



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-PT  
Date: 19 May 2006  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Hans Henrik Brydesholt  
Judge Albin Eser, Pre-Trial Judge

**Registrar:** Mr. Hans Holthuis

**Decision:** 19 May 2006

**PROSECUTOR**

v.

**Ljube BOŠKOSKI  
Johan TARČULOVSKI**

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**DECISION ON THE MOTIONS ON FAIR TRIAL AND  
EXTENSIONS OF TIME**

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**The Office of the Prosecutor:**

Mr. Dan Saxon  
Mr. William Smith  
Mr. Anees Ahmed

**Counsel for the Accused:**

Ms. Edina Residović for Ljube Bošković  
Mr. Antonio Apostolski for Johan Tarčulovski

## I. INTRODUCTION

1. Trial Chamber II (“Trial Chamber”) of the International Criminal 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 seised of the confidential “Motion to Ensure Fair Trial”, filed by Counsel for Ljube Boškoski on 11 May 2006 (“First Motion”). The Trial Chamber is also seised of the confidential “Defence Motion for Extension of Time” filed on 16 May 2006 by Counsel (“Second Motion”), and the “Urgent Defence Motion for Extension of Time for Filing the Pre-Trial Brief”, filed by Counsel for Johan Tarčulovski on 16 May 2006 (“Third Motion”).

2. In the First Motion, it is requested that: (i) the Trial Chamber grants the request by Boškoski for an extension of time for filing of his pre-trial brief<sup>1</sup> and allows Boškoski sufficient time to prepare his defence; and (ii) the Trial Chamber ensures the fair and expeditious conduct of the proceedings and the full respect of the rights of Boškoski, including his adequate legal representation. The Second Motion and the Third Motion are concerned with translations and time limits.

3. In the confidential “Prosecution’s Response to Accused Boškoski’s Confidential ‘Motion to Ensure a Fair Trial’ with Annex A”, filed on 16 May 2006 (“Response”), the Prosecution submits that the First Motion is untimely, an attempt to use the fair trial guarantees of Article 21 to circumvent the Registry’s decision that the Accused must pay part of the costs of his defence, and a demonstration of the Boškoski’s lack of respect for the Tribunal<sup>2</sup>. The Prosecution does not object to an extension of time for the filing of Boškoski’s Pre-Trial Brief.

4. On 13 April 2006, the Registry withdrew Mr. Godzo’s assignment as lead counsel to Boškoski and assigned Ms. Rešidović (“Counsel”) as Boškoski’s lead counsel. In the same decision, the Registry found that Boškoski was able to contribute US\$575, 621 to the cost of his defence. Boškoski has not appealed this decision.

5. On 19 April 2006, Boškoski informed the Registry that he was withdrawing his request for Tribunal-assigned counsel. On 20 April 2006, Counsel requested the withdrawal of her assignment as Counsel for Boškoski, and, on 1 May 2006, Boškoski informed the Registry that he intends to conduct his own defence but that Counsel will continue to represent him in a limited capacity. The extent of this capacity was further clarified in a letter written by Boškoski to the Office of Legal

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<sup>1</sup> The request was made in the Letter addressed to the Deputy Head of OLAD, dated 1 May 2006, and attached as Appendix A to the Decision of the Deputy Registrar, 5 May 2006.

<sup>2</sup> Response, para. 2.

Aid and Detention Matters (“OLAD”), in which Boškoski stated that “[m]y current attorney Edina Residović shall have a trial period where she will represent my interests and she has been authorised to act on my behalf in all instances: (a) in the proceedings that have been initiated for my provisional release; (b) to file a request on my behalf to ensure that I am given a fair trial; (c) to represent me before the Registry with regard to protecting my interests; (d) to give me advice about questions when I raise them”.<sup>3</sup>

## II. DISCUSSION

6. Article 20(1) of the Tribunal’s Statute (“Statute”) obliges the Trial Chamber to “ensure that a trial is fair and expeditious and that the proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses”.

7. Article 21(4) of the Statute states, in relevant part, that “[i]n the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled... (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (d)... to defend himself in person or through assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.

8. The procedure to give effect to the right to assignment of legal assistance as provided for in Article 21(4)(d) is set down in Rule 45(A) of the Rules and the Directive on Assignment of Defence Counsel (“Directive”). Rule 45(A) clearly states that “[w]hensoever the interests of justice so demand, counsel shall be assigned to suspects or the accused *who lack the means to remunerate such counsel*”.<sup>4</sup> Article 8 of the Directive provides that an accused who requests the assignment of counsel must produce evidence that he is unable to remunerate counsel.

