



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-01-45-I  
Date: 24 February 2004  
Original: English

**BEFORE A JUDGE OF A TRIAL CHAMBER**

**Before:** Judge Kevin Parker  
**Registrar:** Mr. Hans Holthuis  
**Decision:** 24 February 2004

**PROSECUTOR**

v.

**ANTE GOTOVINA**

---

***EX PARTE-UNDER SEAL***

**DECISION ON LEAVE TO AMEND INDICTMENT  
AND ON CONFIRMATION OF AMENDED INDICTMENT  
AND  
ORDER FOR NON DISCLOSURE**

---

**The Office of the Prosecutor:**

Ms. Carla Del Ponte

I, Kevin Parker, Judge 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 (“International Tribunal”);

**HAVING BEEN DESIGNATED** by the President of the International Tribunal on 23 January 2004 to consider the “Motion for Issue of an Amended Indictment under Seal of Confidentiality” filed, *ex parte* and confidentially, on 19 December 2003 by the Office of the Prosecutor (“Prosecutor”) in the case of *Prosecutor v. Ante Gotovina*, Case No. IT-01-45-I;

**NOTING** the Prosecutor’s submission in respect of that motion, filed on 19 February 2004, formally seeking leave to amend the indictment against Ante Gotovina and issuance of a warrant of arrest based on the amended indictment;

**CONSIDERING** that under Rule 50(A)(i)(b) between its confirmation and the assignment of a case to a Trial Chamber, an indictment may be amended with the leave of the Judge who confirmed the indictment or a Judge assigned by the President;

**CONSIDERING** that Rule 47 read with Rule 50(A)(ii) indicates that the amended indictment in such case shall also be confirmed;

**CONSIDERING** therefore that pursuant to the Rules and the above Order of the President I have jurisdiction to consider whether to grant leave to amend the indictment and to confirm that amended indictment;

**NOTING** the original indictment against Ante Gotovina confirmed by Judge Riad on 8 June 2001, charging him with crimes against humanity punishable under Article 5 of the Statute of the International Tribunal (“Statute”) (namely persecutions, murder, deportation and forced displacement, and other inhumane acts) and with violations of the laws and customs of war punishable under Article 3 of the Statute (murder, plunder of property, and wanton destruction of cities or villages);

**CONSIDERING** that the proposed Amended Indictment (hereinafter “Proposed Amended Indictment”), while retaining the same types of charges, *inter alia*, provides more detail, narrows the list of killing incidents alleged in Schedule I to the Indictment, adds one municipality to the list of locations where plunder is alleged to have occurred, and limits the alleged number of displaced civilians;

**CONSIDERING** that, more significantly, the Proposed Amended Indictment pleads joint criminal enterprise as a form of individual criminal responsibility in more detail, specifying the participants

in the joint criminal enterprise and their alleged common purpose;

**HAVING HEARD** the Prosecutor pursuant to Rules 47 and 53 of the Rules on 13 February and on 17 February 2004;

**HAVING REVIEWED** a modified version of the Proposed Amended Indictment dated 19 February 2004 and filed by the Prosecutor on the same date (hereinafter "Amended Indictment");

**CONSIDERING** that the supporting material presented by the Prosecutor establishes a *prima facie* case, *i.e.* "a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge,"<sup>1</sup> against **ANTE GOTOVINA** with respect to each and every count of the Amended Indictment;

**CONSIDERING** that it is in the interests of justice to prevent public disclosure of the Amended Indictment, this Decision, and the accompanying Warrants of Arrest addressed to the authorities of the Republic of Croatia and to the authorities of any Member State of the United Nations, until a warrant of arrest is served on the accused;

**PURSUANT** to Article 19 of the Statute and Rules 47, 50, 53, 55 and 59*bis* of the Rules;

**HEREBY ORDER** that:

1. **LEAVE** is granted to the Prosecutor to amend the original indictment by substituting the Amended Indictment for the original indictment;
2. The Amended Indictment be **CONFIRMED**;
3. Copies of the two Warrants of Arrest, which I will issue today, shall be transmitted to the Prosecutor, who may transmit them respectively to the authorities of the Republic of Croatia and to the authorities of any other Member State of the United Nations;
4. With the exception of disclosure to the authorities of the Republic of Croatia and the authorities of any other Member State of the United Nations, there shall be no public disclosure of the Amended Indictment, this Decision with respect to the Amended Indictment, or the Warrants of Arrest until a Warrant of Arrest is served on **ANTE GOTOVINA** or until further order;
5. There shall be no public disclosure of the supporting material until further order.

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



---

Kevin Parker,  
Judge of the  
International Tribunal

Dated this twenty-fourth day of February 2004  
At The Hague,  
The Netherlands

**[Seal of the Tribunal]**

---

<sup>1</sup> *Prosecutor v. Milošević*, IT-01-51-I; Decision on Review of Indictment, 22 November 2001; *Prosecutor v. Kordić et al*, IT-95-14-I, Decision on Review of the Indictment, 10 November 1995.