



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 : 22 April 1999
English
Original: French

IN THE TRIAL CHAMBER

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

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Decision of: 22 April 1999

THE PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

**DECISION ON THE PROSECUTION AND DEFENCE MOTIONS DATED 25
JANUARY 1999 AND 25 MARCH 1999 RESPECTIVELY**

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 hearing the case *The Prosecutor v. Tihomir Blaškić* (hereinafter the Blaškić Trial Chamber) 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 (hereinafter “the Tribunal”);

NOTING the *ex parte* Motion of the Prosecutor filed confidentially on 25 January 1999 requesting that she be permitted to disclose to Defence counsel for Dario Kordić and Mario Čerkez non-public documents produced in the *Blaškić* case (hereinafter “the Motion of 25 January 1999”);

NOTING the Defence Motion to limit disclosure by the Prosecutor of confidential exculpatory documents filed under seal on 25 March 1999 (hereinafter “the Motion of 25 March 1999”);

NOTING the confidential Response of the Prosecutor dated 9 April 1999 to the Motion of 25 March 1999 (hereinafter “the Response of 9 April 1999”);

NOTING the Opinion of the Blaškić Trial Chamber rendered on 16 December 1998 (hereinafter “the Opinion of 16 December 1998”) further to the Decision of the Trial Chamber hearing the case *The Prosecutor v. Dario Kordić and Mario Čerkez* (hereinafter the Kordić-Čerkez Trial Chamber”) dated 12 November 1998;

NOTING the further Order in respect of the request for access to non-public materials in the Lašva Valley and related cases issued on 16 February 1999 by the Kordić-Čerkez Trial Chamber (hereinafter “the further Order”);

PURSUANT to Rules 54, 66, 68 and 70 of the Rules of Procedure and Evidence (hereinafter “the Rules”);

CONSIDERING that, in her Motion of 25 January 1999, the Prosecutor requests that the Trial Chamber authorise her to disclose to counsel for the accused Dario Kordić and Mario Čerkez, in accordance with her obligations under Rules 66 and 68 of the Rules, the transcripts of four confidential depositions tendered in evidence in the proceedings against Tihomir Blaškić, including the deposition of a Defence witness; that this request for authorisation also

guarantees compliance with all the protective measures already ordered by the Blaškić Trial Chamber as well as any additional future protective measure which the Kordić-Čerkez Trial Chamber might order; that, finally, the Prosecutor refers to the Orders issued in other related cases to ask that the disclosure of documents be authorised only further to the express consent of the witnesses concerned or, in any event, to a further Order of the Tribunal to that end;

CONSIDERING that, in its Motion of 25 March 1999, Defence counsel for Tihomir Blaškić requests that the Trial Chamber order the Prosecutor to disclose no confidential documents tendered by the Defence to a third party, in particular, to counsel for the accused Dario Kordić and Mario Čerkez if no express notification and consent have been given; that the Defence bases its request on the Opinion of 16 December 1998 and reasserts its concern that the safety of the protected witnesses not be jeopardised and that the guarantees of confidentiality offered to the said witnesses be honoured so that it may continue its investigations;

CONSIDERING that the Prosecutor objects to the Defence Motion on the ground that the Defence does not have the capacity to consent to an Order of a Trial Chamber and also that the Motion is of no practical interest insofar as the Prosecutor has already disclosed confidential materials to counsel for the accused Dario Kordić and Mario Čerkez, and, lastly, that the protective measures ordered by the Kordić-Čerkez Trial Chamber in its further Order address the concern for witness protection expressed by the Defence; that the Prosecutor does not object to the practice of notifying the Defence of confidential exculpatory documents which have been disclosed;

CONSIDERING that the Trial Chamber deems that the connection between the Motion of 25 January 1999 and the Motion of 25 March 1999 justifies their being considered simultaneously and that a single Decision cover both;

CONSIDERING that the Motion of 25 January 1999 concerns three transcripts of confidential testimony of Prosecution witnesses who have appeared in this case; that the Defence, in effect, objects only to the disclosure of the testimony transcript of the fourth Defence witness mentioned by the Prosecutor;

CONSIDERING that, in its Opinion of 16 December 1998, the Trial Chamber considered “that the Trial Chamber could [...] not order that Defence counsel for one accused provide any materials to the Defence counsel for another accused”; that it thus stated that the Defence was not subject to the same disclosure obligations as the Prosecutor;

CONSIDERING, however, that it considered that the Prosecutor did remain subject to her obligations pursuant to Rules 66 and 68 of the Rules, without any distinction based on the public or confidential character of the documents concerned, except for those materials tendered pursuant to Rule 70 of the Rules;

CONSIDERING that the Trial Chamber is of the opinion that the exculpatory character of the confidential documents tendered by the Defence in support of its case and the Prosecutor’s resulting disclosure obligation take precedence over their confidential nature insofar as the protection of the witnesses concerned is maintained, or even increased;

CONSIDERING that the Kordić-Čerkez Trial Chamber thus ordered the Prosecution to disclose to Defence counsel of the accused Dario Kordić and Mario Čerkez “copies of all transcripts of the testimony of, identifying material, and all exhibits introduced through protected witnesses in the case of *Prosecutor v. Tihomir Blaškić*, insofar as such material relates to witnesses to be called in the case of *Dario Kordić and Mario Čerkez* or constitutes exculpatory material relating to either of these two accused and subject to the protective measures set out herein”; that the further Order also included increased witness protective measures;

CONSIDERING that, in the case in point, this Trial Chamber is intervening only alternatively should the Prosecutor, to date, not have discharged her obligations under Rules 66 and 68 of the Rules;

FOR THE FOREGOING REASONS,

AUTHORISES the Prosecution to disclose, if necessary, to Defence counsel for the accused Dario Kordić and Mario Čerkez the transcripts of the confidential testimony of the four witnesses listed in paragraph 3 of the Motion of 25 January 1999 within the limits stated in the said Motion.

REJECTS the Motion of 25 March 1999.

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

Done this twenty-second day of April 1999
At The Hague
The Netherlands

(signed)

Claude Jorda
Presiding Judge, Trial Chamber I

(Seal of the Tribunal)