



ICTR-97-20-T  
9-5-2002  
(7059 - 7056)

7059  
-HM

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

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

Registrar: Mr. Adama Dieng

Date: 9 May 2002

JUDICIAL RECORDS DIVISION  
RECEIVED  
ICTR  
2002 MAY -9 P 4: 39  
*[Signature]*

**THE PROSECUTOR**

v.

**LAURENT SEMANZA**

Case No. ICTR-97-20-T

---

**DECISION ON DEFENCE MOTION TO RECONSIDER DECISION  
DENYING LEAVE TO CALL REJOINER WITNESSES**

---

The Office of the Prosecutor:  
Mr. Chile Eboe-Osuji  
Ms Patricia Wildermuth

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

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the “Tribunal”) sitting as Trial Chamber III composed of Judge Yakov Ostrovsky, Presiding, Judge Lloyd G. Williams, Q.C., and Judge Pavel Dolenc (the “Chamber”);

**BEING SEISED** of the “Requête en extrême urgence de la défense pour demander le reexmimen [sic] de la Chambre III en date du 30 Avril 2002 intitulée ‘Decision on Defence Motion for Leave to Call Rejoinder Witnesses’ en vue de permettre a la défense de présenter ses témoins en Duplique” filed 2 May 2002 (the “Motion”);

**NOTING** that the Prosecution has not filed a response within the time set out in Rule 73(D) of the Rules of Procedure and Evidence (the “Rules”);

**CONSIDERING** the “Decision on the Defence Motion for Leave to Call Rejoinder Witnesses” dated 30 April 2002 (the “Decision”) in which the Defence was denied leave to call evidence in rejoinder;

**NOW DECIDES** the matter solely on the written brief of the Defence pursuant to Rule 73(A);

**SUBMISSIONS OF THE DEFENCE:**

1. The Defence requests that the Chamber reconsider the Decision and permit the Defence to bring evidence in rejoinder.
2. The Defence submits that the impugned Decision reproaches the Defence for failing to notify the Prosecutor of the Defence’s intention to bring evidence of an alibi pursuant to Rule 67(A)(ii)(a). The Defence argues that this violates Rule 67(B), which provides that such a failure shall not limit the right of the Defence to rely on the defence of alibi.
3. According to the Defence, the Chamber erred by relying on Rule 89(B) and on common law and ICTY jurisprudence regarding the admissibility of evidence in rejoinder. Instead, the Chamber should have applied Rule 85(A)(iv), which explicitly provides that the Defence has a right to bring rejoinder evidence. The Defence draws support for this position from certain remarks of the Presiding Judge during the hearing of 28 February 2002.
4. In the Motion, the Defence submits that the preconditions for admissibility of rejoinder evidence were nevertheless met, because the Prosecutor in rebuttal introduced new evidence that the Defence is entitled to challenge in rejoinder. The Defence therefore proposes that the Chamber reconsider its refusal to permit rejoinder evidence relating to the Accused’s alibi and to the credibility of the Prosecutor’s rebuttal witnesses.
5. In particular, the Defence argues that it should be permitted to bring rejoinder witnesses whose expected testimony would fall within the common law exceptions to the rule that no rejoinder evidence is permitted in relation to collateral facts. Rebuttal Witness XXX testified that her husband died on a date other than that presented by the Defence witnesses. The Defence proposes a rejoinder witness KKN to verify the date and to thereby establish that XXX has a reputation for not telling the truth. The Defence similarly argues that it is entitled to call witnesses to prove DCH’s criminal record and to prove that DCH is an inveterate liar.

6. The Defence also proposes to bring witnesses to clarify an alleged inconsistency in the expert witness' testimony. During his testimony in rebuttal expert witness Guichoua said that the Accused fled from Bicumbi on 19 or 20 April 1994, while during the Prosecutor's case-in-chief he testified that the Accused was already in Murambi on 11 April 1994. The Defence's proposes witnesses in rejoinder to confirm the earlier dates and to provide further eyewitness testimony to support the Accused's alibi.

