



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: 12 March 2008  
Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr Hans Holthuis

**Decision:** 12 March 2008

**PROSECUTOR**

v.

**LJUBE BOŠKOSKI  
JOHAN TARČULOVSKI**

***Public***

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

**The Office of the Prosecutor:**

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

**Counsel for the Accused:**

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

1. This Trial Chamber (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”) is seized of the “Boškoski Defence Second Motion for Admission of Exhibits from the Bar Table”, filed on a confidential basis on 31 January 2008 by Counsel for Ljube Boškoski (“Boškoski Defence”), seeking the admission into evidence of 56 documents (“Motion”). On 14 February 2008, the Prosecution filed its “Prosecution Response to ‘Boškoski Defence Second Motion for Admission of Exhibits from the Bar Table’” (“Response”), requesting that the Motion be granted only in respect of two documents. On 25 February 2008, the Boškoski Defence orally sought leave to reply to the Response, accepting that its reply was sought well out of time; the Chamber did not grant the request.<sup>1</sup>

2. On 4 March 2008, the Boškoski Defence made an application to the Chamber to defer its Decision at least in respect of two documents marked for identification until the Netherlands Forensic Institute has completed its examination of them.<sup>2</sup> The Prosecution did not object and the Chamber granted this request.<sup>3</sup> These two documents will not be addressed further in this Decision.

#### A. Submissions

3. The Boškoski Defence submits that the proposed documents are relevant, have probative value and are sufficiently reliable to be admitted, and present no particular issue of authenticity.<sup>4</sup> It is submitted that the date, source, relevance, and other relevant information related to each document are set out in a chart annexed to the Motion.<sup>5</sup> The Boškoski Defence submits that the issues to which these documents relate have been extensively litigated at trial and most of them were disclosed during the Prosecution’s case, so that the Prosecution has had ample opportunity to test any relevant aspect of these documents in that phase of the trial.<sup>6</sup>

4. The Prosecution opposes the admission of all but two documents.<sup>7</sup> The Prosecution submits that many of the documents the Boškoski Defence seeks to tender are repetitive and cumulative to other documents already in evidence.<sup>8</sup> The Prosecution also submits that the prior admission of similar documents during the testimony of a Prosecution witness does not support the “automatic admission” of additional evidence from the bar table. It is submitted that documents were admitted

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<sup>1</sup> T 9936-9937.

<sup>2</sup> Motion, Annex B-IV; Motion Annex B-V.

<sup>3</sup> T 10361.

<sup>4</sup> Motion, para 3.

<sup>5</sup> See Motion, Annex A.

<sup>6</sup> Motion, para 4.

<sup>7</sup> Response, paras 2, 8, 46.

in trial to prove their content or challenge the credibility of a witness only after the witness had the opportunity to review and respond to the document.<sup>9</sup> The Prosecution also submits that the Boškoski Defence cross-examined the witnesses on some of the documents but chose not to tender them at the time. In addition, it is submitted that the relevant parts of the documents were read in court and, therefore, are reflected in the transcript.<sup>10</sup> The Prosecution addresses most of the proposed documents in detail.<sup>11</sup>

## **B. Law and discussion**

5. Pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“Rules”), a Chamber may admit any relevant evidence which it deems to have probative value. As a general rule, the document proposed for admission has to be of sufficient reliability<sup>12</sup> and relevance<sup>13</sup> to the issues in the case to have probative value. It is for the party that moves to have a document admitted into evidence to demonstrate its relevance and reliability to justify its admission.<sup>14</sup> The Chamber may exclude evidence under Rule 89(D) of the Rules, if its probative value is substantially outweighed by the need to ensure a fair trial.

### 1. Documents already admitted into evidence

6. Since the filing of the Motion, several documents dealt with in the Motion have been admitted into evidence. Document MFI 1D188<sup>15</sup> was admitted into evidence on 28 February 2008;<sup>16</sup> document MFI 1D244<sup>17</sup> was admitted into evidence on 3 March 2008;<sup>18</sup> document MFI 1D263<sup>19</sup> and document MFI 1D264<sup>20</sup> were admitted into evidence on 28 February 2008;<sup>21</sup>

<sup>8</sup> Response, para 4. The Prosecution refers to a ruling in the *Haradinaj et al.* case, in which the Trial Chamber did not admit into evidence certain documents because they were found “to be repetitive of other evidence”.

<sup>9</sup> Motion, para 5.

<sup>10</sup> Motion, para 7.

<sup>11</sup> Response, paras 9-45.

<sup>12</sup> The Appeals Chamber has clarified that “a piece of evidence may be so lacking in terms of indicia of reliability that it is not ‘probative’ and is therefore not admissible”, see *Prosecutor v. Kordić and Čerkez*, Case No: IT-95-14/2-AR73.5, Decision on Appeal Regarding Statements of a Deceased Witness, 21 July 2000, paras 24. See also *Prosecutor v. Milutinović et al.*, Case No: IT-05-87-T, Decision on Prosecution’s Motion to Admit Documentary Evidence, 10 October 2006, para 10 (quoting *Prosecutor v. Tadić*, Case No: IT-94-1-T, Decision on Defence Motion in Hearsay, 5 August 1996, para 15 in which the Trial Chamber held that “if evidence offered is unreliable, it certainly would not have probative value.”) See also *Prosecutor v. Mrkšić et al.*, Case No: IT-95-13/1-T, Decision on Mile Mrkšić’s Motion for Admission of Documents, 21 November 2006; *Prosecutor v. Boškoski and Tarčulovski*, Case No: IT-04-82-T, Decision on Prosecution’s Motion for Admission of Exhibits from the Bar Table with Confidential Annexes A to E, 14 May 2007.

<sup>13</sup> “[E]vidence is admissible only if it is relevant and it is relevant only if it has probative value”, see *Prosecutor v. Galić*, Case No: IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis (C), 7 June 2002, para 35.

<sup>14</sup> *Prosecutor v. Boškoski and Tarčulovski*, Case No: IT-04-82-T, Decision on Prosecution’s Motion for Admission of Exhibits from the Bar Table with Confidential Annexes A to E, 14 May 2007, para 14.

<sup>15</sup> Motion, Annex B-II.

<sup>16</sup> T 10194-10195.

<sup>17</sup> Motion, Annex B-III.

<sup>18</sup> T 10312.

<sup>19</sup> Motion, Annex B-VI.

document Rule 65ter 1D529<sup>22</sup> was admitted into evidence as Exhibit 1D314 on 25 February 2008;<sup>23</sup> document Rule 65ter 1D1170<sup>24</sup> was admitted into evidence as Exhibit 1D296 on 11 February 2008;<sup>25</sup> on 15 February 2008, document Rule 65ter 1D1200<sup>26</sup> was admitted into evidence as Exhibit 1D297,<sup>27</sup> document Rule 65ter 1D1207<sup>28</sup> was admitted into evidence as Exhibit 1D303,<sup>29</sup> Rule 65ter 1D1208<sup>30</sup> was admitted into evidence as Exhibit 1D300,<sup>31</sup> Rule 65ter 1D1209<sup>32</sup> was admitted into evidence as Exhibit 1D301,<sup>33</sup> Rule 65ter 1D1210<sup>34</sup> was admitted into evidence as Exhibit 1D302,<sup>35</sup> and Rule 65ter 1D1232<sup>36</sup> was admitted into evidence as Exhibit 1D311 on 21 February 2008.<sup>37</sup> The Chamber notes that the Boškoski Defence's Motion regarding these documents is, therefore, moot.

## 2. Document MFI 1D12

7. Document MFI 1D12 are investigator's notes prepared by Howard Tucker about an interview with witness Henry Bolton of 25 April 2002.<sup>38</sup> The Boškoski Defence submits that this document is relevant to the general circumstances regarding events around Ljuboten and the presence of NLA in or near the village.<sup>39</sup> The Prosecution submits that the document was used during the cross-examination of witness Bolton and the Boškoski Defence did not seek to tender it, and that the relevant text of the document was recorded into the transcript.<sup>40</sup> The Chamber notes that the portion of the document relevant to the issues referred to by the Defence was recorded in the transcript and witness Bolton was cross-examined on these points;<sup>41</sup> the Defence has not demonstrated that the remaining parts of MFI 1D12 have sufficient relevance or probative value to justify independently the admission of this document. MFI 1D12 will, therefore, not be admitted.

