



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

Case No. IT-04-82-T
Date: 7 April 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: 7 April 2008

PROSECUTOR
v.
LJUBE BOŠKOSKI
JOHAN TARČULOVSKI

PUBLIC

**DECISION ON TARČULOVSKI SECOND MOTION FOR
ADMISSION OF EXHIBITS FROM THE BAR TABLE WITH
ANNEX A**

The Office of the Prosecutor:

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Ms Antoinette Issa
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Counsel for the Accused:

Ms Edina Rešidović and Mr Guénaél Mettraux for Ljube Bošković
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 “Tarčulovski Second Motion for Admission of Exhibits from the Bar Table with Annex A”, filed by Counsel for Johan Tarčulovski (“Tarčulovski Defence”) on 18 March 2008 (“Motion”). In its Motion the Tarčulovski Defence requests that eight documents be admitted into evidence from the bar table. One of these documents it also seeks to have added to its Rule 65ter list.¹ The Prosecution responded on 26 March 2008 (“Prosecution Response”); it objects to the admission of all eight documents.²

A. Submissions

2. The Tarčulovski Defence submits that all documents proposed for admission into evidence are relevant and have probative value.³ According to the Tarčulovski Defence, the documents are relevant to the issues of whether an armed conflict existed and how international organisations and media were wrongly informed about the events in Ljuboten.⁴ It is also submitted that some documents are relevant in that they relate to the credibility of Prosecution witnesses.⁵

3. The Prosecution objects to the admission of the documents.⁶ The Prosecution contends that the Tarčulovski Defence has not demonstrated the relevance of these documents to the issues of the present case. Further, with regard to a number of documents proposed for admission, the Prosecution submits that they are not admissible because they should have been put to witnesses who have testified in court in order to give them the opportunity to comment on them.

B. Law

4. The admission of evidence is generally governed by Rule 89(C) of the Rules of Procedure and Evidence (“Rules”) which provides that a Chamber may admit any relevant evidence which it deems to have probative value. The assessment of the probative value of proposed evidence requires the Chamber to consider its apparent reliability and authenticity.⁷ Under Rule 89(D), the

¹ Motion, para 13.

² Prosecution Response to “Tarčulovski Second Motion for Admission of Exhibits from the Bar Table with Annex A”, 26 March 2008 (“Prosecution Response”).

³ Motion, para 2. Submissions with regard to the relevance and probative value of each document are made in paras 9-12.

⁴ Motion, paras 9-12.

⁵ Motion, paras 9 and 12.

⁶ Prosecution Response, para 2.

⁷ See also *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, paras 9-15; *Prosecutor v.*

Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

5. It is desirable that documents are tendered for admission through witnesses who are able to comment on them. A party is not necessarily precluded from seeking the admission of a document even though it was not put to a witness with knowledge of the document (or its content) when that witness gave testimony in court. However, the failure to put the document to such a witness is relevant to the exercise of the Chamber's discretion to admit the document. Further, if the document is admitted, the failure is likely to limit the value of the document in evidence. In the particular case of a document which is to be relied on to challenge or test the credibility of a witness, the failure (of a party seeking to have the document admitted in evidence,) to put the document to the witness in court, in order to give the witness the opportunity to comment on it, will normally preclude the admission of the document.⁸

C. Discussion

1. Rule 65ter document 2D733

6. Rule 65ter document 2D733, entitled "Crisis in the Balkans: Kosovo Notebook; Milosevic's Vision of Glory Unleashed Decade of Ruin," is an article by Roger Cohen published in the New York Times on 2 July 1999. The article focuses on the situation at that time and earlier in Kosovo and the prospects for Kosovo. The Tarčulovski Defence submits that the document is relevant to the issue of armed conflict, and to the credibility of Prosecution witnesses Nazim Bushi and Gzim Ostreni. It further submits that this document tends to prove the motives of the terrorist attacks in Macedonia in 2001, namely the creation of Greater Albania.⁹ The Prosecution submits that the document is not relevant to the present case as it deals with the conflict in Kosovo and the leadership of Slobodan Milošević during that conflict. It further submits that the document deals with matters that fall outside the temporal scope of the indictment.¹⁰

7. The Chamber does not consider Rule 65ter document 2D733 to have sufficient relevance and probative value to the issues in the present case to justify its admission. It only pertains to the conflict in Kosovo and the leadership of Slobodan Milošević during that conflict in 1999 and

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 5.

