

Subpoena issue - The Appeals Chamber unanimously quashes the subpoenae issued to Croatia and its defence minister.

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SUBPOENA ISSUE:

THE APPEALS CHAMBER UNANIMOUSLY QUASHES THE SUBPOENAE ISSUED TO CROATIA AND ITS DEFENCE MINISTER

***Prosecutor free to submit a new request for
"a binding order to Croatia alone".***

On Wednesday 29 October 1997, the Appeals Chamber (consisting of Judge Cassese, presiding, Judge Karibi-Whyte, Judge Li, Judge Stephen, and Judge Vohrah) handed down its Decision on the appeal lodged by Croatia against the Trial Chamber's Decision of 18 July 1997 .

It "unanimously decided to quash the subpoena duces tecum" addressed on 15 January 1997 to Croatia and to its Defence Minister, who were ordered to turn over documentary evidence relating to the Blaskic Case. These *subpoenae* had been issued at the request of the Prosecutor who, as stated by the Appeals Chamber, is now "at liberty to submit a request (....) for a binding order addressed to Croatia alone".

THE APPEALS CHAMBER'S FINDINGS

The legal meaning of the term *Subpoena*

The Appeals Chamber defines the term *subpoena duces tecum* "*as referring only and exclusively to binding orders addressed by the International Tribunal, under threat of penalty, to individuals acting in their private capacity*".

A *subpoena* thus cannot be issued to a State nor to a State Official acting in his/her official capacity.

States can only receive orders or requests

The ICTY "*does not possess any power to take enforcement measures against sovereign States (....). Had the drafters of the Statute intended to vest the International Tribunal with such a power contrary to current international law, they would have expressly provided for it*".

States can only receive "*orders*" or "*requests*" which are binding under Article 29 of the Statute. In case of non-compliance, the Tribunal may make a judicial finding of this non-compliance and report the failure of the State to observe Article 29 of the Statute to the Security Council which "*will decide whether or not to take any action against the recalcitrant State*".

National security concerns claimed by States will be scrutinized

States are not allowed to claim national security interests for withholding documents or other evidentiary materials requested by the International Tribunal unless the legitimacy of their concerns has been assessed by a Trial Chamber.

State Officials are beyond the reach of the Tribunal

According to the Appeals Chamber, State officials acting in their official capacity cannot receive subpoenae or binding orders: they are mere instruments of a State and for all acts involving action by a State, the Tribunal must turn to the relevant State.

OFFICIAL SUMMARY AND DISPOSITION

A copy of the Summary read out in court by the Presiding Judge and of the Disposition of the Appeals Chamber's Decision can be obtained upon request at the Press and Information Office.

The full text of the Appeals Chamber's Decision will be available within days. It is also posted on the ICTY's Internet Homepage (<http://www.un.org/icty>).