



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: 1 October 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:

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

**DECISION ON MOTION OF BOŠKOSKI DEFENCE FOR
ACCESS TO REGISTRY MINUTES OF A MEETING
BETWEEN THE CHAMBER AND THE OFFICE OF THE
PROSECUTOR ON 10 SEPTEMBER 2002 IN CASE IT-02-55-
MISC-6**

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 Boškoski
Mr Antonio Apostolski and Ms Jasmina Zivković for Johan Tarčulovski

1. This decision of 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 in respect of a motion (“Motion”), raised orally by Counsel for Ljube Boškoski (“Boškoski Defence”) in court session of 29 August 2007, for access to minutes held by the Registry of a meeting between the Chamber and the Office of the Prosecutor on 10 September 2002 (“Registry Minutes”).¹ The Prosecution opposes the Motion.²

2. The Boškoski Defence submits that among the matters relevant to the present case are the investigation conducted by Macedonian authorities before and at the time of deferral, which authority was competent to investigate this matter and which authority was competent to defer the case. It is submitted that the Registry Minutes may be relevant in this regard as they may reflect discussions on the above mentioned issues.³

3. The Prosecution opposes the Motion and submits that it is not apparent how theories of competence in 2001 may be relevant to the case. Further, it is submitted that the Registry Minutes do not fit in within the Rules of Procedure and Evidence of the Tribunal (“Rules”) pertaining to disclosure. It is also submitted that they refer to highly sensitive issues.⁴

4. According to the jurisprudence of the Tribunal, a party is always entitled to seek material from any source to assist in the preparation of its case, if the material sought has been identified or described by its general nature, and if a legitimate forensic purpose for access to such material has been shown.⁵ To demonstrate the existence of a legitimate forensic purpose, the party seeking access to confidential material must show that “the material sought is likely to assist the applicant’s case materially, or at least, there is a good chance that it would.”⁶

¹ *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, Trial Hearing, 29 August 2007, T 4260-4268; 4269-4270.

² *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, Trial Hearing, 29 August 2007, T 4267-4268.

³ *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, Trial Hearing, 29 August 2007, T 4263-4265.

⁴ *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, Trial Hearing, 29 August 2007, T 4267.

⁵ *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on Appellant’s Dario Kordić and Mario Čerkez Request for Assistance of the Appeals Chamber in Gaining Access to Appellate Briefs and Non-Public Post Trial Pleadings and Hearing Transcripts of 16 May 2002, para 14; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Motion by Hadžihasanović, Alagić and Kubura for Access to Confidential Supporting Material, Transcripts and Exhibits in the Kordić & Čerkez Case, 23 January 2003, p 3.

⁶ *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on Appellant’s Motion Requesting Assistance of the Appeals Chamber in Gaining Access to Non-Public Transcripts and Exhibits From the Aleksovski Case, 8 March 2002, p 3; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Motion by Hadžihasanović, Alagić and Kubura for Access to Confidential Supporting Material, Transcripts and Exhibits in the Kordić & Čerkez Case, 23 January 2003, p 4.

5. The Boškoski Defence has sufficiently identified the confidential material to which it seeks access.

6. In assessing whether a legitimate forensic purpose has been shown the Chamber observes that the Accused Ljube Boškoski ("Accused") is charged, as a superior, for his failure to fulfil his duty to investigate and to punish the perpetrators of the crimes alleged in the Indictment.⁷

8. Already admitted as an exhibit in the present case is a formal request of 5 September 2002 of the ICTY Prosecutor ("Prosecutor") to a Trial Chamber of the Tribunal for an order to the authorities in the Republic Macedonia that its courts defer to the competent authorities of the Tribunal all current and future investigations of alleged crimes by members of the National Liberation Army ("NLA"), as well as all current and future investigations and prosecutions concerning the activities of the Macedonian forces against Macedonian Albanian civilians in Macedonia in 2001. Correspondence between the ICTY Prosecutor and the Public Prosecutor in Macedonia regarding that request and its implications for continued investigations in Macedonia, as well as correspondence with other public authorities in Macedonia, is included in this exhibit.⁸ Acting on this request for deferral, a Trial Chamber issued a decision on 4 October 2002 requesting the national courts of the Republic of Macedonia to defer to the competence of this Tribunal all investigations and prosecutions with regard to a number of cases, including the present case.⁹

9. The decision of 4 October 2002 had the apparent effect that it brought to an end the obligation for the Macedonian authorities, including the Accused, to investigate, *inter alia*, the present case. Hence, the live factual issue in this trial, for relevant purposes, is whether the Accused failed to investigate and punish the perpetrators of the crimes alleged in the Indictment until 4 October 2002. There was no request for deferral made by a Trial Chamber to the authorities of Macedonia before that date. The Chamber notes that the Boškoski Defence has access to records of investigations conducted by the Macedonian authorities at the relevant time. The Registry Minutes appear to relate to discussions in Chambers on the Prosecutor's request for an interim order from the Chamber to stop the commencement of criminal proceedings against two individuals accused in the

⁷ *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-T, Second Amended Indictment, 4 April 2006, para 11.

⁸ Exhibit P391, admitted by the Chamber by its Decision on Prosecution's Submission of English Translations of Particular Exhibits that are Subject of the "Prosecution's Motion for Admission of Exhibits from the Bar Table" with Confidential Annexes A and B, 19 July 2007.

⁹ *In Re: The Republic of Macedonia*, Case No. IT-02-55-MISC.6, Decision on the Prosecutor's Request for Deferral and Motion for Order to the Former Yugoslav Republic of Macedonia, 4 October 2002, p 19.

¹⁰ *In Re: The Republic of Macedonia*, Case No. IT-02-55-MISC.6, Decision on the Prosecutor's Request for Deferral and Motion for Order to the Former Yugoslav Republic of Macedonia, 4 October 2002, para 2. See also Exhibit P391, "Prosecutor's Request for Deferral and Motion for Order to the Former Yugoslav Republic of Macedonia" dated 5 September 2002, paras 11 and 15.

¹¹ See *supra* para 2.

Republic of Macedonia. The request was not granted. These criminal proceedings are not shown to relate to the present case. Hence, the Minutes, on their face and by their nature, have no relevance to the issues in this trial.¹⁰ The Boškoski Defence has failed, therefore, to demonstrate how the Registry Minutes are likely to materially assist the case of the Accused, or that there is a good chance that it would, or how they are relevant to the issues identified in the Motion.¹¹

For the foregoing reasons, pursuant to Rule 54 of the Rules the Chamber **DENIES** the Motion.

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



Judge Kevin Parker

Dated this first day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]