

Appeals Chamber Affirms Conviction of Johan Tarčulovski and Acquittal of Ljube Boškosi

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APPEALS CHAMBER

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Appeals Chamber Affirms Conviction of Johan Tarčulovski and Acquittal of Ljube Boškosi

The Appeals Chamber today affirmed the conviction of Johan Tarčulovski, a former police officer of the Former Yugoslav Republic of Macedonia (FYROM) for having ordered, planned and instigated crimes committed against ethnic Albanians during a police operation conducted on 12 August 2001 in the village of Ljuboten in the northern part of the FYROM. His sentence of 12 years' imprisonment was upheld.

The Appeals Chamber also affirmed the acquittal of Ljube Boškosi, Minister of Interior of the FYROM from May 2001 until November 2002.

On 10 July 2008, the Trial Chamber found Johan Tarčulovski guilty of ordering, planning and instigating the murder of three ethnic Albanian civilians, wanton destruction of twelve houses or other property and cruel treatment of thirteen ethnic Albanian civilians, all violations of the laws or customs of war. Ljube Boškosi was found not guilty on all charges with respect to his alleged superior responsibility for failing to punish his subordinates who committed crimes during and subsequent to the police operation on 12 August 2001.



Ljube Boškosi & Johan Tarčulovski

Johan Tarčulovski appealed his conviction and sentence, presenting seven grounds of appeal. The Prosecution appealed Ljube Boškosi's acquittal.

The Appeals Chamber dismissed all the grounds of appeal advanced by Johan Tarčulovski.

In dismissing Johan Tarčulovski's jurisdictional challenges, the Appeals Chamber held that the fact that a State resorted to force in self-defence in an internal armed conflict against an armed group does not, in and of itself, prevent the qualification of crimes committed therein as serious violations of international humanitarian law. It found that the Trial Chamber did not err in applying the laws or customs of war even if the FYROM had been acting in lawful self-defence against terrorists in an internal armed conflict.

The Appeals Chamber also upheld the Trial Chamber's factual findings challenged by Johan Tarčulovski. The Appeals Chamber held that the Trial Judgement, read as a whole, shows that the Trial Chamber was satisfied beyond reasonable doubt that the direct perpetrators of the crimes of murder and cruel treatment knew or should have been aware that the victims were taking no active part in the hostilities. The Appeals Chamber also affirmed the Trial Chamber's findings that the predominant object of the police operation in Ljuboten on 12 August 2001 was to indiscriminately attack ethnic Albanians and their property, and that Johan Tarčulovski personally led the police as they moved through Ljuboten committing crimes.

With respect to Johan Tarčulovski's sentence, the Appeals Chamber found that the Trial Chamber had properly taken into account when assessing the gravity of the offences that he had been carrying out the orders of those senior to him. The Appeals Chamber also held that although the FYROM granted amnesty to those involved on both sides of the conflict, the relevant legislation of the FYROM contained a provision that those who committed criminal acts falling within the jurisdiction of the Tribunal were excluded from the grant of amnesty. The Appeals Chamber affirmed Johan Tarčulovski's sentence of 12 years' imprisonment.

The Appeals Chamber dismissed the Prosecution's single ground of appeal against Ljube Boškosi's

acquittal, with respect to both the alleged errors of law and fact.

The Appeals Chamber was satisfied that the Trial Chamber had correctly held that a superior may, under specific circumstances, discharge his obligation to punish an offending subordinate by reporting to the competent authorities, provided that this report is likely to trigger an investigation or initiate disciplinary or criminal proceedings.

The Appeals Chamber also dismissed the Prosecution's assertion that the Trial Chamber erred in fact in finding that Ljube Boškosi had taken the necessary and reasonable measures to punish his offending subordinates. The Appeals Chamber was not satisfied that the Trial Chamber had erred in finding that the reports ought, in the ordinary course, to have led the judicial authorities to conduct a proper investigation in the events in Ljuboten.

The Appeals Chamber upheld Ljube Boškosi's acquittal.

Johan Tarčulovski will remain in the Tribunal's Detention Unit pending finalisation of arrangements for his transfer to the State where he will serve the rest of his sentence.

The initial indictment against Johan Tarčulovski and Ljube Boškosi was confirmed on 9 March 2005. Johan Tarčulovski was arrested on 14 March 2005 and transferred to The Hague on 16 March 2005. Ljube Boškosi was in custody in Croatia in relation to unconnected charges when he was transferred to The Hague on 24 March 2005. The trial started on 16 April 2007 and closing arguments were heard from 6 to 8 May 2008.

Since its inception 17 years ago, the Tribunal has indicted 161 persons for war crimes committed on the territory of the former Yugoslavia. The proceedings against 123 individuals have been completed.

Proceedings are currently open in relation to 38 accused with 25 at trial stage and 11 pending before the Appeals Chamber. Two accused, Ratko Mladić and Goran Hadžić, are at large awaiting arrest and transfer to The Hague for trial.

The full text of the summary of the Judgement can be found in English at the following link:

http://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_summary.pdf

International Criminal Tribunal for the former Yugoslavia

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