

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

“LAŠVA VALLEY” (IT-95-16)

KUPREŠKIĆ***et al.****The Prosecutor v. Drago Josipović, Vladimir Šantić, Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić & Dragan Papić***DRAGO JOSIPOVIĆ***Convicted of persecutions on political, racial or religious grounds, murder and inhumane acts*

During April 1993, a member of the Bosnian Croat forces (HVO) in Šantići, a village lying in the Lašva Valley, in central Bosnia and Herzegovina

- Sentenced to 12 years' imprisonment

*Crimes convicted of (examples):***Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity)**

- Drago Josipović was actively involved in a military attack on civilians in the village of Ahmići during which over 100 civilians were killed and 169 Muslim homes were destroyed.
- He participated in the murder of one man who was killed in front of his family. He was also involved in expelling the family from the house and setting it on fire.

DRAGO JOSIPOVIĆ

Born	14 February 1955 in Šantići, Bosnia and Herzegovina
Indictment	Initial: 10 November 1995, made public on 26 June 1996; amended: 9 February 1998
Surrendered	6 October 1997
Transferred to ICTY	6 October 1997
Initial appearance	8 October 1997, pleaded not guilty to all charges
Trial Chamber judgement	14 January 2000, sentenced to 15 years' imprisonment
Appeals Chamber judgement	23 October 2001, sentence reduced to 12 years' imprisonment
Sentence served	9 April 2002, transferred to Spain to serve the remainder of his sentence; credit was given for time served since 6 October 1997; early release granted on 30 January 2006

VLADIMIR ŠANTIĆ*Convicted of persecutions on political, racial or religious grounds, murder and inhumane acts*

In April 1993, the local commander of the military police and of the "Jokers", a unit of the HVO, in central Bosnia and Herzegovina

- Sentenced to 18 years' imprisonment

*Crimes convicted of (examples):***Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity)**

- Vladimir Šantić was actively involved in a military attack on civilians in the village of Ahmići during which over 100 civilians were killed and 169 Muslim homes were destroyed. His presence at the scene of the attack, as a local commander of the "Jokers" and the military police, served as an encouragement for his subordinates to commit crimes.
- He played an active role in the burning of one particular house and the murder of a male occupant.

VLADIMIR ŠANTIĆ	
Born	1 April 1958 in Donja Veceriška, Bosnia and Herzegovina
Indictment	Initial: 10 November 1995, made public on 26 June 1996; amended: 9 February 1998
Surrendered	6 October 1997
Transferred to ICTY	6 October 1997
Initial appearance	8 October 1997, pleaded not guilty to all charges
Trial Chamber judgement	14 January 2000, sentenced to 25 years' imprisonment
Appeals Chamber judgement	23 October 2001, sentence reduced 18 years' imprisonment
Sentence served	12 April 2002, transferred to Spain to serve the remainder of his sentence; credit given for time served since 6 October 1997; early release granted on 9 February 2009

ZORAN KUPREŠKIĆ*Found not guilty*

Member of the HVO in central Bosnia and Herzegovina

- Found not guilty

Born	23 September 1958 in Pirići, Bosnia and Herzegovina
Indictment	Initial: 10 November 1995, made public on 26 June 1996; amended: 9 February 1998
Surrendered	6 October 1997
Transferred to ICTY	6 October 1997
Initial appearance	8 October 1997, pleaded not guilty to all charges
Trial Chamber judgement	14 January 2000, sentenced to 10 years' imprisonment
Appeals Chamber judgement	23 October 2001, found not guilty and immediately released

MIRJAN KUPREŠKIĆ*Found not guilty*

Member of the HVO in central Bosnia and Herzegovina

- Found not guilty

Born	21 October 1963 in Vitez, Bosnia and Herzegovina
Indictment	Initial: 10 November 1995, made public on 26 June 1996; amended: 9 February 1998
Surrendered	6 October 1997

Transferred to ICTY	6 October 1997
Initial appearance	8 October 1997, pleaded not guilty to all charges
Trial Chamber judgement	14 January 2000, sentenced to 8 years' imprisonment
Appeals Chamber judgement	23 October 2001, found not guilty and immediately released

