

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

(IT-04-82)

BOŠKOSKI & TARČULOVSKI



LJUBE BOŠKOSKI

Found not guilty

Former Minister of Interior of the former Yugoslav Republic of Macedonia (FYROM)

- Found not guilty

Born	24 October 1960 in Tetovo, Former Yugoslav Republic of Macedonia (FYROM)
Indictments	Initial: 9 March 2005, made public on 15 March 2005; amended: 2 November 2005; second amended: 26 May 2006
Arrested	31 August 2004, by Croatian authorities (on unrelated charges)
Transferred to ICTY	24 March 2005
Initial appearance	1 April 2005, pleaded not guilty to all charges
Trial Chamber Judgement	10 July 2008, found not guilty
Appeals Chamber Judgement	19 May 2010, found not guilty

JOHAN TARČULOVSKI

Convicted of murder, wanton destruction, cruel treatment

A police officer acting as an escort inspector in the president's security unit in the Ministry of the Interior; provided personal security for the President

- Sentenced to 12 years' imprisonment

Crimes convicted of (examples):

Murder, wanton destruction of cities, towns or villages and cruel treatment (violations of laws or customs of war)

- Tarčulovski personally led a police attack on the village of Ljuboten;
- He ordered, planned and instigated the murders of Rami Jusufi, Sulejman Bajrami and Muharem Ramadani;
- He ordered, planned and instigated the wanton destruction of the houses or other property of twelve ethnic Albanian residents;
- He ordered, planned and instigated the cruel treatment at Adem Ametovski's house of thirteen ethnic Albanian residents and the cruel treatment at the 'Braca house' of ten ethnic Albanian residents

Born	17 November 1974 in Skopje, FYROM
Indictments	Initial: 9 March 2005, made public on 15 March 2005; amended: 2 November 2005; second amended: 26 May 2006
Arrested	14 March 2005
Transferred to ICTY	16 March 2005
Initial appearance	21 March 2005, chose not to enter a plea; 18 April 2005, pleaded not guilty to all charges
Trial Chamber Judgement	10 July 2008, found guilty and sentenced to 12 years' imprisonment
Appeals Chamber Judgement	19 May 2010, sentence affirmed
Serving sentence	7 July 2011, transferred to Germany to serve the remainder of his sentence; credit was given for the time served; early release granted on 8 April 2013

STATISTICS

Trial days	144
Witnesses called by Prosecution	56
Prosecution exhibits	1587
Witnesses called by Defence	Boškosi: 13 Tarčulovski: 7
Defence exhibits	Boškosi: 363 Tarčulovski: 118

TRIAL	
Commenced	16 April 2007
Closing arguments	6 - 8 May 2008
Trial Chamber II	Judge Kevin Parker (presiding), Judge Christine Van Den Wyngaert and Judge Krister Thelin
Counsel for the Prosecution	Dan Saxon, Nisha Valabhji, Meritxell Regue, Gerard Dobbyn
Counsel for the Defence	Edina Rešidović, Guénaél Mettraux for Ljube Boškosi; Antonio Apostolski, Jasmina Živković for Johan Tarčulovski
Judgement	10 July 2008

APPEALS	
Appeals Chamber	Judge Patrick Robinson (presiding), Judge Mehmet Güney, Judge Andrèsia Vaz, Judge Liu Daqun and Judge Theodor Meron
Counsel for the Prosecution	Paul Rogers
Counsel for the Defence	Edina Rešidović, Guénaél Mettraux for Ljube Boškosi; Alan M. Dershowitz, Nathan Z. Dershowitz, Antonio Apostolski and Jordan Apostolski for Johan Tarčulovski
Judgement	19 May 2010

INDICTMENT AND CHARGES

The initial indictment was confirmed on 9 March 2005 and made public on 15 March 2005. Amended indictments were filed on 2 November 2005 and 4 April 2006, the latter was confirmed on 26 May 2006.

