



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: 19 October 2011  
Original: English

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**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. John Hocking

**Order of:** 19 October 2011

**IN THE CONTEMPT CASE OF DRAGOMIR PEĆANAC**

**PUBLIC**

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**ORDER ISSUING A PUBLIC REDACTED VERSION OF THE “ORDER *IN LIEU* OF INDICTMENT”**

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**Counsel for the Accused**  
Mr. Jens Dieckmann (Duty Counsel)

**Office of the Prosecutor**  
Mr. Peter McCloskey

**The Government of the Republic of Serbia**

**The Government of the Kingdom of the Netherlands**

**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”);

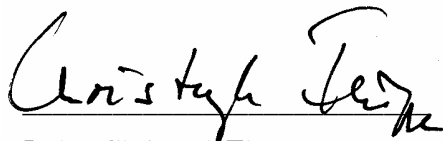
**NOTING** the “Order *in Lieu* of Indictment” filed confidentially by the Chamber on 21 September 2011 (“Order *in Lieu* of Indictment”);

**CONSIDERING** that except for the paragraph containing the Accused’s address on page 3, there is no longer a reason for the Order *in Lieu* of Indictment to remain confidential;

**PURSUANT** to Rule 54 of the Rules of Procedure and Evidence,

**HEREBY ISSUES** a public redacted version of the Order *in Lieu* of Indictment.

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



Judge Christoph Flügge

Presiding Judge

Dated this nineteenth day of October 2011  
At The Hague  
The Netherlands

[Seal of the Tribunal]

**UNITED  
NATIONS**

International Tribunal for the  
Prosecution of Persons  
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**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. John Hocking

**Order:** 21 September 2011

**IN THE CONTEMPT CASE OF DRAGOMIR PEĆANAC****PUBLIC REDACTED VERSION**

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**ORDER *IN LIEU* OF INDICTMENT**

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**The Accused**  
Dragomir Pećanac

**The Government of the Republic of Serbia**

**Office of the Prosecutor**  
Mr. Peter McCloskey

**The Government of the Kingdom of the  
Netherlands**

**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** the “Prosecution’s Application for an Order *in lieu* of Indictment, a Warrant of Arrest and Order for Surrender of Dragomir Pećanac, with Appendices”, filed confidentially on 15 September 2011 (“Application”), in which the Prosecution requested the Chamber to (1) issue an order *in lieu* of indictment and warrant for the arrest of Pećanac; (2) order the Government of the Republic of Serbia to execute the arrest warrant on Pećanac; and (3) order the Government of the Republic of Serbia and the Registry to take all necessary steps to transfer the witness to the Tribunal upon the successful execution of the arrest warrant;<sup>1</sup>

**NOTING** the subpoena *ad testificandum* issued by the Chamber on 31 August 2011 (“Subpoena”), ordering Pećanac to appear for testimony before it in the case of *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T (“Tolimir case”), during the week of 5 September 2011, or on a date and time to be specified;<sup>2</sup>

**NOTING** the Chamber’s request to the Government of the Republic of Serbia on 31 August 2011 to serve the Subpoena on Pećanac, to take all reasonably necessary measures to ensure that Pećanac appears to testify at the Tribunal as indicated in the Subpoena, and to provide a written report on the execution of the Subpoena;<sup>3</sup>

**NOTING** the Government of the Republic of Serbia submitted a Memorandum of Service of the Subpoena dated 2 September 2011 on 9 September 2011, indicating that Pećanac had read the Subpoena, signed for its receipt, and stated that he was willing to appear before the Chamber but unable to give testimony “for reasons of health and also because an indictment has been raised against [him] in Sarajevo and a criminal report filed in Belgrade on the same grounds”;<sup>4</sup>

**NOTING** Rule 77 (A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), which provides that 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

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<sup>1</sup> Motion, paras. 1, 7, 11.

<sup>2</sup> Subpoena *Ad Testificandum* for Dragomir Pećanac, confidential, 31 August 2011.

<sup>3</sup> Order to the Government of Republic of Serbia Concerning Subpoena, confidential, 31 August 2011.