VLATKO KUPREŠKIĆ*Found not guilty*

Member of the HVO in central Bosnia and Herzegovina

- Found not guilty

Born	1 January 1958 in Pirići, Bosnia and Herzegovina
Indictment	Initial: 10 November 1995, made public on 26 June 1996; amended: 9 February 1998
Arrested	18 December 1997
Transferred to ICTY	18 December 1997
Initial appearance	16 January 1998, pleaded not guilty to all charges
Trial Chamber judgement	14 January 2000, sentenced to 6 years' imprisonment
Appeals Chamber judgement	23 October 2001, found not guilty and immediately released

DRAGAN PAPIĆ*Found not guilty*

Member of the HVO in central Bosnia and Herzegovina

- Found not guilty

Born	15 July 1957 in Šantići, Bosnia and Herzegovina
Indictment	Initial: 10 November 1995, made public on 26 June 1996; amended: 9 February 1998
Surrendered	6 October 1997
Transferred to ICTY	6 October 1997
Initial appearance	8 October 1997, pleaded not guilty to all charges
Trial Chamber judgement	14 January 2000, found not guilty and immediately released

STATISTICS

Trial days	111
Witnesses called by Prosecution	60
Witnesses called by Defence	96
Witnesses called by Chambers	1
Prosecution exhibits	394
Defence exhibits	Total: 308 Vladimir Šantić: 20 Vlatko Kuprešić: 68 Zoran Kuprešić: 31 Mirjan Kuprešić: 116 Drago Josipović: 18 Dragan Papić: 30
Chambers exhibits	15

TRIAL	
Commenced	17 August 1998
Closing arguments	8-10 November 1999
Trial Chamber II	Judge Antonio Cassese (presiding), Judge Richard May, Judge Florence Ndepele Mwachande Mumba
Counsel for the Prosecution	Franck Terrier, Michael Blaxhill
Counsel for the Defence	For Zoran Kupreškić: Ranko Radović and Tomislav Pasarić For Mirjan Kupreškić: Jadranka Sloković-Glumac and Desanka Vranjican For Vlatko Kupreškić: Borislav Krajina and Želimir Par For Drago Josipović: Luka Šušak and Goranka Herljević For Dragan Papić: Petar Pulišelić and Nika Pinter For Vladimir Šantić: Petar Pavković and Mirko Vrdoljak
Judgement	14 January 2000

APPEALS	
Appeals Chamber	Judge Patricia Wald (presiding), Judge Lal Chand Vohrah, Judge Rafael Nieto Navia, Judge Fausto Pocar, Judge Liu Daqun
Counsel for the Prosecution	Upawansa Yapa, Anthony Carmona, Fabricio Guariglia, Sonja Boelaert-Suominen, Norul Rashid
Counsel for the Defence	For Zoran Kupreškić: Ranko Radović and Tomislav Pasarić For Mirjan Kupreškić: Jadranka Sloković-Glumac and Desanka Vranjican For Vlatko Kupreškić: Anthony Abell and John Livingstone For Drago Josipović: William Clegg and Valérie Charbit For Vladimir Šantić: Petar Pavković
Judgement	23 October 2001

RELATED CASES <i>by geographical area</i>	
ALEKSOVSKI (IT-95-14/1) "LAŠVA VALLEY"	
BLAŠKIĆ (IT-95-14) "LAŠVA VALLEY"	
BRALO (IT-95-17) "LAŠVA VALLEY"	
DELIĆ, RASIM (IT-04-83)	
FURUNDŽIJA (IT-95-17/1) "LAŠVA VALLEY"	
KORDIĆ & ČERKEZ (IT-95-14/2) "LAŠVA VALLEY"	
LJUBIČIĆ (IT-00-41) "LAŠVA VALLEY"	
MARINIĆ (IT-95-15) "LAŠVA VALLEY"	

INDICTMENT AND CHARGES

Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Vladimir Šantić and Dragan Papić were originally named in an indictment together with Stipo Alilović and Marinko Katava, confirmed on 10 November 1995 and made public on 26 June 1996. The accused, with the exception of Vlatko Kupreškić, surrendered on 6 October 1997. On 8 October 1997, they appeared before Trial Chamber I and pleaded not guilty to the charges against them. Vlatko Kupreškić was arrested on 18 December 1997 and had his initial appearance before Trial Chamber II on 16 January 1998; he pleaded not guilty to all charges.

