

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

(IT-05-88/2-R77.2)

DRAGOMIR PEĆANAC**DRAGOMIR
PEĆANAC***convicted of contempt of the Tribunal in the Tolimir case*Prosecution witness before Trial Chamber II in the case *The Prosecutor v. Zdravko Tolimir**Crimes convicted of:***Contempt of the Tribunal (Rule 77 of the Rules of Procedure and Evidence of the Tribunal)**

- Pećanac failed to answer a subpoena to appear as a Prosecution witness in the Tolimir trial

Order (in lieu of an indictment)	21 September 2011 (made public on 19 October 2011)
Initial and further appearances	10 October 2011, chose not to enter a plea; 19 October 2011, pleaded not guilty
Trial Chamber Judgement	9 December 2011, sentenced to three months' imprisonment

STATISTICS

Trial days	2
Witnesses called by Chamber	0
Chamber exhibits	4
Witnesses called by Defence	0
Defence exhibits	31

TRIAL	
Commenced	30 November 2011
Closing arguments	1 December 2011
Trial Chamber II	Judge Christoph Flügge (presiding), Judge Antoine Kesia-Mbe Mindua and Judge Prisca Matimba Nyambe
Counsel for the Defence	Jens Dieckmann
Trial Chamber Judgement	9 December 2011

RELATED CASES <i>by geographical area</i>	
TOLIMIR (IT-05-88/2)	

INDICTMENT AND CHARGES

In accordance with Rule 77 of its Rules of Procedure and Evidence, the Tribunal can conduct proceedings for contempt of court. Although the ICTY's jurisdiction in respect of contempt is not expressly outlined in the Statute, it is firmly established that the Tribunal possesses an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded. Those who knowingly and wilfully interfere with the Tribunal's administration of justice may, therefore, be held in contempt of the Tribunal.

An order in lieu of an indictment against Pećanac was filed confidentially on 21 September 2011. It was made public on 19 October 2011.

According to the order, a subpoena was issued by the Chamber on 31 August 2011 ordering Pećanac to appear for testimony before it in the case of Prosecutor v. Zdravko Tolimir, during the week of 5 September 2011, or on a date and time to be specified. On 2 September 2011, Pećanac was informed of the contents of the subpoena and of his obligation to appear before the Trial Chamber but he obstructed all attempts by the Tribunal to facilitate his safe transfer to The Hague, which thereby resulted in his failure to appear before the Chamber as ordered or to show good cause why he could not comply with the subpoena.

Pećanac was charged with:

Contempt of the Tribunal (Rule 77 of the Rules of Procedure and Evidence)

TRIAL

On 30 November 2011, both parties presented their evidence. On 1 December 2011, the Defence made its closing arguments.

TRIAL CHAMBER JUDGEMENT

The Chamber, by majority with Judge Nyambe dissenting, concluded that the accused neither appeared before the Chamber as ordered nor showed good cause why he could not comply with the subpoena. Therefore the Chamber, by majority with Judge Nyambe dissenting, found that the accused was fully able to comprehend not only the subpoena and its implications but also the obligations it imposed on him from its service on 2 September 2011 until his arrest on 27 September 2011. The Chamber, by majority with Judge Nyambe dissenting, concluded that the accused knowingly and wilfully interfered with the administration of justice and therefore the requisite *mens rea* for contempt was proven. The Chamber, by majority with Judge Nyambe dissenting, concluded that, by failing to appear before the Chamber as ordered or to show good cause why he could not comply with the subpoena, the accused knowingly and wilfully interfered with the administration of justice and thereby committed an act of contempt of the Tribunal punishable under Rule 77.

On 9 December 2011, the Trial Chamber rendered its judgement, convicting Dragomir Pećanac of:

- Contempt of the Tribunal (Rule 77 of the Rules of Procedure and Evidence of the Tribunal)

Sentence: three months' imprisonment