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20 June 2008

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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-06-90-T
Date: 20 June 2008
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Ķiniš
Judge Elizabeth Gwaunza

Registrar: Mr Hans Holthuis

Decision of: 20 June 2008

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

DECISION ON GOTOVINA DEFENCE MOTION TO EXPAND THE SCOPE OF
THE TESTIMONY OF WITNESS 116

Office of the Prosecutor

Mr Alan Tieger
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Mr Gregory Kehoe
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay, QC
Mr Andrew Cayley
Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić
Mr Tomislav Kuzmanović

1. On 5 May 2008, the Prosecution filed a motion to limit the scope of the testimony of Witness 116.¹ The Prosecution stated that the Rule 70 provider had agreed that Witness 116 could testify on the topics reflected in the witness statement on the condition that the Chamber order that (a) the scope of the cross-examination be restricted to the scope of the direct examination and to credibility issues, unless the Defence is granted formal permission from the Rule 70 provider to go beyond these topics, (b) Witness 116 may decline to answer questions on the ground of confidentiality, and (c) representatives of the Rule 70 provider shall be permitted to be present during the testimony.² The Defence for all three Accused responded that they did not oppose the Prosecution Motion.³ On 12 June 2008, the Chamber granted the Prosecution Motion.⁴

2. On 18 June 2008, the Gotovina Defence filed a motion to expand the scope of the testimony for Witness 116 to a number of identified topics.⁵ The Rule 70 provider has in a letter to the Gotovina Defence, which is attached to the Gotovina Motion, authorized the expansion of Witness 116's testimony to the identified topics, "noting that many appear to be wholly or partially subsumed within the five topics already authorized for [Witness 116's] testimony".⁶ The Rule 70 provider stated that authorization is contingent upon the Gotovina Defence obtaining an order from the Chamber, prior to the testimony, that restricts the scope of the testimony to the identified topics and that provides that Witness 116 may decline to answer questions on grounds of confidentiality.⁷ On 19 June 2008, the Prosecution communicated informally to the Chamber that it did not intend to respond.

3. As the Rule 70 provider has authorized a limited expansion of the scope of cross-examination beyond the restrictions referred to in the Decision, these can be modified

¹ Prosecution Motion to Limit the Scope of Testimony, Submission of Rule 92 *ter* Statement and Associated Exhibits and Motion to Add Two Witness-Related Documents to the Rule 65 *ter* Exhibit List, 5 May 2008 ("Prosecution Motion").

² Prosecution Motion, paras 3-4, 16.

³ Ivan Čermak's Response to Prosecution Motion to Limit the Scope of Testimony, Submission of Rule 92 *ter* Statement and Motion to Add Two Witness-Related Documents to the Rule 65 *ter* Exhibit List, 15 May 2008; Defendant Mladen Markač's Response to Prosecution's Motion to Limit the Scope of Testimony, Submission of Rule 92 *ter* Statement and Motion to Add Two Witness-Related Documents to the Rule 65 *ter* Exhibit List, 16 May 2008; Defendant Ante Gotovina's Response to Prosecution Motion to Limit the Scope of Testimony, Submission of Rule 92 *ter* Statement and Motion to Add Two Witness-Related Documents to the Rule 65 *ter* Exhibit List for Witness 116, 19 May 2008.

⁴ Decision on Prosecution's Motion to Limit the Scope of Testimony of Witness 116, 12 June 2008 ("Decision").

⁵ Defendant Ante Gotovina's Motion to Expand Scope of Testimony for Witness 116, 18 June 2008 ("Gotovina Motion"), paras 6, 8.

⁶ Gotovina Motion, Appendix A.

⁷ Gotovina Motion, Appendix A.


accordingly. The Decision already contains the provision that “Witness 116 be permitted to decline to answer questions on the ground of confidentiality”.⁸

4. For the foregoing reasons, and pursuant to Rules 54 and 70, the Chamber hereby **GRANTS** the Motion and **AMENDS** paragraph 11 (a) of the Decision in the following way:

- a) the scope of cross-examination of Witness 116 shall be limited to the scope of direct examination, to credibility issues, and to the topics authorized by the Rule 70 provider as set out in paragraph 6 of the Gotovina Motion, as well as such other topics that the Rule 70 provider allows upon request of the Defence;

The Decision remains in force in all other respects.

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



Judge Alphons Orie
Presiding Judge

Dated this twentieth day of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

⁸ Decision, para. 11.