#### **DELIBERATION:**

7. The Rules do not explicitly provide for reconsideration of a previous decision. Nevertheless, according to the jurisprudence of the Tribunal, the Chamber possesses an inherent power to reconsider.<sup>1</sup>
8. In light of the principle of finality, which mandates that the parties should be able to rely and act on the binding decisions of the Tribunal without fear that the decisions will be lightly overturned, this inherent discretion to reconsider a decision should be sparingly exercised. Frequent motions to the Trial Chamber for review or reconsideration of its decision are not desirable. Reconsideration of a previous decision may be appropriate only in exceptional circumstances, "where, through no fault of a party, he or she has been subjected to an unfair procedure."<sup>2</sup> In deciding whether to exercise its discretion in a given case, the Chamber may consider, *inter alia*, any new facts or legal arguments brought to the attention of the Chamber, and the possibility and gravity of prejudice to a party. Reconsideration cannot be used to circumvent the inadmissibility of an appeal or a review of an interlocutory decision.
9. For the reasons set forth in the Decision, the Chamber applied the criteria for admission of evidence in rejoinder as they are established in the common law. The Motion does not present any new legal arguments in favour of the Defence position that rejoinder is admissible as a matter of right where there has been evidence in rebuttal. The Trial Chamber is of the view that the presentation of rejoinder evidence requires leave of the Chamber, which will not be granted automatically or unconditionally, but will depend on the particular circumstances of each case. The Chamber, therefore, does not intend to reconsider its legal findings.
10. In this context the Chamber also rejects the Defence submission that the Chamber and the Presiding Judge had already adopted the Defence position that rejoinder is an automatic right. The remarks of the Presiding Judge, to which the Motion refers, may be understood only to mean that the Defence has the right to apply for leave of the Chamber to call evidence in rejoinder. Moreover, in the Status Conference of 22 April 2002 the Presiding Judge repeatedly urged the Defence to file a motion including a list of proposed rejoinder witnesses.


---

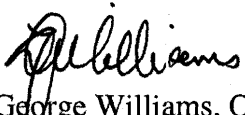
<sup>1</sup> *Prosecutor v. Semanza* Case No. ICTR-97-20-A, Decision on the Appeal against the Oral Decision Dismissing the Motion for Review, 16 April 2002.

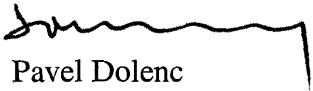
<sup>2</sup> *R. v. Bow Street Metropolitan Stipendiary Magistrate and Others, ex. Parte Pinochet Ugarte* (No 2), [1999] 1 All ER 577 (HL) at pp. 585-586, per Lord Browne-Wilkinson, as cited in *Prosecutor v. Barayagwiza* Case No. ICTR-97-19-AR72, Separate Opinion of Judge Shahabudeen Decision on Prosecutor's Request for Review on Reconsideration, 31 March 2000, paragraphs 2 – 9.

11. The Motion does not explain the significance of the Chamber's alleged "reproach" for failing to notify the Prosecutor of the alibi defence or why this would justify the variation of the Decision. The Motion refers to Rule 67(B), however, there is no question that the Defence was permitted to rely on the defence of alibi and to present evidence in support of its alibi. This is expressly stated in paragraph 9 of the Decision.
12. Even if the Defence could establish that its proposed rejoinder evidence falls within a recognised exception to the collateral fact rule, the Chamber is still required to determine whether rejoinder evidence is appropriate in the circumstances. The Defence has not adduced any new fact or convincing argument why the Chamber should reconsider this assessment.
13. Moreover, there is no prejudice to the Defence since the Chamber has afforded both parties an opportunity to be heard on the issue of alibi. Accordingly, there is no necessity for the Defence to call rejoinder evidence in respect of alibi.
14. The Defence has not advanced any satisfactory ground for reconsideration of the previous decision. In accordance with Rule 73(E), the Chamber finds that the Motion is frivolous.
15. For these reasons the Chamber:
  - (a) Denies the motion in its entirety; and
  - (b) Directs the registry, pursuant to Rule 73(E), to not pay to the Defence any fees or costs associated with this Motion.

Arusha, 9 May 2002.

  
Yakov Ostrovsky  
Judge, Presiding

  
Lloyd George Williams, Q.C.  
Judge

  
Pavel Dolenc  
Judge

(Seal of the Tribunal)