



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: 20 March 2008
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IN TRIAL CHAMBER II

Before: Judge Kevin Parker, Presiding
Judge Christine Van Den Wyngaert
Judge Krister Thelin
Registrar: Mr Hans Holthuis
Decision: 20 March 2008

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

**DECISION ON BOŠKOSKI DEFENCE MOTION
TO AMEND ITS RULE 65ter LIST AND ADMIT EXHIBITS
FROM THE BAR TABLE**

The Office of the Prosecutor:

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Ms Edina Rešidović and Mr Guénaél Mettraux for Ljube Boškosi
Mr Antonio Apostolski and Ms Jasmina Živković 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 Leave to Amend Boškoski Defence Rule 65*ter* List of Proposed Exhibits and Motion to Admit Exhibits from the Bar Table”, filed on 3 March 2008 by Counsel for Ljube Boškoski (“Defence”) seeking the admission into evidence of 32 documents (“Motion”). On 4 March 2008, the Defence filed an “Addendum to Boškoski Defence Motion for Leave to Amend Boškoski Defence Rule 65*ter* List of Proposed Exhibits and Motion to Admit Exhibits from the Bar Table” with video recordings that could not have been appended to the Motion. On 12 March 2008, the Prosecution filed its partly confidential “Prosecution Response to Boškoski Defence Motion for Leave to Amend *Boškoski* Defence Rule 65*ter* List of Proposed Exhibits and Motion to Admit Exhibits from the Bar Table, with Confidential Annex A” (“Response”) objecting to the admission into evidence of all but two proposed documents.

A. Submissions

2. The Defence seeks to add seven documents to its list of proposed exhibits under Rule 65*ter* of the Rules of Procedure and Evidence (“Rules”). It also seeks their admission into evidence and submits that these documents are relevant, have probative value and are sufficiently reliable to be admitted. The Defence contends that these documents present no particular issue of authenticity. It also seeks the admission into evidence of 25 other documents, in respect of which it makes specific submissions in Annex C to the Motion.

3. The Prosecution opposes the admission of the documents tendered by the Defence, save two. It also submits that three documents have already been admitted into evidence. The Prosecution seeks leave to exceed the word limit in its Response. Leave should be granted.

B. Law

4. Pursuant to Rule 89(C) of the 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 reliability¹ and relevance² to the issues in the case to have probative value. It is for the

¹ 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-

party that moves to have a document admitted into evidence to demonstrate its relevance and reliability to justify its admission.³ 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.

C. New documents

5. The Defence seeks to amend the list of exhibits it intended to offer in its case, filed on 10 January 2008 pursuant to Rule 65ter(G)(ii) of the Rules, by adding the documents discussed in the following paragraphs. It also seeks the admission of these documents into evidence.

1. Document Rule 65ter 1D1265

6. Document Rule 65ter 1D1265 is the cover page and a part of the book “Macedonia in the Spotlight” by Dr Srgjan Kerim. It was also attached to a statement of Dr Kerim, admitted into evidence pursuant to Rule 92bis of the Rules. At the time of the admission of the statement the parts of the book of Dr Kerim were not admitted into evidence. The Chamber indicated that the Defence could move to have them admitted at an appropriate time and should support its motion to this effect with more details about the origin and relevance of the document.⁴ The excerpt of the book of Dr Kerim relates to his visit to Brussels and reproduces statements of himself and the then Secretary-General of NATO George Robertson. The Prosecution contends that the accuracy of the remarks made by the Secretary-General of NATO and Dr Kerim has not been established through any witness.⁵ The Chamber accepts that the accuracy of the document at hand is less apparent than that of a press article or an official NATO document. The Prosecution submits that the date when the statements reproduced in the book were made has not been provided.⁶ The document does not specify when the visit of Dr Kerim to Brussels took place. The Defence submits that the document relates to some of the events described by Dr Kerim in his statement, which was admitted into evidence pursuant to Rule 92bis of the Rules.⁷ Reference is made in the statement to a joint press conference which Dr Kerim, the then Minister of Foreign Affairs of Macedonia, held with the Secretary-General of NATO in Brussels.⁸ It appears that document Rule 65ter 1D1265 relates to that event. However, the statement of Dr Kerim does not specify the date of the event. In the

T, Decision on Prosecution’s Motion for Admission of Exhibits from the Bar Table with Confidential Annexes A to E, 14 May 2007.

