

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-06-90-T**

**BEFORE TRIAL CHAMBER I**

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

**Acting  
Registrar: Mr John Hocking**

**Date: 3 February 2009**

**THE PROSECUTOR**

**v.**

**ANTE GOTOVINA, IVAN CERMAK AND MLADEN MARKAC**

***PUBLIC***

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**DEFENDANT ANTE GOTOVINA'S MOTION  
TO EXCLUDE EVIDENCE OF DR. ERIC BACCARD**

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**For the Prosecution:**

Mr. Alan Tieger  
Mr. Stefan Waespi

**For Ante Gotovina:**

Mr. Gregory W. Kehoe  
Mr. Luka S. Misetić  
Mr. Payam Akhavan

**For Ivan Cermak:**

Mr. Steven Kay  
Mr. Andrew Cayley  
Ms. Gillian Higgins

**For Mladen Markac:**

Mr. Goran Mikulić  
Mr. Tomislav Kuzmanović

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1. On 28 April 2008, the Prosecution filed the report of expert witness Dr. Eric Baccard.<sup>1</sup> On 26 May 2008 the Gotovina Defence filed a notice pursuant to Rule 94 *bis* advising the Trial Chamber that it did not accept the expert report of Dr. Eric Baccard ("Witness 95") and that it wished to cross-examine him.<sup>2</sup>
2. Witness 95 is scheduled to begin testifying on 4 February 2009. The Prosecution has made several modifications to the exhibit list for Witness 95, the most recent being on 30 January 2009 when the Prosecution circulated a revised exhibit list with additional English translations added for each exhibit.<sup>3</sup> The exhibit list was circulated yet again on 3 February 2009 with further additions.<sup>4</sup>
3. The Gotovina Defence has reviewed the exhibit list for Witness 95. Pursuant to Rule 89(D), the Gotovina Defence seeks to exclude numerous autopsy

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<sup>1</sup> Prosecutor v. Gotovina et al., IT-06-90-T, *Prosecution Submission of Expert Report of Dr. Eric Baccard pursuant to Rule 94 bis* (28 April 2008)

<sup>2</sup> Prosecutor v. Gotovina et al., IT-06-90-T, *Defendant Ante Gotoivna's Notice to the Trial Chamber pursuant to Rule 94 bis concerning the testimony of Dr. Eric Baccard*, 26 May 2008.

<sup>3</sup> Email correspondence from Prosecution at 4:22 pm on Friday 30 January 2009 attaching a zipped file with the English translations.

<sup>4</sup> Email correspondence from Prosecution at 1:04 pm on Tuesday 3 February 2009.

reports<sup>5</sup> on the grounds that the probative value of the evidence is substantially outweighed by the need to ensure a fair trial. The Gotovina Defence also objects to these autopsy reports on the grounds of relevance.

4. In particular, the Gotovina Defence objects to the following:
  - (a) Rule 65 *ter* 6033 document (Exhibit P01554)<sup>6</sup> on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule, and the killing incident did not occur in the area of responsibility of the Split Military District. The road between Gracac and Otric was in the area of responsibility of the Special Police during Operation Storm when the alleged killing incident took place.
  - (b) Rule 65 *ter* 6034 document (Exhibit P01555) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule, the killing incident did not occur in the area of responsibility of the Split Military District, and the cause of death is unknown. The road between Gracac and Otric was in the area of responsibility of the Special police during Operation Storm when the alleged killing incident took place.
  - (c) Rule 65 *ter* 6035 (Exhibit P01682) on the grounds that the autopsy report refers to a killing incident in Donji Lapac. Donji Lapac is not in the area of responsibility of the Split Military District.
  - (d) Rule 65 *ter* 6036 (Exhibit P01553) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule, the killing incident involving a soldier did not occur in the area of responsibility of the Split Military District. The

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<sup>5</sup> Many of these documents have been admitted into evidence pursuant to the Trial Chamber decision of 25 November 2008 (Prosecutor v. Gotovina, IT-06-90-T, Decision on Prosecution's Motion to Admit Documents into Evidence and to add Two Documents to the Prosecution's Rule 65 *ter* Exhibit List, 25 November 2008). The Gotovina Defence has requested the Trial Chamber to reconsider its Decision as a result of the Appeals Chamber decision on 26 January 2009 (Prosecutor v. Gotovina, IT-06-90-AR73.3, Decision on Joint Defence Interlocutory Appeal Against Trial Chamber's Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 26 January 2009).

