

**UNITED
NATIONS**

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: 4 November
2008

Before:

IN THE APPEALS CHAMBER

Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Andrézia Vaz
Judge Liu Daqun
Judge Theodor Meron

Registrar:

Mr. Hans Holthuis

THE PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

**NOTICE OF FILING OF CORRECTED PUBLIC REDACTED
VERSION OF PROSECUTION'S APPEAL BRIEF**

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Case No. IT-04-82-A

THE PROSECUTOR

v.

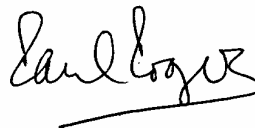
**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

NOTICE OF FILING OF CORRECTED PUBLIC REDACTED VERSION OF
PROSECUTION'S APPEAL BRIEF

The Prosecution hereby files the corrected version of its public redacted Appeal Brief. The Prosecution corrected the paragraph numbers and deleted the word "guilty" which inadvertently appeared in the first paragraph of the version filed on 3 November 2008. The Prosecution also deleted the word "confidential" from the document's footer. This corrected version replaces the 3 November 2008 version.

Word Count: 60



Paul Rogers
Appeals Counsel

Dated this fourth day of November 2008
At The Hague, The Netherlands

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Judge Mohamed Shahabuddeen
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Judge Liu Daqun
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

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I. OVERVIEW

1. Between 12 and 15 August 2001 members of the police of the Former Yugoslav Republic of Macedonia (“FYROM”) committed multiple murders, cruel treatment and wanton destruction of property against inhabitants of Ljuboten, a village in the northern part of the FYROM. The superior of the police was Ljube Boškoski, the Minister of Interior.¹

2. Boškoski’s Ministry of Interior (“MoI”) was “a structured, disciplined and heavily regulated” organisation² and was responsible, among other things, for investigating and reporting crimes.³ As Minister, Boškoski had the power to control and direct the police, and to ensure that the police carried out their functions efficiently and lawfully.⁴ He was able to enforce his ministerial powers to the extent he chose,⁵ and could effectively exercise his superior responsibility over the police, including reserve and special police units.⁶ Under Article 142 of the FYROM Code of Criminal Procedure, Boškoski’s Ministry was under an ongoing obligation to collect information for use in criminal proceedings and to compile it into criminal reports to be filed with the public prosecutor.⁷

3. Boškoski received information from multiple sources about the crimes and that his subordinates committed them.⁸ Notwithstanding this information, Boškoski did not conduct or direct a meaningful investigation into those crimes, nor did he report the criminal conduct of his subordinates to the competent authorities. In addition, Boškoski did not initiate disciplinary measures against his subordinates responsible for those crimes.⁹ Despite heading the FYROM police and being in a unique position to keep himself informed, investigate and report his subordinates’ crimes, he failed to take any active steps to punish them. Yet, the Chamber found he

¹ Judgement, paras.3, 515.

² Judgement, para.514.

³ Judgement, paras.468-469.

⁴ Judgement, para.513.

⁵ Judgement, para.514.

⁶ Judgement, paras.513, 515.

⁷ Exh.P88 (Code of Criminal Procedure) (not confidential), Art.142 (1), (2), (5), (6), (7); *see also* Exh.P96 (Book of Rules on the Work of the Ministry of Interior) (not confidential), Arts.103, 167 (note that there is a mistranslation and that under Article 167, the term “public defender” should read public prosecutor), relied upon in Judgement, para.530, fn.1982.

⁸ Judgement, paras.448, 451, 527, 536. *See also* Judgement, para.450, for Boškoski responding to the allegations of the HRW report prior to its publication (as reflected in a BBC article dated 27 August 2001) and after (as reflected in a BBC article of 6 September 2001).

⁹ Judgement, paras.520, 527, 530, 535.

had taken the necessary and reasonable measures to punish them and acquitted him on all charges.

4. The Chamber reached this erroneous conclusion by considering that Boškoski's duty to punish his subordinates was satisfied because some general information regarding the crimes committed on 12 August 2001 had been provided to an investigative judge and a public prosecutor by the police.¹⁰ This was despite:

- (a) this information being inaccurate and incomplete and not mentioning any alleged criminal conduct by subordinates;¹¹
- (b) no proper investigation into such conduct being conducted; and
- (c) no criminal charges or disciplinary measures being brought against any of his subordinates.¹²

5. First, the Chamber committed a legal error in its evaluation of the element of superior responsibility which requires superiors to take the necessary and reasonable measures to punish subordinates for their crimes. The Chamber held that Article 7(3) only required Boškoski to make a report to the competent authorities that was likely to trigger an investigation into his subordinates' alleged criminal conduct.¹³ This error in the formulation of the relevant legal standard led the Chamber to disregard the necessary and reasonable measures within Boškoski's material possibility, which he should have taken but failed to take.

6. Instead of narrowly focusing on whether there had been a report to the competent authorities likely to trigger an investigation into the alleged criminal conduct of Boškoski's subordinates,¹⁴ the Chamber should have looked at the totality of the factual circumstances and then determined whether Boškoski had taken the necessary and reasonable measures within his material possibility to punish his subordinates.¹⁵

¹⁰ Judgement, paras.529, 536.

¹¹ Judgement, paras.529, 536.

¹² Judgement, paras.520, 527, 530, 534, 535.

¹³ Judgement, paras.519, 536.

¹⁴ Judgement, paras.529, 536.

¹⁵ "Material possibility" and "material ability" are used interchangeably in this draft. For "material possibility" see *Blaškić* AJ, para.417, citing *Celebići* TJ, para.395. For "material ability" see *Celebići* AJ, para.256.

7. It was possible, necessary, and reasonable for Boškoski to:
- (a) inquire into the facts of the crimes;
 - (b) report the alleged criminal conduct of his subordinates to the competent authorities; and
 - (c) initiate disciplinary proceedings against his subordinates.

He took none of these measures.

8. Had it applied the correct legal standard to the facts of this case, the Chamber would have found that Boškoski failed to take the necessary and reasonable measures to punish. It would have found that he should have investigated and reported to the competent authorities the allegations of criminal conduct against his subordinates, identifying as far as possible the crimes and which of his subordinates were allegedly responsible, and should have taken disciplinary measures against them. The Appeals Chamber should review the relevant factual findings of the Chamber in accordance with the correct legal standard and convict Boškoski under Article 7(3) for the crimes detailed in the Prosecution's Notice of Appeal and in the conclusion below.

9. Second, in the alternative, the Chamber erred because no reasonable trier of fact could have found that the information given to the investigative judge and public prosecutor by the MoI (referred to in paragraph 529 of the Judgement) was sufficient to satisfy Boškoski's obligation under Article 7(3) to take the necessary and reasonable measures to punish his subordinates. This is because the Chamber's findings demonstrate that there were necessary and reasonable measures within Boškoski's material possibility which he failed to take. Further, even under the Chamber's own "likely to trigger an investigation" standard (if found to be correct), the information provided by the police to the investigative judge and public prosecutor was not "likely to trigger an investigation" into the crimes of Boškoski's subordinates. This factual error led to a miscarriage of justice because the Chamber acquitted Boškoski of Article 7(3) responsibility. The Appeals Chamber should overturn the Chamber's findings, find that Boškoski failed to take the necessary and reasonable measures to punish his subordinates, and accordingly convict him under Article 7(3).¹⁶

¹⁶ Prosecution's Notice of Appeal.

10. The Prosecution files this Appellant's Brief pursuant to Article 25 of the Statute and Rule 111 of the Rules of Procedure and Evidence.

11. Pursuant to the relevant Practice Direction, the Prosecution, in this overview and throughout its Appellant's Brief, has set forth the arguments supporting its one ground of appeal in the order set forth in its Notice of Appeal (legal error followed by alternative factual error). For ease of clarity and to avoid unnecessary repetition, for each sub-argument within its Brief, the Prosecution has set forth its legal error argument, followed immediately by its alternative factual error argument.¹⁷

¹⁷ To the extent that the Appeals Chamber views this organization of the Appellant's Brief as a variation on the ordering required by paragraph 4 of Practice Direction on Formal Requirements for Appeals from Judgement (IT/201, 7 March 2002), the Prosecution hereby respectfully requests leave from the Appeals Chamber to alter the prescribed ordering.

II. GROUND OF APPEAL: THE CHAMBER ERRED IN LAW OR IN FACT IN FINDING BOŠKOSKI HAD TAKEN THE NECESSARY AND REASONABLE MEASURES TO PUNISH

A. The principle underpinning superior responsibility

12. The Chamber's approach in this case weakens the principle of superior responsibility. In permitting Boškoski to escape responsibility for the crimes of his subordinates whom he failed to punish despite having measures available to do so, the Chamber has unwittingly encouraged superiors to disregard their legal duty during armed conflict. The Chamber's approach significantly undermines the implementation of international humanitarian law.

13. Superiors play a critical role in the enforcement of international humanitarian law:¹⁸

In fact the role of commanders is decisive [...] everything depends on commanders, and without their conscientious supervision, general legal requirements are unlikely to be effective.

It has been said that superiors are humanity's last line of defence against war crimes¹⁹ – society's last hope for imposing order in the chaotic situation of armed conflict.

14. Holding superiors criminally accountable for the crimes of their subordinates is the mechanism through which subordinates' adherence to international humanitarian law is enforced.²⁰ It is this principle which should guide the application of the law in this case.

¹⁸ ICRC Commentary to Additional Protocol I, para.3550. *See also* Negotiating History Protocol I, CDDH/I/SR.50, p.120, para.68, Statement of the US delegation regarding the text of Article 86; *Yamashita*, pp.14-15, cited with approval in *Hadžihasanović* Command Responsibility AD, para.23.

