

IT-02-65-PT  
D 759- D 756  
22 MAY 2003

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**UNITED  
NATIONS**



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: 22 May 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:** 22 May 2003

**PROSECUTOR**

v.

**MOMČILO GRUBAN**

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**DECISION ON SECOND DEFENCE APPLICATION FOR  
VARIATION OF CONDITIONS OF PROVISIONAL RELEASE**

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**The Office of the Prosecutor:**

**Ms. Joanna Korner**

**Counsel for the Accused:**

**Ms. Sanja Turkalov**

**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 a “Second Defence Application for Variation of Conditions of Provisional Release” filed on behalf of Momčilo Gruban (“Accused”) on 14 August 2002 (“Second Application”), seeking variation of the terms and conditions of the Accused’s provisional release set out in the Trial Chamber’s “Decision on Request for Pre-trial Provisional Release” issued on 17 July 2002, in particular, seeking permission for the Accused to change his place of residence from Belgrade, Republic of Serbia and Montenegro, to the village of Marička, in the municipality of Prijedor, Republika Srpska, in order to be with, and to support, his family,

**NOTING** the “Decision on Defence Application for Variation of Conditions of Provisional Release for Momčilo Gruban” (“Decision”), issued by this Trial Chamber on 20 September 2002, which denied the Accused’s request to the same effect on the grounds that his provisional release was based on his undertaking to reside in Belgrade; that at the time of application for provisional release, the Accused did not raise with the Trial Chamber the fact that he wishes to reside in Republika Srpska; and that his return to the areas of the alleged crimes 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 Decision also considered that the Accused can see his family whilst residing in Belgrade, as the distance from Belgrade to Prijedor is not that great, and his own personal safety may be better assured away from the scene of the alleged crimes; that leave to appeal against the Decision was denied by a bench of the Appeals Chamber,<sup>1</sup> finding that the Accused had failed to demonstrate that the Trial Chamber may have erred in taking the Decision,

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<sup>1</sup> *Prosecutor v. Meakić et al.*, Decision on Application for Leave to Appeal, Case No. IT-02-65-AR65, 6 Nov. 2002.

**NOTING** that in support of his Second Application, the Accused argues that the following important changes in his circumstances justify the Second Application: (i) the serious deterioration of his mother's health condition and its impact on the family; (ii) his inability, as a citizen of Republika Srpska, to find suitable employment in Serbia and Montenegro; and (iii) his inability to interfere with witnesses if returned to Prijedor since, as the Prosecution's witness list makes it clear, no witnesses reside in the municipality,

**NOTING** the "Prosecution's Response to 'Second Defence Application for Variation of Conditions of Provisional Release' filed by the Accused Momčilo Gruban", filed by the Office of the Prosecutor ("Prosecution") on 26 March 2003 ("Response"), in which the Prosecution objects to the Second Application on the ground that it invokes no new facts to justify a reconsideration of the conditions of provisional release,

**NOTING** also that the Prosecution, *inter alia*, points out in its Response that, contrary to assertion of the Accused, and in accordance with the Trial Chamber's "Order on the Prosecution's Motion for Protective Measures" dated 13 June 2002, the Accused is not in possession of any information in respect of the current whereabouts of Prosecution's witnesses, that, further, the Trial Chamber has already determined that the return of the Accused "may reasonably be expected to affect victims, witnesses and others still living in the area",<sup>2</sup>

**CONSIDERING** that the argument of the Accused that his family needs him in Prijedor was raised before the Chamber and taken into consideration in the Decision,

**CONSIDERING** that, with regard to the other submissions of the Accused, including his inability, as a citizen of Republika Srpska, to find permanent employment or employment in his field of expertise in Serbia and Montenegro and his inability to influence witnesses if he returned to Prijedor municipality, the Trial Chamber finds no compelling reason to depart from its previous Decision, in particular, it has not been demonstrated to its satisfaction that, in the particular circumstances of this case, the return of the Accused to the areas of the alleged crimes will not pose a danger to victims, witnesses and others still living in the area,

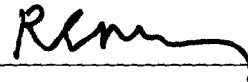
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<sup>2</sup> *Prosecutor v. Meakić et al*, Decision on Defence Application for Variation of Conditions of Provisional Release for Momčilo Gruban, Case No. IT-95-4-PT, 20 Sept. 2002, p. 3.

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

**HEREBY DENIES** the Second Application.

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



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Richard May  
Presiding

Dated this twenty-second day of May 2003  
At the Hague,  
The Netherlands

[Seal of the Tribunal]