



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: 18 December 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:** 18 December 1998

**PROSECUTOR**

v.

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

**DECISION ON MOTION  
FOR WITHDRAWAL OF THE INDICTMENT  
AGAINST THE ACCUSED VLATKO KUPREŠKIĆ**

**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 SEISED of a *Motion for Withdrawal of the Indictment against the Accused Vlatko Kupreškić* dated 7 December 1998, and filed on 9 December 1998, in which the Defence proposes that the Prosecution withdraw the indictment against Vlatko Kupreškić for alleged lack of evidence;

CONSIDERING the *Notice of the Prosecutor's Response to Vlatko Kupreškić's Request to the Prosecutor to withdraw the Indictment against him*, filed on 16 December 1998, in which the Prosecutor points out that an indictment cannot be withdrawn by the Prosecutor of her own Motion, but only with the leave of the Trial Chamber pursuant to Rules 51 and 73 of the Rules of Procedure and Evidence ("the Rules"), and that as the Prosecutor considers that sufficient evidence has been presented against Vlatko Kupreškić to sustain a conviction on all charges alleged against him, the Prosecutor will not seek the Chamber's leave to withdraw the indictment;

CONSIDERING also that in the said *Notice*, the Prosecutor notifies the Chamber of its intention to file a full response if the Chamber interprets the request of Counsel for Vlatko Kupreškić as having its basis in Rule 98 *bis* of the Rules;

NOTING that the said *Motion* was not addressed to the Trial Chamber nor did it request any action by the Trial Chamber and that the said *Motion* cannot therefore be considered as a Defence Motion to dismiss Charges, such as was filed in *Tadić* and rejected by Trial Chamber II in its *Decision on Defence Motion to Dismiss Charges* rendered on 13 September 1996, or as a *Motion for Judgement of Acquittal*, or in the alternative, *Motion to Dismiss the Indictment at the close of the Prosecutor's case*, such as was filed in *Delalić et al* on 6 March 1998 and rejected by Trial Chamber II in an *Order* of 18 March 1998;

CONSIDERING, therefore, that the said *Motion* does not raise any issue for adjudication by the Trial Chamber;

CONSIDERING, nevertheless, that were the said *Motion* to be construed as a Motion to the Trial Chamber requesting that the charges against Vlatko Kupreškić be dismissed, applying the test enunciated in the above-mentioned *Tadić* Decision, namely “whether as a matter of law there is evidence, were it to be accepted by the Trial Chamber, as to each count charged in the indictment which could lawfully support a conviction of the accused”, the Motion would fail, since the Trial Chamber is of the opinion that there is evidence as to each count charged in the indictment, which were it to be accepted by this Trial Chamber, could lawfully support a conviction of Vlatko Kupreškić;

NOTING, moreover, that pursuant to Rule 98 *bis* (“Motion for Judgement of Acquittal”) of the Rules, which reads, “If, after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more offences charged in the indictment, the Trial Chamber, on motion of an accused or *proprio motu*, shall order the entry of judgement of acquittal on that or those charges”, the Chamber would act *proprio motu* to order a judgement of acquittal on one or more charges in the indictment if it considered it appropriate;

CONSIDERING that the Trial Chamber does not consider it appropriate to apply Rule 98 *bis* to order a judgement of acquittal on one or more charges in the indictment against Vlatko Kupreškić;


NOTING further that the reference of counsel for Vlatko Kupreškić to “defence evidence” and “defence testimony” in the said *Motion* is erroneous in that, the defence case having not

yet opened, there is no defence evidence or defence testimony which can be accorded exculpatory weight or otherwise considered by this Trial Chamber;

FOR THE ABOVE REASONS,

REJECTS the *Motion for Withdrawal of the Indictment against the accused Vlatko Kupreškić* dated 7 December 1998 and filed on 9 December 1998, without prejudice to the right of counsel for the accused Vlatko Kupreškić to make a submission of no case to answer before opening the case for his client.

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

  
\_\_\_\_\_  
Judge Mumba

Dated this eighteenth day of December 1998  
At The Hague  
The Netherlands

[Seal of the Tribunal]