

**Declassified to Public  
06 September 2012**

Case No. 001/18-07-2008/ECCC/OCIJ

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**ANNEX A**

**AUTHORITY 42**

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**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-95-16-T  
Date: 14 January 2000  
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

**Judgement of:** 14 January 2000

**PROSECUTOR**

v.

Zoran KUPRE[KI],  
Mirjan KUPRE[KI],  
Vlatko KUPRE[KI],  
Drago JOSIPOVI],  
Dragan PAPI],  
Vladimir [ANTI], also known as "VLADO"

**JUDGEMENT**

**The Office of the Prosecutor:**

Mr. Franck Terrier  
Mr. Michael Blaxill

**Counsel for the Accused:**

Mr. Ranko Radovi}, Mr. Tomislav Pasari}, for Zoran Kupre{ki}  
Ms. Jadranka Stokovi}-Gluma}, Ms. Desanka Vranjican, for Mirjan Kupre{ki}  
Mr. Borislav Krajina, Mr. Želimar Par, for Vlatko Kupre{ki}  
Mr. Luko [u{ak, Ms. Goranka Herljevic, for Drago Josipovi}  
Mr. Petar Puli{eli}, Ms. Nika Pinter, for Dragan Papi}  
Mr. Petar Pavkovi}, Mr. Mirko Vrdoljak, for Vladimir Šanti}

### 3. 'Directed Against a Civilian Population'

547. It would seem that a wide definition of "civilian" and "population" is intended. This is warranted first of all by the object and purpose of the general principles and rules of humanitarian law, in particular by the rules prohibiting crimes against humanity. The latter are intended to safeguard basic human values by banning atrocities directed against human dignity. One fails to see why only civilians and not also combatants should be protected by these rules (in particular by the rule prohibiting persecution), given that these rules may be held to possess a broader humanitarian scope and purpose than those prohibiting war crimes. However, faced with the explicit limitation laid down in Article 5, the Trial Chamber holds that a broad interpretation should nevertheless be placed on the word "civilians", the more so because the limitation in Article 5 constitutes a departure from customary international law.

548. The above proposition is borne out by the case law. Of particular relevance to the present case is the finding in *Barbie*<sup>805</sup> (admittedly based on general international law) that "inhumane acts and persecution committed in a systematic manner, in the name of a State practising a policy of ideological supremacy, not only against persons by reason of their membership of a racial or religious community but also against the opponents of that policy, whatever the form of their "opposition" could be considered a crime against humanity.<sup>806</sup> In the *Vukovar* Rule 61 Decision of 3 April 1996, a Trial Chamber held that crimes against humanity may be committed even where the victims at one time bore arms.<sup>807</sup>

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<sup>805</sup> The *Barbie* case, French Court of Cassation (Criminal Chamber), 20 Dec. 1985, 78 ILR 125.

<sup>806</sup> *Ibid.*, at 137.

<sup>807</sup> On this point, the Trial Chamber held that "[a]lthough according to the terms of Article 5 of the Statute of this Tribunal [...] combatants in the traditional sense of the term cannot be victims of a crime against humanity, this does not apply to individuals who, at one particular point in time, carried out acts of resistance. As the Commission of Experts, established pursuant to Security Council Resolution 780, noted, "it seems obvious that Article 5 applies first and foremost to civilians, meaning people who are not combatants. This, however, should not lead to any quick conclusions concerning people who at one particular point in time did bear arms. ... Information of the overall circumstances is relevant for the interpretation of the provision in a spirit consistent with its purpose". (*Prosecutor v. Mrksi} et al*, Review of Indictment Pursuant to Rule 61, 3 Apr. 1996, para. 29, citing *Report of the Commission of Experts established pursuant to Security Council Resolution 780*, Doc. S/1994/674, para. 78.)

549. Thus the presence of those actively involved in the conflict should not prevent the characterization of a population as civilian and those actively involved in a resistance movement can qualify as victims of crimes against humanity.

#### 4. Can Crimes Against Humanity Comprise Isolated Acts?

550. In general terms, the very nature of the criminal acts over which the International Tribunal has jurisdiction under Article 5, in view of the fact that they must be 'directed against any civilian population,' ensures that what is to be alleged will not be one particular act but, instead, a course of conduct.<sup>808</sup> Nevertheless, in certain circumstances, a single act has comprised a crime against humanity when it occurred within the necessary context.<sup>809</sup> For example, the act of denouncing a Jewish neighbour to the Nazi authorities - if committed against a background of widespread persecution - has been regarded as amounting to a crime against humanity.<sup>810</sup> An *isolated* act, however - i.e. an atrocity which did not occur within such a context - cannot.

#### 5. The Policy Element

551. With regard to the "form of governmental, organisational or group policy" which is to direct the acts in question, the Trial Chamber has noted that although the concept of crimes against humanity necessarily implies a policy element, there is some doubt as to whether it is strictly a *requirement*, as such, for crimes against humanity. In any case, it

<sup>808</sup> *Tadic*, Decision on Defence Motion on the Form of the Indictment, 14 Nov. 1995, at para. 11.

<sup>809</sup> On this point, the Trial Chamber in *Tadic* has held that "clearly, a single act by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility and an individual perpetrator need not commit numerous offences to be held liable. Although it is correct that isolated, random acts should not be included in the definition of crimes against humanity, that is the purpose of requiring that the acts be directed against a civilian *population* and thus "even an isolated act can constitute a crime against humanity if it is the product of a political system based on terror or persecution" (*Tadic*, Trial Chamber Judgement, 7 May 1997, para. 649, footnotes omitted).

