

IT-06-90-T  
D37915 - D37913  
14 April 2011

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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-T  
Date: 14 April 2011  
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding  
Judge Uldis Ķiniš  
Judge Elizabeth Gwaunza

Registrar: Mr John Hocking

Decision of: 14 April 2011

PROSECUTOR

v.

ANTE GOTOVINA  
IVAN ČERMAK  
MLADEN MARKAČ

*PUBLIC*

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DECISION ON PROSECUTION'S MOTION TO CHANGE THE STATUS OF ECMM  
DOCUMENTS PURSUANT TO RULE 70

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**Office of the Prosecutor**

Mr Alan Tieger

**Counsel for Ante Gotovina**

Mr Luka Mišetić  
Mr Gregory Kehoe  
Mr Payam Akhavan

**Counsel for Ivan Čermak**

Mr Steven Kay, QC  
Ms Gillian Higgins

**Counsel for Mladen Markač**

Mr Goran Mikuličić  
Mr Tomislav Kuzmanović

**TRIAL CHAMBER I** (“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** the Prosecution's Motion to Change the Status of ECMM Documents Pursuant to Rule 70, filed publicly with confidential annexes on 14 March 2011 (“Motion”), as rectified by the Clarification to Prosecution's Motion to Change the Status of ECMM Documents Pursuant to Rule 70, filed publicly with confidential annexes on 18 March 2011 (“Clarification”), whereby the Prosecution requested that the status of 92 exhibits listed in Appendix A to the Clarification, and of other exhibits listed in appendices and annexes to three filings listed in the Clarification,<sup>1</sup> be changed from public to confidential;

**CONSIDERING** Ante Gotovina's Response to Prosecution's Motion to Change the Status of ECMM Documents Pursuant to Rule 70, filed on 22 March 2011, whereby the Gotovina Defence requested that the Motion be denied (“Response”); and Defendant Mladen Markač's Joinder to Defendant Ante Gotovina's Response to Prosecution's Motion to Change the Status of ECMM Documents Pursuant to Rule 70, filed on 22 March 2011, whereby the Markač Defence joined the Response;

**FURTHER CONSIDERING** the Prosecution's Request to Reply to Gotovina's Response to Prosecution's Motion to Change the Status of ECMM Documents Pursuant to Rule 70, filed on 23 March 2011; the Prosecution's Reply to Gotovina's Response to Prosecution's Motion to Change the Status of ECMM Documents Pursuant to Rule 70, filed on 25 March 2011; and the Letter from the Secretary-General of the Council of the European Union, Mr Pierre de Boissieu, filed on 1 April 2011 (“EU Letter”);<sup>2</sup>

**CONSIDERING** Rule 70 (B) of the Rules of Procedure and Evidence (“Rules”);

<sup>1</sup> Aside from the 92 documents listed in Appendix A to the Clarification, the Prosecution requests a change of status from public to confidential of Appendix B to the Prosecution Disclosure of Documentation Currently Sought by the Gotovina Defence from the European Union, 19 June 2009; Annexes B, C, D, E and F to the Gotovina Defence Reply to European Union's Response to Defendant Ante Gotovina's Motion to Enforce the Trial Chamber's Previous Rule 54 *bis* Order Compelling Access to Archives of the EUMM, 23 April 2009; and Appendix B to the Trial Chamber's Invitation to the European Union and to the Gotovina Defence, 19 June 2009.

<sup>2</sup> The Chamber granted leave to reply on 23 March 2011 through an informal communication.

**CONSIDERING** that under Rule 70 of the Rules, the provider of the information controls its confidentiality and makes its own determination that this material should be subject to protection;<sup>3</sup>

**FURTHER CONSIDERING** that the Chamber has the authority to assess whether information has been provided in accordance with Rule 70 (B) of the Rules, and that the Chamber can limit itself to an examination of whether the information was in fact provided on a confidential basis;<sup>4</sup>

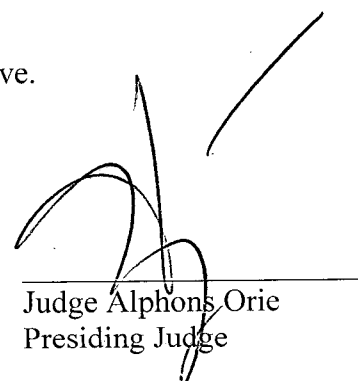
**NOTING** the Prosecution's submission that the documents indicated in the Clarification were provided on a confidential basis, which was confirmed by the EU Letter;

**PURSUANT TO** Rules 54 and 70 (B) of the Rules;

**GRANTS** the Motion as rectified by the Clarification; and

**ORDERS** the Registry to change from public to confidential status the 92 exhibits listed in Appendix A to the Clarification, and the appendices and annexes to the filings listed in footnote 1 of the present decision.

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

  
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Judge Alphons Orie  
Presiding Judge

Dated this fourteenth day of April 2011  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

<sup>3</sup> *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR108bis.2, Decision on Request of the United States of America for Review, 12 May 2006, para. 35.  
<sup>4</sup> *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108bis & AR73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002, para. 29.