### 1. First Motion

9. The First Motion provides the following arguments to support the assertion that “[i]n the interest [*sic*] of justice and fair trial, the current situation of Ljube Boškoski warrants appointing counsel”:<sup>5</sup>

- Boškoski does not have the resources to represent himself;

<sup>3</sup> See Letter from the Accused addressed to OLAD, dated 11 May 2006. See also Registry Decision, 5 May 2006.

<sup>4</sup> Emphasis added.

<sup>5</sup> See First Motion, paras. 22 – 24.

- Boškoski does not speak either of the working languages of the Tribunal;
- Boškoski lacks the training to respond to Prosecution filings;
- Boškoski self-representation will result in the postponement of the Trial; and
- The stress associated with self-representation may damage Boškoski's health.

The Trial Chamber will address each of these submissions to assess whether assigning counsel to Boškoski is in the interests of justice and whether any fair trial issues arise.

(a) Resources

10. Boškoski's submits that the resources, which were the basis of the Registry's calculation of the contribution he must make to the costs of his defence, are "subject to numerous restrictions".<sup>6</sup> However, the nature of these restrictions is not elaborated on in the First Motion. The Trial Chamber notes that Registry has found that Boškoski has the resources to make a significant contribution to the costs of legal representation. Moreover, Boškoski has not appealed the Registry's decision. The decision is of particular significance to the assessment of the Boškoski's right to self-representation or legal assistance.

11. Article 21(4)(d) of the Statute provides an accused with a choice; he can choose to defend himself or choose to have the assistance of and be represented by legal counsel. If the accused chooses the latter and wishes to avail him or herself of legal assistance but is unable to do so because he or she does not have sufficient means to pay for it *and* when the interests of justice so require, is the Tribunal required to provide that assistance free of charge.<sup>7</sup> Rule 45(A) of the Rules and Article 8 of the Directive make it similarly clear that the obligation on the Tribunal to assign counsel arises when an accused wants legal representation and does not have the means to pay for it himself and when the interests of justice so demand.

12. However, in the present case, Boškoski does have sufficient means to pay for legal assistance. The Trial Chamber finds that this ground cannot form the basis of a claim that interests

<sup>6</sup> First Motion, para. 22.

<sup>7</sup> Emphasis added. For examples of how the Tribunal has applied Article 21(4)(d) of the Statute see *Prosecutor v. Vojislav Šešelj*, Case No. IT 03-67-PT, Decision on Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence, dated 8 May 2003, filed 9 May 2003; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Reasons for Decision on the Prosecution Motion Concerning Assignment of Counsel, 4 April 2003; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Reasons for Decision on Assignment of Defence Counsel, 22 September 2004 and *Slobodan Milošević v. Prosecutor*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, 1 November 2004. See also *Jean Kambanda v. Prosecutor*, Case No. ICTR-97-23-A, Appeals Chamber Judgement, 19 October 2000 and *Prosecutor v. Jean-Bosco Barayagwiza*, Case No. ICTR-97-19-T, Decision on Defence Counsel Motion to Withdraw, 2 November 2000.

of justice or fair trial requirements require the Tribunal to provide free legal assistance to Boškoski. The Trial Chamber agrees with the Prosecution's submission that the First Motion appears to be a way of circumventing the Registry's decision that Boškoski must pay part of the costs of his defence.

(b) Working Languages of the Tribunal

13. The Trial Chamber is aware that Boškoski does not speak either of the working languages of the Tribunal. However, the Trial Chamber is not convinced that this means that it is in the interests of justice to assign legal assistance to Boškoski free of charge or that it raises a fair trial issue. Rather, the Trial Chamber considers that Boškoski could be provided with translations in Macedonian of the documents necessary to enable him to fully understand and participate in the proceedings and to prepare his defence.

14. In this regard, the Trial Chamber considers that translations do not need to be provided of documents, other than those required by the Rules,<sup>8</sup> filed prior to the date on which Boškoski declared he was representing himself or documents relating to the matters for which Boškoski has given power of attorney to Counsel, i.e. the Motion, the "Second Motion for Provisional Release", filed on 13 April 2006, and the confidential "Prosecution's Motion for Extension of Time and Application for Stay of Decision Granting Provisional Release", filed on 10 May 2006.

15. However, Boškoski will be provided with translations in Macedonian of currently pending motions and future filings, in order that Boškoski can respond to them.

16. The Trial Chamber recognises that the need for additional translation of documents means that the time limits imposed by the Trial Chamber's Scheduling Order dated 13 April 2006 will have to be adjusted accordingly. Furthermore, the Trial Chamber notes that deadlines for responses by the Accused to motions and decisions will be now determined from the date of the translation of the particular motion or decision.