¹⁹ Timothy Wu & Young-Sung Kang, "Criminal Liability for the Actions of Subordinates – The Doctrine of Command Responsibility and its Analogues in United States Law," 38 *Harv. Int'l L.J.* 272, 290 (1997).

²⁰ *Hadžihasanović* Command Responsibility AD, paras.13-16.

B. The Chamber applied the wrong legal standard to Boškoski's Article 7(3) responsibility

15. The Chamber erred in law when it substituted the requirement under Article 7(3) that a superior take “the necessary and reasonable measures” to punish the criminal acts of subordinates, with a requirement that a superior need only provide a “report to the competent authorities” that was “likely to trigger an investigation into the alleged criminal conduct.”²¹ This is not the proper test. The Chamber relied on an observation initially made in the *Aleksovki* and *Brdanin* Trial Judgements to support its use of this incorrect test.²² However, the Chamber overlooked that this observation was made in the context of determining the requisite degree of control by a superior over his subordinates, and not in relation to necessary and reasonable measures.²³

16. Indeed, in determining the necessary and reasonable measures required under Article 7(3), the *Aleksovski* Trial Chamber endorsed the statement that “a superior should be held responsible for failing to take such measures that are within his material possibility.”²⁴ Likewise, the *Brdanin* Trial Chamber held that the necessary and reasonable measures a superior must take to prevent or punish depend “on the effective *de jure* or *de facto* powers enjoyed.”²⁵

17. The correct legal standard is “solely whether the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrators thereof.”²⁶ In deciding whether a superior has discharged his or her obligation to punish crimes, it is necessary to consider which measures it was possible for the superior to take based on the facts of the case.²⁷ These are the measures within a superior’s “material possibility.” It is these which must be considered in determining whether he reasonably took the measures required to punish the perpetrators.²⁸

²¹ Judgement, para.536. *See also* Judgement, paras.418, 519, 522, 529.

²² *See* Judgement, para.418, citing *Aleksovski* TJ, para.78, *Brdanin* TJ, para.281.

²³ *See* *Aleksovski* TJ, para.78; *Brdanin* TJ, para.281.

²⁴ *Aleksovski* TJ, para.81, citing *Celebići* TJ, para.395.

²⁵ *Brdanin* TJ, para.283, citing *Kordić and Čerkez* TJ, para.446: “[The duty to punish] includes at least an obligation to investigate the crimes to establish the facts and to report them to the competent authorities, if the superior does not have the power to sanction himself. Civilian superiors would be under similar obligations, depending upon the effective powers exercised and whether they include an ability to require the competent authorities to take action.” (footnote omitted).

²⁶ *Halilović* AJ, para.64. *See also* *Orić* AJ, para.177.

²⁷ *Blaškić* AJ, para.417, citing *Čelebići* TJ, para.395. *See also* *Krnojelac* TJ, para.95.

²⁸ *See e.g.* *Blaškić* TJ, para.335.

18. Necessary and reasonable measures are those “that can be taken within the competence of a commander as evidenced by the degree of effective control he wielded over his subordinates. The measure of submitting reports is again an example, applicable ‘under some circumstances.’”²⁹ This single legal standard –necessary and reasonable measures– “will have to be applied differently in different circumstances.”³⁰ “Necessary” measures are the measures appropriate for the superior to discharge his obligation (showing that he genuinely tried to prevent or punish) and “reasonable” measures are those reasonably falling within the material powers of the superior.”³¹ “Necessary and reasonable measures” have also been understood as “those suitable to contain the situation at hand, namely to prevent and/or punish.”³²

19. The Chamber initially stated that “[a] superior’s duty to take the necessary and reasonable measures to prevent the commission of a crime or punish the perpetrators thereof relates directly to his possession of effective control, *i.e.* to his material ability to take such measures.”³³ It also stated that “what constitutes “necessary and reasonable measures” is not a matter of substantive law but of evidence, and is to be determined on the basis of the particular circumstances of the case.”³⁴

20. However, the Chamber failed to apply this legal standard to the facts of the case. Rather than looking at the totality of measures within Boškoski’s material ability to determine which were necessary and reasonable for him to take,³⁵ the Chamber erroneously assumed that if a report likely to trigger an investigation was made to the competent authorities, no further consideration of the measures within Boškoski’s material possibility was warranted.³⁶

21. The Chamber’s error in making such reporting the sole requirement to meet the “necessary and reasonable measures” test is a common fault running through the Judgement, and is clearly demonstrated by reference to it.³⁷

²⁹ *Blaškić* AJ, para.72.

³⁰ *Orić* AJ, para.177.

³¹ *Halilović* AJ, para.63.

³² *Delić* TJ, para.76.

³³ Judgement, para.415.

³⁴ Judgement, para.415 (footnotes omitted).

³⁵ *See Blaškić* AJ, para.417; *see also Hadžihasanović* AJ, para.142.

³⁶ *See* Judgement, paras.498 *and following*, in particular paras.518, 519.

³⁷ Judgement, paras.519, 521, 522, 529, 535, 536.

22. In paragraph 519 the Chamber said:

With respect to criminal conduct by police, and the law and jurisprudence which the Chamber has considered earlier in this Judgement, it is clear that in the context of Article 7(3) and, in particular, in the case of a superior who does not have personal power to punish subordinates, such as political leaders, *what is required* is that there be a report to the competent authorities which is likely to give rise to an investigation or the initiation of appropriate proceedings.³⁸

This led the Chamber into error when it failed to consider other measures within Boškoski's material possibility in assessing whether he took the necessary and reasonable measures to punish his subordinates.

23. In paragraph 521 the Chamber expressly declined to consider what disciplinary measures were within Boškoski's material possibility and thus whether, together with other measures, they were necessary and reasonable to punish in the circumstances. This error arises again in paragraph 522 where the Chamber stated:

In the view of the Chamber the relevant issue presented by the circumstances of this case is whether Ljube Boškoski took adequate measures to ensure that the alleged criminal conduct by police was brought to the attention of the appropriate authorities so that it would be investigated with a view to criminal charges and appropriate punishment. That being so the matters raised concerning internal disciplinary proceedings need not further be considered.

24. Additionally, it is plain from paragraph 529 that the Chamber focused – to the exclusion of all other measures - on the single measure it found was as a matter of law sufficient to discharge Boškoski's Article 7(3) responsibility. It stated:

As a result [of the information provided to the investigative judge and public prosecutor] the issue is not whether, by further or more determined inquiry, Ljube Boškoski should have learned of conduct by police which required him to report the matter to the authorities responsible for the investigation of criminal matters.

25. This error led it to reject consideration of the further steps open to Boškoski to ensure “he was more fully informed” or that the police properly “performed their duties.” It saw these as being relevant only to his “political accountability,” rather

³⁸ Judgement, para.519 (emphasis added), citing Judgement, para.418.

than as necessary and reasonable measures within Boškoski's material possibility which he should have taken.³⁹

26. Finally, in its conclusion⁴⁰ the Chamber recapitulated its finding that Boškoski's obligation to punish under Article 7(3) was satisfied by reporting to the competent authorities.

27. The Chamber applied the wrong legal standard to the facts of the case. An error in interpreting an element of Article 7(3) responsibility constitutes a legal error.⁴¹ Had the Chamber applied the correct legal standard to the facts of this case, it would have found that Boškoski failed to take the necessary and reasonable measures to punish his subordinates, and would have convicted him under Article 7(3) for the crimes of murder, cruel treatment and wanton destruction.

C. Impact: applying the correct legal standard. Alternatively, these arguments demonstrate an error of fact

28. Boškoski was able to: (1) investigate the alleged criminal conduct of his subordinates; (2) ensure full and accurate reports were prepared and submitted to the competent authorities detailing the alleged criminal conduct of his subordinates; and (3) take disciplinary measures against his subordinates suspected of crimes. These measures were within Boškoski's "material powers"⁴² or "material ability,"⁴³ and were necessary and reasonable to punish in the circumstances.

29. Had the Chamber applied the correct legal standard, it would have found Boškoski did not take the necessary and reasonable measures open to him and would have convicted him under Article 7(3). Measures were open to Boškoski to take. It was necessary and reasonable that he do so. The measures detailed below demonstrate that a correct application of the law to the facts must result in Boškoski's conviction.

30. In the alternative, the Chamber erred in fact in concluding that Boškoski had taken the necessary and reasonable measures to punish his subordinates. No reasonable trial chamber could have concluded that despite his failure to investigate

³⁹ Judgement, para.535.

⁴⁰ Judgement, para.536.

⁴¹ See *Blaškić* AJ, paras.62, 405 and *Strugar* AJ, paras.304-305 (noting that the Trial Chamber erred in law by applying the wrong legal standard to the *mens rea* element under Article 7(3) and determining to apply itself the correct legal standard to the facts).

⁴² *Halilović* AJ, para.63.

⁴³ *Čelebići* AJ, para.256.

the crimes, properly report the crimes, and to discipline his subordinates, Boškoski had taken the necessary and reasonable measures to punish them. Further, even under the Chamber's own "likely to trigger an investigation" standard, the information provided by the police to the competent authorities was not "likely to trigger an investigation" into the crimes of Boškoski's subordinates.

31. The paragraphs that follow address both the impact of the Chamber's legal error and are relied upon to show the factual error alleged.

