

ICTR-97-20-T
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UNITED NATIONS
NATIONS UNIES

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: Mr. Adama Dieng

Decision of : 27 September 2001

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ICTR

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THE PROSECUTOR
versus
LAURENT SEMANZA

Case No. ICTR-97-20-T

DECISION ON THE DEFENCE MOTION FOR A JUDGEMENT OF ACQUITTAL
IN RESPECT OF LAURENT SEMANZA AFTER QUASHING THE COUNTS
CONTAINED IN THE THIRD AMENDED INDICTMENT (ARTICLE 98BIS OF
THE RULES OF PROCEDURE AND EVIDENCE)

AND

DECISION ON THE PROSECUTOR'S URGENT MOTION FOR SUSPENSION OF
TIME-LIMIT FOR RESPONSE TO THE DEFENCE MOTION FOR A
JUDGEMENT OF ACQUITTAL

Counsel for the Prosecutor:
Mr. Chile Eboe-Osuji
Ms. Amanda Reichman

Counsel for the Accused:
Mr. Charles A. Taku
Mr. Sadikou Ayo Alao

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 the Defence Motion for a Judgment of Acquittal in Respect of Laurent Semanza after Quashing the Counts Contained in the Third Amended Indictment (Article 98*bis* of the Rules of Procedure and Evidence), filed on 20 July 2001 (the "Motion");

NOTING the Prosecutor's Urgent Motion for Suspension of Time-Limit for Response to the Motion, filed on 26 July 2001;

NOTING the Defence "Transmission des Pieces Complementaires a l'Annexe II de la Requete de la Defense en Vue de l'Acquittement de Semanza Laurent Subsequentement a l'Annulation des Chefs d'Accusation du Troisieme Acte d'Accusation Modifie (art. 98*bis* RPP)", filed on 17 September 2001;

NOTING the "Replique de la Defense a la Reponse du Procureur Relative a la Requete de la Defense en Vue de l'Acquittement de Semanza Laurent Subsequentement a l'Annulation des Chefs d'Accusation du 3eme Acte d'Accusation Modifie (Art. 98*bis* RPP)", filed on 20 September 2001;

CONSIDERING the Prosecutor's Response to the Motion, filed on 17 September 2001;

NOW CONSIDERS the matter without a hearing solely on the briefs of the parties, pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Tribunal (the "Rules").

PLEADINGS BY THE PARTIES**Defence Submissions**

1. The Defence states that the purpose of the Motion is to obtain a judgement of acquittal of the Accused Semanza subsequent to quashing the indictment, in conformity with Rule 98*bis*. The Defence submits that the Prosecutor has failed, in law and in fact, to prove the allegations contained in the indictment.
2. The Defence argues that the Prosecution has not produced evidence of genocide in Gikoro and Bicumbi communes. Further, the Prosecutor produced "gruesome and emotional videotapes" with the intention of supporting its argument that genocide took place in these communes, but this evidence is inadmissible because its authenticity is questionable and because of the "doubtful moral standards of those who produced it", namely investigator Duclos. Duclos' manipulation of videocassettes and witness statements are fraudulent acts. Because "fraud vitiates everything", the videotapes and testimonies produced by Duclos must be excluded from the trial.

