



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: 4 November
2011
Original: English

IT-06-90-A
A3704-A3701
04 November 2011
3704
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IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision of: 4 November 2011

PROSECUTOR

v.

**ANTE GOTOVINA
MLADEN MARKAČ**

PUBLIC

**DECISION ON MOTION TO STRIKE GOTOVINA'S
ABANDONED GROUNDS OF APPEAL**

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 (“Appeals Chamber” and “Tribunal”, respectively), and Pre-Appeal Judge in this case;¹

BEING SEISED of the Prosecution’s “Motion to Strike Gotovina’s Abandoned Grounds of Appeal” filed by the Office of the Prosecutor (“Prosecution”) on 12 September 2011 (“Motion”), wherein the Prosecution seeks to strike 3 grounds and 20 sub-grounds of appeal from Gotovina’s Notice of Appeal,² alleging that they have been effectively abandoned;³

NOTING the Prosecution’s contention, *inter alia*, that Rules 108 and 111 of the Rules of Procedure and Evidence (“Rules”) require that grounds identified in a notice of appeal must be argued in an appellant’s brief;⁴

NOTING the Prosecution’s contention that allowing “empty” grounds and sub-grounds of appeal to stand fails to provide any assistance to the Appeals Chamber and infringes upon the Prosecution’s right to be heard;⁵

NOTING “Ante Gotovina’s Response to Respondent’s Motion to Strike Out (Sub-) Grounds of Appeal” filed by Ante Gotovina (“Gotovina”) on 21 September 2011 (“Response”), wherein Gotovina asserts that he has not withdrawn any of his grounds or sub-grounds of appeal;⁶

NOTING Gotovina’s contention that dismissing grounds of appeal 5, 6, and 7 in a preliminary decision would be unwarranted and unnecessary;⁷

NOTING Gotovina’s assertion that he has addressed errors common to two or more sub-grounds together, as “clearly identified” in his brief, to avoid replication and satisfy the word-limit requirement of the Appeals Chamber;⁸

¹ *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Order Designating a Pre-Appeal Judge, 30 May 2011.

² *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Notice of Appeal of Ante Gotovina, 16 May 2011 (“Notice of Appeal”).

³ Motion, paras 1-2, 6. The allegedly abandoned grounds of appeal are 5, 6, and 7, and the sub-grounds of appeal are 1.1.1, 1.1.2, 1.1.5.5, 1.2.2.1, 1.2.2.2, 1.2.2.3, 1.2.3, 1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.3.7, 1.3.8, 1.5, 1.6, 2.5, 2.6, and 4.1. Motion, para. 2. *See also Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Prosecution’s Reply in Support of its Motion to Strike Abandoned Grounds of Appeal, 23 September 2011 (“Reply”), para. 7; Notice of Appeal; *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Appellant’s Brief of Ante Gotovina, 2 August 2011.

⁴ Motion, para. 4. *See* Rules of Procedure and Evidence, IT/32/Rev.46, 20 October 2011 (“Rules”), Rules 108 and 111; Practice Direction on Formal Requirements for Appeals from Judgement, IT/201, 7 March 2002, para. 4(b).

⁵ Reply, paras 1, 5-6. *See also* Motion, paras 3, 5.

⁶ Response, para. 2.

⁷ Response, para. 4.

RECALLING that in carrying out its mandate under Article 25 of the Statute of the Tribunal, the Appeals Chamber “depends upon the focused contributions of the parties”, and that it is the responsibility of the parties to “present their case clearly, logically and exhaustively so that the Appeals Chamber may fulfill its mandate in an efficient and expeditious manner”;⁹

NOTING that in a notice of appeal, the appellant must set forth the grounds of appeal and “indicate the substance of the alleged errors and the relief sought”,¹⁰ the purpose of which is to provide notice to a respondent on the scope of the appeal from the time a notice of appeal is filed;¹¹

RECALLING that if a ground of appeal is alleged *only* in a notice of appeal and is not elaborated in the relevant appellant’s brief, the Appeals Chamber will consider that ground of appeal to be abandoned;¹²

RECALLING that the benefit of striking out parts of a submission is to guarantee the fairness of the proceedings and to clarify for the parties, and the public, which arguments have been considered by the Chamber in reaching a particular decision;¹³

CONSIDERING that in context, the issues noted by the Prosecution are unlikely to cause confusion;

CONSIDERING that a preliminary decision to strike grounds and sub-grounds of appeal from the Notice of Appeal is thus unnecessary at this stage of the proceedings;

FOR THE FOREGOING REASONS,

DENY the Motion.

⁸ Response, para. 5.

⁹ *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Boškoski Defence Motion to Strike Out Paragraphs from Prosecution Appeal Brief, 19 May 2009, para. 7.

¹⁰ Rule 108 of the Rules; *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-A, Appeals Judgement, 16 October 2007, para. 44.

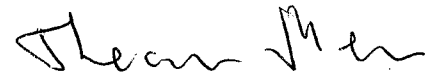
¹¹ *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Motions to Strike and Requests to Exceed Word Limit, 6 November 2009, para. 12; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Prosecution’s Motion for an Order Striking Defence Notice of Appeal and Requiring Refiling, 3 October 2006, p. 4.

¹² *See Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Appeals Judgement, 17 July 2008, para. 265; *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Further Motions to Strike, 17 December 2009, para. 12.

¹³ *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Decision on Prosecution’s Motion to Strike, 20 January 2005, para. 25.

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

Done this 4th day of November 2011,
at The Hague,
The Netherlands.



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]