IT-06-90-T
D 21617 - D 21615
30 MARCH 2009

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UNITED NATIONS	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-T
		Date:	30 March 2009
		Original:	English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Uldis Ķinis
Judge Elizabeth Gwaunza

Acting Registrar: Mr John Hocking

Decision of: 30 March 2009

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

PUBLIC

DECISION ON MARKO RAJČIĆ'S PRIVATE SESSION REQUESTS

Office of the Prosecutor

Mr Alan Tieger
Mr Stefan Waespi

Counsel for Ante Gotovina

Mr Luka Mišetić
Mr Gregory Kehoe
Mr Payam Akhavan

Counsel for Ivan Čermak

Mr Steven Kay, QC
Mr Andrew Cayley
Ms Gillian Higgins

Counsel for Mladen Markač

Mr Goran Mikuličić
Mr Tomislav Kuzmanović

Procedural History and Submissions

1. Witness Marko Rajčić testified before this Chamber on 18, 19, 20, and 23 February 2009. On two occasions during his testimony, Mr Rajčić requested the Chamber to move into private session.[1]

2. When first requesting private session on 19 February 2009, the Chamber informed Mr Rajčić that the Chamber was already in private session due to the confidential nature of the information being discussed at the time of the request.[2] After being informed that the Chamber was already in private session, Mr Rajčić continued his testimony.

3. On 23 February 2009, Mr Rajčić made his second request to move into private session.[3] The Chamber allowed Mr Rajčić's request but, after having heard the witness's testimony, inquired with the parties whether the reason given by Mr Rajčić to move into private session was sufficient under the Rules of Procedure and Evidence ("Rules").[4] The Gotovina Defence stated that in order to determine whether the reason for the request was sufficient under the Rules there should be an inquiry into Rule 75 of the Rules.[5] The Prosecution objected and stated that there was no proper basis for the private session request.[6] After having heard the parties on the matter, the Chamber informed Mr Rajčić that it would consider whether the reason given by him was, according to the Rules, a sufficient basis to grant his request.[7]

Discussion

4. The Chamber acknowledges that Mr Rajčić's first request to move into private session on 19 February 2009, related to information received from the Government of Croatia in the course of the ongoing Rule 54 *bis* proceedings and the portion of these discussions subject to Mr Rajčić's request will remain confidential in order to protect the confidential nature of this information.

5. With regard to Mr Rajčić's second request, the Chamber has considered the reason presented by Mr Rajčić for requesting private session and finds that neither the reason

[1] T. 16349, 16497.
[2] T. 16349.
[3] T. 16497.
[4] T. 16498.
[5] T. 16498-16499.
[6] T. 16499.
[7] T. 16499-16500.

presented nor the contents of the evidence given by the witness justify the confidential status of those parts of the transcript pursuant to Rules 75 or 79 of the Rules.

Disposition

6. On the foregoing basis, the Chamber

DENIES Mr Rajčić's requests to move into private session;

ORDERS the Registry to make public transcript pages T.16.497:23 – 16.500:11.

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

Judge Alphons Orie
Presiding Judge

Dated this thirtieth day of March 2009
At The Hague
The Netherlands

[Seal of the Tribunal]