



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-04-82-T
Date: 12 March 2008
Original: English

IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Christine Van Den Wyngaert
Judge Krister Thelin

Registrar: Mr. Hans Holthuis

Decision: 12 March 2008

PROSECUTOR
v.
LJUBE BOŠKOSKI
JOHAN TARČULOVSKI

PUBLIC

**DECISION ON TARČULOVSKI MOTION FOR PERMISSION
TO ADD ADDITIONAL EXHIBITS TO ITS 2D DEFENCE
EXHIBIT LIST**

The Office of the Prosecutor:

Mr Dan Saxon
Ms Antoinette Issa
Ms Meritxell Regue
Mr Gerard Dobbyn
Ms Nisha Valabhji

Counsel for the Accused:

Ms Edina Rešidović and Mr Guénaél Mettraux for Ljube Boškosi
Mr Antonio Apostolski and Ms Jasmina Zivković for Johan Tarčulovski

1. This Trial Chamber ("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 the "Tarčulovski Motion for Permission to Add Additional Exhibits to its 2D Defence Exhibit List" filed by Counsel for Johan Tarčulovski ("Tarčulovski Defence") on 4 March 2008 ("Motion"). The Prosecution responded on 11 March 2008, not opposing the Motion.¹

2. In this Motion the Tarčulovski Defence seeks leave to add 14 documents to its Rule 65*ter* exhibit list. It is submitted that these documents are supporting materials or are relied on by the Tarčulovski Defence's expert witness Blagoja Markovski and quoted by him in his report. It is submitted further that these documents were disclosed to the Prosecution on 26 and 27 February 2008.

3. As this Chamber has already held, there is a difference between the admission of a document into evidence as an exhibit and the inclusion of a document into a party's list of proposed exhibits submitted pursuant to Rule 65*ter* of the Rules of Procedure and Evidence ("Rules"). The purpose of the Rule 65*ter* list is to give notice to the Prosecution that the Defence intends to rely on the document during the Defence case at trial which will allow the Prosecution to prepare its case accordingly. The Chamber need not assess the relevance and probative value of such documents. However, a party should not be allowed leave to add to its proposed exhibit list documents that are obviously irrelevant.²

4. The proposed documents include, *inter alia*, newspaper articles and interviews speaking of the existence and composition of the NLA, report on possible origins to the conflict in Macedonia, resolutions issued by the European Parliament and the Security Council addressing the situation in Macedonia in 2001, an extract from the Rule Book for Army Service and an extract from the 2001 NATO Handbook.

5. Document Rule 65*ter* 2D00713 is a NATO Handbook of 2001. The Tarčulovski Defence seeks permission to add to its Rule 65*ter* list only one page of it, page 42. The Chamber notes, however, that this document Rule 65*ter* 2D00713 has already been admitted into evidence in this

¹ Prosecution Response to "Tarčulovski Motion for Permission to Add Additional Exhibits to its 2D Defence Exhibit List", 11 March 2008.

² Oral Decision of 4 April 2007, T 243.

trial.³ As page 42 is subsumed under this exhibit, the application for adding page 42 to the Rule 65ter list is moot.

6. All other documents which the Tarčulovski Defence seeks to add to its Rule 65ter list, i.e. documents Rule 65ter 2D00701 - 2D00712 and 2D00714 seem to be relevant to issues in the Indictment. They provide more detail about the Tarčulovski Defence case. These documents were disclosed to the Prosecution before the start of the Tarčulovski Defence case. In the view of the Chamber, no prejudice to the Prosecution will occur if leave to add these documents is granted at this time.

7. The Chamber notes that while the Macedonian originals of documents Rule 65ter 2D704 and 2D708 appear to contain information about the source and the date of these documents, the English translations do not contain such information and should be supplemented accordingly.

For the foregoing reasons and pursuant to Rule 65ter of the Rules of Procedure and Evidence the Chamber:

GRANTS the Motion **IN PART**, as decides as follows:

- (i) The Motion is moot regarding the application to add Rule 65ter document 2D00713 to the Rule 65ter list of the Tarčulovski Defence as the document is admitted into evidence;
- (ii) The Chamber grants leave to the Tarčulovski Defence to add the Rule 65ter documents 2D00701-2D00712 and 2D00714 to its Rule 65ter exhibit list;

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

Dated this twelfth day of March 2008
At The Hague
The Netherlands



Judge Kevin Parker
Presiding Judge

[Seal of the Tribunal]

³ *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-T, Trial Hearing, 12 March 2008, T 1 (temporary transcript page). By the Chamber's decision, pages 1 and 42-47 of document Rule 65ter 2D00713 were admitted into evidence as Exhibit P603.