⁸ See also *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-T, Decision on Tarčulovski Defence Motion for Admission on Exhibits from the Bar Table, 12 March 2008, para 7.

⁹ Motion, para 9.

¹⁰ Prosecution Response, para 5.

earlier. It does not deal with the situation in Macedonia in 2001. While Gzim Ostreni and Nazim Bushi testified on issues which may be argued to have some relevance both to Kosovo in 1999 and Macedonia in 2001 this was not directly explored with these or other witnesses to provide an adequate basis for relevance. Further, in so far as the document could be relevant to their credit, this document was not put to them in cross-examination. Neither witness has had the opportunity to comment on the document and the Prosecution has not had the opportunity to re-examine either witness on it. This document will, therefore, not be admitted for the purpose of challenging the credibility of witnesses Ostreni and Bushi, and the Tarčulovski Defence has failed to demonstrate that this newspaper article is relevant to any other issue in this case. The Chamber will, therefore, not grant leave to the Tarčulovski Defence to add this document to its Rule 65ter list, and will not admit the document into evidence.

2. Rule 65ter documents 2D658, 2D662 and 2D663

9. Rule 65ter document 2D658 is an article entitled “Rebels spend drug millions on guns,” by Christian Jennings apparently published on 16 February 2002 in the UK “Telegraph”. This article asserts that at that time “extremist Albanian rebels” in Macedonia were being re-equipped with arms financed by drug trafficking. Rule 65ter document 2D662 is an article entitled “The Albanian connection,” by Mark Galeotti published by Jane’s International Police Issues on 3 December 1998. This article deals with the extent of organised crime in Albania and it asserts that arms for the KLA in Kosovo were being smuggled by Albanian gangs. Rule 65ter document 2D663 is an article entitled “The Albanian Mafia,” dated 23 March 2001 which originated with Radio Netherlands. It purports to provide a brief review of a book by a Xavier Raufer. The main assertion in this article is that the ethnic Albanian rebels in Macedonia are the same persons, or associate with the persons, that participate in trafficking in drugs and humans, and that police measures to arrest criminals would be more effective than attempts by the Macedonian army to fight “criminalised guerrillas”.

10. The Tarčulovski Defence submits that these three documents are relevant to the issue of armed conflict, in that they tend to prove the source of funding of terrorist activities.¹² The Prosecution advances, in relation to Rule 65ter documents 2D658 and 2D663, that the Tarčulovski Defence has not established how the alleged source of the NLA funding is relevant to the existence of an armed conflict in Macedonia in 2001. The Prosecution further submits that Rule 65ter document 2D662 is irrelevant as it describes activities in Albania well before the period of the

¹¹ Prosecution Response, para 5.

¹² Motion, para 10.

Indictment.¹³ The Prosecution further challenges the reliability of Rule 65ter document 2D663 which does not identify its author or a news source.¹⁴

11. Rule 65ter document 2D658 quotes unspecified “Western intelligence officials” as saying that “since October” 2001 “Albanian gangs” are buying weapons with proceeds from trafficking in heroin from Afghanistan to re-equip rebels in Macedonia who gave up their weapons to NATO troops last autumn. These allegations appear to relate to events occurring since the surrender of arms by the NLA to NATO forces in autumn 2001, *i.e.* temporally they are events later than those alleged in the Indictment. The persons involved are expressly said to be “a hardline breakaway element calling itself the Albanian National Army” which is threatening new trouble in spring 2002. These are distinguished from the NLA and its leadership. For these reasons the article is not shown to have relevance to events alleged in this Indictment or to the conduct of the NLA and its sources are not sufficiently specified to establish reliability. The Chamber will not admit this document into evidence.