The Prosecution filed a motion for the withdrawal of the indictment against Marinko Katava. The motion was granted on 19 December 1997 by Trial Chamber II on the grounds that there was insufficient evidence against the accused to justify proceeding with his prosecution. As a result of the death of Stipo Alilović, the Chamber granted leave to the Prosecution, on 23 December 1997, to withdraw the indictment against the accused.

On 9 February 1998, an amended indictment was filed. The amended indictment replaced the previous charges under grave breaches of the Geneva conventions with charges under crimes against humanity (persecutions, murder and other inhumane acts) and changed the charges under violations of the laws or customs of war by referring to murder and cruel treatment.

The operative indictment charged the accused as follows:

Zoran Kupreškić, on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal), with:

- Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity, Article 5),
- Inhumane acts, cruel treatment (violations of the laws or customs of war, Article 3).

Mirjan Kupreškić, on the basis of individual criminal responsibility with:

- Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity, Article 5),
- Cruel treatment (violations of the laws or customs of war, Article 3).

Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić on the basis of individual criminal responsibility with:

- Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity, Article 5),
- Murder; cruel treatment (violations of the laws or customs of war, Article 3).

THE TRIAL

The *Kupreškić et al.* trial commenced on 17 August 1998 before Trial Chamber II (Judge Antonio Cassese (presiding), Judge Richard May, Judge Florence Mumba). The closing arguments were heard between 8 and 10 November 1999.

TRIAL CHAMBER JUDGEMENT

The Trial Chamber rendered its judgement on 14 January 2000.

Around dawn on the morning of 16 April 1993, Bosnian Croat forces engaged in a surprise attack on the Bosnian Muslim inhabitants of Ahmići, a small village located in central Bosnia and Herzegovina. The Trial Chamber found that this was not a lawful combat operation, but rather a deliberate attack on civilian Muslims by the Croatian defence council (HVO) as part of a campaign to cleanse the village of Ahmići of its Bosnian Muslim inhabitants which, in turn, was part of a broader strategy to expel Bosnian Muslims from the Lašva River Valley region. Specifically, the Trial Chamber found that over 100 civilians were killed in Ahmići and that 169 Muslim homes were destroyed along with the two mosques in the village. The burning of the Muslim houses and the killing of the livestock were clearly intended to deprive the people of their most precious assets.

The attack was planned and carried out by HVO forces and the special unit of the Croatian military police called the "Jokers". The Croatian inhabitants of Ahmići, or at least those of them who belonged to the HVO or were in contact with Croatian armed forces, knew that in the early morning of 16 April 1993, Croatian forces would initiate a massive military attack. The Chamber found that it was plausible to maintain that they acquired the conviction that an attack would be carried out at least on the occasion of the meeting that was held around 2.30am on 16 April 1993 in a local house. The Chamber regarded the evidence led by the Prosecution as credible to the effect that by 15 April 1993 many signs already indicated that a military operation was about to occur and that many Croats were aware of this. The Chamber accepted that there were no Muslim military forces in Ahmići, nor any military establishment belonging to the Army of Bosnia and Herzegovina (ABiH). When the Croatian forces initiated the attack, not more than 10-15 Muslims in the upper part of Ahmići and not more than 10-15 Muslims in the lower part of the village responded by the use of arms. Given the patent disparity in number and in military equipment between the combatants, the Chamber concluded that the Muslim response was clearly directed only toward the protection of a few houses where some survivors of the initial attack had taken shelter and possibly the Muslim combatants also hoped to limit the massacre of civilians as much as possible.

Zoran Kupreškić, his brother Mirjan Kupreškić, their cousin Vlatko Kupreškić and Dragan Papić, were all HVO soldiers in the Ahmići area. Vladimir Šantić was a military police commander and commander of the "Jokers" and lived in the town of Vitez, and Drago Josipović was a HVO soldier in the nearby village of Šantići.

