

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-95-14/2-PT
Date: 1 March 1999
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Mohamed Bennouna
Judge Patrick Robinson

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 1 March 1999

PROSECUTOR

v.

**DARIO KORDIĆ
MARIO ČERKEZ**

**DECISION ON DEFENCE MOTION TO DISMISS OR ALTERNATIVELY
TO ORDER THE PROSECUTOR TO ELECT BETWEEN COUNTS**

The Office of the Prosecutor
Mr. Geoffrey Nice
Mr. Rodney Dixon

Counsel for the Accused
Mr. Mitko Naumovski, Mr. Leo Andreis, Mr. David F. Geneson, Mr. Turner T. Smith, Jr.,
and Ms. Ksenija Turković, for Dario Kordić

Mr. Božidar Kovačić, for Mario Čerkez

THIS TRIAL CHAMBER 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 (“the International Tribunal”),

BEING SEISED of the “Joint Defence Motion to Dismiss or Alternatively to Order the Prosecutor to Elect Between Counts” (“the Motion”), filed by counsel for the accused, Dario Kordić and Mario Čerkez (together “the Defence”) on 22 January 1999, and the Prosecutor’s Response to Joint Defence Motion to Dismiss or, Alternatively to Order the Prosecutor to Elect Between Counts (“the Response”) filed by the Office of the Prosecutor (“the Prosecution”) on 5 February 1999,

NOTING the written submissions of the parties and their oral arguments heard on 16 February 1999,

CONSIDERING that the Indictment meets the requirements of Article 18, paragraph 4, of the Statute of the International Tribunal (“Statute”) and Rule 47 (C) of the Rules of Procedure and Evidence of the International Tribunal,

CONSIDERING that the Prosecutor may be justified in bringing cumulative charges when the Articles of the Statute referred to are designed to protect different values and when each Article requires proof of a legal element not required by the others¹, and that in the instant case both requirements are met,

CONSIDERING that cumulative charging has been permitted in the practice of the International Tribunal²,

¹Decision on Defence Challenges to Form of the Indictment, *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-PT, T.Ch. II, 15 May 1998.

² Decision on Defence Motion on Form of the Indictment, *Prosecutor v. Tadić*, Case No. IT-94-1-T, T. Ch. II, 14 Nov. 1995, paras 15-18; Decision on Application for leave to appeal by Hazim Delić (Defects in the Form of the Indictment), *Prosecutor v. Delalić et al.* Case No. IT-96-21-AR72.5, A. Ch. , 6 Dec. 1996, paras 32-36; Decision on the Defence Preliminary Motion on the Form of the Indictment, *Prosecutor v. Krnojelac*, Case No. IT-97-25-PT, T. Ch.II, 24 February 1999, paras 5-10.

PURSUANT TO Rule 72 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY DISMISSES THE MOTION.

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



Richard May
Presiding

Dated this first day of March 1999
At The Hague
The Netherlands

[Seal of the Tribunal]