



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-PT  
Date: 21 February 1997  
Original: English

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**IN THE TRIAL CHAMBER**

**Before:** Judge Adolphus Karibi-Whyte, Presiding  
Judge Elizabeth Odio Benito  
Judge Saad Saood Jan

**Registrar:** Mrs. Dorothee de Sampayo Garrido-Nijgh

**Decision of:** 21 February 1997

**PROSECUTOR**

v.

**ZEJNIL DELALIĆ**  
**ZDRAVKO MUCIĆ, also known as "Pavo"**  
**HAZIM DELIĆ**  
**ESAD LANDŽO, also known as "Zenga"**

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**DECISION ON THE APPLICATIONS FILED BY THE DEFENCE FOR  
THE ACCUSED ZEJNIL DELALIĆ AND ESAD LANDŽO  
ON 14 FEBRUARY 1997 AND 18 FEBRUARY 1997 RESPECTIVELY**

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**The Office of the Prosecutor:**

Mr. Eric Ostberg  
Ms. Teresa McHenry

Mr. Giuliano Turone  
Ms. Elles van Dusschoten

**Counsel for the Accused:**

Ms. Edina Rešidović, Mr. Ekrem Galijatović, Mr. Eugene O'Sullivan, for Zejnil Delalić  
Mr. Branislav Tapušковиć, Ms. Mira Tapušковиć, for Zdravko Mucić  
Mr. Salih Karabdić, Mr. Thomas Moran, for Hazim Delić  
Mr. Mustafa Bračković, Ms. Cynthia McMurrey, for Esad Landžo

## I. INTRODUCTION

Pending before this Trial Chamber of the International Criminal 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”) are two separate applications relating to the Scheduling Order issued by this Trial Chamber on 25 January 1997 (“Scheduling Order”). (Official Record at Registry Page (“RP”) D2674-D2675)

The Defence for the accused Zejnil Delalić filed its “Request for Amendment to the Scheduling Order of 25 January 1997” on 14 February 1997. The second application pending was filed by the Defence for the accused Esad Landžo entitled “Motion for Enlargement of Time in which to File Pre-trial Brief” on 18 February 1997 (RP D2749-D2752) (together “the Applications”). In compliance with an Order of the Trial Chamber (RP D2754-2755), the Office of the Prosecutor (“Prosecution”) responded to the Applications on 20 February 1997 (D2770-2768 and D2764-D2763).

**THE TRIAL CHAMBER, HAVING CONSIDERED** the written submissions of the parties,

**HEREBY ISSUES ITS DECISION.**

## II. DISCUSSION

### A. Scheduling Order

1. The paragraphs of the Scheduling Order pertinent to the Applications read:

The Trial Chamber . . . .

HEREBY ORDERS:

(1) both the Prosecution and the Defence shall file their pre-trial briefs by Monday 24 February 1997;

(2) the parties are to exchange list of the witnesses they intend to call as soon as practicable and to file those lists with the Trial Chamber by Friday 7 March 1997, stating the order in which the witnesses are to be called. The Prosecution shall indicate for each witness, to the extent possible, the count to which each witness will testify and the estimated length of the testimony;

....  
(RP D2674-D2675)

### B. Pleadings

#### 1. The Defence

2. Zejnil Delalić seeks relief on two separate matters.

(i) The Defence asks the Trial Chamber to amend the first paragraph of the Scheduling Order so that the Prosecution would submit its pre-trial brief by 24 February 1997, while the Defence would submit its pre-trial brief and response to the Prosecution by 7 March 1997. It contends that the two week period between 24 February 1997 and 7 March 1997 would allow it sufficient time to file its own pre-trial brief and respond adequately to any matters raised in the Prosecution's pre-trial brief.

(ii) The second relief sought by the Defence refers to paragraph 2 of the Scheduling Order. The Defence argues that, according to the Rules of Procedure and Evidence ("the Rules"), it is under no obligation to notify the Prosecution of the names of its witnesses, whilst, by virtue of Sub-rule 67(A)(i), the Prosecution must notify the accused of the names of the witnesses it intends to call at trial. The Chamber is

therefore requested to amend the Scheduling Order such that only the Prosecution is obliged to provide a witness list to the Defence.