The Trial Chamber found that Zoran and Mirjan Kupreškić participated in the attack on Ahmići on 16 April 1993. The Chamber concluded that they were both actively involved in the attack. The Chamber found that Zoran and Mirjan Kupreškić attacked their Muslim neighbours solely because of their ethnicity and with the aim of cleansing the village of any Muslim inhabitants. They were found guilty as co-perpetrators, with individual criminal responsibility, of adhering to a common plan for the execution of the cleansing campaign in the village. The Chamber found that this, by necessity, was a highly coordinated effort and required full prior knowledge on Zoran and Mirjan Kupreškić's part of the intended activities. In addition, the Chamber found that Zoran Kupreškić played a leading role as a local commander.

In regards to Vlatko Kupreškić, the Trial Chamber found that he was involved in the preparations for the attack on Ahmići in his role as police operations officer and as a resident of the village. The Chamber found him to be present during the attack and ready to lend assistance to the attacking forces. He did so principally by unloading weapons in his store and agreeing to the use of his home as a strategic point and staging area for the attacking troops. The Chamber found that his role was not quite as prominent as that of the other accused and that he merely supported the actions of the others; a conduct which amounted to aiding and abetting and not to co-perpetration. He was nevertheless aware that his actions would substantially assist the attackers in their activities and the Chamber found that he also knew that the attack would not be a battle between soldiers, but that the Muslim civilians of his own village would be targeted.

The Trial Chamber found that Drago Josipović participated in the killing of one man, that he took part in the attack on the house of another man and that he was actively involved in the burning of private property. The Chamber found that he, together with Vladimir Šantić, was part of a group that went to a local house with the common intent to kill and/or expel its inhabitants and set it on fire and that he was present at the scene of the crime. The Chamber stated that he was aware that he would be attacking unarmed and helpless civilians and that this attack was part of the beginning of a large-scale campaign of ethnic cleansing of Muslims from Lašva Valley.

The Chamber found that in April 1993, Vladimir Šantić was the commander of the first company of the fourth battalion of the military police and also the commander of the "Jokers". Due to his position as a company commander of the military police and the "Jokers", the Chamber inferred that he passed on the orders of his superiors to his men. His presence at the scene of the attack served as an encouragement for his subordinates.

In regard to Dragan Papić, the Chamber found that he was mobilised in the HVO during some part of the period relevant to the indictment, but that his precise role was not clear. The Chamber concluded that none of the Prosecution evidence was sufficient to establish that he was an active participant in the attack on Ahmići or in any of the events preceding the attack. Thus, the Chamber found that there was reasonable doubt as to whether he participated in the attack and found him not guilty.

Thus, the remaining five defendants were all convicted of persecutions as crimes against humanity. Zoran, Mirjan and Vlatko Kupreškić were acquitted of the remaining counts against them alleging murder, cruel treatment or inhumane acts as crimes against humanity or violations of the laws or customs of war. They were sentenced to 10, eight and six years' of imprisonment respectively. In addition to persecutions, Drago Josipović and Vladimir Šantić were each found guilty on one count of murder and one count of inhumane acts both as crimes against humanity, but acquitted on one count of murder and one count of cruel treatment as violations of the laws or customs of war. They were sentenced to a total of 15 and 25 years' of imprisonment respectively.

On 14 January 2000, the Trial Chamber rendered its judgement, convicting the accused as follows:

Zoran Kupreškić, on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- Persecutions on political, racial or religious grounds (crimes against humanity, Article 5).

Sentence: 10 years' imprisonment.

Mirjan Kupreškić, on the basis of individual criminal responsibility with:

- Persecutions on political, racial or religious grounds (crimes against humanity, Article 5).

Sentence: eight years' imprisonment.

Vlatko Kupreškić, on the basis of individual criminal responsibility with:

- Persecutions on political, racial or religious grounds (crimes against humanity, Article 5).

Sentence: six years' imprisonment.

Drago Josipović, on the basis of individual criminal responsibility with:

- Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity, Article 5).

Sentence: 15 years' imprisonment.

Vladimir Šantić, on the basis of individual criminal responsibility with:

- Persecutions on political, racial or religious grounds; murder; inhumane acts (crimes against humanity,

Article 5).

Sentence: 25 years' imprisonment.