1. Boškoski should have investigated his subordinates' alleged criminal conduct, but did not

32. By wrongly considering that Boškoski only had to report so as to trigger the likelihood of an investigation,⁴⁴ the Chamber failed to recognise that the requirement to take the necessary and reasonable measures to punish encompassed an obligation on him to investigate his subordinates' criminal conduct. In *Halilović*, the Appeals Chamber held that "the duty to punish includes at least an obligation to establish the facts, and if the superior has no power to sanction, to report them to the competent authorities."⁴⁵ Any investigation must be effective and aimed at establishing the facts.⁴⁶

33. The Appeals Chamber has upheld superiors' convictions under Article 7(3) where superiors had the material ability to carry out an effective investigation, but failed to do so.⁴⁷ Where the Appeals Chamber has acquitted an accused despite not carrying out an effective investigation, it did so because he had no effective control over the units at the material time.⁴⁸ A superior will not be held liable for failing to investigate if it was impossible for him to do so.⁴⁹ This was not the case for Boškoski.

34. When a superior receives notice of crimes it is axiomatic to enquire into the facts to determine what measures to punish he or she needs to take to discharge the

⁴⁴ Judgement, paras.519, 529, 536.

⁴⁵ *Halilović* AJ, para.182 (footnotes omitted). See also *Strugar* AJ, paras.230-231, 234-236; *Hadžihasanović* AJ, paras.183-184; *Halilović* AJ, para.182; *Halilović* TJ, paras.97, 100; *Kordić and Čerkez* TJ, para.446; *Brdanin* TJ, para.279; *Strugar* TJ, paras.376, 438-439, 443, 445; *Mrkšić* TJ, para.568; *Limaj* TJ, para.529.

⁴⁶ *Halilović* AJ, para.182; *Mrkšić* TJ, para.568; *Limaj* TJ, para.529; *Brdanin* TJ, para.279; *Strugar* TJ, para.376.

⁴⁷ *Hadžihasanović* AJ, paras.183-184; *Strugar* AJ, paras.230-231, 234-236.

⁴⁸ *Blaškić* AJ, paras.417-421.

⁴⁹ *Blaškić* AJ, para.417.

duty under Article 7(3). Establishing the facts is the starting point for any action to punish a breach.⁵⁰

35. The *Delić* Trial Chamber recognised this when it convicted Delić for failing to punish his subordinates' crimes. It stated that "the establishment of the facts is the first step in any attempt to ensure that the perpetrators of the crimes are brought to justice."⁵¹ "[A]ny omission on [the] part of a superior to enquire cannot relieve that superior of taking punitive action."⁵²

36. Post-WWII caselaw recognises investigation as a necessary and reasonable measure. In the Tokyo Judgement, the Tokyo Tribunal convicted Shigemitsu, a civilian superior who was on notice that prisoners were being mistreated.⁵³ It held that despite such notice Shigemitsu had taken no steps to have the matter investigated and that, if necessary, he should have pressed the matter to the point of resigning.⁵⁴

(a) Boškoski had the material ability to investigate the criminal conduct of his subordinates

37. As "minister of a structured, disciplined and heavily regulated ministry,"⁵⁵ Boškoski had the material powers to ensure a comprehensive investigation into the alleged criminal conduct and report the findings to the competent authorities. The Chamber found that there was "no doubt that he was in a position to effectively enforce his ministerial powers to the extent he chose."⁵⁶ He controlled and directed the police⁵⁷ and was himself an "authorised official" of the MoI.⁵⁸ "He was the superior of the personnel of the MoI [...]. He had and could effectively exercise the required command responsibility."⁵⁹

38. Boškoski's ability to investigate –and his duty to do so under national law– is enshrined in the FYROM Code of Criminal Procedure. The FYROM Code of Criminal Procedure stipulates that in the case of a suspected crime "the Ministry of

⁵⁰ See *Kordić and Čerkez* TJ, para.441, citing to ICRC Commentary, para.3560.

⁵¹ *Delić* TJ, para.553. See also *Delić* TJ, paras.512, 533-555.

⁵² *Delić* TJ, para.553.

⁵³ Tokyo Judgement, p.458.

⁵⁴ Tokyo Judgement, p.458.

⁵⁵ Judgement, para.514.

⁵⁶ Judgement, para.514.

⁵⁷ Judgement, para.513.

⁵⁸ Judgement, para.474.

⁵⁹ Judgement, para.515.

the Interior is duty bound to undertake the necessary measures to identify the perpetrator of the crime [...] and to collect all relevant information that could prove useful in conducting successful criminal proceedings.” The material must be compiled into a criminal report which is then filed with the public prosecutor. This obligation is a continuing one so that where the Ministry becomes aware of “new facts, evidence or traces of the crimes after a criminal report has been filed, they are duty bound to collect the necessary information” and to file an addendum to the original report.⁶⁰

39. Within his Ministry, Boškoski had at his disposal a special unit, the “Department for Internal Control,” that existed to address misconduct by employees of the Ministry.⁶¹ Boškoski asserted that this unit was involved in the investigation of 19 cases of alleged police misconduct during 1998 and into March 2001.⁶²

40. Boškoski could also have ensured that he was more fully informed and that the police performed their duties so that the judiciary was in a better position to determine what really had occurred.⁶³

(b) Despite his powers, Boškoski failed to investigate his subordinates’ criminal conduct

41. Boškoski was on notice of alarming information indicating that grave crimes had been committed. He could have ordered his subordinates to seek and provide further information.⁶⁴ Yet he failed to act despite his extensive powers and his duty under national law to investigate to establish the facts and collect all information that could assist the competent authorities in criminal proceedings.

42. No normal police investigations were carried out.⁶⁵ The MoI never provided the names of the police who entered Ljuboten on 12 August 2001,⁶⁶ and there were no

⁶⁰ Exh.P88 (Code of Criminal Procedure) (not confidential), Art.142 (1), (2), (6), relied upon in Judgement, para.530, fn.1982 -the Trial Chamber rejected testimony that contradicted the clear wording of the law. The regulations in the Code of Criminal Procedure are reflected in Exh.P96 (Book of Rules on the Work of the Ministry of Interior) (not confidential), Arts.103, 167. *See also* Stojanovski, T.9250-9251 (open session).

⁶¹ Exh.1D107 (Book of Rules of Organisation and Operation of the Ministry of Interior Affairs) (not confidential), Art.7(2).

⁶² The Judgement notes that there is no record of such investigations and no evidence to support that they took place. *See* Judgement, para.452.

⁶³ Judgement, para.535.

⁶⁴ Judgement, para.527; Jovanovski, T.5133-5134 (open session). *See also* Jovanovski, T.5099, 5104-5106 (open session).

⁶⁵ Judgement, paras.529-530.

statements from the police concerning the events in the village, the deaths, and the injuries of Atulla Qaili.⁶⁷ No statements from Ljuboten residents were obtained.⁶⁸ On 28 November 2001 the public prosecutor's office complained that they had been waiting for information from the MoI for some time, and that they lacked necessary information for their investigation.⁶⁹

43. Not only did Boškoski fail to investigate the crimes in accordance with the Code of Criminal Procedure, but his police actively obstructed the onsite inspection. They prevented the public prosecutor and the investigative judge from entering Ljuboten by incorrectly stating that there was still fighting in Ljuboten and that it was not safe to go there.⁷⁰ In addition, there were no efforts to talk to or interview any of the police officers deployed in Ljuboten because during the armed conflict in 2001 "police officers always refused to testify about these kind of cases," and there was no support from the MoI to bring them to do so.⁷¹

44. Boškoski could have ensured that the police responsible for investigating performed their duties.⁷² Properly supervising the police was a measure Boškoski needed to take. While Boškoski could delegate the implementation of the necessary measures to officers in his Ministry,⁷³ he had to ensure accountability and closely supervise any such assignments. He was not permitted to do nothing and to trust that his police would properly investigate and cooperate with the competent authorities. Thus, whether or not he had actual knowledge of the obstructive conduct is immaterial.⁷⁴ Boškoski needed to take the necessary and reasonable measures. Had the Chamber appreciated this, it would have found that Boškoski needed to properly

⁶⁶ Judgement, para.530, [REDACTED]. *See also* Judgement, para.547.

⁶⁷ Judgement, para.530.

⁶⁸ Judgement, para.531.

⁶⁹ Exh.1D197 (not confidential), referred to in Judgement, paras.455-456. The Prosecution notes that Ex.1D47 (not confidential) is a request for additional information and data on the Ljuboten events addressed to the MoI by the investigative judge on 19 September 2001.

⁷⁰ Judgement, paras.431-432, 530, 536.

⁷¹ Ruskovska, Exh.P235 (not confidential), para.13, referred to in Judgement, para.456.

⁷² Judgement, para.535.

⁷³ *Halilović* AJ, para.182 ("the duty to punish includes at least an obligation to investigate possible crimes or *have the matter investigated*" (emphasis added)).

⁷⁴ The Chamber made no ultimate finding as to whether Boškoski knew of his police's lack of investigations and cooperation with the judiciary but it stated that the evidence did not indicate that he would be strongly motivated to have informed himself: Judgement, para.535.

inform himself of the actions taken to investigate and report the alleged crimes of his subordinates.

