



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: 20 July 2012
Original: English

IT-06-90-A
A5403 - A5401
20 July 2012

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IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Carmel Agius
Judge Patrick Robinson
Judge Mehmet Güney
Judge Fausto Pocar

Registrar: Mr. John Hocking

Order of: 20 July 2012

PROSECUTOR

v.

**ANTE GOTOVINA
MLADEN MARKAČ**

PUBLIC

ORDER FOR ADDITIONAL BRIEFING

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

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);

NOTING the Office of the Prosecutor’s (“Prosecution”) reference to entering convictions under alternative modes of liability in its briefs responding to Ante Gotovina’s (“Gotovina”) and Mladen Markač’s (“Markač”) appeal briefs;¹

CONSIDERING the written and oral submissions of Gotovina, Markač, and the Prosecution;²

CONSIDERING that additional briefing on the potential for convictions under alternate modes of liability with respect to Gotovina and Markač would assist in a just resolution of their appeals;

EMPHASISING that the present order in no way expresses the Appeals Chamber’s views on any aspect of Gotovina’s or Markač’s appeals;

PURSUANT to Rules 54 and 107 of the Rules of Procedure and Evidence of the Tribunal;

HEREBY ORDERS:

1. That the Prosecution file by 10 August 2012 a submission of no more than 5,000 words explaining whether, in the event that Gotovina is not found liable for unlawful artillery attacks or to be a member of a joint criminal enterprise, the Prosecution believes that liability should be ascribed to him on the basis of superior responsibility under Article 7(3) of the Statute of the Tribunal or as an aider and abettor (“Prosecution Gotovina Submission”); this additional briefing should focus on whether any remaining findings of the Trial Chamber satisfy the legal elements of these alternative modes of liability, rather than particular factual issues already addressed in existing briefing;
2. That the Prosecution file by 10 August 2012 a submission of no more than 5,000 words explaining whether, in the event that Markač is not found liable for unlawful artillery attacks or to be a member of a joint criminal enterprise, the Prosecution believes that liability

¹ Prosecution Response to Ante Gotovina’s Appeal Brief, 29 September 2011 (public redacted version) (a confidential version was filed on 12 September 2011) (“Prosecution Response to Gotovina”), para. 333 n. 1112; Prosecution Response to Mladen Markač’s Appeal Brief, 29 September 2011 (public redacted version) (a confidential version was filed on 12 September 2011) (“Prosecution Response to Markač”), para. 273 n. 958.

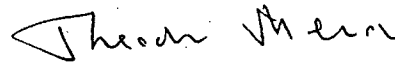
² See generally Appellant’s Brief of Ante Gotovina 2 August 2011 (public redacted version) (a confidential version was filed on 1 August 2011); Prosecution Response to Gotovina; Reply Brief of Appellant Ante Gotovina, 4 October 2011 (public redacted version) (a confidential version was filed on 27 September 2011); Mladen Markač’s Appeal Brief, 12 October 2011 (public redacted version) (a confidential version was filed on 1 August 2011); Prosecution Response to Markač; Mladen Markač’s Reply to Respondent’s Brief, 6 October 2011 (public redacted version) (a confidential version was filed on 27 September 2011); Appeals Transcript, 14 May 2012.

should be ascribed to him on the basis of superior responsibility under Article 7(3) of the Statute of the Tribunal or as an aider and abettor ("Prosecution Markač Submission"); this additional briefing should focus on whether any remaining findings of the Trial Chamber satisfy the legal elements of these alternative modes of liability, rather than particular factual issues already addressed in existing briefing;

3. That Gotovina file by 31 August 2012 a response of no more than 5,000 words to the Prosecution Gotovina Submission;
4. That Markač file by 31 August 2012 a response of no more than 5,000 words to the Prosecution Markač Submission.

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

Dated this 20th day of July 2012,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding

[Seal of the Tribunal]