3. In any event, the Prosecutor did not establish the direct or indirect participation of the Accused in the "mass crimes committed in Rwanda in 1994". The testimonies produced to support such allegations are "inconsistent and themselves confirm the alibi of the Accused". Therefore, the counts in the indictment against the Accused "must be quashed, withdrawn or simply dropped".
4. The Defence further submits that the indictment did not specify the time and place of the alleged acts and that the charges in the indictment are "both vague and imprecise or clearly in contradiction to the indictment and the supporting material".
5. Moreover, the indictment, supporting materials, and witness testimonies mention the participation of several people in the alleged crimes, but, in violation of Rule 48, the Prosecutor is not prosecuting or targeting any of these people. Additionally, the Prosecutor has not called to testify many of the people identified as witnesses in the indictment and the supporting materials. "[I]t can be presumed that if the witnesses had appeared, they would have testified against the Prosecution, and, therefore, there is need to quash all 14 counts" of the indictment.
6. The Defence notes that the Prosecution's witness list specified that the testimony of each witness would relate to each count in the indictment. "[C]ontrary to this statement, no prosecution witness testified on all the counts contained in the ... indictment consequently, there is *in limine litis* need to rule that the counts in the ... indictment [are] inadmissible, which would result in the acquittal of the Accused".
7. Finally, the Defence argues that "certain prosecution testimonies exonerate the Accused and back his alibi", that various of the witness testimonies are contradictory on a number of points, that they "consist of unlikely fabrications", are "inconsistent and imaginary", "unreliable", "hard to believe", and that they "did not provide irrefutable evidence of the alleged acts".
8. In view of all the foregoing, the Defence prays the Chamber to grant its Motion, to take note that all fourteen counts against the Accused do not meet the legal requirement permitting the continued detention of the Accused, to take note that the acts alleged to support the counts were "neither substantiated nor materially proven either by credible and consistent testimonies or by any lawfully acceptable means of adducing evidence", and to order that the Accused be acquitted.

Prosecutor's Response

9. The Prosecutor opposes the Motion and submits that it "is utterly lacking in merit on all scores". First, the Prosecutor points out that in view of the time limits prescribed in Rule 72(a)(i) and (f), the Defence is barred from attacking the form of the indictment.
10. Second, the Prosecution submits that under Rule 98*bis* the Chamber need not make a determination of weight and credibility of the evidence. The Chamber only needs to



determine whether evidence has been produced upon which a reasonable judge of the facts may safely convict, if he or she believed the evidence. The Prosecutor submits that the evidence produced thus far is sufficient to meet this test.

11. Finally, the Prosecutor argues that the Motion is frivolous and was designed to be time-consuming. Consequently, the Chamber should dismiss it with an order for non-payment of fees, pursuant to Rule 73(e).
12. In her Urgent Motion for Suspension of Time-Limit for Response to the Motion, the Prosecutor requested suspension of the time-limit for her response pending the receipt of the English translation of the Motion.

FINDINGS

Legal Basis for the Motion

13. The Defence bases its Motion on Rule 98*bis* which provides: "If, after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber, on motion of an accused or *proprio motu*, shall order the entry of judgement of acquittal in respect of those counts." This Rule is concerned with acquittal based on insufficiency of evidence.

Rule 98bis

14. Rule 98*bis* has not previously been invoked before this Tribunal. However, the Appeals Chamber of the International Tribunal for the former Yugoslavia has had an occasion to interpret a virtually identical provision of the rules of that Tribunal. In its recent Judgement in the case of *Prosecutor v. Jelusic*, the Appeals Chamber wrote: "The Appeals Chamber considers that the reference in Rule 98*bis* to a situation in which 'the evidence is insufficient to sustain a conviction' means a case in which, in the opinion of the Trial Chamber, the prosecution evidence, if believed, is insufficient for any reasonable trier of fact to find that guilt has been proved beyond reasonable doubt." Case No. IT-95-10-A, Judgement, 5 July 2001, para. 37.
15. The Chamber subscribes to this interpretation and holds that Rule 98*bis* of the Rules of this Tribunal means that a judgement of acquittal shall be ordered at the close of the case for the Prosecution if the Chamber finds that the evidence, if believed, is insufficient for a reasonable trier of fact to find that guilt has been proved beyond reasonable doubt. In the instant case, the Defence has failed to show that the evidence, *if believed*, is insufficient for a conviction. At this stage of the proceedings all that is required of the Prosecution is to establish a *prima facie* case against the Accused.

