



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-06-90-PT

Date: 29 November 2006

Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orie, Presiding  
Judge Christine Van den Wyngaert  
Judge Bakone Justice Moloto

**Registrar:** Mr. Hans Holthuis

**Decision of:** 29 November 2006

**PROSECUTOR**

v.

**ANTE GOTOVINA  
IVAN ČERMAK  
MLADEN MARKAČ**

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**DECISION ON ACCUSED MLADEN MARKAČ'S AND  
IVAN ČERMAK'S JOINT MOTION TO ENTER A PLEA  
BY WAY OF VIDEO-LINK, AND SCHEDULING ORDER**

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**The Office of the Prosecutor:**

Mr. Alan Tieger  
Ms. Laurie Sartorio

**Counsel for the Accused:**

Mr. Luka S. Mišetić, Mr. Gregory Kehoe and Mr. Payam Akhavan for Ante Gotovina  
Mr. Čedo Prodanović and Ms. Jadranka Sloković for Ivan Čermak  
Mr. Miroslav Šeparović and Mr. Goran Mikuličić for Mladen Markač

**I, BAKONE JUSTICE MOLOTO**, Judge of 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 (“Tribunal”),

**HAVING BEEN APPOINTED**, pursuant to Rule 65ter(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), as pre-trial Judge in this case by virtue of an order of the President of Trial Chamber I,<sup>1</sup>

**BEING SEISED** of the “Accused Mladen Markač’s and Ivan Čermak’s Joint Motion to Enter a Plea by way of Video-link”, filed on 22 November 2006 (“Motion”), wherein the Accused Mladen Markač and Ivan Čermak request, pursuant to Rules 50(B) and 65bis of the Rules, “not to be physically present in the courtroom while entering a plea but to be present virtually by way of video-link”,<sup>2</sup>

**NOTING** the “Prosecution’s Response to Mladen Markač’s and Ivan Čermak’s Joint Motion to Enter a Plea by way of Video-link”, filed on 29 November 2006, wherein “the Prosecution takes no position on the Defence motion”,<sup>3</sup>

**NOTING** that the Accused Ivan Čermak and Mladen Markač are on provisional release in the Republic of Croatia pursuant to Rule 65 of the Rules,<sup>4</sup>

**CONSIDERING** that, pursuant to Rule 62 of the Rules, the Accused Ivan Čermak and Mladen Markač appeared at the seat of the Tribunal on 12 March 2004 and entered pleas of not guilty to all Counts in the original Indictment against them,<sup>5</sup> and that the Accused Ante Gotovina appeared at the seat of the Tribunal on 12 December 2005 and entered pleas of not guilty to all Counts in the original Indictment against him,<sup>6</sup>

**NOTING** Trial Chamber II’s “Decision on Prosecution’s Consolidated Motion to Amend the Indictment and for Joinder”, filed on 14 July 2006 (“Decision on Joinder”), whereby the Trial Chamber ordered the joinder of the case of *Prosecutor v. Ante Gotovina* and the case of *Prosecutor v. Ivan Čermak and Mladen Markač* and ordered the Prosecution to amend and file, within 21 days,

<sup>1</sup> *Prosecutor v. Ante Gotovina, Ivan Čermak, Mladen Markač*, Case No. IT-06-90-PT, Order Regarding Composition of Trial Chamber and Designating a Pre-Trial Judge, 23 November 2006.

<sup>2</sup> Motion, para. 18.

<sup>3</sup> Prosecution’s Response to Mladen Markač’s and Ivan Čermak’s Joint Motion to Enter a Plea by way of Video-link, filed on 29 November 2006, para. 6 (initially filed on 28 November 2006 under an erroneous title).

<sup>4</sup> Decision on Interlocutory Appeal Against Trial Chamber’s Decision Denying Provisional Release, Case No. IT-03-73-AR65.1, 2 December 2004, para 44.

<sup>5</sup> Case No. IT-03-73-I, Initial Appearance, 12 March 2004. The initial Indictment was filed on 19 February 2004 and confirmed on 24 February 2004.

the proposed Joinder Indictment, which was annexed to the Prosecution's Consolidated Motion to Amend the Indictment and for Joinder, filed on 20 February 2006,

**NOTING** the Joinder Indictment filed by the Prosecution on 24 July 2006,

**NOTING** the "Decision on Interlocutory Appeals Against the Trial Chamber's Decision to Amend the Indictment and for Joinder", filed on 25 October 2006, whereby the Appeals Chamber dismissed the Accused's appeals against the "Decision on Joinder",

**NOTING** Rule 50(B) of the Rules, which provides that:

[i]f the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges,

**CONSIDERING** that as the Joinder Indictment contains new charges in relation to the three Accused concerning which no pleas have been entered pursuant to Rule 50(B), the Accused must enter pleas on these new charges,<sup>7</sup>

**CONSIDERING** that no provision in the Statute or the Rules of the Tribunal prohibits the making of a further appearance by video-conference-link,<sup>8</sup> and **NOTING** in particular Rule 54 which provides that:

[a]t the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial,

<sup>6</sup> Case No. IT-01-45-PT, Initial Appearance, 12 December 2005. The initial Indictment was filed on 31 May 2001 and confirmed on 8 June 2001.

