

Press Release

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BLASKIC CASE - SUBPOENA ISSUE:

APPEAL HEARINGS ON 22 AND 23 SEPTEMBER 1997

The Appeals Chamber will hold on Monday 22 September and Tuesday 23 September 1997 hearings on the "*admissibility and the merits*" of the appeal lodged by Croatia on 25 July 1997 against the "*Subpoena Decision*" handed down by Trial Chamber II on 18 July 1997. (Please refer to Press Release 230, 234, and 237)

This hearing is public and will commence on Monday 22 September at 10 a.m.

In view of this hearing Croatia submitted a **Brief on Appeal in Opposition to the subpoena duces tecum** and the Prosecutor submitted a **Brief in Response to the Brief of the Republic of Croatia in Opposition to Subpoena Duces Tecum** on 18 August and 8 September 1997 respectively. On 15 September 1997 Croatia filed its **Reply to Prosecutor's Brief in Response to the Brief of the Republic of Croatia in Opposition to Subpoena Duces Tecum**.

Croatia's Brief

In Croatia's Brief, the following objections to the *subpoena duces tecum* issued by Trial Chamber II on 18 July 1997 have been raised: The Trial Chamber exceeded the Tribunal's lawful authority by issuing a *subpoena duces tecum* to a State or its officials; The authority to issue compulsory orders to States is not inherent in all courts and cannot be implied; The Tribunal does not have express power to issue binding, compulsory orders to States; The Trial Chamber has incorrectly concluded that the issuance of a US-style, third party "discovery" device known as a "*Subpoena Duces Tecum*" is a valid excuse of the Tribunal's power to issue orders; The Tribunal may not issue compulsory orders to individual States officials or summon those officials to explain actions taken by their States; The Tribunal does not have the power to judge or determine Croatia's national security claims;

For the reasons mentioned above, the Republic of Croatia requests the Appeals Chamber to : **Reverse** Trial Chamber II's Decision on the Objection of Croatia to the Issuance of a *Subpoena Duces Tecum* of 18 July 1997; **Instruct** the Trial Chambers and Prosecutor that no further compulsory orders under threat of sanction may be issued to States and their Officials; **Quash** the *subpoena duces tecum* issued by Trial Chamber II to the Republic of Croatia and its Defence Minister Gojko Suđak on 15 January 1997, and reaffirmed by the Trial Chamber on 18 July 1997.

Prosecutor's Brief

In the **Prosecutor's Brief**, the denial of Croatia's Application by the Appeals Chamber has been requested "*for the reasons advanced in the Trial Chamber's Decision*".

The Prosecutor submitted the following arguments to support her request: The Statute and Rules of the Tribunal expressly empower the Tribunal to issue orders to States, including *subpoenas duces tecum* or orders for the production of evidence. The Statute and Rules also expressly empower the Tribunal to issue orders, including *subpoenas duces tecum* or orders for the production of evidence, to individuals, who are bound to comply with orders; The express provisions are reinforced by the provisions in the Statute concerning the Tribunal's jurisdiction; These express provisions in the Statute are fundamental to the Tribunal's effective fulfillment of its judicial function and mandate, as a criminal court, to prosecute and punish the most serious international crimes - genocide, crimes against humanity, and war crimes; States and State officials cannot unilaterally assert national security claims, and the Tribunal must first assess the validity of such claims.

In view of the above, the Prosecutor requests that the Appeals Chamber to: **Deny** Croatia's review and requests; **Uphold** the Trial Chamber's Decision of 18 July 1997; **Re-instate immediately** the *subpoena duces tecum* issued on 15 January 1997 by Judge McDonald to Croatia and the Croatian Defence Minister, Mr. Gojko Susak ; **Order** Croatia and Mr. Suđak to comply with these *subpoenas*

within 14 days of the release of the Appeals Chamber's Decision.

Reply of Croatia

In Croatia's reply, the following objections to the Prosecution's arguments have been raised: The Tribunal cannot issue a compulsory order to a State as part of its ancillary jurisdiction, which cannot serve as a substitute for a lack of primary jurisdiction; The Tribunal does not have the legal authority to compel the production of evidence from individuals or entities beyond its jurisdiction; The importance of the Tribunal's mission cannot justify a departure from the accepted rules of law and procedure; The Tribunal cannot compel individual State officials to comply with its orders, or to sanction those officials based upon a State's failure to comply; The Appeals Chamber must carefully examine both the form and the content of the *Subpoena* issued to Croatia and its Defense Minister; Croatia's national security considerations cannot be subject to the Trial Chamber's discretion.

For the reasons stated above, the Republic of Croatia sustained their request mentioned in its Brief.

Amici curiae

On 29 July 1997, the Appeals Chamber invited *amicus curiae* to submit their brief by 15 September 1997. The following persons or organisations have submitted an application to file an amicus brief: Professor Ruth Wedgwood, Yale Law School, United States of America; Professor Alain Pellet, University of Paris X- Nanterre, France, on his personal behalf and on behalf of "*Juristes sans frontières*"; Max-Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany; The Government of Norway; The Governments of Canada and New Zealand; The Government of the Netherlands; The People's Republic of China; Ms. Carol Elder Bruce*, member of the bar of the District of Columbia, USA; Professor Dr. Herwig Roggemann, Free University of Berlin, Germany.

*requested an extension of time to file her brief by Friday 19 September 1997