



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-96-21-T
Date: 15 November 1996
Original: ENGLISH AND
FRENCH

IN THE TRIAL CHAMBER

Before: Judge Gabrielle Kirk McDonald, Presiding
Judge Ninian Stephen
Judge Lal C. Vohrah

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 15 November 1996

PROSECUTOR

v.

ZEJNIL DELALIĆ
ZDRAVKO MUCIĆ also known as "PAVO"
HAZIM DELIĆ
ESAD LANDŽO also known as "ZENGA"

**DECISION ON MOTION BY THE ACCUSED ESAD LANDŽO
BASED ON DEFECTS IN THE FORM OF THE INDICTMENT**

The Office of the Prosecutor:

Mr. Eric Ostberg
Ms. Teresa McHenry

Counsel for the Accused:

Mr. Mustafa Bracković, for Esad Landžo

I. INTRODUCTION

On 28 June 1996, the accused, Esad Landžo, submitted to this Trial 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 (“International Tribunal”) a Motion based on Defects in the Form of the Indictment (“Motion”) pursuant to Rules 72 and 73 of the International Tribunal’s Rules of Procedure and Evidence (“Rules”). The Office of the Prosecutor (“Prosecution”) responded in writing to the Motion on 10 September 1996. The parties orally presented their arguments on 1 October 1996.

THE TRIAL CHAMBER, HAVING CONSIDERED the written submissions and the oral arguments of the parties,

HEREBY ISSUES ITS DECISION.

II. DISCUSSION

A. Introduction

1. The indictment in which Esad Landžo is charged (“Indictment”) includes a total of 49 counts against the accused and three other persons. It was originally confirmed on 21 March 1996. In the Indictment, the Prosecution asserts that the accused Esad Landžo is responsible for the alleged direct participation in the mistreatment and killing of several detainees in the Čelebići camp (Counts 1-2, 5-6, 7-8, 9-10, 11-12, 15-17, 24-26, 27-29, 30-32, 36-37 and 46-47).

2. The Defence asks the Trial Chamber, pursuant to Rule 54, to order the Prosecution to amend the Indictment.

B. Applicable Provisions

3. The Motion is brought pursuant to Rule 72, which authorises the filing of preliminary motions, and Rule 73, which sets out a non-exhaustive list of the motions that an accused may submit. Rule 73 provides, *inter alia*, that an accused may make “objections based on defects in the form of the indictment.” Articles 18 and 21 of the Statute and Sub-rule 47 (B) provide the foundation for the arguments articulated in the Motion. Article 18 provides in paragraph 4 :

Upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Sub-rule 47 (B) states that “[t]he indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with

which the suspect is charged.” In addition, sub-paragraph 4(a) of Article 21 provides that an accused is entitled “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”.

C. Analysis

4. The Defence asserts that several counts of the Indictment are too general, imprecise and unclear, as they fail to establish which concrete acts were committed by the accused Esad Landžo himself, as opposed to those committed by “others”. The Prosecution on the contrary opposes the Motion primarily on the ground that the Indictment is in accordance with Article 18(4) of the Statute and Sub-rule 47(B) of the Rules as it contains a “concise statement of the facts and the crime or crimes with which the accused is charged.” The Prosecution notes that further detailed particulars can be found in the supporting materials.

5. The Trial Chamber does not consider the Indictment to be too general or imprecise. The standard the Indictment has to meet, as set out in the Statute, is that of containing a “concise statement of the facts”. The Indictment before the Trial Chamber contains all the necessary information for the Defence to prepare its defence: the identity of the victim, the place and approximate time of the alleged crime and the means by which it was committed. It is the alleged direct participation in the acts that entails his personal criminal responsibility (Article 7(1) of the Statute). It is therefore unimportant at this stage to determine with greater detail the exact nature of his participation and what was the role of the “others” in the event.

6. Secondly, the Defence contends that due to the cumulative nature of the charges, the Indictment charges the accused, Esad Landžo, twice for one single criminal event. The Prosecution on the other hand stresses the fact that the separate charges reflect and address different aspects of the alleged criminal conduct of the accused Esad Landžo. The Prosecution also points out that challenges to the facts are

not appropriate here, and that, in any event, the evidence the Prosecution has revealed to the Defence supports the allegations.

7. The Trial Chamber denies the Motion on this second ground, concerning the cumulative nature of the charges. An identical issue was raised in the case of *Prosecutor v. Tadić*, in which the Trial Chamber considered the matter to be relevant only to the penalty considerations, if the accused were ultimately to be found guilty of the charges in question:

In any event, since this is a matter that will only be relevant insofar as it might affect penalty, it can best be dealt with if and when matters of penalty fall for consideration. What can, however, be said with certainty is that penalty cannot be made to depend upon whether offences arising from the same conduct are alleged cumulatively or in the alternative. What is to be punished by penalty is proven criminal conduct and that will not depend upon technicalities of pleading.

Prosecutor v. Tadić, Decision on Defence Motion on Form of the Indictment at p. 10 (No. IT-94-1-T, T.Ch. II, 14 Nov. 1995). The Trial Chamber has previously applied the same reasoning in denying a challenge to this Indictment against the co-accused Zejnil Delalić. *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, Decision on Motion by the Accused Zejnil Delalić based on Defects in the Form of the Indictment at p. 14 (No. IT-96-21-T, T.Ch. II, 2 Oct. 1996) (“*Delalić Indictment Decision*”)

8. Thirdly, the Defence argues that Counts 9 and 10 of the Indictment should be disregarded. The Defence contends that it has not been established for certain whether the alleged victim ever existed or not. The Prosecution asserts that the evidence currently in its possession and provided to the Defence supports exactly what was set out in the Indictment and that disputed matters of fact should be decided at trial, after a full opportunity for the presentation of evidence.

9. The Trial Chamber considers the existence or not of the person named as the victim in Counts 9 and 10 is a matter of fact that will have to be considered at the trial.

A motion on the form of the indictment is not an appropriate way of challenging the evidence: “Whether or not the allegations listed in the Indictment are true ultimately will be decided at trial.” *Delalić Indictment Decision* at p. 7.

10. Finally, the Defence asserts that due to the “time continuity” for the several criminal acts of the same kind, described in the various charges, all those acts should be considered as representing one extended criminal act, and should be treated as such. The Prosecution on the contrary considers every alleged offence to be a discrete event, with a separate victim, and a result of a separate exercise of the will of the accused Esad Landžo over an extensive time period.

11. The Trial Chamber is of the opinion that the possible existence of a relation between the different crimes is a matter that can be addressed at the time of sentencing. Such arguments are not appropriate in a motion on the form of the indictment and cannot be evaluated here. The separation of the acts into different charges clearly does not hinder the Defence in any way in the preparation of its defence.

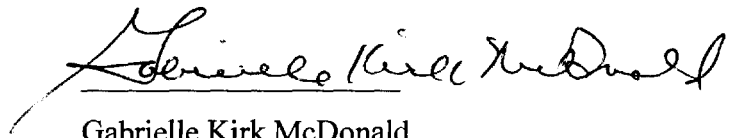
III. DISPOSITION

For the foregoing reasons,

THE TRIAL CHAMBER,

PURSUANT to Rule 72,

HEREBY DENIES in all respects the Motion by the Accused, Esad Landžo on Defects in the Form of the Indictment.



Gabrielle Kirk McDonald
Presiding Judge

Dated this fifteenth day of November 1996,
At The Hague
The Netherlands

[Seal of the Tribunal]