



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: 12 April 2006
Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision: 12 April 2006

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON SERBIA AND MONTENEGRO'S MOTION TO
VACATE OR SUSPEND 9 MARCH 2006 DECISION AND
REQUEST TO REDACT PARTS OF PUBLIC VERSION OF
DECISION**

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

Amicus Curiae:

Prof. Timothy McCormack

Government of Serbia and Montenegro:

Ms. Sanja Milinković
Mr. Sasa Obradović
Mr. Vladimir Cvetković

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 “Motion to Vacate or Indefinitely Suspend the Trial Chamber’s ‘Decision on Applications of Serbia and Montenegro Pursuant to Rule 54bis’ Issued on 9 March 2006” and a “Submission for Redaction of Certain Parts of the Trial Chamber’s ‘Decision on Applications of Prosecution and Serbia and Montenegro Pursuant to Rule 54bis’ Issued on 9 March 2006” and hereby renders a decision thereon.

I. Introduction

1. On 9 March 2006 the Chamber filed a decision on various requests for relief made by the Prosecution and Serbia and Montenegro under Rule 54 *bis* (“Rule 54 *bis* Decision” or “Decision”).¹ The Decision granted many of the Prosecution’s requests for relief and ordered Serbia and Montenegro to produce various documents (or, in the event of non-production, to provide explanations of the steps taken to locate the documents) by 23 March 2006. The Decision also denied Serbia and Montenegro’s request for protective measures for certain documents that were to be produced.

2. The Decision was filed confidentially but stated in the disposition that:

[The] status of this Decision will change from confidential to public in 7 days [i.e. on 16 March], but the Chamber invites any party to the case and Serbia and Montenegro to file submissions before the expiration of this time-period identifying specific passages in the Decision which should be redacted, if any, and the basis on which such redactions should be made.

3. On 14 March the Chamber issued an order terminating the proceedings due to the death of the Accused (“Termination Order”).²

4. On 15 March Serbia and Montenegro filed a motion requesting that the Trial Chamber either (i) vacate or “suspend indefinitely [the] execution” of the Rule 54 *bis* Decision *or, in the alternative* (ii) “suspend the execution” of the three rulings in the Decision that deny Serbia and Montenegro’s request for protective measures, pending an application by the state for review of these rulings by the Appeals Chamber (“Motion to Vacate” or “Motion”).³ Serbia and

¹ Decision on Applications of Prosecution and Serbia and Montenegro Pursuant to Rule 54 *bis*, Case No. IT-02-54-T, 9 March 2006.

² Order Terminating the Proceedings, Case No. IT-02-54-T, 14 March 2006.

³ Serbia and Montenegro’s Submission for Redaction of Certain Parts of the Trial Chamber’s “Decision on Applications of Prosecution and Serbia and Montenegro Pursuant to Rule 54*bis*” Issued on 9 December 2005 [sic], Case No. IT-02-54-T, 15 March 2006.

Montenegro also filed a request for redactions to be made to the text of the Rule 54 *bis* Decision in the event that the Decision was made public (“Request for Redactions”).⁴

5. One week later, the President issued an order assigning this Trial Chamber to consider the Motion to Vacate and Request for Redactions (“Assigning Order”).⁵
6. Then, on 29 March 2006, the Prosecution filed a response to the Motion to Vacate and Request for Redactions (“Response”).⁶
7. Serbia and Montenegro filed a reply to the Prosecution Response (“Reply”), along with a request for leave to file it, on 4 April 2006.⁷
8. That same day, the Prosecution filed a pleading withdrawing the submissions made in its Response (“Withdrawal of Submissions”).⁸

II. Motion to Vacate

9. Serbia and Montenegro argues that, under the terms of the Termination Order that ended proceedings in the *Milošević* case, only decisions granting protective measures continue to have effect.⁹ The Rule 54 *bis* Decision was filed before termination but did not become “final” before termination because neither the time for compliance with the Decision, nor the time for filing an appeal or request for review of the Decision, had expired.¹⁰ And because, the state argues, it is “now not capable of becoming final,” the Decision “cannot have any legal effect.”¹¹ In support of this argument, the state cites a decision in the *Kovačević* case in which the Appeals Chamber terminated an interlocutory appeal that was pending because proceedings in the case had been terminated.¹²

⁴ Serbia and Montenegro’s Motion to Vacate or Indefinitely Suspend the Trial Chamber’s “Decision on Applications of Serbia and Montenegro Pursuant to Rule 54*bis*” Issued on 9 December 2005 [sic], Case No. IT-02-54-T, 15 March 2006.

⁵ Order Assigning a Case to a Trial Chamber, Case No. IT-02-54-T, 22 March 2006.

⁶ Prosecution Submission on the Continued Validity of the Trial Chamber’s Decision of 9 March 2006 Pursuant to Rule 54 *bis*, Case No. IT-02-54-T, 29 March 2006.

⁷ Serbia and Montenegro’s Reply to “Prosecution Submission on the Continued Validity of the Trial Chamber’s Decision of 9 March 2006 Pursuant to Rule 54 *bis*,” Case No. IT-02-54-T, 4 April 2006. The Trial Chamber believes that its decision on the Motion and Request for Redactions is aided by consideration of all the arguments raised by the parties and therefore grants the state’s request for leave to file its Reply.

⁸ Withdrawal of Prosecution Submissions on the Continued Validity of the Trial Chamber’s Decision of 9 March 2006 Pursuant to Rule 54 *bis*, Case No. IT-02-54-T, 4 April 2006.

⁹ Reply, paras. 6 and 8.

¹⁰ *Id.* at para. 7.

¹¹ *Id.*

¹² Reply, para. 8.

