



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Claude JORDA, Presiding
Judge Lal Chand VOHRAH
Judge Mohamed SHAHABUDEEN
Judge Rafael NIETO-NAVIA
Judge Fausto POCAR

Registrar: Mr Agwu U OKALI

Decision of: 14 September 2000

Jean Bosco BARAYAGWIZA

v

THE PROSECUTOR

Case No: ICTR-97-19-AR72

DECISION ON REVIEW AND/OR RECONSIDERATION

Counsel for Jean Bosco Barayagwiza

Ms Carmelle MARCHESSAULT
Mr David DANIELSON

Counsel for the Prosecutor

Mr William EGBE
Ms Cydney CRICKARD
Ms Charity KAGWI
Mr Alphonse VAN

THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of

neighbouring States, between 1 January 1994 and 31 December 1994 ("the Appeals Chamber" and "the International Tribunal" respectively);

NOTING the "*Arrêt (Demande du Procureur en Révision ou Réexamen)*" ("the Review Decision") delivered on 31 March 2000 by the Appeals Chamber, which reviews the Decision delivered on 3 November 1999 by the said Chamber;

NOTING the "Extremely Urgent Motion by the Appellant for Review and/or Reconsideration of the Appeals Chamber Decision Delivered on 31 March 2000 and for Stay of Proceedings" ("the Motion"), filed on 28 July 2000 by the Accused Jean-Bosco Barayagwiza ("the Applicant"), in which he requests the Appeals Chamber *inter alia* to review and/or reconsider the Review Decision pursuant to Article 25 of the Statute of the Tribunal, to set aside the said Decision and to rule that the Decision of 3 November 1999 remains as the only applicable Decision in the proceedings against the Applicant;

CONSIDERING that in support of his Motion the Applicant affirms that, due to the efforts of his Counsel, he has discovered new facts which were not known to him or to the Trial Chamber at the time of the proceedings before it, and that those facts might have been decisive factors for the Review Decision of 31 March 2000;

CONSIDERING that the Applicant submits that in its consideration of the Prosecutor's Motion for Review the Appeals Chamber was led into error in its evaluation of certain facts by the Prosecutor, who produced false documents, documents drawn up by authorities in Cameroon who were not authorized to do so and a sworn statement made in ignorance of the facts in question; and that the delay in transferring him to Arusha was not attributable to the authorities in Cameroon but rather to negligence by the Prosecutor, who deliberately refrained from carrying out the Transfer Order delivered on 3 March 1997 by Judge Aspegren;

NOTING the "Prosecution Response to the Extremely Urgent Motion for a Review and/or Reconsideration of the Decision Rendered by the Appeals Chamber on 31 March and for a Stay of the Proceedings", filed on 1 September 2000, in which the Prosecutor requests that the Motion should be dismissed as inadmissible with respect to the request for review and without merit with respect to the request for reconsideration;

RECALLING the provisions of Article 25 of the Statute of the Tribunal ("the Statute") and Rule 120 of the Rules of Procedure and Evidence ("the Rules"), which stipulate that in the event of the discovery of a new fact which was not known to the moving Party during trial proceedings or on appeal even though due diligence was shown, which fact might have been decisive in reaching the decision, that Party may submit to the relevant Chamber a request for review of its decision;

RECALLING in this connection the Appeals Chamber's position in the Review Decision, in which it considered that only a final judgement may be reviewed under the terms of Article 25 of the Statute and Rule 120 of the Rules, and that a final judgement is a decision which puts an end to proceedings^[1];

CONSIDERING that the Review Decision, the review of which is requested, did not put an end to the proceedings against the Applicant, and in particular that the trial on the merits is already on the Tribunal's schedule ;

CONSIDERING that there is therefore cause to dismiss the request for review;

CONSIDERING that the power of reconsideration may not be used as a power of review in situation in which review is not available, and, in the circumstances of this case, its exercise would not be justified ;

CONSIDERING that, if the Applicant has any new facts which may show an absence or "lack of jurisdiction", it is appropriate for him, if he so desires, to raise the matter before the Trial Chamber ;

CONSIDERING that the request for reconsideration is therefore without merit ;

FOR THESE REASONS

DISMISSES the Motion.

Done in both English and French, the French text being authoritative.

_____ s./ _____

Claude Jorda,
Presiding

Dated this fourteenth day of September 2000
At The Hague,
The Netherlands

[Seal of the Tribunal]

Op. cit., para. 49.