

ICTR-97-20-T  
5-10-2001  
(5614-5611)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER III

Original: English

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

Registrar: Mr. Adama Dieng

Date: 05 October 2001

THE PROSECUTOR

v.

LAURENT SEMANZA

Case No. ICTR-97-20-T

JUDICIAL RECORDS/ARCHIVES  
ICTR  
2001 OCT -5 P 2:33  
Jury/W/2001  
D. Am/2001

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**DECISION ON THE DEFENCE MOTION FOR TRIAL CHAMBER III TO  
DECLARE ITSELF COMPETENT TO HEAR AND DETERMINE DEFENCE  
MOTION FOR REVIEW OF THE JUDGEMENT OF THE APPEALS  
CHAMBER DATED 31 MAY 2000 PURSUANT TO ARTICLE 25 OF THE  
STATUTE, RULES 120 AND 121 OF THE RULES OF PROCEDURE AND  
EVIDENCE FILED ON MARCH 2 2001 PURSUANT TO THE APPEALS  
CHAMBER DECISION DATED 4 MAY 2001 RULE 54**

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The Office of the Prosecutor:

Mr. Chile Eboe-Osuji  
Ms. Amanda Reichman

Defence Counsel for the Accused:

Mr. Charles Achaleke 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 (hereinafter, the "Chamber");

**BEING SEIZED** of the Defence Motion for Trial Chamber III to Declare Itself Competent to Hear and Determine Defence Motion for Review of the Judgement of the Appeals Chamber Dated 31 May 2000 Pursuant to Article 25 of the Statute, Rules 120 and 121 of the Rules of Procedure and Evidence Filed on March 2 2001 Pursuant to the Appeals Chamber Decision Dated 4 May 2001 Rule 54, filed on 30 August 2001 (hereinafter, the "Motion");

**CONSIDERING** the Prosecutor's Response in the Defence Motion for Trial Chamber III to Declare Itself Competent to Hear and Determine Defence Motion for Review of the Judgement of the Appeals Chamber dated 31 May 2000, filed on 10 September 2001 (hereinafter, the "Response");

**RECALLING** the Decision of the Chamber denying the Defence Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful, dated 6 October 1999 (hereinafter, "Trial Chamber III Decision").

**RECALLING** the Appeals Chamber Decision, dated 31 May 2000, affirming the Chamber's Decision Denying the Motion to Set Aside the Arrest and Detention of Laurent Semanza as Unlawful, dated 6 October 1999 (hereinafter, "Appeals Decision of 31 May 2000");

**RECALLING** the Defence Motion for Review of the Judgement of the Appeals Chamber dated 31 March 2000 pursuant to Article 25 of the Statute Rules 120 and 121 of the Rules of Procedure and Evidence of the ICTR, filed on 2 March 2001 (hereinafter, the "Defence Motion for Review");

**RECALLING** the Decision of the Appeals Chamber, dated 4 May 2001, dismissing the Defence Motion for Review (hereinafter, the "Appeals Decision of 4 May 2001");

**NOW DECIDES** the Motion on the basis of the written briefs of the parties, pursuant to Rule 73(A) of the Rules.

## **I. SUBMISSIONS**

### **A. Submissions of Defence**

1. By the present Motion, the Defence seeks the following relief: First, invoking the provisions of Rule 54 and the pronouncements of the Appeals Chamber in the Appeals Decision of 31 May 2000, the Defence requests that the Chamber declare itself competent to review the 31 May Appeals Decision. Secondly, the Defence requests that the Chamber declare itself properly seized of and competent to consider the Defence Motion for Review and the Prosecutor's Response to it. To that end, the Defence also asks that the Chamber issue appropriate orders to retrieve from the Appeals Chamber and have delivered to it "all motions and records," referred to in the Defence Motion for Review. Notably, the Defence claims that it was hampered in its efforts to fairly present the instant Motion owing to the fact

that the Appeals Chamber retained all the original documents in connection with its Defence Motion for Review.

2. The Defence argues that the language of the Appeals Decision of 4 May 2001 vests the Trial Chamber with the authority to consider a motion for review of the Appeals Decision of 31 May 2000 since the substantive matter was before the Trial Chamber.