<sup>810</sup> See e.g. the judgements of the Supreme Court for the British zone in: *Entscheidungen des Obersten Gerichtshofes für die Britische Zone in Strafsachen*, Vol. I, pp. 6 *et seq.*; 19 *et seq.*; 39 *et seq.*; 45 *et seq.*; 49 *et seq.*; 56 *et seq.*

murder and cruel treatment are concerned, protects the same interests as Article 5(a) and (i). However, while murder as a crime against humanity requires proof of elements that murder as a war crime does not require (the offence must be part of a systematic or widespread attack on the civilian population), this is not reciprocated. As a result, the two offences are not in a relationship of reciprocal speciality. The prohibition of murder as a crime against humanity is *lex specialis* in relation to the prohibition of murder as a war crime and must therefore prevail.

824. For reasons of law, the Trial Chamber therefore finds the accused **not guilty** with regard to **counts 17 and 19**.

6. Vladimir [anti]

825. The accused, together with Drago Josipovi}, was charged under count 1 with persecution as a crime against humanity pursuant to Article 5(h) of the Statute

826. Vladimir Šanti} in April 1993 was the commander of the 1<sup>st</sup> Company of the 4<sup>th</sup> Battalion of the Military Police. He was also Commander of the Jokers.

827. As was described with respect to the accused Drago Josipovi}, Vladimir [anti}, together with the latter, participated in the murder of Musafer Pu{cul and the burning of his house. In addition, from his position as a company commander of the Military Police and commander of the Jokers, it can be safely inferred that he passed on the orders of his superiors to his men, and his presence on the scene of the attack also served as an added encouragement for his subordinates to abide by the orders they had received.

828. The Trial Chamber refers to the facts and the law explained above with respect to the accused Drago Josipovi}. They apply *mutatis mutandis* to the accused Vladimir [anti}.

829. The Trial Chamber accordingly finds the accused **guilty** of persecution as a crime against humanity pursuant to Article 5(h) of the Statute under **count 1**.

**D. The Sentence to be Imposed for a Multiple Conviction**

864. Drago Josipovi} and Vladimir [anti} have been convicted on more than one count.

865. The Trial Chamber has dealt with the problems relating to multiple convictions above. Here it will suffice to say the following: Article 48 of the SFRY Criminal Code, on the one hand, provides for the imposition of a single or composite sentence where an accused has been convicted for more than one criminal act based on the commission of one deed or several deeds. It also provides that a court shall first assess the sentence for each of the criminal acts before determining the composite sentence.

866. Where an accused has been convicted on more than one count based on the commission of one or several deeds, the practice of the International Tribunal, on the other hand, has been to impose sentences on each count to be served concurrently.<sup>997</sup>

867. In practice, there is no real difference in effect between the imposition of concurrent sentences for multiple sentences and one composite sentence for multiple offences. In the unlikely event of there being uncertainty about the length of the concurrent or consecutive sentences to be served, the State of imprisonment could approach the International Tribunal for clarification. Similarly, if a convicted person is eligible for pardon or commutation of sentences according to the law of the State of imprisonment, the State must inform the President of the Tribunal, who will determine whether pardon or commutation is appropriate. Further, in the event of a successful appeal on any count, there would be no problems with the sentences.

868. The Trial Chamber will thus follow the sentencing practice of the International Tribunal.

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<sup>997</sup> *Delali} et al.*, Judgement, 16 Nov. 1998, para. 1286; *Tadi}*, Sentencing Judgement, 14 July 1997, para. 75; *Prosecutor v. Tadi}*, (IT-94-1-Tbis-R117), Sentencing Judgement, Trial Chamber, 11 Nov. 1999, (hereafter *Tadi}*), Sentencing Judgement II, 11 Nov. 1999), p. 17; *Furundžija*, Judgement, 10 Dec. 1998, paras. 292-296 and p. 112 (Disposition).

The transfer of Zoran Kupre{ki}, Mirjan Kupre{ki}, Vlatko Kupre{ki}, Drago Josipovi} and Vladimir [anti] shall be effected as soon as possible after the time-limit for appeal has elapsed. In the event that notice of appeal is given, the transfer of the accused Zoran Kupre{ki}, Mirjan Kupre{ki}, Vlatko Kupre{ki}, Drago Josipovi} and Vladimir [anti], if compelled by the outcome of such an appeal, shall be effected as soon as possible after the determination of the final appeal by the Appeals Chamber. Until such time as their transfer is effected, Zoran Kupre{ki}, Mirjan Kupre{ki}, Vlatko Kupre{ki}, Drago Josipovi} and Vladimir [anti] shall remain in the custody of the International Tribunal, in accordance with Rule 102.

**E. Immediate Release of Dragan Papi}**

Pursuant to Rule 99(A), the Trial Chambers orders the immediate release of Dragan Papi} from the United Nations Detention Unit. This order is without prejudice to any such further order as may be made by the Trial Chamber pursuant to Rule 99(B).

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

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Antonio Cassese

Presiding

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Richard May

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Florence Ndepele Mwachande Mumba

Dated this fourteenth day of January 2000,  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**