



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

Case No. IT-04-82-T
Date: 21 November 2007
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr Hans Holthuis

Decision: 21 November 2007

PROSECUTOR
v.
LJUBE BOŠKOSKI
JOHAN TARČULOVSKI

PUBLIC

**DECISION ON BOŠKOSKI DEFENCE MOTION FOR
ADMISSION OF DOCUMENTS FROM THE BAR TABLE**

The Office of the Prosecutor:

Mr Dan Saxon
Mr Gerard Dobbyn
Ms Meritxell Regue

Counsel for the Accused:

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

1. This Trial Chamber (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”) is seized of the “Boškoski Defence Motion for Admission of Documents from the Bar Table” filed by counsel for Ljube Boškoski (“Boškoski Defence”) on 9 November 2007 (“Motion”).

2. On 29 October 2007, the Boškoski Defence informed the Chamber of the late disclosure by the Prosecution of a number of documents, including Investigator’s Notes made by Mr Howard Tucker and disclosed by the Prosecution after Mr. Tucker had finished his testimony.¹ The Boškoski Defence indicated that it would seek to submit a proposal to the Prosecution of agreed facts based on the contents of these notes. Counsel for Johan Tarčulovski took the same position.² The Prosecution responded that it would not object to the Boškoski Defence either re-calling Mr Tucker and/or having the Investigator’s Notes admitted as Defence exhibits, or both, if necessary.³ The Chamber advised the Boškoski Defence to consider whether it would seek to re-call Mr Tucker or to move to admit these notes into evidence.⁴

3. On 6 November 2007, the Boškoski Defence informed the Chamber of another instance of late disclosure by the Prosecution, this time in relation to two panoramic pictures of the village of Ljuboten, marked respectively by witness M051 and Mr Nikolce Grozdanovski when they were interviewed by the Office of the Prosecutor. The Prosecution stated that it would not object to the Boškoski Defence either re-calling witness M051 or having one or both of the disclosed pictures admitted into evidence.⁵ The Chamber advised the Boškoski Defence to consider whether it would seek to have either witness M051 recalled; or one or both of the marked panoramas admitted into evidence.⁶

4. In its Motion, the Boškoski Defence now seeks leave to tender from the bar table five proposed documents, namely the Investigator’s Notes made by Mr. Howard Tucker and annexed as Annex A to the Motion (“ Tucker Investigator’s Notes”); and four marked photographs of Ljuboten annexed as Annex B to the Motion. The Boškoski Defence submits that these documents are relevant and have probative value in relation to the issues at trial and that the present Motion has been rendered necessary by the late disclosure by the Prosecution. The Prosecution does not oppose the Motion.

¹ T 6846.

² T 6852-6853.

³ T 6855.

⁴ T 6930.

⁵ T 7413.

⁶ T 7414.

5. Pursuant to Rule 89(C) of the Rules of Procedure and Evidence of the Tribunal, the Chamber may admit any relevant evidence which it deems to have probative value.

6. The Tucker Investigator's Notes dated 14 November 2001 pertain to a meeting between Mr Tucker and representatives of the Tetovo Regional Court. At the meeting, the competence of the Tetovo Regional Court to initiate an investigation and to carry out an exhumation on sites within its jurisdiction, *inter alia*, were discussed. The powers of the courts in Macedonia to conduct an exhumation is a question relevant to the issues in this case. The Chamber has heard evidence on this matter from other witnesses. The Tucker Investigator's Notes is, therefore, of sufficient relevance and probative value to be admitted into evidence.

7. The Boškoski Defence further seeks to tender four photographs into evidence. Document Rule 65ter No. 1D 1112.1 is a photograph that was marked by Mr Grozdanovski during his interview with the Office of the Prosecutor, and documents Rule 65ter No. 1D 1112.2, Rule 65ter No. 1D 1112.3 and Rule 65ter No. 1D 1112.4 are enlargements of the left, middle and right parts of the previous document. Mr Grozdanovski's markings indicate his understanding of the positions of the Macedonian Army around the village of Ljuboten and the locations within the village from which the Army units came under attack during the period of 10-12 August 2001. The four photographs are clearly relevant and are of sufficient probative value to be admitted into evidence.

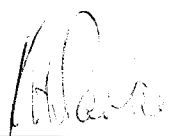
For the foregoing reasons the Chamber

GRANTS the Motion; and

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 text being authoritative.

Dated this twenty-first day of November 2007
At The Hague
The Netherlands



Judge Kevin Parker
Presiding Judge

[Seal of the Tribunal]