

Blaskic case: The Appeals Chamber grants the Republic of Croatia the right to appeal the subpoena Decision and suspends the subpoena Decision pending the disposal of the appeal.

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BLASKIC CASE:

THE APPEALS CHAMBER GRANTS THE REPUBLIC OF CROATIA THE RIGHT TO APPEAL THE SUBPOENA DECISION AND SUSPENDS THE SUBPOENA DECISION PENDING THE DISPOSAL OF THE APPEAL

Background

On 25 July 1997, pursuant to Rule 108 of the Rules of Procedure and Evidence (RPE), the Republic of Croatia filed a Notice of the Republic of Croatia and Request for Stay of Trial Chamber's Order of 18 July 1997. In its Notice, the Republic of Croatia requested the Appeals Chamber to : Review and set aside the opinion and order of the Trial Chamber, dated July 18, 1997; Quash the *subpoena duces tecum* issued to the Republic of Croatia and Defence Minister Gojko [u]ak on January 15, 1997; Stay Trial Chamber II's order dated July 18, 1997, pending resolution of the appeal.

On 29 July 1997, the Appeals Chamber, consisting of Judge Cassese (presiding), Judge Karibi-Whyte, Judge Li, Judge Stephen and Judge Vohrah rendered a Decision on the Admissibility of the Request for Review by the Republic of Croatia of an Interlocutory Decision of a Trial Chamber (Issuance of *subpoena duces tecum*).

Appeals Chamber's Decision

In its Decision, the Appeals Chamber declared admissible the Republic of Croatia's request that it review the Decision on the Objection of the Republic of Croatia to the Issuance of *Subpoena Duces Tecum*, rendered by Trial Chamber II (consisting of Judge Kirk McDonald (presiding), Judge Odio-Benito and Judge Jan), on 18 July 1997 (see PR 230-E).

The crucial question of Croatia's right to appeal was examined by the Chamber which stated that although, "*Croatia is not entitled to invoke Rule 108 [...] since it is not a 'Party', as defined by Rule 2 of the Rules of Procedure and Evidence, namely either 'the Prosecutor or the Accused,'*" during the thirteenth plenary session of the Judges, "*a new Rule was adopted, Rule 108bis, which enables certain non-Parties only, namely States, to appeal interlocutory decisions of the Trial Chambers under certain circumstances*".

Applying this new Rule, the Chamber found Croatia's request admissible:

"First, Croatia is clearly "directly affected" by a Decision which holds that both Croatia and high officials of Croatia may be ordered to produce documents, in particular military records, before the Tribunal. Second, whether the Tribunal indeed has the power to subpoena States and high officials of States is clearly an issue "of general importance relating to the powers of the Tribunal", indeed it relates to the Tribunal's very competence".

Rule 108bis reads as follows :

(A) A State directly affected by an interlocutory decision of a Trial Chamber may, within fifteen days from the date of the decision, seek a review of the decision by the Appeals Chamber if that decision concerns issues of general importance relating to the powers of the Tribunal.

(B) The Prosecutor and the Defence shall be entitled to be heard by the Appeals Chamber.

(C) The Appeals Chamber, if it considers the request for review admissible may, if it deems it appropriate, suspend the execution of the impugned decision.

(D) Rule 116*bis* (B) shall apply *mutatis mutandis*.

Furthermore, the Appeals Chamber noted that although the Decision of Trial Chamber II was rendered before the adoption of Rule 108*bis* by the Judges during the Plenary Session, the amendment would not prejudice the rights of the accused due to its retroactive nature. The Appeals Chamber based its finding on Rule 6 (C) of the RPE and stated that, "*provided the appeals is heard expeditiously and does not unduly delay the trial proceedings*", General Blaskic's right to be tried diligently will not be violated.

Subpoena stayed by the Appeals Chamber

Having admitted the request for review, the Appeals Chamber stayed the execution of the subpoena in question, pursuant to Rule 108*bis* (C), stating that, "*although Article 29 of the Statute remains of course applicable as regards the obligation of States to cooperate with the Tribunal, the subpoena at issue cannot be executed while its validity is being challenged in appellate proceedings*".

Amici curiae invited

The Appeals Chamber invited *amicus curiae* briefs to be submitted by "States, non-governmental organisations and persons" on the following subjects:

(1) the power of a Judge or Trial Chamber of the International Tribunal to issue a *subpoena duces tecum*, i.e. according to the definition given by the Trial Chamber in its Decision of 18 July 1997, an order to a sovereign State compelling the production of documents, but not necessarily implying the assertion of a power to imprison and fine [...];

(2) the power of a Judge or Trial Chamber to make a request or issue a *subpoena duces tecum* to a high government official of a State;

(3) the appropriate remedies to be taken if there is non-compliance with a *subpoena duces tecum* or request issued by a Judge or Trial Chamber; and

(4) any other issue concerned in this matter, such as the question of the national security interests of a sovereign State".

Scheduling order

The Appeals Chamber issued the following scheduling order :

The Republic of Croatia is to file its Brief by 18 August 1997 ; The Prosecutor and Defence as to file any Briefs in Reply by 8 September 1997; The Republic of Croatia to file its Brief in Reply by 15 September 1997; Any *amicus curiae* briefs to be filed by 15 September 1997.