



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: 17 July 2006
Original: English

IN TRIAL CHAMBER II

Before: Judge Kimberly Prost, Pre-Trial Judge
Registrar: Mr. Hans Holthuis
Decision: 17 July 2006

PROSECUTOR

v.

**Ljube BOŠKOSKI
Johan TARČULOVSKI**

**DECISION ON LJUBE BOŠKOSKI'S MOTION FOR
SUBMISSION OF DOCUMENTS AND SCHEDULING ORDER**

The Office of the Prosecutor:

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

Counsel for Ljube Boškosi

Accused-in-Person

Counsel for Johan Tarčulovski

Mr. Antonio Apostolski for Johan Tarčulovski

I, Kimberly Prost, Pre-Trial Judge 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”);

BEING SEISED OF the “Motion for Submission of Documents and Scheduling Order” filed by Ljube Boškosi on 19 June 2006 (“Motion” and “Boškosi”, respectively);

NOTING the “Decision on the Motions on Fair Trial and Extensions of Time” issued by the Trial Chamber on 19 May 2006 (“Decision on Extensions of Time”), in which the Trial Chamber ordered, among other things, (i) that Boškosi and the Defence of Johan Tarčulovski (“Accused”) have 30 days after the translation of the Expert Reports of the Office of the Prosecution (“Prosecution”) to respond and (ii) that both Accused report on the progress made in relation to the Prosecution’s Agreed Facts Proposals by no later than 16 June 2006;

NOTING that in the Motion, Boškosi requests (i) that the Prosecution Expert Reports which had been disclosed to him in his language in electronic format on 9 June 2006 be disclosed to him in hard copy; (ii) that all other Prosecution Expert Reports which are in process of being translated be disclosed in hard copy; (iii) that the Prosecution’s Agreed Facts Proposals be translated in his language and disclosed to him in hard copy; (iv) that the 30 day term set in the Decision on Extensions of Time apply from the day he receives the Prosecution’s Expert Reports in hard copy; and (v) that a new timeframe be set for the report on the progress made in relation to the Prosecution’s Agreed Facts Proposals, to start from the day he receives the Prosecution’s Agreed Facts Proposals in his language in hard copy;

NOTING that Boškosi submits that he requires the Prosecution Expert Reports and the Prosecution’s Agreed Facts Proposals in hard copy in order to respond since he is unable to use a computer;

NOTING the “Prosecution’s Response to Accused Boškosi’s ‘Motion for Submission of Documents and Scheduling Order’ with Annex A” filed on 5 July 2006 (“Response”), in which the Prosecution requests the Motion be denied on the grounds (i) that the disclosure of voluminous materials such as Expert Reports and accompanying exhibits in hard copy is highly inefficient and costly, and thus it is in the interests of all parties that Boškosi accepts the disclosure of material pursuant to Rules 65ter, 66 and 68 of the Rules and Procedure and Evidence of the Tribunal (“Rules”) in electronic format and (ii) that with regard to the translation of Prosecution’s Agreed Facts Proposals, several options are available, namely, (a) he can request a translation from the Registry; (b) he can request his *pro bono* counsel to translate the Prosecution’s Agreed Facts

Proposals, in to the BCS language, which he understands, or (c) he could retain a Defence Counsel, in which case, a Macedonian translation of the Prosecutions' Agreed Facts Proposals would not be necessary;

NOTING the partly confidential "Prosecution's Submission of Pre-Trial Filings Pursuant to Rule 65ter and Motion for Non-Disclosure with Annexes A to G - Annexes B, C & D Being Confidential", filed by the Prosecution on 7 November 2005, wherein the Prosecution submitted the Prosecution's Agreed Facts Proposals attached as Annexes E and F;

NOTING the "Prosecution's Notice of Compliance with the Pre-Trial's Judge's Third Scheduling Order Setting Time for Submissions Dated 15 December 2005 and Submission of First Amended Witness List, First Amended List and Expert Reports With Annexes" filed by the Prosecution on 31 March 2006, wherein the Prosecution submitted five Expert Reports and provided notice that "the Prosecution shall make an earnest endeavour, [...] to disclose the Macedonian translations of these reports and supporting exhibits to both Accused as soon as practicable";

