



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: 14 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: 14 November 2011

IN THE CONTEMPT CASE OF DRAGOMIR PEĆANAC

PUBLIC

**ORDER REGARDING PREPARATION FOR AND CONDUCT OF THE
TRIAL**

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;¹

NOTING that in the Order *in Lieu* of Indictment the Chamber, 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;²

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;³

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 that on 10 November 2011, the Chamber issued the “Scheduling Order for the Pre-Trial Conference and the Start of Trial”, in which it scheduled the Pre-Trial Conference and the commencement of the trial for Monday, 28 November 2011;

NOTING that the documentary evidence in the case against the Accused consists of:

- (a) the “Subpoena *Ad Testificandum* for Dragomir Pećanac” filed confidentially in *Prosecutor v. Zdravko Tolimir* on 31 August 2011,
- (b) the “Memorandum of Service of Subpoena for Witness Dragomir Pećanac” filed confidentially on 9 September 2011 in *Prosecutor v. Zdravko Tolimir* (“Memorandum of Service”), which is also Confidential Appendix A to 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 in *Prosecutor v. Zdravko Tolimir* (“Prosecution’s Application”), and

¹ 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 T. 24 (19 October 2011).

- (c) an Internal Memorandum from the Victims and Witness Section (“VWS Memorandum”), which is Confidential Appendix B to the Prosecution’s Application;

NOTING that the “Notice in Compliance with Order Regarding Documents referred to in the Order in Lieu of Indictment”, filed on 9 November 2011, in which the Accused accepts the truth of the contents of the Memorandum of Service;

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

NOTING the “Registrar’s Submission Pursuant to Rule 33(B) of the Rules Regarding the Chamber’s Order Dated 4 November 2011” filed confidentially and *ex parte* on 10 November 2011 (“Registrar’s Submission”);

NOTING that, pursuant to Article 30(3) of the Statute of the Tribunal (“Statute”), staff of the Registry enjoy the privileges and immunities accorded to officials of the United Nations under Articles V and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946;

NOTING the submission of the Registrar that should the Chamber consider it necessary to call any of the members of staff of the Registry who made the contacts with the Accused and attempts to contact the Accused referred to in paragraphs 4 to 7 of the VWS Memorandum (“the Registry Staff Concerned”), the Registrar would need to request a waiver of their immunity;⁴

NOTING that on 11 November 2011 the Chamber ordered that the Registrar as a matter of urgency request that the Secretary-General of the United Nations waive the immunity of the Registry Staff Concerned so that they may testify in the instant matter;⁵

CONSIDERING that if the Secretary-General waives the immunity of the Registry Staff Concerned, it is in the interests of justice that they testify as to what is stated in the VWS Memorandum;⁶

CONSIDERING that as of now the Chamber estimates that it will require approximately 30 minutes to question each of the Registry Staff Concerned;

⁴ Registrar’s Submission, para. 5.

⁵ Order to Request Waiver of Immunity for Certain Staff of the Registry, 11 November 2011, confidential (“Order to Request Waiver”), p. 4.

⁶ Order to Request Waiver, p. 3.

CONSIDERING that pursuant to Rule 127 a Trial Chamber may on good cause enlarge or reduce any time prescribed by the Rules, and as such the Chamber has decided to follow a simplified procedure;

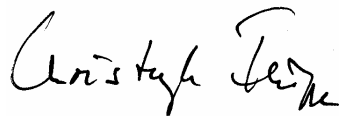
CONSIDERING that it is in the interests of the fair and expeditious conduct of the proceedings pursuant to Article 20(1) of the Statute to set out in advance the procedure to be followed in preparation for the trial and at the trial in this matter;

PURSUANT to Article 20(1) of the Statute and Rules 54, 65 *ter*, 73 *bis*, 77(E), 84, 85 and 98,

HEREBY ORDERS that:

- (1) If the Secretary-General waives the immunity of the Registry Staff Concerned so that they may testify in the instant matter, they shall testify as Chamber witnesses pursuant to Rule 98;
- (2) 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;
 - (c) an estimate of the time the Accused will need for an opening statement and a closing statement, if necessary;
- (3) The trial shall be conducted in the week of 28 November 2011;
- (4) The Chamber witnesses shall testify before the Defence Witnesses;
- (5) The Chamber shall question the Chamber witnesses first, after which they will be available for cross-examination by the Accused; and after the Chamber witnesses have testified, the Accused shall present his case; and
- (6) The Accused may present an opening statement and a closing statement, if he so wishes.

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



Judge Christoph Flügge

Presiding Judge

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

[Seal of the Tribunal]