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<sup>20</sup> Motion, Annex B-VII.

<sup>21</sup> T 10247-10248.

<sup>22</sup> Motion, Annex B-XXVII.

<sup>23</sup> T 9934.

<sup>24</sup> Motion, Annex B-XLIV.

<sup>25</sup> T 9208.

<sup>26</sup> Motion, Annex B-XLVIII.

<sup>27</sup> T 9504.

<sup>28</sup> Motion, Annex B-XLIX.

<sup>29</sup> T 9505.

<sup>30</sup> Motion, Annex B-L.

<sup>31</sup> T 9506.

<sup>32</sup> Motion, Annex B-LI.

<sup>33</sup> T 9506.

<sup>34</sup> Motion, Annex B-LII.

<sup>35</sup> T 9506.

<sup>36</sup> Motion, Annex B-LVI.

<sup>37</sup> T 9784.

<sup>38</sup> Motion, Annex B-I.

<sup>39</sup> Motion, Annex A, no 1.

<sup>40</sup> Response, para 15.

<sup>41</sup> T 1639, 1641.

### 3. Document Rule 65ter 1D583.1

8. Document Rule 65ter 1D583.1 is the letter from attorney Dragan Godzo, acting for the Boškoski Defence, to the State Secretary of the Macedonian Ministry of Internal Affairs (“MoI” or “Ministry of Interior”), dated 16 July 2007, requesting information about the events in Bitola in 2001, indicating against whom criminal reports were filed and what kind of crimes were reported.<sup>42</sup> The response of the MoI of 19 July 2007 to this letter has been admitted into evidence as Exhibit 1D188. The Boškoski Defence has failed to demonstrate that document Rule 65ter 1D583.1 as such is of sufficient probative value to be admitted in the case, in particular in light of the fact that the response containing the information sought is now an exhibit in this case. Document Rule 65ter 1D583.1 will, therefore, not be received.

### 4. Document Rule 65ter 1D8 and Rule 65ter 1D18

9. Document Rule 65ter 1D8 is an investigator’s note describing a conversation with Elmaz Jusufi, father of Rami Jusufi who is one of the victims alleged to have been killed in Ljuboten on 12 August 2001.<sup>43</sup> Document Rule 65ter 1D18 is a summary of a suspect interview taken by the Office of the Prosecutor, with several medical documents attached.<sup>44</sup> The Boškoski Defence submits that documents Rule 65ter 1D8 and Rule 65ter 1D18 are relevant to the credibility of witness Elmaz Jusufi.<sup>45</sup> The Prosecution responds that the Boškoski Defence did not seek to tender these documents when it used them during the cross-examination of witness Elmaz Jusufi and that, in any case, the relevant text of the documents was recorded into the transcript.<sup>46</sup> The Chamber observes that during cross-examination, the Defence showed document Rule 65ter 1D8 to witness Elmaz Jusufi, summarised its content on two occasions, and compared it to other exhibits in an attempt to demonstrate a contradiction in the Elmaz Jusufi’s recounting of events.<sup>47</sup> The Defence also summarised the interview contained in document Rule 65ter 1D18 and witness Elmaz Jusufi had the opportunity to comment on it.<sup>48</sup> The relevant content of these documents are, therefore, recorded in the transcript. There is no need to additionally admit documents Rule 65ter 1D8 and Rule 65ter 1D18 into evidence; they will, therefore, not be received.

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<sup>42</sup> Motion, Annex B-XXXII.

<sup>43</sup> Motion, Annex B-VIII.

<sup>44</sup> Motion, Annex B-IX.

<sup>45</sup> Motion, Annex A, no 8, no 9.

<sup>46</sup> Response, para 21.

<sup>47</sup> T 523, 525.

<sup>48</sup> T 538-539.

## 5. Document Rule 65ter 1D64

10. Document Rule 65ter 1D64 is an ICTY Monitor Record Sheet prepared by Howard Tucker of an exhumation at the Ljuboten cemetery and subsequent autopsy.<sup>49</sup> The Boškoski Defence submits that this document is relevant to the circumstances of the death of alleged victims, to the presence of ammunition in pockets of one of the alleged victims, and to the exhumation process in Ljuboten”.<sup>50</sup> The Prosecution responds that this document is repetitive and cumulative to documents already in evidence.<sup>51</sup> The Chamber observes that other exhibits demonstrate that live ammunition was found with the body.<sup>52</sup> Document Rule 65ter 1D64 gives, however, a detailed account on how this ammunition was secured and where exactly it was found. Document Rule 65ter 1D64 will, therefore, be received.

## 6. Document Rule 65ter 1D111

11. Document Rule 65ter 1D111 is an Official Note of the police station Mirkovci, indicating that a police checkpoint (“Chinese wall”) was attacked.<sup>53</sup> The Boškoski Defence submits that this document is relevant to the “[p]resence of NLA in Ljuboten in 2001 [and the] inference as to the presence of hostile forces during the relevant period”.<sup>54</sup> The Prosecution responds that this document is repetitive and cumulative to other documents already in evidence.<sup>55</sup> The Chamber observes that the document is dated 16 March 2001, but it describes events alleged to have occurred on 16 August 2001. Moreover, this document appears to be the same as Exhibit 1D290, with minor differences: the Macedonian originals of the Official Note contained in document Rule 65ter 1D111 and Exhibit 1D290 differ in that the last line of the Official Note in Exhibit 1D290, in contrast to document Rule 65ter 1D111, has been crossed out.<sup>56</sup> The translation, however, attached to both Exhibit 1D290 and document Rule 65ter 1D111 is identical; it does not include a translation of the last line crossed-out in Exhibit 1D290.<sup>57</sup> In the present circumstances, the Chamber considers that there is no need to admit document Rule 65ter 1D111 into evidence.

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<sup>49</sup> Motion, Annex B-X.

<sup>50</sup> Motion, Annex A, no 10.

<sup>51</sup> Response, para 29.

<sup>52</sup> Exhibit P443, pp 13-14; Exhibit 1D5, p 6; Exhibit P55.20, p 7; Exhibit P55.36, p 1.

<sup>53</sup> Motion, Annex B-XI.

<sup>54</sup> Motion, Annex A, no 11.

<sup>55</sup> Response, para 29.

<sup>56</sup> In addition, Exhibit 1D290 contains a date in the bottom left corner (9 August 2004), which does not appear on the original of document Rule 65ter 1D111.

<sup>57</sup> The translation of Exhibit 1D290 shows the number N000-7281-ET; the translation of Exhibit 1D290 document Rule 65ter 1D111 has the document number 1D00-1529 (e-court) but the document as such shows also number N000-7081-ET.

## 7. Document Rule 65ter 1D130

12. Document Rule 65ter 1D130 is a black-and-white photograph of a person, captioned that this person is “Jashari, Kadri”.<sup>58</sup> The Boškoski Defence submits that this photograph is relevant to “photos of alleged victims; alleged status of alleged victims; circumstances of death”.<sup>59</sup> The Prosecution submits that all relevant facts regarding the document are in the record.<sup>60</sup> The Chamber observes that this photograph was shown to witness Henry Bolton, who recalled that the person was wearing black trousers and a black jacket at the time of his death.<sup>61</sup> The photograph may have some probative value in addition to what was recorded into the transcript. Document Rule 65ter 1D130 will, therefore, be received.