(c) Legal expertise

17. Boškoski submits that he does not have the expertise to prepare responses to Prosecution filings alone. However, Boškoski has law degree and considerable high-level professional

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<sup>8</sup> Pursuant to Rule 66(A) of the Rules and in accordance with Article 21(4)(a) of the Statute, a copy of the supporting material and all prior statements obtained by the Prosecutor from the Accused, statements of all witnesses who the Prosecutor intends to call to testify at trial, written statements taken in accordance with Rule 92*bis*, and the statements of any additional Prosecution witnesses when the decision is made to call those witnesses must be provided to the Accused in a language he understands, and that, pursuant to Rule 47(G), the Accused must be provided with a copy of the indictment in a language he understands. In addition, all written decisions and orders rendered by the Tribunal must be submitted to the Accused in a language he understands.

experience. The Trial Chamber considers that he has sufficient legal training and competencies to respond to Prosecution motions.

18. The Trial Chamber also wishes to reiterate that Boškoski's expertise does not raise a fair trial issue or that it means it is in the interests of justice to provide legal assistance to Boškoski. If Boškoski has concerns about his ability to represent himself, his financial situation means that he has alternative courses of action open to him.

(d) Postponement of trial

19. Boškoski submits that since he does not speak either of the languages of the Tribunal and he lacks training the trial will be postponed. The Trial Chamber notes that no date for the commencement of trial has been set down. Furthermore, the Trial Chamber agrees with the Prosecution's submission that the First Motion does not indicate how matters relating to Boškoski's decision to represent himself will postpone the trial.<sup>9</sup>

20. The Trial Chamber is aware of the need to adjust currently established timeframes. Apart from changes to these dates, the Trial Chamber does not believe that Boškoski's decision to represent himself will postpone the trial. Furthermore, the Trial Chamber does not consider that the timeframe adjustments raise a fair trial issue or mean that it is in the interests of justice to assign to legal assistance to Boškoski.

(e) Health issue

21. The First Motion submits that the Accused is compelled to place his health at risk. The Trial Chamber disagrees that, in the current circumstances, the Accused's health "is certainly to be considered of relevance for a fair trial". As the First Motion demonstrates, the Accused is not currently experiencing any health-related difficulties. The Trial Chamber has emphasised above that Boškoski has chosen to represent himself and he can engage counsel at his own expense.

(f) Cited case-law

22. The Accused refers to authority from the Tribunal and the International Criminal Tribunal for Rwanda ("ICTR") to support the submission that the interests of justice require the assignment of counsel in the present case.

23. The jurisprudence of the Tribunal and the ICTR has upheld the rights of the accused to legal assistance and have imposed counsel on the accused when interests of justice demanded it.

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<sup>9</sup> See Response, para. 9 and First Motion, para. 23.

However, the cases where counsel has been imposed differ in fundamental ways from the present case.

24. In the case of *Prlić et al.*, the Trial Chamber determined that in the particular circumstances of the case it was in the interests of justice that counsel be assigned to Mr. Praljak.<sup>10</sup> The particular circumstances included: the commencement of the accused's trial and that of his co-accused was imminent, the trial would be complex and was anticipated to last more than two years, the accused has no legal education, and counsel for the co-accused submitted that lack of representation for the accused could further delay the start of trial and future proceedings, thus prejudicing the fairness of the trial for the co-accused.<sup>11</sup> The Trial Chamber considers these circumstances differ significantly from those in the present case. Moreover, the Trial Chamber highlights the fact that no determination of Mr. Praljak's financial status has yet been possible. The Trial Chamber agrees with the Prosecution that "the circumstances of Mr. Praljak, therefore, provide no support for the Accused's claim that the 'interests of justice' require the assignment of defence counsel in his case".<sup>12</sup>

25. The circumstances leading to the assignment of *amici curiae* in the *Milošević* case are also considerably different from those in the present case. As noted in the Response, the *Milošević* case was significantly larger and more complex than the present case. Furthermore, it is pertinent that the *amici curiae* were appointed to assist the Trial Chamber and not the accused,<sup>13</sup> and, as such, while their appointment was made in the interests of securing a fair trial it has no bearing on the immediate issue of whether free legal assistance should be assigned to the Accused.