APPEALS CHAMBER JUDGEMENT

Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić filed their respective notices of appeal against the judgement and sentence in the period from 24 to 28 January 2000. The Prosecution filed its notice of appeal on 31 January 2000 against the Trial Chamber's findings regarding Vladimir Šantić and Drago Josipović, specifically the Chamber's ruling not to convict them for violations of the laws or customs of war, based on cumulative conviction considerations. The appeals hearing took place from 23 to 25 July 2001.

Charges against Zoran and Mirjan Kupreškić

Throughout the trial, the cases of the brothers Zoran and Mirjan Kupreškić were closely linked as they were based upon similar allegations of participation in the Ahmići events and their appeals raised many joint issues. In their appeal, the brothers argued that the Trial Chamber erred in convicting them of persecutions based on material facts that were not contained in the amended indictment. In particular, the Trial Chamber accepted the evidence of a witness H that the brothers were present in the house of Suhret Ahmić shortly after he and Meho Hrstanović were killed and shortly before the surviving occupants of the house were expelled and the house set on fire. The amended indictment did not contain any information as to the alleged participation of the brothers in these events on 16 April 1993.

The attack on the house of Suhret Ahmić was a material fact in the Prosecution case against the brothers: at trial it was one of only two incidents as to which the Prosecution alleged their participation on that day. The Trial Chamber, however, rejected their participation in the other attack. Their involvement in the attack on the house of Suhret Ahmić thus became the nucleus of their persecution conviction. In the Appeal Chamber's opinion, the omission of any reference to the Suhret Ahmić attack in the amended indictment had to constitute a material defect. The Appeals Chamber noted that the Prosecution expressly chose not to further amend the indictment to include the attack on Suhret Ahmić's house in the interests of expediency. However, the Appeals Chamber noted that the goal of expediency should not be allowed to over-ride the rights of the accused to a fair trial.

The Appeals Chamber concluded that the trial of the brothers was rendered unfair as a result of the defects in the amended indictment. In particular, the Appeals Chamber was not persuaded by the Prosecution's arguments that any defect was remedied by providing the brothers with adequate notice of the allegations concerning the house of Suhret Ahmić prior to trial. The Appeals Chamber found the pre-trial brief to be extremely general and noted that it made no reference to particular attacks or murders implicating the brothers. Even during its opening address at trial, the Appeals Chamber commented that the Prosecution made no reference to the attack on the house of Suhret Ahmić. In addition, the Defence consistently objected to the form of the amended indictment throughout the trial proceedings.

The Appeals Chamber, having upheld the objections of the brothers based on the vagueness of the amended indictment, confronted the question whether the appropriate remedy would be to remand the matter for retrial. The Appeals Chamber was reluctant to allow a defect in the form of the indictment to finally determine the outcome of a case in which there was strong evidence pointing towards the guilt of the accused. However, the Appeals Chamber found that the brothers raised a number of objections to the factual findings of the Trial Chamber, which fatally undermined the evidentiary basis for their convictions. Foremost among these objections, was that witness H, who was 13 years old at the time of the Ahmići attack and 18 years old at the time she gave evidence before the Trial Chamber, was not a sufficiently reliable witness from which to conclude that they participated in the attack on the house of Suhret Ahmić. The Appeals Chamber found that the Trial Chamber's decision to accept the evidence of witness H was very heavily influenced by her confident demeanour in court and her personal certainty that she was correct in her identification of the brothers. There was no other evidence deemed credible by the Trial Chamber, to directly corroborate witness H's observations.

The Appeals Chamber concluded that the Trial Chamber's assessment of witness H's evidence was critically flawed. This witness purported to identify the defendants under extremely difficult circumstances. The attackers descended upon her house in the early morning hours while she and her family were sleeping. Her father was killed as she and the other occupants of the house hid in the basement. The attackers had masked their faces with paint in order to camouflage themselves. In such

circumstances, the Appeals Chamber found that it was clearly incumbent upon the Trial Chamber to proceed with extreme caution prior to accepting witness H's identification evidence as the basis upon which to conclude that the defendants were involved in the attack on the house of Suhret Ahmić.

