



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-95-5/18-T

Date: 5 September 2014

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Order of: 5 September 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**INTERIM ORDER REGARDING THE ACCUSED'S MOTION FOR WITHDRAWAL OF
CHARGES**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 seised of the Accused’s “Motion for Withdrawal of Charges”, filed on 20 August 2014 (“Motion”), and hereby issues this order in relation thereto.

I. Background and Submissions

1. On 22 July 2009, the Trial Chamber, pursuant to Rules 54 and 73 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), ordered the Office of the Prosecutor (“Prosecution”) to propose in writing the ways in which the scope of the trial may be reduced.¹ On 31 August 2009, the Prosecution proposed to reduce its presentation of evidence in relation to a number of municipalities as well as individual crime sites and incidents. The Prosecution indicated that it would not lead evidence of crime-base witnesses relating to these specified crime sites and incidents, and that the Accused would not be expected to be held criminally liable for the related alleged crimes.² The Chamber ultimately accepted each of the proposals made by the Prosecution in the “Decision on the Application of Rule 73 *bis*” filed on 8 October 2009 (“Rule 73 *bis* Decision”) and instructed the Prosecution not to lead evidence on a number of crime sites and incidents.³

2. On 16 November 2009, the Chamber issued the “Decision on the Accused’s Motion for Finding of *Non-Bis-In-Idem*” (“*Non-Bis-In-Idem* Decision”) wherein it dismissed the Accused’s argument that by virtue of the principle of *non-bis-in-idem*, neither this Tribunal nor any domestic court would be able to try him at any later stage in relation to the allegations which had been removed from the Third Amended Indictment (“Indictment”) pursuant to Rule 73 *bis*.⁴ In doing so, the Trial Chamber elaborated that one of the circumstances in which the Tribunal could prosecute the Accused on those charges is when it grants a Prosecution motion under Rule 73 *bis*(F).⁵

¹ Order to the Prosecution under Rule 73 *bis*(D), 22 July 2009, paras. 5–7.

² Prosecution Submission Pursuant to Rule 73 *bis*(D), 31 August 2009, paras. 1–6, 11.

³ Rule 73 *bis* Decision, paras. 6, 11. *See also* Status Conference, T. 467 (6 October 2009). The Chamber also made clear, in the course of making its decision on the application of Rule 73 *bis*(D), that notwithstanding its removal of certain crime sites or incidents from the scope of the trial, the Accused may still be prosecuted on the related charges by the Tribunal or a domestic court. Status Conference, T. 451 (8 September 2009).

⁴ *Non-Bis-In-Idem* Decision, paras. 12–13, 16.

⁵ *Non-Bis-In-Idem* Decision, para. 12.

3. In the Motion, the Accused requests that the Chamber order the Prosecution to withdraw the charges in the Indictment in relation to which the Prosecution was instructed not to lead evidence as per the Rule 73 *bis* Decision.⁶ The Accused argues that the Prosecution did not move to amend the terms of the Rule 73 *bis* Decision throughout the trial, and since the trial has now come to an end, the charges in question should be withdrawn.⁷ The Accused also requests that the Chamber, in the interests of justice and judicial economy, invite the Prosecution to withdraw those charges not covered by the Rule 73 *bis* Decision on which it has voluntarily decided not to lead evidence, as well as those charges for which it has led evidence that is “plainly insufficient to sustain a conviction.”⁸

4. On 26 August 2014, the Prosecution filed the “Prosecution Response to the Accused’s Motion for Withdrawal of Charges” (“Response”), arguing that the Motion should be denied. The Prosecution submits that given the fact that the trial has not yet ended, the Accused’s request for withdrawal of charges is premature.⁹

