

IT-06-90-T  
D34380-D34378  
29 June 2010

34380  
SMS



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: 29 June 2010  
Original: English

IN TRIAL CHAMBER I

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

**Registrar:** Mr John Hocking

**Decision of:** 29 June 2010

PROSECUTOR

v.

ANTE GOTOVINA  
IVAN ČERMAK  
MLADEN MARKAČ

*PUBLIC*

---

REASONS FOR DECISION OF 2 JUNE 2010 TO HEAR TESTIMONY OF  
WITNESSES BILOBRK, GEROVAC AND MIKULIĆ IN PRIVATE SESSION

---

**Office of the Prosecutor**

Mr Alan Tieger

**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

1. On 2 June 2010, the Chamber decided, as a temporary measure, to hear the evidence of Witnesses Jozo Bilobrk, Antonio Gerovac and Željko Mikulić in private session, with reasons to follow.<sup>1</sup> All three Defence teams objected to proceeding in private session.<sup>2</sup> On 7 June 2010, the Chamber lifted the confidential status of the testimony of Witnesses Bilobrk, Gerovac and Mikulić.<sup>3</sup>

2. Article 20 (4) of the Statute of The Tribunal provides that hearings shall be public unless the Chamber decides to close proceedings in accordance with its Rules of Procedure and Evidence ("Rules"). Rule 79 (A) (iii) and (B) of the Rules states that the Chamber may order that the press and public be excluded from all or part of the proceedings for the protection of the interests of justice, and that the Chamber must make public the reasons for its order.

3. When deciding to hear the testimony of Witnesses Bilobrk, Gerovac and Mikulić in private session, the Chamber envisaged the possibility that the witnesses may provide varying accounts of Bilobrk's interview with Gerovac and Mikulić. The Chamber requested that the witnesses remain on stand-by and be kept separate during each other's testimony, in order to have the opportunity to call them back to clarify potential discrepancies in their accounts.<sup>4</sup> Previously, the Chamber considered that hearing the testimony of these witnesses would assist in clarifying the varying accounts of what Bilobrk is reported to have stated, as well as whether Gerovac and Mikulić suggested the name of Čermak to Bilobrk during their interview with him.<sup>5</sup> Therefore, in light of their potentially contradictory testimony, and in order to protect the integrity of the proceedings by preventing the witnesses from following and thereby being possibly influenced by each other's testimony, the Chamber decided it was in the interests of justice to hear their testimony provisionally in private session. This measure, which prevented the witnesses from hearing the testimony of the other witnesses on the very subject of their own testimony, corresponds in its effect with a common practice in criminal procedure, reflected in Rule 90 (C) of the Rules. In its temporary nature, the measure infringed minimally upon the public character of the proceedings. For the foregoing reasons, pursuant to Article 20 (4) of the Statute and Rule 79 (A) (iii) of the Rules, the Chamber

<sup>1</sup> T. 28650-28651.

<sup>2</sup> T. 28651.

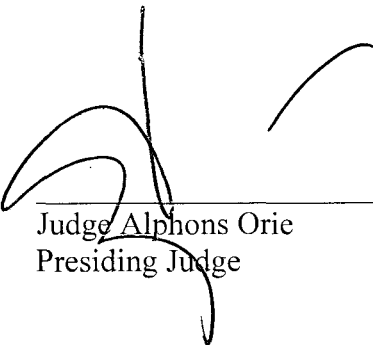
<sup>3</sup> Order Lifting Confidentiality of Testimony of Witnesses 176, 177 & 178, 7 June 2010.

<sup>4</sup> T. 28650, 28765, 28845, 28890-28891.

<sup>5</sup> See Decision on Prosecution's Motion to Reopen Its Case, 21 April 2010, para. 12.

decided, only as a temporary measure, to hear the testimony of Witnesses Bilobrk, Gerovac and Mikulić in private session.

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



Judge Alphons Orié  
Presiding Judge

Dated this Twenty-ninth day of June 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**