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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 10 July 2008

Judgement Summary For Ljube Boškoski and Johan Tarčulovski

Please find below the summary of the judgement read out today by Judge Parker:

Summary of Judgement

1. This Chamber is sitting today to deliver Judgement in the trial of the two Accused persons, Ljube Boškoski and Johan Tarčulovski.
2. For the purposes of this hearing, the Chamber will summarise briefly its findings, emphasising that this is a *summary* only, and that the only authoritative account of the Chamber's findings, and of its reasons for those findings is to be found in the written Judgement, copies of which will be made available to the Parties at the conclusion of this sitting.
3. The two Accused, Ljube Boškoski and Johan Tarčulovski are charged with crimes allegedly committed between 12 and 15 August 2001 against ethnic Albanians from Ljuboten village near Skopje, in the former Yugoslav Republic of Macedonia (which will be referred to as Macedonia). It is alleged in the Indictment that a police unit commanded by Johan Tarčulovski entered the village in the morning of 12 August, that members of this unit shot and killed six unarmed ethnic Albanian residents of the village, that they severely mistreated 13 ethnic Albanian residents, 10 of whom were subjected to further beatings at a police checkpoint at the entrance to the village and later at Mirkovci police station in Skopje as a result of which one of the men died. It is alleged further that members of the police unit intentionally set on fire at least 14 houses in the village which caused serious damage to these houses or destroyed them, and damaged houses by the use of hand grenades and rifle fire. Further, it is alleged that in the afternoon of 12 August about 90 ethnic Albanian men fleeing from the village were subjected to cruel treatment by other police at a police checkpoint near the village, and later at several police stations in Skopje, in Skopje Court II, and Skopje City Hospital.
4. The police are a component element of the Ministry of the Interior of the Government of Macedonia. At the time Ljube Boškoski was the Minister of Interior. He is charged under Article 7(3) of the Statute of this Tribunal, enacted by the United Nations, on the basis that, as the Minister, he was the superior of the police who committed the alleged crimes, but despite having knowledge of or reason to know, what they had done, he failed to take reasonable and necessary measures to investigate and to ensure that they were punished for their crimes. It is alleged his failure continued until May 2002 when the Prosecutor of this Tribunal announced that she was assuming responsibility for the investigation of the Ljuboten case. It is on this basis of his alleged responsibility as their superior, that Ljube Boškoski is charged in the Indictment with
 - the MURDER of 7 ethnic Albanian men, a violation of the laws or customs of war as recognised by Article 3(1)(a) of the Geneva Conventions of 1949. These are the six men alleged to have been shot and killed in the village, and the 7th man who died in hospital from the beatings he had received in the village and at Mirkovci police station,

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- WANTON DESTRUCTION of a village by setting fire to at least 14 houses, a violation of the laws and customs of war, and
- CRUEL TREATMENT of ethnic Albanian residents of the village at the various locations indicated, a violation of the laws and customs of war, as recognised by Article 3(1)(a) of the Geneva Conventions of 1949.

5. The other Accused, Johan Tarčulovski, is charged on quite a different basis from Ljube Boškoski. Johan Tarčulovski was a relatively junior police officer serving in the unit providing security for the President of Macedonia and his family. It is alleged that he commanded the police who actually entered Ljuboten village on 12 August 2001, that he led the police during the attack and was present when the crimes were committed. He is charged under Article 7(1) of the Statute with having ordered, planned, instigated and aided and abetted the crimes committed in the village by the police, and also for participating in a joint criminal enterprise with other persons to commit these same crimes. The Indictment does not allege that he had any responsibility for the acts of mistreatment which are alleged to have occurred outside Ljuboten.

6. For the Tribunal to have the power to deal with the crimes charged against the Accused, it must be proved by the Prosecution that an armed conflict existed in Macedonia at the time of the charged offences. The Prosecution alleged that an internal armed conflict existed from January until at least September 2001 between the Security Forces (i.e. the army and police) and the Albanian National Liberation Army (which will be referred to as the NLA). This issue was highly contested during the trial. It is a complex factual and legal issue. The Chamber has dealt with important aspects of the evidence and set out its reasoning in the Judgement. In the result the Chamber is satisfied that by August 2001 there was an internal armed conflict between the Security Forces and the National Liberation Army.

