

IT-06-90-T  
D 30862 - D 30839  
16 December 2009

30862 KB.



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: 16 December 2009  
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding  
Judge Uldis Ķiniš  
Judge Elizabeth Gwaunza  
Registrar: Mr John Hocking  
Invitation of: 16 December 2009

PROSECUTOR

v.

ANTE GOTOVINA  
IVAN ČERMAK  
MLADEN MARKAČ

*PUBLIC*

INVITATION TO THE EUROPEAN UNION

**Office of the Prosecutor**

Mr Alan Tieger  
Mr Stefan Waespi

**General Secretariat of the Council of  
The European Union**

Mr Pierre de Boissieu

**High Representative of the Union for  
Foreign Affairs and Security Policy**

Mrs Catherine Ashton

**The Presidency of the Council of the  
European Union (Sweden)**

**The Commission of the European Union**

**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

**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)**

**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 (“EUMM”), filed on 20 March 2009, and the Corrigendum thereto, filed on 23 March 2009 (collectively “Motion”), wherein it, *inter alia*, requests an order to the European Union (“EU”) to further investigate the whereabouts of specified documents (“Sought Documents”);

**RECALLING** that on 28 February 2008 the Chamber pursuant to Rule 54 *bis* of the Tribunal’s Rules of Procedure and Evidence ordered the Secretary-General of the Council of the EU to grant access to the defence to the EUMM archives;

**NOTING** the EU’s response of 17 April 2009 (“First Letter”), wherein it stated that the Sought Documents were either already made available to the Gotovina Defence or could not be found in the EUMM archives;

**NOTING** the Gotovina Defence’s reply to the First Letter of 23 April 2009, wherein it requests the Chamber to order the EU to disclose certain documents, to further investigate the whereabouts of missing reports, and to provide the Chamber with a progress report;

**NOTING** the EU’s further submission of 26 May 2009, wherein its previous position is reaffirmed;

**NOTING** the Chamber’s invitation of 19 June 2009 (“19 June 2009 Invitation”), wherein the EU is invited to verify that eleven reports, for which indicia of existence were found, are missing from the EUMM archives and to provide the Chamber with specific reasons for their absence;

**NOTING** the Prosecution’s submissions of 19 and 22 June 2009, wherein the Prosecution disclosed to the Gotovina Defence 27 of the Sought Documents, including eight of the eleven reports identified by the 19 June 2009 Invitation;

**NOTING** the Gotovina Defence’s submission of 24 June 2009, wherein it requests the Chamber to order rather than invite the EU to conduct a detailed investigation into all of the Sought Documents;

**NOTING** the EU's letter of 13 August 2009, wherein it stated that after again verifying in the EUMM archives it had concluded that eight of the eleven documents identified in the 19 June 2009 Invitation had already been disclosed to the Gotovina Defence and that the three remaining documents could not be found following a further intensive search;

**NOTING** that on 25 August 2009 the Chamber orally invited the Gotovina Defence to submit to the Chamber a list of documents still outstanding and to provide further information as to these documents' existence;

**NOTING** that on the same day the Gotovina Defence assured the Chamber that it would submit such a list expeditiously;

**NOTING** that on 10 November 2009, after a further invitation by the Chamber to clarify the scope of the Motion, the Gotovina Defence informed the Chamber that it only sought further Chamber action with regard to the "RC Knin log-book";

**NOTING** Appendix A of the Motion indicating that the "RC Knin log-book" supposedly contains log reports of the ECMM Regional Centre Knin for the period of 4 August 1995 until 15 August 1995;

**NOTING** the EU's timely submissions to Chamber invitations in the past;

**WELCOMING** the fact that the EU succeeded in finding some of the Sought Documents in the EUMM archives and providing them to the Gotovina Defence;

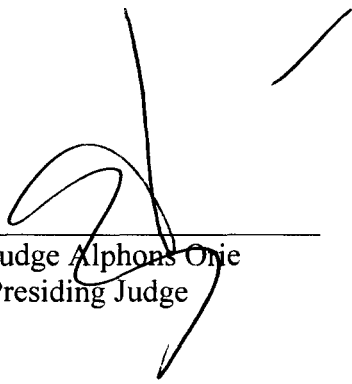
**INVITES** the Secretary-General of the Council of the European Union, in consultation with the High Representative for the Common Foreign and Security Policy, to focus and intensify his search of the EUMM archives on the "RC Knin log-book", and, within 14 days of this decision, to either provide the Gotovina Defence with this document, or parts thereof, or provide the Chamber with an overview of all efforts undertaken if the document cannot be found;

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

1. The Secretary-General of the Council of the European Union, or his designated representative;
2. The High Representative of the Union for Foreign Affairs and Security Policy, or her designated representative;

3. The Presidency of the Council of the European Union;
4. The Commission of the European Union; and
5. The Founding Member States of the European Community Monitoring Mission.

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



Judge Alphons Orie  
Presiding Judge

Dated this sixteenth of December 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**