<sup>6</sup> Please refer to footnote 5.

killing incident, which allegedly occurred on 5 August 1995, near the lake around Gracac did not take place in the area of responsibility of the Split Military District.

- (e) Rule 65 ter 6037 (Exhibit P01552) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule and the killing incident did not occur in the area of responsibility of the Split Military District.
- (f) Rule 65 ter 6038 (Exhibit P01545) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule, and the killing incident did not occur in the area of responsibility of the Split Military District. This part of Gracac was in the area of responsibility of the Special Police during Operation Storm at the time the alleged killing incident occurred.
- (g) Rule 65 ter 6040 (Exhibit P01692) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule, and the killing incident did not occur in the area of responsibility of the Split Military District. The killing incident allegedly occurred on 7 August 1995. The Split Military District was not in Srb on 7 August 1995.
- (h) Rule 65 ter 2624 (Exhibit P00728), Rule 65 ter 5403 (Exhibit P00738), Rule 65 ter 2902 (Exhibit P00735), Rule 65 ter 2366 (Exhibit P00732) on the grounds that the autopsy reports refer to killing incidents in Donji Lapac which is not in the area of responsibility of the Split Military District.
- (i) Rule 65 ter 6043 (Exhibit P01558) on the grounds that the autopsy report refers to a killing incident which is not in the Indictment or Clarification Schedule, and the killing incident did not occur in the area of responsibility of the Split Military District. The killing incident allegedly occurred on 5 August 1995 in Grab which was in the area of responsibility of the Special Police during Operation Storm.

- (j) Rule 65 ter 6044 (Exhibit P01565) and Rule 65 ter 6045 (Exhibit P01556) on the grounds that the autopsy reports refer to killing incidents that are not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District. Grab was in the area of responsibility of the Special Police during Operation Storm at the time the alleged killing incidents occurred.
- (k) Rule 65 ter 6046 (Exhibit P01557) on the grounds that the autopsy report refers to a death incident that is not in the Indictment or Clarification Schedule and the cause of death is unknown. Given that the exact date of death is unknown, it is also unclear whether the killing incident occurred in the area of responsibility of the Split Military District. Velika Popina was not in the area of responsibility of the Split Military District during Operation Storm.
- (l) Rule 65 ter 3820 (Exhibit P91) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule and the killing incident occurred on 8 August 1995 in Bruvno which is not in the area of responsibility of the Split Military District.
- (m) Rule 65 ter 6047 (Exhibit P01547), Rule 65 ter 6048 (Exhibit P01546), Rule 65 ter 6049 (Exhibit P01690), Rule 65 ter 6050 (Exhibit P01689) on the grounds that the autopsy reports refer to killing incidents that are not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District. Regarding Rule 65 ter 6050 (Exhibit P01689) the cause of death is also unknown.
- (n) Rule 65 ter 6051 (Exhibit P01677), Rule 65 ter 6052 (Exhibit P01683), and Rule 65 ter 6053 on the grounds that the autopsy reports refer to killing incidents that are not in the area of responsibility of the Split Military District. Regarding Rule 65 ter 6052 (Exhibit P01683) the cause of death is also unknown.
- (o) Rule 65 ter 6054 (Exhibit P01687), Rule 65 ter 6055 (Exhibit P01548), and Rule 65 ter 6056 (Exhibit P01549) on the grounds that the autopsy reports refer to killing incidents that are not in the Indictment or

Clarification Schedule, and did not occur in area of responsibility of the Split Military District. Regarding Rule 65 ter 6055 (Exhibit P01548) the cause of death is also unknown.

