

## **Croatia Fights Subpoena Decision**

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In response to what it perceives to be a "dangerous precedent", and which, Zagreb argues, has no basis in international law, Croatian authorities, on 25 July, filed a Notice of the Republic of Croatia and Request for Stay of Trial Chamber's Order of 18 July 1997. In this notice, Croatia requests the Appeals Chamber to:

1. Review and set aside the opinion of the Trial Chamber, dated 18 July 1997; 2. Quash the Subpoena Duces Tecum issued to Croatia and its defence minister Gojko Susak of 15 January 1997; 3. Stay the Trial Chamber order dated 18 July 1997, pending resolution of the appeal.

On 29 July 1997, the Appeals Chamber-consisting of Judge Cassese (Presiding) and Judges Karibi-Whyte, Li, Stephen and Vohrah-declared admissible Croatia's request. This was made possible due to the new rule (108bis), adopted at the last week's XIII Plenary Session of the Tribunal's Judges, which enables certain non-parties (namely states) to appeal interlocutory decisions of the Trial Chambers under certain circumstances.

According to Rule 108 bis, " A State directly affected by an interlocutory decision of a Trial Chamber may...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."

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."

Having admitted the request for review, the Appeals Chamber stayed the execution of the subpoena in question, 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."

The Appeals Chamber invited "States, non-governmental organisations and persons" to submit amicus curiae briefs on the subject of the Tribunal's power to issue subpoena duces tecum, i.e. an order to a sovereign State and a high official of the State, compelling production of documents, and on appropriate remedies in the case of non-compliance with a such order.

In a hearing that was held concerning the same topic in the middle of April before Trial Chamber II, more than a dozen amicus curiae prominent professors of international law from the world's universities and representatives of legal and human rights organisations had responded to that invitation.

**Location:** [Croatia](#)

**Focus:** [International Criminal Tribunal for the former Yugoslavia](#)

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