² “[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.

³ *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.

⁴ Confidential Decision on Boškoski Defence Motion for Admission of Witness Statements pursuant to Rule 92bis with Annexes A through P, 14 February 2008, para 44.

⁵ Response, para 6.

⁶ Response, para 6.

⁷ Motion, para 4.

absence of indication of the time when the statements contained in the document were made, the document would be of no assistance to the Chamber. For this reason, document Rule 65ter 1D1265 will not be added to the Defence's Rule 65ter list and admitted into evidence.

2. Videos Rule 65ter 1D1286, 1D1287, 1D1288

7. Item Rule 65ter 1D1286 sought to be added to the Defence's Rule 65ter is a video recording of an interview of Ljube Boškoski by journalists in a field near Vaksince. Item Rule 65ter 1D1287 is a video clip which shows Ljube Boškoski giving a speech in front of a train. Item Rule 65ter 1D1288 is a video recording of a speech given by a representative of the OSCE in a train. Transcripts of the videos in English have been provided.⁹ The Defence submits that the videos are indicative of the state of mind of the Accused Boškoski and in particular of the absence of ethnic bias on his part. It contends that the videos provide evidence of Ljube Boškoski's efforts to contribute to the peaceful stabilisation of the Republic of Macedonia. The Defence submits that the videos corroborate statements of Slobodan Čašulev, Aleksandar Milošević and Srgjan Kerim, admitted into evidence pursuant to Rule 92bis of the Rules.¹⁰

8. Video Rule 65ter 1D1286 records a meeting of Ljube Boškoski with journalists in a field, which appears to be located 400-500 metres from Vaksince. Ljube Boškoski stresses the need to minimise the number of casualties in the course of operations by the security forces. At some point Ljube Boškoski and the journalists hide behind a pile of sandbags saying they came under a sniper attack. The Defence indicates that the date of the video clip is May 2001, although it is not entirely clear whether this refers to the time of the recording.¹¹ On the video recording Ljube Boškoski refers to the operation of the Macedonian security forces in Vaksince which was apparently in progress at the time.¹² In addition, Ljube Boškoski mentions that it is the day of St Spas.¹³ It thus appears that the video recording was made in May 2001. The Prosecution does not oppose the admission of this recording and submits that it is relevant to issues concerning armed conflict and the Accused Boškoski's superior responsibility.¹⁴ The Chamber accepts that the video may be of relevance to the issues in this case.

9. On video Rule 65ter 1D1287 Ljube Boškoski is giving a speech in front of a train. He speaks of a need to restore trust between people and that extremism has to be punished. The date of

⁸ Exhibit 1D334, para 14.

⁹ Annexes A-II to A-IV to the Motion.

¹⁰ Motion, para 7.

¹¹ Motion, footnote 6.

¹² The Chamber has heard evidence concerning the operation in Vaksince, which may be of assistance in determining the time of the video recording; e.g. M056, transcript of hearing in the present case, page ("T") 2099.

¹³ Annex A-IV to the Motion, p 3.

¹⁴ Response, para 9.

13 July 2002 is indicated in relation to the recording.¹⁵ It is not clear whether the speech by Ljube Boškoski recorded in the video clip was given on that date. No other indication of the time of the event has been provided. The Prosecution submits that it was not allowed by the Chamber to use a similar video in court.¹⁶ The Chamber notes that, if the video clip was recorded at the time indicated by the Defence, it concerns an event falling outside of the scope of the Indictment. It is of significance that the alleged obligation of Ljube Boškoski to investigate the crimes and impose punitive measures on their perpetrators does not extend beyond May 2002, according to the Indictment,¹⁷ and thus the state of mind of the Accused Boškoski in July 2002 is of no relevance to the charges against him. Further, it is not apparent from this video clip that Ljube Boškoski effectively contributed to the peaceful stabilisation of the Republic of Macedonia, as the Defence suggests. It might be argued that his involvement in the restoration of peace and stability in Macedonia, as well as the absence of bias against persons of the Albanian ethnicity, are factors relevant to the character of the Accused. However, the statement by Ljube Boškoski recorded in video clip Rule 65ter 1D1287 does not provide much information about his involvement. Rather, he expresses his general opinion on the need to restore peace, avoid casualties and punish the extremists. The Chamber finds the video to be of no relevance to the issues in this case.