## 8. Document Rule 65ter 1D139

13. Document Rule 65ter 1D139 is an OSCE press release, seemingly dated 15 August 2001, stating that the OSCE rejects allegations that it would “want to stage a ‘Macedonian Racak’” and that it made no comments about the nature of what happened in the village of Ljuboten.<sup>62</sup> The Boškoski Defence submits that this press release is relevant to “[the] information available to Mr Boškoski re Ljuboten and [the] position of OSCE; [and] meeting Boškoski-OSCE re Ljuboten”.<sup>63</sup> The Prosecution submits that this document is cumulative and repetitive to others already admitted and in any case should have been put to witness Henry Bolton.<sup>64</sup> The Chamber observes that the Prosecution has not referred to any exhibits which may render document Rule 65ter 1D139 cumulative and repetitive. There is also no universal obligation for a party to put a document to a specific witness; the admission of documents is governed by Rule 89(C) and Rule 89(D) of the Rules and if the moving party demonstrates that the document is reliable, relevant, and has probative value, subject to fairness, it may be admitted whether or not it was put to a witness.<sup>65</sup>

<sup>58</sup> Motion, Annex B-XII.

<sup>59</sup> Motion, Annex A, no 12.

<sup>60</sup> Response, para 22.

<sup>61</sup> T 1696: “Q. Sir, there's a few more pictures that I would like to show to you. The first one is a picture of Mr. Kadri Jashari, and it is at 1D130 under the ERN of 1D001646. Sir, I understand the picture is a black-and-white picture, so my question may be a bit unfair. But can you recall that this person was - it is tab 24 in your binder - that this person was bearing [*sic*] black trousers and a black jacket at the time of his death. Is that correct? A. That is what I recall, yes.”

<sup>62</sup> Motion, Annex B-XIII.

<sup>63</sup> Motion, Annex A, no 13.

<sup>64</sup> Response, para 32.

<sup>65</sup> However, a party may have to put a document to a specific witness, if it seeks the admission of a document for the purpose to undermine this witness' credibility, *see Prosecutor v. Boškoski and Tarčulovski*, Case No: IT-04-82-T, Decision on Boškoski Defence Motion for Admission of Exhibits from the Bar Table – ‘Armed Conflict’ and Related Requirements under Article 3 of the Statute, 27 February 2008, para 38: “In such a case, the Defence should have confronted the witness with the content of the document to give him the opportunity to comment on this material, and to give the Prosecution the possibility to re-examine the witness on it.”

This document has some potential relevance to issues in this case. Document Rule 65ter 1D139 will, therefore, be received.

9. Document Rule 65ter 1D144

14. Document Rule 65ter 1D144 is an OSCE press release, dated 10 December 2001 and titled “Redeployment of police to the villages Grusino, Orlanci and Ljuboten – Team Bravo concept of operations”.<sup>66</sup> The Boškosi Defence submits that this press release is relevant to the ability of the authorities to enter the village and the security situation in or around Ljuboten in December 2001.<sup>67</sup> The Prosecution submits that this document is cumulative and repetitive to others already admitted and in any case should have been put to witness Henry Bolton.<sup>68</sup> The Chamber observes that the Prosecution has not referred to any exhibits which may render document Rule 65ter 1D144 cumulative and repetitive. This document is of sufficient relevance and probative value to be admitted into evidence. Document Rule 65ter 1D144 will, therefore, be received.

10. Document Rule 65ter 1D152

15. Document Rule 65ter 1D152 is an undated document, which is titled “Draft CBM Annex – Ljuboten Exhumation” and outlines the need to perform “Confidence Building Measures” by the OSCE in preparation for the exhumation of ten bodies buried in the Ljuboten cemetery.<sup>69</sup> The Boškosi Defence submits that this document is relevant to the difficulties with respect to investigating the events, and to the preparations and conditions for the exhumation in Ljuboten”.<sup>70</sup> The Prosecution submits that this document is cumulative and repetitive to other documents already in evidence.<sup>71</sup> The Chamber observes that the document appears to be a “draft” and is an “annex” to an unspecified document. The Boškosi Defence has made no submission explaining the origin of the document and has not showed it to any witness. The Boškosi Defence has thus failed to demonstrate that this document is of sufficient reliability to be admitted into evidence. Document Rule 65ter 1D152 will, therefore, not be received.

11. Document Rule 65ter 1D156

16. Document Rule 65ter 1D156 is a document titled “Eli Krpach – Implementation of ICTY decision – background and update”, which appears to be an email of 18 November 2002, informing about the situation that several cases, among them the Ljuboten case, were deferred to the ICTY,

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<sup>66</sup> Motion, Annex B-XIV.

<sup>67</sup> Motion, Annex A, no 14.

<sup>68</sup> Response, para 32.

<sup>69</sup> Motion, Annex B-XV.

<sup>70</sup> Motion, Annex A, no 15.



and the measures taken by the Macedonian authorities.<sup>72</sup> The Boškoski Defence submits that this document is relevant to the transfer / deferral of cases including the Ljuboten case and the competence over those cases.<sup>73</sup> The Prosecution submits that this document is cumulative and repetitive to others already admitted and in any case should have been put to witness Henry Bolton.<sup>74</sup> The Indictment is limited to May 2002 with regard to the failure of the Accused Boškoski to investigate and punish. This document is thus not sufficiently relevant to be admitted into evidence. Document Rule 65ter 1D156 will, therefore, not be received.

## 12. Document Rule 65ter 1D190

17. Document Rule 65ter 1D190 is an Official Note, number 936, of the police station Bit Pazar, dated 13 August 2001.<sup>75</sup> The Boškoski Defence submits that this document is relevant to "[the] detention of Ljuboten residents; status of residents; competence and responsibility over alleged victims / detainees; measures taken by judicial authorities; involvement of investigative judge".<sup>76</sup> The Prosecution submits that this document was used with witness Isni Ali and not tendered at the time; in addition, it is submitted that the relevant text has been recorded in the transcript.<sup>77</sup> The document was shown to Isni Ali during cross-examination, who confirmed that his name was on this document, but he did not confirm the content of this document.<sup>78</sup> The Boškoski Defence was asked by the Prosecution at the time whether document Rule 65ter 1D190 had been or was intended to be tendered; the Boškoski Defence replied that "[he did] not seek to tender this

<sup>71</sup> Response, para 29.

<sup>72</sup> Motion, Annex B-XVI.

<sup>73</sup> Motion, Annex A, no 16.

<sup>74</sup> Response, para 32.

<sup>75</sup> Motion, Annex B-XVII.

<sup>76</sup> Motion, Annex A, no 17.

<sup>77</sup> Response, para 22.

<sup>78</sup> T 3471-3472: "MR. METTRAUX: Could the witness please be shown 1D190, ERN 1D002133, the Macedonian is 1D002131. It's 1D190. [...] At the top left-hand corner of the document you will see that it is a document that comes from the Ministry of Interior of the Republic of Macedonia, department of the minister of the interior, Bit Pazar, and it's dated the 13th of August, 2001. Can you see that? A. Yes. Q. And in this Official Note there's a comment or a note by a person named Saso who reads in the following terms: "On the 13 August 2001 at 2200 from the PS Kisela Voda upon the request of the PS Cair and verbal order of the investigative judge from the Basic Court Skopje II Beqir Shahini, the following persons were brought to be kept in the PS Bit Pazar. Then there's a list of name and the last name is yours, is that correct, number 4? A. Yes, I see it. Q. And what the police officer in question comments is the following: "I searched the person and made visual inspection and I concluded that a physical force is used upon them, in other words, they have obvious bruises and their bodies and faces." Can you see that? A. Yes. Q. And does that refresh your memory about this meeting with the police officer at Bit Pazar? A. No. This is not true. No one asked us how we were. Q. And can you recall a police officer coming to you at Bit Pazar searching you and looking at your injuries? Is that something that you recall now? A. No, this is not true. MR. METTRAUX: Could the registry please turn to the next page of this document. Q. Sir, in this note there is the following annotation or note. It says that on the 14th August 2001 verbal order of the investigative Judge Beqir Shahini from the Basic Court Skopje II from PS Kisela Voda into PS Bit Pazar were brought the following persons. And on the number 4 is your name again. Is that correct? A. Yes. Q. And do you recall a police officer indicated to you that you had been transferred from one police station to the other pursuant to an order of an investigative judge? Do you recall that? A. No, I don't remember. We went to the court after the Bit Pazar police station. After Bit Pazar, we were taken to the court at 2.00 a.m. in the morning."

document for the reason that the witness had not acknowledged or remembered the meeting in question.” This Official Note is handwritten and the name of the person who submitted it is in part illegible. The only witness to whom this document was presented could not confirm the content of this document. The Boškoski Defence has failed to establish that document Rule 65ter 1D190 is sufficiently reliable to be admitted into evidence; it will not be received.

