



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

IT-06-90-A
A3508-A3506
01 November 2011

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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;¹

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”);²

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

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;⁶

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;⁷

NOTING further that unjustified motions impact the Tribunal’s duty to assure that its proceedings are expeditious;⁸

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;⁹

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

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

³ Request, paras 1, 3-4.

⁴ Request, paras 2, 10.

⁵ 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”).

⁶ Response, paras 2-9.

⁷ 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.

⁸ See Statute of the Tribunal, Article 20.

CONSIDERING that the Reply Brief raises no new substantive arguments;

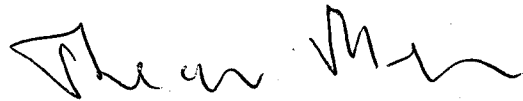
FINDING that the Reply Brief thus does not warrant a sur-reply;

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.



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]

⁹ 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.