45. A superior cannot avoid responsibility by assuming that delegated subordinates will automatically implement the measures necessary to discharge his duty. A superior must ascertain that the system put in place actually functions. The Tokyo Tribunal held that a person responsible for prisoners of war has a “duty to ascertain that the system [to secure proper treatment of POWs] is working and if he neglects to do so he is responsible.”⁷⁵ The *Strugar* Trial Chamber endorsed a similar passage from the same judgement which held that it is not sufficient for a superior to simply issue an order to meet his duties; he must also “satisfy himself that such orders are carried out.”⁷⁶

46. In the present case the need for supervision was obvious. The police had to investigate and report on their peers for the purpose of prosecution. Boškoski must have been aware that members of the police would be reluctant to effectively investigate and implicate other members of the police. Rather than ensure a proper investigation, Boškoski displayed a hostile and closed-minded attitude to allegations of police misconduct. Two days after the crimes, he stated that allegations of a massacre were foreign propaganda.⁷⁷ Later he said, “I vigorously reject the accusations against the Interior Ministry and against the regular and the reserve police forces, which have demonstrated unprecedented courage [...]”⁷⁸ He also threatened to file suit against Human Rights Watch for their reporting of the crimes.⁷⁹

47. By failing to ensure proper investigation and reporting of the Ljuboten events, Boškoski failed to take a measure that was evidently necessary to achieve punishment of those subordinates guilty of crimes.

48. In addition to ensuring a proper criminal investigation and properly reporting to the competent authorities, Boškoski could have established an effective internal inquiry to look into the conduct of the police and to report the results as the basis for disciplinary and criminal proceedings against the perpetrators. He set up a

⁷⁵ Tokyo Judgement, p. 30.

⁷⁶ *Strugar* TJ, para.374, citing Tokyo Judgement, p.452.

⁷⁷ Exh.P362 (not confidential), referred to in Judgement, para.446.

⁷⁸ Exh.P355 (not confidential), referred to in Judgement, para.450.

⁷⁹ Judgement, para.450, referring to Exhs.P359 (not confidential) and P355 (not confidential).

commission but failed to give this commission a proper mandate by limiting its inquiry to the activities undertaken by MoI forces to “repel the armed attacks by terrorist groups.”⁸⁰ The commission’s inadequacy is shown by the superficial way it conducted its work. Ultimately, it was not sufficient to satisfy the need to investigate.⁸¹ Despite its failure, the Chamber did not take it into account in examining whether Boškoski had taken the necessary and reasonable measures to punish his subordinates. Instead, it found that this commission was irrelevant to his criminal responsibility because Boškoski created it out of political interest to deflect mounting international and domestic pressure.⁸² His motive for failing to take necessary and reasonable measures did not excuse his failure.

49. In summary, no one in the FYROM was better equipped to investigate the police crimes in and around Ljuboten than Boškoski. As Minister of Interior he could have applied the MoI apparatus to the task of investigating the Ljuboten crimes, assisting the conduct of successful criminal proceedings, and conducting disciplinary proceedings. Instead, he chose to vigorously reject any allegations about these crimes, and failed to take any meaningful steps towards a proper investigation. Indeed, the Chamber correctly emphasised evidence in the record suggesting that Boškoski never intended to seriously address any possible crimes by the police.⁸³

50. By failing to investigate, Boškoski failed to take the necessary and reasonable measures to punish the perpetrators of the crimes. The Appeals Chamber should reverse Boškoski’s acquittal and convict him under Article 7(3) of the Statute.

51. In the alternative, no reasonable trier of fact could have concluded that, despite failing to investigate, Boškoski took the necessary and reasonable measures to punish his subordinates. This occasioned a miscarriage of justice as it led the Chamber into error in acquitting Boškoski of all the counts against him.

⁸⁰ Ex.P73 (not confidential), referred to in Judgement, para.434.

⁸¹ Judgement, paras.437, 527.

⁸² Judgement, para.528.

⁸³ Judgement, paras.450, 535.

2. Boškoski should have ensured full and accurate reports were prepared and submitted detailing the alleged criminal conduct of his subordinates, but did not

52. The information provided by the MoI to the investigative judge and the public prosecutor, relied upon by the Chamber to acquit Boškoski under Article 7(3), did not mention *any* alleged criminal conduct committed by Boškoski's subordinates, let alone murder, cruel treatment, and wanton destruction of property. The Chamber wrongly held that all that was required was a report sufficient to trigger the likelihood of an investigation into the alleged criminal conduct. In doing so, the Chamber failed to recognise that the form and contents of the reporting had to be assessed against the necessary and reasonable measures standard. The information provided was insufficient to meet this standard. A superior who is on inquiry notice that crimes were possibly committed by his subordinates is at least capable of providing this information. To meet the Article 7(3) obligation of taking the necessary and reasonable measures to punish, a superior must identify in the report the subordinates' alleged criminal conduct. Boškoski's failure to do so results in his Article 7(3) responsibility.

53. The need to identify the alleged criminal conduct and that the conduct was perpetrated by his subordinates, stems from the fact that the duty to punish subordinates under Article 7(3) arises only if the superior knew or had reason to know that his subordinates committed crimes.

54. The level of detail required for a superior's report is informed by the state of his knowledge regarding allegations of criminal conduct and by the necessary and reasonable measures within his material possibility, particularly his ability to investigate. Where, as here, it is within a superior's material possibility to undertake an investigation into allegations of subordinates' criminal conduct to establish the facts, trial chambers have consistently held that reports by superiors to the competent authorities must reflect the fruits of that investigation.⁸⁴

55. The ICRC Commentary on Article 87(3) of Additional Protocol I confirms this. Article 87(3) requires a commander who is aware that his subordinates have

⁸⁴ See *Kordić and Čerkez* TJ, para.446 ("This duty includes at least an obligation to investigate the crimes to establish the facts and to report them [the facts] to the competent authorities."); *Halilović* TJ, paras.97, 100 (same); *Orić* TJ, para.336 (same); *Brdanin* TJ, para.279 (same). See also *Limaj* TJ, para.529.

committed a breach of the Geneva Conventions or the Protocol “where appropriate to initiate disciplinary or penal action” against them.⁸⁵ The ICRC Commentary states that this action may include “remitting the case to the judicial authority where necessary *with such factual evidence which is possible to find.*”⁸⁶ Where a superior has the ability to investigate and discover facts, those facts must be included in the report to the competent authorities in order to fulfil his Article 7(3) obligation to punish.

56. Both trial and appeal chambers addressing this issue have concluded that a report to the competent authorities must report the actual crimes of subordinates (or allegations thereof) to fulfil a superior’s Article 7(3) obligation. In *Aleksovski*, the Trial Chamber held that reports submitted by the accused to the military police commander and the president of a military tribunal were insufficient measures under Article 7(3) because the reports did not include information on or expose any of the crimes committed by subordinate guards in Kaonik prison.⁸⁷

57. Similarly, in *Hadžihasanović* the Appeals Chamber recognised the importance of reporting the entirety of the alleged criminal conduct when it reversed a finding by the Trial Chamber that the accused did not take the necessary and reasonable measures to punish the perpetrators of the murder and cruel treatment of prisoners.⁸⁸ The Appeals Chamber found that the evidence was sufficient to raise a reasonable doubt as to whether the entire matter, *including the cruel treatment*, was referred to the municipal public prosecutor.⁸⁹

58. To amount to “necessary” measures under Article 7(3), a superior must show he or she “genuinely tried to prevent or punish.”⁹⁰ A report to the competent authorities that genuinely aims to ensure punishment of subordinates’ criminal conduct must at least refer to the nature of the wrongdoing and who the suspected perpetrators are, where the accused has the material ability to obtain such information.

⁸⁵ API, Art.87(3).

⁸⁶ ICRC Commentary, para.3562, p.1023 (emphasis added), *quoted in Strugar* TJ, para.377.

⁸⁷ *Aleksovski* TJ, para.117 (“None of the reports transmitted to the military police commander or to the president of the Travnik military tribunal dealt with *the assaults committed by guards* [...] within Kaonik prison.”) (emphasis added); *Aleksovski* TJ, para.117 (noting that the secretary “specified before the Trial Chamber that she had never drawn up a report *exposing any crimes by guards*”) (emphasis added). These findings survived challenge on appeal by the Accused. *See Aleksovski* AJ, paras.70-74.

⁸⁸ *See Hadžihasanović* AJ, paras.147, 153.

⁸⁹ *Hadžihasanović* AJ, para.147.

⁹⁰ *Halilović* AJ, para.63.

To conclude otherwise would lead to the result that vague reports, which mention neither the criminal conduct nor the suspected perpetrators, can satisfy a superior's Article 7(3) duty to punish simply because such reports were likely to trigger an investigation into an event, but which might or might not discover the conduct of the subordinates.

59. In *Hadžihasanović* the Trial Chamber recognised that the measures superiors need to take must be specific and closely linked to the acts they are intended to prevent or punish.⁹¹ In order to achieve this, a report to the competent authorities by a superior must reflect his subordinates' alleged criminal conduct to satisfy Article 7(3).

(a) Boškoski had the material ability to report his subordinates' criminal conduct

60. Boškoski was on notice of the allegations of criminal conduct by his police. The Chamber found that by 13 August 2001 "rumours were circulating in media and other circles that there had been clashes with citizens, shelling by the police and a number of persons killed" in Ljuboten on 12 August 2001. It was "entirely satisfied that these very grave allegations quickly came to the attention of Ljube Boškoski."⁹² Indeed, the Chamber went further and accepted that because of these circulating allegations, on 13 August 2001, Boškoski established "a commission to enquire into the events of 12 August in Ljuboten,"⁹³ which conducted a superficial investigation into the events.⁹⁴

61. Boškoski was also on notice of *specific* allegations of crimes committed by his subordinates. On 14 August 2001, Boškoski himself discussed "speculation that was launched [that morning] in some foreign media" about a "massacre of the civilian population in the village of Ljuboten."⁹⁵ Moreover, the Chamber found that the HRW report of Peter Bouckaert, issued on 5 September 2001, "came to the attention of Ljube Boškoski, as well as newspaper articles reflecting his report, clearly identif[ying] allegations of murder, police brutality and destruction of property."⁹⁶

⁹¹ *Hadžihasanović* TJ, para.155.

