



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: IT-01-46-PT

Date: 12 November 2001

Original: English

IN THE TRIAL CHAMBER

Before: Judge Almiro Rodrigues, Presiding
Judge Fouad Riad
Judge Patricia Wald

Registrar: Mr. Hans Holthuis

Decision of: 12 November 2001

THE PROSECUTOR

v.

RAHIM ADEMI

**DECISION ON THE DEFENCE MOTION ON
THE FORM OF THE INDICTMENT**

The Office of the Prosecutor:
Mr. Mark Ierace

Defence Counsel:
Mr. Čedo Prodanović

TRIAL CHAMBER I (“the 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 Tribunal”);

NOTING the Defence “Motion on the Form of the Indictment–Vagueness and Lack of Adequate Notice of Charges” of 24 September 2001 (hereinafter “the Motion”);

NOTING the “Prosecutor’s Response to the Defence Motion on the Form of the Indictment” filed on 8 October 2001 (hereinafter the “Prosecutor’s Response”);

PURSUANT to Article 18 and 21 of the Statute and to Rule 47 (C) of the Rules of Procedure and Evidence of the Tribunal;

CONSIDERING that the Defence objects to the form of the indictment on the ground that (i) it is too vague and unspecific, specifically considering that particular elements regarding the crime of persecution were not included in the indictment; (ii) no evidence is mentioned to support the factual allegations dealing, *inter alia*, with lack of evidentiary facts in the Indictment (such as the lack of any written or oral incriminating command (para. 11), evidence of the accused’ participation in the planning and preparation of the alleged attacks (para. 13) and others; (iii) both the *locus* and *tempus delicti* are missing;

CONSIDERING that the Prosecution maintains that, in respect to the first of the Defence’ arguments, the charge of persecution in the indictment is sufficiently determined; that, regarding the second submission of the Defence, an indictment must specify the material facts underlying a charge, but not the evidence; that, regarding the last submission of the Defence, a schedule with the names, age and place of origin of several victims was annexed;

CONSIDERING that, regarding the first submission of the Defence, both the Defence and Prosecution base their submissions on the *Kupreškić* Trial Judgement.¹ In particular, the Defence, citing paragraphs 626 and 627, submits that in the *Kupreškić* judgement it was stated that “the prosecution cannot merely rely on a general charge of persecution in bringing its case...”;

CONSIDERING that, on the other hand, the Prosecutor underlines that paragraph 17 of the present Indictment, issued against Mr. Ademi, is structured similarly to paragraph 21 of the *Kupreškić* Amended Indictment and maintains that the Trial Chamber in the *Kupreškić* case considered it sufficiently detailed;

CONSIDERING that the Appeals Chamber in the *Kupreškić* case (hereinafter the “*Kupreškić* Appeal Judgement”) rendered its judgement on 23 October 2001 dealing with, *inter alia*, the form of the indictment, deciding that:

“By framing the charges ... in such a general way, the amended indictment fails to fulfil the fundamental purpose of providing the accused with a description of the charges ... with sufficient particularity to enable him to mount his Defence... the prosecution should have articulated, to the best of its ability, the specific acts of the defendants...”²

CONSIDERING that, moreover, the Appeals Chamber stated:

“Pursuant to elementary principles of criminal pleading, it is not sufficient for an indictment to charge a crime in generic terms. An indictment must delve into particulars... What the Prosecution must do, as with any other offence under the Statute, is to particularise the material facts of the alleged criminal conduct of the accused that, in its view, goes to the accused’s role in the alleged crime.”³

CONSIDERING that the Appeals Chamber required further material facts as to the role of the accused and their individual responsibility for having “participated in or aided and abetted the crime of persecution”;⁴

CONSIDERING that, in the present case, Mr. Ademi is charged as a superior for the crimes listed in the Indictment;

CONSIDERING that, in this specific case, the Prosecutor failed to specify whether each of the specific crimes related to counts 2 & 3 (murder), 4 (plunder of property) and 5 (wanton destruction of cities, towns or villages) are meant to constitute the underlying acts in the general crime of persecution;

¹ The Prosecutor v *Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Vladimir Šantić*, Case No. IT-95-16, Trial Judgement, 14 January 2000.