10. Alternatively, the state argues, even if the Decision is still valid, the termination of the proceedings means that it has been “deprived of its purpose.”¹³ One of the requirements for granting an order for the production of documents or information under Rule 54 *bis* is that the documents or information be relevant to “any matter in issue before the Judge or Trial Chamber” and “necessary for a fair determination of that matter.”¹⁴ Once proceedings are terminated in a case, the state asserts, “this requirement ... *even if previously satisfied*, cannot be considered as fulfilled any more.”¹⁵ In conclusion, the state requests that the Rule 54 *bis* Decision be vacated or that its execution be indefinitely suspended.¹⁶
11. In its initial response, the Prosecution argued that the Motion to Vacate should be denied. The death of the Accused, the Prosecution argued, “has no impact on the ongoing validity and importance” of the Rule 54 *bis* Decision and the Trial Chamber should “order [Serbia and Montenegro] to comply with it and produce the requested documents.”¹⁷ Alternatively, the Prosecution “request[ed] that the Trial Chamber issue a new order pursuant to Rule 54” in which it would “order [Serbia and Montenegro] to comply with the Trial Chamber’s [Decision] and immediately produce the documents requested therein.”¹⁸
12. In its 4 April 2006 filing, however, the Prosecution withdrew all of these submissions. According to this filing, the Prosecution has reached an agreement with the state that “documents will be provided,” and therefore considers that “the question of the continuing validity of the [Decision], or its substitution by another order in similar terms, is now moot.”¹⁹

III. Request for Redactions if Decision is to Become Public

13. In its Request for Redactions, Serbia and Montenegro explained that “in the extraordinary circumstances of the present case, it is not certain whether the [Rule 54 *bis*] Decision would be [made public] or not,” but that “out of an abundance of caution” it decided to file a request for redactions.²⁰

¹³ Motion to Vacate, para. 2.

¹⁴ *Id.*

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.* at p. 3. In the alternative Serbia and Montenegro requests a stay of the three rulings in which the Chamber denies the state’s request for protective measures.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Prosecution Withdrawal of Submissions, para. 2.

²⁰ Request for Redactions, para. 3.

14. The state submits that if the Trial Chamber decides that the Decision should become public notwithstanding the termination of the proceedings, the Chamber should redact from the public version of the Decision (i) the parts of the decision that relate to Serbia and Montenegro's motion for protective measures, and (ii) the parts of the decision that relate to the Prosecution request for the production of the personnel file of Ratko Mladić.²¹
15. In its response, the Prosecution submits that the Request for Redactions should be denied because there are "[n]o grounds for confidentiality of the [Decision]."²²
16. In its filing of 4 April 2006 the Prosecution withdrew its "submissions on the continued validity of the Trial Chamber's Decision" but did not explicitly address the status of its submissions on the question of redactions.²³ The filing does state, however, that the Prosecution "hereby withdraws the prosecution submissions filed on 29 March 2006", and this includes submissions on the state's Request for Redactions.²⁴

IV. Discussion

17. As a preliminary matter, the Trial Chamber notes that it is validly seized of the Motion to Vacate and the Request for Redactions by virtue of the Assigning Order issued by the President of the Tribunal.
18. The Chamber also notes that although its Rule 54 *bis* Decision was rendered prior to the death of the Accused and the termination of proceedings in the *Milošević* case, the Decision set a deadline of 17 March 2006 for the Decision to become partly or fully public, and a deadline of 23 March 2006 for compliance with the Decision by the state. Both deadlines turned out to be after the Accused's death and after the Chamber's Termination Order was issued.
19. In its Termination Order this Chamber "terminate[d] all proceedings in this trial."²⁵ The only exception to this order was its confirmation of the provision in Rule 75(F)(i) that all the protective measures ordered during the course of the proceedings "shall continue to have effect

²¹ Specifically, the state seeks to redact: (i) the words "and an application by Serbia and Montenegro for protective measures" in the preamble; (ii) paragraphs 6-10, 15, 19-21 and 25 of the Decision (including subtitles and footnotes); (iii) rulings 1, 4, 5 of the Decision (at pages 1, 4 and 5 of Annex A) (including accompanying text and footnotes), and (iv) ruling 6 (at pages 6 and 7 of Annex A). Request for Redactions, para. 4. *See also id.* at para. 5 (stating basis on which redactions should be made).

²² Prosecution Response, para. 21. *See also id.* (arguing that Serbia and Montenegro's proposed basis for redactions should be rejected).

²³ Prosecution Withdrawal of Submissions, Title.

²⁴ *Id.* at para. 3.

²⁵ Termination Order, p. 1.

unless and until they are rescinded, varied or augmented.”²⁶ From the date of the Termination Order, then, the Rule 54 *bis* Decision—not being one that granted protective measures to witnesses or documents—was no longer operative. Its status at that time was that it had not yet been complied with and had not yet become public, and that status cannot change. In light of this, it is not necessary for the Chamber to “vacate” or “suspend” the effect of the Decision today. Nor, for the same reason, is it necessary for the Chamber to consider the Request for Redactions. As a result, Serbia and Montenegro’s requests for relief will be dismissed.

²⁶ *Id.*

V. Disposition

20. For these reasons, pursuant to Rule 54 and Rule 54 *bis*, the Trial Chamber hereby:

- (a) GRANTS Serbia and Montenegro's request for leave to file its Reply;
- (b) DISMISSES as unnecessary Serbia and Montenegro's Motion to Vacate, and
- (c) DISMISSES as unnecessary Serbia and Montenegro's Request for Redactions.

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



Judge Robinson
Presiding

Dated this twelfth day of April 2006
At The Hague
The Netherlands

[Seal of the Tribunal]