



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-02-65-AR65
Date: 6 November 2002
Original: English

IN THE APPEALS CHAMBER

Before: Judge Meron, Presiding
Judge Gunawardana
Judge Pocar

Registrar: Mr. Hans Holthuis

Decision of: 6 November 2002

PROSECUTOR

v.

**ŽELJKO MEAKIĆ
MOMČILO GRUBAN
DUŠKO KNEŽEVIĆ**

DECISION ON APPLICATION FOR LEAVE TO APPEAL

Counsel for the Prosecutor:

**Ms Joanna Korner
Ms Jocelyn Bodson**

Counsel for the Defence:

Ms Sanja Turkalov for Mr Momčilo Gruban

THIS BENCH of the Appeals 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”);

SEISED OF the “Defence Application for Leave to Appeal Against Trial Chamber Decision of 20 September 2002”, filed by Momčilo GRUBAN (“Applicant”) on 27 September 2002 (“Application”);

NOTING the “Prosecution’s Response to the Pleading Entitled ‘Defence Application for Leave to Appeal against Trial Chamber Decision of 20 September 2002’ Filed by the Accused Momčilo Gruban”, filed by the Prosecutor on 7 October 2002;

NOTING the “Decision on Defence Application for Variation of Conditions of Provisional Release for Momčilo Gruban”, issued by Trial Chamber III on 20 September 2002 (“Impugned Decision”), which denies the Applicant’s request to vary the conditions of his provisional release so as to reside in the village of Marička in the municipality of Prijedor, Republika Srpska, rather than in Belgrade, Federal Republic of Yugoslavia;

NOTING that the Impugned Decision is taken on the grounds that the Applicant’s provisional release was based on his undertaking to reside in Belgrade; that he did not mention at the hearing on his original provisional release motion that he might apply to reside in Republika Srpska; and that his return to the area of the crimes alleged in the indictment might reasonably be expected to affect victims, witnesses and others still living in the area, and that he had not demonstrated otherwise to the satisfaction of the Trial Chamber;

NOTING that the Impugned Decision further considers that the Applicant can see his family whilst residing in Belgrade, as the distance from Belgrade to Prijedor is not that great, and that his own personal safety may be better assured away from the scene of the alleged crimes;

CONSIDERING that the Impugned Decision was rendered under Rule 65 of the Rules of Procedure and Evidence of the Tribunal (“Rules”);

NOTING that, pursuant to Rule 65(B) of the Rules, an accused may only be provisionally released if the Trial Chamber is satisfied that he or she will appear for trial and, if released, will not pose a danger to any victim, witness or other person;

NOTING that, pursuant to Rule 65(C) of the Rules, the Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others;

NOTING the argument advanced in the Application that the Prosecution offered no evidence to support its concern that the Applicant might exert influence on witnesses if he returned to the area of the crimes;

CONSIDERING that, in an application to vary conditions attached to a grant of provisional release, the burden is on the accused to satisfy the Trial Chamber that he will appear for trial and pose no danger to any victim, witness or other person under the new conditions, and that the Prosecution is therefore under no obligation to present evidence on this issue;

NOTING the argument advanced in the Application that the Trial Chamber deprived the Applicant of the opportunity to present all his arguments by not holding a hearing on his application for variation of conditions of pre-trial release (“Motion to Vary Conditions”);

NOTING that the Applicant did not request a hearing in his Motion to Vary Conditions, but only in his reply to the Prosecution’s response to that Motion;

CONSIDERING that parties are required to present their full case, in outline at least, in any initial motion, and that Trial Chambers are under no general obligation to hear oral argument on a motion, so that the fault lies with the Applicant if the Impugned Decision was taken without the benefit of all the arguments at his disposal;

NOTING the argument advanced in the Application that the Trial Chamber was informed that the Applicant was waiting to receive guarantees from the Republika Srpska at the hearing on the original motion for provisional release (“Motion for Provisional Release”);

CONSIDERING that this does not undermine the accuracy of the Trial Chamber’s statement that the Applicant’s provisional release was based on his undertaking to reside in Belgrade, and that he did not mention at the hearing on the Motion for Provisional Release that he might apply to reside in Republika Srpska;

NOTING the argument advanced in the Application that the Applicant’s family needs him in Prijedor;

CONSIDERING that the above argument was raised before the Trial Chamber and taken into consideration in the Impugned Decision;

NOTING the arguments advanced in the Application in relation to the Applicant's ability to influence witnesses if he returned to the Prijedor municipality, which were not raised before the Trial Chamber, and the argument that the Applicant has no housing or employment in the Federal Republic of Yugoslavia which is similarly raised for the first time on appeal;

CONSIDERING that the powers of the Appeals Chamber are limited to affirming, reversing or revising decisions of the Trial Chambers when an appealable error has been demonstrated in their reasoning, and not to rehearing applications *de novo* on the basis of arguments not presented to them, so that these new arguments are irrelevant to this appeal;

NOTING that, pursuant to Rule 65(D) of the Rules, leave to appeal a decision rendered under that Rule may be granted upon good cause being shown;

CONSIDERING that "good cause" within the meaning of Rule 65(D) of the Rules requires that the party seeking leave to appeal under that provision satisfy the bench of the Appeals Chamber that the Trial Chamber may have erred in making its decision;

FINDING for the reasons set out herein that the Applicant has failed to demonstrate that the Trial Chamber may have erred in taking the Impugned Decision;

HEREBY REJECTS the Application.

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



Judge Theodor Meron
Presiding Judge

Dated this sixth day of November 2002
At The Hague,
The Netherlands.

[Seal of the Tribunal]