⁹² Judgement, para.527.

⁹³ Judgement, para.527.

⁹⁴ Judgement, paras.434-439, 528.

⁹⁵ Exh.P362 (not confidential), referred to in Judgement, para.446.

⁹⁶ Judgement, para.527.

These allegations generally correspond to the counts of murder, cruel treatment and wanton destruction found to have been established by the Chamber.⁹⁷

62. It was within Boškoski's power to investigate further and then report these allegations to the competent authorities and the public prosecutor. Had he done so, the investigation would have established certain facts and evidence and, at the very least, would have ensured that Boškoski could report specific allegations of criminal misconduct by subordinates to the competent authorities.

63. None of the information provided by the MoI to the competent authorities disclosed any allegations of criminal conduct by Boškoski's subordinates. All the notifications disclosed was that members of the NLA/KLA were killed in Ljuboten on 12 August 2001 in the context of combat activities with the Macedonian security forces,⁹⁸ and that Atulla Qaili, against whom a criminal charge for terrorism had been filed, died at Skopje hospital on 13 August 2001 after being interviewed at Mirkovci police station.⁹⁹

(b) Despite his powers, Boškoski failed to report his subordinates' criminal conduct

64. The "reports" relied on by the Chamber to relieve Boškoski of criminal liability, contained in Exhibit 1D6 and Exhibit P261,¹⁰⁰ did not disclose to the investigative judge and public prosecutor any allegation of criminal conduct by Boškoski's subordinates. The Chamber found that the reports were "not full or accurate."¹⁰¹

⁹⁷ See Judgement, para.448 (noting that the accounts contained in the HRW Report "speak of killings of a number of persons and bombing, firing and burning of several houses in Ljuboten on 12 August 2001. They also speak of mistreatment of detainees in Ljuboten and at Buzalak checkpoint on 12 August 2001, in the hospital and in the police stations of Butel, Karpoš and Proleće on 12 August 2001 and following days. It was also reported that one detainee, Atulla Qaili, subsequently died in hospital, having been beaten prior to his death. It was specifically reported that police belonging to the MoI under the authority of Ljube Boškoski had been involved in these actions [...]"). See also Judgement, para.451.

⁹⁸ Exh.1D6 (not confidential).

⁹⁹ Exh.P261 (not confidential).

¹⁰⁰ Judgement, paras.431-433, 529-530, 536. [REDACTED]

[REDACTED]

[REDACTED]

The information referred to by the Judgement, however, is found in Exhibit P261 (Official Note No.537) (not confidential).

¹⁰¹ Judgement, para.536.

65. The first Exhibit, 1D6, is an “Official Note” of Investigative Judge Ognen Stavrev, Primary Court Skopje II, dated 15 August 2001. This note records two pieces of information received by the investigative judge from the MoI. First, that on 14 August 2001 at 1:30 p.m., the MoI informed the investigative judge of the existence of “several corpses” in Ljuboten and suggested that “it probably concerns killed members of the terrorist organization ONA/NLA/ - UCK/KLA/, perished in combat activities carried out with RM/*Republic of Macedonia* security forces on 12 August 2001.”¹⁰² Second, that on the same day, at 5:30 p.m.,¹⁰³ the MoI again notified the investigative judge of the existence of “several killed members of the paramilitary of the Albanian terrorists” in Ljuboten, which could not be reached “because at that moment there were still combat activities.”¹⁰⁴

66. Exhibit 1D6 shows that the MoI did not report allegations of any criminal conduct on the part of the police. Moreover, the MoI did not provide any information concerning allegations of assaults and beatings (cruel treatment), or the burning and destruction of houses or other property (wanton destruction) by subordinates of Boškoski.

67. The Chamber specifically acknowledged these deficiencies in the information provided to the investigative judge by the MoI. It noted that “there was no specific notification of destruction of houses in Ljuboten or of any mistreatment of detained villagers or suspects in Ljuboten, at Braca’s house, at Buzalak checkpoint, in various police stations, the Skopje court or in the Skopje hospital. Further no names of potential witnesses, either residents or police, were provided to the investigative judge.”¹⁰⁵

68. In addition, it is clear from the Chamber’s findings that Boškoski had no intention of reporting any alleged criminal conduct on the part of his subordinates. Indeed, he never acknowledged that such conduct had arisen despite having alarming

¹⁰² See Exh.1D6 (not confidential).

¹⁰³ The Trial Judgement, citing to Exhibit 1D6 (not confidential), mistakenly refers to this second notification as occurring on 12 August 2001. See Judgement, paras.431, 529. The description of this notification is found in the last paragraph of Exhibit1D6 (not confidential), which when read in its entirety and considering the context, suggests that the second notification regarding the events of 12 August 2001 also took place on 14 August 2001. See Exh. 1D6 (not confidential) at p.2, last para. (“*In regard to the same event on 12 August 2001, the on-duty investigating judge was informed by MVR-SVR [...]*”) (emphasis added).

¹⁰⁴ See Exh.1D6 (not confidential).

information about it. In fact, on 14 August 2001, he brushed away indications of a massacre and asserted that the dead persons were members of “a terrorist – extremist group”,¹⁰⁶ and that it was only necessary to identify the origin of the deceased as from Ljuboten or from outside FYROM.¹⁰⁷ Exhibit 1D6 is consistent with an investigation to establish the identity of the deceased, not into the criminal conduct of Boškoski’s subordinates.¹⁰⁸

69. The second exhibit relied upon by the Trial Chamber, Exhibit P261, is an Official Note dated 14 August 2001 submitted by Blagoja T. of the MoI (OVR Čair) with the subject “report on a deceased person,” Atulla Qaili. It does not suggest or even mention the possibility of any criminal conduct on the part of the police relating to Atulla Qaili’s death. It only suggests Atulla Qaili’s own criminal culpability for the crime of terrorism because charges were being pressed against him.¹⁰⁹ This note, which was attached as an enclosure to a cover sheet addressed to the public prosecutor,¹¹⁰ states that (a) OVR Čair filed a criminal report against Atulla Qaili; (b) Atulla Qaili¹¹¹ was officially interviewed on 12 August 2001 and then taken to Mirkovci police station by security forces active in Ljuboten; and (c) Qaili’s “health condition deteriorated” and he was taken to Skopje City Hospital, where he died later that same day.¹¹² The note is silent as to how or why Atulla Qaili’s health deteriorated or who was responsible for his condition, its deterioration and his ultimate death.¹¹³

70. The Chamber found Boškoski was aware that the judicial authorities had been notified and that some kind of on-site inspection was being attempted on the basis of

¹⁰⁵ Judgement, para.431. *See also* Judgement, para.546 (the police records which were provided in evidence do not identify the police who entered into Ljuboten on the morning of 12 August 2001).

¹⁰⁶ Exh.P362 (not confidential), referred to in Judgement, para.446.

¹⁰⁷ Exh.P362 (not confidential), referred to in Judgement, para.446.

¹⁰⁸ *See* paras.83-86 below. *See also* Judgement, para.456, citing to Exh.P388 (not confidential), para.8.

¹⁰⁹ *See* Exh.P261 (not confidential).

¹¹⁰ *See* fn.100 above.

¹¹¹ Exh.P261 (not confidential) spells this individual’s name differently as Atula Qailji. This Brief uses the spelling used by the Chamber in its Judgement.

¹¹² Exh.P261 (not confidential).

¹¹³ *See* Judgement, para.530 (“It is also the case that no information was provided to the investigative judge and the public prosecutor as to how Atulla Qaili suffered the fatal injuries, and no witnesses or police responsible for the detention of Atulla Qaili were identified. Nor were names of witnesses to his injuries provided.”).

four reports sent to him as Minister.¹¹⁴ In relation to these crimes the reports only mentioned (a) bodies had been found in Ljuboten by OSCE investigators entering the village on 14 August;¹¹⁵ (b) the bodies had been buried;¹¹⁶ (c) several houses were set on fire;¹¹⁷ and (d) 73 individuals from Ljuboten had been detained at OVR Čair in connection with the situation in Ljuboten.¹¹⁸

71. These reports did not identify any allegations of criminal behaviour by the police. This information was as deficient as that contained in Exhibits 1D6 and P261. Accordingly, Boškoski could not have reasonably believed that this information was sufficient to meet his obligation to punish his subordinates. He needed to ensure the information provided to the competent authorities did identify the criminal conduct of his subordinates.

72. Neither the evidence of the reports upon which the Chamber relied, nor those sent to Boškoski, contained any allegations of criminal conduct against Boškoski's subordinates. He failed to have any allegations genuinely investigated in order to, if appropriate, file a criminal report with the competent authorities.¹¹⁹ Boškoski took no steps to ensure that proper reports were made into the alleged criminal conduct of his subordinates. Indeed, the information provided to him which according to the Judgement indicated reports had been made to the responsible authorities did not mention alleged criminal conduct of his subordinates.¹²⁰ He failed to verify or have verified whether the competent authorities were aware of and were investigating those allegations.

73. In the circumstances, Boškoski wholly failed to take the necessary and reasonable measures to punish his subordinates for their crimes. The Appeals Chamber should reverse Boškoski's acquittal and convict him under Article 7(3) of the Statute.

¹¹⁴ Judgement, paras.447, 529, 536. Exhs.1D361 (not confidential), 1D364 (not confidential), 1D373 (not confidential), 1D374 (not confidential). *See also* Exh.P402 (not confidential), referred to in Judgement, para.529.