3. The Defence for Esad Landžo seeks relief similar to that of the Defence for Zejnil Delalić on two issues.

(i) The first relief sought by the Defence is set out in terms analogous to those of paragraph 2(i) above.

(ii) In its second request, the Defence seeks the amendment of the Scheduling Order such that only the Prosecution should be required to provide a witness list and that this should be done by Monday 24 February 1997.

4. Further, the Defence for Esad Landžo prays for relief on two additional matters.

(i) The Defence submits that “[w]ith the eve of trial approaching, a mandatory cut off date for the continual dribble of evidence to be used [by the Prosecution] should be ordered.” (RP 2750 at para. III) It, therefore, urges the Trial Chamber to set such a date.

(ii) Finally, the Defence requests that the Trial Chamber should order the Prosecution to provide reports of expert witnesses that it intends to call, by 24 February 1997.

## 2. The Prosecution

5. The Prosecution argues that “a trial brief is meant to briefly state the view of the parties on legal matters pertaining to the indictment, and . . . should in no way be considered some kind of a motion and may therefore be filed independently by each party.” The Prosecution defers to the Trial Chamber’s discretion to grant a postponement.

6. With regard to the second matter raised by the Applications, the Prosecution has responded as follows.

(i) Exchange of witness list. Objecting to the request of the Defence, the Prosecution contends that in the interests of a fair, just and expeditious trial, the parties must

exchange their lists of witnesses. It asserts that Rule 54 provides sufficient authority for the Trial Chamber to order such an exchange.

(ii) Dates for the exchange. The Prosecution submits that there is no justification for the request by Esad Landžo for the alteration of the dates, already ordered by the Trial Chamber, by which the Prosecution should file its witness list.

7. In relation to Esad Landžo's additional requests, the Prosecution has responded as follows.

(i) The Prosecution maintains that an order for a time limit on the presentation of evidence such that no additional evidence can be offered in the future would be entirely unfounded and would not advance the truth-seeking process.

(ii) Regarding the submission of reports from its expert witnesses, the Prosecution contends that the Scheduling Order imposes no obligation to submit such a report. It states that, in compliance with that Scheduling Order, it provided the Defence with the names of the expert witnesses, a curriculum vitae and a statement of the areas about which the witnesses will testify. The Prosecution indicates that it may of its own volition offer to provide a written statement of the expert witnesses at some future date.

### III. FINDINGS

8. The Trial Chamber considers that pre-trial briefs assist the Chamber and the parties in acquiring a general picture of the case to be presented. Pre-trial briefs address mainly questions of law. In this respect, the submission of the Prosecution accords with the views of the Trial Chamber. The Defence objection to the briefs being filed simultaneously are unfounded. However, considering that the Prosecution does not object, in practice, to non-concurrent filing, the Trial Chamber is prepared to amend the Scheduling Order so that the parties may file their pre-trial briefs by different dates.

9. Rules 66 and 67 set forth specific obligations relating to the disclosure of evidence. The general provisions of Rule 54 may not be used to circumvent the specific requirements enunciated in those rules.

10. The Trial Chamber accepts the submission of the Defence that under the Rules there is no general reciprocal obligation on the Defence to give notice to the Prosecution of the witnesses it intends to call at trial. Sub-rule 67(A)(ii), however, imposes such an obligation upon the Defence when it intends to offer a defence of alibi or any other special defence, including that of diminished or lack of mental responsibility.

11. The Defence for the accused Zejnil Delalić has not given notice of its intent to offer any of the defences contemplated by Sub-rule 67(A)(ii). The Trial Chamber, therefore, accepts its submission that, at the present time, it is not obliged to provide a witness list to the Prosecution.