10. Video clip Rule 65ter 1D1288 is a recording of a speech by an OSCE representative. The date of 13 July 2002 is indicated in relation to the recording.¹⁸ The representative speaks about a Peace Train that travelled through various regions of the Republic of Macedonia. The man mentions the successful conclusion of a police redeployment programme. The video clip appears to have been recorded at a time outside of the temporal scope of the Indictment and, contrary to the submission of the Defence, it does not concern the Accused Boškoski. It is of no relevance to any other issue in the present case.

11. For these reasons, video Rule 65ter 1D1286, together with the transcript thereof, will be added to the Defence's Rule 65ter list and admitted into evidence, and videos Rule 65ter 1D1287 and 1D1288 will neither be added to the Defence's Rule 65ter list, nor admitted into evidence.

3. Document Rule 65ter 1D378

12. Document Rule 65ter 1D378 is a printout of a webpage displaying a letter apparently sent on 4 August 2006 by the Director of the Anti-Defamation League to the Editor of International Herald Tribune, concerning the reliability of Peter Bouckaert of Human Rights Watch and his views

¹⁵ Motion, footnote 4.

¹⁶ Response, para 8.

¹⁷ Indictment, para 15.

¹⁸ Motion, footnote 5.

on Israeli's actions in Lebanon. The Defence contends that the document became relevant to the case after the Prosecution put to Defence witnesses press articles describing the Human Rights Watch's report on the events in Ljuboten and Ljube Boškoski's reactions to it. The Defence submits that document Rule 65ter 1D378 is relevant to the assessment of reliability of reporting by Peter Bouckaert and his report.¹⁹ The Prosecution contends that the document relates to a different matter and is thus not relevant to the issues in this case. The Prosecution also submits that Mr Bouckaert was not given an opportunity to respond to the allegations made in the document.²⁰

13. Document Rule 65ter 1D378 appears to be a reaction of the Director of the Anti-Defamation League to an article by Peter Bouckaert published in the International Herald Tribune. Peter Bouckaert of Human Rights Watch gave evidence in the present case as a Prosecution witness and his report on the events in Ljuboten was admitted as an exhibit.²¹ Document Rule 65ter 1D378 is dated 2006 and does not seem to be a criticism of the reporting skills of Bouckaert in general, but rather his lack of objectivity in the article to which the document relates. Therefore, its relevance to the issue of reliability of the report of Peter Bouckaert is very minor. The document was not put to Bouckaert when he gave evidence, although the Chamber notes that the content of the document was put to witness Stojkov in re-examination and recorded in the transcript.²² Therefore, irrespectively of its relevance and probative value, there is no need for the document to be added to the Defence's Rule 65ter list and admitted into evidence.

4. Documents Rule 65ter 1D1295 and 1D1296

14. Documents Rule 65ter 1D1295 and 1D1296 were added to the list of the proposed Defence exhibits under Rule 65ter of the Rules and admitted into evidence on 10 March 2008.²³ The Motion is therefore moot in respect to these two documents.

D. Documents from the Defence Rule 65ter list

15. The Defence seeks the admission into evidence of 25 documents from the list of exhibits it intended to offer in its case, filed on 10 January 2008 pursuant to Rule 65ter(G)(ii) of the Rules.

1. Document Rule 65ter 1D149.1

16. Document Rule 65ter 1D149.1 is a letter from Andrzej Szydlik to Public Prosecutor Stavre Džikov, dated 21 February 2002. The Defence submits that the letter is of relevance to the issue of

¹⁹ Motion, paras 8-10.

²⁰ Response, paras 13-14.

²¹ Exhibit P352.

²² Igno Stojkov, T 9050-9053.

cooperation of the Macedonian authorities regarding investigative activities and the issue of competence of the Public Prosecutor in respect of the investigation of the Ljuboten case.²⁴ An agreement between the Office of the Prosecutor and Mr Djikov appears to have been attached to the letter. The letter is merely a cover memo for the agreement, which is not part of document Rule 65ter 1D149.1. However, it is already in evidence, as Exhibit 1D191. The Prosecution argues that the document could have been tendered during the cross-examination of Zoran Jovanovski or Howard Tucker, when Exhibit 1D191 was discussed.²⁵ The Chamber notes that Exhibit 1D191 indicates when the agreement was reached and who from the Republic of Macedonia was a party to it. Document Rule 65ter 1D149.1 does not add anything to the content of the agreement. Therefore, document Rule 65ter 1D149.1 will not be admitted into evidence.

