

IT-06-90-T
D30886-D30882
18 DECEMBER 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: 18 December 2009
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Invitation of: 18 December 2009

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

**INVITATIONS TO THE REPUBLIC OF CROATIA, THE GOTOVINA DEFENCE, AND
THE PROSECUTION IN RELATION TO THE REQUESTS FOR PERMANENT
RESTRAINING ORDERS DIRECTED TO THE REPUBLIC OF CROATIA**

Office of the Prosecutor

Mr Alan Tieger
Mr Stefan Waespi

Republic of Croatia

Per: the Embassy of the Republic of Croatia
to the Kingdom of the Netherlands

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 Renewed Motion for a Restraining Order against the Republic of Croatia (“Croatia”) pursuant to Rule 54, filed on 29 September 2009 (“Renewed Motion”);

NOTING the Prosecution’s Response to the Renewed Motion, filed on 13 October 2009, Croatia’s Correspondence in Relation to the Renewed Motion, filed on 30 October 2009, and Defendant Ante Gotovina’s Reply to the latter, filed on 6 November 2009;

BEING FURTHER SEISED OF the Gotovina Defence’s oral requests of 10 December 2009 for the Chamber to issue permanent restraining orders to Croatia, firstly, to cease and desist from all actions against Mr Ivanović, a Gotovina Defence investigator (“first request”); secondly, to stop all searches of records and computers that Croatia has in its custody which were seized from Gotovina Defence offices or members (“second request”); and thirdly, to desist from any future searches against Gotovina Defence offices or members, (“third request”);¹

BEING FURTHER SEISED OF Defendant Mladen Markač’s oral request of 10 December 2009 for the Chamber to issue a permanent restraining order to Croatia to cease and desist from any future actions against its members and offices, as a preventive measure (“fourth request”);²

NOTING the oral submissions made by the parties and Croatia on 10 and 11 December 2009;³

FURTHER NOTING the temporary order issued by the Chamber on 11 December 2009 restraining Croatia from undertaking certain actions until further notice;⁴

NOTING that the first request seeks the same remedy as the Renewed Motion of 29 September 2009;

CONSIDERING that the oral submissions of 10 and 11 December 2009 raised significant new facts which are relevant to the first request;

¹ T. 26023-26024, 26028-26030.

² T. 26024.

³ Order Scheduling a Hearing, 11 December 2009; T. 26003-26053, 26075-26162.

⁴ T. 26160-26161.

FURTHER CONSIDERING that the hearings of 10 and 11 December 2009 focused primarily on the request for a temporary restraining order to stop all searches of records and computers that Croatia has in its custody which were seized from Gotovina Defence offices or members;

RECALLING that the Chamber has previously held that it is concerned primarily with whether the Croatian proceedings against Mr Ivanović impact on the fairness of the proceedings against Mr Gotovina;⁵

FINDING it appropriate, in the new circumstances, to give the Gotovina Defence an opportunity to make further written submissions in relation to the first request;

CONSIDERING that the first request concerns an issue related to the fairness of the proceedings before the Chamber;

FINDING it appropriate, in the new circumstances, to give the Prosecution an opportunity to make a written response in relation to the first request;

RECALLING that the Chamber has previously held that an order to Croatia to cease and desist from all actions against Mr Ivanović would amount to a significant intervention in the domestic jurisdiction of Croatia;⁶

FINDING it appropriate, in the new circumstances, to give Croatia an opportunity to make written submissions in relation to the first request;

FURTHER NOTING the Chamber's Decision on Requests for Temporary Restraining Orders Directed to the Republic of Croatia and Reasons for the Chamber's Order of 11 December 2009, filed on 18 December 2009;

CONSIDERING that the new facts presented to the Chamber on 10 and 11 December 2009 have raised concerns regarding the protection of any materials subject to lawyer-client privilege that may be among the objects in Croatia's custody which were seized and removed from the Gotovina Defence offices or present and former members;

FINDING it appropriate to give Croatia an opportunity to make written submissions in relation to the second, third and fourth requests, specifically with regard to:

⁵ Decision on Defendant Ante Gotovina's Motion for a Restraining Order against the Republic of Croatia, 23 July 2009, paras 20-21.

⁶ Ibid., para. 18.

- the rules and procedures under the law of Croatia that protect materials subject to lawyer-client privilege,
- the procedures applied in relation to the objects seized from Gotovina Defence offices or present and former members, identified to the Chamber as Mr Ivanović, Mr Ribičić, and Mr Hučić, or their relatives, including, at least, where, when, how, by whom and to what extent the seized objects were inspected,
- whether these persons are considered under Croatian law to be lawyers for the purposes of applying the lawyer-client privilege, and whether any materials seized from them are considered under Croatian law to be subject to lawyer-client privilege to the extent applicable, and
- with regard to the potential involvement of an independent authority, such as the Tribunal's Advisory Panel,⁷ in defining which seized objects contain materials subject to lawyer-client privilege and which do not;

FINDING it appropriate to give the Gotovina Defence and the Prosecution an opportunity to make written responses in relation to the second, third and fourth requests, specifically with regard to the potential involvement of an independent authority, such as the Tribunal's Advisory Panel, in defining which seized objects contain materials subject to lawyer-client privilege and which do not;

NOTING that the Chamber's invitations below do not prevent the Markač and Čermak Defence from making written submissions, by the same deadlines;

INVITES the Gotovina Defence to file written submissions in relation to the first request, by 4 January 2010;

INSTRUCTS the Registry to provide Croatia with the Gotovina Defence's written submissions once these have been filed;

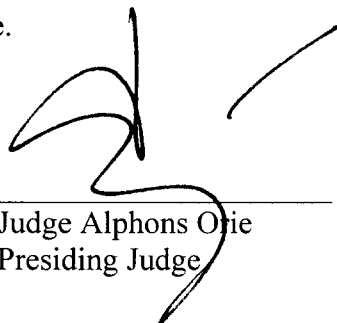
INVITES Croatia to file written submissions, and the Prosecution to file a written response, in relation to the Gotovina Defence's written submissions, by 11 January 2010;

FURTHER INVITES Croatia to file written submissions in relation to the second, third and fourth requests, as specified above, by 11 January 2010;

⁷ See Articles 32 and 33 of the Directive on the Assignment of Defence Counsel (Directive No. 1/94), available at <http://www.icty.org/sections/LegalLibrary/Defence>.

INVITES the Gotovina Defence and the Prosecution to file written submissions to Croatia's written submissions, by 18 January 2010.

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



Judge Alphons Orie
Presiding Judge

Dated this 18th day of December 2009
At The Hague
The Netherlands

[Seal of the Tribunal]