

IT-06-90-T
D 23756-D 23755
20 May 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: 20 May 2009
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 20 May 2009

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

INTERIM DECISION ON DEFENCE REQUESTS FOR ORDER OF NON-
DISCLOSURE FOR MATERIALS DISCLOSED TO PROSECUTION AND CO-
DEFENDANTS

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

TRIAL CHAMBER I (“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 SEISED of the Gotovina Defence’s and the Čermak Defence’s requests of 4 May 2009 for the Chamber to order that all material disclosed by those Defence teams to the Prosecution and the co-defendants not be disclosed to the public or any person beyond the immediate trial teams of the other parties (“Requests”);¹

NOTING the Prosecution’s response of 18 May 2009 requesting, *inter alia*, that the Chamber deny the Requests (“Response”);²

NOTING the Chamber’s Closing Order and Amended Scheduling Order of 23 March 2009, in which it ordered the Defence, should there be a Defence case, to perform their disclosure obligation pursuant to Rule 67 (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) no later than 20 May 2009;

NOTING that all three Defence teams have elected to present a case;

CONSIDERING Article 22 of the Statute of the Tribunal, and Rules 54 and 75 of the Rules;

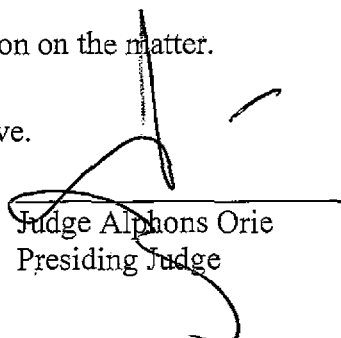
CONSIDERING the objections and arguments made in the Response;

CONSIDERING that disclosure pursuant to Rule 67 (A) should proceed as planned without jeopardizing the protection of victims and witnesses;

INVITES the Defence to reply to the Response, or to reach a common position with regard to the Requests with the Prosecution and co-defendants, and to inform the Chamber thereof, by 22 May 2009;

GRANTS the Requests on an interim basis, pending a final decision on the matter.

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


Judge Alphons Orié
Presiding Judge

Dated this 20th day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

¹ Defendant Ante Gotovina’s Submission Pursuant to Rule 65 *ter* (G), 4 May 2009, para. 9; Ivan Čermak’s Submission Pursuant to Rule 65 *ter* (G), 4 May 2009, para. 8.

² Prosecution Response to the Non-Disclosure Request Made by Ante Gotovina and Ivan Čermak in Their Respective 65 *ter* (G) Submissions, 18 May 2009, para. 7.