

## **Dokmanovic Case: Motion for Release Denied**

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After two hearings (on 5 and 8 September 1997), Trial Chamber II (consisting of Judge McDonald, Presiding, and Judges Odio Benito and Jan) denied the Defence motion, confirming the legality of Dokmanovic's arrest.

Slavko Dokmanovic, the former mayor of Vukovar, is accused - together with three officers of the former JNA - of participation in the mass killing of some 260 people taken out of the Vukovar hospital after the JNA seized the town in November 1991. On the grounds of the so-called "sealed indictment" and secret warrant of arrest, Dokmanovic was arrested in June this year in a joint operation conducted by UNTAES forces and the investigators of the Hague Tribunal.

The Trial Chamber decision that denies the Defence motion, announced on 27 October, is the first such decision of an international court concerning the legality of arrest carried out by an international authority. Therefore, it is not surprising that the hearing before the Trial Chamber lasted longer than a month, and that the decision is presented rather carefully and in great detail in a 40-page text. Five questions are specially analysed: 1) the arrest of the accused; 2) authority for the arrest of the accused; 3) non-disclosure of the indictment and issuance of the warrant of arrest; 4) the method of arrest; and 5) safe conduct.

After having debated each of these questions separately, the Trial Chamber arrived at the following judicial findings:

- Dokmanovic was arrested in the region of Croatia administered by UNTAES, by the forces of UNTAES, and with the participation of the Office of the Prosecutor (OTP). UNTAES legitimately executed the warrant of arrest, which had been directed to it pursuant to Rule 59 bis of the Rules, and the OTP informed the accused of his rights. Rule 59 bis (which introduces the possibility that the arrest warrant be sent "to an international body or the Prosecutor") provides for a method of arrest additional to that envisaged by Rule 55 (execution of arrest warrant by the national authorities of the state in whose territory the accused resides).

- Dokmanovic was arrested and detained only after he arrived at the Erdut UNTAES base in the Eastern Slavonia region of Croatia. This is why it is irrelevant whether the UNTAES vehicle which waited for him on the bridge on the Danube entered the territory of FRY or Croatia.

The record clearly shows that Dokmanovic entered the UN vehicle of his own accord, and that he was quite eager to get into it because he believed that he was heading to a meeting with the UNTAES chief Jacques Klein to discuss his property rights in Croatia. Although he testified that the door locked while he was in the vehicle, neither did he attempt to open it nor did he express any desire for the vehicle to stop or to be let out.

- The evidence suggests that Dokmanovic was not given an assurance of safe conduct and freedom from arrest by the representatives of the OTP or UNTAES. Neither would such safe conduct be legally binding, for only a Trial Chamber is entitled to give such guarantees in relation to the International Tribunal. Anyway, the OTP and UNTAES representatives testified that Dokmanovic asked only for assurances that he would not be arrested by the Croatian authorities, and that - being unaware of the Tribunal's indictment against him - he had no reason to seek assurances that the OTP or UNTAES would not arrest him.

- Finally, the means used to accomplish the arrest neither violated principles of international law nor the sovereignty of FRY. To the contrary, UNTAES - in discharging its obligation to cooperate with the Tribunal and enforcing its Chapter VII mandate - is assuring the effectiveness of the Tribunal and thus contributing to the maintenance of international peace and security, as it is expected to do.

**Location:** [Croatia](#)

**Focus:** [International Criminal Tribunal for the former Yugoslavia](#)

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