



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: 31 May 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Pre-Trial Judge
Judge Alphons Orié
Judge Christine Van den Wyngaert

Registrar: Mr. Hans Holthuis

Decision of: 31 May 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

**DECISION ON DEFENDANT ANTE GOTOVINA'S
EMERGENCY MOTION TO LIFT CONFIDENTIALITY
OF PROSECUTION'S CLARIFICATION OF
INDICTMENT FILED 17 MAY 2007**

The Office of the Prosecutor:

Mr. Alan Tieger
Mr. Marks Moore

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 (in transfer) 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 “Defendant Ante Gotovina’s Emergency Motion to Lift The Confidentiality of Prosecution’s Clarification of Indictment Filed 17 May 2007” filed confidentially on 22 May 2007 (“Motion”) in which the Accused Gotovina requested that the Trial Chamber lift the confidential status of the “Clarification of Indictment” filed by the Prosecution on 17 May 2007 (“Clarification of Indictment”);¹

BEING SEIZED of “Defendant Mladen Markač’s Joinder to Defendant Ante Gotovina’s Emergency Motion to Lift the Confidentiality of Prosecution’s Clarification of Indictment Filed 17 May 2007” filed confidentially on 24 May 2007 and noting that Čermak’s defence counsel have informed the Trial Chamber, in an email of 31 May 2007 to its Senior Legal Officer, that they will not file any response to the Motion;

NOTING that the Trial Chamber had ordered the Prosecution to “widen the circle of named participants [...] to the extent they are known by the Prosecution”,² and that it was in compliance with that order that the Prosecution filed the Clarification of Indictment;

NOTING that the Prosecution’s reasons for filing the Clarification of Indictment confidentially were that certain U.S. practice indicated that un-indicted co-conspirators are not named publicly in a formal indictment, an approach also adopted in a U.S. Attorney’s practice manual;³ that though the practice was different in the ICTY and the same interests may not be relevant in the international context, since no more indictments will be issued by the ICTY, this could be a factor for the Trial Chamber to consider a confidential filing of the Clarification of Indictment;⁴

CONSIDERING that the Accused’s right to a fair and public trial under Article 21(2) of the “Statute of the International Criminal Tribunal For the Former Yugoslavia” (“Statute”) outweighs the interests the Prosecution purported to protect by the confidential filing of the Clarification of Indictment;

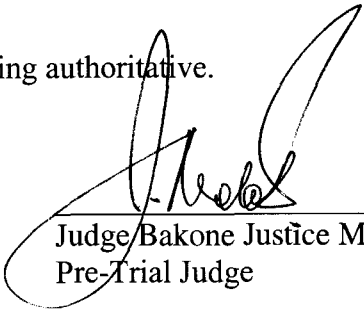
PURSUANT TO Articles 20 and 21(2) of the Statute and to Rules 53 and 54 of the Rules of Procedure and Evidence,

¹ Motion, paras 1-2, 4-5.

² Decision on Ante Gotovina’s Preliminary Motions Alleging Defects in the Form of the Joinder Indictment, 19 March 2007, para. 14.

HEREBY GRANTS the Motion and lifts the confidential status of the Clarification of Indictment.

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



Judge Bakone Justice Moloto
Pre-Trial Judge

Dated this thirty-first day of May 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

³ Clarification of Indictment, para. 2.

⁴ Clarification of Indictment, para. 3.