



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: 15 February 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Pre-Trial Judge
Judge Alphons Orie
Judge Christine van den Wyngaert

Registrar: Mr. Hans Holthuis

Decision of: 15 February 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

**DECISION TO REINSTATE THE PROVISIONAL
RELEASE OF IVAN ČERMAK**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Laurie Sartorio

Government of the Republic of Croatia

**Government of the Kingdom of The
Netherlands**

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

TRIAL CHAMBER I (“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 (“Tribunal”);

BEING SEIZED of the “Submission of the Registrar Pursuant to Rule 33 (B) on the Provisional Release of Ivan Čermak” (“Registrar’s Submission”), filed confidentially on 12 January 2007;

NOTING that “it was brought to the attention of the Registry that the Croatian media reported on 10, 11 and 12 January 2007 that Mr. Čermak (“Accused”), had been present and photographed at three events in Zagreb”;¹

NOTING that the Trial Chamber had invited the Government of Croatia to make observations on the matter and ordered Counsel for the Accused to respond to the Registrar’s Submission before determining if the Registrar’s Submission warranted its further action;²

NOTING the Submission by the Registrar of 29 January 2007, and considering the responses by the Government of Croatia included therein;³

NOTING that Counsel for the Accused⁴ confirmed that the Accused had been present at each of the three events mentioned in the Croatian media, providing reasons for his presence;

NOTING that at the Status Conference held on 9 February 2007 (“Status Conference”), both Counsel for the Accused and the Accused himself answered questions and made further clarifications with regard to the Accused’s presence at the three events in question;

NOTING further Counsel for the Accused’s Submission of 12 February 2007 (“12 February Submission”), submitted without leave, in which it argued that due to an ambiguity in the BCS versions of the court orders relating to the conditions of the Accused’s provisional release, Counsel and the Croatian Government reasonably believed that the Accused was not restricted to the confines of his residence; in fact Croatian Ministry of Interior informed the local police that the Accused was permitted to move freely within the boundaries of the Zagorsko-Kaprińska County;⁵

¹ Registrar’s Submission, p. 1.

² Request to the Parties and the Government of Croatia concerning Submission of the Registrar Pursuant to Rule 33 (B) on the Provisional Release of Ivan Čermak, 12 January 2007, p. 3-4.

³ Submission of the Registrar Pursuant to Rule 33 (B) Regarding the Government of Croatia’s Response of 23 January 2007, 29 January 2007 (“Government of Croatia’s Response”).

⁴ Ivan Čermak’s Response to the Request Concerning Submission of the Registrar Pursuant to Rule 33(B) on the Provisional Release of Ivan Čermak, 23 January 2007 (“Čermak Response”).

⁵ Submission to the Trial Chamber Regarding the Provisional Release of Ivan Čermak, 12 February 2007, para. 3. (“12 February Submission”).

RECALLING the conditions for the Accused's provisional release set out in the Appeal Chamber's "Decision on Interlocutory Appeal Against Trial Chamber's Decision Denying Provisional Release" ("Appeal Decision"), filed on 2 December 2004, providing, *inter alia*, that the Appellants shall "comply strictly with any order issued by the Trial Chamber varying the terms of...the provisional release";⁶

RECALLING furthermore, that the Appeal Decision was modified by the "Decision on Ivan Čermak's Motion for Amending the Conditions of the Appeals Chamber Decision on Provisional Release" ("Amended Decision"), filed confidentially on 11 July 2005, which permitted the Accused "to leave the confines of his residence in Krapinkse Toplice and travel to and from the seat of the company Tifon d.o.o., Martićeva 65, Zagreb, on weekdays, between 0700 and 1900 hours, but not on Saturdays or Sundays";⁷

CONSIDERING that the conditions of the Accused's provisional release should be interpreted restrictively and as such do not authorise him to perform his business activities outside his residence or place of business, therefore excluding business lunches and business dinners, or any business activity outside these two specified places;

