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Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 9 December 2011

Contempt Judgement Summary For Dragomir Pećanac

Please find below the summary of the Judgement read out today by Judge Flügge:

The Chamber, consisting of myself, Judge Christoph Flügge, as Presiding Judge, Judge Antoine Kesia-Mbe Mindua, and Judge Prisca Matimba Nyambe, will now pronounce the Judgement in the Contempt Case of Dragomir Pećanac.

The Chamber is sitting pursuant to Rule 15 *bis*, because Judge Mindua is absent this afternoon for urgent reasons.

I shall read a summary of the Chamber's findings. The authoritative account of the Chamber's findings is contained in the written Judgement, copies of which will be made available after this hearing. The Accused will be given a confidential version of this Judgement, and a public redacted version will be available to the public.

First, I should outline the case against the Accused.

In the Order *in Lieu* of Indictment the Chamber ordered the prosecution of the Accused for contempt of the Tribunal, which is punishable under Rule 77 of the Rules of Procedure and Evidence of the Tribunal.

The Accused is prosecuted for having been informed on 2 September 2011 of the contents of the subpoena *ad testificandum* dated 31 August 2011, and of his obligation to appear before the Chamber, obstructing all attempts by the Victims and Witnesses Section of the Tribunal to implement the Decision on Safe Conduct and make arrangements for his travel to The Hague, thereby failing to appear before the Chamber as ordered or to show good cause why he could not comply with the Subpoena, and therefore knowingly and wilfully interfering with the administration of justice by refusing to comply with the Subpoena.

The charge against the Accused rests on Rule 77(A) which provides in relevant part:

The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who [...] without just excuse fails to comply with an order to attend [...] before a Chamber;

To satisfy the material element of contempt under Rule 77(A), an order by a Chamber, whether oral or written, must be objectively breached and to satisfy the mental element for contempt, there must be a knowing and wilful conduct in violation of a Chamber's order.

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I turn now to the findings by the Majority of the Chamber on the material element of the offence of contempt:

It is necessary to determine whether during the period from the service of the Subpoena on the Accused on the 2nd of September 2011 to his arrest on the 27th of September 2011 the Accused failed to appear before the Chamber as ordered or to show good cause why he could not comply with the Subpoena.

First, it should be noted that the Accused did not appear as ordered before he was arrested on the 27th of September.

A Memorandum of Service of the Subpoena records what the Accused said when he was served with the Subpoena on the 2nd of September. He indicated that he was "willing to appear but unable to give testimony for reasons of health". This without further specifics or substantiation cannot amount to showing good cause why he should not testify. He is also recorded as having stated that as a former member of the armed forces he has an obligation to keep state, official and military secrets. Again, this cannot amount to showing good cause why he should not testify. It is certainly no impediment to his appearance or to his giving testimony on matters not covered by this obligation. The other points that the Accused mentioned when he was served with the Subpoena are simply practical matters that he and the relevant authorities needed to resolve before he could testify.

Of the various issues that the Accused raised when he was served with the Subpoena, only "reasons of health", if properly substantiated, could constitute a "good cause" for not complying with the Subpoena. After service of the Subpoena, the Accused took no steps to substantiate these "reasons of health".

The Subpoena imposed an obligation on the Accused to appear before the Tribunal during the week of the 5th of September or on a further date to be specified. It also alerted him to the manner in which this was to be facilitated. Irrespective of the practical arrangements to be made by the Victims and Witnesses Section and the Serbian authorities for his travel to the Tribunal, in the entire period from the moment of service of the Subpoena until his arrest on the 27th of September 2011, the Accused took none of the multiplicity of actions necessary either to facilitate his attendance at the Tribunal or to show good cause why he should not attend.

The Chamber, by majority with Judge Nyambe dissenting, concludes that the Accused neither appeared before the Chamber as ordered nor showed good cause why he could not comply with the Subpoena.

I shall now move on to the findings by the Majority of the Chamber on the mental element of the offence.

On the basis of medical reports and the Memorandum of Service the Chamber, by majority with Judge Nyambe dissenting, finds 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 the 2nd of September until his arrest on the 27th of September. Therefore, the Chamber, by majority with Judge Nyambe dissenting, finds that the Accused knowingly and wilfully interfered with the administration of justice and therefore the requisite mental element for contempt is proven.

Accordingly, the Chamber, by majority with Judge Nyambe dissenting, is satisfied beyond reasonable doubt that the Accused committed an act of contempt of the Tribunal punishable under Rule 77.

Will the Accused Dragomir Pećanac please rise.

For all the reasons I have summarized, the Trial Chamber, by majority with Judge Nyambe dissenting, finds you, Dragomir Pećanac, to be guilty of contempt of the Tribunal, punishable under Rule 77.

Contempt of the Tribunal is a serious offence, which goes to the essence of the administration of justice. By your failure to comply with the Subpoena and to appear at the seat of the Tribunal and testify, you have acted against the interests of justice.

Having considered all of the relevant factors the Majority of the Chamber sentences you to a single sentence of three months of imprisonment, subject to credit being given for the 74 days that you have spent in detention.

You may sit down.

As I said at the beginning, copies of the written Judgement will be made available after the hearing. The dissenting opinion of Judge Nyambe is appended to the written Judgement.

I have to address one final matter which was raised by the Defence during the closing arguments. The Defence requested an Order for Safe Conduct, if the Accused were to be acquitted and released. Since the Accused has been convicted, this request is now moot. Also the Chamber would draw the attention of the Defence to the provisions regarding immunity in Article XX of the Headquarters Agreement between the United Nations and the Host State.

The hearing is now adjourned.