Misinterpretation of Rule 98bis

16. In spite of the requirements of Rule 98bis the Defence is not even seeking to show that the evidence, if accepted, is not sufficient for the Chamber to be satisfied of the guilt of the Accused. Rather, the Defence has concentrated its efforts on demonstrating that the evidence produced by the Prosecutor is not credible or reliable because the testimonies are contradictory and inconsistent. There are, from the point of view of the Defence, fabrications and fraud. The Defence also raised the issue of alibi of the Accused. Once the Prosecutor has established a *prime facie* case against the Accused then it is incumbent on the Trial Chamber to require the Accused to answer the charges against him.
17. Considering the issue of credibility and reliability of evidence in the context of a motion for acquittal under Rule 98bis, the International Tribunal for the former Yugoslavia wrote that a Chamber is obliged to take these matters into account only "where the Prosecution's case has completely broken down, either on its own presentation, or as a result of such fundamental questions being raised through cross examination as to the reliability and credibility of witnesses that the Prosecution is left without a case."¹ The Defence did not demonstrate in its Motion that the Prosecution's case has completely broken down. What the Defence had to show to satisfy the requirements of Rule 98bis is that the Prosecutor's evidence, *if believed*, is insufficient for a conviction. Having failed in this, the Chamber will not order the entry of a judgement of acquittal in respect of the fourteen counts against the Accused Semanza.

Matters Outside the Scope of Rule 98bis

18. Notwithstanding the clear language of Rule 98bis, the Defence raised a number of issues that fall outside its scope. Firstly, pleas for quashing the indictment cannot be raised under Rule 98bis. Whatever defects the Defence perceived in the form of the indictment, such as its claim that the charges in the indictment are vague or in contradiction to the indictment and the supporting materials, were to be raised under Rule 72 within the time limits prescribed therein. It is wholly unacceptable to raise such matters half-way through the trial. In fact, this and similar issues have been raised in this case in previous pre-trial motions.
19. Rule 98bis is also not a vehicle through which the Defence may move to quash the counts in the indictment because the Prosecutor may not have called all possible witnesses or because the Prosecutor may not be proceeding against all possible perpetrators of alleged crimes. These are matters within the Prosecutor's discretion and, in any event, they are not within the scope of Rule 98bis. Consequently, the Chamber does not propose to address those issues in this Decision.
20. Similarly, the fact that not all Prosecution witnesses may have testified on all counts in

¹*Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2-T, Decision on Defence Motions for Judgement of Acquittal, 6 April 2000, at para. 28.


the indictment as indicated in the witness list is not an issue that the Chamber could consider under Rule 98*bis*, nor, in any event, would this be a sufficient ground for acquittal.


21. Finally, the Defence submits that the procedure followed from the moment of the arrest of the Accused was erroneous. This is an issue on which the Chamber has already ruled in its Decision on the "Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful", dated 6 October 1999. Further, the Defence has indicated that it reserves its right to lodge further appeals. The right of the parties to file a notice of appeal is provided in the Rules. However, this matter as well as procedural issues are outside the scope of Rule 98*bis*.
22. The Chamber notes with dismay that the Defence has raised numerous issues outside the scope of Rule 98*bis* and that it has filed voluminous materials that could have been of no use, and indeed were of no use, to the Chamber in disposing of the Defence Motion. Raising irrelevant issues and filing materials that could be of no use to the Chamber, but which nevertheless require reproduction and translation, wastes the resources of the Tribunal. Consequently, the Chamber admonishes the Defence; such behavior will not be tolerated in the future.

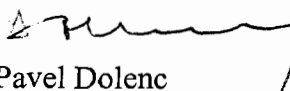
FOR THESE REASONS, THE TRIBUNAL

23. **DENIES** the Motion; and
24. **DISMISSES** as moot the Prosecutor's Urgent Motion for Suspension of Time-Limit for Response to the Motion.

Arusha, 27 September 2001.


Yakov Ostrovsky
Judge, presiding


Lloyd George Williams
Judge


Pavel Dolenc
Judge