CONSIDERING that the Accused's presence at 1400 hours on Friday 29th December 2006 at a birthday party held in the Paviljon Restaurant, Zagreb, was in breach of the conditions of his provisional release as the conditions do not permit him to leave his business premises to attend an event with a highly social character, regardless of the proximity of such an event to his business premises;

CONSIDERING that the Accused's presence between 9pm and 1am, on Sunday 31st December 2006, at a New Year's Eve party held at the Westin Hotel, Zagreb, is a clear breach of the conditions of his provisional release which both the Accused and his Counsel have acknowledged and called a mistake on the part of the Accused;⁸

CONSIDERING additionally that the Accused's attendance on Thursday, 4th January 2007 at the Snow Queen Trophy went well beyond the conditions of his provisional release as there was no justification to attend, even if one were to allow for such a detour between his work place and his residence;

⁶ Decision on Interlocutory Appeal Against Trial Chamber's Decision Denying Provisional Release, 2 December 2004.

⁷ Confidential Decision on Ivan Čermak's Motion for Amending the Conditions of the Appeals Chamber Decision on Provisional Release, 11 July 2005, p. 3.

⁸ 9 February 2007 Status Conference Transcript ("Transcript"), para. 122, line 10; Čermak Response, see *supra* note 4, para. 6.

CONSIDERING further that the Accused informed the Chamber in the Status Conference that he had not taken the road up to Sljeme in order to pick up his wife and son but had gone specifically to attend the race,⁹ contrary to both his prior written submissions that he had simply passed by on his way home from work so as to meet his family¹⁰ and the submissions of the Republic of Croatia that the Accused had taken the route to avoid traffic jams;¹¹

CONSIDERING that attending the Snow Queen Trophy on 4th January 2007 was not only an obvious violation of the conditions of the Accused's provisional release, regardless of whether he attended only to pick up his family or to take his son to watch the race out of a parent's love; the Accused should have been aware that it was a violation, and even if this was not the case, he should have sought guidance from the Chamber instead of taking such a risk, directly or through his counsel, as he is clearly intelligent enough not to be totally dependent on his counsel in this respect;

CONSIDERING that at the Status Conference, the Accused informed the Chamber that he had also taken his son to last year's Snow Queen Trophy;

CONSIDERING that with regard to the New Years' Eve party the Accused attended in the Westin Hotel, there can be no question about an error in the interpretation of the conditions as Sundays and any time after 7pm is unambiguously excluded;

CONSIDERING however that despite the disrespect shown to this Tribunal in relation to the matters addressed in this decision, the Accused has in the past fully cooperated with the Tribunal including the Office of the Prosecutor, namely by consenting to interviews with the Prosecution, not trying to abscond prior to his arrest despite knowing in advance that he was likely to be indicted and could face a severe sentence if convicted, reporting regularly to the local police while on provisional release, returning to the custody of the Tribunal when summoned to do so and not interfering with any witnesses or victims;

CONSIDERING the Accused's statements that he meant no disrespect to the Tribunal;

CONSIDERING that the Chamber does not find that this matter warrants being discussed confidentially;

REJECTS the Submission presented by Counsel for the Accused that the reason for breaches of the conditions was due to ambiguity between the English and BCS versions of the court orders, as it is clearly stated in each order that the English text is the authoritative version; such ambiguities are

⁹ Transcript page 125, line 21.

¹⁰ Čermak Response, see *supra* note 3, para. 7.

not of a kind to sufficiently explain the Accused's behaviour and presence in the locations in question as none of them were held within the immediate vicinity of the Accused's residence.

