



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-AR73.5
Date: 13 May 2010
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mehmet Güney
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision: 13 May 2010

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

**DECISION ON ANTE GOTOVINA'S MOTION TO STRIKE
THE PROSECUTION'S RESPONSE DUE TO VIOLATION OF
THE PRACTICE DIRECTION ON LENGTH OF BRIEFS AND
MOTIONS**

The Office of the Prosecutor:

Mr. Alan Tieger

Republic of Croatia:

via The Embassy of the Republic of Croatia to The Netherlands, The Hague

Counsel for the Accused:

Mr. Gregory W. Kehoe, Mr. Luka S. Mišetić and Mr. Payam Akhavan for Ante Gotovina
Mr. Stephen Kay QC, Mr. Andrew Cayley and Ms. Gillian Higgins for Ivan Čermak
Mr. Goran Mikuličić and Mr. Tomislav Kuzmanović for Mladen Markač

File

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 (“Appeals Chamber” and “Tribunal”, respectively);

NOTING the decision rendered in the case *Prosecutor v. Ante Gotovina et al.*, by Trial Chamber I (“Trial Chamber”) on 12 March 2010 (“Impugned Decision”)¹ and the “Decision on Defence Request for Certification to Appeal the Trial Chamber Decision of 12 March 2010” granting the request of Ante Gotovina (“Gotovina”) for certification to appeal;²

NOTING the “Gotovina Defence Appeal Against 12 March 2010 Decision on Requests for Permanent Restraining Orders Directed to the Republic of Croatia” filed by Gotovina on 28 April 2010 (“Gotovina Appeal”) and the “Prosecution’s Response to Gotovina Defence Appeal Concerning Permanent Restraining Orders to the Republic of Croatia” filed by the Office of the Prosecutor (“Prosecution”) on 10 May 2010 (“Prosecution’s Response”);

BEING SEISED of “Ante Gotovina’s Motion to Strike the Prosecution’s Response Due to Violation of the Practice Direction on Length of Briefs and Motions” filed by Gotovina on 12 May 2010 (“Motion”);

NOTING that in his Motion, Gotovina submits that the appendices of the Prosecution’s Response include quotations from pleadings and the Impugned Decision and present legal and factual arguments resulting in a total of 11,547 words in violation of the requirement set out in the Practice Direction on the Length of Briefs and Motions (“Practice Direction”)³ which imposes a word limit of 9,000 words;⁴

NOTING that Gotovina requests the Appeals Chamber to strike the Prosecution’s Response in its entirety⁵ or, should the Appeals Chamber order the Prosecution to re-file its response, to allow him to file his reply within four days of the re-filing of the Prosecution’s Response;⁶

NOTING “The Prosecution’s Response to Gotovina’s Motion to Strike” filed by the Prosecution on 13 May 2010 (“Response of 13 May 2010”) arguing that the Motion should be dismissed as the

¹ *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-T, Decision on Requests for Permanent Restraining Orders Directed to The Republic of Croatia, 12 March 2010.

² *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-T, Decision on Defence Request for Certification to Appeal the Trial Chamber Decision of 12 March 2010, 21 April 2010, paras 8-11.

³ Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005.

⁴ Motion, paras 3, 4.

⁵ Motion, paras 1, 5.

⁶ Motion, para. 5.

remedy requested is disproportionate and unwarranted and that the Appendices meet the requirements of the Practice Direction;⁷

NOTING that the reply from Gotovina to the Prosecution's Response is due to be filed no later than 14 May 2010;

CONSIDERING that the interests of justice justify rendering this Decision without any delay and prior to the expiry of the deadline for the filing of a reply to the Response;⁸

RECALLING that, pursuant to paragraph (C)(6) of the Practice Direction, unlike quotations, appendices do not count towards the word limit provided they do not contain legal or factual arguments, but only non-argumentative material;

CONSIDERING that Appendices A and B of the Prosecution's Response contain quotations from both the Gotovina Appeal and the Impugned Decision and, therefore, should count towards the word limit in accordance with paragraph (C)(6) of the Practice Direction;

NOTING that Appendix A of the Prosecution's Response is a table comparing Gotovina's arguments on appeal under his first and second grounds of appeal with his arguments before the Trial Chamber and that Appendix B of the Prosecution's Response is a table comparing Gotovina's factual assertions under his first and second grounds of appeal with the Trial Chamber's contrary findings;

CONSIDERING FURTHER that the juxtaposition of these arguments and quotations amounts to legal and factual arguments supplementary to the Prosecution arguments,⁹ in violation of paragraph (C)(6) of the Practice Direction;

FINDING therefore that the Prosecution's Response unjustifiably exceeds the limit of 9,000 words set out in paragraph (C)(2)(2) of the Practice Direction without demonstrating any exceptional circumstances warranting an oversized filing;¹⁰

FOR THE FOREGOING REASONS,

GRANTS the Motion **IN PART**;

⁷ Response of 13 May 2010, paras 1, 3-8, 10.

⁸ The deadline for filing the said reply expires on 17 May 2010. Considering the arguments presented by Gotovina and the Prosecution and the outcome of the Decision, the Appeals Chamber further finds that rendering this Decision prior to the expiry of this deadline is without prejudice to the parties.

⁹ Prosecution's Response, paras 10, 12.

¹⁰ See Practice Direction on Length, para. 7.

ORDERS the Prosecution to re-file its Response consisting of no more than 9,000 words no later than 17 May 2010 in strict compliance with paragraph (C)(6) of the Practice Direction;

ORDERS Gotovina to file his reply, if any, to the Prosecution's Response within four days of the re-filing of the Prosecution's Response, in any event no later than 21 May 2010, in accordance with the requirements set out in the relevant provisions of the Rules of Procedure and Evidence and the Practice Direction.

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

Done this 13th day of May 2010,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding

[Seal of the Tribunal]