



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-PT

Date: 28 December 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Frederik Harhoff, Duty Judge

Registrar: Mr. Hans Holthuis

Order of: 28 December 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

**ORDER FOR THE ARREST AND TRANSFER OF THE
ACCUSED MLADEN MARKAČ FROM PROVISIONAL
RELEASE**

The Office of the Prosecutor

Mr. Alan Tieger
Mr. Stefan Waespi

Counsel for the Accused

Mr. Luka S. Mišetić, Mr. Gregory Kehoe and Mr. Payam Akhavan for Ante Gotovina
Mr. Steven Kay and Mr. Andrew Cayley for Ivan Čermak
Mr. Goran Mikuličić and Mr. Tomislav Z. Kuzmanović for Mladen Markač

Government of the Republic of Croatia

Government of the Kingdom of the Netherlands

I, Frederik Harhoff, Duty Judge 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”);

RECALLING the “Decision on Interlocutory Appeal against Trial Chamber’s Decision Denying Provisional Release”, rendered by the Appeals Chamber on 2 December 2004, granting provisional release for the Accused Ivan Čermak and Mladen Markač (“Decision”);

NOTING the “Order of Provisional Release for Mladen Markač”, issued by the Trial Chamber on 9 February 2007 (“Order”);

NOTING that both the Decision and the Order include, among other terms and conditions of the Accused Mladen Markač’s provisional release, that the Accused shall “remain within the confines of his residence in the Republic of Croatia”;¹

NOTING further that both the Decision and the Order require the Government of Croatia, *inter alia*, to ensure compliance with the conditions imposed on the Accused during his provisional release and to immediately detain the Accused should he breach any terms and conditions of his provisional release and report immediately any such breach to the Registry and the Trial Chamber;

CONSIDERING that the Trial Chamber has received information on 27 December 2007 from the Registry giving rise to serious concerns as to the Accused Mladen Markač’s compliance with the conditions of the provisional release, namely that the Accused left the premises of his designated residence in Zagreb on 22 December 2007 to join a hunting trip in Bilogora;

NOTING that the competent authorities of the Republic of Croatia had not reported any such breach to the Registry or the Trial Chamber by 27 December 2007;

NOTING my Decision of 27 December 2007 instructing the Registrar to request a report from the Government of the Republic of Croatia concerning the Accused Mladen Markač’s adherence to the conditions of the provisional release and, in particular, whether he had violated these terms by leaving the confines of his designated residence in the Republic of Croatia, and, in the affirmative, whether the Government of the Republic of Croatia had taken any steps to detain the Accused;

NOTING the response from the Government of the Republic of Croatia of 28 December 2007, in which the Government reports that on 22 December 2007 the Accused accepted an invitation to join

¹ Order, p. 2; Decision, para. 44.

a hunting trip organized in Bilogora; that photos taken on that occasion were subsequently published in the local media; and that the Accused had expressed regret for his action.

FINDING that based on a free assessment of the evidence before me, on a balance of probabilities the behaviour exhibited by the Accused Mladen Markač constitutes a violation of the conditions of his provisional release, as he left the premises of his designated residence in Zagreb without due permission;

NOTING that Rule 28(d)(ii) provides that where a case has already been assigned to a Trial Chamber and an application is made and the Trial Chamber is unavailable, the application “shall be dealt with by the duty Judge if satisfied as to its urgency”;

CONSIDERING that the information concerning the Accused Mladen Markač’s possible breach of the conditions of his provisional release has come to light during a period of time when the competent Trial Chamber I was and is unavailable due to the court recess;

FINDING that the matter is of an urgent character, and that I am therefore competent to dispose of this matter in my capacity as the duty Judge;

FOR THE FOREGOING REASONS, and pursuant to Rules 28, 54, and 65 of the Rules,

I HEREBY REVOKE the Trial Chamber’s Order of 9 February 2007 and **TERMINATE** the provisional release of the Accused Mladen Markač; and

(I) REQUEST the Government of the Republic of Croatia to immediately arrest and take into custody the Accused Mladen Markač and to make arrangements to transfer him under escort on Sunday 30 December 2007 from the Republic of Croatia into the custody of officials of the Kingdom of the Netherlands at Schiphol airport, and to assume the expenses concerning this transport of the Accused Mladen Markač;

(II) REQUEST the Government of the Republic of Croatia to ensure the personal security and safety of the Accused Mladen Markač until he is delivered into the custody of Dutch officials at Schiphol airport;

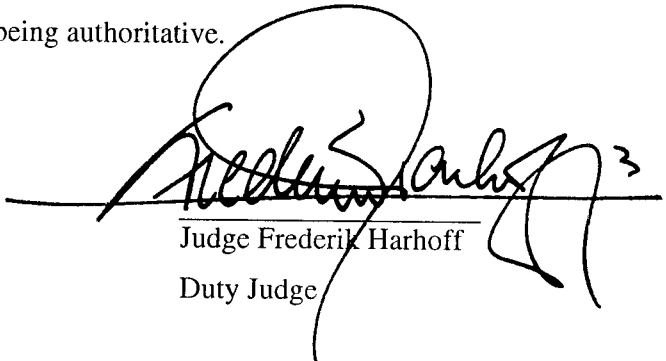
(III) REQUEST the Government of the Kingdom of the Netherlands to ensure that the Accused Mladen Markač is maintained in custody and transported from Schiphol airport to the United Nations Detention Unit;

(IV) **INSTRUCT** the Registrar of the Tribunal to consult with the Ministry of Justice of the Republic of Croatia and the Ministry of Justice of the Kingdom of the Netherlands as to the practical arrangements for the return of the Accused Mladen Markač to the United Nations Detention Unit;

(V) **REQUEST** the authorities of all States through which the Accused will travel:

- (a) to hold the Accused in custody for any time that he will spend in transit at an airport in their territories; and
- (b) to arrest and detain the Accused pending his return to the United Nations Detention Unit in The Hague, should he attempt to escape.

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



Judge Frederik Harhoff
Duty Judge

Dated this twenty-eighth day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]