- (p) Rule 65 ter 6057 (Exhibit P01691) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District.
- (q) Rule 65 ter 6058 (Exhibit P01550) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District. The killing incident allegedly occurred in Kontici which was in the area of responsibility of the Special Police during Operation Storm.
- (r) Rule 65 ter 6059 (Exhibit P01551) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule, did not occur in the area of responsibility of the Split Military District, and the cause of death is unknown. Gracac was in the area of responsibility of the Special Police during Operation Storm.
- (s) Rule 65 ter 6061 (Exhibit P01563) and Rule 65 ter 6062 (Exhibit P01564) on the grounds that the autopsy reports refer to killing incidents that are not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District. Cerovac was in the area of responsibility of the Special Police during Operation Storm. Regarding Rule 65 ter 6062, the cause of death is also unknown.
- (t) Rule 65 ter 6063 on the grounds that the autopsy report refers to a killing incident that occurred in Gornji Kijani which is not in the area of responsibility of the Split Military District.
- (u) Rule 65 ter 6064 (Exhibit P01559), Rule 65 ter 6065 (Exhibit P01560), and Rule 65 ter 6066 (Exhibit P01684) on the grounds that the autopsy reports refer to killing incidents that are not in the Indictment or

Clarification Schedule and did not occur in the area of responsibility of the Split Military District.

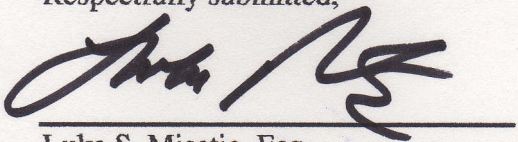
- (v) Rule 65 ter 6067 (Exhibit P01685) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District. The Prosecution has alleged that the death occurred on 5 August 1995. There were no Croatian forces in the Donji Lapac area at that time.
- (w) Rule 65 ter 6068 (Exhibit P01681) on the grounds that the autopsy report refers to a killing incident that occurred in Brezovac, Donji Lapac, which is not in the area of responsibility of the Split Military District.
- (x) Rule 65 ter 6069 (Exhibit P01561), Rule 65 ter 6070 (Exhibit P01571), and Rule 65 ter 6071 (Exhibit P01570) on the grounds that the autopsy reports refer to killing incidents that are not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District. In addition, Rule 65 ter 6069 (Exhibit P01561) on the grounds that the cause of death is unknown.
- (y) Rule 65 ter 6072 (Exhibit P01694) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District. The Prosecution has alleged that the death occurred on 5 August 1995 in Krupa which was not in the area of responsibility of the Split Military District until after 7 August 1995.
- (z) Rule 65 ter 6073 (Exhibit P01693) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule, and did not occur in the area of responsibility of the Split Military District. The killing incident allegedly occurred on 6 August 1995 between the villages of Brotnja and Suvaja in Srb. The village of Brotnja was not in the area of responsibility of the Split Military District.

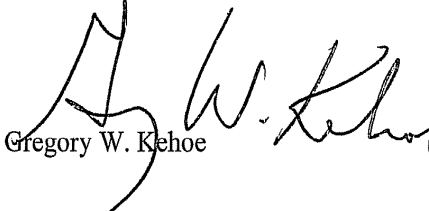
- (aa) Rule 65 ter 6074 (Exhibit P01569) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District.
- (bb) Rule 65 ter 6075 (Exhibit P01562) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule.
- (cc) Rule 65 ter 6077 (Exhibit P01566) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule, did not occur in the area of responsibility of the Split Military District, and the cause of death is unknown.
- (dd) Rule 65 ter 6080 (Exhibit P01686) on the grounds that the autopsy report refers to a killing incident that is not in the Indictment or Clarification Schedule and did not occur in the area of responsibility of the Split Military District. The killing incident occurred on 5 August 1995 in Kunovac which was not in the area of responsibility of the Split Military District until after 7 August 1995.

5. WHEREFORE the defendant Ante Gotovina respectfully requests that the exhibits listed above be excluded in their entirety.

Word Count: 2043

Dated: 3 February 2009

Respectfully submitted,  
  
Luka S. Misetec, Esq.

  
Gregory W. Kehoe

Defence Counsel for Ante Gotovina