



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-R77.4
Date: 3 May 2005
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 3 May 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

CONTEMPT PROCEEDINGS AGAINST KOSTA BULATOVIĆ

**ORDER ON DEFENCE MOTION SEEKING RECONSIDERATION OF ORDER ON
CONTEMPT CONCERNING WITNESS KOSTA BULATOVIĆ
AND ALTERNATIVELY MOTION REQUESTING CERTIFICATION**

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Counsel for Mr. Kosta Bulatović:

Mr. Stéphane Bourgon, Duty Counsel

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. 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 (“International Tribunal”);

BEING SEISED OF a “Defence Motion Seeking Reconsideration of Order on Contempt Concerning Witness Kosta Bulatović and Alternatively Motion Requesting Certification”, filed confidentially on 27 April 2005 (“Motion”), in which the Defence of Kosta Bulatović (“Witness Accused”) presents two alternative prayers for relief: (1) a request that the Chamber reconsider its decision to proceed against the Witness Accused for contempt (“Reconsideration Request”), and (2) a request that the Chamber certify its decision “to remain seized of the matter”, and not transfer the contempt proceedings to another Chamber (“Certification Request”);

CONSIDERING that a Chamber may reconsider a decision where there has been a change of circumstances, or where the Chamber has been persuaded that its previous decision was erroneous and caused prejudice;¹

CONSIDERING that a Chamber’s determination of whether to reconsider its previous decision is itself a discretionary decision arising from its inherent powers;²

NOTING the arguments advanced in the Reconsideration Request:

- (1) Since the Chamber’s decision to proceed against the Witness Accused for contempt, there has been a significant change of circumstances, in that the Witness Accused completed his testimony, expressed his respect for the International Tribunal, and informed the Chamber that his conduct was not intended to interfere in the administration of justice;
- (2) When the Chamber charged the Witness Accused with contempt, it was not aware of pertinent information, including:
 - (a) that the Accused Milošević “had not been allowed to attend the proceedings”,
 - (b) that the Witness Accused would complete his testimony on 25 April 2005,
 - (c) the Witness Accused’s view that it was not his intention to delay the proceedings, because he “had not been given an opportunity to express” that view;
- (3) The Chamber’s decision to proceed with cross-examination of the Witness Accused in the absence of the Accused Milošević was based on its decision that a continuation of the

¹ *Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-21-Abis, “Judgment on Sentence Appeal”, 8 April 2003, para. 49.

² *Ibid.*; see also *Prosecutor v. Blaškić*, Case No. IT-95-14-A, “Decision on ‘Prosecution’s Preliminary Response and Motion for Clarification Regarding Decision on Joint Motion of Hadžihasanović, Alagić and Kubura of 24 January 2003’”, 23 May 2003, para. 7; *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A “Decision on Applicant’s Urgent Motion for Reconsideration of Decision on Second Defence Motion to Enlarge Time for Filing of Replies Dated 1 April 2005”, 6 April 2005, p. 4.

trial in those circumstances was permissible, a decision taken on the same day without the benefit of detailed submissions by the Parties; and

- (4) Several factors suggest that it would not be in the interests of justice to continue with the contempt proceedings, including:
- (a) the legal complexity of the underlying decision to proceed with cross-examination in the Accused Milošević's absence,
 - (b) the administration of justice before the Tribunal, where hearing time has become a scarce resource,
 - (c) the cost involved for travel and remuneration of counsel, considering that the Witness Accused has filed for indigent status,
 - (d) the "resonance of the proceedings against the Witness Accused in the former Yugoslavia" and its consequences for the Tribunal's mission in general and the continuation of the *Milošević* trial in particular, and
 - (e) the potential consequences for the Witness Accused's health;

CONSIDERING that neither the Witness Accused's statements after the resumption of the *Milošević* trial on 25 April 2005, nor the information unavailable to the Chamber at the time of its decision, affect or change the conduct on 19 and 20 April 2005 that gave rise to the initiation of contempt proceedings against him;

CONSIDERING that the legal issues discussed in the Reconsideration Request are beyond the scope of the limited proceedings against the Witness Accused;

CONSIDERING that the Witness Accused has an automatic right of appeal from the decision of this Trial Chamber at the conclusion of the contempt proceedings;

CONSIDERING that the remaining issues raised in the Reconsideration Request are not relevant to the contempt proceedings, and that none of those issues persuades the Chamber that its previous decision was erroneous or caused prejudice;

CONSIDERING that Rule 73(B) of the Rules of Procedure and Evidence of the International Tribunal ("Rules") requires two criteria be satisfied before a Trial Chamber may certify a decision for interlocutory appeal: (1) that the issue would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, *and* (2) an immediate resolution of the issue by the Appeals Chamber may, in the opinion of the Trial Chamber, materially advance the proceedings,

NOTING that the Certification Request's basic assignment of error to the Chamber in relation to its decision to prosecute the contempt matter itself is that "its impartiality may be called into

question regarding the underlying issue of the right of an accused person to be tried in his presence”;

CONSIDERING that, although the Certification Request correctly notes the two criteria for certification, its arguments focus on the effect on the fair conduct of the proceedings of the Chamber’s decision to prosecute the matter itself, and do not discuss the requirement that immediate resolution of the issue by the Appeals Chamber may materially advance the proceedings;

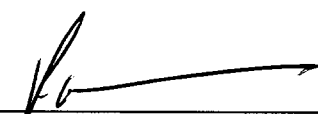
CONSIDERING that, even when an important point of law is raised, such as in this case, the effect of Rule 73(B) is to preclude certification unless the party seeking certification establishes that both conditions are satisfied;

CONSIDERING, moreover, that given the narrow nature of the charge against the Witness Accused and the imminent hearing date of 5 May 2005, it is difficult to see how resolution of the issue by the Appeals Chamber now, as opposed to after a decision is rendered by this Trial Chamber,³ would materially advance the proceedings;

PURSUANT TO Rules 54 and 73 of the Rules,

HEREBY DENIES the Motion.

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



Judge Robinson
Presiding

Dated this third day of May 2005
At The Hague
The Netherlands

[Seal of the Tribunal]

³ In this regard, Rule 73(B)’s reference to “immediate resolution” has been interpreted as marking the distinction between resolution of the issue at this stage of the proceedings, and waiting until the end of the case to raise the issue in the course of an appeal from the Trial Chamber judgement. *See Prosecutor v. Strugar*, Case No. IT-01-42-T, “Decision on Defence Motion for Certification”, 17 June 2004, paras. 6, 8.