



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: 21 February 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: 21 February 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

**ORDER PURSUANT TO RULE 73 *BIS*(D)
TO REDUCE THE INDICTMENT**

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

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”);

NOTING the Trial Chamber’s “Request to the Prosecution pursuant to Rule 73 *bis* (D) to reduce the scope of its case”, filed on 13 December 2006, wherein the Trial Chamber noted that the Joinder Indictment contains 9 Counts covering up to 20 municipalities, recalled its duty pursuant to Article 20 of the Statute to ensure a fair and expeditious trial, considered Rule 73 *bis* (D) of the Rules of Procedure and Evidence (“Rules”), and invited the Prosecution 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”;

NOTING the “Prosecution’s Response to Trial Chamber’s request pursuant to Rule 73 *bis* (D)”, filed on 22 January 2007 (“Response”), wherein the Prosecution “respectfully decline[d] the Trial Chamber’s invitation because the indictment is already focused on the most important criminal charges and because the request infringes upon the Prosecutor’s independence”, and submitted that “[a]ny further reduction would inhibit the Prosecution’s ability to bring the Accused’s criminal responsibility to the attention of the Trial Chamber”;¹

NOTING the Prosecution’s submission that it “is committed to running a focused case that is limited to those charges and events necessary to capture the alleged criminal responsibility of the accused”;²

NOTING the Prosecution’s submission that “[i]f ordered to do so, the Prosecution will reduce its case by not proceeding on a number of crime sites and incidents [...] in the following municipalities: Kijevo, Lovinac, Polača, Smilčić, Titevo [*sic*] Korenica, and Udbina”³ and that it will also “reduce the temporal scope of the indictment by eliminating allegations relating to October and November 1995 [...]”,⁴ which in the Prosecution’s opinion would reduce the indictment by approximately one-third;⁵

NOTING the Prosecution’s submission that, as a result of the proposed reduction, the Prosecution “would not lead evidence of crime-base witnesses concerning these municipalities or events during

¹ Response, para. 1.

² Response, para. 3.

³ Response, paras 8 and 9.

⁴ Response, para. 10.

⁵ Response, para. 10.

October and November [1995]” and that “the accused would not be held criminally liable for those crimes”; that the proposed reduction is based on an understanding, referring to Rule 93 of the Rules, that the Prosecution would, however, “be permitted to present relevant evidence relating to pattern, intent, or knowledge”, and therefore “would [...] lead evidence concerning, for example: (i) crimes in August and September 1995 that continued into October and November; (ii) testimony relating to crimes in charged municipalities that were part of a pattern of events encompassing the uncharged municipalities; or (iii) evidence that an accused was aware of continuing crimes”;⁶

CONSIDERING that the proposed reduction is in accordance with the interest of a fair and expeditious trial;

NOTING that at the Status Conference on 9 February 2007 the presiding Judge issued an Oral Order to the Prosecution to reduce the Indictment in accordance with the Response (“Oral Order”);⁷

CONSIDERING that this Order is without prejudice to any future decisions under the Rules, in particular pursuant to Rule 73 *bis* (E) and (F);

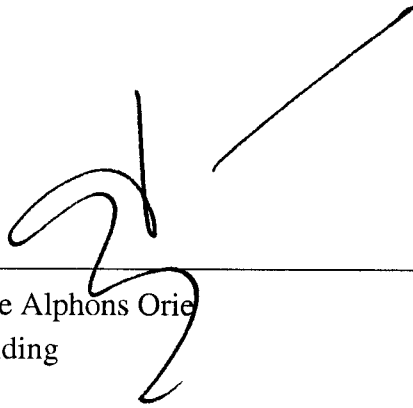
⁶ Response, para. 11, referring to *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, Decision on the Application of Rule 73 *bis*, 8 Nov 2006, paras 17-19.

⁷ Status Conference, 9 Feb 2007, T. 59.

PURSUANT TO Rule 73 *bis* (D) of the Rules;

AFFIRMS the Oral Order.

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



Judge Alphons Oriet
Presiding

Dated this twentyfirst day of February 2007

At The Hague

The Netherlands

[Seal of the Tribunal]