7. The Prosecution and the Defence cases as to what occurred in Ljuboten on 12 August 2001 are in a considerable opposition. The Defence submits that the events that occurred in Ljuboten were part of a legitimate law enforcement operation, to search for members of the NLA and to prevent future NLA attacks. The Prosecution case is that the police operation in Ljuboten and the destruction caused was not a legitimate law enforcement operation; it was not justified by military necessity; that Ljuboten was not an NLA stronghold, and it was not used as an NLA logistics base. The Chamber heard a great deal of conflicting evidence on this and other issues in the trial.

8. The Chamber notes that it found that some evidence from residents of the village, especially concerning the presence and activities of NLA members in the village, and from members of the police and the Army concerning the events, was not honest and reliable.

9. The Chamber is satisfied that in the morning of 12 August 2001, a party of at least 60 to 70, and possibly more than 100 well armed reserve police, including men from a private security agency called "Kometa", entered the village of Ljuboten. They took with them a considerable amount of incendiary material. A police armoured personnel carrier supported them. Johan Tarčulovski led this group of police. Macedonian army units positioned in the mountainous country around the village provided mortar and other fire support, especially as the unit was poised and ready to enter the village. Members of the army, however, are not charged in respect of these events.

10. The first act of the group in the village was to blow open the gate to the home of an ethnic Albanian family, fire very many shots from a number of police at the house and through the open front door, shooting fatally an unarmed man in casual civilian clothing as he tried to close the door. He died a little later in the house in the presence of members of his family. The evidence does not establish that the dead man had any NLA affiliation. He obviously presented no threat to the police when he was shot, and he was taking no part in hostilities. The police did not seek to enter the house to search or to interview the other persons inside. Instead, a car and construction material in the front yard were then

deliberately set on fire with the aid of incendiary material the police had with them. Then the police moved on.

11. The next action of the police was to deliberately set fire to a nearby house of another ethnic Albanian, again with the aid of incendiary material the police had with them. There was no entry of the house to search. The evidence does not establish that this house had been used for hostilities against the police or army that day, or that the owner was affiliated with the NLA. The police continued moving along the main road of the village setting fire to some further 10 houses in similar circumstances.

12. Near the centre of the village the police found a group of 13 male ethnic Albanians sheltering in the basements of two houses of the family compound of Adem Ametovski. Women were also in one of the basements. The men were unarmed, dressed in civilian clothes, and offered no resistance to the arriving police. Valuables, money and identification papers were taken from the men, and valuables and money from the women. Outside, in the front yard of one of these houses, the men were forced to lie down on the ground and to pull up their clothing to cover their eyes and heads. The men were then very severely and repeatedly beaten and kicked by the police, some were hit with rifle butts, as they lay on the ground. They were threatened with knives and one man had a cross carved on his back by a policeman with a knife. One of the men was shot in the arm or hand as he lay on the ground. One of the men in this group was then shot dead while the others were lying on the ground. He was shot many times. Most of the remaining men were then forced to walk under armed escort to a police checkpoint at a house at the entrance to the village (Braca's house). However, two elderly men were forced to stay behind at Adem Ametovski's house. One of them was then shot many times by the police and died by the house. The remaining 10 men were further violently mistreated by the escorting police by Braca's house at the entrance to the village, so much that some of them were rendered unconscious.

13. The men were then detained at Mirkovci police station where they were subjected to further severe beatings. One of them died on the following day as a result of the beatings. He had been taken to hospital. He had been gravely mistreated by members of the police unit in Ljuboten, and later by different police at Mirkovci police station. The evidence does not establish however that the police led by Johan Tarčulovski who mistreated this man in Ljuboten village beat him with the intent to murder him. The police who gravely mistreated this man at Mirkovci police station were not among the police led by Johan Tarčulovski.