13. Document Rule 65ter 1D210

18. Document Rule 65ter 1D210 is an extract of the Official Gazette of the Republic of Macedonia of 19 June 2000, containing an amendment to the Book of Rules on the way of summoning and engaging members of the reserve composition of the Ministry of Interior Affairs, adopted by Minister Ljube Boškoski.<sup>79</sup> The Boškoski Defence submits that this document is relevant to the regulation of police reservists showing the engagement of reservists in MoI.<sup>80</sup> The Prosecution does not object to the admission of this document.<sup>81</sup> This document appears relevant to the issues in this case; document Rule 65ter 1D210 will, therefore, be received.

14. Document Rule 65ter 1D230

19. Document Rule 65ter 1D230 is a document from the Basic Court Skopje II, containing a request to the Institute of Forensic Medicine on the identification of “Čaili Atula”, who died on 13 August 2001 in the Skopje City Hospital.<sup>82</sup> The Boškoski Defence submits that this document is relevant to the competence over the investigation and the efforts made to investigate, in particular as regards Mr Attula Quaili.<sup>83</sup> The Prosecution made no submission regarding this document. Mr Atulla Quaili is mentioned as one of the victims in Count 1 of the Indictment.<sup>84</sup> The document appears to be relevant to the issues mentioned by the Boškoski Defence. Document Rule 65ter 1D230 will, therefore, be received.

15. Document Rule 65ter 1D259

20. Document Rule 65ter 1D259 is a letter of the Axel Springer publishing company to the Boškoski Defence, dated 10 April 2007, and a list of publications written by witness Franz-Josef Hutsch for the newspaper Hamburger Abendblatt.<sup>85</sup> The Boškoski Defence submits that this document is relevant to the “[c]redibility / reliability of witness Franz-Josef Hutsch [and the] chain

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<sup>79</sup> Motion, Annex B-XVIII.

<sup>80</sup> Motion, Annex A, no 18.

<sup>81</sup> Response, paras 2, 8, 46.

<sup>82</sup> Motion, Annex B-XIX.

<sup>83</sup> Motion, Annex A, no 19.

<sup>84</sup> Indictment, para 21.

<sup>85</sup> Motion, Annex B-XX.

of custody of article of Mr Hutsch".<sup>86</sup> The Prosecution responds that the Defence should have tendered this document through witness Franz-Josef Hutsch.<sup>87</sup> The Chamber observes that, during cross-examination, the Boškoski Defence showed to witness Franz-Josef Hutsch two of his own articles, which are also listed in document Rule 65ter 1D259, for the purpose of undermining his credibility.<sup>88</sup> The list of his publications for the Hamburger Abendblatt as such does not appear to have any probative value in addition to the articles shown to witness Franz-Josef Hutsch. In any case, the Boškoski Defence seeks the admission of this document for the purpose to undermine the credibility of witness Franz-Josef Hutsch. The Boškoski Defence should have confronted the witness with the content of the document to give him the opportunity to comment on this material, and to give the Prosecution the possibility to re-examine the witness on it. The document, which, according to the date of the letter, the Boškoski Defence had in its possession at the time of the cross-examination of witness Franz-Josef Hutsch, will not be admitted for the purpose of challenging the credibility of this witness. The Boškoski Defence also submits that the document is relevant to the "chain of custody of article of Mr Hutsch",<sup>89</sup> without, however, specifying which article and without explaining the relevance of the chain of custody to any issue in the case other than the credibility of witness Franz-Josef Hutsch. Document Rule 65ter 1D259 will, therefore, not be received.

#### 16. Document Rule 65ter 1D316

21. Document Rule 65ter 1D316 is a letter of the Cabinet of the State Secretary of the MoI to Dragan Godzo Law Office, dated 19 June 2007, containing information about Hermelin and BT-80 vehicles.<sup>90</sup> The Boškoski Defence submits that this document is relevant to the credibility and reliability of evidence of witness Franz-Josef Hutsch.<sup>91</sup> The Prosecution submits that this document is correspondence from the MoI to the Boškoski Defence and the Chamber has already declined to accept such correspondence into evidence.<sup>92</sup> This document was shown to witness Franz-Josef Hutsch during cross-examination; the relevant parts were read in court and are therefore recorded in the transcript.<sup>93</sup> The Chamber confirms its practice not to admit documents of a similar nature, in particular when their content was read into the transcript.<sup>94</sup> Document Rule 65ter 1D316 will, therefore, not be received.

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<sup>86</sup> Motion, Annex A, no 20.

<sup>87</sup> Response, para 33.

<sup>88</sup> T 6177-6187.

<sup>89</sup> Motion, Annex A, no 20.

<sup>90</sup> Motion, Annex B-XXI.

<sup>91</sup> Motion, Annex A, no 21.

<sup>92</sup> Response, para 24.

<sup>93</sup> Second part of the letter, T 6295; first part of the letter, T 6300.

<sup>94</sup> See T 4920.

17. Documents Rule 65ter 1D330

22. Document Rule 65ter 1D330 is a handwritten document of Commander Ferdo Pavlov.<sup>95</sup> The Boškoski Defence submits that this document is relevant to the presence of armed persons in Ljuboten and arms fire towards army positions coming from Ljuboten on 12 August 2001, the movement of NLA in the area around Ljuboten, the status of alleged victims, and the joint nature of operation.<sup>96</sup> The Prosecution responds that this document is repetitive and cumulative to documents already in evidence.<sup>97</sup> The document was not shown to any witness in this case. It appears to be a handwritten count of events observed by army Commander Ferdo Pavlov on 12 August in and around Ljuboten. This document appears to be the equivalent of a written statement and the admission of such document is regulated by Rule 92bis and Rule 92ter of the Rules. Document Rule 65ter 1D330 will, therefore, not be received.

18. Documents Rule 65ter 1D463 and Rule 65ter 1D1158

23. Documents Rule 65ter 1D463 and Rule 65ter 1D1158 contain the same document titled “Rules - on amendments to the rules on the systematisation of work places in the Ministry of the Interior”, dated 3 February 2003,<sup>98</sup> and signed by then Minister of the Interior Hari Kostov.<sup>99</sup> The Boškoski Defence submits that the two documents are relevant to, *inter alia*, the structure and position of the ‘Lions’ unit.<sup>100</sup> The Prosecution responds that the relevance of 1D463 is not established as it is dated 3 February 2003, that is, “well outside” the period of the Indictment.<sup>101</sup> The Chamber observes that this document refers to the initial rules on the systematisation of work places in the Ministry of Interior of 13 September 2002 and several amendments thereto; all these rules and amendments, including the amendment referred to in the proposed documents, are outside the period relevant to the Indictment. The Boškoski Defence has failed to demonstrate the relevance of this document; Rule 65ter 1D463 and Rule 65ter 1D1158 will, therefore, not be received.

19. Documents Rule 65ter 1D464 and Rule 65ter 1D553

24. Document Rule 65ter 1D464 is a document titled “Book of Rules - on amendments to the Rules on systematization of the working posts in the Ministry of the Interior”, dated 7 November

<sup>95</sup> Motion, Annex B-XXII.

<sup>96</sup> Motion, Annex A, no 22.

<sup>97</sup> Response, para 29.

<sup>98</sup> The translation erroneously reads “3 February 2001”.

<sup>99</sup> Motion, Annex B-XXIII and Annex B-XLI.

<sup>100</sup> Motion, Annex A, no 23, no 41

<sup>101</sup> Response, para 34.