¹¹⁵ Judgement, paras.447, 527. Exhs.1D364 (not confidential), 1D373 (not confidential), p.2, last para. The Centre for Crisis Management served as coordinating interagency between the Macedonian authorities and the international community involved on daily basis in responding to the conflict. The OSCE was a party. *See* Bolton, T.1604 (open session); Exh.P249 (not confidential), p.1.

¹¹⁶ Judgement, para.447.

¹¹⁷ Exhs.1D361 (not confidential), 1D373 (not confidential).

¹¹⁸ Exh.1D373 (not confidential), p.2.

¹¹⁹ *See* Exh.P88 (not confidential), Art.142 (6).

74. In the alternative, for the reasons outlined above, the Chamber erred as no reasonable trier of fact could have found that the reports referred to in paragraph 529 of the Judgement and above,¹²¹ were sufficient to satisfy Boškoski's obligation under Article 7(3) to take the necessary and reasonable measures to punish his subordinates. In addition, the Prosecution submits that the information provided was not "likely to trigger an investigation" into the crimes of Boškoski's subordinates. The Chamber's factual error led to a miscarriage of justice as the Chamber acquitted Boškoski in relation to all counts.

(c) Additional factual argument: the "reports" relied on by the Chamber were not "likely to trigger an investigation" into the criminal conduct of Boškoski's subordinates

75. The information provided by the MoI to the investigative judge and the public prosecutor stated that:

(a) Members of the NLA/KLA were killed in Ljuboten on 12 August 2001 in the context of combat activities with the Macedonian security forces;¹²² and

(b) Atulla Qaili, against whom a criminal charge for terrorism had been filed, died at Skopje hospital on 13 August 2001, after being interviewed at Mirkovci police station.¹²³

76. In light of this limited information, no reasonable trial chamber could have found that: (1) the notifications of the MOI to the investigative judge and public prosecutor in the official notes,¹²⁴ "ought, in the ordinary course, to have led an investigative judge and the public prosecutor to conduct a proper investigation as anticipated by law [...]" into the reported events and into "the closely interrelated allegations of police criminal conduct in Ljuboten, and thereafter at police checkpoints and police stations [...];"¹²⁵ or (2) while the reports were not full or accurate, they were nonetheless "likely to trigger an investigation," "by law," into the

¹²⁰ See Judgement, para.529; Exhs.1D373 (not confidential), 1D374 (not confidential), P402 (not confidential), ERN N000-9659-N000-9660.

¹²¹ See paras.64-69 above.

¹²² Exh.1D6 (not confidential).

¹²³ Exh.P261 (not confidential).

¹²⁴ Exhs.1D6 and P261 (not confidential).

¹²⁵ Judgement, para.529.

deaths, cruel treatment and wanton destruction that occurred on 12 August 2001 and the days following.¹²⁶

77. This is because the information provided to the investigative judge and public prosecutor did not refer to any criminal conduct by the police, nor did the MoI's notifications constitute criminal reports such that they would have by law caused a judicial investigation into police misconduct. Indeed, the deputy public prosecutor gave evidence that the objective of the attempted onsite investigation "was not to clarify what happened at Ljuboten," but rather to identify those individuals who were killed.¹²⁷

(i) The information provided to the competent authorities did not refer to any criminal conduct by the police

78. The information provided to the investigative judge and public prosecutor described in the official notes fell short of that which would trigger an investigation into any or all of the criminal conduct of the police.

79. In the first place, the information minimised the likelihood that the investigative judge or public prosecutor would investigate the conduct of the police. The information in Exhibit 1D6 contained language strongly suggesting that the deceased were "terrorists" killed in fighting.¹²⁸ Exhibit P261 portrayed Atulla Qaili as an alleged terrorist.

80. In the second place, the crimes perpetrated against Ljuboten villagers by Boškoski's subordinates were committed in different places against different victims. The Chamber's findings in this respect are summarised below. They show that any investigation into the information reflected in Exhibits 1D6 and P261 - which focused on the bodies *in Ljuboten* and on Atulla Qaili's brief detention at the *Mirkovci police station* - was unlikely to uncover the totality of the criminal conduct of Boškoski's subordinates.

81. The Chamber found that, in Ljuboten, the police led by Johan Tarčulovski murdered Rami Jusufi at his own house¹²⁹ and later murdered Sulejman Bajrami¹³⁰

¹²⁶ Judgement, para.536.

¹²⁷ Judgement, para.456 (quoting Dragoljub Čakić, Exh.P388 (not confidential), para.8).

¹²⁸ Exh.1D6 (not confidential).

¹²⁹ Judgement, paras.306, 312, 552, 554, 555.

¹³⁰ Judgement, paras.313, 316, 320.

and Muharem Ramadani outside Adem Ahmetovski's house.¹³¹ They mistreated Atulla Qaili¹³² together with the rest of the men sheltering at Adem Ahmetovski's basement,¹³³ and set on fire houses and other property in Ljuboten.¹³⁴ These men were subjected to further abuses at Braca's house by the group of police led by Johan Tarčulovski,¹³⁵ and then at Mirkovci police station by the police at that location.¹³⁶

82. At the same time the Chamber found that a group of villagers who attempted to leave Ljuboten were mistreated at Buzalak checkpoint by the police officers manning the checkpoint.¹³⁷ They were later taken to different police stations outside Ljuboten (Butel/Čair,¹³⁸ Karpoš,¹³⁹ Bit Pazar¹⁴⁰ and Proleće/Kisela Voda¹⁴¹) where they were further mistreated by the police from those stations.¹⁴²

(ii) The information provided by the MoI did not constitute criminal reports

83. The information reported by the MoI to the investigative judge and the public prosecutor did not constitute a criminal report according to FYROM law, and so was not likely to trigger an investigation into the criminal conduct of Boškoski's subordinates. The Chamber erred in finding that "by law [the reports] should have caused a judicial investigation, supported by the public prosecutor."¹⁴³

84. Under FYROM law, the police are obliged to undertake certain investigations and "to identify the perpetrator [...] and to collect all relevant information" if there are grounds to suspect that a crime has been committed, prior to referring a criminal report to the public prosecutor.¹⁴⁴ Nevertheless, the Chamber found that "[n]o normal police investigations were carried out [...] before the investigative judge and the public prosecutor were notified."¹⁴⁵ This absence of a police investigation confirms that the information referred to in Exhibit 1D6 and the MoI's official note to the

¹³¹ Judgement, paras.325, 328.

¹³² Judgement, para.329.

¹³³ Judgement, paras.383, 384.

¹³⁴ Judgement, paras.567-569.

¹³⁵ Judgement, paras.385, 558.

¹³⁶ Judgement, paras.387, 575.

¹³⁷ Judgement, para.388.

¹³⁸ Judgement, para.83.

¹³⁹ Judgement, para.84.

¹⁴⁰ Judgement, para.85.

¹⁴¹ Judgement, paras.86, 574.

¹⁴² Judgement, para.388. *See also* Judgement, para.574.

¹⁴³ Judgement, para.536.

¹⁴⁴ Exh.P88 (not confidential), Art.142(1), cited in Judgement, fn.1982.

¹⁴⁵ Judgement, para.530.

public prosecutor (Exhibit P261) did not constitute criminal reports likely to trigger an investigation in accordance with FYROM law.¹⁴⁶

85. A proper criminal charge or report compiles all facts and evidence collected and describes the measures undertaken when there are grounds for suspicion that a crime has been committed.¹⁴⁷ The prosecutor can then decide to reject the charge only in circumstances prescribed by law.¹⁴⁸ The communications referred to in Exhibit 1D6 and the official note identified as Exhibit P261 do not amount to criminal reports, as defined by Articles 140 and 142 of the FYROM Code of Criminal Procedure.¹⁴⁹ Neither of the documents reports a crime or identifies a perpetrator.¹⁵⁰

86. Therefore, no reasonable trier of fact could have found that the information described in Exhibits 1D6 and P261 was, by law, likely to trigger a judicial investigation into the crimes of Boškoski's subordinates.¹⁵¹ Hence, no reasonable trier of fact could have concluded that Boškoski had satisfied his obligation under Article 7(3) by reporting the criminal conduct to the competent authorities.

3. Boškoski should have taken disciplinary measures against his subordinates, but did not

87. Boškoski's obligation to "take necessary and reasonable measures to punish" his subordinates required him to take disciplinary measures in addition to initiating and supporting criminal procedures. Had the Chamber applied the correct legal standard, it would have convicted Boškoski under Article 7(3) because he failed to take any disciplinary measures against his criminal subordinates.

¹⁴⁶ Exh.P88 (not confidential), Art.140(1): "The state agencies and institutions which perform public authorisation are obliged to report crimes". Stojanovski, T.9092 (open session), cited in Judgement, fn.1982: a criminal report is filed to the Prosecutor "[i]f, in the course of our work, we arrive at an information that a crime has been committed, and if we have sufficient relevant facts to substantiate the notion that such crime has been committed and the identity of the perpetrator is unknown to us, then we filed a criminal report against an unknown perpetrator".

¹⁴⁷ Exh.P88 (not confidential), Arts.140, 142 (6). This article further states that "[o]bjects, drawings, photographs, collected reports, records on undertaken measures and activities, official notes, statements and other material that may prove useful in instituting criminal proceedings are filed together with the criminal report. Should the bodies of the Ministry of the Interior become aware of new facts, evidence or traces of the crimes after the criminal report has been filed, they are duty-bound to collect the necessary information and the report pertaining to it, and file it with the public prosecutor as an addendum to the criminal report."