II. Applicable Law

5. Rule 73 *bis*(D) of the Rules empowers a Trial Chamber to invite the Prosecution to reduce the number of counts charged in an indictment, and to fix a number of crime sites or incidents in respect of which evidence may be presented by the Prosecution, in the interests of a fair and expeditious trial.¹⁰ When a Chamber exercises this power, it remains open to the Prosecution, after the commencement of trial, to apply under Rule 73 *bis*(F) of the Rules to vary the Chamber’s decision as to the number of crime sites or incidents in respect of which evidence may be presented.¹¹

III. Discussion

6. With respect to the Accused’s request that the Chamber order the Prosecution to withdraw charges which were the subject of the Rule 73 *bis* Decision, the Chamber recalls that in the *Non-Bis-In-Idem* Decision, it stated that those charges have not simply disappeared, and that “it will be

⁶ Motion, paras. 1–2.

⁷ Motion, paras. 3–4, citing *Non-Bis-In-Idem* Decision and *Prosecutor v. Milutinović at al.*, Case No. IT-05-87-T, Order Regarding Prosecution’s Submission With Regard to Rule 73 *bis* (D), 7 April 2009 (“*Milutinović* Decision”).

⁸ Motion, para. 5 and footnote no. 2. As an example of the latter charges, the Accused refers to the alleged shelling of a flea market in Sarajevo on 22 December 1994, described in Schedule G.9 of the Indictment.

⁹ Response, p. 1.

¹⁰ See also Rule 73 *bis* Decision, para. 4; *Non-Bis-In-Idem* Decision, para. 11.

¹¹ See also *Non-Bis-In-Idem* Decision, para. 11.

for the Prosecution to either withdraw [them], or indicate the manner in which it wishes to proceed against the Accused in relation to them, at the end of this trial.”¹²

7. While the Prosecution submits that the trial has not yet ended and that therefore the Motion is premature, the Chamber notes that – in stark contrast to November 2009 when the *Non-Bis-In-Idem* Decision was issued – the Prosecution’s case has now been closed for a number of years, following the presentation of a large volume of Prosecution evidence.¹³ In addition, the Accused’s case has also been closed for a number of months and the presentation of evidence in the trial has been concluded.¹⁴ Furthermore, the Chamber has denied the Prosecution’s request for re-opening of its case as well as its request for leave to introduce evidence in rebuttal.¹⁵ Accordingly, the Prosecution is highly unlikely to be leading any more evidence in this trial, let alone evidence on entire incidents. Thus, it should be in a position to indicate to all the parties in this case, *via* a submission, what its intentions are as to the charges that were the subject of the Rule 73 *bis* Decision. The added benefit of filing this submission prior to the issuance of the judgement is that it will allow this particular bench – it being most familiar with the case – to deal with any issues that might arise therein. This will not be the case if the submission is filed after the Chamber has issued its judgement, because by then the Chamber will have effectively ceased to exist.¹⁶ Accordingly, before dealing with the Motion, the Chamber shall instruct the Prosecution to file a submission indicating its position on the charges on which it did not lead evidence due to the Rule 73 *bis* Decision.

IV. Disposition

8. Accordingly, the Chamber, pursuant to Rules 54 and 73 *bis* of the Rules, hereby:
- a) **ORDERS** the Prosecution to file a submission by 15 September 2014 outlining its intentions with respect to the incidents and charges on which it did not lead evidence due to the operation of Rule 73 *bis* of the Rules; and

¹² *Non-Bis-In-Idem* Decision, para. 14.

¹³ The Prosecution case was closed on 25 May 2012. *See*: Further Order on Close of Prosecution Case, 1 June 2012.

¹⁴ The Accused’s case was closed on 1 May 2014. *See* Further Order on Closure of Defence Case, 2 May 2014.

¹⁵ Decision on Prosecution Motion to Re-Open its Case and Prosecution Motion for Protective Measures for Witness KDZ614, 20 March 2014; Decision on Prosecution’s Motion to Admit Evidence in Rebuttal, 21 March 2014.

¹⁶ *See e.g. Milutinović* Decision.

b) **REMAINS** seised of the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this fifth day of September 2014
At The Hague
The Netherlands

[Seal of the Tribunal]