



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: IT-96-21-A
Date: 15 June 1999
Original: ENGLISH

IN THE APPEALS CHAMBER

Before: Judge David Hunt, Presiding
Judge Fouad Abdel-Monem Riad
Judge Wang Tieya
Judge Rafael Nieto-Navia
Judge Mohamed Bennouna

Registrar: Dorothee de Sampayo Garrido-Nijgh

Order of: 15 June 1999

The PROSECUTOR

v.

**Zejnir DELALIĆ, Zdravko MUCIĆ (aka "PAVO"), Hazim DELIĆ and
Esad LANDŽO (aka "ZENGA")**

ORDER ON THE SECOND MOTION TO PRESERVE AND PROVIDE EVIDENCE

Office of the Prosecutor:

Mr Yapa Upawansa
Mr Christopher Staker
Mr Rodney Dixon

Counsel for the Accused

Mr John Ackerman for Zejnir Delalić
Mrs Nihada Butorović and Mr Howard Morrison for Zdravko Mucić
Mr Salih Karabdić and Mr Thomas Moran for Hazim Delić
Ms Cynthia Sinatra and Mr Peter Murphy for Esad Landžo

THE APPEALS 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”);

NOTING the “Defendant Esad Landžo’s Notice of Appeal”, filed on 1 December 1998, wherein he sets out the grounds of appeal which include, *inter alia*, that his right to a fair and expeditious trial pursuant to Articles 20 and 21 of the Statute of the International Tribunal “were violated when verdict and sentence were rendered by a Trial Chamber whose presiding Judge was permitted to sleep through much of the proceedings” (“Sixth Ground of Appeal”);

BEING SEIZED of the “Second Motion to Preserve and Provide Evidence” filed on 12 May 1999 (“Motion”) by counsel for Esad Landžo (“Appellant”) with supporting affidavits annexed, wherein the Appellant seeks to gain access to evidence which he alleges proves the factual basis for the Sixth Ground of Appeal by requesting, for the second time, that:

1. The daily videotapes produced by Camera 3 in Courtroom I during the trial of the Appellant be preserved; and
2. Counsel for the Appellant be granted access to these videotapes by a particular date;

NOTING the “Prosecution response to Esad Landžo’s Second Motion to Preserve and Provide Evidence and to Esad Landžo’s Second Motion for Extension of Time to File Brief” filed on 4 June 1999;

NOTING the “Response of Appellant, Esad Landžo, to Prosecution’s Submissions Concerning Motions for Extension of Time and to Preserve and Provide Evidence, and Request for Late Acceptance” filed on 14 June 1999;

NOTING the Appeals Chamber “Decision on Motion to Preserve and Provide Evidence” of 22 April 1999, wherein the Appeals Chamber dismissed the Appellant’s first motion to preserve and provide evidence on the basis that he had not provided “evidence of a first-hand (that is, not hearsay) and detailed nature which demonstrates that access to the video recording is likely to materially assist in the presentation of his case on appeal”;

NOTING that the Registrar has in fact preserved the relevant videotapes;

FINDING that, in so far as the statements made in the affidavits attached to the Motion are admissible, they constitute evidence of a first-hand and detailed nature which demonstrate that access to the videotapes is likely to materially assist the Appellant in the presentation of his case on appeal, specifically the Sixth Ground of Appeal;

HEREBY DISMISSES the Motion in so far as it relates to the request that the relevant videotapes be preserved as such an order is unnecessary in the circumstances, and

ORDERS that:

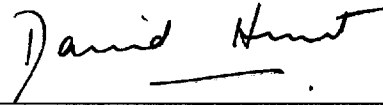
1. Counsel or Co-counsel for the Appellant or their legal assistant(s), may view the videotapes of proceedings conducted in open session and produced by Camera 3 in Courtroom I and Camera 3 in Courtroom III during the trial of the Appellant, for the purposes of assisting him in the presentation of his case on appeal, specifically the Sixth Ground of Appeal, from Wednesday 16 June 1999 until Monday 13 September 1999 in the premises of the International Tribunal, under the direction of and using the technical equipment designated by the Registrar or her representatives.
2. Only Counsel or Co-counsel for the Appellant may view the proceedings conducted in closed session and produced by Camera 3 in Courtroom I and Camera 3 in Courtroom III during the trial of the Appellant, for the purposes and under the conditions stated in order No. 1, above.
3. Counsel, Co-counsel for the Appellant and their legal assistant(s) viewing the videotapes, shall be bound by the orders for protective measures made by the Trial Chamber during the trial.
4. The videotapes shall not be removed from the room designated for viewing by the Registrar or her representatives.
5. No audio or visual copies of the videotapes shall be made by or provided to Counsel or Co-counsel for the Appellant or their legal assistant(s) or any other person, unless ordered by the Appeals Chamber.

6. The Appellant shall file a notice providing details of the dates and times of those passages on the videotapes upon which the Appellant will rely, on or before Monday 13 September 1999.

7. The Office of the Prosecutor shall be permitted to view the videotapes to which the Appellant has been granted access, and shall file a notice indicating and justifying the amount of time it will require to do so, on or before Friday 17 September 1999.

8. Any breach of the orders numbered 1 to 5 above shall render the person(s) in breach liable to proceedings pursuant to Rule 77 of the Rules of Procedure and Evidence of the International Tribunal.

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



Judge David Hunt
Presiding Judge

Dated this fifteenth day of June 1999
At The Hague,
The Netherlands.

[Seal of the Tribunal]