



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: 19 September 2007
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision: 19 September 2007

PROSECUTOR
v.
LJUBE BOŠKOSKI
JOHAN TARČULOVSKI

PUBLIC

**DECISION ON “PROSECUTION’S FOURTH MOTION FOR
LEAVE TO ADD EXHIBITS TO ITS ‘FIRST AMENDED
EXHIBIT LIST’ WITH CONFIDENTIAL ANNEXES A-I”**

The Office of the Prosecutor:

Mr Dan Saxon
Ms Joanne Motoike
Mr Matthias Neuner
Ms Meritxell Regue
Mr Gerard Dobbyn

Counsel for the Accused:

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

1. This Trial Chamber (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”) is seized of the “Prosecution’s Fourth Motion for Leave to Add Exhibits to its ‘First Amended Exhibit List’ with Confidential Annexes A–I”, filed on a partly confidential basis on 20 July 2007 (“Motion”), in which the Prosecution seeks leave to add nine documents to its exhibit list.¹ Counsel for Ljube Boškoski filed its Response to the Motion on 1 August 2007 (“Boškoski Response”), in which it requests that the Motion be dismissed. Counsel for Johan Tarčulovski did not file a response to the Motion.²

A. Background

2. The Prosecution was ordered to file its Rule 65*ter* exhibit list on 31 March 2006 and the Prosecution complied with this order.³ Prior to the commencement of the trial, the Prosecution filed three motions to add documents to its Rule 65*ter* exhibit list, which the Chamber granted.⁴

3. As this Chamber has already held, there is a difference between the admission of a document into evidence as an exhibit and the inclusion of a document into the Prosecution’s list of proposed exhibits submitted pursuant to Rule 65*ter* of the Rules of Procedure and Evidence (“Rules”). The purpose of the Rule 65*ter* list is to give notice to the Defence that the Prosecution intends to rely on a document at trial which will allow the Defence to prepare its case accordingly. The Chamber need not assess the relevance and probative value of such documents. However, a party should not be allowed leave to add to its Rule 65*ter* exhibit list documents that are obviously irrelevant.⁵ A document may not be added to the Rule 65*ter* list if its addition at this stage of the proceedings will prejudice the rights of the Accused.

B. Submissions

4. In this Motion the Prosecution seeks leave to add nine documents (proposed documents 1030-1037, 1039) to its Rule 65*ter* list. The Prosecution submits that all documents all relevant to its case. The Prosecution identifies two documents from the Čair police station that are related to a meeting of Ljube Boškoski with the then Macedonian prime minister at the VMRO-DPMNE party

¹ The Prosecution also filed an Addendum with Confidential Annex to this Motion, dated 23 July 2007.

² According to the Prosecution, Defence Counsel for Tarčulovski indicated that he does not object to the addition of the proposed exhibits; except for one exhibit, namely proposed document 1030, for which he asked the Prosecution to provide more information as to its relevance (Motion, para 10).

³ Prosecution’s Notice of Compliance with the Pre-Trial Judge’s Third Scheduling Order Setting Time for Submissions dated 15 December 2005 and Submission of First Amended Witness List, First Amended Exhibit List and Expert Reports with Annexes A to G, 31 March 2006, Annex B.

⁴ See the two oral decisions at T 240-244 and T 254-256; and Confidential Decision on Prosecution’s Fifth Motion to Amend its Exhibit List and on its Second Motion to Remove Witnesses from its Witness List, 20 April 2007.

headquarter in Čair (proposed documents 1030, 1031);⁶ three documents, also from the Čair police station, that pertain to the manning and functioning of the Buzalak checkpoint (proposed documents 1032-1034);⁷ three documents from the Mirkovci police station, relating to the deployment of police “Hermelin” vehicles (proposed documents 1035-1037);⁸ and one document, which is an undated record on Johan Tarčulovski produced by F.-J. Hutsch (proposed document 1039).⁹

5. The Prosecution submits that the documents from the Čair police station (proposed documents 1030-1034), as well as proposed documents 1035 and 1036 were received on 30 April 2004 and disclosed to the Defence on 5 June 2007.¹⁰ Explaining the late disclosure, the Prosecution submits that its language assistant, who in late 2005 was asked to review the documentation related to the Čair and Mirkovci police stations for material related to the events in Ljuboten, identified only two relevant documents,¹¹ but after the testimony of several witnesses at trial, the Prosecution revisited its analysis and identified proposed documents 1030-1036 as relevant to the proceedings.¹² During the review of its documentation, the Prosecution also discovered that some documents were missing and sought to obtain several documents from the Macedonian authorities. It received one document on 31 May 2007, disclosed it to the Defence on 15 June 2007, and proposes it now as document 1037.¹³

6. The Defence for Boškoski responds that the Prosecution has been in possession of proposed documents 1030 to 1036 for more than two years and has failed to explain why it did not seek to place these documents earlier.¹⁴ With respect to document 1037, the Prosecution has not explained why it did not immediately apply for leave to add this document on the list when it could have been put to a witness who could have been capable of commenting on its content.¹⁵ The Defence for Boškoski also submits that all these documents are irrelevant to the proceedings.¹⁶ With respect to the content of the proposed documents, the Defence for Boškoski submits that documents 1032 to 1037 are “unnecessary” as the Defence does not challenge the fact that police officers were present at the Buzalak checkpoint during the time periods indicated in proposed documents 1032 and

⁵ Confidential Decision on Prosecution’s Fifth Motion to Amend its Exhibit List and on its Second Motion to Remove Witnesses from its Witness List, 20 April 2007, para 3; Oral Decision of 4 April 2007, T 243.