Boškosi was charged on the basis of superior criminal responsibility (Article 7(3) of the Statute) with:

- **Murder, wanton destruction of cities, towns or villages and cruel treatment** (violations of laws or customs of war, Article 3)

Tarčulovski was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) with:

- **Murder, wanton destruction of cities, towns or villages and cruel treatment** (violations of laws or customs of war, Article 3)

THE TRIAL

The trial of Boškosi and Tarčulovski started on 16 April 2007. The Prosecution completed its case on 6 December 2007. The Defence cases commenced on 30 January 2008 and were completed on 18 March 2008.

The closing arguments took place between 6 and 8 May 2008.

TRIAL CHAMBER JUDGEMENT

The Trial Chamber rendered its judgement on 10 July 2008.

The Chamber was satisfied that in the morning of 12 August 2001, a party of at least 60 to 70 and possibly more than 100 well armed reserve police, including men from a private security agency called “Kometa”, entered the village of Ljuboten. They took with them a considerable amount of incendiary material. A police armoured personnel carrier supported them. Tarčulovski led this group of police. Macedonian army units positioned in the mountainous country around the village provided mortar and other fire support, especially as the unit was poised and ready to enter the village. Members of the army, however, were not charged in respect of these events.

Regarding the accused Boškosi, a primary contention of his Defence was that Boškosi was neither *de jure* nor *de facto* a superior of the police that entered Ljuboten on 12 August 2001, nor over Tarčulovski, nor over the other police at the police checkpoints, police stations, the court or in the hospital, where it is alleged the offences occurred. Further, it was submitted, that Boškosi had no power to punish any of these persons within the meaning of Article 7(3). However, the Chamber found that Boškosi, as Minister of Interior at the material time, had the power to control and direct the police and any other operative employees of the Ministry of the Interior, including members of the reserve police. This power also extended to ensuring that those police responsible for investigating possible crimes, including those who were required to act at the direction of the judiciary and to assist the public prosecutor, *i.e.* the criminal police in the Ministry of the Interior, performed their functions efficiently and lawfully. In particular, this power to control and direct extended to Tarčulovski, who was then an employee of the Ministry of the Interior.

The Trial Chamber found that Boškosi was not in Ljuboten directing the police operation throughout 12 August. As news of the operation spread he was asked by the President of FYROM to go there. He reached Ljuboten as the operation was drawing to a close and was able to see something of events in the village from Braca’s house at the entrance to the village. In short, from what he could see and what he was then told by police, he had no reason to believe there may have been murder, cruel treatment or wanton destruction. By two days later, however, he had received police reports that terrorists had been killed. In addition, by virtue of information from diplomatic figures, human rights and other organisations and the media, Boškosi knew of serious allegations about the conduct of police in Ljuboten and elsewhere on 12 August and the following day. As the information available to him grew, it was sufficient to put him on notice of the likelihood that crimes may have been committed by the police. As their superior, Boškosi was obliged to investigate this, or report it to the competent authorities in FYROM so that the matter could be fully investigated and offenders punished if this was justified. For the purposes of Article 7(3) of the Statute, his obligation as a superior to punish offending subordinates would be satisfied, if a report which was likely to trigger an investigation into the alleged criminal conduct was made to the appropriate authorities. In fact two reports were made, in the course of their ordinary duties, by police of the Ministry of Interior, to the appropriate authorities, *i.e.* the investigating judicial authority and to the public prosecutor. Boškosi was informed that the judicial authorities had been notified and that steps to investigate had already been attempted. While these reports by his officers were not full or accurate and did not detail all possible criminal conduct, they were such that they were likely to trigger an investigation. Indeed, by virtue of the existing laws, they should have caused a judicial investigation, supported by the public prosecutor, into each of the deaths, in the course of which the investigative judge and the public prosecutor ought also to have become officially aware of the closely related allegations of misconduct of police involving cruel treatment and wanton destruction, so as to be able to determine whether criminal charges were justified.

In fact, there was not an investigation by the responsible authorities. No criminal proceedings were instituted against any police. There were a number of reasons for this. Failures by police at police station Čair to perform their responsibilities adequately on 12 August 2001 and on the days following, and an apparent want of due attention to their responsibilities by the responsible authorities, are the primary factors. Boškoski had no authority or powers in respect of the responsible authorities, i.e. the investigative judge and the public prosecutor, who were not within the Ministry of Interior. It was not shown that the failure of police to perform their duties is attributed to his orders, or was known to Boškoski during the period charged in the Indictment, or that it should have been anticipated by him. It was not established, therefore, that further reporting or other action by Boškoski to satisfy his obligation under Article 7(3) of the Statute was required. While the circumstances disclosed by the evidence revealed a serious failure of the functioning of the police and the responsible Macedonian authorities at that time, it has not been established that Boškoski failed to take the necessary and reasonable measures for the punishment of the police which were required of him by Article 7(3) of the Statute.

