



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-95-4-PT

Date: 17 July 2002

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Order of: 17 July 2002

PROSECUTOR

v.

MOMČILO GRUBAN

DECISION ON REQUEST FOR PRE-TRIAL PROVISIONAL RELEASE

Office of the Prosecutor:

Ms. Joanna Korner
Ms. Ann Sutherland

Counsel for the Accused:

Ms. Sanja Turlakov and Mr. Milenko Dunder

THIS TRIAL 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 (“International Tribunal”),

BEING SEISED of the “Defence Motion for Provisional Release” filed by the Defence of Momčilo Gruban on 6 June 2002 (“Request”), seeking the provisional release of Momčilo Gruban, pursuant to Rule 65 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”),

NOTING the arguments of the Accused, as set forth in the Request that

- (i) he voluntarily surrendered to the custody of the International Tribunal on 2 May 2002,
- (ii) he recognises the authority of the International Tribunal as the only legal forum where he can defend himself;
- (iii) he does not pose any danger to victims, witnesses or other persons and his financial circumstances leave him without means to influence witnesses or obstruct justice;
- (iv) he has given a personal undertaking to appear for trial, to refrain from interfering with witnesses or obstructing justice and to comply with all orders of the International Tribunal;
- (v) the Government of the Federal Republic of Yugoslavia and the Republic of Serbia have issued a guarantee that the Accused return to appear before the International Tribunal at any time or place the International Tribunal or Trial Chamber may require, that the Accused not contact witnesses for the Prosecution nor attempt to influence or threaten any witness, and that the life and well-being of the Accused be safeguarded during the pre-trial and any subsequent stage of these proceedings ; and
- (vi) the probable length of pre-trial detention supports the request.

NOTING the Response to the Request filed by the Office of the Prosecutor (“Prosecution”) on 17 June 2002 (“Response”), in which the Prosecution raises certain objections to the Request, noting, in particular, that the accused only surrendered seven

years after being publicly indicted and after completion of a trial involving certain of his co-accused,

NOTING that the Prosecution has not filed a request for a stay of any decision granting provisional release, pursuant to Rule 65 (E),

NOTING the written guarantee provided jointly by the Government of the Federal Republic of Yugoslavia and the Republic of Serbia dated 12 June 2002, numbered 4762-1//2001, filed on 21 June 2002,

NOTING further the undertakings of the Accused attached to the Request,

NOTING the letter from the host country filed on 13 June 2002, as required by Rule 65 (B) of the Rules, in which it is stated that the host country does not have any objection to the Request,

HAVING HEARD the parties and the Government of the Federal Republic of Yugoslavia at a hearing on 9 July 2002,

CONSIDERING that a determination as to whether release is to be granted must be made in the light of the particular circumstances of each case, and may be granted only if the Trial Chamber is satisfied that the accused “will appear for trial and, if released, will not pose a danger to any victim, witness or other person”,

CONSIDERING that the Accused voluntarily surrendered to the custody of the International Tribunal,

CONSIDERING that the Accused has provided, both on his own behalf, and through the Government of the Federal Republic of Yugoslavia and the Republic of Serbia, guarantees which are satisfactory to the Trial Chamber,

CONSIDERING that the Trial Chamber is satisfied that the Accused, if released, will appear for trial and further, that he will not pose a danger to any victim, witness or other person,

PURSUANT TO Rule 65 of the Rules

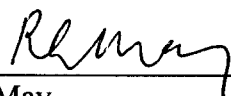
HEREBY GRANTS the Request, **SUBJECT TO** the necessary arrangements being made with the Registrar of the International Tribunal pursuant to operative paragraph (5) hereof, **AND ORDERS** the provisional release of Momčilo Gruban on the following terms and conditions:

- (1) a) the Accused shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
- b) at Schiphol airport, the Accused shall be provisionally released into the custody of a designated official of the Federal Republic of Yugoslavia (whose name is to be notified to the Trial Chamber) who shall accompany the Accused for the remainder of his travel to the Federal Republic of Yugoslavia and to his place of temporary residence;
- c) on his return flight, the Accused shall be accompanied by the same designated official of the Federal Republic of Yugoslavia (or by such other designated official as the Trial Chamber may, by order, accept), who shall deliver the Accused into the custody of the Dutch authorities at Schiphol airport at a date and time to be determined by the Trial Chamber, and the Dutch authorities shall then transport the Accused back to the United Nations Detention Unit;
- d) the Accused or the Government of the Federal Republic of Yugoslavia shall bear all expenses concerning transport of the Accused from Schiphol airport to his place of residence and back ;
- e) during the period of his provisional release, the Accused shall abide by the following conditions, and the authorities of the Federal Republic of Yugoslavia, including the local police in his place of residence, shall ensure compliance with such conditions:
- (i) to reside at Aleksa Nevadovic Street No. 1, Apartment 5, Belgrade;

- (ii) to remain within the confines of the city of Belgrade;
 - (iii) to surrender his passport to the Federal Ministry of the Interior or the Ministry of Justice in Belgrade;
 - (iv) to report daily to the local police in Belgrade who shall maintain a log of such reports;
 - (v) to consent to having the Ministry of the Interior or the Ministry of Justice check with the local police about his presence and to the making of occasional, unannounced visits to the Accused by the Ministry of the Interior or the Ministry of Justice, or by a person designated by the Registrar of the International Tribunal;
 - (vi) not to have any contact whatsoever with any other co-accused in the case;
 - (vii) not to have any contact whatsoever or in any way interfere with victims or potential witnesses or otherwise interfere in any way with the proceedings or the administration of justice;
 - (viii) not to discuss his case with anyone, including the media, other than his counsel;
 - (ix) to comply strictly with any requirements of the authorities of the Federal Republic of Yugoslavia and the Republic of Serbia necessary to enable them to comply with their obligations under this Decision and their guarantees;
 - (x) to return to the International Tribunal at such time and on such date as the Trial Chamber may order; and
 - (xi) to comply strictly with any order of the Trial Chamber varying the terms of, or terminating his provisional release,
- (2) **FURTHER ORDERS** that the Accused shall be immediately detained should he breach any of the foregoing terms and conditions of his provisional release;

- (3) **REQUIRES** the Government of the Federal Republic of Yugoslavia to assume responsibility for:
- (a) all expenses concerning transport of the Accused from Schiphol airport to his place of residence and back;
 - (b) at the request of the Trial Chamber or of the parties to the present case to facilitate all means of cooperation and communication between the parties and to ensure the confidentiality of any such communication;
 - (c) to submit a written report to the Trial Chamber each month as to the compliance of the Accused with the terms of this Decision; and
 - (d) to report immediately to the Trial Chamber any breach of the conditions set forth above,
- (4) **REQUESTS** the authorities of all States through which he will travel:
- (i) to hold the Accused in custody for any time he will spend in transit at the airport;
 - (ii) to arrest and detain the Accused pending his return to the United Nations Detention Unit, should he attempt to escape,
- (5) **INSTRUCTS** the Registrar of the International Tribunal to consult with counsel for the Accused and the Ministry of Justice of the Netherlands as to the practical arrangements for his release, and to keep the Accused in custody until relevant arrangements are made for his travel.

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



Richard May
Presiding

Dated this seventeenth day of July 2002
At The Hague,
The Netherlands

[Seal of the Tribunal]