

IT-02-65-91  
D 970 - D 966  
11 July 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: 11 July 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:** 11 July 2003

**PROSECUTOR**

v.

**ŽELJKO MEAKIĆ  
MOMČILO GRUBAN  
DUŠAN FUŠTAR  
DUŠKO KNEŽEVIĆ**

**DECISION ON DEFENDANT DUŠAN FUŠTAR'S EMERGENCY MOTION SEEKING  
A TEMPORARY PROVISIONAL RELEASE TO ATTEND THE 40-DAY MEMORIAL  
OF HIS FATHER'S DEATH**

**Office of the Prosecutor:**

Ms. Joanna Korner  
Ms. Sureta Chana  
Ms. Jocelyne Bodson  
Mr. Nicholas Koumjian

**Counsel for the Accused:**

Mr. Jovan Simić, for Željko Mejačić  
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

**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 “Defendant, Dusan Fustar’s Emergency Motion Seeking A Temporary Provisional Release to Attend the 40 Day Memorial of His Father’s Death”, filed by the Defence of Dušan Fuštar (“accused”) on 7 July 2003 (“Motion”), seeking the temporary, provisional release of the accused from detention so that he may attend the 40-day memorial service of his father,

**NOTING** the “Prosecution’s Response to ‘Defendant, Dušan Fuštar’s Emergency Motion Seeking A Temporary Provisional Release to Attend the 40 Day Memorial of His Father’s Death’”, filed by the Office of the Prosecutor (“Prosecution”) on 10 July 2003 (“Response”), opposing the Motion on grounds that the proposed security procedures are insufficient to guarantee the return of the accused and the safety of witnesses and that the requested length of the release is not justified for the purpose of attending the memorial service,

**NOTING** also a “Defendant, Dusan Fustar’s Emergency Motion Seeking A Temporary Provisional Release to Attend His Father’s Funeral”, filed by the accused on 10 June 2003,

**NOTING** the certificate of death (and its translation) submitted as Exhibits A and A-1 to the Motion,

**CONSIDERING** that the accused voluntarily surrendered to the International Tribunal on 31 January 2002,

**CONSIDERING** that the accused’s defence counsel has represented the following to the Trial Chamber:

- (1) defence counsel “is prepared to accompany [the accused] for the duration of his provisional release, and to personally effectuate his return into the custody of the ICTY”;
- (2) “an official of the Republika Srpska government has already made inquiries and preliminary arrangements for” the travel of the accused;
- (3) the Dutch Ministry of Foreign Affairs has been requested to allow the accused to travel, under these special circumstances, and to provide the accused with the necessary travel documents,

**CONSIDERING** that, in the special circumstances in this case, obvious humanitarian considerations substantially favouring the grant of provisional release for a limited period, namely so that a son be permitted to pay his last respects to his deceased father, weigh in favour of granting the Motion,

**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 Trial Chamber considers that the accused is not likely to pose a danger to any victim, witness or other person and accepts that sufficient safeguards and guarantees for the return of the accused have been demonstrated in the Motion,

**PURSUANT TO** Article 29 of the Statute of the International Tribunal and Rule 65 of the Rules of Procedure and Evidence of the International Tribunal,

**HEREBY GRANTS** the Motion, **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 Dušan Fuštar on the following terms and conditions:

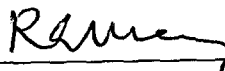
- (1) (a) On Friday, 18 July 2003, the accused shall be transported to Schiphol airport in the Netherlands by the Dutch authorities;
- (b) At Schiphol airport, the accused shall be provisionally released into the custody of a designated official of Republika Srpska (whose name is to be notified to the Trial Chamber) who shall accompany the accused for the remainder of his travel to Republika Srpska and to his place of temporary residence;
- (c) On his return flight, the accused shall be accompanied by the same designated official of Republika Srpska (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 no later than Sunday, 20 July 2003, and the Dutch authorities shall then transport the accused back to the United Nations Detention Unit;
- (d) The accused or the Government of Republika Srpska shall bear all expenses concerning transport of the accused from Schiphol airport to his place of temporary residence and back;
- (e) During the period of his provisional release, the accused shall abide by the following conditions, and the authorities of Republika Srpska, including the local police in

his place of temporary residence, shall ensure compliance with such conditions:

- (i) The accused shall remain within the confines of the municipality of Prijedor and within his family's home in Prijedor when he is not travelling to and from the International Tribunal's Detention Unit or to activities directly related to his father's memorial service, *i.e.*, the local Orthodox Christian Church and the JARUGE cemetery;
  - (ii) The accused shall be under constant, 24-hour surveillance of the authorities of Republika Srpska;
  - (iii) The accused shall surrender any travel documents to the authorities of Republika Srpska;
  - (iv) The accused shall not 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;
  - (v) The accused shall not have any contact in any manner whatsoever with persons other than his relatives, close friends, and persons necessary to his father's memorial services, *e.g.*, any clergy;
  - (vi) The accused shall not discuss the case with anyone, including the media, other than his defence counsel;
  - (vii) The accused shall 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 attempt to escape or breach any of the foregoing terms and conditions of his provisional release, as set out herein by the Trial Chamber;
- (3) **REQUESTS** the competent authorities of Republika Srpska to co-operate with and support the Registrar and any persons instructed by the Registrar in the fulfilment of the Trial Chamber's Order, according to Article 29 of the Statute of the International Tribunal, and to report immediately to the Trial Chamber any breach of the conditions set forth above,
- (4) **REQUESTS** the authorities of all States through which the accused will travel to hold the accused in custody for any time he will spend in transit and 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 the accused's defence counsel and the relevant authorities of the Netherlands as to the

practical arrangements for the accused's release, to keep the accused in custody until relevant arrangements are made for his travel, and to take all appropriate and necessary steps to ensure that the accused is transported and escorted to his father's memorial service and back to the Detention Unit no later than Sunday, 20 July 2003.

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



Richard May  
Presiding

Dated this eleventh day of July 2003  
At The Hague,  
The Netherlands

[Seal of the Tribunal]