



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-06-90-PT

Date: 12 July 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Christine Van Den Wyngaert
Judge Bakone Justice Moloto

Registrar: Mr. Hans Holthuis

Decision of: 12 July 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

**DECISION ON DEFENDANT MLADEN MARKAČ'S
MOTION FOR CLARIFICATION OF THE CONDITIONS
ATTACHED TO HIS PROVISIONAL RELEASE**

The Office of the Prosecutor

Mr. Alan Tieger
Mr. Marks Moore

Counsel for the Accused

Mr. Luka S. Mišetić, Mr. Gregory Kehoe and Mr. Payam Akhavan for Ante Gotovina
Mr. Čedo Prodanović (in transfer) and Ms. Jadranka Sloković (in transfer) for Ivan Čermak
Mr. Miroslav Šeparović (in transfer) and Mr. Goran Mikuličić for Mladen Markač

TRIAL CHAMBER I (“Trial 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”);

BEING SEISED of “Defendant Mladen Markač’s motion for clarification of the conditions attached to his provisional release”, filed on 9 July 2007 (“Motion”);

NOTING that at the Status Conference held on 6 July 2007¹ the Defence of Mladen Markač (“Defence”) informed the Trial Chamber that on 20 June 2007 the District Court in Zagreb issued a summons for Mladen Markač to testify on 16 July 2007 at the trial against Rahim Ademi and Mirko Norac (“Summons”);²

NOTING that in view of the Summons the Defence seeks clarification of the conditions attaching to Mladen Markač’s provisional release by posing the following four questions to the Trial Chamber:³

- i) “Would the execution of the Zagreb District Court’s summons contravene, in any way whatever, certain terms and conditions in the Decision?”
- ii) “If not, is it necessary for General Markač, or the Zagreb District Court, to request and receive the Tribunal’s permission before General Markač delivers testimony in the case of Generals Ademi and Norac?”
- iii) “Could General Markač refuse to testify before the Zagreb District Court on the ground that he has been indicted by the International Tribunal for crimes that are related to the allegations surrounding Operation Medak Pocket?”
- iv) “Finally, if General Markač does testify before the Zagreb District Court, could his testimony be brought to bear upon the proceedings in his case before the International Tribunal?”;

NOTING the “Prosecution response to Defendant Mladen Markač’s motion for clarification of the conditions attached to his provisional release”, filed on 12 July 2007;

NOTING the Appeals Chamber’s “Decision on interlocutory appeal against Trial Chamber’s decision denying provisional release”, filed on 2 December 2004 (“Appeals Chamber Decision”),

¹ Status Conference, 6 Jul 2007, T. 255-257.

² The Summons was faxed to the Trial Chamber by the Defence on 10 July 2007.

³ Motion, para. 3.

whereby the Appeals Chamber ordered the provisional release of Mladen Markač on certain conditions, including (a) that he remain within the confines of his residence in the Republic of Croatia, (b) that he does not discuss the case with anyone – including the media – other than his counsel, and immediate members of his family, and (c) that he comply strictly with any order issued by the Trial Chamber varying the terms of, or terminating, the provisional release;⁴

NOTING that the proceedings at the District Court in Zagreb against Rahim Ademi and Mirko Norac result from the decision by the Referral Bench of this Tribunal to refer Case No. IT-04-78-PT, *Prosecutor v. Rahim Ademi and Mirko Norac*, to the authorities of the Republic of Croatia, in order for those authorities forthwith to refer the case to the appropriate court for trial;⁵

NOTING that according to the Criminal Procedure Code of the Republic of Croatia, as referenced in the Summons, any person called as a witness is under a legal duty to appear;

CONSIDERING, in relation to the first and second questions posed by the Defence, that in order for Mladen Markač to be able to testify in accordance with the Summons the conditions of his provisional release must be amended;

CONSIDERING, as the third question posed by the Defence seeks legal advice which must be provided by counsel himself, that it is not appropriate to answer the question;

CONSIDERING that it is premature to answer the fourth question posed by the Defence in view of, among other reasons, the impossibility of knowing the substance of the future testimony of Mladen Markač before the District Court of Zagreb, which by necessity will affect any determination as to the relevancy and probative value of such evidence before this Tribunal; whether the future testimony would tend to incriminate or exculpate Mladen Markač in the proceedings before this Tribunal; the circumstances under which the future testimony is given before the District Court in Zagreb, including whether Mladen Markač, in relation to specific questions put to him, will invoke a right not to be forced to incriminate himself; and how the evidence resulting from Mladen Markač's testimony would be sought to be introduced before this Tribunal;

⁴ Decision on interlocutory appeal against Trial Chamber's decision denying provisional release, 2 Dec 2004, para. 44, conditions (a)(i), (a)(ix), and (a)(xiii).

⁵ *Prosecutor v. Rahim Ademi and Mirko Norac*, Case No. IT-04-78-PT, Decision for referral to the authorities of the Republic of Croatia pursuant to Rule 11 *bis*, 14 Sep 2005.

FOR THE FOREGOING REASONS


VARIES conditions (a)(i) and (a)(ix) of the Appeals Chamber Decision so as to release Mladen Markač from complying with these conditions within the limits strictly necessary to fulfil his legal duty to appear and testify under the Summons;

REMINDS the Government of the Republic of Croatia of its responsibilities under the conditions applicable to the provisional release of Mladen Markač as per the Appeals Chamber Decision, in particular for ensuring compliance therewith and for Mladen Markač's personal security and safety;

HOLDS that in all other respects the conditions applicable to the provisional release of Mladen Markač remain as ordered in the Appeals Chamber Decision.

DISMISSES the Motion in all other respects.

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



Judge Alphons Orie
Presiding

Dated this twelfth day of July 2007

At The Hague

The Netherlands

[Seal of the Tribunal]