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bis



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

THE APPEALS CHAMBER

Before:

**Judge Claude JORDA, Presiding
Judge Mohamed SHAHABUDEEN
Judge Mehmet GUNEY
Judge Fausto POCAR
Judge Theodor MERON**

Registrar:

Mr. Adama DIENG

Decision of:

16 April 2002

ICTR
JUDICIAL RECORDS DIVISION
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ICTR-97-20-A

16 APRIL 2002

(825/H_{bis} - 822/H_{bis})

Laurent SEMANZA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-97-20-A

DECISION

**ON THE APPEAL AGAINST THE ORAL DECISION OF 7 FEBRUARY 2002
DISMISSING THE MOTION FOR REVIEW OF THE DECISION OF 29 JANUARY 2002
RELATING TO THE APPEARANCE OF THE FRENCH EXPERT WITNESS
DOMINIQUE LECOMTE AND THE ACCEPTANCE OF HIS REPORT**

Counsels for the Appellant

Mr. Charles A. TAKU
Mr. Sadikou Ayo ALAO

Counsel for the Prosecutor

Mr. Chile EBOE-OSUJI

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THE APPEALS CHAMBER of the International 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”),

BEING SEISED of the “*l’Acte d’appel*” filed by Laurent Semanza on 12 February 2002 against the 7 February 2002 oral decision of Trial Chamber III, dismissing a Motion for Review of the 29 January 2002 Decision concerning the appearance of French expert witness, Dominique Lecomte, and the acceptance of his report (respectively “the Appeal”, “the Appellant”, the “Impugned Decision” and the “Decision of 29 January 2002”);

NOTING the “*Conclusions additionnelles à l’Acte d’appel*” filed by the Appellant on 15 February 2002 against the oral decision of 7 February 2002;

NOTING that the Prosecution did not oppose the Appellant’s motion for review in the Trial Chamber and did not file a response to his notice of appeal;

NOTING that the Decision of 29 January 2002 ordered that the name of the expert witness be taken off the list of Defence witnesses and that his report would not be considered by the Trial Chamber, and that it was so ordered as a consequence of the non-compliance by the Defence with the Decision of the Trial Chamber of 13 December 2001, which ordered the Defence to file that report by 15 January 2002 (“the Decision of 13 December 2001”);

NOTING that it is common ground that the Decision of 13 December 2001 was only received by the Defence on 28 January 2002;

NOTING that, in the Impugned Decision, the Trial Chamber held that “although [it] sympathises with the explanations presented by the Defence, the Chamber finds itself without the requisite legal authority to review the decision as requested”;

CONSIDERING that, even if there is no right of review, there was a right of reconsideration in view of the circumstance that the Decision of 29 January 2002 proceeded on the mistaken assumption that the appellant had received notice of the Decision of 13 December 2001, with the consequence that the procedure by which the former decision was taken was unfair to him;

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CONSIDERING that it would be for the Trial Chamber, if it reconsiders its decision, to decide eventually how much, if any part, of the proposed report should be admitted as being legally relevant;

CONSIDERING, however, that a preliminary question is whether the applicant has a right of appeal;

NOTING that the Appeal is not founded on any particular provision of the Rules of Procedure and Evidence, though it alleges, with regard to the admissibility, that an oral decision from which there is no appeal and which is likely to affect the merits of the case, amounts to a miscarriage of justice hence, the imperative need for the Appeals Chamber to pronounce thereon;

NOTING that the appeal documents lack clarity, though the grounds of appeal may be summarised as follows: (i) that the Trial Chamber erred in ruling that the Decision of 29 January 2001 did not put an end to the proceedings within the meaning of the *Barayagwiza* Decision of 14 September 2000¹; and that (ii) having acknowledged, in light of new facts, the Decision of 29 January 2002 was wrong, the Trial Chamber erred in not accepting to correct that error of judgement "in the interest of justice";

CONSIDERING that the decision of a Trial Chamber that there is no right of review of its previous decision on the admission of an expert witness and his report is, on the one hand, not a judgement which puts an end to the case as a whole and does not give a right of appeal as if it were such a judgement, and, on the other hand, does not raise any of the grounds on which an interlocutory appeal may be made and is accordingly not capable of supporting an interlocutory appeal;

CONSIDERING in particular that an allegation of miscarriage of justice does not, of its own, confer a right of appeal;

¹ Decision on Review and/or Reconsideration, *Jean Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Appeals Chamber, 14 September 2000, p. 3.

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CONSIDERING that the Appellant has not shown that he has a right of appeal in this case;

FOR THESE REASONS,

DISMISSES the Appeal.

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

Claude Jorda
Presiding Judge of the Appeals Chamber

Done this 16th day of April, 2002
At The Hague
The Netherlands

[Seal of the Tribunal]

