



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-T
Case No.: IT-05-88/2-R77.2
Date: 18 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

Order of: 18 November 2011

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**ORDER REGARDING THE DISCLOSURE OF DOCUMENTS TO THE
DEFENCE IN THE CONTEMPT CASE OF DRAGOMIR PEĆANAC**

Office of the Prosecutor
Mr. Peter McCloskey

Counsel for Dragomir Pećanac
Mr. Jens Dieckmann

The Accused
Zdravko Tolimir

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 in the *Contempt Case of Dragomir Pećanac* (“Order *in Lieu* of Indictment” and “*Pećanac* Case” respectively);¹

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

NOTING that the Chamber in the *Pećanac* Case has the same composition as the Chamber in *Prosecutor v. Zdravko Tolimir* (“the instant case”);

NOTING that at the Further Initial Appearance on 19 October 2011 in the *Pećanac* Case the Presiding Judge ordered that the Registry provide Dragomir Pećanac within ten days in a language he understands certain documents from the instant case, namely 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 for an Order *in Lieu* of Indictment, a Warrant for Arrest and Order for Surrender of Dragomir Pećanac”, filed confidentially on 15 September 2011;³

NOTING that the Registry provided these documents to Dragomir Pećanac, as ordered, on 19 October 2011;⁴

NOTING that following an instruction from the Chamber conveyed in an email of 8 November 2011 the Registry disclosed on 9 November 2011 two further documents from the instant case to the Counsel for Dragomir Pećanac, namely “Prosecution’s Motion for Issuance of a Subpoena in relation to Dragomir Pećanac” filed confidentially on 28 July 2011 and the “Decision on

¹ *Contempt Case of Dragomir Pećanac*, Case No. IT-05-88/2-R77.2, Order Issuing a Public Redacted Version of the “Order *in Lieu* of Indictment”, 19 October 2011.

² Order *in Lieu* of Indictment, p. 3.

³ *Contempt Case of Dragomir Pećanac*, Case No. IT-05-88/2-R77.2, T. 26–27 (19 October 2011).

⁴ *Contempt Case of Dragomir Pećanac*, Case No. IT-05-88/2-R77.2, 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.

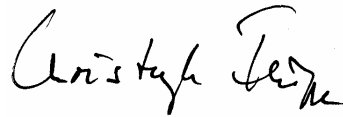
Prosecution's Motion for Issuance of a Subpoena in relation to Dragomir Pećanac" issued confidentially on 31 August 2011;⁵

CONSIDERING that it is in the interests of justice that the Accused Zdravko Tolimir should be notified of any variation of the status of a document that has been filed confidentially in the case against him;

PURSUANT TO Articles 20(1) and 21(2) of the Statute of the Tribunal and Rule 54 of the Rules,

HEREBY AFFIRMS the instructions given orally on 19 October 2011 and by email on 8 November 2011 for the disclosure of confidential documents to the Defence in the *Pećanac* case **AND ORDERS** that the confidentiality of these documents shall be maintained.

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



Judge Christoph Flügge
Presiding Judge

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

[Seal of the Tribunal]

⁵ Email communication from the Registry of 9 November 2011.