

UNITED
NATIONS

D6044-D6041

D6044

03rd APRIL 1998

~~D6039~~

~~D6039-D6036~~

DW



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-96-21-T

Date: 3 April 1998

Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Order of: 3 April 1998

PROSECUTOR

v.

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

**ORDER ON THE PROSECUTOR'S MOTION ON THE ORDER OF APPEARANCE
OF DEFENCE WITNESSES AND THE ORDER OF CROSS-EXAMINATION BY THE
PROSECUTION AND COUNSEL FOR THE CO-ACCUSED**

The Office of the Prosecutor:

Mr. Grant Niemann
Ms. Teresa McHenry
Mr. Giuliano Turone

Counsel for the Accused:

Ms. Edina Rešidović, Mr. Ekrem Galijatović, Mr. Eugene O'Sullivan, for Zejnil Delalić
Mr. Željko Olujić, Mr. Michael Greaves, for Zdravko Mucić
Mr. Salih Karabdić, Mr. Thomas Moran, for Hazim Delić
Ms. Cynthia McMurrey, Ms. Nancy Boler for Esad Landžo

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”);

BEING SEISED of the “Prosecutor’s Motion on the Order of Appearance of Defence Witnesses and the Order of Cross-examination by the Prosecution and Counsel for the Co-accused” (“Motion”) (Official Record at Registry Page (“RP”) D5929-D5935), filed by the Office of the Prosecutor (“Prosecution”) on 18 March 1998;

NOTING the Scheduling Order issued by the Trial Chamber on 23 March 1998 (RP D5948-D5949), requiring any written responses to the Motion by the Defence for each of the four accused persons (“Defence”) to be filed by 25 March 1998;

CONSIDERING the “Defence Response to the Prosecutor’s Motion on the Order of Appearance of Defence Witnesses and the Order of Cross-examination by the Prosecution and Counsel for the Co-accused” (“Defence Response”) (RP D5953-5996), filed on 25 March 1998;

FURTHER CONSIDERING “Esad Landžo’s Response to Prosecutor’s Motion on Presentation of Defence Evidence” (RP D5998-D6000), filed out of time on 27 March 1998, whereby the Defence for Esad Landžo adopted the arguments espoused in the Defence Response and sought to reserve its response to an oral hearing of the Motion;

FURTHER CONSIDERING “Lead Counsel’s (sic) for Mr. Mucić Reply and Motion to Dismiss Prosecutor’s Motion on the Order of Defence Witnesses and the Order of Cross-examination by the Prosecution and Counsel for the Co-accused” (RP D6005-6010), filed out of time on 27 March 1998;

NOTING the Scheduling Order issued by the Trial Chamber on 27 March 1998 (RP D5602-D5603), which ordered, *inter alia*, oral arguments on the Motion to be heard on 30 March 1998;

HAVING HEARD the oral arguments of the Defence and the Prosecution on 30 March 1998;

NOTING that, in the Motion, the Prosecution requests orders that:

(1) should any of the accused choose to appear as witnesses in their own defence, they are required to do so before calling the defence witnesses in their respective cases, subject to the discretion of the Trial Chamber on good cause shown ("First Request");

(2) the Defence complete their respective cross-examinations of a witness called by a co-accused before the Prosecution begins its cross-examination of the witness ("Second Request");

CONSIDERING that, with respect to the both the First and Second Requests, the Trial Chamber shall ensure that a trial is fair and expeditious pursuant to Article 20, paragraph 1, of the Statute of the International Tribunal ("Statute");

FURTHER CONSIDERING that, with respect to the First Request, each accused has the right "to be tried in his presence" pursuant to Article 21, paragraph 4(d), of the Statute and the right "not to be compelled to testify against himself or to confess guilt" pursuant to Article 21, paragraph 4(g), of the Statute;

FURTHER CONSIDERING that, with respect to the First Request, Rule 85(C) of the Rules of Procedure and Evidence of the International Tribunal ("Rules") provides that the "accused may, if he so desires, appear as a witness in his own defence" and that this Rule does not, in any way, restrict this right of the accused to a particular stage of his defence;

NOTING that, with respect to the Second Request, the Trial Chamber has previously held, in its Decision on the Motion on Presentation of Evidence by the Accused Esad Landžo of 1 May 1997 (RP D3491-D3504), that there is no right to "re-cross-examination" under Rule 85 but that "where during re-examination new material is introduced, the opposing party is entitled to further cross-examine the witness on such new material";

CONSIDERING that, with respect to the Second Request, where new material is introduced in either re-examination or cross-examination the Trial Chamber may allow "re-cross examination" by a party which may be adversely affected by the new material;

PURSUANT TO ARTICLES 20, PARAGRAPH 1, AND 21, PARAGRAPHS 4(d) AND 4(g) OF THE STATUTE AND RULE 85(C);

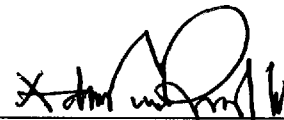
6036
6041

HEREBY DENIES the First Request;

PURSUANT TO ARTICLE 20, PARAGRAPH 1, OF THE STATUTE AND RULES 85 AND 54,

HEREBY ORDERS that for each Defence witness the Defence complete their respective examination(s)-in-chief and respective cross-examination(s) before the Prosecution begins its cross-examination.

Done in both English and French, the English version being authoritative.



Adolphus G. Karibi-Whyte
Presiding Judge

Dated this third day of April 1998
At The Hague,
The Netherlands.

[Seal of the Tribunal]