expeditious trial;

CONSIDERING that the Prosecution's prior knowledge of the names and identifying information in respect of the Defence witnesses and the essential point of their testimony will permit the proceedings before the Trial Chamber to be conducted more expeditiously and efficiently;

CONSIDERING, however, that the present wording of Rule 73 *ter* demonstrates the extent of the obligations the Judges intended to impose upon the Defence vis à vis the Prosecution; that the Trial Chamber therefore cannot grant the Prosecutor's Motion insofar as it seeks the disclosure of prior statements from the Defence witnesses;

FOR THE FOREGOING REASONS,

ORDERS the Defence to disclose to the Prosecutor the names and identifying information (given names, date of birth, domicile, and profession) in respect of each witness it intends to call, as well as the summary of all the facts about which the said witnesses will testify, at least seven days prior to the date of their appearance;

STATES that the documents shall be recorded in the case-file of the Registry and submitted to the Trial Chamber;

STATES that the Defence must refer to the Trial Chamber any requests for the protection of the witnesses it intends to call.

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

Done this third day of September 1998

At The Hague

The Netherlands

(Signed)

Claude Jorda

Presiding Judge Trial Chamber I

(Seal of the Tribunal)