12. The matters dealt with in Rule 65ter document 2D662 took place in 1998 and preceding years and do not relate to events in Macedonia in 2001. These matters fall outside the time frame of the armed conflict alleged in the Indictment, and no relevance to events in Macedonia in 2001 is demonstrated. The Chamber will not admit this document into evidence.

13. As for Rule 65ter document 2D663, this radio book review attributes to the author of the book the view that “ethnic Albanian rebels fighting in the hills of Macedonia are the paramilitary wing of an Albanian Mafia” involved in drugs and human trafficking. The factual basis for this view is not considered. The author of the book has not given evidence. The author of the radio review is not identified (being described as “our Internet desk”). Even if the assertion is accepted that “there is no way to distinguish Albanian guerrillas from local mafia groups”, it is not apparent how this, or any other aspect of the radio review is relevant to any issue in this case. In so far as the review also asserts that “claims by Albanian rebels that they are standing up for the rights of the ethnic Albanian minority in Macedonia is just an excuse for criminal activities”, this assertion is not supported by other evidence, has not been explored in any detail with any witness and its reliability has not been established in any way. Indeed the radio review does not even indicate that “the ethnic Albanian rebels” referred to are NLA members. For these reasons, the Chamber will not admit Rule 65ter document 2D663 into evidence.

¹³ Prosecution Response, para 8.

¹⁴ Prosecution Response, para 7.

3. Rule 65ter documents 2D678, 2D679 and 2D680

14. Rule 65ter document 2D678 is entitled "Executed more than 10 villagers," an article by Lirim Dullovi published in "Fakti", an Albanian language daily newspaper on 14 August 2001. Rule 65ter document 2D679 is entitled "The villagers were executed behind the back and in the head," an article by Lirim Dullovi published in the same newspaper on 15 August 2001. Rule 65ter document 2D680, in the part proposed for admission, is entitled "Those who ordered the crimes, booked the ticket for The Hague," an article by Xhelal Nexiri published in "Fakti" on 21 August 2001. Relevantly, all three articles purport to provide descriptions of the events in Ljuboten on 12 August 2001 and in police stations in Skopje in the following days.

15. The articles in Rule 65ter documents 2D678 and 2D679 apparently are based largely on interviews with identified persons. The Tarčulovski Defence submits that these documents are relevant to the issue of "presenting wrong information" about the events in Ljuboten and that these documents have probative value as they "served to inflame the inter-ethnic relations and send incorrect information to international organisations and media."¹⁵ The Prosecution argues that the Tarčulovski Defence has not demonstrated how these documents are relevant to the present case. In particular it is argued that the Defence has not shown which international organisations and media used this newspaper as a source of information, nor how they are reliable.¹⁶ As these articles deal with the material events in Ljuboten, they appear to be relevant to the present case. In each case the author of the article is identified, although none has given evidence. The sources relied on in Rule 65ter documents 2D678 and 2D679 are identified. There is a considerable amount of eye-witness evidence about most of the reported events which in part appears likely to support some assertions in the articles but not to support other assertions. While, in the end result, these articles may be of little weight unless supported by direct evidence which the Chamber accepts, there is a sufficient indication of relevance and reliability to justify their admission into evidence. The Chamber is not persuaded, however, that the admission of these articles could also be justified on the further special basis of "presenting wrong information" as submitted by the Tarčulovski Defence. They were published after the events relied on in the Indictment, not before them, so that they cannot have any direct causative relevance to the commission of the offences alleged.

16. As for Rule 65ter document 2D680, however, in those parts which are tendered for admission the sources of alleged facts are not identified and the assertions made are very general. The Chamber is, therefore, not persuaded that the document bears sufficient indicia of reliability to

¹⁵ Motion, para 11.

