



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: 6 December 2005
Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 6 December 2005

PROSECUTOR

v.

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

**DECISION ON DEFENDANT DUŠAN FUŠTAR'S PETITION
SEEKING A TEMPORARY PROVISIONAL RELEASE**

Office of the Prosecutor:

Ms. Carla del Ponte
Ms. Ann Sutherland

Counsel for the Accused:

Mr. Jovan Simić and Mr. Zoran Živanović, for Željko Mejačić
Mr. Branko Lukić, for Momčilo Gruban
Mr. Theodore Scudder and Mr. Dragan Ivetić, for Dušan Fuštar
Ms. Slobodanka Nedić, 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 SEIZED of a “Defendant, Dušan Fuštar’s Petition Seeking a Temporary Provisional Release to Attend the 40 Day Memorial of his Mother-in-Law’s Death,” filed by the Defence of Dušan Fuštar (“the Accused”) on 30 November 2005 (“Petition”), requesting that the Accused be provisionally released from detention from 13 to 20 December 2005, in order to travel to Bosnia and Herzegovina for the 40-day memorial of the death of his mother-in-law,

NOTING the “Decision on Defendant Dušan Fuštar’s Emergency Motion Seeking a Temporary Provisional Release,” filed on 9 November 2005, and the “Decision on Defendant Dušan Fuštar’s Emergency Motion to Reconsider,” filed on 10 November 2005,

NOTING also the “Decision on Defendant Dušan Fuštar’s Emergency Motion Seeking a Temporary Provisional Release to Attend the 40-day Memorial of his Father’s Death,” filed on 11 July 2003, and the terms of the guarantees then provided,

CONSIDERING that the Accused has submitted a formal written request to the government of Republika Srpska seeking its provision of guarantees and assurances in support of the Petition, but that such guarantees have not been provided to the Trial Chamber, and that the Chamber cannot therefore be assured that the Accused will be accompanied and properly supervised by officials of the Republika Srpska government, should a period of temporary provisional release be granted,

CONSIDERING that, before any decision granting temporary provisional release can be granted, it is necessary for the Accused to ensure the provision to the Trial Chamber of written guarantees from the government of the Republika Srpska, specifying the measures that would be taken by that government to ensure that the Accused abides by the terms of any order for temporary provisional release and returns to the Hague upon the expiry of the period of his temporary provisional release,

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

HEREBY DENIES the **PETITION** without prejudice, should the Accused obtain the necessary written guarantees and provide these to the Trial Chamber sufficiently in advance of the date upon

which temporary provisional release is sought.

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



Patrick Robinson
Presiding

Dated this sixth day of December 2005
At The Hague,
The Netherlands

[Seal of the Tribunal]