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UNITED NATIONS



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-T

Date: 16 March 1999

English
Original: French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Almiro Simões Rodrigues
Judge Mohamed Shahabuddeen

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Order of: 16 March 1999

THE PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

**DECISION OF TRIAL CHAMBER I
ON THE APPLICATION OF THE PROSECUTOR TO ADMIT INTO EVIDENCE
THE STATEMENT OF DEFENCE WITNESS MR. LEYSHON**

The Office of the Prosecutor:

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

Defence Counsel:

**Mr. Anto Nobilo
Mr. Russell Hayman**

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 Application of the Prosecutor to admit into evidence the statement of the defence witness Mr. Leyshon (hereinafter "the Statement") filed under seal on 14 January 1999;

NOTING the Response of the Defence of 11 March 1999 to the Application of the Prosecutor to admit into evidence the statement of the Defence witness;

NOTING Rules 54, 66, and 89 of the Rules of Procedure and Evidence (hereinafter "the Rules");

CONSIDERING that the Prosecutor is requesting that the record of the signed Statement of the Witness be admitted into evidence by the Defence;

CONSIDERING that the Prosecutor asserts that she has misplaced the said Statement and that only the Defence has a copy;

CONSIDERING that the Defence objects to that Application because (1) the Prosecutor deliberately failed in her obligation to transmit to it the copy of the prior statement of the said witness whom she wished to call to the stand, (2) witness statements are never admitted into evidence, (3) a copy of the draft statement of Mr. Leyshon has already been submitted to the Judges, and (4) the witness had already testified before the Trial Chamber when the Prosecutor requested that the Statement be admitted into evidence, which would not have permitted counsel to exercise his right to examine the witness on the contents of that Statement;

CONSIDERING that the Prosecutor asserts that she did not knowingly hide the contents of the Statement from the Defence and that she was not informed of its disclosure to the Judge;

CONSIDERING that firstly, pursuant to Rule 66 of the Rules, the Prosecutor must disclose to Defence counsel the statements of all witnesses she intends to call to testify;

CONSIDERING that the name of the witness Leyshon appeared on the list of the witnesses the Prosecutor wished to examine; and that she should have therefore disclosed his prior statement to the Defence;

CONSIDERING, however, that Mr. Leyshon was eventually called by the Defence to testify as a Defence witness;

CONSIDERING, moreover, that the failure to comply with the disclosure obligation stipulated in Rule 66 of the Rules would not preclude the admission of the Statement into evidence;

CONSIDERING also that the disclosure of the said Statement to the Trial Chamber might assist the Judges in their effort to ascertain the truth about the crimes with which the accused is charged;

CONSIDERING that, in respect of the second argument of the Defence, the Trial Chamber has allowed statements of Prosecution or Defence witnesses to be admitted into evidence on several occasions;

CONSIDERING, moreover, that Mr. Leyshon testified orally before the Trial Chamber on 18 November 1998 and that he was subject to an unrestricted examination and cross-examination by the parties to the trial;

CONSIDERING that, in respect of the third argument raised by the Defence, the Judges deem that the Statement was not admitted into evidence but merely disclosed to the Judges in support of a motion for witness protection and, therefore, was not entered as such into the record;

CONSIDERING lastly, that the Trial Chamber considers that the final argument submitted by the Defence is not relevant because the Defence clearly had the opportunity to examine the witness on the contents of the Statement of which the Defence was aware before the witness testified before the Tribunal and about which the issue concerning its status had been raised during the cross-examination by the Prosecutor;

CONSIDERING, moreover, that, pursuant to Rule 89 of the Rules, the Trial Chamber may admit any relevant document deemed to have probative value which appears to be the situation in the case in point, while reserving the right to judge freely what weight to give it at the conclusion of the trial;

FOR THE FOREGOING REASONS,

ORDERS that the Statement made by the witness Leyshon to the members of the Office of the Prosecutor on 2 December 1996 and signed by him on 3 June 1997 be admitted into evidence and entered into the record.

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

Done this sixteenth day of March 1999

At The Hague

The Netherlands

(Signed)

Claude Jorda

Presiding Judge Trial Chamber I

(Seal of the Tribunal)