

IT-06-90-T
D 32537- D 32535
03 FEBRUARY 2010

32537
PK



**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: 3 February 2010
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Order of: 3 February 2010

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

URGENT 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 (Spain)**

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 the Gotovina Defence, *inter alia*, requests an order to the European Union (“EU”) to further investigate the whereabouts of specified documents;

NOTING in addition to all other filings in this matter, that on 16 December 2009, the Chamber invited the Secretary-General of the Council of the EU in case of non-production of the “RC Knin log-book” to, *inter alia*, provide the Chamber with an overview of all efforts undertaken to locate this document in an intensified search of the EUMM archives;

NOTING the Gotovina Defence Motion to Compel Production of Document from the EU pursuant to Rule 54 *bis*, filed on 12 January 2009 (“Further Urgent Motion”), requesting the Chamber to urgently take all measures available to the Chamber to compel production of the “RC Knin log-book”, and to compel the EU to provide an overview of all efforts undertaken to find the “RC Knin log-book”;

NOTING the further raising of this issue in court by the Gotovina Defence on 18 January 2010, to be found at transcript pages 26,904 and 26,905;

NOTING the EU’s latest submission in its facsimile dated 18 January 2010 (“EU’s Latest Submission”), filed on the following day, stating simply that the “RC Knin log-book” was not found, that “all efforts were once again undertaken”, and that it had “carefully verified” whether this document could be found in the EUMM archives;

NOTING the further urgent oral motion by the Gotovina Defence on 20 January 2010, reiterating the request of the Further Urgent Motion, as well as the renewed raising of this issue in court by the Gotovina Defence on 27 January 2010, to be found at transcript pages 27,054-27,055 and 27,116 respectively;

NOTING that there were no details in the EU's Latest Submission as to which efforts the EU has undertaken to find the "RC Knin log-book";

CLARIFYING that the Chamber expected an overview of the EU's efforts in finding the "RC Knin log-book", which could have included for instance, names and positions of archivists or other officials consulted to these ends and their statements concerning the efforts undertaken (to be provided confidentially if need be), as well as information about consultation of the archive's inventory and about efforts to establish the chain of custody of the mentioned document;

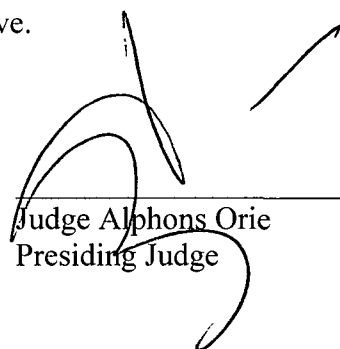
NOTING the urgency of this matter as underscored by the Gotovina Defence which is amplified by the imminent close of the case *Prosecutor v. Gotovina et al.*;

CONSIDERING that the appropriateness of issuing an order to the EU as requested is still under consideration by the Chamber;

DEFERS its decision on the Gotovina Defence's Motion and Further Urgent Motions; and

URGENTLY INVITES the Secretary-General of the Council of the EU to, within 14 days of this urgent invitation, provide the Chamber with an overview of all efforts undertaken in searching for the "RC Knin log-book". If the time limit of 14 days should be determined to be inadequate for the fulfilment of this urgent invitation, the Chamber will consider a request for an extension of time where such request is supported by a plan of further action.

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


Judge Alphons Orie
Presiding Judge

Dated this third of February 2010
At The Hague,
The Netherlands

[Seal of the Tribunal]