2001, signed by then Minister Ljube Boškosi.<sup>102</sup> Document Rule 65ter 1D553 is a document titled “Rulebook - on amendments and additions to the Book of Rules on conditions and procedure for deployment, rights and duties of the members of the Rapid Intervention Battalion of the Ministry of the Interior”, dated 26 October 2001, signed by then Minister Ljube Boškosi.<sup>103</sup> The Boškosi Defence submits that document Rule 65ter 1D464 is relevant to the “[r]egulation of MoI [and the] structure and position of the ‘Lions’ unit”.<sup>104</sup> Document Rule 65ter 1D553 is submitted to be relevant to the “timing and circumstances of creation of Lions unit”.<sup>105</sup> The Prosecution responds that documents Rule 65ter 1D464 and Rule 65ter 1D553 are pertaining to the establishment of the Lions unit, an issue that was explored extensively in this case and is still a “live issue”. The Prosecution argues that these documents should have been used with one of the witnesses, who were questioned extensively on the issue. The Prosecution adds that it “has not had the opportunity to explore their probative value with respect to this contentions issue”.<sup>106</sup>

25. The admission of evidence is governed by Rule 89(C) and Rule 89(D) of the Rules and if the moving party demonstrates that the piece of evidence is reliable, relevant, and has probative value, the document can be admitted even though it has not been put to a witness who could speak to its authenticity and the reliability of its contents. The failure of the Boškosi Defence to do so has the effect that the Prosecution has not had the opportunity to react to these documents. The Chamber has the power to deny the admission of a document pursuant to Rule 89(D) of the Rules, if its probative value is substantially outweighed by the need to ensure a fair trial. The nature of these particular documents deals adequately with their authenticity and reliability. With regard to fairness, several witnesses were questioned on the establishment of the Lions unit so that the Prosecution has been able to raise any issues it deemed relevant in relation to this unit. The fact that the Prosecution could not specifically confront witnesses with the two proposed documents does not appear to be of major concern for the fairness of the trial. The Prosecution also does not doubt the relevance or the reliability of the proposed documents. Indeed, they are official documents issued by the MoI and appear sufficiently reliable. The Chamber concludes that the probative value of the documents is not outweighed by the Prosecution’s concerns. Documents Rule 65ter 1D464 and Rule 65ter 1D553 will, therefore, be received.

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<sup>102</sup> Motion, Annex B-XXIV.

<sup>103</sup> Motion, Annex B-XXVIII. This document is an amendment to the Rules contained in Exhibit P82.

<sup>104</sup> Motion, Annex A, no 24.

<sup>105</sup> Motion, Annex A, no 28.

<sup>106</sup> Response, para 36.

20. Document Rule 65ter 1D478

26. Document Rule 65ter 1D478 is a “Decision for establishing a Commission for dismissal for the organizational units with a seat at the Ministry of interior affairs”, dated 7 June 2001 and signed by then Minister of Interior Ljube Boškoski.<sup>107</sup> The Boškoski Defence submits that this document is relevant to the competence regarding dismissal in disciplinary matters.<sup>108</sup> The Prosecution submits that the reliability and relevance of this document have not been established.<sup>109</sup> The Chamber observes that the document contains a stamp of the MoI and the signature of the Accused Boškoski. This document is of sufficient relevance and reliability to be admitted into evidence; document Rule 65ter 1D478 will, therefore, be received.

21. Document Rule 65ter 1D522

27. Document Rule 65ter 1D522 contains an “Order for performing service” of the police station Čair, dated 2 January 2002, giving certain persons the task to enter the village of Ljuboten together with the OSCE, and the report of one of the persons who had been sent to the village.<sup>110</sup> The Boškoski Defence submits that this document is relevant to the efforts undertaken by the police to re-introduce police in Ljuboten.<sup>111</sup> The Prosecution responds that this document has been used with a witness but was not tendered then, and the relevant text has been recorded into the transcript.<sup>112</sup> The Chamber observes that the order and the report contained in document Rule 65ter 1D522 were shown to witness Blagoja Toškovski.<sup>113</sup> While only the report was read out in court,<sup>114</sup> the precise terms of the order are not material. After seeing both the order and the report, witness Blagoja Toškovski agreed that this confirmed his testimony about the police patrol entering the village accompanied by foreigners.<sup>115</sup> It appears to the Chamber that for the purposes of this trial the material contents of the report are adequately recorded in the transcript. The existence of the order is not in issue and its precise terms are not material. The Chamber will not receive document Rule 65ter 1D522.

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<sup>107</sup> Motion, Annex B-XXV.

<sup>108</sup> Motion, Annex A, no 25.

<sup>109</sup> Response, para 45.

<sup>110</sup> Motion, Annex B-XXVI.

<sup>111</sup> Motion, Annex A, no 26.

<sup>112</sup> Response, para 25.

<sup>113</sup> T 4396.

<sup>114</sup> T 4396-4397.

<sup>115</sup> T 4396.

22. Document Rule 65ter 1D572

28. Document Rule 65ter 1D572 contains minutes of the 12<sup>th</sup> session of the Coordinative Body for Crisis Management of the Government of Republic of Macedonia held on 16 July 2001.<sup>116</sup> The Boškoski Defence submits that this document is relevant to the “[r]esponsibility of Prime Minister regarding resolution of crisis and use of police; [and the] implementation of government plan for developing measures for building trust”.<sup>117</sup> The Prosecution responds that the reliability and relevance of this document have not been established.<sup>118</sup> The minutes of the session have nine items on the agenda and the Boškoski Defence has not indicated which ones are of relevance to issues in the case. Item one of the agenda mentions the “Plan for measures for building trust”, which the Boškoski Defence submits is relevant to the proceedings, and requests several ministries to propose measures for its implementation. This request does not, however, appear to be relevant to any issue in the case. It is also unclear how this document is relevant to, as submitted by the Boškoski Defence, the responsibility of the Prime Minister regarding the resolution of the crisis and the use of the police. The Boškoski Defence has failed to demonstrate that this document is sufficiently relevant to be admitted into evidence; document Rule 65ter 1D572 will, therefore, not be received.

23. Document Rule 65ter 1D574

29. Document Rule 65ter 1D574 is a document of the MoI, Analytics and Research Sector, dated 14 August 2001. It contains information on the events in the villages of Ljuboten and Ljubanci.<sup>119</sup> The Boškoski Defence submits that this document is relevant to, *inter alia*, the events and circumstances of Ljuboten/Ljubanci, the presence of NLA in Ljuboten, the Ljubotenski Bacila attack by the NLA, the cause and circumstances of destruction of properties in the village; the protection of civilians; and the notification by SVR Skopje about the presence of five corpses.<sup>120</sup> The Prosecution responds that this document is repetitive and cumulative to documents already in evidence.<sup>121</sup> Document Rule 65ter 1D574 contains a chronological recount of the events in and around Ljuboten, which appear to be based on reports received from headquarters “Ramno”,<sup>122</sup> and which was dispatched, *inter alia*, to the Minister of Interior Affairs.<sup>123</sup> This document is of

<sup>116</sup> Motion, Annex B-XXIX.

<sup>117</sup> Motion, Annex A, no 29.

<sup>118</sup> Response, para 45.

<sup>119</sup> Motion, Annex B-XXX.

<sup>120</sup> Motion, Annex A, no 30.

<sup>121</sup> Response, para 29. In the relevant footnote, in which the Prosecution may have sought to refer to exhibits which demonstrate that document Rule 65ter 1D574 is “repetitive and cumulative”, the Prosecution refers to “footnote 42 *supra*”; however, footnote 42 of the Response only refers to Annex XXXVIII of the Motion.

<sup>122</sup> Motion, Annex B-XXX, p 1, *see* title of document.

<sup>123</sup> Motion, Annex B-XXX, p 3.

sufficient relevance, reliability and sufficient probative value to be admitted; document Rule 65ter 1D574 will, therefore, be received.

