

UNITED
NATIONS

4-06-90-97
D 2217 - D 2215
12 July 2007

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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 ANTE GOTOVINA'S
MOTION FOR APPOINTMENT OF *AMICUS CURIAE*
PROSECUTOR FOR RULE 77 INVESTIGATION**

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 the “Defendant Ante Gotovina’s Motion for Appointment of *Amicus Curiae* Prosecutor for Rule 77 Investigation”, filed on 1 June 2007 (“Motion”) by the Defence for Ante Gotovina (“Defence”);

RECALLING the “Order to the Prosecutor Under Rule 77”, filed on 1 June 2007 (“Order”) whereby the Prosecutor was directed to investigate the leak of the contents of the Clarification of the Indictment, which was filed confidentially by the Prosecution on 28 May 2007;

NOTING the Defence’s submission that “there is a possibility that the leak of the Clarification of the Indictment came from within [the Office of the Prosecutor] itself” and that the Defence requests the Trial Chamber to amend the Order and invite the Registry to appoint an *amicus curiae* prosecutor pursuant to Rule 77(C)(ii) of the Rules of Procedure and Evidence (“Rules”);¹

NOTING that Rule 77(C) provides that:

When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may:

[...]

- (ii) Where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings.

CONSIDERING that the Defence’s submission is speculative, hence that no *prima facie* case of a conflict of interest for the Prosecution has been shown;

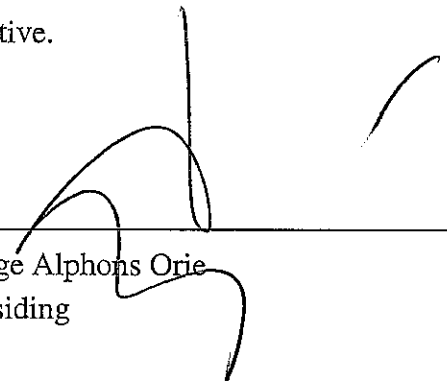
¹ Motion, paras 5-6.

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PURSUANT TO Rules 54 and 77 of the Rules;

DISMISSES the Motion.

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]