



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: 28 July 2004  
Original: ENGLISH

**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge O-Gon Kwon  
Judge Bert Swart

**Registrar:** Mr. Hans Holthuis

**Decision of:** 28 July 2004

**PROSECUTOR**  
v.  
**ŽELJKO MEJAKIĆ**  
**MOMČILO GRUBAN**  
**DUŠAN FUŠTAR**  
**DUŠKO KNEŽEVIĆ**

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**DECISION ON DUŠKO KNEŽEVIĆ'S REQUEST PURSUANT  
TO RULE 81 (D)**

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**The Office of the Prosecutor:**

Ms. Ann Sutherland

**Counsel for the Accused:**

Mr. Jovan Simić, 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 (“the International Tribunal”),

**BEING SEISED** of “Duško Knežević’s Request Pursuant to Rule 81 (D)” filed confidentially on 14 April 2004 filed by the defence for the accused Duško Knežević (“Defence”) seeking orders: (1) to prohibit photography, video and audio recording of the accused Duško Knežević by third persons; (2) directing the Registry not to publish or disclose photographs, video and audio records of the accused Duško Knežević to the media; and (3) addressed to the authorities of Republika Srpska to remove billboards and posters with the photograph of the accused and to prohibit posting such billboards and posters while the case is pending, as amended by a filing of 4 May 2004 and addendum filed 11 May 2004 (together “the Motion”), in which the Defence amends its request under order (3) to seek an order directing the Office of the Prosecutor (“Prosecution”) and Registry “to cease advertising of indictments in the form wic[h] [sic] contains the photograph of accused Knežević and to prohibit any advertisement containing Knežević’s photograph or video and audio record while this case is pending”, asserting that such billboards, posters and related television broadcasts are “published at the request of the Prosecutor of ICTY and sent by the Registry to the authorities in Republika Srpska according to Rule 60 of the Rules”,

**NOTING** the responses of the Prosecution filed on 28 April and 25 May 2004, objecting to the relief sought, denying any involvement of the Prosecution with the billboards or television broadcasts and stating that, in relation to the posters, once an accused has been arrested, his picture does not appear on subsequent posters, and that it is beyond the powers and duties of the Prosecution to retrieve all previously issued posters whenever an accused is taken into custody,

**CONSIDERING** the arguments put forward by the Defence in support of the Motion, namely, as regards the first and second requests, that the various Orders issued by the Trial Chamber in this case permitting release of audio-and video-recordings of the proceedings of the International Tribunal were issued before the surrender of this accused and that therefore his counsel had no opportunity to object to the issue of such Orders, [REDACTED] and as regards the third request (as amended), that “the publication of the advertisement in such form as it was done by Prosecution breaks the right of accused established by the Article 21 of the Statute of the Tribunal: the right to fair trial [sic] and the right to be presumed innocent until proved guilty”, and constitutes a misuse of the principle of public proceedings,

**CONSIDERING** that, with regard to the timing of the objection to the Orders of the Trial Chamber authorising release of the audio- and video-recording, those Orders form part of the public record of the case and that defence counsel are expected to review the existing record of a case when an accused is surrendered to the International Tribunal, that defence counsel for this accused was assigned in September 2002 and only raised this complaint more than one year later,

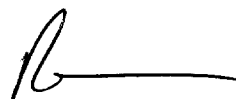
**CONSIDERING** that, as stated in its Decision of 20 April 2004<sup>1</sup>, the potential impact of pre-trial media coverage is a factor to be taken into account at trial<sup>2</sup> and not a matter for determination at this stage of the proceedings,

**CONSIDERING** therefore that, although the Trial Chamber has discretion pursuant to Rule 5 (B) of the Rules to grant relief when an objection is raised other than at the first opportunity where the non-compliance is proved and the Trial Chamber is satisfied that the objecting party has suffered material prejudice, the Trial Chamber is not satisfied as to the issue of prejudice sufficient to warrant the relief sought by orders (1) and (2),

**CONSIDERING** further that, with respect to the relief sought by order (3), the Prosecution has asserted that it "has no involvement with the billboards or television broadcast" and the Defence has not provided any evidence to show that the Prosecution has requested the publication of the billboards and the television broadcast in Republika Srpska, relying instead on mere assertions and speculation,

**HEREBY DISMISSES** the Motion.

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



Patrick Robinson  
Presiding

Dated this twenty-eighth day of July 2004  
At The Hague  
The Netherlands

[Seal of the Tribunal]

<sup>1</sup> Decision On Motions To Remove Photographs Of Accused From ICTY Website, 20 Apr. 2004.

<sup>2</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-1, Opinion and Judgment, 7 May 1997, paras 542-44, *Prosecutor v. Simić et al.*, Case No. IT-95-5, Decision on Joint Defence Motion to Exclude Evidence, 1 Aug. 2002.