



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: 4 October 1999
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mrs Dorothee de Sampayo Garrido-Nijgh

Order of: 4 October 1999

PROSECUTOR

v

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

**ORDER ON ESAD LANDŽO'S MOTION (1) TO VARY IN PART ORDER ON MOTION
TO PRESERVE AND PROVIDE EVIDENCE, (2) TO BE PERMITTED TO PREPARE
AND PRESENT FURTHER EVIDENCE, AND (3) THAT THE APPEALS CHAMBER
TAKE JUDICIAL NOTICE OF CERTAIN FACTS, AND ON HIS SECOND MOTION FOR
EXPEDITED CONSIDERATION OF THE ABOVE MOTION**

Office of the Prosecutor:

Mr Upawansa Yapa
Mr Christopher Staker
Mr Norman Farrell
Mr Rodney Dixon

Counsel for the Defence

Mr John Ackerman for Zejnir Delalić
Mr Tomislav Kuzmanović and Mr Howard Morrison for Zdravko Mucić
Mr Salih Karabdić and Mr Tom 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”);

BEING SEISED of the “Motion of Appellant, Esad Landžo, (1) To Vary in Part Order on Motion to Preserve and Provide Evidence, (2) To Be Permitted to Prepare and Present Further Evidence, and (3) That the Appeals Chamber Take Judicial Notice of Certain Facts”, filed on 10 September 1999, and of the “Second Motion for Expedited Consideration of Motion of Appellant, Esad Landžo, (1) To Vary in Part Order on Motion to Preserve and Provide Evidence, (2) To Be Permitted to Prepare and Present Further Evidence, and (3) That the Appeals Chamber Take Judicial Notice of Certain Facts”, filed on 20 September 1999 (“Motions”);

NOTING the “Prosecution Response to Esad Landžo’s Motion Filed on 10 September 1999 and Prosecution’s Response to Esad Landžo’s Second Motion Filed on 20 September 1999”, filed on 22 September 1999, in which the Office of the Prosecutor (“Prosecution”) opposes the making of the orders sought in the Motions;

NOTING the “Reply of the Appellant, Esad Landžo, to Response of Prosecution to Motions Filed on 10th and 20th September, 1999”;

NOTING the “Defendant Esad Landžo’s Notice of Appeal”, filed on 1 December 1998, wherein he sets out his 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” (“Fourth Ground of Appeal”);

NOTING the “Second Motion to Preserve and Provide Evidence”, filed on 12 May 1999, in which Esad Landžo (“the Appellant”) requested that Counsel acting on his behalf be granted access to the daily videotapes produced by Camera 3 in Courtroom I during his trial in order to assist him in the presentation of the Fourth Ground of Appeal;

NOTING the “Order on the Second Motion to Preserve and Provide Evidence” issued on 15 June 1999 (“Order of 15 June”) in which the Appeals Chamber ordered, *inter alia*, that viewing of videotapes of proceedings produced by Camera 3 in Courtroom I and Camera 3 in Courtroom III

("Trial Videotapes") during the trial of the Appellant be permitted subject to a number of conditions, including the condition that 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;

NOTING FURTHER the "Order on Motion by Esad Landžo for Extension of Time to File Supplementary Brief", issued on 29 July 1999 ("Order for Extension"), in which the Appeals Chamber extended until 15 October 1999 the time period in which Counsel or Co-counsel for the Appellant or their legal assistant(s) may view the videotapes in question and in which the Supplemental Brief of the Appellant and a 'notice providing details of the dates and times of those passages of the videotapes upon which he will rely' ("Particulars") shall be filed;

NOTING that the Appellant by his Motions seeks to vary the Order of 15 June to permit the making of tapes containing all portions of the Trial Videotapes which are said to depict Judge Karibi-Whyte sleeping during the trial ("Appellant Tapes") and an additional tape compiled of extracts from the Appellant Tapes for the purposes of presentation at oral argument ("Compilation Tape"), and that the Registrar be ordered to begin making these tapes immediately;

ACCEPTING that the making of a tape recording of those portions of the videotapes of the proceedings upon which both parties rely ("Extracts Tape") would be a convenient way for the Appeals Chamber to view the material which is relevant to the Fourth Ground of Appeal;

BUT CONSIDERING that it is not appropriate that the Appeals Chamber order that an Extracts Tape may be made until both parties have determined the portions upon which they intend to rely and any disputes as to the relevance of those portions have been resolved;

NOTING that the Prosecution cannot identify the portions of the Trial Videotapes upon which it relies until the Appellant has filed his Particulars;

NOTING FURTHER that an officer of the Audio-Visual Section of the International Tribunal's Electronic Support Services has already been assigned by the Registrar to make the Extracts Tape and will be able to commence as soon as the appropriate order is made by the Appeals Chamber in the circumstances referred to above;

FINDING THEREFORE that the application for the variation of the Order of 15 June to allow the making of the Extracts Tapes is premature;

CONSIDERING that a Compilation Tape would not give a fair and accurate impression of the proceedings as a whole;

CONSIDERING MOREOVER that, because of the anticipated length of the Extracts Tape (as indicated by the Appellant), the Appeals Chamber intends to view the Extracts Tape in chambers prior to the hearing of the Appeal and that it will therefore be unnecessary to view it or portions of it during oral argument;

FINDING THEREFORE that a variation of the Order of 15 June to allow the making of the Compilation Tape is unwarranted;

NOTING further the Appellant's application that the time for filing the Appellant's Brief be extended for a further thirty days to enable completion of the tapes;

CONSIDERING that the Order for Extension requires the filing of (i) the notice providing details of the dates and times of those passages of the videotapes upon which the Appellant will rely, and (ii) the Supplementary Brief of the Appellant by 15 October, but does not impose a requirement to produce the Extracts Tapes or any tapes by that date;

CONSIDERING THEREFORE that the obligation to file the Supplementary Brief of the Appellant is independent of the completion of the Extracts Tapes or any tapes;

FINDING THEREFORE that an order for an extension of time for the filing of the Supplementary Brief of the Appellant is unnecessary;

NOTING that the Appellant also applies for the Appellant Tapes and the Compilation Tape to be admitted in evidence as further evidence pursuant to Rule 115 of the Rules of Evidence and Procedure ("Rules");

CONSIDERING that Rule 115 is not applicable to the material sought to be admitted, which relates to the Fourth Ground of Appeal concerned with the fairness of the trial and not with the guilt or innocence of the Appellant;

CONSIDERING ALSO that the Appeals Chamber is entitled by Rule 109 (D) of the Rules to call for the whole of the trial record;

AND CONSIDERING that pursuant to Rule 81 (A) of the Rules the trial record includes any video recordings made, and thus includes the Trial Videotapes;

CONSIDERING that the Extracts Tape, for use as a reference aid to the Trial Videotapes, will be authenticated by its production to the Appeals Chamber by the officer of the Audio-Visual Section who prepared it, and thus the Extracts Tape need not be tendered as evidence on the Appeal;


FINDING THEREFORE that the application pursuant to Rule 115 is unnecessary;

NOTING that the Appellant seeks that the Appeals Chamber take judicial notice of the Trial Videotapes, the Appellant Tapes and the Compilation Tape, and of the fact alleged in the Fourth Ground of Appeal, that the Presiding Judge was asleep during substantial portions of the trial; and

CONSIDERING that it is inappropriate to take judicial notice of any of those matters;

HEREBY DISMISSES the Motions.

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



David Hunt
Presiding Judge

Done this 4th day of October 1999
At The Hague,
The Netherlands.

[Seal of the Tribunal]