26. Moreover, the assignment of counsel to Mr. Milošević was also done under very different circumstances than those existing in the present case and represented an imposition of counsel against the wishes of the accused over two and a half years into trial. The Trial Chamber assigned counsel on the ground that:

the risk to the health, and indeed the life, of the Accused and the prospects that the trial would continue to be severely disrupted [are] so great as to be likely to undermine the integrity of the trial process. There [is] a real danger that this trial might last for an unreasonably long time, or, worse yet, might not be concluded should the

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<sup>10</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Assignment of Defence Counsel (Confidential Annex), 15 February 2006, para. 12. See also *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Slobodan Praljak's Request for Review of the Deputy Registrar's Decision Dated 17 June 2005 Regarding the Accused's Request for Assignment of Counsel, 21 September 2005, where the Trial Chamber rejected Mr. Praljak's request for a review of the Registry's decision that refused his request for the assignment of counsel on the basis that the accused had not provided the information the Registry needed to complete its inquiries into his financial status.

<sup>11</sup> *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Assignment of Defence Counsel (Confidential Annex), 15 February 2006, para. 11.

<sup>12</sup> Response, para. 13.

<sup>13</sup> See, for example, *Prosecutor v. Milošević*, Case No. IT-02-54, Order Inviting Designation of *Amicus Curiae*, 30 August 2001.

Accused continue to represent himself without the assistance of counsel. In the face of these circumstances, it would [be] irresponsible to allow the Accused to continue to represent himself...<sup>14</sup>

27. The Appeals Chamber upheld the Trial Chamber's decision, stating that, in light of the concerns regarding the accused's health, the Trial Chamber had properly *restricted* the right of the accused to represent himself on the basis of "substantial trial disruption".<sup>15</sup> In the present case, there is no issue of the restriction of Boškoski's right to self-representation through the imposition of legal assistance and Boškoski's health does not raise a fair trial issue.

28. The Trial Chamber similarly agrees with the Prosecution's assessment regarding the assignment of stand-by counsel to Mr. Šešelj. While stand-by counsel was assigned "to safeguard a fair and expeditious trial", it was deemed necessary because of the accused was "increasingly demonstrating a tendency to act in an obstructionist fashion while at the same time revealing a need for legal assistance".<sup>16</sup> The Trial Chamber considers that there are not comparable circumstances to justify the imposition of stand-by counsel in the present case.

29. The Trial Chamber further notes that the *Barayagwiza* case related to a request by the accused's defence counsel to be withdrawn because the accused had instructed them not to participate in the proceedings. The Trial Chamber held that the accused's instructions amounted to an attempt to obstruct the proceedings. As such, counsel was under no obligation to follow the instructions and they did not constitute a ground for withdrawal.<sup>17</sup> Therefore, while the sections of the decision cited in the Motion establish broad principles relating to the rights of the accused, including the right to legal assistance, the decision by the ICTR Trial Chamber not to withdraw counsel in the *Barayagwiza* case has no bearing on the present case. Moreover, the Trial Chamber reiterates its view that Boškoski's rights to a fair trial and legal assistance are not being undermined by Boškoski's decision to represent himself.

(g) Conclusion

30. The Trial Chamber finds that, in the current circumstances and for the reasons discussed above, the Tribunal is not required to assign legal assistance free of charge to Boškoski. The Trial Chamber does not consider that the assignment of counsel would be in the interests of justice or necessary to uphold the fair trial rights of Boškoski.

<sup>14</sup> *Prosecutor v. Milošević*, Case No. IT-02-54, Reasons for Decision on the Assignment of Counsel, 22 September 2004, para. 65.

<sup>15</sup> *Prosecutor v. Milošević*, Case No. IT-02-54-AR.73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defense Counsel, 1 November 2004, para. 13.

<sup>16</sup> *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Šeselj with his Defence, 9 May 2003, para. 23.

<sup>17</sup> *Prosecutor v. Barayagwiza*, Case No. ICTR-97-19-T, Decision on Defence Counsel Motion to Withdraw, 2 November 2000, para. 24.



## 2. Second Motion

31. In the Second Motion, it is requested that the Trial Chamber (i) order the Registry to have all motions and annexes, if any, translated into the language Boškoski understands; (ii) order the Registry to provide Boškoski with all motions and documents in hard copy; and (iii) grant Boškoski a period of thirty (30) days to respond to the Prosecution's filings, starting with the date hard copies are received by Boškoski in the language he understands. In support of the requests made in the Second Motion, it is submitted that: (i) Boškoski does not speak either working language of the Tribunal; and, (ii) Boškoski has no computer skills or experience using electronic transmission of documents.

32. The Trial Chamber has dealt with the translation issue above and does not consider it necessary to address it again here. Moreover, the Trial Chamber notes that as Boškoski will be representing himself he will receive hard copies of filings.

