



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: 18 October 2011
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision of: 18 October 2011

PROSECUTOR

v.

**ANTE GOTOVINA
MLADEN MARKAČ**

PUBLIC

**DECISION ON PROSECUTION'S MOTION TO STRIKE ANTE
GOTOVINA'S REPLY BRIEF**

The Office of the Prosecutor

Ms. Helen Brady and 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, Mr. Tomislav Kuzmanović, Mr. John Jones, and Mr. Kai Ambos

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

RECALLING the “Reply Brief of Appellant Ante Gotovina” filed confidentially by Ante Gotovina (“Gotovina”) on 27 September 2011 (“Reply Brief”);

BEING SEISED OF the “Motion to Strike Ante Gotovina’s Reply Brief” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 3 October 2011 (“Motion”);

NOTING the Prosecution’s contentions that Annex A of the Reply Brief (“Annex A”) is argumentative and should have been included in the word count,² that including Annex A in the word count results in the Reply Brief exceeding the 15,000 word limit set by the Pre-Appeal Judge, and that the Reply Brief should thus be stricken;³

NOTING “Ante Gotovina’s Response to Prosecution Motion to Strike Appellant’s Reply Brief” filed confidentially on 7 October 2011 (“Response”), in which Gotovina argues that Annex A is not argumentative but “merely provides record references to support the Appellant’s arguments contained in the body of the Reply Brief”;⁴

NOTING the “Prosecution Reply in Support of its Motion to Strike Ante Gotovina’s Reply Brief” filed confidentially on 11 October 2011 (“Reply”), in which the Prosecution opposes Gotovina’s arguments and reiterates its contention that the Reply Brief exceeds the word limit;⁵

CONSIDERING that, pursuant to paragraph (C)(6) of the Practice Direction on the Length of Briefs and Motions (“Practice Direction”), annexes do not count towards the word limit, provided that they do not contain “legal or factual arguments, but rather references, source materials, items from the record, exhibits, and other relevant, non-argumentative material”;⁶

¹ Order Designating a Pre-Appeal Judge, 30 May 2011.

² Motion, paras 1, 3.

³ Motion, para. 1.

⁴ Response, para. 3 (emphasis in the original). See also Response, paras 1-3, citing *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on the Motion to Strike Annexes A, C, D and E of the Prosecution’s Appeal Brief, 18 May 2007 (“*Orić* Appeal Decision of 18 May 2007”).

⁵ Reply, para. 1.

⁶ Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005.

CONSIDERING that “an annex that provides description for some of the references cited does not necessarily lead to the conclusion that the annex has argumentative content” and that “the interests of justice may even allow for a very limited amount of argumentative material in an annex”;⁷

CONSIDERING that parties have some discretion with respect to the contents of annexes, and that the Appeals Chamber will intervene only where such discretion is abused;⁸

CONSIDERING that the determination of whether an annex is inappropriately argumentative has to be made on a case-by-case basis;⁹

NOTING that even if an annex gives a clear overview of a party’s positions, this does not necessarily prove that the annex is argumentative;¹⁰

NOTING that Annex A consists of a chart, principally composed of numbers and brief descriptions, relating to artillery shelling of targets in Knin, including the date and time these targets were fired on, the number of projectiles, and references to relevant paragraphs in the Trial Judgement;

FINDING that considered in context, Annex A is not inconsistent with the criteria set out by the Practice Direction;¹¹

FINDING that there is no reason to maintain the confidentiality of the Motion, Response, and Reply;

FOR THE FOREGOING REASONS,

DISMISS the Motion; and

DIRECT the Registry to lift the confidentiality of the Motion, Response, and Reply.

⁷ *Orić* Appeal Decision of 18 May 2007, para. 7.

⁸ *Orić* Appeal Decision of 18 May 2007, para. 7. *See also Prosecutor v Naser Orić*, Case No. IT-03-68-A, Decision on the Motion to Strike Defence Reply Brief and Annexes A-D, 7 June 2007, para. 6.

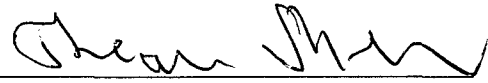
⁹ *Orić* Appeal Decision of 18 May 2007, para. 7.

¹⁰ *Orić* Appeal Decision of 18 May 2007, para. 7.

¹¹ *Cf. Orić* Appeal Decision of 18 May 2007.

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

Dated this 18th day of October 2011,
at The Hague,
The Netherlands.



Judge Theodor Meron,
Pre-Appeal Judge

[Seal of the Tribunal]