24. Document Rule 65ter 1D575

30. Document Rule 65ter 1D575 is a proposed agenda for a meeting of the Coordinative Body for Crisis Management of the Macedonian Government, dated 29 August 2001.<sup>124</sup> The Boškoski Defence submits that this document is relevant to the discussion of information provided by the MoI at the Government level and indicates that the Government was informed and briefed about the events of Ljuboten”.<sup>125</sup> The Prosecution responds that the reliability and relevance of the document have not been established.<sup>126</sup> The Chamber observes that the document is an agenda for a session which was to be held on 29 August 2001 when the MoI was to inform about the events in Ljuboten, the latest events in Tetovo, and on the reasons for maltreatment of civilians.<sup>127</sup> The probative value of this document is very minor as the document only refers to information that is proposed to be given at a subsequent meeting. The Boškoski Defence has failed to demonstrate that this document is of sufficient relevance to be admitted. Document Rule 65ter 1D575 will, therefore, not be received.

25. Document Rule 65ter 1D590

31. Document Rule 65ter 1D590 is a letter of the President of the Basic Court Skopje II to the Ministry of Justice, dated 5 September 2005.<sup>128</sup> The Boškoski Defence submits that this document is relevant to “the competence to investigate” and to the “absence of investigative bias”.<sup>129</sup> The Prosecution submits that the reliability and relevance of this document have not been established.<sup>130</sup> In this document the Ministry of Justice is informed that no case against unknown perpetrators was registered at the Basic Court Skopje regarding the mine incident north of Ljuboten on 10 August 2001, and that the Basic Court is not in charge of initiating procedures for identification and criminal prosecution of perpetrators. The document is stamped and signed by the President of the Basic Court. This document is of sufficient reliability and relevance to be admitted into evidence. Document Rule 65ter 1D590 will, therefore, be received.

<sup>124</sup> Motion, Annex B-XXXI.

<sup>125</sup> Motion, Annex A, no 31.

<sup>126</sup> Response, para 45.

<sup>127</sup> Motion, Annex B-XXXI, p 2, items 8, 9, and 10.

<sup>128</sup> Motion, Annex B-XXXIII.

<sup>129</sup> Motion, Annex A, no 33.

<sup>130</sup> Response, para 45.



26. Document Rule 65ter 1D650

32. Document Rule 65ter 1D650 is an email message of August 2001, in which sender and recipient as well as date and subject line have been redacted.<sup>131</sup> The Boškoski Defence submits that this document is relevant to the allegation of an armed conflict.<sup>132</sup> The Boškoski Defence sought to tender this document in a previous motion; the Chamber has already decided that the Boškoski Defence did not demonstrate that document Rule 65ter 1D650 is of sufficient relevance to the issue of armed conflict.<sup>133</sup> No reasons have been advanced for the Chamber to reconsider its decision to deny admission; Rule 65ter 1D650 will, therefore, not be received.

27. Document Rule 65ter 1D668

33. Document Rule 65ter 1D668 is a letter from the President of the Appeals Court Skopje to the President of the Basic Court Skopje II, dated 6 November 2002.<sup>134</sup> The Boškoski Defence submits that this document is relevant to the issues of the competent authorities as regard the investigation of the Ljuboten events, and the process of deferral of cases to the ICTY.<sup>135</sup> The Prosecution responds that, in light of the date of the document (6 November 2002) and its content, it has not been established how this document is relevant to the allegations of the Accused Boškoski's failure to investigate.<sup>136</sup> The document sets out the opinion of the President and several judges of the Appeals Court Skopje that Basic Court Skopje II and Basic Court Tetovo are competent with respect to matters related to the Tribunal's decision of 4 October 2002, and that the lower courts should be composed of a bench of three judges and decide in a form of a "resolution which will contain legal advice", which may then be appealed to the higher courts. The Chamber observes that this document appears to be outside the period relevant to the Indictment. In addition, its content appears to be considering technical and formal issues regarding the competence and the composition of the Macedonian courts. The Boškoski Defence has not demonstrated that this document is of sufficient relevance or contains sufficient probative value to be admitted into evidence. Document Rule 65ter 1D668 will, therefore, not be received.

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<sup>131</sup> Motion, Annex B-XXXIV.

<sup>132</sup> Motion, Annex A, no 34.

<sup>133</sup> *Prosecutor v. Boškoski and Tarčulovski*, Case No: IT-04-82-T, Decision on Boškoski Defence Motion for Admission of Exhibits from the Bar Table – 'Armed Conflict' and Related Requirements under Article 3 of the Statute, 27 February 2008, para 10.

<sup>134</sup> Motion, Annex B-XXXV.

<sup>135</sup> Motion, Annex A, no 35.

<sup>136</sup> Response, para 38.

28. Document Rule 65ter 1D718

34. Document Rule 65ter 1D718 is an operative diary of, it is submitted, the Command for Defence of the city of Skopje.<sup>137</sup> The Boškoski Defence submits that this document is relevant to the “[p]resence of NLA in Ljuboten and role of Gzim Ostreni regarding event of Ljuboten [and the] credibility / reliability of witness Gzim Ostreni”.<sup>138</sup> The Prosecution responds that this document is repetitive and cumulative to documents already in evidence with regard to the issue of the presence of the NLA the village of Ljuboten. The Prosecution adds that it should have been put to witness Gzim Ostreni.<sup>139</sup> The Chamber observes that this document was not put to witness Gzim Ostreni. As far as the Boškoski Defence seeks the admission of this document for the purpose of undermining the credibility of witness Gzim Ostreni, it should have confronted the witness with the content of the document to give him the opportunity to comment on this material, and to give the Prosecution the possibility to re-examine the witness on it. The document will not be admitted for the purpose of challenging the credibility of witness Gzim Ostreni. In addition, no witness has testified about this document, which is a form filled in with handwritten text. The reliability of this document has not been established. Document Rule 65ter 1D718 will, therefore, not be received.

29. Document Rule 65ter 1D876

35. Document Rule 65ter 1D876 contains investigator’s notes of the Office of the Prosecutor (“OTP”) of a conversation with Baki Halimi.<sup>140</sup> The Boškoski Defence submits that this document is relevant to the presence of the NLA in Ljuboten and the credibility of witness Nazim Bushi.<sup>141</sup> The Prosecution responds that the relevant text of the document has been recorded into the transcript when this document was used in the cross-examination of witness Nazim Bushi.<sup>142</sup> Parts of this document have been read to witness Nazim Bushi and are recorded in the transcript.<sup>143</sup> The Boškoski Defence has failed to demonstrate that document Rule 65ter 1D876 has sufficient relevance or probative value to be admitted into evidence; it will, therefore, not be received.

30. Document Rule 65ter 1D931 and Rule 65ter 1D933

36. Document Rule 65ter 1D931 is a letter, dated 7 February 2005, of the MoI to the OTP of the Tribunal, responding to a request for information.<sup>144</sup> Document Rule 65ter 1D933 is a letter of the

<sup>137</sup> Motion, Annex B-XXXVI. The title page of the document has not been translated.

<sup>138</sup> Motion, Annex A, no 36.

<sup>139</sup> Response, para 30.

<sup>140</sup> Motion, Annex B-XXXVII.

<sup>141</sup> Motion, Annex A, no 37.

<sup>142</sup> Response, para 27.

<sup>143</sup> T 5887-5889.

<sup>144</sup> Motion, Annex B-XXXVIII.

MoI to the OTP of the Tribunal informing about lifting the obligation of MoI employees not to disclose state secrets.<sup>145</sup> The Boškoski Defence submits that both documents are relevant to the alleged *de jure* status of certain individuals, who allegedly participated in the commission of crimes in Ljuboten.<sup>146</sup> The Prosecution responds that the relevant text of the documents has been recorded into the transcript.<sup>147</sup> The Chamber agrees with the Prosecution that the relevant parts of both documents have been read out during the cross-examination of witness Viktor Bezruchenko, and are therefore recorded in the transcript.<sup>148</sup> Documents Rule 65ter 1D931 and Rule 65ter 1D933 will, therefore, not be received.