¹⁴⁸ Exh.P88 (not confidential), Arts.144-146.

¹⁴⁹ Exh.P88 (not confidential), Arts.140, 142(6).

¹⁵⁰ [REDACTED]

[REDACTED].

¹⁵¹ See Judgement, para.536.

88. The purpose of the duty to punish is to deter the commission of future offences.¹⁵² Deterrence includes swift and visible disciplinary action against wrongdoers in order to send an immediate signal to subordinates. Criminal sanctions are not as immediate.

89. Deterrence may require that subordinates suspected of crimes be suspended from active service with a view to terminating their employment. If they are allowed to continue performing their tasks until judicial proceedings against them are completed months or years later, the purpose of deterring them may be undermined and the preventive effect of command responsibility watered down.

90. Where available, therefore, disciplinary measures are a necessary complement to criminal sanctions. Both constitute necessary and reasonable measures to punish consistent with the objectives of superior responsibility: creating “an environment of discipline and respect for the law,”¹⁵³ and “ensuring compliance with the rules of international humanitarian law.”¹⁵⁴

91. This approach was adopted by the *Hadžihasanović* Appeals Chamber when it found that “immediate and visible measures such as disciplinary detention were necessary,”¹⁵⁵ even if in the circumstances of the case they were insufficient on their own.

92. Here, the Chamber found that since disciplinary measures were insufficient to address the crimes in this case, they were automatically rendered unnecessary.¹⁵⁶ However, as shown by the *Hadžihasanović* Appeal Judgement, a measure may be necessary even if on its own it is not sufficient. In this case, the Chamber failed to appreciate that disciplinary measures were part of the necessary and reasonable measures to punish which Boškoski was required to take.

¹⁵² *Orić* TJ, para.338; Ilias Bantekas, *Principles of Direct and Superior Responsibility in International Humanitarian Law* (Manchester: Manchester University Press, 2002), p.119; *see also Halilović* TJ, para.96; *Hadžihasanović* TJ, para.187; *Blagojević* TJ, para.822.

¹⁵³ *Bagilishema* TJ, para.50, cited with approval in *Hadžihasanović* TJ, para.171.

¹⁵⁴ *Blagojević* TJ, para.822.

¹⁵⁵ *Hadžihasanović* AJ, para.152.

¹⁵⁶ Judgement, para.521.

(a) Boškoski had the material ability to take disciplinary measures against his subordinates

93. Boškoski had the material ability to initiate disciplinary proceedings and to take the ultimate decision on the outcome of such proceedings.¹⁵⁷ Several disciplinary decisions signed by Boškoski show that he was directly involved in this process and that it was functioning at the time of these incidents.¹⁵⁸

94. In particular, Boškoski could and should at the very least have suspended all police involved, including reserve police, from active service pending the termination of their employment.¹⁵⁹ The collective agreement regulating the employment relationship between the MoI and serving police officers requires that an employee be removed from active duty pending a final decision on the termination of employment in cases of alleged misconduct directly endangering life or health or damaging valuable equipment.¹⁶⁰ The murders, cruel treatment and wanton destruction carried out by police fall within these terms. Suspending the perpetrators from active duty and subsequently terminating their employment was both necessary and reasonable in the circumstances and would have satisfied the need for immediate and visible measures recognized as necessary by the *Hadžihasanović* Appeals Chamber.¹⁶¹

95. Since Boškoski was able to take disciplinary measures against the police officers involved in the crimes,¹⁶² he could and should have disciplined Tarčulovski, the leader of the criminal campaign, who was a regular police officer and a permanent MoI employee,¹⁶³ and the police who, under his command, committed the crimes.

¹⁵⁷ Judgement, para.520; Exh.P382 (not confidential), Arts.143 (5) & (6), 148, 149; Jovanovski, T.5082-5083 (open session).

¹⁵⁸ Exh.P525 (not confidential), N006-5548, pp.1-2, N006-5551, pp.1-2, N006-5553, pp.1-2, N006-5559, pp.1-2; [REDACTED]; Exh.527 (not confidential); Exh.P528 (not confidential), N006-5592, pp.1-3 and N006-5598, p.1

¹⁵⁹ See Judgement, paras.474, 495, 497, 520. [REDACTED]
[REDACTED]

T.8367 (closed session). Boškoski Defence witness Dorevska, also an MoI official, while claiming that reservists were not subject to disciplinary procedures –a view the Chamber rejected at Judgement, para.520– agreed that reservists who committed violations would be struck from the MoI's list of reservists. Dorevska, T.9484-9485, 9642 (open session). The witness merely took issue with labelling this a disciplinary measure. See also Exh.1D310 (not confidential), p.13, para.48 (Rule 94bis report of Boškoski Defence expert witness Taseva).

¹⁶⁰ Exh.P382 (not confidential), Collective Agreement of the Ministry of Interior, Art.136.

¹⁶¹ *Hadžihasanović* AJ, para.152.

¹⁶² See Exh.P382 (not confidential), Collective Agreement of the Ministry of Interior, Art.136.

¹⁶³ Judgement, paras.513, 520.

FYROM law did not prevent Boškoski from imposing disciplinary measures for conduct which was, at the same time, reported for criminal prosecution.¹⁶⁴

(b) Despite his powers, Boškoski failed to take disciplinary measures

96. Despite his ability to take disciplinary measures, Boškoski initiated no disciplinary proceedings against the members of the police who committed the murders, cruel treatment and destruction. No records of disciplinary proceedings regarding the crimes in the present case were found within the archives relating to the permanent commission for disciplinary proceedings of the MoI.¹⁶⁵ Witness Galevski, referring to potential disciplinary proceedings against the perpetrators of the crimes in the present case, stated: “I think that there was no disciplinary proceeding at that moment because no report was filed against anyone.”¹⁶⁶ [REDACTED],¹⁶⁷ and other witnesses,¹⁶⁸ never heard of anyone being disciplined or prosecuted for misconduct against ethnic Albanians in the village of Ljuboten. This evidence supports the Chamber’s finding that no criminal proceedings were initiated against any perpetrators,¹⁶⁹ and is consistent with Boškoski’s obvious lack of motivation to do anything himself to punish them.¹⁷⁰

97. By failing to take disciplinary measures Boškoski failed to take the necessary and reasonable measures to punish the perpetrators of the crimes. The Appeals Chamber should reverse Boškoski’s acquittal and convict him under Article 7(3) of the Statute.

98. In the alternative, no reasonable trier of fact could have concluded that, despite failing to take disciplinary measures, Boškoski took the necessary and reasonable

¹⁶⁴ Dorevska, T.9641 (open session).

¹⁶⁵ Keuhnel, T.7902-7903, 7907-7908, 7958-7959 (open session).

¹⁶⁶ Galevski, T.3588 (open session).

¹⁶⁷ [REDACTED]

¹⁶⁸ M037, T.871 (open session); [REDACTED]; M083, T.1443 (open session).

¹⁶⁹ See Judgement, paras.440 (citing a report by the European Committee for the Prevention of Torture or Degrading Treatment or Punishment stating that the MoI did not carry out a criminal investigation), 536 (“No criminal proceedings were instituted against any police.”)

¹⁷⁰ See Judgement, paras.450 (referring to Boškoski’s response to the HRW report that reported about the crimes relevant to the present case), 535 (stating that the evidence does not indicate that Boškoski would have been strongly motivated to take further steps to ensure he was more fully informed, or to have ensured that the responsible police performed their duties so that the investigative judge and the public prosecutor were in a better position to determine what really had occurred and whether criminal charges against any of the police were justified).

measures to punish his subordinates. This occasioned a miscarriage of justice as it led the Chamber into error in acquitting Boškoski of all the counts against him.

III. CONCLUSION

99. Ljube Boškoski was the head of the Ministry responsible for detecting crimes in FYROM.¹⁷¹ He had the power to control and direct the police, and to ensure that the police carried out their functions efficiently and lawfully.¹⁷² He was able to effectively enforce his ministerial powers to the extent he chose,¹⁷³ and could effectively exercise his superior responsibility over the police including reserve and special police units.¹⁷⁴ This responsibility as a superior, in the context of this internal armed conflict, existed to ensure his subordinates acted in a disciplined and lawful manner or would be punished if they did not.

100. Boškoski knew that his subordinates were alleged to have committed grave and serious crimes including murder, cruel treatment and the wanton destruction of property.¹⁷⁵ As their superior he was obliged to ensure that this conduct was punished. He did nothing to achieve this. In acquitting Boškoski, the Chamber relied upon information about reports which the evidence did not indicate Boškoski had seen or commissioned, and which nowhere referred to crimes by his subordinates. It found that Boškoski had satisfied his obligation to punish. Boškoski did not investigate those allegations. His only action in relation to the Ljuboten events was to set up a sham commission with a misleading mandate that was never sufficient to meet his investigation obligation.¹⁷⁶ He made no attempt to discipline any subordinates involved, or even to suspend them in accordance with the disciplinary procedures in force at the time.¹⁷⁷ He never even inquired as to what had been reported, or satisfied himself that all the allegations of criminal conduct that he had been made aware of were reported to the competent authorities.

101. Despite all Boškoski knew, and all that was within his material ability, throughout he took no active steps to ensure his subordinates were punished. For all

¹⁷¹ Judgement, paras.468-469.

¹⁷² Judgement, para.513.

¹⁷³ Judgement, para.514.

¹⁷⁴ Judgement, paras.513, 515.

¹⁷⁵ Judgement, para.527.