NOTING that the Prosecution has informed the Registry in a regular manner that the translation of Prosecution's Expert Reports in Macedonian language and disclosure thereof has been made in part and is ongoing;

CONSIDERING that the key issue where disclosure is made through use of an electronic format is whether in the circumstances it is in accord with the fundamental principle of fairness;

CONSIDERING that the accused is entitled to receive from the Registry the basic equipment and training necessary to make effective use of material disclosed in electronic format and so long as such assistance is provided, no unfairness results;¹

NOTING that Article 21(4) of the Statute provides, in relevant part, that "[i]n the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) to have adequate time and facilities for the preparation of his defence[...];

CONSIDERING that in the practice of the Tribunal, "the guarantees provided in Article 21(4) of the Statute do not extend to all documents, but only to evidence which forms the basis of the determination by the Chamber of the charges against the accused";²

¹ *Prosecutor v. Vojislav Šešelj*, Decision on Form of Disclosure, Case No. IT-03-67-PT, 4 July 2006 ("Šešelj Decision"), paras. 12-13.

CONSIDERING however that the purpose of the Agreed Facts Proposals is to facilitate agreement on factual matters in order to expedite the proceedings;

CONSIDERING therefore that such agreement is in the interests of the parties and the Trial Chamber and the translation of the Agreed Facts Proposals would enhance the prospect for agreement;

RECOGNISING that under Rule 65ter(B) of the Rules, the pre-trial Judge shall ensure that the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial;

CONSIDERING however that no date has been set as yet for the commencement of trial at the moment;

PURSUANT to Rule 54, 65ter(C) and (E)(i), 66, 68, 94bis and 127(A)(i) of the Rules;

HEREBY FIND that the Prosecution is entitled to provide Expert Reports as well as Agreed Facts Proposals and any translations thereof, in electronic format, subject to the qualifications regarding assistance for Boškoski and the relevant time limits set out below will run from the receipt of any such electronic copy;

GRANT the Motion in part and **ORDER**:

- (a) that any Expert Reports which have yet to be translated and disclosed be provided to Boškoski as soon as practicable;
- (b) that the Prosecution's Agreed Facts Proposals be translated into Macedonian and disclosed as soon as practicable;
- (c) that, in accordance with the Decision on Extensions of Time, Boškoski has until thirty (30) days after the translation of the Expert Reports to respond; and
- (d) that Boškoski has ten days to report on progress made in relation to the Prosecution's Agreed Facts Proposals with the time to run from the date on which he receives the translation of those documents;

² See Šešelj Decision, supra note 4, para. 14; *Prosecutor v. Paško Ljubičić*, Case No. IT-00-41-PT, Decision on the Defence Counsel's Request for Translation of All Documents, 20 November 2002, p. 3; *Prosecutor v. Miladen Naletilić (a.k.a. "Tuta") and Vinko Martinović (a.k.a. "Štela")*, Case No. IT-98-34-T, Decision on Defence's Motion Concerning Translation of All Documents, 18 October 2001, p. 3; *Prosecutor v. Zejnil Delalić, Zdravko Mucić (a.k.a. "Pavo")*,

DENY the requests in the Motion seeking the disclosure of the Agreed Facts Proposals and the Expert Reports in hard copy;

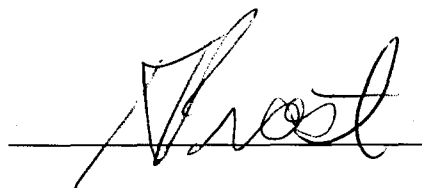
DENY the Motion in all other respects.

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

Dated this seventeenth day of July 2006,

At The Hague

The Netherlands



Judge Kimberly Prost

Pre-Trial Judge

[Seal of the Tribunal]

Hazim Delić, and Esad Landžo (a.k.a. "Zenga"), Case No. IT-96-21-T, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, para. 8.