14. The evidence does not show that any of the men who had been sheltering in Adem Ametovski's family compound had any NLA affiliation. When they were shot and mistreated they were in police custody, they were unarmed, very heavily outnumbered, and obviously presented no threat to the armed police. They were not taking any active part in hostilities.

15. The police in the village continued and reached a group of houses belonging to an ethnic Albanian family on the outskirts at the far end of the village. While the evidence concerning activities at these houses is in many respects unsatisfactory, it is open on the evidence that there could have been firing at the police and at the army from one or more of these houses. As the police approached these houses five men ran from the back of one of these houses, uphill across a field from the house towards trees. As they were running they came under heavy firing from the police and also fire from army positions located on a slope above the village. Two of the men managed to escape. The dead bodies of the other three men were found in the field. All three had been hit by very many bullets.

16. It is the evidence of the police that three firearms and ammunition were found by the police near the bodies of these three dead men. However, this evidence of the police about these weapons is suspect, because the same three weapons were later claimed by police to have been the weapons of some of the 13 men mentioned earlier who were

sheltering in the cellars in Adem Ametovski's compound. They were used as evidence in court proceedings against those men.

17. The bodies of these three dead men in the field, and the bodies of the two men who had been shot many times by police earlier outside the house of Adem Ametovski, were left where they had fallen. No police investigation of the scenes, or of the bodies was undertaken.

18. They were buried by villagers two days later. Eventually, some eight months later, the bodies of these men were exhumed in the presence of representatives of this Tribunal and autopsies were conducted. However, the bodies had undergone significant changes in that time. In respect of the three men shot in the field it was established that many bullets had entered the bodies from more than one direction, but it was not possible to determine which bullet or bullets had actually caused the deaths. It is not possible to determine, therefore, whether these three men died from police or army fire. The charges are limited to firing by the police. It has not been established therefore that the police caused the deaths of these three men. Further, while the evidence is not fully convincing, it is possible that these three men shot in the field had been firing at the police or army and were running with their weapons to other shelter. On this view, it has not been established that they were not engaged in armed hostilities. For these two reasons it has not been proved that the three men shot in the field were murdered by the police.

19. As people were trying to flee from the village in the afternoon of 12 August, at a police checkpoint on the road to Skopje, which was manned by different police and not those who had entered Ljuboten, men were separated from women and subjected to cruel treatment. From there they were taken to police stations in Skopje, where many of them were further severely mistreated. In turn, several of the Ljuboten residents detained at police stations in Skopje were taken to Skopje City Hospital. Others were brought to Skopje Court II. There is evidence that at these two locations the men may have been further mistreated. It has not been established, however, that the persons who carried out the assaults at the court and the hospital were under the authority of the Minister of Interior.

20. As had been indicated, the only basis on which Ljube Boškoski could be convicted of the offences charged in the Indictment, is as a superior pursuant to the provisions of Article 7(3) of the Statute, *i.e.* what is usually described as command responsibility. A primary contention of the Boškoski Defence is that Ljube Boškoski was neither *de jure* nor *de facto* a superior of the police that entered Ljuboten on 12 August 2001, nor over Johan Tarčulovski, nor over the other police at the police checkpoints, police stations, the court or in the hospital, where it is alleged the offences occurred. Further, it is submitted, that Ljube Boškoski had no power to punish any of these persons within the meaning of Article 7(3). A great deal of evidence was advanced in an effort to support these contentions.

21. Despite this, for reasons detailed in the written Judgement, the Chamber is satisfied that Ljube Boškoski, as Minister of Interior at the material time, had the power to control and direct the police, and any other operative employees of the Ministry of the Interior, including members of the reserve police. This power also extended to ensuring that those police responsible for investigating possible crimes, including those who were required to act at the direction of the judiciary and to assist the public prosecutor, *i.e.* the criminal police in the Ministry of the Interior, performed their functions efficiently and lawfully. Of course, this power to control and direct extended to the Accused Johan Tarčulovski who was then an employee of the Ministry of the Interior.

