



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: 1 November 2011  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Pre-Appeal Judge  
**Registrar:** Mr. John Hocking  
**Decision of:** 1 November 2011

**PROSECUTOR**

**v.**

**ANTE GOTOVINA  
MLADEN MARKAČ**

***PUBLIC***

**DECISION ON PROSECUTION'S REQUEST FOR LEAVE TO  
FILE SUR-REPLY TO RESPOND TO FALSE ALLEGATIONS  
IN MARKAČ'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;<sup>1</sup>

**BEING SEISED OF** the “Prosecution’s Request for Leave to File Sur-Reply to Respond to False Allegations in Markač’s Reply Brief, and Proposed Sur-Reply”, filed by the Office of the Prosecutor (“Prosecution”) on 14 October 2011 (“Request”);<sup>2</sup>

**NOTING** that the Prosecution seeks leave to respond to “inflammatory language” and “unfounded allegations of bad faith”<sup>3</sup> directed against the Prosecution in the Reply Brief, contends that these allegations should be dismissed,<sup>4</sup> and suggests that the submissions contravene “the spirit and letter” of the Tribunal’s proceedings and codes of conduct;<sup>5</sup>

**NOTING** “Appellant Markač’s Response to ‘Prosecution’s Request for Leave to File Sur-Reply to Respond to False Allegations in Markač’s Reply Brief, and Proposed Sur-Reply’”, filed by Mladen Markač (“Markač”) on 19 October 2011 (“Response”), in which Markač maintains that the Request is premature and unwarranted, and that he has a duty to call attention to misrepresentations in the Prosecution’s submissions;<sup>6</sup>

**NOTING** that while vigorous advocacy is inherent to the thrust and parry of adversarial court proceedings, the Appeals Chamber expects all parties before the Tribunal to maintain high standards of professional conduct;<sup>7</sup>

**NOTING** further that unjustified motions impact the Tribunal’s duty to assure that its proceedings are expeditious;<sup>8</sup>

**CONSIDERING** that neither the Rules of Procedure and Evidence nor the practice of the Tribunal provide a party with a right to respond to a reply, although leave to file a sur-reply may be granted where a reply raises a new issue;<sup>9</sup>

<sup>1</sup> Order Designating a Pre-Appeal Judge, 30 May 2011.

<sup>2</sup> See also Mladen Markač’s Public Redacted Reply to Respondent’s Brief, 6 October 2011 (“Reply Brief”).

<sup>3</sup> Request, paras 1, 3-4.

<sup>4</sup> Request, paras 2, 10.

<sup>5</sup> Request, para. 9. See also Request, paras 5-8; *Code of Professional Conduct for Counsel Appearing Before the International Tribunal*, IT/125 Rev. 3, 22 July 2009 (“Code of Professional Conduct”).

<sup>6</sup> Response, paras 2-9.

<sup>7</sup> Cf. Code of Professional Conduct; Prosecutor’s Regulation No. 2, Standards of Professional Conduct for Prosecution Counsel, 14 September 1999; *Practice Direction on the Procedure for the Review of Written Submissions Which Contain Obscene or Otherwise Offensive Language*, IT/240, 14 November 2005; *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Judgement, 16 January 2007, n. 231.

<sup>8</sup> See Statute of the Tribunal, Article 20.

**CONSIDERING** that the Reply Brief raises no new substantive arguments;

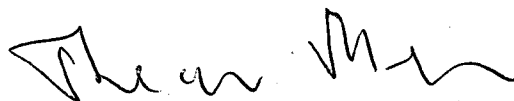
**FINDING** that the Reply Brief thus does not warrant a sur-reply;

**FOR THE FOREGOING REASONS,**

**DENY** the Request.

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

Dated this 1st day of November 2011,  
at The Hague,  
The Netherlands.



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Judge Theodor Meron  
Pre-Appeal Judge

[Seal of the Tribunal]

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<sup>9</sup> See *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tarčulovski's Motion for Leave to Present Appellate Arguments in Order Different From That Presented in Notice of Appeal, to Amend the Notice of Appeal, and to File Sur-Reply, and on Prosecution Motion to Strike, 26 March 2009, para. 15; *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-R.1, Decision on Prosecution Motion for Leave to File Sur-Reply to Defence Reply in Request for Review by Mlado Radić, 9 May 2006, p. 3.