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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: 19 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: 19 March 1999

THE PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

**DECISION OF TRIAL CHAMBER I
ON THE MOTION TO PROTECT A WITNESS**

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 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 Motion of the Defence for protective measures of 8 March 1999 (hereinafter “the Motion”);

NOTING the Decision of Trial chamber I filed on 11 November 1997 on the Motion of the Prosecutor for video deposition and protective measures (hereinafter “the Decision”);

NOTING the Decision of Trial Chamber I on the Application of the Defence for an order pursuant to Sub-rule 70 (F) of the Rules of Procedure and Evidence (hereinafter “the Rules”);

NOTING Rules 70 and 79 of the Rules;

CONSIDERING that the Defence submits that the conditions stipulated by the provisions of Rule 70 of the Rules for the protection of information which might have been provided to it on a confidential basis have been met;

CONSIDERING that the Defence therefore requests that the Trial Chamber grant the witness mentioned in the Motion (hereinafter “the Witness”) four protective measures: 1) that he be heard in closed session, 2) that the scope of his cross-examination be limited to the scope of his examination-in-chief, 3) that he be allowed to decline to answer questions concerning the protected information, and lastly 4) that a representative of the Government concerned be present in the courtroom during his testimony and that, with the leave of the Trial Chamber, the representative be allowed to advise the Witness;

CONSIDERING that on the basis of the criteria established by the Decision of 11 November 1997, three conditions must be met in order for the information, for which counsel is requesting protection, to be covered by the relevant provisions of Rule 70 of the Rules: 1) the Defence must be in possession of the said information; 2) the information must have been provided to it on a confidential basis; and 3) solely for the purpose of generating new evidence.

CONSIDERING also that, pursuant to the Decision of 12 January 1999, the Trial Chamber specified that it would verify that the person or entity providing the information has not given

written or express authorisation for the information to be used in any legal forum other than the one provided in the provisions of Rule 70 of the Rules;

CONSIDERING that it appears from the information which the Defence provided to the Trial Chamber that it is in possession of information which was provided to it on a confidential basis and for the sole purpose of generating new evidence;

CONSIDERING that it also appears that the person or entity providing the information did not consent to its disclosure on any other ground than the one provided by Rule 70 of the Rules;

CONSIDERING that in respect of the legality of the requested measures, the Trial Chamber recalls that, in its Decision of 11 November 1997, it had authorised a witness in possession of information protected by the provisions of Rule 70 of the Rules, 1) to testify in closed session, 2) that the scope of his cross-examination be limited to the scope of his examination-in-chief, 3) to decline to answer a question about the said information or about its origin on grounds of confidentiality, and 4) that a representative of the Government concerned be present in the courtroom at the time of his testimony,

CONSIDERING that the Trial Chamber notes that the measures which the Defence is requesting are identical to those authorised in the Decision, with the exception of two new measures: 1) that the Judges not order the Witness to produce additional evidence and 2) that, with the leave of the Trial Chamber, the representative of the Government concerned may advise the Witness during his testimony;

CONSIDERING that, in respect of the measure covering the production of additional evidence, the provisions of Sub-rule 70(C) of the Rules state explicitly that "the Trial Chamber, notwithstanding Rule 98, may not order either party to produce additional evidence received from the person or entity providing the initial information";

CONSIDERING that, in respect of the measure covering the intervention of the representative of the Government during the testimony, the Trial Chamber is of the opinion that it must have strict control over the exercise of such a power;

CONSIDERING that it therefore deems that the representative of the Government concerned must first request the leave of the Trial Chamber whenever he wishes to speak with the Witness;

CONSIDERING that the Trial Chamber recalls that, pursuant to Sub-rule 89(D) of the Rules, it reserves the right to exclude evidence if its probative value would be substantially outweighed by the need to ensure a fair trial;

FOR THE FOREGOING REASONS,

ORDERS that the Witness testify in closed session;

ORDERS that the scope of the cross-examination by the Prosecutor be limited to the scope of the examination-in-chief, with the Trial Chamber reserving the right to rule on any possible dispute in that regard;

AUTHORISES the Witness to decline to produce the additional evidence received from the person or entity providing the initial information;

AUTHORISES the representative of the Government concerned to be present in the courtroom during the testimony of the Witness and, after first obtaining the leave of the Trial Chamber, to advise him;

AUTHORISES the Witness to decline to answer a question about the said information or about its origin on grounds of confidentiality;

RECALLS that both the Statute and Rules of the Tribunal guarantee a fair trial and that the provisions of Sub-rule 89(D) of the Rules allow the Trial Chamber to exclude evidence if its probative value would be substantially outweighed by the need to ensure a fair trial.

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

Done this nineteenth day of March 1999

At The Hague

The Netherlands

(Signed)

Claude Jorda

Presiding Judge Trial Chamber I

(Seal of the Tribunal)