2. Document Rule 65ter 1D150

17. Document Rule 65ter 1D150 is a letter from Prosecutor Stavre Džikov to the Prosecutor of this Tribunal dated 25 February 2002. The document has already been admitted into evidence and the Motion is thus moot in respect to it.²⁶

3. Document Rule 65ter 1D586

18. Document Rule 65ter 1D586 is a letter from the Office of the Prosecutor addressed to the Ministry of Foreign Affairs of the Republic of Macedonia. The Defence submits that the letter is of relevance to the issues of competence and efforts made to investigate the events in Ljuboten.²⁷ The Prosecution argues that the Defence has not sufficiently specified what the relevance of the document is and that part of it referring to Neproštено is of no relevance. The Prosecution submits that the document is repetitive of other evidence in the case.²⁸ The document, dated 30 January 2002, is a request for assistance in the Prosecution's investigations into allegations of violations of humanitarian law committed in Neproštено and Ljuboten. It is addressed to the Ministry of Foreign Affairs of the Republic of Macedonia. The letter is indicative of the progress, as of January 2002, of the investigations conducted by the Office of the Prosecutor regarding, *inter alia*, the crimes charged in the Indictment. The issue is relevant to the individual criminal responsibility of the Accused Ljube Boškoski. The exhibits referred to by the Prosecution relate to different dates and thus document Rule 65ter 1D586 cannot be said to be repetitive of them. The document will be admitted into evidence.

²³ Exhibits 1D350, 1D351. T 10675.

²⁴ Annex C to the Motion, item 1.

²⁵ Response, para 17.

²⁶ Exhibit 1D200.

²⁷ Annex C to the Motion, item 3.

²⁸ Response, para 19.

4. Documents Rule 65ter 1D593, 1D594, 1D595

19. Documents Rule 65ter 1D593, 1D594 and 1D595 are internal notes sent within the Ministry of Interior regarding a request for assistance from the Office of the Prosecutor of the Tribunal. The Defence submits that the notes are of relevance to the issue of co-operation with the Tribunal and efforts made to investigate the allegations in respect to the events in Ljuboten.²⁹ The Prosecution argues that the documents have not been authenticated and that one of them could have been put to a witness during his testimony. The Prosecution also submits that a witness who could have given evidence regarding these documents was withdrawn by the Defence.³⁰ The three notes appear to have been sent in March 2002 and all relate to the request for assistance made by the Office of the Prosecutor of the Tribunal (document Rule 65ter 1D586) and a subsequent request from the Ministry of Justice to the Ministry of Interior regarding the information requested by the Tribunal. In the three notes a sector of the Ministry requests information and documents from other sectors concerning, *inter alia*, the participation of the security forces in the operation in Ljuboten and the police investigation regarding the events in Ljuboten. The notes may be of relevance to the issues of co-operation of the Ministry of Interior with the Office of the Prosecutor regarding its investigation into the allegations of crimes committed in Ljuboten and of measures taken by the Ministry to investigate those matters. The issues are relevant to the individual criminal responsibility of the Accused Ljube Boškoski. The documents would be of more assistance to the Chamber if they had been put to witnesses involved in the process of exchange of information within the Ministry at the time. However, the Chamber would not refuse to receive them on this basis alone. As regards the witness withdrawn by the Defence from its list of proposed witnesses, referred to by the Prosecution, the Chamber notes that the proposed evidence of that witness did not cover the issues to which the notes relate. Each of the documents is dated and signed. The name of the person who produced them is provided. The Chamber is satisfied that the documents are sufficiently reliable for the purposes of admission. Documents Rule 65ter 1D593, 1D594 and 1D595 will be admitted into evidence.

5. Document Rule 65ter 1D659

20. Document Rule 65ter 1D659 is a note prepared by the Tribunal investigator Howard Tucker regarding a meeting held in Skopje with a view to arranging for an exhumation in Ljuboten. The Defence submits that the document is of relevance to the case as it concerns “on-going investigative efforts of the Macedonian authorities”.³¹ The Prosecution argues that the document should have

²⁹ Annex C to the Motion, items 4-6.

³⁰ Response, para 20; Annex A to the Response.