Although witness H was a confident and impressive in-court witness, the Appeals Chamber emphasised that a Trial Chamber must take into account the fact that, when it comes to identification evidence, the degree of certainty expressed by a witness is not necessarily an indicator of its reliability. Rather, a Trial Chamber must thoroughly and carefully consider the evidentiary record as a whole prior to reaching a conclusion about the credibility of the witness. The Appeals Chamber found that such caution was not sufficiently reflected in the treatment accorded to the evidence of witness H.

The Appeals Chamber found that most significantly, the Trial Chamber failed to direct itself at all to another material piece of evidence, namely the statements made by witness SA, a close relative of witness H, who was also present during the attack on the house of Suhret Ahmić. Throughout the trial, the brothers were insistent that witness SA be called to testify. She was, they said, the only other eyewitness who could shed light upon the events in the Ahmić house and she had made prior statements that cast doubt upon important aspects of witness H's in-court testimony. At first, the Trial Chamber named witness SA a court witness. However, the Chamber subsequently retracted that decision upon being informed by the Tribunal's Victims and Witnesses Section that witness SA could not attend for health reasons. The Appeals Chamber concluded that the Trial Chamber should not have retracted that decision, to the detriment of the Defence, in the absence of certification from a qualified health professional demonstrating that the witness was medically unfit to attend.

In an attempt to compensate for witness SA's non-appearance before the Tribunal, the Trial Chamber agreed to admit six of her prior written statements. The judgement revealed, however, that it subsequently reviewed these six statements only in the narrow context of whether they provided support for witness H's evidence. The Trial Chamber failed to take the critical step of considering whether the statements made by witness SA cast doubt upon the identification evidence of witness H. The Appeals Chamber found that they did. Among other things, these statements raised the distinct possibility that witness H's identification of Zoran Kupreškić and, particularly, Mirjan Kupreškić as participants in the attack on her house, gradually developed in the months following the April 1993 atrocity. The trial record revealed that, immediately following the April 1993 attack, there was extensive speculation amongst the Bosnian Muslim members of Ahmići and, in particular, witness H's family, about the involvement of their Croat neighbours in the attack. The Trial Chamber should have evaluated the possibility that witness H may have been influenced in her belated identification by this speculation within her family circle.

The Trial Chamber also failed to direct itself to material discrepancies between witness H's in-court testimony and the prior statement that witness H herself made which, among other things, cast doubt upon her claim of an adequate opportunity to identify the brothers during the early morning attack. Additionally, witness SA's statements provide no support for witness H's claim that she had such an opportunity. The Appeals Chamber found that the Trial Chamber omitted to make any specific factual findings about these and other crucial matters affecting witness H's credibility, such as her outright denial that she had made a prior inconsistent statement to an investigating judge in Zenica and her mistaken claim that she recognised Zoran Kupreškić as an employee of a shop she frequented. The Trial Chamber also did not account for the distinct likelihood, stemming from witness H's description of the brothers' physical appearance that day, that she may have mistaken them for two members of the "Jokers" unit, of which they were not members. The Appeals Chamber found that sufficient attention was not paid to these crucial identification questions by the Trial Chamber. The Appeals Chamber also had the benefit of the additional evidence of witness AT which illuminated certain matters regarding the organisation of the Ahmići attack and served to highlight some of the difficulties associated with the Trial Chamber's treatment of witness H's evidence.

To recapitulate, the Appeals Chamber found that the brothers were prejudiced as a result of, firstly, the Prosecution's failure to allege the attack on witness H's house in the amended indictment, and secondly, the late disclosure of her earlier statements. The Defence had only a few weeks to prepare for the cross-examination of this witness who turned out to be the lynchpin in the case against them.

The Appeals Chamber concluded that if witness H's testimony was discounted, the cases against the brothers could not stand. The Trial Chamber drew some support for Zoran Kupreškić's participation in the Ahmići attack from the evidence of witness JJ. According to this witness, he told her that, on the day of the Ahmići attack, under threat by the "Jokers", he shot into the air in the pretence of shooting at civilians. However, without witness H's evidence, witness JJ's observations were an insufficient basis

upon which to attribute criminal responsibility to him. The Trial Chamber's finding that the brothers provided local knowledge and the use of their houses as bases for the attacking troops was similarly unsustainable. The Appeals Chamber considered that even if all evidence in the trial record was credited, it was a tenuous foundation for such a finding, based as it was, on a single witness' testimony that he had seen a group of soldiers at the junction outside Zoran Kupreškić's house in the late afternoon of 15 April 1993. The additional evidence of witness AT, previously credited by the Trial Chamber in the *Kordić* case, fatally undermined this finding. Witness AT revealed that the decision to attack Ahmići, was not made until the afternoon of 15 April and that, to his knowledge, there was no military reconnoitring associated with the attack that afternoon. The assignment of groups to particular sections of the town did not occur until the early morning hours of 16 April 1993. It was also apparent from the witness AT material that the military police were not reliant upon the assistance of local Croat inhabitants to plan the attack.

