



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: 14 February 2000
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: 14 February 2000

PROSECUTOR

v

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

**ORDER ON MOTION OF ESAD LANDŽO TO ADMIT AS ADDITIONAL EVIDENCE
THE OPINION OF FRANCISCO VILLALOBOS BRENES**

Office of the Prosecutor:

Mr Upawansa Yapa

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, to Admit as Additional Evidence the Expert Opinion of Francisco Villalobos Brenes, an Expert on the Law of Costa Rica”, filed by Esad Landžo on 24 January 2000 (“Motion” and “Appellant”, respectively);

NOTING the “Prosecution Response to the Motion of Esad Landžo to Admit as Additional Evidence the Opinion of Francisco Villalobos Brenes”, filed by the Office of the Prosecutor (“Prosecution”) on 3 February 2000;

NOTING the “Reply of Appellant Esad Landžo, to Response of Prosecution to Motion to Admit Expert Evidence of Francisco Villalobos”, filed on 4 February 2000;

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 that the Appellant in the Motion seeks to have admitted, as additional evidence pursuant to Rule 115 of the Rules of Procedure and Evidence of the International Tribunal, a document described as an “expert opinion” on the interpretation of certain articles of the Constitution of Costa Rica, prepared by Sr. Francisco Villalobos Brenes, a member of the Bar of Costa Rica and an Adjunct Professor at the Faculty of Law of the University of Costa Rica (“Opinion” and “Witness”, respectively);

CONSIDERING that Rule 115 is not applicable to the material now sought to be admitted into evidence, which relates to the Second Ground of Appeal concerned with the ineligibility of one of the members of the Trial Chamber to serve as a Judge of the International Tribunal and not with the guilt or innocence of the Appellant;

CONSIDERING that the Appeals Chamber possesses the competence to receive evidence of this nature, provided that it meets the general criteria for admissibility under sub-Rule 89(C);

NOTING that the Prosecution opposes the Motion on the grounds (1) that Sr. Francisco Villalobos Brenes cannot be regarded as an expert for the purposes of giving expert opinion on the constitutional law of Costa Rica, and (2) that the Opinion fails to address the specific issues relating to the Constitution of Costa Rica raised by the Appellant and the Prosecution in connection to the Second Ground of Appeal and therefore is not probative to the specific points at issue in this case;

CONSIDERING that points of national law are questions of fact to be decided by the Judges of the International Tribunal;

CONSIDERING that the International Tribunal may receive evidence, including expert evidence, on such questions where relevant;

CONSIDERING that the Witness, as a Member of the Bar of Costa Rica, is qualified to give evidence on the law of that country as an expert witness within the meaning of Rule 94*bis*, and that his relative inexperience and lack of further qualifications in the area of constitutional law, as demonstrated by his *curriculum vitae*, goes to the weight to be afforded to his evidence;


CONSIDERING, without prejudice to the determination of the weight to be afforded to the views expressed by the Witness, that the Opinion offers a degree of relevance and probative value which is sufficient to warrant its admission under sub-Rule 89(C);

PURSUANT TO Rules 89, 94*bis* and 107,

HEREBY ORDERS that:

1. The Opinion is admitted into evidence.
2. The Prosecution shall by [date] file a notice indicating whether it wishes to cross-examine the Witness.

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



David Hunt
Presiding Judge

Done this 14th February 2000
At The Hague,
The Netherlands.

[Seal of the Tribunal]