³¹ Annex C to the Motion, item 7.

been tendered during the testimony of Howard Tucker and that it is duplicative of other evidence in the case.³² The investigator's note is the summary of a meeting held on 3 March 2002 between the representatives of the Office of the Prosecutor and professors of the Institute of Forensic Science in Skopje. The professors requested that certain information should be provided to them before the exhumation could be conducted in Ljuboten. The note does not provide details of the actual exhumation itself and reports prepared afterwards. It is therefore of very little relevance to the issues in this case. Document Rule 65ter 1D659 should not be admitted into evidence.

6. Document Rule 65ter 1D832

21. Document Rule 65ter 1D832 is a report on human rights and media organisation in the Republic of Macedonia. The Defence submits that the report refers to the goals of the NLA.³³ The Prosecution argues that the report does not mention the NLA and is of no relevance.³⁴ The Chamber notes that, contrary to the submission of the Defence, the document does not make reference to the NLA. No other matters of relevance to the present case are dealt with in the report. In addition, it appears that it was prepared in May or June 1999³⁵ and thus two years before the events alleged in the Indictment took place. For these reasons, document Rule 65ter 1D832 will not be admitted into evidence.

7. Document Rule 65ter 1D897

22. Document Rule 65ter 1D897 is a press statement by the Secretary General of NATO. The Defence submits that the document is of relevance to the issue whether a state of armed conflict existed.³⁶ The Prosecution submits that a significant part of the statement was read out in court to a witness and is reflected in the transcript.³⁷ In the press statement, given on 24 July 2001, the Secretary-General of NATO calls upon the NLA to show respect for the safety of the civil population and states that intimidation and kidnapping must end. On 11 September 2007, a significant portion of the document was read out in court to witness Gzim Ostreni.³⁸ The author of the statement and the date were indicated for the record. In the remaining part of the document the Secretary-General denies allegations of KFOR re-supplying the ethnic Albanian armed groups. This part is thus of no relevance to the present case. As the relevant part of the press statement was

³² Response, para 21.

³³ Annex C to the Motion, item 8.

³⁴ Response, para 22.

³⁵ The report is part of a publication of which the preface specifies that the report was completed in May-June 1999. The preface is available at http://www-gewi.kfunigraz.ac.at/csbsc/country_reports/Preface.htm

³⁶ Annex C to the Motion, item 9.

³⁷ Response, para 23.

³⁸ T 7592.

recorded in the transcript, there is no need to admit the document into evidence. Document Rule 65ter 1D897 will not be received.

8. Documents Rule 65ter 1D910 and 1D1021

23. Documents Rule 65ter 1D910 and 1D1021 are reports regarding the security situation in various regions of Macedonia. The Defence submits that the documents describe methods used by the NLA and are relevant to the issue whether a state of armed conflict existed.³⁹ The Prosecution argues that the documents are cumulative of OSCE documents already in evidence and should have been put to witnesses. The Prosecution submits that they are unsigned and have not been authenticated in any way.⁴⁰ The reports relate to 7-8 and 29-30 July 2001 and describe the security situation in various regions of Macedonia. The Defence submits that they were prepared by the OSCE. One of the reports provides a description of the EAAG, or “the ethnic Albanian armed group”,⁴¹ and their activities. Both reports describe incidents of shelling, firing at the army positions and encircling of an ethnic Macedonian village by the EAAG. In document Rule 65ter 1D910 an attack on the convoy of the Minister of Interior is mentioned. Both reports are relevant to the issue whether a state of armed conflict existed. They are not cumulative of the OSCE documents referred to by the Prosecution, as those documents concern different events. The Chamber notes that the reports are not signed and do not indicate the person who prepared them. However, their format is identical to OSCE “spot reports” which are already in evidence, such as Exhibits 1D23 and 1D267. For this reason the Chamber is able to be sufficiently satisfied that documents Rule 65ter 1D910 and 1D1021 are apparently reliable for the purposes of admission.⁴² Therefore, they should be admitted.

9. Documents Rule 65ter 1D1101 and 1D1102

24. Documents Rule 65ter 1D1101 and 1D1102 are letters from the then Prosecutor of this Tribunal to the Public Prosecutor of the Republic of Macedonia Stavre Džikov. The Defence submits that the letters are of relevance to determining which authority was competent to conduct the relevant investigation and describe steps taken to that end. In particular, they demonstrate that the judicial authorities were properly seized of the matter.⁴³ The Prosecution argues that the documents could have been tendered earlier and are duplicative of many other documents tendered by the Defence for Ljube Boškoski in support of its argument concerning the role of the

³⁹ Annex C to the Motion, items 10, 11.

