

17 January 2007



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: 17 January 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

Order of: 17 January 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

SCHEDULING ORDER

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Laurie Sartorio

Counsel for the Accused:

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

I, BAKONE JUSTICE MOLOTO, Judge of Trial Chamber I 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”);

HAVING BEEN APPOINTED, pursuant to Rule 65 *ter* (A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), as Pre-Trial Judge in this case by virtue of an order of the President of Trial Chamber I;¹

NOTING that at the 65 *ter* Conference and the Status Conference, both held on 5 December 2006 (“65 *ter* Conference” and “Status Conference”, respectively), the Trial Chamber raised the matter of date for trial with the Parties;

NOTING that at the 65 *ter* Conference the Senior Legal Officer of Trial Chamber I, while noting that a date for trial had not yet been set, alerted the Parties to “begin to prepare in earnest” for a starting date of “approximately May 2007”;²

NOTING the opinion of the Prosecution and the Defence, and their arguments therefor, stated at the Status Conference that the earliest this case can go to trial is September 2007;³

NOTING that at the Status Conference the Trial Chamber urged the Parties to reconsider the September 2007 preference;⁴

NOTING that on 19 December 2006 the Trial Chamber informed the Parties by way of e-mail that it could consider starting the trial at a slower pace, that is part time, and that the Parties were requested to reconsider by 22 January 2007 their preference of September 2007 in light of this information;⁵

NOTING that on 2 January 2007 the Trial Chamber received an e-mail from the Defence of Ante Gotovina wherein it was stated that “[t]he general consensus is that we cannot begin at any pace until September 2007”;⁶

NOTING that on 12 January 2007 the Trial Chamber by way of e-mail requested the Parties to clarify the meaning of the “general consensus”, “as the matter of the trial start date requires

¹ *Prosecutor v. Ante Gotovina, Ivan Čermak, Mladen Markač*, Case No. IT-06-90-PT, Order Regarding Composition of Trial Chamber and Designating a Pre-Trial Judge, 23 November 2006.

² 65 *ter* Conference (Closed Session), 5 Dec 2006, T. 41, 43.

³ Status Conference, 5 Dec 2006, T. 35 onwards.

⁴ Status Conference, 5 Dec 2006, T. 45.

⁵ E-mail, dated 19 December 2006, from the Senior Legal Officer of Trial Chamber I to all Parties.

⁶ E-mail, dated 2 January 2007, from Mr Gregory Kehoe, Counsel for Ante Gotovina, to the Senior Legal Officer of Trial Chamber I.

immediate clarification”,⁷ and that on 15 and 16 January the Trial Chamber was informed by way of e-mails of the Parties’ preference for starting in September 2007;⁸

NOTING the submission of one of the Counsel for the Accused Gotovina who is involved in other trials in his domestic jurisdiction, which require his attention during the relevant time period and make it difficult for him to participate in the present trial were it to start before the judicial summer recess,⁹ but **CONSIDERING** that it is incumbent upon Counsel to organise his work in such a way that he respects the deadlines set by this Trial Chamber, and, therefore, that this does not affect the scheduling before this Tribunal;

NOTING the submission that more preparation time is needed in light of outstanding matters, including completing witness interviews¹⁰ and translations of documents,¹¹ but **CONSIDERING** that it cannot be that interviews of Defence witnesses are completed before the start of the Prosecution case, and that regarding translations there appears to exist miscommunication between the Parties;¹²

NOTING the submission by the Prosecution that it has reviewed the estimated length of the trial and concluded that “this case would be completed within an approximately 12- to 14-month period [and] not the inflated periods of time that [...] may otherwise have played a role in the Court’s assessment”,¹³ but **CONSIDERING** that a shorter estimate of the length of time it will take to complete a trial is not necessarily a reason to postpone the start of that trial, particularly in light of the right of the Accused of this case, as well as of the accused in other pending cases before the Tribunal, to an expeditious trial;

FINDING that the Parties’ arguments as to why the start of the trial must be delayed until September 2007 are unconvincing;

⁷ E-mail, dated 12 January 2007, from the Senior Legal Officer of Trial Chamber I to all Parties.