33. In relation to his request for the extension of time, the Trial Chamber considers that Boškoski has failed to show "good cause" as required by Rule 127(A) of the Rules.<sup>18</sup> Boškoski will receive translations of all filings in the language he understands and the time limits within which he and Tarčulovski will have to file their responses will run from the date of translation.

## 3. Third Motion

34. In the Third Motion, Counsel for Tarčulovski requests an extension of two weeks from the date the Trial Chamber reaches a decision on the Prosecution's Amended Pre-Trial Brief to file his Pre-Trial Brief. The Prosecution takes no position on the Third Motion as there is currently no date set for the commencement of trial.<sup>19</sup> In support of his request for an extension of time to file his Pre-Trial Brief, Tarčulovski notes that the Trial Chamber has not yet issued its decision regarding the Prosecution's Amended Pre-Trial Brief. Tarčulovski argues that if he files his Pre-Trial Brief before the decision is issued he will have to submit an additional Pre-Trial Brief based on the Prosecution's Amended Pre-Trial Brief, which "would lead to unnecessary waste of time and confusion in filings".

35. The Trial Chamber considers that the argument provided in the Third Motion does not constitute "good cause" for the extension of time as required under Rule 127(A) of the Rules. However, the Trial Chamber will grant the extension of time. The Trial Chamber is concerned to see that the pre-trial phase continues in an orderly fashion and, thus, considers that the same time

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<sup>18</sup> Pursuant to Rule 127(A) of the Rules, the Trial Chamber may "on good cause being shown by motion (i) enlarge or reduce any time prescribed by or under these Rules".

limits should apply to both Accused. Trial Chamber's adjustment of the currently existing time limits includes an adjustment to the date for the filing of the Defence Pre-Trial Brief.

### III. DISPOSITION

**FOR THE FOREGOING REASONS**, the Trial Chamber, pursuant to Rules 54, 65ter (E) and (F), 92 bis, 94 bis and 127 of the Rules;

**HEREBY**, in **GRANTING** the requests for translations and extensions of time, in part, and **DENYING** all other requests, **ORDERS**;

- (a) that the Defence of Boškoski and Tarčulovski have fourteen (14) days from the date that the 92bis motions<sup>20</sup> and their annexes have been translated to respond to those motions;
- (b) that the Defence of Boškoski and Tarčulovski have twenty (20) days from the date of the translation of the Prosecution's amended Pre-Trial Brief to file its Pre-Trial Brief.
- (c) that the Defence of Boškoski and Tarčulovski have until thirty (30) days after the translation of the Expert Reports has been translated to respond;
- (d) that the Defence of Boškoski and Tarčulovski report on the progress made in relation to the Agreed Facts Proposals no later than 16 June 2006;
- (e) that the Defence of Boškoski and Tarčulovski indicate by 30 June 2006 whether they challenge the authenticity of the exhibits proposed by the Prosecution, and which exhibits they agree to have admitted, if any;
- (f) that, should the Prosecution wish to file a motion for the admission of witness statements pursuant to Rule 92bis of the Rules, such motion should be filed no later than 16 June 2006;
- (g) that future time limits for response to motions will apply from the date of translation of the motion;

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<sup>19</sup> Prosecution's Response to Accused Tarčulovski's "Urgent Defence Motion for Extension of Time for Filing the Pre-Trial Brief", 18 May 2006, para. 2.

<sup>20</sup> The Rule 92bis motions are: confidential "Prosecution's Second Revised Motion for Admission of Written Statements pursuant to Rule 92bis with Annexes A Through C", filed on 16 May 2006, confidential "Prosecution's First Revised Motion for Admission of Written Statements pursuant to Rule 92bis, for Extension of Time and for Submission of Provisional Second Amended Witness List", filed on 8 May 2006, and, confidential "Prosecution's Third Motion for Admission of Written Statements In Lieu of Viva Voce Testimony pursuant to Rule 92 bis and Attached Annexes A, B and C", filed on 3 April 2006.

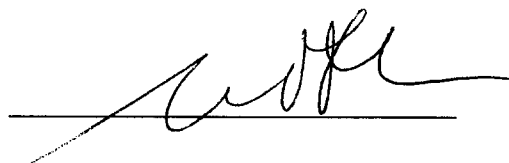
**REQUESTS** the Registry to inform the Chamber and the Parties when the respective translations are filed.

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

Dated this nineteenth day of May 2006,

At The Hague

The Netherlands



**Judge Carmel Agius**

**Presiding Judge**

**[Seal of the Tribunal]**