



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-04-82-A
Date: 19 May 2009
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision of: 19 May 2009

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

**DECISION ON BOŠKOSKI DEFENCE MOTION TO STRIKE
OUT PARAGRAPHS FROM PROSECUTION APPEAL BRIEF**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Ljube Boškosi:

Ms. Edina Rešidović
Mr. Guénaél Mettraux

Counsel for Johan Tarčulovski:

Mr. Alan M. Dershowitz
Mr. Nathan Z. Dershowitz
Mr. Antonio Apostolski
Mr. Jordan Apostolski

1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seized of appeals by both the Prosecution and Johan Tarčulovski against the Judgement of Trial Chamber II in this case, rendered on 10 July 2008 (“Trial Judgement”).¹ It is also presently seized of the “Boškoski Defence Motion to Strike Out Paragraphs from Prosecution Appeal Brief”, filed on 1 December 2008 (“Motion to Strike”). On 11 December 2008, the Prosecution filed its response to the Motion to Strike.² Subsequently, on 15 December 2008, Ljube Boškoski (“Boškoski”) replied to the Prosecution Response to Motion.³

A. Submissions of the Parties

2. In the Motion to Strike, Boškoski argues that paragraphs 1, 2, 3, 93 and 99 of the Prosecution’s Appeal Brief contain grave misstatements or misrepresentations of the findings of the Trial Chamber.⁴ Boškoski requests the Appeals Chamber to strike out these paragraphs and “order the Prosecution to re-file its brief without the impugned paragraphs”, or “order that the impugned paragraphs do not form part of this appeal”. In the alternative, Boškoski submits that the Appeals Chamber should indicate that it will disregard these misrepresentations for the purposes of the appeal.⁵

3. Boškoski submits that granting the Motion to Strike will contribute to ensuring fair and expeditious proceedings, and that the inaccurate submissions contained in the Appeal Brief do not take any of the Tribunal’s time during the appeal hearing.⁶ Furthermore, Boškoski submits that should the Appeals Chamber decide not to deal with the matter at this stage, it should be taken into consideration when dealing with the merits of the appeal, at which point the Appeals Chamber may summarily dismiss those grounds of appeal which misrepresent the findings of the Trial Chamber.⁷

4. As regards the particulars of the alleged misrepresentations, Boškoski argues that paragraph 1 of the Appeal Brief erroneously claims that the Trial Chamber found Boškoski to have effective control over the perpetrators of the crimes, when in fact the finding was limited to

¹ Prosecution’s Appeal Brief, 20 October 2008 (“Appeal Brief”). Brief of Johan Tarčulovski, 12 January 2009.

² Prosecution Response to Boškoski Defence Motion to Strike Out Paragraphs From the Prosecution Appeal Brief, 11 December 2008 (“Prosecution Response to Motion”).

³ Boškoski Defence Reply *Re* Motion to Strike Parts of Prosecution Appeal, 15 December 2008 (“Reply”).

⁴ Motion to Strike, para. 8.

⁵ Motion to Strike, para. 9. *See also* Reply, para. 34.

⁶ Motion to Strike, para. 35.

⁷ Motion to Strike, para. 36 (emphasis omitted).

Boškoski being regarded as superior of the police in a general sense.⁸ Boškoski argues that in paragraph 2 of the Appeal Brief, the Prosecution misquoted the Trial Chamber as having said that organs of the Ministry of Interior were competent “for investigating and reporting crimes” as opposed to “preventing and detecting crimes”.⁹ Finally, Boškoski claims that, contrary to the Prosecution’s allegations in paragraphs 3 and 93 of the Appeal Brief, the Trial Chamber made no finding that Boškoski had the material ability in the circumstances to initiate disciplinary proceedings and did not find that he had failed in his duty as far as is pertinent to the disciplinary process.¹⁰

5. The Prosecution responds that the Appeal Brief accurately reflects the Trial Judgement and that the Motion to Strike should be dismissed.¹¹ The Prosecution states that all but one of the impugned paragraphs are found in the “Overview” or “Conclusion” sections, and are consequently summaries of the operative part of the Appeal Brief.¹²

6. With respect to Boškoski’s specific submissions, the Prosecution argues that paragraph 1 of the Appeal Brief accurately reflects the Trial Chamber’s finding that Boškoski had “effective control” over those responsible for committing the crimes.¹³ Regarding paragraph 2 of the Appeal Brief, the Prosecution argues that the allegation of misrepresentation is misplaced and that Boškoski has “introduc[ed] an argument which revolved around semantics”.¹⁴ Finally, the Prosecution argues that the different interpretation given by Boškoski regarding the Trial Chamber’s findings concerning his material ability to initiate disciplinary proceedings goes to the merit of the appeal and is consequently misplaced in the Motion to Strike.¹⁵

B. Discussion

7. The essence of Boškoski’s claim is that the Appeal Brief contains a number of misrepresentations or misstatements of the Trial Judgement. The Appeals Chamber recalls that in carrying out its mandate under Article 25 of the Statute, it depends upon the focused contributions of the parties. It thus falls to the parties to present their case clearly, logically and exhaustively so that the Appeals Chamber may fulfil its mandate in an efficient and expeditious

⁸ Motion to Strike, para. 12.

⁹ Motion to Strike, paras 22-23 (Boškoski’s emphasis omitted; internal quotations omitted).

¹⁰ Motion to Strike, para. 31. *See also* Reply, paras 7-8, 22-26, 30-33.

¹¹ Prosecution Response to Motion, paras 1, 26.

¹² Prosecution Response to Motion, para. 2.

¹³ Prosecution Response to Motion, paras 5-18.

¹⁴ Prosecution Response to Motion, para. 21.

