



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-T  
Date: 27 August 2007  
Original: English

**IN THE TRIAL CHAMBER II**

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

**Registrar:** Mr Hans Holthuis

**Decision:** 27 August 2007

**PROSECUTOR**

v.

**LJUBE BOŠKOSKI  
JOHAN TARČULOVSKI**

**PUBLIC**

**DECISION ON PROSECUTION'S MOTION TO ADMIT INTO  
EVIDENCE DOCUMENTS ATTACHED TO JORGEN ENGEL'S  
WITNESS STATEMENT WITH CONFIDENTIAL ANNEXES A  
TO I**

**The Office of the Prosecutor:**

Mr Dan Saxon  
Ms Joanne Motoike  
Mr Matthias Neuner  
Ms Meritxell Regue

**Counsel for the Accused:**

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

1. This decision of Trial Chamber II is in respect of the “Prosecution’s Motion to Admit into Evidence Documents Attached to Jorgen Engel’s Witness Statement with Confidential Annexes A to I” filed confidentially on 25 May 2007 (“Motion”).<sup>1</sup> On 11 June 2007, Counsel for Ljube Boškosi (“Boškosi Defence”) filed “Response to Prosecution Motion for Admission of Exhibits from the Bar Table – IMG Documents” (“Boškosi’s Response”) requesting that the Prosecution’s motion be denied. Counsel for Johan Tarčulovski has not filed a response. On 15 June 2007, the Prosecution filed a reply to the Boškosi’s response seeking leave to file a reply and that its motion be granted.<sup>2</sup>

**A. Submissions**

2. The Prosecution submits that the documents at issue in its motion are relevant to the charges, in particular Count 3 of the Indictment regarding wanton destruction of cities, towns and villages.<sup>3</sup> Further, it is submitted, the documents are probative and reliable in that they were compiled by IMG, International Management Group, a specialized intergovernmental organisation neutral to the events.<sup>4</sup>

3. The Boškosi Defence submits that the reliability and the probative value of the documents in question has not been established. It is submitted that Mr Jorgen Engel only gives general and generic information about the methods and role of the IMG and the evidence suggests that he was not personally involved in the damage assessment in relation to Ljuboten.<sup>5</sup> Further, there is no evidence as to who carried out this work and on what information they based their conclusions.<sup>6</sup> Further, information contained in four different OTP statements suggests that the documents sought to be admitted are not sufficiently reliable.<sup>7</sup> The Boškosi Defence also contends that the date at which the damage was caused to the relevant buildings is unclear<sup>8</sup> as is the cause of damage.<sup>9</sup> The

<sup>1</sup> Confidential Annex A consists of one document called “IMG Assessment Methodology for housing.” Confidential Annex B includes a “list of conflict damaged houses in the village of Ljuboten, Čair Municipality” dated October 2001. Confidential Annex C comprises maps of the village of Ljuboten and Ljubotenski Bacila. Houses assessed in October 2001. Confidential Annex D includes 88 “photographs of the conflict damaged houses in the village of Ljuboten and in Ljubotenski Bacila area.” Confidential Annex E has a “list of DDC/IMG rehabilitated houses in the village of Ljuboten, Čair Municipality” dated December 2003. Confidential Annex F includes a map of DDC/IMG rehabilitated houses in the village of Ljuboten, December 2002. Confidential Annex G includes “photographs of DDC/IMG rehabilitated houses in the village of Ljuboten” and Confidential Annex H includes a chart on the rehabilitation of conflict damaged residential houses. Confidential Annex I include 10 photographs of “weekend houses damaged in categories III and IV in the area Ljubotenski Bacila.”

<sup>2</sup> Prosecution’s Reply to the Boškosi Defence Response to Prosecution’s Motion for Admission of Exhibits from the Bar Table – IMG Documents, filed on 15 June 2007.

<sup>3</sup> The Chamber notes that these charges are contained in Count 2 of the Indictment.

<sup>4</sup> Motion, paras 4 and 7.

<sup>5</sup> Boškosi’s Response, para 6.

<sup>6</sup> Boškosi’s Response, paras 11 and 16.

<sup>7</sup> Boškosi’s Response, para 7.

<sup>8</sup> Boškosi’s Response, paras 12 and 17

Boškoski Defence further submits that documents pertaining to the 10 weekend houses in Ljubotenski Bacila has no relevance to the charges.<sup>10</sup> Finally, granting the Prosecution's Motion would, in the view of the Boškoski Defence, violate the right of the accused to confront the evidence presented against him and prejudice the defendant.<sup>11</sup>

4. The Chamber does not grant leave to the Prosecution to reply to Boškoski's Response as there was no adequate justification for these further submissions.

### **B. The law**

5. Pursuant to Rule 89 (C) of the Rules a Chamber may admit any relevant evidence which it deems to have probative value. As has been said in the jurisprudence of this Tribunal, "evidence is admissible only if it is relevant and it is relevant only if it has probative value."<sup>12</sup> In so far as the Boškoski Defence contends that admission would violate the right of the accused to confront the evidence against him, the Chamber observes that Rule 89 (C) has been approved and adopted as a means of improving the efficiency of the proceedings while at the same time facilitating a fair trial. Application of this Rule *per se* need not cause any undue prejudice to the Accused or otherwise violate the right to a fair trial.