#### **B. Submissions of the Prosecutor**

3. In the Response to the Motion, the Prosecutor attacks the motivation of the Defence in filing it by accusing Defence of having brought a motion that is "vexatious, embarrassing and abusive of the processes of the Tribunal.

4. Arguing that the Defence cannot be permitted to "blow hot and cold on the matter," a term defined in Osborne's Concise Dictionary of Law as follows: "[a] person is not allowed to take a benefit under an instrument and disclaim the liabilities imposed by the same instrument [.]". Highlighting the Defence Submissions in the Prosecution's Motion for Sanctions, dated 6 March 2001, the Prosecutor stresses that the Defence averred that the gravamen of the Prosecution's Motion for Sanctions involved matters properly before the Appeals Chamber rather than this Trial Chamber. Having taken such a position, argues the Prosecutor, the Defence cannot now deny the concomitant burden of the Chamber's Decision which was based, to a significant extent, upon the Defence's averment that it "... has not and does not intend to make an application to your Lordships on the subject matter [i.e., the new evidence in the form of a certain affidavit from the Cameroonian Court] unless directed by the Appeals Chamber." Therefore contends the Prosecutor, since the Appeals Chamber made no such direction, the Defence is now obliged to relinquish its right to bring a motion for review in this Chamber.

### **II. DELIBERATIONS AND FINDINGS**

5. The Motion is styled as a motion seeking the review of the Appeals Decision of 31 May 2000. However, pursuant to Article 25 of the Statute and Rule 120 of the Rules, a Trial Chamber is not competent to review any decision of the Appeals Chamber. Namely, according to Rule 120 a party "... may make a motion to that Chamber, if it can be reconstituted or, failing that, to the appropriate Chamber of the Tribunal for review of the judgement (emphasis added)". Therefore, a Trial Chamber or an Appeals Chamber may review only its own decisions.

6. Moreover, the Defence Motion for Review has already been disposed of in the Appeals Decision of 4 May 2001 by the Appeals Chamber, the appropriate judicial body to consider it. The Motion for Review was rejected because a review of an interlocutory decision is not admissible.

7. In the Motion, the Defence interprets the Appeals Decision of 4 May 2001 as directing that this Chamber be seized with the Motion for Review, since the trial was proceeding before the Chamber. The Defence misinterpreted this portion of the Appeals Decision of 4 May 2001, which merely states that the Defence may request this Chamber of first instance to review the Trial Chamber III Decision, if it knows of new facts in the nature of establishing the Tribunal's lack of jurisdiction.

8. The Chamber similarly denies the Defence request that the Chamber declare itself properly seized of and competent to consider the Defence Review Motion. This Chamber is without authority deriving either from the Statute or from the Rules vesting it with the extraordinary power of issuing advisory or declaratory opinions under the current circumstances. *See The Prosecutor v. Semanza*, (ICTR-97-20-I) Decision on the Prosecutor's Motion for Sanctions Against Defence Counsel [Rule 46] and on the Defence Application for Sanctions Against the Prosecutor (26 March 2001). The Defence has placed no motion for review before this Chamber for consideration. Only upon filing such a motion may the Chamber determine whether it is properly seized and authorised to consider the substantive merits of such a motion.

9. Finally, the Defence request for an order from the Trial Chamber to the Appeals Chamber for the delivery of all the documents and records submitted with respect to the Defence Motion for Review cannot be entertained. There are no provisions in the Statute or Rules that would permit the Trial Chamber to take such action.

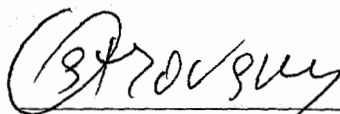
10. There is no legal basis whatsoever for granting the Motion. The Motion is an abuse of the process of the Tribunal and as such fees and costs will be denied pursuant to Rule 73(E).

11. Accordingly, the Chamber

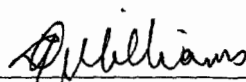
**DENIES** the Motion in its entirety; and further

**DIRECTS** the Registry not to pay the Defence fees and costs in connection with the Motion.

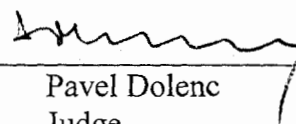
Arusha, 05 October 2001



Yakov Ostrovsky  
Judge, Presiding



Lloyd G. Williams  
Judge



Pavel Dolenc  
Judge