### 31. Document Rule 65ter 1D1157

37. Document Rule 65ter 1D1157 is a document of the MoI, dated 7 August 2003, containing information about a meeting between representatives of the MoI and the Tribunal.<sup>149</sup> The Boškoski Defence submits that this document is relevant to the following issues: “[o]ngoing investigation and competent organs; relationship between the second commission of inquiry re Ljuboten and OTP investigation; credibility of witness Viktor Bezruchenko”.<sup>150</sup> The Prosecution submits that the relevance of this document has not been established; insofar as the relevance is related to the credibility of Viktor Bezruchenko, the Prosecution argues that it should have been used during his cross-examination.<sup>151</sup> The document provides information about the MoI’s view that the report of a previously formed working group to investigate the Ljuboten case has failed to provide any relevant information, and the MoI’s intent to form a new commission in 2003;<sup>152</sup> the document also indicates that the Tribunal’s investigation into the Ljuboten events is ongoing.<sup>153</sup> This meeting occurred on 7 August 2003, that is, outside the period relevant to the Indictment. The Boškoski Defence has not demonstrated that this document is of sufficient relevance to be admitted into evidence; document Rule 65ter 1D1157 will, therefore, not be received.

### 32. Document Rule 65ter 1D1166

38. Document Rule 65ter 1D1166 is an Official Note of SVR Cabinet Skopje, dated 4 February 2002.<sup>154</sup> The Boškoski Defence submits that this document is relevant to the “[i]nvestigation into the events of Ljuboten; involvement of the police; cooperation between Macedonian authorities and

<sup>145</sup> Motion, Annex B-XXXIX.

<sup>146</sup> Motion, Annex A, no 38, no 39.

<sup>147</sup> Response, para 28.

<sup>148</sup> For document Rule 65ter 1D931, see T 6689-6690; for document Rule 65ter 1D933, see T 6684-6686.

<sup>149</sup> Motion, Annex B-XL.

<sup>150</sup> Motion, Annex A, no 40.

<sup>151</sup> Response, para 39.

<sup>152</sup> Document Rule 65ter 1D1157, p 2.

<sup>153</sup> Document Rule 65ter 1D1157, p 3.

international community regarding this case; ongoing nature of investigation”.<sup>155</sup> The Prosecution responds that this document is repetitive and cumulative to documents already in evidence.<sup>156</sup> This Official Note gives an account of a meeting on 30 January 2002 between, *inter alia*, ICTY and OSCE representatives and representatives of the Public Prosecutor’s Office, where the measures to be undertaken in relation to the exhumation of corpses from the village cemetery of Ljuboten were discussed. The information has relevance to issues in this case; document Rule 65ter 1D1166 will, therefore, be received.

### 33. Document Rule 65ter 1D1169

39. Document Rule 65ter 1D1169 is a report on a meeting of Minister Ljube Boškoski and US Special Envoy to Macedonia James Pardew, prepared by the MoI Department for International Cooperation and European Integration and dated 31 August 2001.<sup>157</sup> The Boškoski Defence submits that this document is related to the enforcement of the Ohrid Agreement and to the alleged purpose of the NLA, as well as to the MoI efforts to integrate ethnic minorities into the police forces.<sup>158</sup> The Prosecution responds that the reliability and relevance of this document have not been established.<sup>159</sup> The Chamber observes that the document contains no stamp or signature, and no witness has testified about it. In any case, the documents contain details on the carrying out of a police training project, such as the establishment of a commission responsible for the “verification and enrolment” of candidates, the need for translators for the US instructors, and setting a start date for the training. The Boškoski Defence has not demonstrated that this document is of sufficient relevance to be admitted into evidence; document Rule 65ter 1D1169 will, therefore, not be received.

### 34. Document Rule 65ter 1D1171

40. Document Rule 65ter 1D1171 is an official note issued by the Ministry of Interior, Police Station “Mirkovci” dated 14 August 2001 indicating that on 14 August 2001 at 1730 hours information was received from checkpoint “Ljubanci” that an armed person in black uniform and three persons in civilian clothes were noticed near the cemetery in Ljuboten.<sup>160</sup> The document is unsigned but bears a name of a person who is said to have submitted the information. That named person has not been called as a witness. The Boškoski Defence submits that, nevertheless, this

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<sup>154</sup> Motion, Annex B-XLII.

<sup>155</sup> Motion, Annex A, no 42.

<sup>156</sup> Response, para 29.

<sup>157</sup> Motion, Annex B-XLIII.

<sup>158</sup> Motion, Annex A, no 43.

<sup>159</sup> Response, para 45.

<sup>160</sup> Motion, Annex B-XLV.

document is relevant to the security situation and continued presence of NLA in or around Ljuboten at the relevant time.<sup>161</sup> The Prosecution responds that this document is repetitive and cumulative to other documents already admitted into evidence.<sup>162</sup> In the Chamber's view, while the information contained in this document may have some relevance to some issues alleged in the Indictment, this information is not specific and its reliability has not been tested. It is, therefore, of little relevance. Document Rule 65ter 1D1171 will, therefore, not be received.

### 35. Document Rule 65ter 1D1173

41. Document Rule 65ter 1D1173 is a document entitled "Information on events and data received at the headquarters of OA 'Ramno' in relation to the current situation in the Republic of Macedonia in the period between 0700 and 2300 hours on 14 August 2001".<sup>163</sup> The Boškoski Defence submits that the document is relevant to the presence of armed persons in Ljuboten, attempts to enter the village to investigate the events and the reasons why these attempts were unsuccessful, as well as to what information was available to Boškoski regarding Ljuboten.<sup>164</sup> The Prosecution responds that the document is repetitive and cumulative to other documents already admitted into evidence.<sup>165</sup>

42. Document Rule 65ter 1D1173 is an unsigned document issued by the headquarters of Operation Ramno, Ministry of Interior. It is indicated in the document that it has been dispatched to a number of officials of the Ministry of Interior, including the Minister. The document contains information about numerous incidents occurring in Macedonia between the evening hours of 13 August 2001 and the evening hours of 14 August 2001, including acts of violence carried out by "terrorists" and armed actions carried out by Macedonian forces. With respect to the events in Ljuboten the document indicates that on 14 August 2001 Fatmir Etemi from SVR Skopje had asked that an inspection be carried out in the village of Ljuboten "because there were corpses there", that an inspection team was set up but the inspection was suspended twice and was not carried out because there was information that "terrorist" were present at Ljuboten and that the corpses had been buried. In the Chamber's view, the information contained in document Rule 65ter 1D1173 is relevant to the issues in this trial. Further, there are sufficient indicia of reliability to enable the Chamber to admit it into evidence. Document Rule 65ter 1D1173 will, therefore, be received.

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<sup>161</sup> Motion, Annex A, no 45.

<sup>162</sup> Response, para 29.

<sup>163</sup> Motion, Annex B-XLVI.

<sup>164</sup> Motion, Annex A, no 46.

<sup>165</sup> Response, para 29.