22. Contrary to some media reports and the understanding of some people at the time, Ljube Boškoski was not at Ljuboten and directing the police operation throughout 12 August. As news of the operation spread he was asked by the President of Macedonia to go there. He reached Ljuboten as the operation was drawing to a close and was able to see something of events in the village from Braca's house at the entrance to the village. He was there for over an hour. The evidence discloses that he was told that there had been a

successful operation against terrorists and that some of them had been arrested. He was not told that any had been shot. He saw at a little distance the 10 men who remained of those detained at Adem Ametovski's house in the village. They had been escorted to Braca's house from the village. They were again lying face down with their heads covered and it is not apparent that he would have had any reason to think they had been severely mistreated. Smoke could be seen rising from parts of the village, but that could be consistent with armed hostilities against terrorists. In short from what he could see and what he was then told by police, he had no reason to believe there may have been murder, cruel treatment or wanton destruction.

23. By two days later, however, he had received police reports that terrorists had been killed. In addition, by virtue of information from diplomatic figures, human rights and other organisations and the media, Ljube Boškoski quickly knew of serious allegations about the conduct of police in Ljuboten and elsewhere on 12 August and the following day. As this information available to him grew, it was sufficient to put him on notice of the likelihood that crimes may have been committed by the police. As their superior, Ljube Boškoski was obliged to investigate this, or report it to the competent authorities in Macedonia who were responsible for investigating possible criminal conduct so that the matter could be fully investigated and offenders punished if this was justified. For the purposes of Article 7(3) of the Statute, his obligation as a superior to punish offending subordinates would be satisfied, if a report was made to the appropriate authorities which was likely to trigger an investigation into the alleged criminal conduct.

24. In fact two reports were made, in the course of their ordinary duties, by police of the Ministry of Interior, to the appropriate authorities, i.e. the investigating judicial authority and to the public prosecutor. On the evening of 12 August 2001 a report was made of the dead men in Ljuboten, and a further report was made following the death in hospital of the man mistreated in Ljuboten and then at Mirkovci police station. Ljube Boškoski was informed that the judicial authorities had been notified and that steps to investigate had already been attempted. While these reports by his officers were not full or accurate and did not detail all possible criminal conduct, they were such that they were likely to trigger an investigation. Indeed, by virtue of the existing laws, they should have caused a judicial investigation, supported by the public prosecutor, into each of the deaths, in the course of which the investigative judge and the public prosecutor ought also to have become officially aware of the closely related allegations of misconduct of police involving cruel treatment and wanton destruction, so as to be able to determine whether criminal charges were justified.

25. In fact, there was not an investigation by the responsible authorities. No criminal proceedings were instituted against any police. There are a number of reasons for this. Failures by police at police station ^air to perform their responsibilities adequately on 12 August 2001 and on the days following, and an apparent want of due attention to their responsibilities by the responsible authorities, are the primary factors. Ljube Boškoski had no authority or powers in respect of the responsible authorities, i.e. the investigative judge and the public prosecutor, who were not within the Ministry of Interior. It is not shown that the failure of police to perform their duties is attributed to his orders, or was known to Ljube Boškoski during the period charged in the Indictment, or that it should have been anticipated by him. It is not established, therefore, that further reporting or other action by Ljube Boškoski to satisfy his obligation under Article 7(3) of the Statute was required. While the circumstances disclosed by the evidence reveal a serious failure of the functioning of the police and the responsible Macedonian authorities at that time, it has not been established that Ljube Boškoski failed to take the necessary and reasonable measures for the punishment of the police which were required of him by Article 7(3) of the Statute.

26. As already indicated the Indictment charges the Accused Johan Tarčulovski with individual criminal liability under Article 7(1) of the Statute for ordering, planning, instigating, or aiding and abetting the crimes referred to in Article 3 of the Statute and

described in the Indictment, and with committing them by participation in a joint criminal enterprise.