⁴⁰ Response, para 24.

⁴¹ Henry Bolton, T 1652.

⁴² See the Chamber’s oral ruling of 14 November 2007 regarding a similar report, T 7802-7803.

⁴³ Annex C to the Motion, items 12, 13.

Macedonian judicial authorities.⁴⁴ The Chamber notes that documents Rule 65ter 1D1101 and 1D1102 are already in evidence, as part of Exhibit P391. The Motion is, therefore, moot in that regard.

10. Document Rule 65ter 1D1150

25. Document Rule 65ter 1D1150 is a booklet titled “United Nations Criminal Justice Standards for Law Enforcement Officials”. The Defence submits that the document is of relevance to the issue of efforts made by the Ministry of Interior to ensure compliance with legal standards.⁴⁵ The Prosecution argues that the date of the document is outside the relevant time frame in this case and that the document has not been authenticated. The Prosecution submits that the document is of no relevance to the case.⁴⁶ Document Rule 65ter 1D1150 is a translation of the UN document into Macedonian. It was published by the Ministry of Interior in 1997. The Chamber notes that the booklet was published long before the time relevant to the Indictment and there is nothing to suggest that the Accused Boškoski was involved in the initiative to have the UN document translated into Macedonian and published. It has no relevance to any issue in the present case. Therefore, the document will not be admitted into evidence.

11. Document Rule 65ter 1D1162 and 1D1163

26. Documents Rule 65ter 1D1162 and 1D1163 are letters from the Public Prosecutor of the Republic of Macedonia Stavre Džikov to the Prime Minister and the President of the Republic. The Defence submits that the letters are of relevance to the issue of competence with respect to the investigation regarding the events in Ljuboten and, in particular, to the issue of judicial responsibility for the investigation.⁴⁷ The Prosecution argues that the letters have not been authenticated and they are duplicative of other documents tendered into evidence.⁴⁸ The letters are dated 12 September 2002 and both concern the on-going procedure before the Tribunal concerning the Prosecution’s request for deferral. In these letters the Public Prosecutor Stavre Džikov advises the Prime Minister and President of Macedonia on procedural issues relating to the deferral procedure. The Chamber notes that the letters were sent a few months after the end of the period in which Ljube Boškoski is alleged to have been under an obligation to investigate the crimes and impose punitive measures on their perpetrators and therefore the letters are of limited relevance to the present case.⁴⁹ In addition, the Tribunal’s decision concerning the request for deferral, dated 4

⁴⁴ Response, para 25.

⁴⁵ Annex C to the Motion, item 14.

⁴⁶ Response, para 26.

⁴⁷ Annex C to the Motion, items 15, 16.

⁴⁸ Response, para 27.

⁴⁹ Indictment, para 15.

October 2002,⁵⁰ provides a summary of procedural steps preceding the deferral, including submissions made by the representatives of the Republic of Macedonia. Therefore, documents Rule 65ter 1D1162 and 1D1163 will not be admitted into evidence.

12. Document Rule 65ter 1D1171

27. Document Rule 65ter 1D1171 is an official note concerning a report received from the checkpoint "Ljubanci". In its decision of 12 March 2008, the Chamber decided that the document should not be admitted.⁵¹ The inclusion of the document in the Motion, which was filed at the time when the motion concerning the same document was being examined by the Chamber, appears to be an oversight on the part of the Defence. As the matter has been decided, the Motion is moot in respect to this document.

13. Documents Rules 65ter 1D1227 and 1D1228

28. Documents Rule 65ter 1D1227 and 1D1228 are responses of the Government of Macedonia to reports prepared by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("CPT"). The Defence submits that the documents are relevant to the issue of competence to conduct relevant investigations and the issue of co-operation of the Macedonian authorities.⁵² The responses of the Government of the Republic of Macedonia relate to two reports sent by the CPT to the Government for comments. One of the reports, sent to the Government of Macedonia on 22 March 2002, is in evidence.⁵³ On an earlier occasion, in its response to a motion filed by the Prosecution and concerning the admission of the report, the Defence sought the admission of the Government's response to that report. However, as the response was not a subject of that motion, the matter was not considered by the Chamber.⁵⁴ The Defence now seeks the admission of the response, which is document Rule 65ter 1D1227. The response is not dated, but, as it refers to events that took place in September 2002, it appears to have been submitted by the Government of Macedonia towards the end of the six-month time-limit set out by the CPT⁵⁵ and thus in September 2002. The response provides information about the termination of criminal proceedings against various individuals charged with crimes in connection with the events in Ljuboten. Reference is made to the exhumation conducted in connection with the

⁵⁰ Exhibit 1D218.

