

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-A
Date: 19 July 2011
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Carmel Agius

Registrar: Mr. John Hocking

Decision of: 19 July 2011

PROSECUTOR

v.

**ANTE GOTOVINA
MLADEN MARKAČ**

PUBLIC

**DECISION ON ANTE GOTOVINA'S
APPLICATION FOR AN ORDER PURSUANT
TO RULE 54 *BIS* DIRECTING THE GOVERNMENT
OF THE REPUBLIC OF SERBIA TO PRODUCE DOCUMENTS**

The Office of the Prosecutor

Ms. Helen Brady
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. Kai Ambos, and Mr. John Jones

The Government of the Republic of Serbia

via the Embassy of the Republic of Serbia to The Netherlands, The Hague

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),

BEING SEISED OF “Ante Gotovina’s Application for an Order Pursuant to Rule 54 *bis* Directing the Government of the Republic of Serbia to Produce Documents”, filed publicly with confidential annexes by Ante Gotovina (“Gotovina”) on 22 June 2011 (“Application”);

NOTING the “Prosecution Response to Gotovina’s Application Pursuant to Rule 54 *bis*”, filed confidentially by the Office of the Prosecutor on 4 July 2011;¹

NOTING “Ante Gotovina’s Reply in Support of His Application for an Order Pursuant to Rule 54 *bis* Directing the Republic of Serbia to Produce Documents”, filed confidentially by Gotovina on 11 July 2011 (“Reply”);

NOTING that the Application requests that the Appeals Chamber issue an order directing the Republic of Serbia (“Serbia”) to produce certain documents relating, *inter alia*, to the departure of Serbian civilians from the “Krajina” region in August 1995;²

NOTING that the Application claims that Gotovina submitted two letters to the Ambassador of Serbia to The Netherlands, on 30 May and 16 June 2011, respectively, requesting the documents which are the subject of the Application (“Requests of 30 May and 16 June”);³

NOTING that as of the date of the filing of the Reply, Serbia had not yet responded to the Requests of 30 May and 16 June;⁴

NOTING that a state must have declined to comply with a request for documents before a Chamber may issue an order under Rule 54 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);⁵

CONSIDERING that the relatively short period of time that has elapsed since the Requests of 30 May and 16 June were submitted cannot reasonably be interpreted as a refusal to voluntarily produce the requested documents;⁶

¹ See also Notice of Filing of Redacted Public Version of Prosecution Response to Gotovina’s Application Pursuant to Rule 54 *bis*, 6 July 2011.

² Application, paras 1, 16, 19, 20, 24; Annex C (confidential).

³ Application, paras 9-11; Annexes A (confidential) and B (confidential).

⁴ Reply, para. 23.

⁵ See *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-AR108bis.2, Decision on Request of the United States of America for Review, 12 May 2006, para. 32; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on

CONSIDERING therefore that Gotovina has not met the requirements of Rule 54 *bis* of the Rules at this time;

FOR THE FOREGOING REASONS,

DISMISSES the Application.

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

Dated this 19th day of July 2011
at The Hague
The Netherlands



Judge Theodor Meron
Presiding

[Seal of the Tribunal]

the Accused's Third Motion for Binding Order (United States of America), 17 February 2011 ("*Karadžić* Decision"), para. 7.

⁶ Cf. *Karadžić* Decision, paras 8, 9.