

**UNITED
NATIONS**

IT-02-65-PT
D 565 - D 562
18 MARCH 2003

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International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-02-65-PT
Date: 18 March 2003
Original: ENGLISH

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 18 March 2003

PROSECUTOR
v.
ŽELJKO MEAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
PREDRAG BANOVIĆ
DUŠKO KNEŽEVIĆ

DECISION ON DUŠKO KNEŽEVIĆ'S MOTION FOR PROVISIONAL RELEASE

The Office of the Prosecutor:

Ms. Joanna Korner

Counsel for the Accused:

Ms. Sanja Turlakov, for Momčilo Gruban
Mr. Theodore Scudder and Mr. Dragan Ivetić, for Dušan Fuštar
Ms. Slobodanka Nedić and Mr. Thomas Moran, for Duško Knežević
Mr. Jovan Babić and Mr. Thomas Rothpfeffer, for Predrag Banović

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 Duško Knežević’s Motion for Provisional Release (“Motion”) filed by the defence of Duško Knežević (“Defence” and “Accused”, respectively), on 27 January 2003, which seeks the provisional release of the Accused, and in which the Defence submits, *inter alia*, that

- (i) the Accused has shown a willingness to co-operate with the Tribunal and he has submitted voluntarily to the jurisdiction of the Tribunal,¹
- (ii) While there was a “wanted poster”, dated 31 March 1996, with incorrect birth date, photograph and name, the Accused surrendered shortly after a new “wanted poster” with correct data was issued, showing that he did not attempt to avoid arrest, but did not know that he was wanted,²
- (iii) the Accused would abide by any conditions set for provisional release and appear before the Tribunal as ordered,³ and
- (iv) whether the Accused surrendered shortly after learning that he was indicted or he hid for years before surrendering, there is no evidence that he posed a threat to anyone, even though he had the chance to do so,⁴

NOTING Duško Knežević’s Request for Oral Hearing on Motion for Provisional Release, filed by the Defence on 29 January 2003,

NOTING that on 7 February 2003, the Dutch Protocol Department indicated that the Host Country had no objection to the provisional release of the Accused, provided that upon his provisional release, the Accused leave the Dutch territory,

NOTING the Scheduling Order for Oral Hearing, filed on 10 February 2003,

NOTING the Prosecution Response to Duško Knežević’s Motion for Provisional Release (“Response”), filed on 10 February 2003, in which the Prosecution opposed the Motion, submitting *inter alia*, that

¹ Motion, para. 13.3.

² Motion, para. 8.

³ Motion, para. 14.

⁴ Motion, paras. 18.1 and 18.2.

- (i) Rule 65 places a substantial burden upon the Accused to satisfy the Trial Chamber that the conditions for provisional release are met,⁵
- (ii) the guarantees provided by the Republika Srpska are not sufficient,⁶
- (iii) the Accused's voluntary surrender, of itself, does not necessarily suggest a genuine and permanent change of his attitude, since it occurred a very long time after the indictment in 1995, and that the Accused must have been aware of the possibility that the person in the "wanted poster" was in fact himself, notwithstanding the minor mistakes of the birth date and the name of the Accused in the early version of the poster,⁷
- (iv) the Trial Chamber could not be satisfied that, if released, the Accused would appear for Trial, and that he would not pose a danger to any victim, witness or other persons, and
- (v) the public interest considerations weigh against exercising the Trial Chamber's discretion in favour of the provisional release,

NOTING Duško Knežević's Request for Attendance of Liaison Officer of Republika Srpska at Hearing on Motion for Provisional Release ("Request"), filed on 11 February 2003, in which the Defence requested that the Trial Chamber grants the attendance of Mr. Trivun Jovičić as Republika Srpska's Liaison Officer,

NOTING the Order for Attendance at Hearing on Motion for Provisional Release, filed on 14 February 2003, in which the Trial Chamber granted the Request,

NOTING the Oral Hearing ("Hearing") held on 20 February 2003, during which, *inter alia*, the Accused gave evidence, supporting the argument in the Motion that he first became aware in 2002 of the warrant for his arrest that was issued in 1995 and that, therefore, his surrender to the Tribunal was voluntary, notwithstanding the fact that it was done in 2002,

NOTING the Prosecution's Further Response to Duško Knežević's Motion for Provisional Release ("Further Response"), filed on 6 March 2003 pursuant to the ruling of the Trial Chamber at the Hearing, in which the Prosecution requested that the Motion be denied; or, if such Motion were not denied, that no decision be taken until the Republika Srpska authorities have responded to the request for assistance addressed to it by the Prosecution on 28 February 2003,⁸

⁵ Response, para. 5.

⁶ Response, para. 16.

⁷ Response, paras. 13-15.

⁸ Further Response, paras. 17-18.

NOTING Duško Knežević's Reply to Prosecution's Further Response to Duško Knežević's Motion for Provisional Release ("Reply"), filed on 12 March 2003,

NOTING Rule 65 which provides in the relevant part:

- (A) Once detained, an accused may not be released except upon an order of a Chamber.
- (B) Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it 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 Trial Chamber does not accept that the Accused was not aware, until 2002, of the issue of an indictment against him in 1995, and rejects his evidence to that effect,

CONSIDERING that, in all circumstances, the Trial Chamber is not satisfied that if released, the Accused would appear before the Tribunal, and that there is no need to further consider the requirement that the Accused, if released, would not pose a danger to any victim, witness or other person,

PURSUANT TO Rules 54 and 65 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY DISMISSES the Motion.

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



Richard May
Presiding

Dated this eighteenth day of March 2003
At The Hague
The Netherlands