### **C. Discussion**

6. The documents sought to be admitted into evidence relate to the assessment of the damage to houses in Ljuboten and Ljubotenski Bacila conducted by representatives of IMG, a specialized intergovernmental agency whose main activities are emergency reconstruction, rehabilitation and development programmes.<sup>13</sup> Assessment of damages is the first stage of such rehabilitation.<sup>14</sup> The damage assessment of houses in Ljuboten by IMG is said to have taken place on 13 September 2001.<sup>15</sup>

7. The authenticity of these documents is not disputed. Further, the Chamber finds these documents to be relevant to the charges, in particular Count 2 of the Indictment.<sup>16</sup> However, the documents relating to 10 weekend houses in Ljubotenski Bacila, bearing ERN number N000-7233

<sup>9</sup> Boškoski's Response, paras 13 and 18.

<sup>10</sup> Boškoski's Response, paras 19 and 24.

<sup>11</sup> Boškoski's Response, paras 20-23.

<sup>12</sup> *Prosecutor v. Galić*, Case No: IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis (C), 7 June 2002, para 35.

<sup>13</sup> Exhibit 390, Witness Statement Rule 92bis of Jorgen Engel of 28 April 2004, 3 and 4 November 2004, para 5.

<sup>14</sup> Exhibit 390, para 8.

<sup>15</sup> Exhibit 390, para 11.

<sup>16</sup> Second Amended Indictment of 4 April 2006, para 24.

– N000-7242,<sup>17</sup> are irrelevant as these fall outside the geographical scope of the Indictment. These documents will, therefore, not be admitted.

8. Regarding reliability, these documents relate relevantly to the assessment of damage to 78 residential houses in the village of Ljuboten conducted by the IMG on 13 September 2001.<sup>18</sup> In the view of the Chamber the information given by Jorgen Engel, the Head of Office and Resident Representative in Skopje of the IMG, as to how the information in these documents was obtained and how the assessment was conducted is sufficient to enable the Chamber to accept their reliability for present purposes.<sup>19</sup> Mr Jorgen Engel did not personally take part in the damage assessment, but the damage assessment was conducted according to the established system of the IMG with which the witness was familiar by virtue of his supervisory role. On this basis the witness can attest to the system of damage assessment followed by chartered architects and engineers<sup>20</sup> who actually made the assessments and the Chamber is further able to identify the damage by the photographs which are part of the assessment.

9. Information provided in the four OTP statements referred to by the Boškoski Defence could suggest that some houses in Ljuboten which were assessed may not actually have been rehabilitated. Further, there may be some difference or confusion as to names on the list compiled by IMG of the owners and/or beneficiaries of the damaged houses in Ljuboten which were assessed. The Chamber is of the view that these issues, even if established, are not critical and would not cause the assessments made to be unreliable for the purposes relevant to the issues in this case.

10. Regarding the date of the damage, in the Chamber's view, it is important to be able to separate out damage assessed which was caused at the material time alleged in the Indictment from all other damage.<sup>21</sup> The damage assessment was carried out on 13 September 2001. In the evidence presented to the Chamber, there is nothing which would indicate that houses in the village of Ljuboten were damaged around this time other than the period alleged in the Indictment, namely 10-12 August 2001, save for a reference in Exhibit 1D32, an OSCE Report, which indicates that 3 houses in Ljuboten and one outhouse were damaged on 16 and 17 August 2001.<sup>22</sup> Two of these houses are identified in a sketch prepared by the witness Peter Bouckaert,<sup>23</sup> but the other house and the outhouse are not presently identified in the evidence. Despite this, the Chamber would be in a

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<sup>17</sup> Motion, Annex D and Annex I.

<sup>18</sup> Exhibit 390, paras 11 and 16.

<sup>19</sup> Exhibit 390, paras 11-14.

<sup>20</sup> Exhibit 390, para 13.

<sup>21</sup> *Prosecutor v. Strugar*, Case No: IT-01-42-T, Decision on the Admissibility of Certain Documents, 26 May 2004, para 32.

<sup>22</sup> Boškoski's Response, para 12.

<sup>23</sup> Exhibit 334.

position on the evidence to make an assessment of the general nature and extent of the damage in Ljuboten caused 10-12 August, subject to the matter referred to in the next paragraph of this decision. The documents should be admitted.

11. The IMG assessments identify some damage as to which it was unclear whether the cause of the damage was conflict damage. This will be weighed and taken into account by the Chamber in its consideration of the documents. Contrary to the submission by the Boškoski Defence this matter does not render the IMG assessments inadmissible as unreliable or irrelevant.

For the foregoing reasons and pursuant to Rules 54 and 89 of the Rules, the Chamber

**DECIDES** as follows:

- (1) The proposed documents identified by ERN numbers: N000-7148, N000-7149-N000-7152, N000-7153-N000-7154, N000-7155-N000-7232, N000-7243, N000-7244, N000-7245-N000-7260 and N000-8634-N000-8635 will be admitted into evidence.
- (2) The proposed documents identified by ERN numbers: N000-7233-N000-7242 will not be admitted into evidence.

**REQUESTS** the Registry to assign exhibit numbers to the received documents and to inform the Chamber and the parties in writing accordingly.

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



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**Judge Kevin Parker**  
**Presiding**

Dated this twentyseventh day of August 2007  
At The Hague  
The Netherlands

[Seal of the Tribunal]