⁸ E-mail, dated 15 January 2007, from Mr Goran Mikuličić, Counsel for Mladen Markač, to the Senior Legal Officer of Trial Chamber I; E-mail, dated 15 January 2007, from Mr Gregory Kehoe, Counsel for Ante Gotovina, to the Senior Legal Officer of Trial Chamber I; E-mail, dated 16 January 2007, from Mr Luka Mišetić, Counsel for Ante Gotovina, to the Senior Legal Officer of Trial Chamber I E-mail, dated 16 January 2007, from Mr Alan Tieger, Senior Trial Attorney, to the Senior Legal Officer of Trial Chamber I.

⁹ Status Conference, 5 Dec 2006, T. 36.

¹⁰ Status Conference, 5 Dec 2006, T. 38 (raised by the Defence for the Accused Gotovina).

¹¹ Status Conference, 5 Dec 2006, T. 41.

¹² The Trial Chamber notes that at the 65 *ter* Conference the Prosecution stated that it had completed virtually all translations of documents and witness statements which it was required to have translated pursuant to its obligation under Rule 66 (A) (ii) of the Rules. The exception, according to the Prosecution, was the translations of eight witness statements, which at that point in time had yet to be translated. Contrary to this, the Defence of the Accused Markač stated that the translations of 20 such statements were outstanding, 65 *ter* Conference, 5 Dec 2006, T. 35-36 and 37-38).

¹³ Status Conference, 5 Dec 2006, T. 44.

NOTING that at the Status Conference the Prosecution indicated to the Trial Chamber that preliminary discussions concerning agreed facts had been held among the Parties and that this would be a “fruitful area of discussion”;¹⁴

NOTING that on 8 December 2006 the Prosecution informed the Trial Chamber at a meeting with a Legal Officer of Trial Chamber I that the Parties had commenced discussions concerning agreed facts;

NOTING that on 13 December 2006 the Trial Chamber, pursuant to Rule 73 *bis* (D) of the Rules, invited the Prosecution by 22 January 2007 “to propose means of reducing the scope of the Indictment by at least one-third by reducing the number of counts charged in the Indictment and/or crime sites or incidents comprised in one or more of the charges in the Indictment, in particular taking into account that several counts are cumulatively charged”;¹⁵

CONSIDERING AND EMPHASISING the Trial Chamber’s duty, enshrined in Article 20 (1) of the Statute of the Tribunal, to ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses;

CONSIDERING IN PARTICULAR Article 21 (4) (c) of the Statute and that the present order is in keeping with the rights of the Accused as set out in Article 21 (4) (b) of the Statute;

CONSIDERING that pursuant to Rule 65 *bis* of the Rules “[a] Trial Chamber or a Trial Chamber Judge shall convene a status conference [...] within one hundred and twenty days after the last status conference”, the last Status Conference having been held on 5 December 2006;

¹⁴ Status Conference, 5 Dec 2006, T. 34.

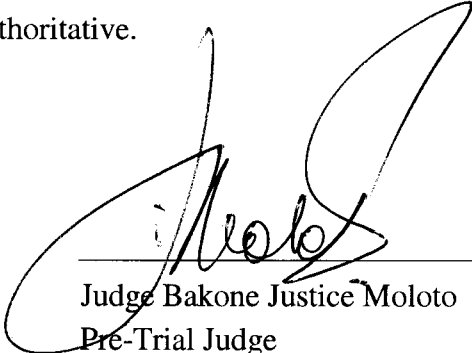
¹⁵ Request to the Prosecution pursuant to Rule 73 *bis* (D) to Reduce the Scope of Its Case, 13 December 2006.

PURSUANT TO Rules 54, 65 *bis*, 65 *ter* (E) and (F), 73 *bis*:

ORDERS

- the Prosecution to file its submissions pursuant to Rule 65 *ter* (E) by Friday 16 March 2007;
- a Status Conference to take place on Tuesday 3 April 2007 beginning at 1430 hours, in a courtroom to be announced by the Registry;
- the Defence to file their submissions pursuant to Rule 65 *ter* (F) by Thursday 5 April 2007;
- the Pre-Trial Conference pursuant to Rule 73 *bis* to take place on Friday 27 April 2007;
- the Opening Statement of the Prosecution pursuant to Rule 84 to take place on Monday 7 May 2007, and the Opening Statement of the Defence, if any at this stage of the case, to conclude at the latest on Tuesday 8 May 2007; and
- the presentation of evidence for the Prosecution to commence on 9 May 2007.

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



Judge Bakone Justice Moloto
Pre-Trial Judge

Dated this seventeenth day of January 2007

At The Hague

The Netherlands

[Seal of the Tribunal]