⁵¹ Decision on Boškovski Defence Second Motion for the Admission of Exhibits from the Bar Table, 12 March 2008 ("Boškovski Bar Table Decision"), para 40.

⁵² Annex C to the Motion, items 18, 19.

⁵³ Exhibit P380.1.

⁵⁴ Decision on Prosecution's Second Motion for Admission of Exhibits from the Bar Table with Confidential Annexes A through B, 5 December 2007, para 9.

⁵⁵ Exhibit P380.1, p N001-4759.

death of "A. Q.". The response concerns matters of relevance to the present case. The Prosecution does not object to the admission of the document.⁵⁶

29. Document Rule 65ter 1D1228 is a response to another report by the CPT. It is dated 16 April 2003 and deals with events that took place after the time relevant to the Indictment. None of the matters with which it deals appears to be of direct relevance to the present case. For these reasons, document Rule 65ter 1D1227 will be admitted into evidence and document Rule 65ter 1D1228 will not.

14. Document Rule 65ter 1D1230

30. Document Rule 65ter 1D1230 is a report regarding activities of the NLA in Ljuboten. The Defence submits that the document is relevant to the issue whether members of the NLA were present in Ljuboten.⁵⁷ The Prosecution argues that the document has not been authenticated.⁵⁸ The report appears to have been prepared by the Security and Counter-intelligence Administration of the Ministry of Interior on the basis of information "received indirectly" on 29 November 2001. It concerns movements of members of the NLA to and from the village of Ljuboten in the months of August and September 2001. The document specifically refers to 12 August 2001 and the conduct of persons in possession of weapons on that day. The report may be of relevance to the issue whether members of the NLA were present in Ljuboten at the time when the crimes alleged in the Indictment were committed. However, the report is not signed and its producer is not identified. Further, it is unclear why the information contained therein, which concerns the months of August and September 2001, was received only on 29 November 2001 and "indirectly". The Chamber is not persuaded that the document bears sufficient indicia of reliability to justify its admission into evidence. Therefore, document Rule 65ter 1D1230 will not be admitted into evidence.

15. Document Rule 65ter 1D1231

31. Document Rule 65ter 1D1231 is a report regarding a group of armed people. The Chamber notes that the admission into evidence of the same document, under the number Rule 65ter 2D451, was sought by the Defence for Johan Tarčulovski. The Chamber decided that the document should not be admitted.⁵⁹ The Motion is therefore moot in respect to document Rule 65ter 1D1231.

⁵⁶ Response, para 29.

⁵⁷ Annex C to the Motion, item 20.

⁵⁸ Response, para 30.

⁵⁹ Decision on Tarčulovski Defence Motion for Admission of Exhibits from the Bar Table, 12 March 2008 ("Tarčulovski Bar Table Decision"), paras 10-12.

16. Document Rule 65ter 1D1233

32. Document Rule 65ter 1D1233 is a report submitted to the Minister of Interior by the Analytics and Investigations Sector of the Ministry. The Defence submits that the report is of relevance to establishing what information was available about the events and what efforts were made to investigate.⁶⁰ The Prosecution argues that the Defence could have put the document to witnesses.⁶¹ The report appears to have been prepared by the Analytics and Investigations Sector of the Ministry of Interior. It is dated 17 August 2001 and contains the note that it was dispatched to the Minister. The report provides a recount of the events in Ljuboten and Ljubanci between 10 and 16 August 2001. The Chamber notes that a document containing an identical text, document Rule 65ter 1D574, was admitted into evidence.⁶² The document that is now tendered contains additional paragraphs at the end, covering the rest of the day of 14 August, as well as 16 August 2001, and describing, *inter alia*, a renewed attempt by a team headed by the investigating judge to enter the village of Ljuboten, information that was not provided in document Rule 65ter 1D574. Document Rule 65ter 1D1233, in its part not covered by document Rule 65ter 1D574, is relevant to the charges against the Accused. There is no dispute as to its authenticity. Document Rule 65ter 1D1233 should be admitted into evidence.

