

ICTR-97-20-I  
(4572-4570) 4572  
International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

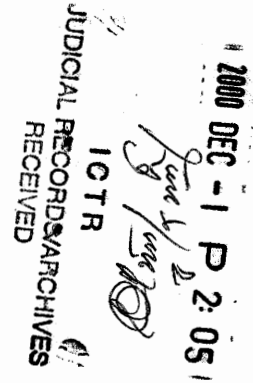
TRIAL CHAMBER III

Original: English

Before: Judge Yakov Ostrovsky, Presiding  
Judge Lloyd George Williams  
Judge Pavel Dolenc

Registrar: Dr. Agwu Ukiwe Okali

Decision of : 1 December 2000



THE PROSECUTOR  
versus  
LAURENT SEMANZA

Case No. ICTR-97-20-I

---

DECISION ON THE DEFENCE MOTION FOR THE INTERPRETATION OF  
RULES 89(A), (B), (C), (D), AND 90(F) AND (G) OF THE RULES OF  
PROCEDURE AND EVIDENCE AND FOR THE RECALL OF A WITNESS

---

Counsel for the Accused:

Mr. Charles A. Taku  
Mr. Sadikou Ayo Alao

Counsel for the Prosecutor:

Mr. Chile Eboe-Osuji  
Mr. Frederic Ossogo  
Ms. Patricia Wildermuth

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal")

**SITTING** as Trial Chamber III, composed of Judge Yakov Ostrovsky, presiding, Judge Lloyd George Williams, and Judge Pavel Dolenc (the "Chamber");

**BEING SEIZED** of Semanza's Defence Motion for the Interpretation of Rules 89(A), (B), (C), (D), and 90(F) and (G) of the Rules of Procedure and Evidence and for the Recall of a Witness, filed on 15 November 2000 (the "Motion");

**NOW DECIDES** the matter.

**DEFENCE SUBMISSIONS**

1. The Defence feels handicapped by the restrictions imposed on it with respect to the use, in the course of cross-examinations, of statements Prosecution witnesses made to investigators.
2. Consequently, the Defence requests appropriate interpretation of Rules 89(A), (B), (C), (D), and 90(F) and (G), and a recall of witness VJ so that the Defence may complete cross-examination of this witness.

**FINDINGS**

3. It is not the practice of this Tribunal to inform the parties in advance how it will interpret certain provisions of the Rules. In principle, the Tribunal interprets the Rules in its written or oral decisions on concrete matters raised before it. *See Prosecutor v. Kabiligi & Ntabakuze*, ICTR-97-34-I (Decision on Ntabakuze's Motion for a Declaratory Ruling in Order to Determine the Law Applicable to the Prosecutor's Motion for Joinder filed on 28 October 1999, prior to Hearing the Said Motion) (4 May 2000) at para. 5.
4. However, the question in this case is not about the interpretation of the Rules referred to by the Defence, but rather about their application in particular circumstances. As is pointed out in the Motion, the Defence feels handicapped by the restrictions imposed on it in the use of previous testimonies of witnesses and failing any particular provision in the Rules prohibiting the use of such previous statements made to investigators and communicated to the Defence. The decision on this matter was rendered during the proceedings. The Defence has been repeatedly informed about this decision. Therefore there is no ground to return to this issue and, in particular, to file a written motion for the interpretation of the given Rules.
5. The cross examination should be carried out in conformity with the requirements of Rule 90, especially paragraph G. If, in a particular case, the Defence has difficulties with understanding or applying this Rule to the use of previous statements made to investigators, the Defence may move before the Trial Chamber for an appropriate ruling. In light of this, the Defence request for interpretation of certain Rules and for a recall of witness VJ for further cross-examination has no merit.
6. The Chamber cannot tolerate written motions filed during the trial on issues that just as

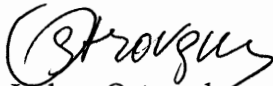
easily could have been brought to the Chamber's attention orally during the course of the proceedings. In the case before us, the Defence had already raised the present issues during the proceedings, the Chamber has decided them, and only after that did the Defence package them in the present Motion.


7. Such behavior must be penalized. The Motion is frivolous, improper, and its filing constitutes an abuse of process. Furthermore, it constitutes misconduct by the Defence Counsel to raise this question again despite the fact that the Chamber had already rendered a decision on this matter and that, during the proceedings, it has repeatedly informed the Defence Counsel of its decision. The Chamber recalls that sanctions against Counsel may be imposed if their conduct is offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice. It is to be noted that laws of some jurisdictions, such as England and Wales, provide for sanctions that may include not just disallowance of fees for such irresponsible conduct, but actual payments of the costs of other participants in the justice system that have been incurred by time-wasting behavior. *See* Prosecution of Offences Act 1985, sec. 19A. The Chamber emphasizes that due regard must be had for judicial time.


**FOR THESE REASONS, THE TRIBUNAL**

8. **DENIES** the Motion.
9. **DIRECTS** the Registry, pursuant to Rule 73(E), not to pay fees and costs associated with the preparation and filing of this Motion.

Arusha, 1 December 2000.

  
Yakov Ostrovsky  
Judge, Presiding

  
Lloyd George Williams  
Judge

  
Pavel Dolenc  
Judge

[Seal of the Tribunal]

