



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-A
Date: 17 July 2001
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Patricia Wald, Presiding
Judge Lal Chand Vohrah
Judge Rafael Nieto-Navia
Judge Fausto Pocar
Judge Liu Daqun

Registrar: Mr. Hans Holthuis

Decision of: 17 July 2001

PROSECUTOR

v.

**ZORAN KUPREŠKIĆ
MIRJAN KUPREŠKIĆ
VLATKO KUPREŠKIĆ
DRAGO JOSIPOVIĆ
VLADIMIR ŠANTIĆ**

**DECISION ON THE MOTIONS OF ZORAN AND MIRJAN KUPREŠKIĆ TO
ADMIT ADDITIONAL EVIDENCE**

Counsel for the Prosecutor:
Mr. Upawansa Yapa

Counsel for the Defence:
Mr. Ranko Radović, Mr. Tomislav Pasarić for Zoran Kupreškić
Ms. Jadranka Sloković-Glumac, Ms. Desanka Vranjican for Mirjan Kupreškić
Mr. Anthony Abell, Mr. John Livingston for Vlatko Kupreškić
Mr. William Clegg Q.C., Ms. Goranka Herljević for Drago Josipović
Mr. Petar Pavković, Mr. Mirko Vrdoljak for Vladimir Šantić

THE APPEALS 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 following motions filed confidentially and pursuant to Rule 115 of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”) by counsel for Zoran and Mirjan Kupreškić (“the Appellants”) requesting that the Appeals Chamber admit additional evidence (together “the Motions”):

- (i) “Motion of the Counsels of Zoran and Mirjan Kupreškić with which they Propose the Derivation of New Proof Considering the Rule 115 of the Rules of Procedure and Evidence” filed on 26 June 2001 relating to a “Regular security report” dated 16 April 1993 (“the First Report”) which states that “Fierce fighting is going on in Ahmići” and that “[Muslim] Army members have been forced to retreat to reserve positions”;
- (ii) “Motion of the Counsel of Zoran and Mirjan Kupreškić with which they Propose the Acceptance of the New Proof, Based on the Rule 116 [sic] from the Rules and Procedure” filed on 6 July 2001 relating to an intelligence report dated 19 April 1993 (“the Second Report”) which states that “at 0530 hours (16 April 1993) an HVO attack on our forces (325th bbr) began in the sector of the villages of Ahmići and Kruščica”;

NOTING the “Joinder of the Accused Vladimir Šantić to the Motion of the Counsels of Zoran and Mirjan Kupreškić with which they Propose the Derivation of New Proof Considering the Rule 115 of the Rules of Procedure and Evidence Dated 26 June 2001” filed on 29 June 2001 by counsel for Vladimir Šantić;

NOTING the following responses filed by the Office of the Prosecutor (“the Prosecution”) on 5 July and 12 July 2001 respectively which request that the Appeals Chamber reject the Motions:

- (i) “Prosecution’s Response to ‘Motion of the Counsels of Zoran and Mirjan Kupreškić with which they Propose the Derivation of New Proof Considering the Rule 115 of the Rules of Procedure and Evidence’ and to ‘Joinder of the Accused Vladimir Šantić’”;
- (ii) “Prosecution’s Consolidated Response to ‘Motion Pursuant to Rule 115 for Admission of Additional Evidence on Appeal by the Appellants, Zoran and Mirjan Kupreškić’ and to ‘Motion of the Counsel of Zoran and Mirjan Kupreškić with which they Propose the Acceptance of the New Proof, Based on the Rule 116 [sic] from the Rules and Procedure [sic]’”;

NOTING the various filings in this case, particularly the Appellants Briefs filed on 3 July 2000 in which the Appellants set out their arguments on appeal;

CONSIDERING that, to be admissible under Rule 115 of the Rules, a party must show that the material was not available to it at trial, and that its admission is required in the interests of justice;

CONSIDERING that as the First and Second Report were only recently disclosed to the Appellants by the Prosecution, pursuant to its obligation under Rule 68 of the Rules, the requirement that the material was not available at trial is satisfied;

CONSIDERING that the admission of additional evidence is in the interests of justice if it is relevant to a material issue, credible and such that it would probably show that the conviction or sentence was unsafe;¹

CONSIDERING that in the Motions the Appellants argue that the admission of the First and Second Report is in the interests of justice because they demonstrate that there were Muslim defending forces in Ahmići on 16 April 1993 and thus the factual findings of Trial Chamber II as set out in paragraph 335 of the *Prosecutor v. Kupreškić et al.* Judgement are incorrect;

CONSIDERING that as the references in the First Report to fierce fighting going on in Ahmići and army members being forced to retreat do not establish that there was any significant number of Muslim combatants in Ahmići on 16 April 1993 nor that any military establishment belonging to the BiH army was in existence, the Appellants have failed to show that, had the First Report been presented before the Trial Chamber, it probably would have come to a different result;

CONSIDERING that the Second Report refers to an HVO attack “on our forces” beginning in the sector of the villages of Ahmići and Kruscica but does not state that there was a BiH unit stationed in Ahmići, nor that the village was formally defended by the BiH army, and is thus not in contradiction of paragraph 335 of the Judgement of the Trial Chamber;

¹ See *Prosecutor v. Jelisić*, “Decision on Request to Admit Additional Evidence”, 15 November 2000, p. 3; and previous decisions in this appeal: “Decision on the Motions of Appellants Vlatko Kupreškić, Drago Josipović, Zoran Kupreškić and Mirjan Kupreškić to Admit Additional Evidence”, dated 26 February 2001, para. 17; and “Decision on the Admission of Additional Evidence following Hearing of 30 March 2001, dated 11 April 2001, para. 6 (both decisions were originally issued confidentially, however, redacted versions were issued on 30 May 2001).

FINDING that as the Appellants have failed to “probably show that the conviction or sentence” is unsafe” it is not in the interests of justice to admit the First and Second Report as additional evidence;

HEREBY DISMISSES the Motions.

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



Patricia M. Wald
Presiding Judge

Dated this 17th day of July 2001
At The Hague,
The Netherlands.

[Seal of the Tribunal]

the Admission of Additional Evidence following Hearing of 30 March 2001, dated 11 April 2001, para. 6 (both decisions were originally issued confidentially, however, redacted versions were issued on 30 May 2001).