



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: 28 September 2007
Original: English

IN THE TRIAL CHAMBER II

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

Registrar: Mr Hans Holthuis

Decision: 28 September 2007

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

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

The Office of the Prosecutor:

Mr Dan Saxon
Ms Joanne Motoike
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 II (“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 Fifth Motion for Leave to Add Exhibits to its “First Amended Exhibit List” with Confidential Annexes A –D”, filed confidentially on 3 September 2007 (“Motion”)¹, in which the Prosecution seeks leave to add sixteen documents to its exhibit list. Neither Counsel for Ljube Boškoski or Counsel for Johan Tarčulovski has filed a response to the Motion.

2. The Prosecution was ordered to file its Rule 65ter exhibit list on 31 March 2006 and the Prosecution complied with this order.² The Prosecution filed four motions to add documents to its Rule 65ter exhibit list, three prior to the commencement of the trial and one during trial. All were granted by the Chamber.³

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 65ter of the Rules of Procedure and Evidence (“Rules”). The purpose of the Rule 65ter 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 to add to its Rule 65ter exhibit list documents that are obviously irrelevant.⁴ A document may not be added to the Rule 65ter list, if its addition at this stage of the proceedings will prejudice the rights of the Accused.

4. In this Motion the Prosecution seeks leave to add sixteen documents (proposed documents 1042-1057) to its Rule 65ter exhibit list. The Prosecution submits that all documents are relevant to its case as they relate to the allegation of the Accused Ljube Boškoski’s failure to investigate and punish. Documents 1042-1053 are Requests for Assistance (“RFAs”) sent by the Office of the

¹ Confidential Annex A contains documents 1042-1053; Confidential Annex B contains documents 1054-1056; Confidential Annex C contains document 1057 and Confidential Annex D is a list of the documents with their numbers and content.

² 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.

³ See the two oral decisions at T 240-244 and T 254-256; 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 and Decision on Prosecution’s Fourth Motion for Leave to Add Exhibits to its First Amended Exhibit List with Confidential Annexes A-I, 19 September 2007.

⁴ 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 and Decision on

Prosecutor (“OTP”) to the Government of Macedonia between 30 January 2002 and 19 March 2007, documents 1054-1056 are selected responses to RFAs received by the OTP from the Government of Macedonia. Document 1057 contains a table that summarises all the RFAs sent to the Government of Macedonia seeking information as well as the responses received.⁵ The Prosecution submits that the documents have been in the Prosecution’s possession for periods ranging from over five years (document 1042) to three months (document 1057). The late disclosure is said to be due to an inadvertent omission by the Prosecution.⁶ It is submitted that the addition of the proposed exhibits will not cause prejudice to the Accused. These documents do not represent a new category of documents as 11 RFAs are already on the Prosecution’s Rule 65*ter* list. They only provide a more complete picture to certain exhibits on that list.⁷ The proposed documents were disclosed to the Defence on 30 July 2007 (documents 1042-1054); on 18 November 2005 (document 1055); on 18 April 2007 (document 1056) and on 18 May 2007 (document 1057).⁸ It is further submitted that the Prosecution thus disclosed the documents well before the witness Thomas Kuehnel will testify, through whom the Prosecution intends to use the proposed exhibits.⁹

5. In the Chamber’s view the Prosecution has shown that documents 1042-1057 have some relevance to the matters in this trial. The documents could indicate the extent to which Macedonian authorities, including the Accused Ljube Boškoski, investigated the material events. While no good cause has been demonstrated by the Prosecution as to why it did not add these documents to its Rule 65*ter* list earlier, the Chamber is of the view that granting the Prosecution’s Motion will not cause prejudice to the Defence. All documents have since 30 July 2007 been disclosed to the Defence, some even earlier. At this moment, the witness through which the Prosecution will use these documents is not yet scheduled. In light of these observations, the Chamber finds that no prejudice of the Defence will occur, if leave to add these documents is granted at this time.

Prosecution’s Fourth Motion for Leave to Add Exhibits to its First Amended Exhibit List with Confidential Annexes A-I, 19 September 2007, para 3.

⁵ Motion, paras 3-5.

⁶ Motion, para 6.

⁷ Motion, para 7.

⁸ Motion, para 8.

⁹ Motion, paras 4 and 8.

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

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



Judge Kevin Parker
Presiding Judge

Dated this twenty-eighth day of September 2007
At The Hague
The Netherlands

[Seal of the Tribunal]