<sup>4</sup> Memorandum of Service of Subpoena for Witness Dragomir Pećanac, confidential, 9 September 2011.

without just excuse fails to comply with an order to attend before a Chamber;<sup>5</sup> Rule 77 (C)(iii), which provides that a Chamber when it has reason to believe that a person may be in contempt of the Tribunal, may initiate proceedings itself; and Rule 77 (D)(ii), which provides that the Chamber may issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself if it considers that there are sufficient grounds to proceed against a person for contempt;

**NOTING** that the Victims and Witness Section of the Registry (“VWS”) informed the Prosecution that (1) following receipt of the Memorandum of Service of the Subpoena and the instruction from the Officer of the Prosecutor, the VWS initiated arrangements for Pećanac’s travel to appear before the Chamber; (2) the VWS made several attempts to contact Pećanac by telephone on 10, 11 and 12 September 2011 and that Pećanac stated that he did not want to talk on the phone with unidentified persons and required that he be met in person, despite the fact that VWS staff identified themselves as members of the Registry of the Tribunal; (3) that on 12 September 2011, at the request of VWS, and to facilitate the process, the Belgrade Registry Liaison Officer (“Liaison Officer”) contacted Pećanac to set up a meeting where the practical arrangements for his travel to The Hague would be initiated and the Decision on Safe Conduct could be provided to him; (4) despite VWS’s attempt to facilitate the process, the Liaison Officer reported that Pećanac refused to go to the Belgrade Field Office or meet any members of the Tribunal’s Staff and intended to file a complaint with the local police against Tribunal Staff; (5) in a telephone conversation with the Liaison Officer on 13 September 2011, Pećanac stated that he would not speak to or meet with any member of the Tribunal’s staff and that if the Tribunal wants to contact him, these contacts should be directed through the local authorities in Serbia, and demanded not to be contacted again by the Liaison Officer;<sup>6</sup>

**CONSIDERING** that Pećanac, despite having submitted in the Memorandum of Service that he was willing to appear before the Chamber, is obstructing any attempts by the VWS to make suitable arrangements for his travel to The Hague and his appearance as a witness before the Chamber;

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<sup>5</sup> Rule 77 (A)(iii).

<sup>6</sup> Application, Appendix B, VWS Internal Memorandum, 13 September 2011.

**CONSIDERING** that that Pećanac's obstructive behaviour in the face of repeated attempts by the VWS to arrange for his travel to The Hague constitutes a failure to comply with the Subpoena without just excuse;<sup>7</sup>

**CONSIDERING** that the Chamber thus has reason to believe that Pećanac may be in contempt of the Tribunal, and that under such circumstances there are sufficient grounds to proceed against Pećanac for contempt, to issue an order *in lieu* of an indictment, and to either direct *amicus curiae* to prosecute the matter or prosecute the matter itself, in accordance with Rule 77(D)(ii) of the Rules;

**PURSUANT TO** Rules 54 and 77 of the Rules,

**HEREBY GRANTS** the Motion, Judge Nyambe dissenting with reasons to follow, **ISSUES** this order *in lieu* of an indictment, and **ORDERS** the prosecution for **CONTEMPT OF THE TRIBUNAL**, punishable under Rule 77, of:

**DRAGOMIR PEĆANAC**, born on 6 June 1964 at Sarajevo, Bosnia and Herzegovina, [REDACTED] whose prosecution is being pursued 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 VWS 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;

**AND DECIDES** to prosecute the matter itself.

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<sup>7</sup> While Pećanac has stated that he would not be able to testify "for reasons of health", he has provided no basis for this submission and, moreover, does not offer it as an impediment to his travel, given his submission that he would be willing to appear in The Hague. Similarly, the fact that an indictment has been issued against him in Sarajevo and a criminal report filed against him in Belgrade on the same grounds, does not amount to a just excuse, as the Chamber has issued a decision ordering Pećanac's safe conduct. *See* Decision on Prosecution Request for an Order for Safe Conduct for Witness Dragomir Pećanac, filed confidentially on 9 September 2011.

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

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Judge Christoph Flügge

Presiding Judge

Dated this twenty-first day of September 2011  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**