

IT-06-90-T
D 24200- D 24253
19 JUNE 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: 19 June 2009
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Order of: 19 June 2009

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

INVITATION TO THE EUROPEAN UNION AND TO THE GOTOVINA DEFENCE

Office of the Prosecutor

Mr Alan Tieger
Mr Stefan Waespi

European Union Monitoring Mission

Mr Javier Solana

**The Presidency of the Council
of the European Union (Czech Republic)**

The Commission of the European Union

**The Founding Member States of the European
Community Monitoring Mission**

Belgium, Denmark, France, Germany, Greece,
Ireland, Italy, Luxembourg, The Netherlands,
Portugal, Spain, and the United Kingdom

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 Defendant Ante Gotovina’s Motion to Enforce the Trial Chamber’s Previous Rule 54 *bis* Order Compelling Access to Archives of the European Union Monitoring Mission, filed on 20 March 2009, and the Corrigendum thereto, filed on 23 March 2009 (together “Further Motion”);

NOTING in addition to all earlier filings in this matter, the European Union’s latest response in its letter dated 26 May 2009 (“Further Response”), filed on the same day;

NOTING that the Gotovina Defence in the Further Motion asserted that the European Union failed to produce a significant number of reports which it was requested to produce by a Chamber’s Order¹;

CONSIDERING that the European Union had stated that 24 documents sought by the Gotovina Defence are available and accessible to the Defence;

CONSIDERING the Gotovina Defence’s reply² in which it further substantiated why it is of the opinion that the majority of the 80 documents being sought must have come into existence;

CONSIDERING that these submissions indicate that some of the sought documents are referenced in other European Union Monitoring Mission (“EUMM”) reports, which are either admitted as exhibits in this trial or which are attached to the Reply;

CONSIDERING that these references are indicia that suggest, sometimes strongly, that these documents that are among those that the Gotovina Defence has been seeking indeed had been created;³

¹ Chamber’s Order Compelling Access to Archives of the European Union Monitoring Mission, filed confidentially and *ex parte* on 28 February 2008, status changed to public and *inter partes* in court on 3 April 2009.

² Gotovina Defence Reply to European Union’s Response to Defendant Ante Gotovina’s Motion to Enforce the Trial Chamber’s Previous Rule 54 *bis* Order Compelling Access to Archives of the EUMM, 23 April 2009 (“Reply”).

³ The reports for which such indicia of production exist are listed in Appendix A to this Invitation. The documents which reference the sought reports are attached in Appendix B to this Invitation.

CONSIDERING that in one instance it is not possible for the Chamber or the Gotovina Defence to verify whether a report sought by the Gotovina Defence is referenced in another EUMM report, because of redactions of the latter,⁴ and that this does not allow for an assessment as to whether the sought report had been created;

CONSIDERING that this, however, can be verified by the European Union;

CONSIDERING the European Union's general explanations in its response⁵ and its Further Response, as to why the sought reports would not have come into existence, namely the fact that the teams concerned were not operational during parts of August 1995 mainly due to limitations on their freedom of movement, meetings held at EUMM headquarters in Zagreb, vehicle repairs, removal of team's offices, organisational changes, and administrative duties;

CONSIDERING that the Chamber would be assisted by more detailed explanations as to why the specific documents that are referenced in other EUMM reports could not exist.

THE CHAMBER, for the foregoing reasons,

INVITES the Secretary-General of the Council of the European Union and High Representative for the Common Foreign and Security Policy, or his designated representative, to verify whether the reports for which indicia of their creation exist, as listed in Appendix A to this Invitation, can be found in EUMM's archives, and in case any of these reports cannot be found, provide the Chamber with specific reasons for their absence from the archives, to the extent that this information is available;

INVITES the Gotovina Defence to get in contact with the European Union to gain access to the 24 documents, to which the European Union in its Further Response offered the Gotovina Defence renewed access;

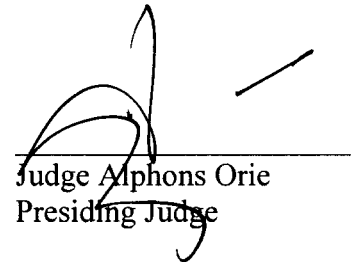
⁴ Referring to the sought daily report of ECMM RC Knin team N3, dated 28 August 1995, which may be referenced in the daily report of RC Knin dated 28 August 1995, mentioned in Annex F to the Reply.

⁵ European Union's response, filed on 17 April 2009 ("Response").

REQUESTS the Registrar of the Tribunal to serve this Invitation on:

1. The Secretary-General of the Council of the European Union and High Representative for the Common Foreign and Security Policy, or his designated representative;
2. The European Union Monitoring Mission;
3. The Presidency of the Council of the European Union;
4. The Commission of the European Union;
5. The Founding Member States of the European Community Monitoring Mission;

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



Judge Alphons Orié
Presiding Judge

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

[Seal of the Tribunal]

Appendix A

Reports for which indicia suggest (*) or strongly () suggest that they had been created:**

Document sought	referenced in	to be found in following trial document
daily report of ECMM RC Knin team N2 dated 11 August 1995**	daily report of RC Knin dated 11 August 1995, page 2, paragraph 3 lit. d	P934, page 2, paragraph 3 lit. d
daily report of ECMM RC Knin team N2 dated 29 August 1995**	daily report of RC Knin dated 29 August 1995, page 2, paragraphs 4 lit. b and c	P940, page 2, paragraphs 4 lit. b and c
daily report of ECMM RC Knin team N3 dated 10 August 1995**	daily report of RC Knin dated 10 August 1995, page 2, paragraph 4 lit. c	P830, page 2, paragraph 4 lit. c
daily report of ECMM RC Knin team N3 dated 11 August 1995**	daily report of RC Knin dated 11 August 1995, page 2, paragraph 3 lit. c	P934, page 2, paragraph 3 lit. c
daily report of ECMM RC Knin team N3 dated 12 August 1995**	daily report of RC Knin dated 12 August 1995, page 1, paragraph 3 lit. e	P808, page 1, paragraph 3 lit. e
daily report of ECMM RC Knin team N3 dated 16 August 1995*	daily report of RC Knin dated 16 August 1995, pages 1 and 2, paragraph 3 lit. c	Annex B of the Reply, pages 1 and 2, paragraph 3 lit. c
daily report of ECMM RC Knin team N3 dated 24 August 1995*	daily report of RC Knin dated 24 August 1995, page 2, paragraph 2 lit. f	Annex E of the Reply, page 2, paragraph 2 lit. f
daily report of ECMM RC Knin team N3 dated 28 August 1995	daily report of RC Knin dated 28 August 1995	Annex F of the Reply
daily report of ECMM RC Knin team N3 dated 31 August 1995**	daily report of RC Knin dated 31 August 1995, page 2, paragraph 4 lit. d	P941, page 2, paragraph 4 lit. d
ECMM HQ daily monitoring activity reports 8 August 1995*	daily report of RC Knin dated 8 August 1995, which does not reference the sought report, but shows that EUMM reported on that day	P806
ECMM HQ daily monitoring activity reports 31 August 1995*	daily report of RC Knin dated 31 August 1995 which does not reference the sought report, but shows that EUMM reported on that day	P941