Finally, the Appeals Chamber could find no basis for the Trial Chamber's finding that the brothers were involved in a persecutory campaign stemming back to October 1992. The Trial Chamber provided no description of what illegal conduct it attributed to the defendants during the period between October 1992 and 15 April 1993, when they were alleged to have been involved in the preparation and implementation of the 16 April 1993 attack. Hence, the Appeals Chamber stated that the finding must be rejected due to the absence of any evidentiary basis to support it. In totality, the Appeals Chamber concluded that the convictions of the brothers had occasioned a miscarriage of justice and ordered them to be reversed.

Charges against Vlatko Kupreškić

Regarding the conviction of Vlatko Kupreškić, the Appeals Chamber found that additional evidence admitted on appeal demonstrated that the circumstantial evidence relied on by the Trial Chamber to convict him of aiding and abetting persecutions could not support his conviction.

During trial, the Prosecution did not allege that he was directly involved in any specific attacks on Bosnian Muslim houses on 16 April 1993. Rather, his conviction was based on a web of circumstantial evidence grounded on the Trial Chamber's findings that he was a police operations officer. This led the Trial Chamber to conclude that he had aided and abetted the preparation of the Ahmići attack.

On appeal, Vlatko Kupreškić argued that the Trial Chamber's factual findings about his involvement in the attack had no basis in the evidence to begin with and, second, that additional evidence admitted on appeal served to underscore the extreme weakness of the case against him.

The Appeals Chamber accepted that, on the basis of the trial record, it was reasonable for the Trial Chamber to conclude that he was a police operations officer. The judgement suggested that this finding was an important factor in its decision to convict him of persecutions. From his status as a police officer, the Trial Chamber inferred that conduct was directed towards assisting, encouraging or lending moral support to the crime of persecutions. However, the totality of the evidence, namely the trial record and the additional evidence admitted on appeal, overwhelmingly suggested that any police duties undertaken by Vlatko Kupreškić ceased in February 1993. The Appeals Chamber found that there was no satisfactory evidence that his employment with the police continued until April 1993.

As to the Trial Chamber's finding that he assisted the attack by providing his house as a base for the attacking troops, the Appeals Chamber accepted that this too was reasonable on the basis of the original trial record. The evidence of troop movement in and around the defendant's house came from four separate sources. However, the Appeals Chamber admitted additional evidence on this point. They found that the evidence of witness ADA, who said that he was sitting on a hill outside Vlatko Kupreškić's store throughout the afternoon and early evening of 15 April, and saw neither Vlatko Kupreškić nor any troop activity, was not compelling. However, the evidence of witness AT that the plan to attack Ahmići was not announced until the afternoon of 15 April 1993, and that troops were not deployed to the Bungalow until late into the night between 15 and 16 April 1993, made it unlikely that another set of troops would have been dispatched to Vlatko Kupreškić's house much earlier in the day in order to prepare for the attack. Consequently, the Appeals Chamber concluded that there was serious doubt as to whether there were troops at Vlatko Kupreškić's house in the early evening of 15 April 1993 preparing for the attack the following morning.

The Appeals Chamber concluded that the remaining evidence against Vlatko Kupreškić provided an insufficient basis upon which to conclude that he aided and abetted persecutions. At trial, a witness gave evidence that, in October 1992, he saw Vlatko Kupreškić unloading "weapons" from his car and taking

them into his house. There was no evidence that the "weapons" were ever used during the 16 April 1993 attack, which occurred six months later. In the Appeals Chamber's view, it was unreasonable for the Trial Chamber to infer, on the basis of scant evidence that he had engaged in acts specifically directed to assist, encourage or lend moral support to persecutory acts against Muslim neighbours that occurred some six months later.