ESTABLISHES that the Accused has knowingly violated the conditions of his provisional release on at least four occasions, strongly demonstrating that the inclination to attend social events was considered an excuse to publicly disrespect the Chamber's orders;

FINDS nonetheless that the conduct of the Accused was not of a kind to jeopardise the core elements found in Rule 65, since he has returned to the custody of the Tribunal when called to do so and has not posed a danger to any victim, witness or other person;

DECIDES to exceptionally exercise its discretion, though the Accused should be aware that any further action of this sort will result in immediate revocation of his provisional release;

FOR THE FOREGOING REASONS,

PURSUANT to Article 29 of the Statute, and Rules 54 and 65 of the Rules of Procedure and Evidence,

GRANTS Counsel for the Accused leave to file the 12 February Submission;

ORDERS the provisional release of the Accused be reinstated as of 16 February 2007 under the same conditions, and with the following clarifications:

- (i) That the Accused be restricted to his residence (limited to his house and premises of the property) located at Ulica Ivana Mihanovića 13, Klokovec, Krapinske Toplice, with the sole exception set out in (ii) and (v) below;
- (ii) The Accused is permitted to leave his residence solely between the hours of 0700 and 1900 on week days only, so as to travel to his place of business, located at Martićeva 65, Zagreb;
- (iii) In travelling between his residence and place of business the Accused must use the shortest route (in kilometres and irrespective of traffic jams), and not interrupt his journey for anything that is not strictly necessary such as picking up family members, visiting friends or business partners;

¹¹ Government of Croatia Response. See *supra* note 3, page 2.

- (iv) During working hours in which the Accused is permitted to be at his place of business he is not permitted to leave the building for any reason, including going to any sort of business or social event, apart from returning home,;
- (v) When reporting to the nearest police station to his residence, the Accused will go there by the shortest route and return, without any interruption;

REQUESTS that the Dutch Authorities transport the Accused to Schiphol airport (or any other airport in the Netherlands), and release the Accused into the custody of designated officials of the Government of Croatia;

REQUIRES the Government of Croatia, to assume responsibility for:

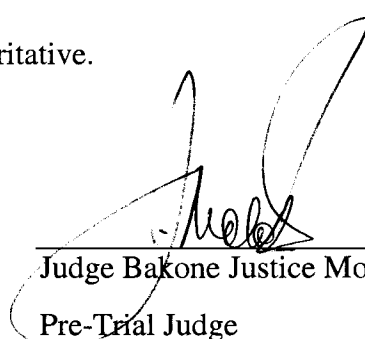
- 1) The personal security and safety of the Accused while on provisional release;
- 2) Ensure compliance with the conditions imposed on the Accused under all decisions on the conditions of his provisional release;
- 3) All expenses concerning the transport of the Accused from Schiphol airport (or any other airport in the Netherlands), to his place of residence in the Republic of Croatia and eventually back to the Netherlands;
- 4) Ensuring that upon release of the Accused at Schiphol airport (or any other airport in the Netherlands), designated officials of the Government of Croatia, (whose names shall be provided in advance to the Trial Chamber and the Registry), take custody of the Accused from the Dutch authorities and accompany the Accused for the remainder of his travel to his place of residence;
- 5) Facilitating at the request of the Trial Chamber or of the parties to the instant case, all means of cooperation and communication between the parties and ensuring the confidentiality of any such communication;
- 6) Not issuing any new passports or documents which would enable the Accused to travel;
- 7) Monitoring on a regular basis the presence of the Accused at the address given to the Registry of the International Tribunal, and maintaining a log of such reports;

- 8) Submitting a written report every month to the Trial Chamber and the Registry as to the presence of the Accused and his compliance with the terms of this and all other relevant decisions;
- 9) Reporting immediately to the Registrar of the International Tribunal the substance of any threats to the security of the Accused, including full reports of the investigations related to threats;
- 10) Immediately detain the Accused should he breach any of the terms and conditions of his provisional release and report immediately any such breach to the Registry and the Trial Chamber;
- 11) Respecting the primacy of the International Tribunal in relation to any existing or future proceedings in the Republic of Croatia concerning the Accused;

ORDERS the Registrar to disclose all confidential filings relating to this matter made since 12 January 2007;

INSTRUCTS the Registrar of the Tribunal to consult the Ministry of Justice of The Netherlands and the authorities of Croatia as to the practical arrangements for the release of the Accused.

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



Judge Bakone Justice Moloto
Pre-Trial Judge

Dated this fifteenth day of February 2007
At The Hague
The Netherlands

[Seal of the Tribunal]