



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

Case No.: IT-05-88/2-R77.2
Date: 25 November 2011
Original: English

IN TRIAL CHAMBER II

Before: Judge Christoph Flügge, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: Mr. John Hocking

Decision of: 25 November 2011

IN THE CONTEMPT CASE OF DRAGOMIR PEĆANAC

PUBLIC

**PARTIAL DECISION ON THE MOTION FOR DISMISSAL OF THE
ORDER IN LIEU OF INDICTMENT AND FOR STAY OF DEADLINE**

Counsel for the Accused
Mr. Jens Dieckmann

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 (“Tribunal”);

BEING SEISED OF “Dragomir Pećanac’s Motion to Dismiss the Order in Lieu of Indictment and Request for Stay of Deadline”, filed confidentially on 24 November 2011 (“Motion”);

NOTING that in the Motion Dragomir Pećanac (“Accused”) requests that the Chamber, *inter alia*:

- 1) Dismiss the contempt charge against the Accused in the “Order *in Lieu* of Indictment” filed confidentially on 4 October 2011 and in public redacted form on 19 October 2011¹ based on the argument that the evidence to be proffered by the Chamber is insufficient to support a conviction against him; and
- 2) Stay the deadline for the “Defence 65 *ter* (G) submissions” until the disposal of the issues raised in the Motion;²

NOTING that in the “Order Regarding Preparation for and Conduct of the Trial” issued on 14 November 2011 (“Order Regarding Trial”) the Chamber ordered, *inter alia*, that by 23 November 2011 the Accused shall provide the Chamber with (a) a list of witnesses he intends to call (“Defence witnesses”) with the name or pseudonym of each witness, a brief summary of the facts on which each witness will testify and the estimated length of time required for each witness and the total time estimated for presentation of the defence case; (b) a list of exhibits the Accused intends to offer in his case; and (c) an estimate of the time the Accused will need for an opening statement and a closing statement, if necessary (collectively “Information about the Defence Case”);³

NOTING that in an email sent on behalf of the Chamber on 22 November the Chamber ordered that the Accused provide Information about the Defence Case on 24 November 2011;

NOTING that in the “Scheduling Order for the Pre-Trial Conference and the Start of Trial” issued on 10 November 2011, the Chamber ordered that the Pre-Trial Conference and the commencement of trial take place on Monday 28 November 2011;

NOTING that the Pre-Trial Conference has been scheduled for 11:00 a.m. and the commencement of trial for 3:15 p.m. on Monday 28 November 2011;

¹ Order Issuing a Public Redacted Version of the “Order *in Lieu* of Indictment”, 19 October 2011.

² Motion, pp. 9–10.

³ Order Regarding Trial, p. 3.

CONSIDERING that the trial may only take place if the Chamber decides to deny the request of the Defence to dismiss the contempt charge against the Accused and order his release from the UNDU (“Request for Dismissal of Charge and Release”);

CONSIDERING, therefore, that preparations for the Defence case should be suspended pending the decision of the Chamber on the Request for Dismissal of Charge and Release;

NOTING that the Chamber shall render its decision on the Request for Dismissal of Charge and Release as soon as possible;

CONSIDERING that, whatever decision the Chamber takes on the Request for Dismissal of Charge and Release, it is in the interests of the expeditious conduct of the proceedings for the Pre-Trial Conference to take place as scheduled on Monday 28 November 2011;

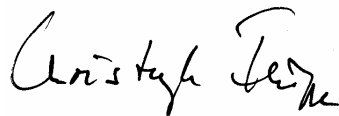
CONSIDERING that it would be in the interests of an expeditious conduct of the proceedings for the Chamber to decide on the scheduling of the commencement of the trial during the Pre-Trial Conference;

PURSUANT to Article 20(1) of the Statute of the Tribunal and Rule 54 of the Rules of Procedure and Evidence,

HEREBY PARTIALLY GRANTS the Motion, **POSTPONES** its decision on the Request for Dismissal of Charge and Release and **ORDERS** that

- (1) The obligation of the Accused to provide the Chamber with Information about the Defence Case shall be suspended;
- (2) The Pre-Trial Conference shall take place as planned at 11:00 a.m. on Monday 28 November 2011; and
- (3) The scheduling of the commencement of trial shall be dependent on the decision to be taken by the Chamber on the Request for Dismissal of Charge and Release.

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



Judge Christoph Flüge

Presiding Judge

Dated this twenty-fifth day of November 2011
At The Hague
The Netherlands

[Seal of the Tribunal]