¹⁷⁶ Judgement, para.527.

the reasons stated above the Chamber erred in law, and alternatively in fact, in acquitting Ljube Boškoski of failing to take the necessary and reasonable measures to punish the crimes of his subordinates.

102. The Chamber erred in acquitting Ljube Boškoski of responsibility under Article 7(3) for the following crimes committed by his subordinates: murder (Count 1 –murder of Rami Jusufi, Sulejman Bajrami, Muharem Ramadani and Atulla Qaili), wanton destruction (Count 2 –wanton destruction of the houses or other property of Alim Duraki, Agim Jusufi, Qenan Jusufi, Sabit Jusufi, Xhevshet Jusufovski, Abdullah Luftiu, Harun Rexhepi (Redžepi), Ismet Rexhepovski (Rexhepi, Redžepi), Nazim Murtezani, Qani Jashari, Afet Jashari and Ramush Jashari) and cruel treatment (Count 3 –M012, Hamdi Ametovski, Adem Ametovski, Aziz Bajrami, M017, Nevaip Bajrami, Vehbi Bajrami, Atulla Qaili, Beqir Ramadani, Ismail Ramadani, Muharem Ramadani, Osman Ramadani, and Sulejman Bajrami in front of Adem Ametovski’s house; M012, Hamdi Ametovski, Adem Ametovski, M017, Nevaip Bajrami, Vehbi Bajrami, Atulla Qaili, Beqir Ramadani, Ismail Ramadani, and Osman Ramadani at Braca’s house; M012, Hamdi Ametovski, Adem Ametovski, M017, Atulla Qaili, Nevaip Bajrami, Vehbi Bajrami, Beqir Ramadani, Ismail Ramadani, and Osman Ramadani at Mirkovci police station; Hazbi Ajrullai, Sherafedin Ajrullai, Murtezan Murtezani, Ramiz Xhavid, Betjulla Zendeli, Suat Zendeli, and Sulejman Zendeli at Buzalak checkpoint; Sherafedin Ajrullai at Butel police station; Isni Ali, Vehap Ali, Burhan Murtezani, Murtezan Murtezani, Aziz Redžepi, Rametulla Zendeli, and Sulejman Zendeli at Proleće police station; Isni Ali, Aziz Redžepi, Latif Saliu, Rametulla Zendeli, and Sulejman Zendeli at Bit Pazar police station; and Sherafedin Ajrullai and Arben Murseli at Karpoš police station).

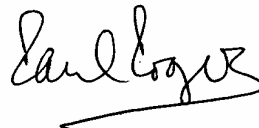
IV. RELIEF REQUESTED

103. The Prosecution respectfully requests the Appeals Chamber to reverse Boškoski’s acquittal for murder, wanton destruction and cruel treatment, to apply the correct legal standard to the evidence or correct the erroneous factual findings and to convict him pursuant to Article 7(3) of the crimes under Counts 1, 2 and 3 detailed above.

¹⁷⁷ See Exh.P382 (not confidential), Collective Agreement of the Ministry of Interior, Art.136.

104. The Prosecution also respectfully requests that the Appeals Chamber sentence Boškoski for these crimes.¹⁷⁸

Word Count: 11,236



Paul Rogers
Appeals Counsel

Dated this twentieth day of October 2008
At The Hague, The Netherlands

V. RULE 111 DECLARATION

The Prosecutor will exercise due diligence to comply with his continuing Rule 68 disclosure obligations during the appeal stage of this case. As of the date of this filing, the Prosecutor has disclosed, or is in the process of disclosing, to Boškoski all material under Rule 68(i) which has come into his actual knowledge and, in addition, has made available to Boškoski collections of relevant material held by the Prosecutor.

¹⁷⁸ The Prosecution at trial recommended a single sentence of 12 years: *see* Prosecution Final Trial Brief, para.504.

VI. GLOSSARY

Pleadings, Orders, Decisions etc from Prosecutor v. Ljube Boškosi, Johan Tarčulovski, Case No. IT-04-82

Abbreviation used in Prosecution's Appeal Brief	Full citation
Chamber	Trial Chamber in <i>Prosecutor v. Ljube Boškosi, Johan Tarčulovski</i> , Case No. IT-04-82-T
Judgement	<i>Prosecutor v. Ljube Boškosi, Johan Tarčulovski</i> , Case No. IT-04-82-T, T.Ch., Judgement, 10 July 2008
Indictment	<i>Prosecutor v. Ljube Boškosi and Johan Tarčulovski</i> , Case No. IT-04-82-PT, Second Amended Indictment, 4 April 2006
Prosecution Final Brief	<i>Prosecutor v. Ljube Boškosi, Johan Tarčulovski</i> , Case No. IT-04-82-T, Confidential Prosecution's Final Brief, 24 April 2008
Prosecution's Notice of Appeal	<i>Prosecutor v. Ljube Boškosi</i> , Case No. IT-04-82-A, Prosecution's Notice of Appeal, 6 August 2008

Other ICTY authorities

Abbreviation used in Prosecution's Appeal Brief	Full citation
<i>Aleksovski</i> AJ	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, App.Ch., Judgement, 24 March 2000
<i>Aleksovski</i> TJ	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, T.Ch., Judgement, 25 June 1999
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Blaškić</i> TJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, T.Ch., Judgement, 3 March 2000
<i>Blagojević</i> TJ	<i>Prosecutor v. Vidoje Blagojević, Dragan Jokić</i> , Case No. IT-02-60-T, T.Ch., Judgement, 17 January 2005

<i>Brđanin</i> TJ	<i>Prosecutor v Radoslav Brđanin</i> , Case No. IT-99-36-T, T.Ch., Judgement, 1 September 2004
<i>Čelebići</i> AJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
<i>Čelebići</i> TJ	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo</i> , Case No. IT-96-21-T, T.Ch., Judgement, 16 November 1998
<i>Delić</i> TJ	<i>Prosecutor v. Rasim Delić</i> , Case No. IT-04-83-T, T.Ch., Judgement, 15 September 2008
<i>Hadžihasanović</i> AJ	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-A, App.Ch., Judgement, 22 April 2008
<i>Hadžihasanović</i> TJ	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, T.Ch., Judgement, 15 March 2006
<i>Hadžihasanović</i> Command Responsibility AD	<i>Prosecutor v. Enver Hadzihasanović and Amir Kubura</i> , Case No.IT-01-47-AR72, App.Ch, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003
<i>Halilović</i> AJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, App.Ch., Judgement, 16 October 2007
<i>Halilović</i> TJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, T.Ch., Judgement, 16 November 2005
<i>Kordić and Čerkez</i> AJ	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, App.Ch., Judgement, 17 December 2004
<i>Kordić and Čerkez</i> TJ	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, T.Ch., Judgement, 26 February 2001
<i>Krnjelac</i> TJ	<i>Prosecutor v. Milorad Krnjelac</i> , Case No. IT-97-25-T, T.Ch., Judgement, 15 March 2002
<i>Limaj</i> TJ	<i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu</i> , Case No. IT-03-66-T, T.Ch., Judgement, 30 November 2005
<i>Mrkšić</i> TJ	<i>Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin</i> , Case No. IT-95-13/1, T.Ch., Judgement, 27 September 2007
<i>Orić</i> AJ	<i>Prosecutor v Naser Orić</i> , Case No. IT-03-68-A, App.Ch., Judgement, 3 July 2008

<i>Orić</i> TJ	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-T, T.Ch., Judgement, 30 June 2006
<i>Strugar</i> AJ	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, App.Ch., Judgement, 17 July 2008
<i>Strugar</i> TJ	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, T.Ch., Judgement, 31 January 2005

ICTR authorities

Abbreviation used in Prosecution's Appeal Brief	Full citation
<i>Bagilishema</i> TJ	<i>Prosecutor v Ignace Bagilishema</i> , Case No. ICTR-95-1A-T, T.Ch., Judgement, 7 June 2001

Judgements and Decisions Relating to Crimes Committed During WWII

Abbreviation used in Prosecution's Appeal Brief	Full citation
Tokyo Judgement	<i>Tokyo Judgement</i> , The International Military Tribunal for the Far East, Volume I (University Press Amsterdam, 1977)
<i>Yamashita</i>	<i>In re Yamashita</i> , 327 U.S. 1 (1946)

General Sources

Abbreviation used in Prosecution's Appeal Brief	Full citation
AP I	Additional Protocol I to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977
AP II	Additional Protocol II to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977

ICRC Commentary	ICRC, Yves Sandoz, Christophe Swinarski and Bruno Zimmerman (eds.), <i>Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949</i> (Geneva: International Committee of the Red Cross, Martinus Nijhoff (1987))
Negotiating History Protocol I	<i>Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Statement of the US delegation, Negotiating History Protocol I, CDDH/I/SR.50, (Federal Political Department, Bern, 1978)</i>

Other Abbreviations

Abbreviation used in Prosecution's Appeal Brief	Full citation
BBC	British Broadcasting Corporation
Exh.	Exhibit
Exhs.	Exhibits
fn.	Footnote
FYROM	Former Yugoslav Republic of Macedonia
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
ICTY	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
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994
KLA	Kosovo Liberation Army
MoI	Macedonian Ministry of Interior

MVR	Ministry of Interior
NLA	Albanian National Liberation Army
OSCE	Organization for Security and Cooperation in Europe
OVR	Oddelenie za Vnatrešni Raboti (Department for Internal Affairs)
para.	paragraph
paras.	paragraphs
p.	page
pp.	pages
POW	Prisoner of War
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the Security Council Resolution 827 (1993)
SVR	Sector for Internal Affairs
T.	Trial Transcript
UN	United Nations
WWII	Second World War