¹⁵ Prosecution Response to Motion, para. 24.

manner.¹⁶ In presenting their arguments on appeal, parties must provide precise references to relevant transcript pages or paragraphs in the judgement being challenged.¹⁷

8. The Appeals Chamber has repeatedly held that it has the inherent discretion to determine which of the parties' submissions merit a reasoned opinion in writing and that it may dismiss arguments that are evidently unfounded without providing detailed reasoning in writing in an appeal judgement.¹⁸ For example, the Appeals Chamber may dismiss submissions summarily if they are vague or incorrect or suffer from other formal and obvious insufficiencies.¹⁹ In particular, arguments that misrepresent the factual findings of the Trial Chamber, as alleged by Boškoski in the present case, may be dismissed without any detailed reasoning in writing.²⁰

9. The Appeals Chamber further notes that Boškoski has acknowledged the competence of the Appeals Chamber to summarily dismiss grounds of appeal which misrepresent the findings of the Trial Chamber or the evidence relied upon by the Trial Chamber.²¹ In doing so, he cites an established line of Appeals Chamber jurisprudence.²² Moreover, Boškoski explicitly invites the Appeals Chamber to consider the issue at the merits stage.²³

10. In light of the above, the Appeals Chamber does not find that there are sufficient grounds to warrant striking out the impugned paragraphs in the Appeal Brief at this stage. It will not strike portions of the Prosecution's arguments on the grounds that they diverge from Boškoski's

¹⁶ *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23 & IT-96-23/1-A, Appeal Judgement, 12 June 2002 (“*Kunarac Appeal Judgement*”), para. 43.

¹⁷ Practice Direction on Formal Requirements for Appeals from Judgement, IT/201, 7 March 2002 (“Practice Direction on Formal Requirements for Appeals”), para. 5(c); *See Prosecutor v. Mladen Naletilić, a.k.a. “Tuta” and Vinko Martinović, a.k.a. “Štela”*, Case No. IT-98-34-A, Appeal Judgement, 3 May 2006, para. 14.

¹⁸ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Appeal Judgement, 9 May 2007 (“*Blagojević and Jokić Appeal Judgement*”), para. 11; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Appeal Judgement, 3 April 2007 (“*Brđanin Appeal Judgement*”), para. 16; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Appeal Judgement, 30 November 2006 (“*Galić Appeal Judgement*”), para. 12; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Appeal Judgement, 22 March 2006 (“*Stakić Appeal Judgement*”), para. 13; *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Appeal Judgement, 25 February 2004 (“*Vasiljević Appeal Judgement*”), para. 11; *Kunarac Appeal Judgement*, para. 48.

¹⁹ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Appeal Judgement, 17 March 2009 (“*Krajišnik Appeal Judgement*”), para. 16; *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Appeal Judgement, 8 October 2008 (“*Martić Appeal Judgement*”), para. 14; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Appeal Judgement, 17 July 2008 (“*Strugar Appeal Judgement*”), para. 16; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Appeal Judgement, 3 July 2008 (“*Orić Appeal Judgement*”), para. 14; *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, Case No. IT-03-66-A, Appeal Judgement, 27 September 2007 (“*Limaj Appeal Judgement*”), para. 15; *Blagojević and Jokić Appeal Judgement*, para. 11; *Galić Appeal Judgement*, para. 11; *Stakić Appeal Judgement*, para. 12; *Vasiljević Appeal Judgement*, para. 12; *Kunarac Appeal Judgement*, para. 43.

²⁰ *Krajišnik Appeal Judgement*, para. 18; *Martić Appeal Judgement*, para. 18; *Strugar Appeal Judgement*, para. 20; *Orić Appeal Judgement*, para. 13; *Blagojević and Jokić Appeal Judgement*, para. 11; *Kunarac Appeal Judgement*, para. 48.

²¹ Motion to Strike, para. 36.

²² *Brđanin Appeal Judgement*, para. 23; *Martić Appeal Judgement*, para. 18; *Strugar Appeal Judgement*, para. 146 *in fine*; *Galić Appeal Judgement*, paras 292, 300, 302.

²³ Motion to Strike, para. 36.

interpretation of the Trial Judgement.²⁴ Such arguments pertain to the merits of the appeal. Similarly, whether the Prosecution's submissions constitute an interpretation or, alternatively, a misstatement of the Trial Judgement need not be considered at this stage. Furthermore, contrary to Boškoski's submissions in the Motion to Strike,²⁵ an in-depth analysis of these issues at this stage would not expedite proceedings.

11. Accordingly the Appeals Chamber declines to decide at this juncture whether the Appeal Brief contains the misrepresentations or misstatements as alleged by Boškoski. Instead, it will take the parties' arguments with respect to these matters into consideration when dealing with the merits of the appeal.

12. Finally, the Appeals Chamber considers that the arguments made in support of the Motion to Strike should have been more appropriately raised in Boškoski's Respondent's Brief which was filed on the same day²⁶ as the Motion to Strike, as they refer to the merits of this appeal.


C. Disposition

13. For these reasons, the Appeals Chamber **GRANTS** the Motion to Strike to the extent that it requests the Appeals Chamber to take the matters raised therein into consideration when dealing with the merits of this appeal.

14. The remainder of the Motion to Strike is **DENIED**.

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

Dated this nineteenth day of May 2009,
At The Hague
The Netherlands



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

²⁴ *Prosecution v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motion of Dragan Jokić to Strike or Require Re-Drafting of Parts of Prosecution Amended Consolidated Response Brief, 27 September 2006, para. 10.

²⁵ Motion to Strike, para. 35.

²⁶ Boškoski Defence Respondent Brief, 1 December 2008.