<sup>7</sup> In relation to the Accused Ivan Čermak and Mladen Markač, in its Decision on Prosecution Motion Seeking Leave to Amend the Indictment, filed 19 October 2005, Trial Chamber II found that the addition of Count 6 (murder, charged as a crime against humanity under Art. 5 of the Statute) and Count 9 (cruel treatment, charged as a violation of the laws or customs of war under Art. 3 of the Statute) constituted "new charges" within the meaning of Rule 50(B). However, before the Accused could plead on the new charges, the Accused Ante Gotovina was arrested. The initial appearance took place on 12 December 2005. At a status conference on 20 January 2006 in *Čermak and Markač*, the Prosecution indicated that it would move to join that case with the case against Ante Gotovina (Case No. IT-03-73-PT, Hearing, 20 January 2006, T. 114 onwards). Judge Parker, acting as pre-trial Judge, stated that the Accused Ivan Čermak and Mladen Markač should more appropriately wait to plead in relation to the new charges of the Second Amended Indictment pending the resolution of the issue of joinder. The new charges have been included by the Prosecution in the Joinder Indictment.

In relation to the Accused Ante Gotovina, the Decision on Joinder found that the Joinder Indictment includes new charges by the addition of Count 6 (murder, charged as a crime against humanity under Art. 5 of the Statute) and Count 9 (cruel treatment, charged as a violation of the laws or customs of war under Art. 3 of the Statute), and by the amendment of Count 7 (murder, charged under Art. 3 of the Statute, which is charged also under Art. 7(1) of the Statute) and Count 8 (other inhumane acts, charged under Art. 5, which is charged also under Art. 7(1) of the Statute). The Accused Ante Gotovina has not yet pleaded under Rule 50 (B) in relation to these charges.

<sup>8</sup> See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Order Scheduling Further Appearance, 6 March 2006, which ordered that "each Accused may enter his respective plea by video-conference link from an appropriate location in Belgrade", p. 4. The further appearance in that case was carried out on 16 March 2006 (Further Initial Appearance, T. 544-549). Moreover, in the case *Prosecutor v. Biljana Plavčić and Momčilo Krajišnik*, Case No. IT-00-39&40-PT, the Accused Biljana Plavčić entered a guilty plea pursuant to Rule 62bis of the Rules over video-conference link (Rule 62bis hearing, 2 October 2002, T. 337-344).

**NOTING** Rule 65*bis*(A) of the Rules according to which:

A Trial Chamber or a Trial Chamber Judge shall convene a status conference within one hundred and twenty days of the initial appearance of the accused and thereafter within one hundred and twenty days after the last status conference [...].

**NOTING** that the last status conference in the present case was held on 7 September 2006,<sup>9</sup> that, consequently, a status conference must be held before 5 January 2007, and that the Judicial Recess runs until 7 January 2007 wherefore the next status conference must be held before the Judicial Recess,<sup>10</sup>

**NOTING** that on 21 November 2006 the Parties to the present case were notified by the Senior Legal Officer of Trial Chamber II that a status conference and combined further appearance of the Accused was tentatively scheduled for 4 December 2006, but that for technical reasons the video-conference link cannot be scheduled for that date,

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<sup>9</sup> Case No. IT-06-90-PT, Status Conference, 7 September 2006.

<sup>10</sup> On 21 November 2006, the Parties to the present case were informally notified by the Senior Legal Officer of Trial Chamber II that a combined status conference and further appearance of the Accused was tentatively scheduled for 4 December 2006.

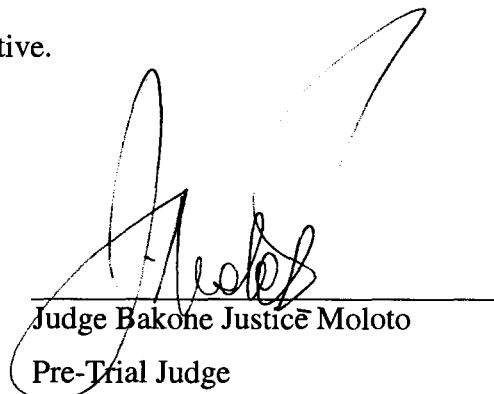
**PURSUANT TO** Rules 50(B), 54, and 65bis(A),

**GRANTS** the Motion,

**ORDERS** that a status conference and combined further appearance, to enable each Accused to enter a plea on the new charges in the Joinder Indictment, shall be held on Tuesday 5 December at 0900-1200 in Courtroom II,

**ORDERS** the Registry to make all necessary arrangements in order to enable the Accused Ivan Čermak and Mladen Markač to enter their respective pleas by video-conference link from an appropriate location in Zagreb, Republic of Croatia.

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



Judge Bakone Justice Moloto  
Pre-Trial Judge

Dated this twenty-ninth day of November 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**