17. Document Rule 65ter 1D1234

33. Document Rule 65ter 1D1234 is a report prepared by the Department for Analyses of SVR Skopje. The Defence submits that the document is of relevance to the issue of “investigative efforts made by the Ministry of Interior relevant to the third element of Article 7(3) of the Statute”.⁶³ The Prosecution argues that the Defence could have put the document to witnesses.⁶⁴ The report in issue is dated 15 August 2001 and describes measures taken by the Sector for Internal Affairs Skopje in connection with a request by the Crisis Management Centre to conduct an on-site inspection. The report describes attempts made by the Head of OVR Čair, a member of the Parliament and the Investigating Judge Ognen Stavrov to enter the village of Ljuboten. According to a note at the end of the document, it was submitted to the Minister of Interior. The Chamber accepts, as submitted by the Prosecution, that the document could have been put to witnesses, especially to Petre Stojanovski and M052 by the Boškoski Defence. Had that been done it is likely that the Chamber would have been able to attach greater weight to the document. Nevertheless, the document Rule 65ter 1D1234 is of relevance to the issue of investigations regarding the events in

⁶⁰ Annex C to the Motion, item 22.

⁶¹ Response, para 31.

⁶² *Boškoski* Bar Table Decision, para 29.

⁶³ Annex C to the Motion, item 24.

⁶⁴ Response, para 31.

Ljuboten. There is no objection to the authenticity of the document. For these reasons, the document should be admitted into evidence.

18. Document Rule 65ter 1D1235

34. Document Rule 65ter 1D1235 is a report apparently prepared by OVR Čair. The Parties' submissions in respect of this document are the same as for document Rule 65ter 1D1234. The report is dated 15 August 2001 and contains information which is very similar to the content of document Rule 65ter 1D1234, discussed earlier. The report appears to have been submitted to the Ministry of Interior and SVR Skopje. Even though the report would be admissible for the same reasons as document Rule 65ter 1D1234, it is too repetitive in relation to that document to be of any assistance to the Chamber. Therefore, the admission of the other document makes it unnecessary to admit document Rule 65ter 1D1235 into evidence. It will not be received.

19. Document Rule 65ter 1D1236

35. Document Rule 65ter 1D1236 is a report dated 25 March 2004 and it was previously used in court by the Defence for Johan Tarčulovski. The Chamber did not allow the Defence to pursue a line of questioning based on that document, as the information contained in the document had no sufficient connection with any of the events charged in the Indictment.⁶⁵ For the reasons set out in that ruling, the Chamber finds that the document is of no relevance to the present case and therefore should not be admitted into evidence.

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

GRANTS the Prosecution leave to exceed the word limit in its Response;

DECIDES as follows:

- (1) The Motion is moot in respect of documents Rule 65ter 1D1295, Rule 65ter 1D1296, Rule 65ter 1D150, Rule 65ter 1D1101, Rule 65ter 1D1102, Rule 65ter 1D1171, Rule 65ter 1D1231;
- (2) Documents Rule 65ter 1D1265, Rule 65ter 1D1287, Rule 65ter 1D1288, Rule 65ter 1D378 will **not** be added to the Boškoski Defence's list of proposed exhibits and will **not** be received;

⁶⁵ The document bore Rule 65ter number 2D502. T 9206.

- (3) Video Rule 65ter 1D1286, together with the transcript thereof, will be added to the Boškoski Defence's list of proposed exhibits, received and admitted into evidence;
- (4) Document Rule 65ter 1D149.1, Rule 65ter 1D659, Rule 65ter 1D832, Rule 65ter 1D897, Rule 65ter 1D1150, Rule 65ter 1D1162, Rule 65ter 1D1163, Rule 65ter 1D1228, Rule 65ter 1D1230, Rule 65ter 1D1235, Rule 65ter 1D1236 will **not** be received;
- (5) Document Rule 65ter 1D586, Rule 65ter 1D593, Rule 65ter 1D594, Rule 65ter 1D595, Rule 65ter 1D910, Rule 65ter 1D1021, Rule 65ter 1D1227, Rule 65ter 1D1233, Rule 65ter 1D1234 will be received and admitted into evidence;

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 twentieth day of March 2008
At The Hague
The Netherlands



Judge Kevin Parker
Presiding Judge

[Seal of the Tribunal]