

IT-06-90-T
D33778-D33774
21 May 2010

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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: 21 May 2010
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 21 May 2010

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

**DECISION ON GOTOVINA DEFENCE'S OBJECTION TO THE SUSPENSION OF
DEADLINES FOR THE FINAL BRIEFS AND MOTION TO REINSTATE**

Office of the Prosecutor

Mr Alan Tieger

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Mr Gregory Kehoe
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay, QC
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Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić
Mr Tomislav Kuzmanović

PROCEDURAL HISTORY

1. On 26 March 2010, the Chamber ordered the parties to submit their final briefs by 31 May 2010 and added that, should further developments make this time-line unlikely, the Chamber would consider entertaining requests for extensions of time.¹ On 21 April 2010, the Chamber granted the Prosecution's motion to reopen its case-in-chief.² In the same Decision, the Chamber suspended until further notice the 31 May 2010 deadline to submit final briefs.³ On 22 April 2010, the Gotovina Defence filed an objection to the Chamber's suspension of deadline for the final briefs and moved the Chamber to reinstate the 31 May 2010 deadline ("Gotovina Request").⁴ On 3 May 2010, the Prosecution responded, asking that the Gotovina Request be denied.⁵ On 4 May 2010, the Gotovina Defence sought leave to reply to the Prosecution's response.⁶ On 6 May 2010, the Chamber denied leave to reply, and informed the parties accordingly through an informal communication.

SUBMISSIONS OF THE PARTIES

2. The Gotovina Defence submits that the suspension of the deadline runs contrary to the representations made by the Chamber that the 31 May 2010 deadline "included the possibility that the Prosecution's case would be reopened".⁷ Furthermore, in the Gotovina Defence's submission, while all parties endeavoured to ensure an expeditious conclusion to the trial, the Chamber in recent months "has not demonstrated the same sense of urgency".⁸ In support of its assertion, the Gotovina Defence submits that the Chamber took "more than three months to hear only six witnesses" and noted the "protracted time" taken by the Chamber to resolve the Prosecution's Rule 54 *bis* motion.⁹ According to the Gotovina Defence, these "excessive and unnecessary delays" significantly prejudice the Accused Gotovina and are contrary to his right to be tried without undue delay.¹⁰

¹ T. 28047.

² Decision on Prosecution's Motion to Reopen Its Case, 21 April 2010.

³ *Ibid.*, p. 9.

⁴ Ante Gotovina's Objection to Trial Chamber Suspension of Deadlines for Final Briefs and Motions to Reinstate, 22 April 2010.

⁵ Prosecution's Response to Ante Gotovina's Objection to Trial Chamber Suspension of Deadlines for Final Briefs and Motion to Reinstate, 3 May 2010 ("Prosecution's Response").

⁶ Gotovina Defence Motion for Leave to Reply to the Prosecution's Response to Ante Gotovina's Objection to Trial Chamber Suspension of Final Briefs and Motion to Reinstate, 4 May 2010.

⁷ Gotovina Request, para. 2.

⁸ Gotovina Request, para. 4.

⁹ *Ibid.*

¹⁰ *Ibid.*

3. The Prosecution responds that it would be illogical and contrary to common sense to maintain the 31 May 2010 deadline, as it is uncertain whether all the evidence will have been heard by that date.¹¹ In fact, the Prosecution argues that it would be impractical and inefficient to require the parties to file final briefs before they have all presented their evidence and closed their cases.¹² In addition, it submits that it was obvious that the reopening could cause an extension of the duration of the trial, and yet the Gotovina Defence neither objected to the motion to reopen nor raised objections to the substance of the Chamber's decision to reopen.¹³ The Prosecution also notes that in long and complex trials such as the present one, there are many factors and uncertainties which may require scheduling adjustments.¹⁴ By way of example, the Prosecution recalls the five-week adjournment granted to the Defence in connection with the Prosecution's Further Clarification, arguing that Gotovina presumably benefited from it and that the fact that Gotovina may not benefit from an adjournment at this stage does not imply that the delay is either improper or prejudicial.¹⁵ The Prosecution also argues that the Gotovina Defence's submissions concerning the time taken to hear the Chamber witnesses are based on questionable calculations and superficial analysis, and that the assertions concerning the violations of Gotovina's right to be tried without undue delay are unfounded.¹⁶

DISCUSSION

4. Once the Chamber has issued a decision, parties have two procedural avenues available to challenge it. The first one is offered by Rule 73 (B) of the Rules, and consists of requesting certification to appeal the decision before the Appeals Chamber. The second one is a request for reconsideration. In spite of the fact that the Gotovina Defence has not opted to pursue either of these avenues, the Chamber will exceptionally deal with the merits of the Gotovina Request.

5. The suspension of the deadline for the final briefs does not create an unnecessary delay. Rather, it is the logical and necessary consequence of the reopening of the Prosecution's case. The Chamber set the 31 May 2010 deadline before deciding on the

¹¹ Prosecution's Response, para 2.

¹² Prosecution's Response, para 3.

¹³ Prosecution's Response, para. 4.

¹⁴ Prosecution's Response, para 5.

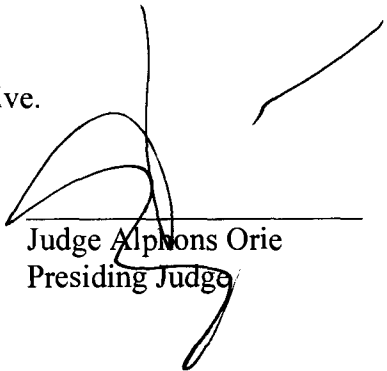
¹⁵ Prosecution's Response, para. 6, citing Decision on Joint Defence Request for a Stay of the Proceedings, 23 March 2009.

reopening. In this regard, the reference to the pending motion to reopen, in the Chamber's oral scheduling of the 31 May 2010 deadline,¹⁷ should not be interpreted as excluding the possibility of the deadline being rescheduled following the Chamber's decision on the reopening of the Prosecution's case. The Prosecution's witnesses in reopening will start testifying on 2 June 2010.¹⁸ Furthermore, the Čermak Defence has already requested to call two witnesses in response.¹⁹ The Markač Defence has also announced that it might call witnesses.²⁰ Final briefs are dealt with by Rule 86 (B) of the Rules in connection with the presentation of final arguments, which are heard by a Trial Chamber "after the presentation of all the evidence". The submission of final briefs offers to the parties the opportunity of showing how the evidence on the record supports their theory of the case. It is clear that the hearing of all the evidence in this case will not be concluded by 31 May 2010, and reinstating that deadline would therefore be inappropriate. Considering that the parties have already started preparations for the final briefs, the Chamber announces that it might set a new short deadline in due course.

DISPOSITION

6. For the foregoing reasons the Chamber **DENIES** the Gotovina Request.

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



Judge Alphons Orié
Presiding Judge

Dated this 21st day of May 2010
At The Hague
The Netherlands

¹⁶ Prosecution's Response, paras 7-10.

¹⁷ T. 28047.

¹⁸ Order Scheduling a Hearing, 14 May 2010.

¹⁹ Ivan Čermak's Motion to Call Evidence in Response to the Reopening of the Prosecution's Case, 19 May 2010, para. 15.

²⁰ Defendant Mladen Markač's Consolidated Response to Prosecution's Motion to Re-open its Case and its Further Submission in Support of the Motion, 18 March 2010, para. 23; Defendant Mladen Markač's Request for Certification to Appeal the Trial Chamber's 21 April 2010 Decision on Prosecution's Motion to Reopen Its Case, 28 April 2010, para. 6.

[Seal of the Tribunal]