



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***

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

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**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>

**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,<sup>2</sup> 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;<sup>3</sup>

**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”;<sup>4</sup>

**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;<sup>5</sup>

**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”;<sup>6</sup>

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

<sup>2</sup> Motion, paras 1, 3.

<sup>3</sup> Motion, para. 1.

<sup>4</sup> 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”).

<sup>5</sup> Reply, para. 1.

<sup>6</sup> 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”,<sup>7</sup>

**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;<sup>8</sup>

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

**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;<sup>10</sup>

**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;<sup>11</sup>

**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.

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<sup>7</sup> Orić Appeal Decision of 18 May 2007, para. 7.

<sup>8</sup> 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.

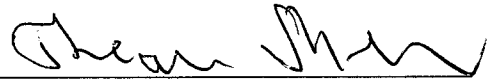
<sup>9</sup> Orić Appeal Decision of 18 May 2007, para. 7.

<sup>10</sup> Orić Appeal Decision of 18 May 2007, para. 7.

<sup>11</sup> 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]**