The Trial Chamber also found that Vlatko Kupreškić was in the vicinity shortly after the attack on Suhret Ahmić's house and thereby concluded that he was ready to lend assistance in whatever way he could to the attacking forces, for instance by providing local knowledge. This finding was based on the evidence of witness H, corroborated by witness KL, who testified to seeing him after the attack on the Ahmić house in front of the garage. In the Appeals Chamber's view, this evidence was an insufficient basis for the Trial Chamber to conclude that he assisted in the attack. The Appeals Chamber found that it was risky to draw inferences of guilt simply from the fact that a person was seen in the area of an attack. It constituted only the merest of circumstantial evidence that he was a participant in the attack and was an insufficient basis upon which to found his conviction for persecutions.

Regarding the evidence given by a witness at trial that he had seen Vlatko Kupreškić in front of the Hotel Vitez (the headquarters of the HVO in central Bosnia) in mid-afternoon on 15 April 1993, the judgement referred to, but did not clarify, the significance of this circumstance. In the Appeals Chamber's opinion, it was an insufficient basis from which to infer that Vlatko Kupreškić aided and abetted persecutions.

The Appeals Chamber concluded that the conviction of Vlatko Kupreškić had occasioned a miscarriage of justice. His conviction was reversed and his release was ordered.

Charges against Drago Josipović

Drago Josipović also raised several grounds of appeal. The Appeals Chamber accepted some of them and dismissed others. In respect of Drago Josipović, the Appeals Chamber found that the Trial Chamber erred in only two respects: in returning a conviction for persecutions based, in part, on his role in the attack on the house of Nazif Ahmić, which was not pleaded in the amended indictment, and in making a factual finding that he held a command position *vis-à-vis* other soldiers involved in the attack. For these reasons, the Appeals Chamber considered that the sentence imposed upon Drago Josipović should be reduced from 15 to 12 years' imprisonment. The Appeals Chamber found no merit in any of his other grounds of appeal.

Charges against Vladimir Šantić

At trial, Vladimir Šantić vigorously contested his guilt, relying upon a defence of alibi: he was, he said, not in Ahmići during the 16 April 1993 attack. Since his conviction, he admitted that he was the commander of the first company of the fourth battalion of the HVO military police and that he was a member of one of the groups that descended upon Ahmići in the early morning hours of 16 April 1993. However, he maintained his objections to certain findings made by the Trial Chamber regarding the extent of his participation in the Ahmići events.

The Appeals Chamber considered that there was ample credible evidence before the Trial Chamber that he was both commander of the first company of the fourth battalion of the HVO military police and the anti-terrorist unit, known as the "Jokers", that was formed within the fourth battalion and that he carried out a command role during the attack. However, the Appeals Chamber stated that the Prosecution adduced no evidence at trial that he was amongst the architects of the Ahmići assault strategy and that this fact should not have influenced his sentence.

Vladimir Šantić argued that, since his conviction, he accepted guilt and expressed sincere remorse for his participation in the attack on Ahmići, that he co-operated substantially with the Prosecution by assisting them with their investigations and that this should be considered in determining the sentence. The Prosecution verified his co-operation and the Appeals Chamber accepted that he had, to a limited degree, accepted responsibility for his role in the attack on Ahmići. The Appeals Chamber found that his co-operation between conviction and appeal justified a reduction in sentence.

The Appeals Chamber found no merit in any of his other grounds of appeal regarding conviction and sentence. His sentence was revised from 25 to 18 years' imprisonment.

The Appeals Chamber rendered its judgement on 23 October 2001. The Chamber reversed the convictions of Zoran, Mirjan and Vlatko Kupreškić and ordered their immediate release. Drago Josipović's sentence

was reduced to 12 years' imprisonment and Vladimir Šantić's sentence was lowered to 18 years' imprisonment.

Drago Josipović and Vladimir Šantić were transferred to Spain on 9 April 2002 and 11 April 2002 respectively. Credit was given for time served since their surrender on 6 October 1997.

On 30 January 2006, Drago Josipović was granted early release.

On 9 February 2009, Vladimir Šantić was granted early release.