¹⁶ Prosecution Response, para 9.

justify its admission into evidence. Rule 65ter document 2D680, therefore, will not be admitted into evidence.

4. Rule 65ter document 2D712

17. Rule 65ter document 2D712 is a presentation made by Robert Hislope at the Annual Meeting of American Political Association, San Fransisco, California, entitled “The Calm Before the Storm? The Influence of Cross-Border Networks, Corruption and Contraband on Macedonian Security Stability and Regional Security”. The presentation focuses on organised crime in Macedonia and the connections to the conflict in Macedonia in 2001. It provides a description of different crime businesses in Macedonia, the existence of an Albanian criminal network, factors that account for the concentration of Albanians in mafia crime organisations and an analysis of corruption as a facilitating variable for ethnic war in Macedonia. The last part of the presentation seeks to explore the relationship between an Albanian criminal network and the NLA, addressing the issue of what caused the first confrontation between Macedonian security forces and NLA in 2001 as well as providing information on KLA and NLA, such as their key persons, origins and the funding of these groups, including their possible connections with the mafia. The Tarčulovski Defence submits that the reliability and “the probative value” of this document is to show that no armed conflict existed, to challenge the credibility of the witness Gzim Ostreni and to corroborate the evidence of Tarčulovski Defence expert witness Blagoja Markovski.¹⁷ The Prosecution contends that, while Blagoja Markovski referred to this document in his evidence, the Tarčulovski Defence did not seek to tender the document at that time. Further, the Prosecution argues that this document does not relate to Gzim Ostreni, but to other individuals. Therefore, the relevance of this document is not established. In addition, it is submitted that the Tarčulovski Defence should have allowed Gzim Ostreni the opportunity to comment on this document.¹⁸

18. As to relevance, the Chamber notes that the presentation relates to the time period relevant to the Indictment. While large parts of its content, such as information on different crimes, description of mafia organisations, the extent of corruption in Macedonia, and information concerning the KLA are not relevant to issues in the present case, the last part of the presentation bears some relevance as it provides some information on the NLA. While the funding of the NLA is not directly relevant, information on the origins and the key personnel of the NLA is.¹⁹ The Chamber finds that this presentation bears sufficient indicia of reliability. The author is known and generally his sources of information are provided in footnotes to the presentation. Therefore, the

¹⁷ Motion, para 12.

¹⁸ Prosecution Response, para 10.

Chamber will admit the Rule 65ter document 2D712 into evidence, but limited to the part relating to the origins and the key personnel of the NLA.²⁰

For the foregoing reasons and pursuant to Rules 89 and 126bis, the Chamber

GRANTS the Motion **IN PART** and **DECIDES** as follows:

- i) Document Rule 65ter 2D733 will not be added to the Tarčulovski Defence Rule 65ter list and will not be admitted into evidence;
- ii) Documents Rule 65ter numbers 2D678, 2D679 and part of document Rule 65ter number 2D712 identified by the following ERN numbers 2D08-0057-2D08-0059 will be admitted into evidence; the Tarčulovski Defence is requested to upload this document on e-court anew, containing only the admitted pages identified above;
- iii) Documents Rule 65ter numbers 2D658, 2D662, 2D663, 2D680 and 2D733 will not be admitted into evidence.

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

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

Dated this seventh day of April 2008
At The Hague
The Netherlands



Judge Kevin Parker
Presiding Judge

[Seal of the Tribunal]

¹⁹ Rule 65ter document 2D712, Part IV, Chapter C. The National Liberation Army, subchapter 1: The Men Behind the NLA, ERN number 2D08-0057-2D08-0059.

²⁰ Rule 65ter document 2D712, Part IV, Chapter C. The National Liberation Army, subchapter 1: The Men Behind the NLA, ERN number 2D08-0057-2D08-0059.