⁶ Motion, paras 5(a),(b).

⁷ Motion, paras 5(c)-(e). *See* Second Amended Indictment, para 34.

⁸ Motion, paras 5(f)-(h).

⁹ Motion, para 5(i).

¹⁰ Motion, paras 6-7.

¹¹ Motion, para 6.

¹² Motion, para 7.

¹³ Motion, para 8.

¹⁴ Boškoski Response, paras 4, 7, 12.

¹⁵ Boškoski Response, para 13.

¹⁶ Boškoski Response, paras 5, 8, 9, 15.

1033,¹⁷ or that some information was provided to the Čair police station as indicated in proposed document 1034,¹⁸ or that Hermelin vehicles circulated in the area of responsibility of the Mirkovći police station in the indicated time periods in proposed documents 1035-1037.¹⁹ However, the Defence still claims that, regarding documents 1032 to 1037, it would be prejudiced if the Prosecution were allowed to use these documents when the Prosecution failed to put them to witnesses who might have been able to give evidence in relation to them.²⁰ With respect to document 1039, the Defence for Boškoski submits that the Chamber has already ruled on the issue and the alleged relevance of this document has not been established.²¹

C. Discussion

7. In view of the Chamber the Prosecution has shown that documents 1030 to 1037 have some relevance to the matters before the Chamber. Proposed documents 1030 and 1031 indicate that the Accused Boškoski attended a meeting in Čair, the day of the ground attack on Ljuboten.²² Documents 1032, 1033 and 1034 seems to demonstrate that the Buzalak checkpoint, where acts of cruel treatment are alleged to have occurred,²³ were manned with police officers from the Čair police station shortly before and after the attack on Ljuboten, and that the chain of command between the Čair police station and this checkpoint was functioning.²⁴ Documents 1035, 1036 and 1037 indicate that a police Hermelin vehicle was deployed in the area of responsibility of Mirkovći police station after the events in Ljuboten, which may be relevant to the fact that one witness at trial testified that he entered the village of Ljuboten in a Hermelin vehicle on 13 or 14 August 2001.²⁵

8. The Prosecution explains the late disclosure of documents 1030-1036 with the failure of its language assistant to identify the relevant documents.²⁶ This is a failure within the Prosecution's own office. In contrast, document 1037 was obtained from the Macedonian authorities only on 31 May 2007.²⁷

9. In the Chamber's view, proposed documents 1030-1037 are of sufficient relevance to be added to the Prosecution's Rule 65*ter* list. The Chamber also finds that good cause has been shown why document 1037 was not added earlier to the Rule 65*ter* list. Even though good cause has not

¹⁷ Boškoski Response, para 8.

¹⁸ Boškoski Response, para 9.

¹⁹ Boškoski Response, para 15.

²⁰ Boškoski Response, paras 10, 14.

²¹ Boškoski Response, para 17.

²² Motion, paras 5(a), (b).

²³ Second Amended Indictment, para 34.

²⁴ Motion, paras 5(c)-(e).

²⁵ Motion, paras 5(f)-(h).

²⁶ Motion, para 6.

²⁷ Motion, para 8.

been shown in relation to documents 1030-1036, the Chamber finds that, taking into account that proposed documents 1030-1036 each contain only one page and that the Prosecution has indicated that it intends to tender the proposed documents through witnesses so as to give the Defence an opportunity to challenge each proposed document during cross-examination,²⁸ there will be no prejudice to the Defence by adding these documents to the Prosecution's Rule 65ter list at that stage of the proceedings.

10. With respect to proposed document 1039, the Chamber notes that the Prosecution, on 27 June 2007, orally applied for permission to add this document to its Rule 65ter exhibit list;²⁹ however, the Chamber was of the view that it should not be added "at the moment" to the Prosecution's Rule 65ter list.³⁰ According to the Prosecution, this document is relevant to demonstrate F.-J. Hutsch's prior knowledge of the Accused Tarčulovski when he encountered the Accused in the village of Ljuboten on 12 August 2001.³¹ Document 1039 was sent to the Prosecution by F.-J. Hutsch on 25 June 2007 and disclosed to the Defence the same day.³² Document 1039 may have some relevance to the case and good cause has been shown why it has not been added earlier to the Rule 65ter exhibit list. Permission to add this document will, therefore, be granted; however, the Chamber reiterates that placing the document on this list is not an indication of its admission into evidence as no assessment of its probative value is given at this stage.

For the foregoing reasons and pursuant to Rule 65ter of the Rules the Chamber **GRANTS** the Motion.

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



Judge Kevin Parker
Presiding Judge

Dated this nineteenth day of September 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁸ Motion, para 12.

²⁹ T 2774.

³⁰ T 2775.

³¹ Motion, para 5(i).

³² Motion, para 9.