

IT-06-90-T
D21610 - D21605
27 MARCH 2009

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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: 27 March 2009
Original: English

IN TRIAL CHAMBER I

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

Acting Registrar: Mr John Hocking

Order of: 27 March 2009

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

NOTIFICATION TO THE PARTIES IN RELATION TO THE TRIAL CHAMBER'S
INSTRUCTIONS TO THE PARTIES ON 6 MARCH 2009 AND REQUEST FOR
PROSECUTION TO RESPOND

Office of the Prosecutor

Mr Alan Tieger
Mr Stefan Waespi

Counsel for Ante Gotovina

Mr Luka Mišetić
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 March 2009, the Prosecution submitted an oral application to the Chamber to recall Marko Rajčić.¹ On the same day, the Prosecution and Defence made submissions with regard to this application and the Prosecution further requested that the Chamber instruct the Defence to refrain from contacting Mr Rajčić until the Chamber had reached a decision on the Prosecution's request to recall him.²

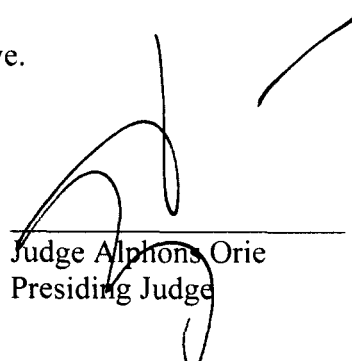
2. On 6 March 2009, the Chamber instructed the parties by way of an informal communication to refrain from contacting Mr Rajčić until further notice was given by the Chamber. The Chamber indicated that this instruction would be put on the record at a later stage.

3. On 26 March 2009, the Gotovina Defence requested by way of an informal communication, and for reasons explained in the annex to this Notification, that the Chamber lifts its instruction for the parties not to contact Mr Rajčić.

4. The Chamber requests the Prosecution to, within 3 days of the filing of this Notification, respond to the Gotovina Defence's request to the Chamber to lift its instruction to the parties not to contact Mr Rajčić.

5. The Chamber uses this opportunity to put on the record the Chamber's instructions to the parties of 6 March 2009, the Gotovina Defence's request of 26 March 2009, and the subsequent email exchange between the parties and the Chamber, also on the latter date. All of these are included in the abovementioned annex.

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



Judge Alphons Orie
Presiding Judge

Dated this 27th day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹ T. 17.184 -17.185.

² T.17.184 -17.198.

IT-06-90-T

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

**ANNEX TO
NOTIFICATION TO THE PARTIES IN RELATION TO THE TRIAL CHAMBER'S
INSTRUCTIONS TO THE PARTIES ON 6 MARCH 2009 AND REQUEST FOR
PROSECUTION TO RESPOND**



Luka Misetic
[Redacted]
03/26/2009 12:59 PM

To Alan Tieger [Redacted]
cc [Redacted]
bcc [Redacted]

Subject Re: Gotovina et al.: Instruction in relation to the Prosecution's request to re-call Marko Rajcic (Witness 175)

For Follow Up Urgent Priority

Dear Ms. Palmgren:

Our position is that, because OTP did not file a "formal motion" in the first place, nor did the Chamber issue a "formal order," but rather an emailed "instruction," no formal pleading is required. Accordingly, we disagree with Mr. Tieger's procedural analysis and ask that you convey our request to the Chamber.

Sincerely,

Luka Misetic

On Thu, Mar 26, 2009 at 12:50 PM, Alan Tieger <[Redacted]> wrote:

Dear Ms. Palmgren,

Please be advised that the Prosecution objects to the form of the "formal request" advanced by the Gotovina defence. The request relates to a substantive matter and should be brought by way of a motion. Once the matter is filed in the manner contemplated by the Rules, the Prosecution will respond.

Sincerely,

Alan Tieger

Luka Misetic
<[Redacted]>
[Redacted]
26-03-2009 11:48 AM

To Katarina Palmgren [Redacted]
cc [Redacted]
[Redacted]
[Redacted]
[Redacted]

[REDACTED]

Subject

Re: Gotovina et al.: Instruction in relation to the Prosecution's request to re-call Marko Rajcic (Witness 175)

Dear Ms. Palmgren:

The Gotovina Defence hereby formally requests that the Trial Chamber lift

its instruction to the Defence not to contact Marko Rajcic. As the case of the Prosecution is now "formally closed" according to the Trial Chamber's most recent scheduling order, the Defence must now prepare to present its Defence case. Vital to the preparation of the Defence case is our ability to consult with Mr. Rajcic concerning certain matters. For example, there are matters that arise from the previously ex-parte filings which were served upon the Defence yesterday, which we now need to review with Mr. Rajcic. Furthermore, there are other matters (for example, additional documents and information from other witnesses) which we need to put to Mr. Rajcic in order to prepare the Defence case.

Accordingly, unless the Chamber is going to re-call Mr. Rajcic in the immediate future, we formally request the Chamber to lift its instruction as soon as possible so that we can properly prepare for a Defence case.

Sincerely,

Luka Misetic

On Fri, Mar 6, 2009 at 5:30 PM, Katarina Palmgren [REDACTED] wrote:
Dear Parties,

On 5 March 2009, the Prosecution submitted an oral request to re-call Marko Rajcic (Witness 175). The Chamber has noted the Gotovina Defence's submissions in relation to the steps taken by the Prosecution in its attempt to determine the availability of the witness and the potential need to subpoena the witness to appear before the Tribunal. The Chamber will consider the Prosecution's request to re-call Mr Rajcic as well as the Gotovina Defence's request to call for testimony the Prosecution investigator who contacted Mr Rajcic.

The Chamber instructs the parties to refrain from contacting Mr Rajcic until further notice. This instruction will be put on the record at a later stage.

Kind regards,

Katarina Palmgren