



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: 19 May 2000
Original: English

IN THE APPEALS CHAMBER

Before: Judge David Hunt, Presiding
Judge Fouad Riad
Judge Rafael Nieto-Navia
Judge Mohamed Bennouna
Judge Fausto Pocar

Registrar: Mrs Dorothee de Sampayo Garrido-Nijgh

Order of: 19 May 2000

PROSECUTOR

v

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

ORDER IN RELATION TO WITNESSES ON APPEAL

Counsel for the Office of the Prosecutor:

Mr Upawansa Yapa
Mr Christopher Staker
Mr Norman Farrell

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”);

NOTING the “Defendant Esad Landžo’s Notice of Appeal”, filed on 1 December 1998, and the “Brief of Appellant, Esad Landžo, on Appeal Against Conviction and Sentence”, filed on 2 July 1999, 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 that Extracts Tapes have been compiled, containing the portions of the videotapes of proceedings produced by Camera 3 in Courtroom I and Camera 3 in Courtroom III upon which both parties rely in relation to the Fourth Ground of Appeal, for the use of the Appeals Chamber as a convenient way for it to view the material which is relevant to the Fourth Ground of Appeal;

NOTING the “Scheduling Order” issued by the Pre-Appeal Judge on 3 May 2000 which ordered, *inter alia*, that the parties to this appeal file a list of any witnesses they propose to call, with statements of the proposed evidence of each of those witnesses, by 15 May 2000;

NOTING the “Appellant Esad Landžo’s List of Witnesses on Appeal, Submission of Witness Statements and Motion for Issuance of Subpoena *Ad Testificandum*” filed by the counsel for the appellant Esad Landžo (Landžo) on 15 May 2000 (“Witness List”, “Witness Statements” and “Motion for Subpoena” respectively);

NOTING the “Motion of Appellant, Esad Landžo, for Issuance of Subpoena *Ad Testificandum*” filed by counsel for Landžo on 16 May 2000 and “Motion of Appellant, Esad Landžo, for Issuance of Subpoena *Ad Testificandum*” filed by counsel for Landžo on 17 May 2000 (collectively, with the Motion for Subpoena, the “Motions for Subpoenae”) which move the Appeals Chamber to issue subpoenae *ad testificandum* to certain of the proposed witnesses designated in the Witness List;

CONSIDERING that, while Rule 115 of the Rules of Procedure and Evidence limits the extent to which evidence upon matters relating to the guilt or innocence of the accused may be given before the Appeals Chamber (being the issue litigated in the Trial Chamber), when the Appeals Chamber is hearing evidence which relates to matters other than the issues litigated in the Trial Chamber, the Appeals Chamber is in the same position as a Trial Chamber, so that Rule 107 applies to permit the Appeals Chamber to admit any relevant or probative evidence pursuant to Rule 89 (C) and, pursuant to Rule 90 (G), to exercise control over the mode of presenting evidence to avoid needless consumption of time;

CONSIDERING that the Witness Statements do not show that the evidence of the proposed witnesses Kay Hendrick, Nancy Boler and Frank Sinatra, Jr, and the evidence of Cynthia McMurrey Sinatra, insofar as it describes the conduct of the Presiding Judge of the Trial Chamber in these proceedings, (“Designated Proposed Evidence”) would advance the appellants’ case beyond what is already shown in the Extracts Tapes;

CONSIDERING FURTHER that a large proportion of the Designated Proposed Evidence consists of statements by way of conclusions drawn by the proposed witnesses as to the mental and physical state of the Presiding Judge and is therefore of no probative value in relation to the issues raised by the Fourth Ground of Appeal or any other issue in the appeal;

ACTING IN ACCORDANCE WITH these considerations and pursuant to Rule 90 (G), the Appeals Chamber will reject the Designated Proposed Evidence in order to avoid needless consumption of time;

NOTING the “Appellants-Cross Appellees Zdravko ‘Pavo’ Mucić and Hazim Delić’s Notice of Intent to Rely Upon Other Parties’ Designation of Witnesses”, filed by counsel for the appellants Zdravko Mucić and Hazim Delić on 17 May 2000 in which they advise, *inter alia*, that they do not intend to call any witnesses for further evidence, and that they “rely upon the designation of witnesses filed by other parties to this appeal and reserve the right to call necessary witnesses who were called by other parties”;

NOTING the “Prosecution Notice in Compliance with the Appeals Chamber’s Scheduling Order of 3 May 2000 and Prosecution Motion to Admit as Additional Evidence the Expert Opinion of Mr. Alejandro Batalla” filed by the Office of the Prosecutor (“prosecution”) on 15 May 2000

(“Prosecution Notice and Motion”) in which the prosecution advised, *inter alia*, that it does not propose to call any witnesses in this appeal;

NOTING that the Prosecution Notice and Motion moves the Appeals Chamber for an order that an annexed expert opinion of Mr Alejandro Batalla, described as an expert in the law of Costa Rica, (“Prosecution Expert Opinion”) be admitted into evidence in these proceedings;

NOTING the “Defendant Esad Landžo’s Notice of Appeal”, filed on 1 December 1998, and the “Brief of Appellant, Esad Landžo, on Appeal Against Conviction and Sentence”, filed on 2 July 1999, wherein he sets out his grounds of appeal, which include, *inter alia*, that “[t]he participation at trial as a member of the Trial Chamber of a Judge ineligible to sit as a Judge of the Tribunal violated Articles 13 and 21 of the Statute of the ICTY, the rules of natural justice, and international law and rendered the trial a nullity” (“Second Ground of Appeal”);

NOTING the “Order on Motion of Esad Landžo to Admit as Additional Evidence the Opinion of Francisco Villalobos Brenes” issued by the Appeals Chamber on 14 February 2000 which ordered, *inter alia*, that an expert opinion submitted on behalf of Landžo in relation to the Second Ground of Appeal be admitted into evidence;

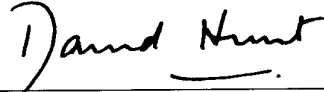
NOTING the “Response of Appellant, Esad Landžo, to Prosecution Notice in Compliance with Scheduling Order of 3 May 2000 and Motion to Admit Expert Opinion of Mr. Alejandro Batalla” filed by counsel for Landžo on 16 May 2000, which advises that Landžo has no objection to the admission in evidence of the Prosecution Expert Opinion;

CONSIDERING, without prejudice to the determination of the weight to be afforded to the views expressed in the Prosecution Expert Opinion, that it offers a degree of relevance and probative value to the issues raised by the Second Ground of Appeal which is sufficient to warrant its admission into evidence under Rule 89 (C);

HEREBY ORDERS AS FOLLOWS:

1. The Designated Proposed Evidence is rejected.
2. The Motions for Subpoenae are dismissed.
3. The Prosecution Expert Opinion is admitted into evidence.

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



Judge David Hunt
Presiding Judge

Done this 19th day of May 2000
At The Hague,
The Netherlands.

[Seal of the Tribunal]