



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-02-54-T
Date: 31 October 2005
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision: 31 October 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION APPLICATION FOR
FURTHER ACTION IN RELATION TO
PREVIOUS RULE 54 *BIS* APPLICATIONS**

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

**Government of Serbia
and Montenegro:**

Ms. Sanja Milinković

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay
Ms. Gillian Higgins

Amicus Curiae:

Mr. Timothy McCormack

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 (“Tribunal”) is seized of a “Prosecution Application for Further Action in Relation to Previous Rule 54*bis* Applications” and hereby renders a decision thereon.

1. On 24 August 2005, the Prosecution filed an “Application for Further Action in Relation to Previous Rule 54*bis* Applications” (“Application”).
2. On 14 September 2005, Serbia and Montenegro filed a “Confidential Response to Prosecution Application for Further Action in Relation to Previous Rule 54*bis* Applications, dated 24 August 2005” (“Response”). Serbia and Montenegro’s Response did not comply with the Tribunal’s Rules of Procedure and Evidence (“Rules”) and practice directions in that (i) it was filed after the deadline for responses to motions had passed, and (ii) it exceeded the accepted length of responses to motions.¹ Serbia and Montenegro did not seek leave for an extension of the length of its Response or the time in which it could be filed. The Trial Chamber notes this non-compliance with the Tribunal’s procedures but decides in this instance to grant *proprio motu*, pursuant to Rules 127 and 54, leave to Serbia and Montenegro to file its Response. Serbia and Montenegro also filed its Response confidentially. The Trial Chamber discerns no reason for the Response to have been filed confidentially and therefore will order Serbia and Montenegro to file a public version with any information it deems confidential redacted.
3. On 19 September 2005, the Prosecution filed a confidential “Reply to Serbia and Montenegro’s Confidential Response to Prosecution Application for Further Action in Relation to Previous Rule 54*bis* Applications” (“Reply”), along with a request for leave to file it under Rule 126 *bis*. The Trial Chamber grants, pursuant to Rule 126 *bis*, leave to the Prosecution to file its Reply. The Prosecution also filed its Reply confidentially. For the reason in the foregoing paragraph, the Trial Chamber will order the Prosecution to file a public, redacted version of its Reply.
4. The Trial Chamber has considered all the arguments raised by the Prosecution and Serbia and Montenegro in their filings and, pursuant to Article 29 of the Statute of the Tribunal and Rules 54 and 54 *bis* of the Rules **HEREBY ORDERS** as follows:

¹ See Rule 126 *bis* and Practice Direction IT/184/Rev. 2 (16 September 2005).

- (a) With regard to the “Joint Command documents” that were the subject of RFAs 174 and 174A² and the Trial Chamber’s Thirteenth Decision, Serbia and Montenegro shall file, within two weeks of this date of this decision, an *inter partes*, public submission explaining why it did not previously produce, and to this date still has not produced, the two “Joint Command” documents tendered by witness Božidar Delić during his testimony,³ despite the fact that the Thirteenth Decision called for the production of such documents.⁴ The Trial Chamber notes that Serbia and Montenegro is still bound by the Thirteenth Decision’s order that Serbia and Montenegro “continue its efforts to locate the requested documentation” and produce such documentation to the Prosecution, and that a state must always perform its legal obligations in good faith.⁵ The Chamber also notes that non-compliance with the Trial Chamber’s decisions can entail Serbia and Montenegro being reported to the Security Council under Rule 7 *bis* of the Tribunal’s Rules.
- (b) With regard to the documents requested in RFAs 119B-D (“Military Unit Documents”), the Trial Chamber DENIES the Prosecution’s motion for reconsideration as unnecessary.⁶ The specific relief requested by the Prosecution in its Application is “a

² These include (1) all orders of the Joint Command for Kosovo and Metohija (or purporting on their face to be issued by an entity called the “Joint Command for Kosovo and Metohija”) issued during the period 1 January to 20 June 1999; and (2) all minutes or recordings of meetings of the Joint Command for Kosovo and Metohija during the period 1 January to 20 June 1999.

³ These were two orders purporting to originate from the Joint Command for Kosovo and Metohija during the 1999 state of war (tabs 356 and 471 of the Delić exhibit binder).

⁴ See *Prosecutor v. Milošević*, Case No. IT-02-54-T, Thirteenth Decision on Applications Pursuant to Rule 54*bis* of Prosecution and Serbia and Montenegro, 17 December 2003 (“Thirteenth Decision”), Ruling 12(a), which ordered, with respect to the “[d]ocumentation relating to the Joint-Command for Kosovo and Metohija” requested in RFAs 174 and 174A, that Serbia and Montenegro “(1) continue its efforts to locate the requested documentation and (2) produce to the Prosecution the requested documentation within two (2) months from the date of this Order.” In addition the Trial Chamber notes that Serbia and Montenegro has represented that it (1) accepts that it is under an obligation to produce all documents bearing the header “Joint Command”; (2) has continued its efforts to locate such documentation since the issuance of the Thirteenth Decision; (3) has not found any documents bearing the heading “Joint Command”; and (4) will continue to search for additional documentation. Response, para. 15.

⁵ Cf. *Prosecutor v. Blaskić*, Case No. IT-95-14-T, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997, para. 68, citing *Nuclear Tests case (New Zealand v. France)*, I.C.J. Reports 1974, p. 268, para. 46.

⁶ The Application sought reconsideration of the Trial Chamber’s decision in Ruling 9(a) of its Thirteenth Decision, which ordered in relevant part the following: “The Trial Chamber, with respect to the documentation of the other headquarters and military units, hereby DENIES the Prosecution’s request for binding orders for production of the requested documentation according to specific modalities, on the bases that the requests are (1) overbroad and unduly onerous and (2) in effect applications for search warrants, but that there are insufficient grounds for the grant of such warrants in the present circumstances.”

binding order for the production of the documents *detailed in Attachment A*", which is a subset of the Military Unit Documents. The Trial Chamber notes that Serbia and Montenegro has expressed an ability and willingness to provide the documents listed in Attachment A of the Prosecution's Motion;⁷ the Trial Chamber therefore INVITES the Prosecution to direct a Request for Assistance to Serbia and Montenegro for the documents listed in Attachment A.

- (c) With regard to the documents requested in RFA 877,⁸ the Trial Chamber notes that Serbia and Montenegro indicated that it was in the process of collecting the documents and that they would be provided to the Prosecution by 28 September 2005, and notes that they should now be in the hands of the Prosecution.⁹ Based upon Serbia and Montenegro's representation, the Trial Chamber regards further action in relation to these documents to be unnecessary at this point in time.
- (d) Serbia and Montenegro shall, within two weeks of the date of this decision, file a public and (if necessary) redacted version of its Response.
- (e) The Prosecution shall, within one week of Serbia and Montenegro's compliance with the paragraph above, file a public and (if necessary) redacted version of its Reply.

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



Judge Robinson
Presiding

Dated this 31st day of October 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ See Response, para. 22.

⁸ According to the Prosecution, RFA 877 requests "[a]ny report compiled by the Army of Yugoslavia (VJ) concerning events in the area of Račak, Kosovo, during the period 13-17 January 1999." Motion, Attachment A, p. 1 (noting that this "request was the basis of RFA 877 dated 21 July 2005, requested for 17 August 2005").

⁹ Serbia and Montenegro stated in its Response—filed on 14 September 2005—that the requested documents "will be produced to the OTP within no more than 2 weeks." Response, para. 22.