

Office of the Prosecutor
of the Paris Court of Appeal

Paris, 27 February 2008

Public Prosecutor (*Procureur général*) to the
Paris Court of Appeal

to

Mr. Patrick Baudouin
39, avenue Rapp
75007 Paris

Subject: Case of Donald Rumsfeld - triggering contesting the decision of the Paris
District Prosecutor (*Procureur de la République*) to dismiss the case,
16 November 2007.

Your ref: PB/JS/01 40 62 99 60

Our ref: 2007/09216/SGE

Dear Sir,

I read your letter of 20 December 2007 contesting the decision taken by the Paris District Prosecutor (*Procureur de la République*) on 16 November 2007 to dismiss the case mentioned in the reference.

After examining the case file again, I think the following points should be borne in mind:

The International Court of Justice, in its judgment of 14 February 2002, the "Democratic Republic of Congo v. Belgium", recalls that: "*certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal*" during the exercise of their functions. Upon termination of such functions, the judgment agrees that immunity shall cease, but only for acts accomplished before or after the period during which the protected person was occupying his/her post or for acts that, although accomplished during this period, are not related to the functions being carried out.

The charges against Mr. Rumsfeld, cannot be dissociated from his functions since, in the complaint, he is accused of having initiated or at least tolerated practices which, if confirmed, could fall under the New York Convention on Torture of 10 December 1984, and were carried out while he was US Secretary of Defence, between 20 January 2001 and 8 November 2006. The situation, thus, is different from that, for instance of Augusto Pinochet Ugarte, who was accused of acts (kidnapping, sequestration, assassinations) that did not fall under the exercise of his functions as President but were marginal to them.

The functions of a Secretary of Defence clearly fall within the framework defined by the International Court of Justice, which considers that immunity depends on the

essentially diplomatic nature of the functions exercised, requiring numerous travels abroad, under the same conditions as the Head of State and the Minister for Foreign Affairs. The list drawn up in the Yerodia judgment is not comprehensive and a British judge ruled along these lines in a case against the General Mofaz, Minister of Defence of Israel (Decision of 12 February 2004 by Judge C. I. Pratt, District Judge, Bow Street).

This immunity cannot be set aside on the grounds that certain violations, because of their gravity, make it impossible to maintain it. This is the meaning of the “Kadhafi” judgment (of the French Supreme Court – *Cour de cassation* - quashing the decision of 20 October 2000) which, contrary to allegations in the brief of 20 December 2007, does not recognise the existence of exceptions to this immunity besides when “*contrary international provisions bind the involved parties*”. It is difficult to imagine, if a general exception connected to the nature of the offence does exist, on what grounds the criminal chamber could have excluded crimes committed in relation to a terrorist undertaking.

In any case, the conditions of application of article 689-2 of the Code of criminal procedure and article 1 of the aforementioned convention have not been met since Mr. Rumsfeld left France before any proceedings were able to arouse public action during his brief stay.

This explains why the decision taken on 16 November by the Paris District Prosecutor (*Procureur de la République*) to the *Tribunal de Grande Instance* of Paris to dismiss the case does not call for any remarks on my side.

Sincerely yours,

The Public Prosecutor
(*Procureur Général*)