² The Prosecutor v *Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Vladimir Šantić*, Case No. IT-95-16-A, Appeal Judgement, (hereinafter *Kupreškić* Appeal Judgement), 23 October 2001, at para. 95.

³ *Kupreškić* Appeal Judgement, at para. 98.

⁴ *Kupreškić* Amended Indictment, at para. 21.

CONSIDERING, moreover, that this Trial Chamber notes that subparagraphs 17 (b) and 17 (c) of the Indictment, (which refer to acts of cruel and inhumane treatment of Serb civilians from the Medak Pocket, including causing serious injuries, and acts of terrorising the predominantly Serb civilian population of the Medak Pocket, including forcing the civilian population to abandon their homes and leave the area permanently) are not connected to any specific underlying crime charged in the indictment;

CONSIDERING that the Trial Chamber wishes to underscore that a distinction must be drawn between material facts upon which the Prosecution relies and the evidence by which those material facts will be proven,⁵ that material facts supporting each charge must be pleaded, but not the evidence by which such material facts are to be proven;⁶

CONSIDERING that the Defence further submits that it is not clear which crimes provoked the death of civilians nor the identities of the deceased;

CONSIDERING that the Prosecution replies that a Schedule, which is attached to the indictment, sets out some relevant data regarding the identification of the victims as well as the area where the killings occurred; that the Schedule identifies the generalities and place of “origin” of 21 deceased civilians and 2 soldiers;

CONSIDERING however that (i) the Prosecution mentions at paragraph 34 of the Indictment that “at least 38 local Serb civilian were unlawfully killed...” and (ii) the place where the crimes were perpetrated is not mentioned;

CONSIDERING that paragraphs 34-38 of the Indictment provide information about the various crimes committed by Croatian forces in the Medak Pocket between 9 and 17 September 1993;

CONSIDERING, however, that it is not clear under which count those acts are pleaded;

CONSIDERING, moreover, that the Schedule provides information in relation to killings only;

⁵ *Brdanin & Talić* Decision, hereinafter *Talić Decision*, (26 June 2001). *Brdanin & Talić* decision (20 February 2001); second *Krnjelac* decision, (11 February 2000); *Krajisnik* Decision, (1 August 2000); *Došen* Decision (10 Feb. 2000); *Kvočka* Decision (12 April 1999); *Krnjelac* Decision (24 February 1999).

⁶ *Kupreškić* Appeal Judgement, 23 October 2001, at para.88; the Prosecutor v *Furundžija*, Appeal Judgement, Case No. IT-95-17/1-A, 21 July 2000, at para.147; see also *Brdanin & Talić* Decision, 20 February 2001, at para.18; *Krnjelac* Decision, 11 February 2000, at paras 17-18; *Krnjelac* Decision, 24 February 1999, at paras 7-12.

FOR THE FOREGOING REASONS THE TRIAL CHAMBER:

PARTIALLY GRANTS the Motion of the Defence;

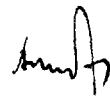
and therefore

ORDERS the Prosecution, within fourteen days of the present decision, to file:

- 1) a list of all material facts it intends to plead under the crime of persecution and
- 2) to supplement the Schedule with the name of the 15 victims not yet listed as well as with the place and date of the incidents involving each and all of the victims;
- 3) to file additional schedules in relation to the other criminal acts referred to in the Indictment.

DECIDES that the Defence shall have fourteen days within the Prosecution's filing, to submit any preliminary motion.

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



Almiro Rodrigues
Presiding Judge

Dated this Twelfth Day of November 2001
At The Hague
The Netherlands