



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: 8 February 1999
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: 8 February 1999

PROSECUTOR

v.

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

**DECISION ON DEFENCE MOTION
TO SUMMON WITNESS**

The Office of the Prosecutor:

Mr. Franck Terrier
Mr. Albert Moskowitz
Mr. Michael Blaxill

Counsel for the Accused:

Mr. Ranko Radović, for Zoran Kupreškić
Ms. Jadranka Glumać, for Mirjan Kupreškić
Mr. Borislav Krajina, Mr. Želimir Par, for Vlatko Kupreškić
Mr. Luko Šušak, Ms. Goranka Herljević, for Drago Josipović
Mr. Petar Pulišelić, Ms. Nika Pinter, for Dragan Papić
Mr. Petar Pavković, for Vladimir Šantić

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 a Defence Motion dated 20 January 1999 and filed on 29 January 1999 by counsel for Drago Josipović requesting that the Trial Chamber:

- (1) admit the reports of Mr. Tadeusz Mazowiecki, the former United Nations Special Rapporteur on Human Rights in the former Yugoslavia, into evidence;
- (2) summon Mr. Mazowiecki to testify as a court witness before the Trial Chamber.

CONSIDERING that, as regards the first request, there appears to be no obstacle to admitting into evidence the reports of Mr. Mazowiecki which may concern the events that took place in central Bosnia and Herzegovina at the times relevant to this indictment, namely between 1992 and mid-1993;

CONSIDERING, however, that the second request, to call Mr. Mazowiecki to testify, is unfounded for the following reasons:

- (i) Defence counsel has failed to demonstrate that he has attempted to contact Mr. Mazowiecki, much less to request him to testify, nor that any such attempts have been unsuccessful. The sole justification given by defence counsel for his request that the Chamber call Mr. Mazowiecki is the assertion that, "Calling Mr. Mazowietsky (sic) as a witness would be impossible to the Defence, even more as we know he is not UN employee any more", without any explanation of the alleged "impossibility";
- (ii) Defence counsel has likewise failed to demonstrate how Mr. Mazowiecki's testimony would be of assistance to the Chamber. Mr. Mazowiecki's findings are laid down in the aforementioned Reports, and two witnesses who gathered evidence for Mr. Mazowiecki in central Bosnia at the time of the events in question have already testified in detail before the Chamber. Thus the Chamber does not consider that any further evidence which Mr. Mazowiecki could give in Court would provide any further assistance;

(iii) Defence counsel has so far not persuasively proved the relevance to the issue of innocence or guilt of the accused of the alleged commission by Bosniaks (Bosnian Muslims), or forces of the Bosnian army, of large-scale crimes against Croats in Bosnia and Herzegovina. In this connection the Chamber reiterates what it indicated to all defence counsel at the hearing of 11 January 1999, namely that the *tu quoque* principle does not apply to international humanitarian law. This body of law does not lay down synallagmatic obligations, i.e obligations based on reciprocity, but obligations *erga omnes* (or, in the case of treaty obligations, obligations *erga omnes contractantes*) which are designed to safeguard fundamental human values and therefore must be complied with by each party regardless of the conduct of the other party or parties.

FOR THE ABOVE REASONS

REJECTS the Defence request to summon Mr. Mazowiecki to testify as a court witness;

DECIDES to admit into evidence the reports of Mr. Mazowiecki which concern the events that took place in central Bosnia and Herzegovina at the times relevant to this indictment (1992 through mid-1993).

REQUESTS, accordingly, the Registrar to provide to the Trial Chamber and the parties the aforementioned reports.

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



Antonio Cassese
Presiding Judge

Dated this eighth day of February 1999
At The Hague
The Netherlands

[Seal of the Tribunal]