



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-A
Date: 28 June 2011
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision of: 28 June 2011

PROSECUTOR

v.

**ANTE GOTOVINA
MLADEN MARKAČ**

PUBLIC

**DECISION ON PROSECUTION
REQUEST FOR LEAVE TO RESPOND TO
GOTOVINA'S APPLICATION PURSUANT TO RULE 54bis**

The Office of the Prosecutor:

Ms. Helen Brady
Mr. Douglas Stringer

Counsel for Ante Gotovina:

Mr. Gregory Kehoe, Mr. Luka Mišetić, Mr. Payam Akhavan, and Mr. Guénaél Mettraux

Counsel for Mladen Markač:

Mr. Goran Mikuličić and Mr. Tomislav Kuzmanović

I, THEODOR MERON, Judge of the Appeals 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”), and Pre-Appeal Judge in this case;¹

BEING SEISED of the “Prosecution Request for Leave to Respond to Gotovina’s Application Pursuant to Rule 54bis” (“Motion”) filed by the Office of the Prosecutor (“Prosecution”), on 24 June 2011;

NOTING that the Motion, citing Rule 54bis(D)(ii) of the Rules of Procedure and Evidence (“Rules”), requests permission to submit a response to “Ante Gotovina’s Application for an Order Pursuant to Rule 54 bis Directing the Government of the Republic of Serbia to Produce Documents”, filed publicly with confidential annexes on 22 June 2011 (“Application”);²

CONSIDERING that while Rule 54bis(D)(ii) of the Rules states that “[e]xcept in cases where [a] Judge or Trial Chamber determines otherwise, only the party making the application and the State concerned shall have the right to be heard”, this restriction applies to oral hearings held pursuant to Rule 54bis of the Rules, rather than to relevant written responses;³

CONSIDERING that there is therefore no requirement for the Prosecution to obtain special leave before responding to the Application;

FOR THE FOREGOING REASONS,

DISMISSES the Motion.

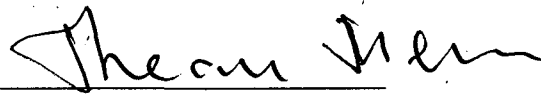
¹ *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-A, Order Designating a Pre-Appeal Judge, 30 May 2011.

² This decision has been issued without awaiting a response from Ante Gotovina or Mladen Markač in view of the lack of prejudice to them and the urgency of expediting consideration of the Application.

³ See generally Rules 54bis and 107 of the Rules. See, e.g., *Prosecution v. Radovan Karadžić*, Case No. IT-95-5/18-T, Prosecution’s Submission on Karadžić’s Motion for Binding Order: United Nations and NATO, 3 December 2010 (“3 December Submission”) (making no reference to obtaining the relevant Chamber’s permission before filing a written response to a Rule 54bis request); *Prosecution v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on the Accused’s Motion for Binding Order (United Nations and NATO), 11 February 2011, para. 4 (considering the 3 December Submission filed without special permission).

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

Dated this 28th day of June 2011
at The Hague
The Netherlands



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]