Accordingly, Boškoski was acquitted of all charges.

Regarding Tarčulovski, the evidence satisfied the Chamber that he played a prominent role in the events of 12 August 2001 in Ljuboten. On 10 and 11 August he was in charge of logistical preparations for the operation. Support was provided by the police and the army. He coordinated this, as well as mortar and other fire support provided by the army. On 12 August, Tarčulovski personally led the police operation and was with the police as they moved through the village. Although not formally appointed, Tarčulovski exercised effective leadership and control of the police in the village that day. The actions of the police in the village were at his direction. The Chamber was satisfied, therefore, that Tarčulovski was criminally responsible for ordering, planning and instigating the offences committed in the village by the police.

The evidence did not establish that Tarčulovski participated in a joint criminal enterprise as alleged in the Indictment. The reserve police with him in the village were acting under his orders not as fellow participants in a joint criminal enterprise. Further, as detailed in the written judgement, the Chamber was satisfied that Tarčulovski was himself acting under orders in carrying out the police operation in Ljuboten. The evidence did not enable the person or persons responsible for the orders to Tarčulovski to be identified. The circumstances confirmed it was a person or persons superior to him.

The Chamber found that the pattern of conduct in the village by the police disclosed a deliberate and indiscriminate attack on residents of Ljuboten of Albanian ethnicity, involving acts of murder and cruel treatment, as well as the indiscriminate and wanton destruction of houses and other property of ethnic Albanian residents of Ljuboten. It was not a law enforcement operation to locate and arrest members of the ethnic Albanian National Liberation Army (NLA). The predominant objective of this police operation was to retaliate against persons of Albanian ethnicity in the village for actions of the NLA, which the village was thought to have harboured or supported, in killing ethnic Macedonian soldiers, most especially in respect of a land mine attack at a location close to Ljuboten on 10 August 2001. Eight soldiers were killed in this attack and others were wounded. The operation was not only a means of retaliation, it would also serve as a warning of the consequences of support in the village for the NLA.

On 10 July 2008, the Trial Chamber rendered its judgement convicting Tarčulovski on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- Murder (violations of the laws or customs of war, Article 3)
- Wanton destruction of cities, towns or villages (violations of the laws or customs of war, Article 3)
- Cruel treatment (violations of the laws or customs of war, Article 3)

Sentence: 12 years' imprisonment

APPEALS CHAMBER JUDGEMENT

On 6 August 2008, the Prosecution filed its notice of appeal in respect of Boškoski. On 8 August 2008, the Defence of Tarčulovski filed its notice of appeal. On 4 November 2008, the Prosecution filed its appeal brief. On 12 January 2009, the Defence of Tarčulovski filed its appeal brief.

On 2 April 2009, the Defence of Tarčulovski filed its amended notice of appeal.

The appeal hearing took place on 29 October 2009.

The Appeals Chamber dismissed all seven grounds of appeal presented by the Defence of Tarčulovski.

With regard to the Prosecution's appeal, the Appeals Chamber found that it was not shown that Boškosi had failed to take the necessary and reasonable measures to punish his offending subordinates. The Chamber stated that, in the circumstances of the case, it was open to a reasonable trier of fact to acquit Boškosi of failure to punish responsibility, on the basis of reports about the events described in the indictment which had been provided by the Ministry of Interior to the competent judicial authorities. As a result, the Chamber dismissed the Prosecution's appeal in its entirety.

On 19 May 2010, the Appeals Chamber affirmed the Trial Chamber judgement, confirming the acquittal of Boškosi and sentencing Tarčulovski to 12 years' imprisonment.

On 7 July 2011, Tarčulovski was transferred to Germany to serve his sentence. On 8 April 2013, he was granted early release.