27. Contrary to the case advanced by the Defence for Johan Tarčulovski, the evidence satisfies the Chamber that he played a prominent role in the events of 12 August 2001 in Ljuboten. On 10 and 11 August he was in charge of logistical preparations for the operation. Support was provided by the police and the army. He coordinated this, and mortar and other fire support provided by the army. On 12 August, Johan Tarčulovski personally led the police operation and was with the police as they moved through the village. Although not formally appointed, Johan Tarčulovski exercised effective leadership and control of the police in the village that day. The actions of the police in the village were at his direction.

28. The Chamber is satisfied, therefore, that the Accused Johan Tarčulovski is criminally responsible for ordering, planning and instigating the offences committed in the village by police. In view of his direct role in ordering the commission of these offences it is not the case that he merely aided and abetted their commission.

29. The evidence does not establish that Johan Tarčulovski participated in a joint criminal enterprise as alleged in the Indictment. The reserve police with him in the village were acting under his orders not as fellow participants in a joint criminal enterprise. Further, as detailed in the written Judgement, the Chamber is satisfied that Johan Tarčulovski was himself acting under orders in carrying out the police operation in Ljuboten. The evidence does not enable the person or persons responsible for the orders to Johan Tarčulovski to be identified. The circumstances confirm it was a person or persons superior to him.

30. It is to be noted that the police operation on 12 August occurred on the day before the signing of the Ohrid Agreement, which brought an end to fighting between the Macedonian security forces and the NLA.

31. The pattern of conduct in the village by the police discloses, in the finding of the Chamber, a deliberate and indiscriminate attack on residents of Ljuboten of Albanian ethnicity, involving acts of murder and cruel treatment, as well as the indiscriminate and wanton destruction of houses and other property of ethnic Albanian residents of Ljuboten. It was not a law enforcement operation to locate and arrest NLA members. The predominant objective of this police operation was to retaliate against persons of Albanian ethnicity in the village for actions of the NLA, which the village was thought to have harboured or supported, in killing ethnic Macedonian soldiers, most especially in respect of a land mine attack at a location close to Ljuboten on 10 August 2001. 8 soldiers were killed in this attack and others were wounded. The operation was not only a means of retaliation, it also would serve as a warning of the consequences of support in the village for the NLA.

Ljube Boškoski: Will you please stand.

The Chamber finds you **NOT GUILTY** on all counts in the Indictment. The Chamber orders that you be released from the United Nations Detention Unit, subject to the completion of the necessary modalities.

You may be seated.

Johan Tarčulovski: Will you please stand.

The Chamber finds you **GUILTY**, pursuant to Article 7(1) of the Statute, of the following offences:

Count 1: Murder, a violation of the laws or customs of war, under Article 3 of the Statute, for having ordered, planned and instigated the murder of Rami Jusufi, Sulejman Bajrami and Muharem Ramadani;

- Count 2: Wanton destruction, a violation of the laws or customs of war, under Article 3 of the Statute, for having ordered, planned and instigated the wanton destruction of the houses or other property of the twelve ethnic Albanian residents identified in the written Judgement;
- Count 3: Cruel treatment, a violation of the laws or customs of war, under Article 3 of the Statute, for having ordered, planned and instigated the cruel treatment at Adem Ametovski's house of the thirteen ethnic Albanian residents identified in the written Judgement; and the cruel treatment at Braca's house of the ten ethnic Albanian residents identified in the written Judgement.

With respect to sentence, the Chamber has set out in the written Judgement the many matters that have been taken into account in determining the appropriate sentence. In particular, the Chamber has taken into account the sentencing structure in the Former Yugoslav Republic of Macedonia in 2001 and sentences imposed in this Tribunal for offences in some ways similar to those of which you have been convicted.

The Chamber would emphasise that you were a relatively junior officer of the police, acting under orders, when you planned, instigated and ordered the commission of these offences. This does not excuse your conduct, but it affects the degree of the seriousness of your conduct.

You are sentenced to a single sentence of 12 years imprisonment. Full credit will be given for the time you have spent in custody. You will remain in the custody of the Tribunal pending the finalisation of arrangements for your transfer to the State where you will serve your sentence.

You may sit down.
This concludes this Trial.
The Chamber will now adjourn.
