



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-95-16-T
Date: 6 October 1998
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Antonio Cassese, Presiding
Judge Richard May
Judge Florence Ndepele Mwachande Mumba

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 6 October 1998

PROSECUTOR

v.

**Zoran KUPREŠKIĆ, Mirjan KUPREŠKIĆ, Vlatko KUPREŠKIĆ,
Drago JOSIPOVIĆ, Dragan PAPIĆ, Vladimir ŠANTIĆ, also known as "VLADO"**

**DECISION ON DEFENCE MOTION
TO SUMMON WITNESSES**

The Office of the Prosecutor:

Mr. Franck Terrier
Mr. Albert Moskowitz

Counsel for the Accused:

Mr. Ranko Radović, for Zoran Kupreškić
Ms. Jadranka Glumać, for Mirjan Kupreškić
Mr. Borislav Krajina, for Vlatko Kupreškić
Mr. Luko Šušak, for Drago Josipović
Mr. Petar Pulišelić, for Dragan Papić
Mr. Petar Pavković, for Vladimir Santic

TRIAL CHAMBER II 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 ("International Tribunal");

BEING SEIZED of an oral motion by counsel for Vlatko Kupreskic at the afternoon hearing of 5 October 1998 to the effect that four witnesses whom he wishes to call are reluctant, for reasons of personal security and possible intimidation, to appear as *defence* witnesses and that their presence before the Chamber can only be ensured by calling them to testify as witnesses *for the Tribunal*;

CONSIDERING that in the circumstances it appears to be in the interests of justice and of a fair trial that the said witnesses testify before the Chamber, and that the Tribunal has a mandate to ensure fair and expeditious proceedings, pursuant to Articles 20 and 21 of the Statute,

CONSIDERING, further, that pursuant to Article 22, the Tribunal also has a mandate to provide for the protection of victims and witnesses, and that the defence motion alleges possible harassment of witnesses as a ground for issuing the requested summons,

CONSIDERING, therefore, that it is both in the interests of a fair trial and necessary for the protection of witnesses that the requested summons be issued,

NOTING, however, that Rule 98 (“Power of Chambers to Order Production of Additional Evidence”), which provides that “a Trial Chamber may order either party to produce additional evidence. It may itself summon witnesses and order their attendance”, is inapplicable to the case at hand insofar as it concerns the production of *additional* evidence, whereas what is requested by defence counsel in this instance is an order of the Chamber summoning witnesses to testify as court witnesses,

CONSIDERING that Rules 54 and 75(A) are nevertheless applicable to the case at hand:

Rule 54
General Rule

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

Rule 75
Measures for the Protection of Victims and Witnesses

(A) A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

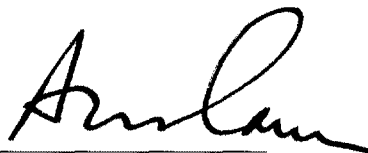
[...]

HEREBY DECIDES TO SUMMON the four witnesses who are the subject of the defence motion to testify as witnesses for the Tribunal,

ORDERS that the order of presentation of evidence, pursuant to Rule 85(B), as regards these four witnesses shall be examination-in-chief by defence counsel for Vlatko Kupreskic, cross-examination, if any, by other defence counsel, cross-examination by the Prosecution and re-examination by defence counsel for Vlatko Kupreskic.

FURTHER ORDERS, as a consequence of the foregoing, that defence counsel for Vlatko Kupreskic only shall be permitted to contact and communicate with the said witnesses prior to their being sworn in as witnesses, but that thereafter, until the end of their testimony, communication must cease pursuant to the Chamber's Decision of 18 September 1998 (*Decision On Communications Between The Parties And Their Witnesses*).

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



Antonio Cassese
Presiding Judge

Dated this sixth day of October 1998
At The Hague
The Netherlands

[Seal of the Tribunal]