36. Document Rule 65ter 1D1174

43. Document Rule 65ter 1D1174 is a daily report for the period 12/13 August 2001 issued by the Sector for Security and Intelligence of the Ministry of Defence of Macedonia on 13 August 2001.<sup>166</sup> The Boškoski Defence submits that the document is relevant to the presence of NLA in the village (of Ljuboten) and to the credibility of Prosecution witness Gzim Ostreni.<sup>167</sup> The Prosecution responds that with respect to the alleged presence of NLA members in Ljuboten, the document is cumulative and repetitive to exhibits already in evidence. Further, in so far as admission is sought to challenge the credibility of Gzim Ostreni, it is submitted that the document should have been put to this witness during his cross-examination.<sup>168</sup>

44. Document Rule 65ter 1D1174 contains information about the capture of eight persons trying to cross the border between Macedonia and Kosovo illegally on 10 August 2001, about an attack against the army barracks at the village of Poroj in the Tetovo-Šar Planina region on 11 August, about a groups of 50 “terrorists” being observed in the area of Tetovo, about Gzim Ostreni issuing “an order to the 114<sup>th</sup> Brigade to start an attack on Skopje” and to start operations against Macedonian security forces in the area of Ljubanci and Raštak and about the presence of groups of “terrorists” at various locations. It is also mentioned in the document that a group of “terrorists” have entered Aračinovo and “are most probably preparing to carry out an attack against the security forces in the area of Ljuboten village.” The document proposed for admission is not complete and is unsigned. Attached to the document is a chart entitled “Journal of Data Received for 12/13 August 2001” with entries generally corresponding to the information in the document. This journal is signed by an individual designated as the duty officer in charge. The Chamber is not persuaded that document Rule 65ter 1D1174 is sufficiently reliable to be admitted. Only two pages of what appears to be a longer document are proposed for admission. There is no indication as to who the author of the document is. The sources of the information are only vaguely defined. The information itself is often not sufficiently specific and contains assumptions the basis for which is unknown. Further, the document contains information relevant to a witness, whose evidence the Boškoski Defence now seeks to challenge. This information was not put to the witness when he was cross-examined and the witness was given no opportunity to comment on it. The document should not be admitted for the purpose of challenging this witness’s credibility at this stage of the proceedings. Document Rule 65ter 1D1174 will, therefore, not be received.

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<sup>166</sup> Motion, Annex B-XLVII.

<sup>167</sup> Motion, Annex A, no 47.

<sup>168</sup> Response, para 30.

37. Document Rule 65ter 1D 1218

45. Document Rule 65ter 1D 1218 is a document issued by the Ministry of Interior, SVR Čair on 25 March 2003, and titled “handover of weapons and ammunition to storage”.<sup>169</sup> The Boškoski Defence submits that that the document is relevant to the status of the victims alleged in the Indictment, to the origin and chain of custody of weapons found in Ljuboten, and to relevant UBK and police activities.<sup>170</sup> The Prosecution responds that the origin and chain of custody of the weapons allegedly found in Ljuboten is a contentious issue and that the document should be tendered through an appropriate witness so that the Prosecution will have the opportunity to test the reliability of the document.<sup>171</sup>

46. Document Rule 65ter 1D1218 appears to be a letter issued by SVR Čair on 25 March 2003 and addressed to SVR Skopje. It indicates that three automatic rifles, bullets, and frames for automatic rifles are submitted to SVR Skopje to be stored. It is indicated that this document is issued “in connection with the criminal charges submitted by [OOR] Čair on grounds of a suspected criminal act Terrorism according to article 31 of the Criminal Code of the Republic of Macedonia, which is recorded under our No 19’7.1-304/1 from 13 August 2001 and KU No 4353 from 13 August 2001.” It is not apparent from this document that the objects referred to in it were seized at Ljuboten. Further, the document does not contain any indication as to where and by whom these objects were stored or in whose custody they were before their handover to SVR Skopje. The reliability of this document is contested by the Prosecution. In the Chamber’s view, the relevance of this document to issues in the Indictment is not clear, in the absence of evidence demonstrating the connection. Document Rule 65ter 1D1218 will, therefore, not be received.

38. Document Rule 65ter 1D 1223

47. Document Rule 65ter 1D 1223 is a document issued by the Ministry of Interior, Security and Counterintelligence Information Administration (UBK), Skopje UBK Sector on 5 February 2002.<sup>172</sup> The Boškoski Defence submits that the document is relevant to the presence of NLA in Ljuboten; to the UBK activities regarding the events of Ljuboten and to credibility of Prosecution witnesses.<sup>173</sup> The Prosecution responds that with regard to the presence of NLA in Ljuboten the document is cumulative and repetitive to documents already in evidence and that in so far as the

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<sup>169</sup> Motion, Annex B-LIII.

<sup>170</sup> Motion, Annex A, no 53.

<sup>171</sup> Response, para 43.

<sup>172</sup> Motion, Annex B-LIV.

<sup>173</sup> Motion, Annex A, no 54.

Boškoxi Defence seeks to challenge the credibility of Prosecution witnesses the document should have been put to the witnesses during cross-examination.<sup>174</sup>

48. Document Rule 65ter 1D 1223 is a report from an interview with “operative position NUR” which is alleged to have taken place on 4 April 2002 in the Blue Café cafeteria. The document itself is dated 5 February 2002, *i.e.* approximately two months before the alleged interview. The document is not signed and its author is not identified. The information contained in the document comes from an unidentified source. Further, while the document refers to alleged activities of alleged NLA members in Ljuboten, this information is vague and there are no indications as to when these activities are alleged to have taken place. Document Rule 65ter 1D1223 thus lacks the necessary indicia of reliability and will, therefore, not be admitted into evidence.

### 39. Document Rule 65ter 1D1226

49. Document Rule 65ter 1D1226 is a special report issued by the European Union Police Mission on 11 October 2005.<sup>175</sup> The Boškoxi Defence submits that the document is relevant to the presence of weapons in Ljuboten, to the “hostile” character of the village, and to the credibility of two Prosecution witnesses as regards to their evidence about the absence of NLA.<sup>176</sup> The Prosecution responds that the document is not relevant to the events in Ljuboten in 2001 and that it was not put to the two Prosecution witnesses during their cross-examination.<sup>177</sup>

50. Document Rule 65ter 1D1226 describes a police operation that took place on 8 October 2005 in the village of Ljuboten at which personnel of the European Union Police Mission appears to have been present. It is not demonstrated how this event may be of any relevance to any of the issues in the present trial. Further, while admission of this document is now sought in order to challenge the credibility of two Prosecution witnesses, this document was not put to them during their cross examination and should not be admitted for this purpose at the present stage. Document Rule 65ter 1D1226 will, therefore, not be received.

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

**DECIDES** as follows:

- (1) The Boškoxi Defence request regarding Documents MFI 1D188, MFI 1D244, MFI 263, MFI 264, Rule 65ter 1D529, Rule 65ter 1D1170, Rule 65ter 1D1200, Rule 65ter

<sup>174</sup> Response, para 31.

<sup>175</sup> Motion, Annex B-LV.

<sup>176</sup> Motion, Annex A, no 55.

<sup>177</sup> Response, para 44.



1D1207, Rule 65ter 1D1208, Rule 65ter 1D1209, Rule 65ter 1D1210, Rule 65ter 1D1232 is moot as they have already been admitted into evidence;

(2) Documents MFI 1D12, Rule 65ter 1D583.1, Rule 65ter 1D8, Rule 65ter 1D18, Rule 65ter 1D111, Rule 65ter 1D152, Rule 65ter 1D156, Rule 65ter 1D190, Rule 65ter 1D259, Rule 65ter 1D316, Rule 65ter 1D330, Rule 65ter 1D463, Rule 65ter 1D522, Rule 65ter 1D572, Rule 65ter 1D575, Rule 65ter 1D650, Rule 65ter 1D668, Rule 65ter 1D718, Rule 65ter 1D876, Rule 65ter 1D931, Rule 65ter 1D933, Rule 65ter 1D1157, Rule 65ter 1D1158, Rule 65ter 1D1169, Rule 65ter 1D1171, Rule 65ter 1D1174, Rule 65ter 1D1218, Rule 65ter 1D1223, Rule 65ter 1D1226 will **NOT** be received;

(3) Documents Rule 65ter 1D64, Rule 65ter 1D130, Rule 65ter 1D139, Rule 65ter 1D144, Rule 65ter 1D210, Rule 65ter 1D230, Rule 65ter 1D464, Rule 65ter 1D553, Rule 65ter 1D478, Rule 65ter 1D574, Rule 65ter 1D590, Rule 65ter 1D1166, Rule 65ter 1D1173 will be received and admitted into evidence;

**DEFERS** its Decision with respect to MFI 1D247 and MFI 1D248;

**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 twelfth day of March 2008  
At The Hague  
The Netherlands




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Judge Kevin Parker  
Presiding Judge

**[Seal of the Tribunal]**