

IT-06-90-T
D 16655 - D 16653
03 November 2008

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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:

3 November 2008

Original:

English

IN TRIAL CHAMBER I

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

Registrar: Mr Hans Holthuis

Order of: 3 November 2008

PROSECUTOR

v.

ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ

CONFIDENTIAL

ORDER FOR SAFE CONDUCT

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

TRIAL CHAMBER I 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”);

CONSIDERING the Prosecution’s Request for a Safe Conduct Order for Witness Kosta Novaković filed on 30 October 2008 (“Request”) and the facts stated therein, mainly that there is a valid international arrest warrant against the witness who was tried and convicted, *in absentia*, by the Šibenik County Court, Croatia;

CONSIDERING that the witness, who was a member of the General Staff of the Army of the Republika Srpska Krajina (“SVK”), is currently scheduled to testify from 12 to 14 November 2008 in The Hague and that his expected evidence is important as, among other things, it concerns the use of certain buildings in Knin and the number of SVK soldiers prior to and during Operation Storm in the town;

CONSIDERING the Defence’s responses to the Request, to which they do not object;¹

CONSIDERING the decision of 26 June 1996 in the *Tadić* case,² which established that safe conduct, although not explicitly provided for in the Statute, can be ordered under the general power of Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”);

CONSIDERING that orders of safe conduct of witnesses have been issued by the Trial Chambers of the Tribunal, when deemed to be in the interests of justice;³

FINDING that the circumstances, as set out in the Request, demonstrate that it is in the interests of justice that the witness be granted safe conduct for the purpose of enabling him to appear and testify before this Trial Chamber;

FOR THE FOREGOING REASONS:

PURSUANT to Articles 20, 29 and 30 of the Tribunal’s Statute, Rule 54 of the Rules, and Article XVIII of the Headquarters Agreement between the Tribunal and the Netherlands;⁴

¹ T. 10940-10941; Defendant Ante Gotovina’s Response to Prosecution’s Request for Safe Conduct Order for Witness Kosta Novaković, 31 October 2008; Defendant Mladen Markač’s Response to Prosecution’s Request for Safe Conduct Order for Witness Kosta Novaković, 3 November 2008.

² *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link, 26 June 1996, paras 8-16.

³ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Order on Miletić Motion for Safe Conduct, 28 September 2008; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Lukić Motion for Safe Conduct of Witnesses [A and B], 19 March 2008.

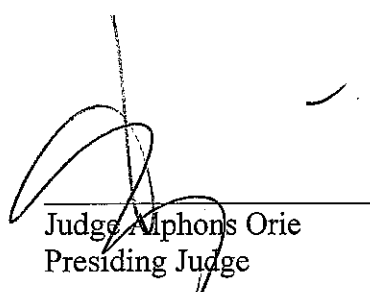
⁴ Agreement between the United Nations and the Kingdom of the Netherlands Concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, 27 May 1994.

HEREBY ORDERS safe conduct for Kosta Novaković, for the purpose of his appearance as a witness in the present case, that is to say that he shall not be prosecuted, detained or subjected to any other restriction of his liberty (i) while travelling back and forth between his place of residence and the Netherlands, and (ii) while in the Netherlands, in respect of any acts or convictions prior to his entry into the territory of any transit country or the Netherlands, respectively;

FURTHER ORDERS that such immunity shall be limited in time to seven days prior to and seven days after the completion of the testimony of the witness in the present case; and that, should illness prevent the witness from leaving the Netherlands or should the witness be detained for an offence he may have committed during his stay in the Netherlands, the seven day time-period shall start to run from the time the witness is again able to travel or has been released;

REQUESTS the Registrar of the Tribunal to take all necessary measures for the implementation of the present Order.

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



Judge Alphons Orie
Presiding Judge

Dated this 3rd day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]