



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: 9 June 2009
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 9 June 2009

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

DECISION ON ASSOCIATION OF DEFENCE COUNSEL (ADC-ICTY) MOTION FOR
LEAVE TO APPEAR AS AMICUS CURIAE

Office of the Prosecutor

Mr Alan Tieger
Mr Stefan Waespi

Association of Defence Counsel

Counsel for Ante Gotovina

Mr Luka Mišetić
Mr Gregory Kehoe
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay
Mr Andrew Cayley
Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić
Mr Tomislav Kuzmanović

1. On 1 April 2009, the Gotovina Defence requested the Chamber to issue a restraining order against the Government, the State Prosecutor's Office, and the courts of the Republic of Croatia ("Croatia") to cease all criminal proceedings and prosecutions that emanates from acts related to the Gotovina Defence's fulfilment of its function before the Tribunal, including those against Mr Marin Ivanović, an attorney employed by the Gotovina Defence, and against Mr Jurica Šare, a possible witness for the Gotovina Defence.¹ The Gotovina Defence supplemented its submission on 2 April 2009 and 3 April 2009.² On 9 April 2009, the Prosecution requested the Chamber to dismiss the Request.³ On 29 April 2009, following an invitation by the Chamber, Croatia filed written submissions with regard to the Request.⁴ On 5 May 2009, the Chamber granted requests by the Gotovina Defence to reply to the Response and the Submission and to exceed the word limit to 3,500 words, and informed the parties accordingly through an informal communication.⁵ On 12 May 2009, the Gotovina Defence replied to the Response and the Submission.⁶

2. On 20 May 2009, the Association of Defence Counsel of the International Criminal Tribunal for the former Yugoslavia ("ADC-ICTY") filed a motion for leave to appear as *amicus curiae* regarding the Request.⁷ The ADC-ICTY submitted that the issue presented in the Request "presents a direct threat to the ability of defence counsel and team members to adequately defend accused persons at the ICTY".⁸ It therefore argued that it is appropriate that the ADC-ICTY, as the body officially recognized by the Registry as representing all Defence Counsel practicing before the Tribunal, be given an opportunity to address the matter.⁹

3. Rule 74 of the Tribunal's Rules of Procedure and Evidence ("Rules") provides that a Chamber may, if it considers it desirable for the proper determination of the case, invite or

¹ Defendant Ante Gotovina's Motion for a Restraining Order against the Republic of Croatia pursuant to Rule 54, 1 April 2009.

² Defendant Ante Gotovina's Additional Submission in Support of His Motion for Restraining Order against the Republic of Croatia, 2 April 2009; Submission of Registry Accreditation Letter for Mr. Marin Ivanovic, 3 April 2009. The submissions of 1, 2, and 3 April 2009 will collectively be referred to as the "Request".

³ Prosecution Response to Gotovina's Motion for Restraining Order against the Republic of Croatia, 9 April 2009 ("Response").

⁴ Invitation to Croatia to File a Submission in Relation to Defendant Ante Gotovina's Motion for a Restraining Order against the Republic of Croatia, 15 April 2009; Submission by Croatia in Relation to Defendant Ante Gotovina's Motion for a Restraining Order, 29 April 2009 ("Submission").

⁵ See Defendant Ante Gotovina's Motion for Leave to Reply to Prosecution's Response to General Gotovina's Motion for Restraining Order against the Republic of Croatia, 14 April 2009; Gotovina Defence Motion for Leave to Reply to the Republic of Croatia's Response to General Gotovina's Motion for a Restraining Order against the Republic of Croatia, 1 May 2009.

⁶ Defendant Ante Gotovina's Reply in Support of the Motion for a Restraining Order against the Republic of Croatia Pursuant to Rule 54, 12 May 2009.

⁷ Association of Defence Counsel (ADC-ICTY) Motion for Leave to Appear as *Amicus Curiae*, 20 May 2009 ("Motion").

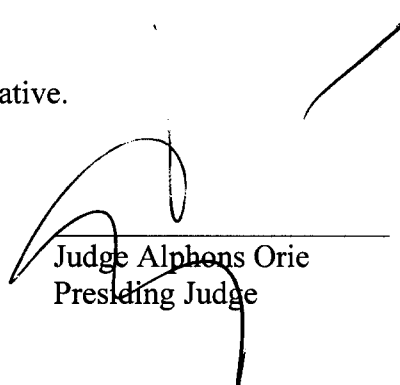
⁸ *Ibid.*, para. 4.

grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

4. The Chamber considers that a request for leave to appear as *amicus curiae* should be granted if the State, organization, or person requesting such a standing may assist it in its considerations of matters before it.¹⁰ This requires that the requester has the knowledge and intention to add information and arguments to those already submitted by the parties. As described in paragraph 1, the Chamber received extensive submissions from the Gotovina Defence, Croatia and the Prosecution on this matter. In its Motion, the ADC-ICTY does not elaborate on how it can assist the Chamber with information and arguments, beyond what has already been submitted by the parties and Croatia. Therefore, the Chamber finds that the ADC-ICTY has not shown that it would be desirable for the proper determination of this matter to grant it leave to appear as an *amicus curiae*.

5. For the foregoing reasons, and pursuant to Rule 74 of the Rules, the Chamber **DENIES** the Motion, without prejudice.

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



Judge Alphons Orie
Presiding Judge

Dated this ninth day of June 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁹ *Ibid.*, para. 3.

¹⁰ *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Association of Defence Counsel Request to Participate in Oral Argument, 7 November 2005, p. 3.