12. The situation differs with regard to the accused Esad Landžo. On 15 November 1996, the Defence for Esad Landžo notified the Prosecution of its intent to offer a defence of diminished or lack of mental responsibility as well as the defence of limited physical capabilities. *Prosecutor v. Delalić et al.* Notice of the Defence to the Prosecutor Pursuant to Rule 67(A)(ii)(b) of the Rules of Procedure and Evidence (RP D2248-D2251). Furthermore, on 31 December 1996, the Defence for Esad Landžo notified the Prosecutor of its intent to offer the defence of alibi. *Prosecutor v. Delalić et al.* Notice of the Defence to the Prosecutor offering the Defence of Alibi, Pursuant to Rule 67(A)(ii)(a) of the Rules of Procedure and Evidence (RP D2338-D2341). As a result, both paragraphs of Sub-rule 67(A)(ii) apply. The Defence for Esad Landžo is under an obligation to notify the Prosecution of the names and addresses of witnesses upon which it intends to rely to establish the defences of alibi and the diminished or lack of mental responsibility.

13. The Trial Chamber finds no justification for the request of the Defence to bring forward the date by which the Prosecution should provide its witness list to the Defence.

14. In several parts of the "Decision on the Motion by the Accused Zejnil Delalić for the Disclosure of Evidence" (Case No. IT-96-21-T, T.CH. II, 26 Sept. 1996), the Trial Chamber emphasised that disclosure obligations are of a continuing nature. This fact is also apparent in Sub-rule 67(D).

If either party discovers additional evidence or material which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional or material.

In light of the above, the request made by the Defence for Esad Landžo to set a time limit on the disclosure of evidence cannot be granted. The Trial Chamber wishes to stress that the fundamental premise underlying the obligations set out in Sub-rule 67(D) is that the parties will act *bone fides* at all times.

15. The Trial Chamber in its "Order to Provide Notice of Expert Witnesses", instructed the "Prosecution and the Defence for each accused to provide the other parties with timely notice of potential expert witnesses", including "the name of the witness, the witness's curriculum vitae and a statement of the area(s) about which the witness will testify." *Prosecution v. Zejnil Delalić et al*, Order to Provide Notice of Expert Witnesses, para. 1 Case No. IT-96-21-T, T.Ch. II, 25 Jan. 1997. In addition, the Trial Chamber, in the same Order, instructed the Prosecution "to provide the Defence with notice of all its potential expert witnesses no later than Friday 31 January 1997" (para. 2(i)).

16. It is noted that despite the order quoted above, there is, at this time, no evidence before the Trial Chamber that the Prosecution has passed to the defence the required notice of its expert witnesses. Although there is a presumption of full and diligent compliance with orders of the Trial Chamber, such evidence from the Prosecution should form a part of the record in this case. In addition, the Trial Chamber notes that the indication by the Prosecution that it would provide further reports to the Defence is beyond the scope of the Order. This matter is strictly *inter partes* and the Trial Chamber shall not become involved at this stage.

#### IV. DISPOSITION

**THE TRIAL CHAMBER,**

**FOR THE FOREGOING REASONS,**

**HAVING CONSIDERED THE SUBMISSIONS OF THE PARTIES,**

**PURSUANT TO RULES 54 AND 67,**

**HEREBY AMENDS** paragraph 1 of the Scheduling Order to require that each accused file their pre-trial briefs by 3 March 1997; the Scheduling Order remaining unchanged with respect to the Prosecution,

**HEREBY VACATES** paragraph 2 of the Scheduling Order in respect of each accused,

**FURTHER ORDERS** the Defence for Esad Landžo to provide to the Prosecution a list of witnesses it intends to call to establish the defences of alibi, diminished or lack of mental responsibility and the defence of limited physical capabilities in accordance with Rule 67(A)(ii),

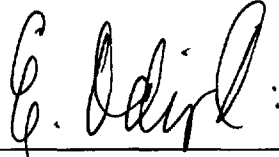
**DENIES** the request by Esad Landžo to bring forward the date by which the Prosecution should provide its witness list to the Defence,

**FURTHER DENIES** the request by Esad Landžo to set a time limit for the disclosure of evidence by the Prosecution,

**ORDERS** the Prosecution to file its notification of expert witnesses, pursuant to our previous Order dated 25 January 1997, *Order to Provide Notice of Expert Witnesses*, upon receipt of this Decision.



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



Judge Elizabeth Odio Benito

Dated this twenty-first day of February 1997  
At The Hague  
The Netherlands

Seal of the Tribunal