



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: 4 November 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:** 4 November 2011

**IN THE CONTEMPT CASE OF DRAGOMIR PEĆANAC**

**PUBLIC**

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**ORDER REGARDING DOCUMENTS REFERRED TO IN THE ORDER *IN*  
*LIEU* OF INDICTMENT**

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**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”);

**NOTING** the “Order *in Lieu* of Indictment” filed confidentially on 4 October 2011 and in public redacted form on 19 October 2011;<sup>1</sup>

**NOTING** that in the Order *in Lieu* of Indictment the Chamber, with Judge Nyambe dissenting, ordered the prosecution of Dragomir Pećanac (“Accused”) for contempt of the Tribunal punishable under Rule 77 of the Rules of Procedure and Evidence (“Rules”) and decided to prosecute the matter itself;<sup>2</sup>

**NOTING** that the Order *in Lieu* of Indictment refers, *inter alia*, to two documents filed in *Prosecutor v. Zdravko Tolimir*, namely the “Memorandum of Service of Subpoena for Witness Dragomir Pećanac” filed confidentially on 9 September 2011 (“Memorandum of Service”)<sup>3</sup> and an Internal Memorandum from the Victims and Witness Section (“VWS Memorandum”) at confidential Appendix B of the “Prosecution’s Application for an Order *in lieu* of Indictment, a Warrant for Arrest and Order for Surrender of Dragomir Pećanac”, filed confidentially on 15 September 2011 (“Prosecution’s Application”);<sup>4</sup>

**NOTING** that, pursuant to Rule 77(E), Parts Four to Eight of the Rules shall apply *mutatis mutandis* to proceedings under Rule 77;

**NOTING** that at the Further Initial Appearance of the Accused held on 19 October 2011, the Accused entered a plea of not guilty;<sup>5</sup>

**NOTING** that at the Further Initial Appearance the Presiding Judge ordered that the Registry provide the Accused within ten days in a language he understands the “Subpoena *Ad Testificandum* for Dragomir Pećanac” filed confidentially on 31 August 2011, the “Order to the Government of the Republic of Serbia Concerning Subpoena” filed confidentially on 31 August 2011 and the Prosecution’s Application (collectively “Documents to be Provided”);<sup>6</sup>

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

<sup>2</sup> Order *in Lieu* of Indictment, p. 3.

<sup>3</sup> Order *in Lieu* of Indictment, p. 1, n. 4.

<sup>4</sup> Order *in Lieu* of Indictment, p. 2, n. 6.

<sup>5</sup> T. 24 (19 October 2011).

<sup>6</sup> T. 26–27 (19 October 2011).

**NOTING** that the Presiding Judge further ordered that the Accused may file preliminary motions pursuant to Rule 77(E) in conjunction with Rule 72(A) no later than ten days after the disclosure of the Documents to be Provided;<sup>7</sup>

**NOTING** that the Documents to be Provided were disclosed to the Accused on 19 October 2011;<sup>8</sup>

**NOTING** that the Accused did not file any preliminary motion within the prescribed period of ten days from the disclosure of the Documents to be Provided;

**NOTING** that on 2 November 2011 the Deputy Registrar decided to assign Mr. Jens Dieckmann as counsel to the Accused for a temporary period of 120 days effective of the date of the decision;

**NOTING** the “Order to the Registrar to make a Submission Pursuant to Rule 33(B) of the Rules of Procedure and Evidence” issued on 4 November 2011;

**CONSIDERING** that proceedings have now reached a point at which it is appropriate to plan for the trial;

**NOTING** that, pursuant to Rule 98, a Trial Chamber may *proprio motu* summon witnesses and order their attendance;

**NOTING** that pursuant to Article 20(1) of the Statute of the Tribunal (“Statute”) the Trial Chambers shall ensure that a trial is fair and expeditious;

**CONSIDERING** that the proceedings can be expedited if agreement can be reached with regard to relevant items of evidence;

**CONSIDERING** that it is in the interest of a fair and expeditious trial for the Chamber to be informed as soon as possible whether the Accused accepts the truth of the contents of the Memorandum of Service and/or the VWS Memorandum, so that the Chamber is in a position to proceed with the preparation of the trial and, in particular, to decide whether it shall exercise its discretion pursuant to Rule 98 to summon witnesses and order their attendance *proprio motu*;

**PURSUANT** to Article 20(1) of the Statute and Rules 54 and 77(E),

**HEREBY ORDERS** that

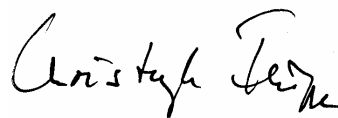
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<sup>7</sup> T. 27 (19 October 2011).

<sup>8</sup> CMSS Report on Disclosure of Filings from Tolimir Case to Dragomir Pećanac Pursuant to the Trial Chamber’s Oral Order, dated 19 October 2011, confidential, 20 October 2011.

- (1) The Accused shall inform the Chamber as soon as possible whether he accepts the truth of the contents of the Memorandum of Service and whether he accepts the truth of the contents of the VWS Memorandum; and
- (2) By Friday 11 November 2011 the Accused shall either provide the information ordered to be given in (1) above or inform the Chamber when he will be in a position to do so.

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



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Judge Christoph Flügge  
Presiding Judge

Dated this fourth day of November 2011  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**