



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-05-86-T

01-04-2010

(2709-2706)

OR: ENG

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TRIAL CHAMBER III

Before Judges: Vagn Joensen, Presiding
Bakhtiyar Tuzmukhamedov
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 1 April 2010

THE PROSECUTOR

v.

Michel BAGARAGAZA

Case No. ICTR-2005-86-s

JUDICIAL RECORDS ARCHIVES

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**ORDER REGARDING THE COMPUTATION OF TIME SPENT IN CUSTODY TO
BE DEDUCTED IN MICHEL BAGARAGAZA'S SENTENCE**

Rule 101 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Mr. Wallace Kapaya
Mr. Patrick Gabaake
Mr. Moussa Sefon
Mr. Iskander Ismail

Counsel for the Defence:

Mr. Geert-Jan Alexander Knoops
Mr. Wayne Jordash
Ms. Anne-Marie Verwiel

INTRODUCTION

1. On 5 November 2009, this Chamber sentenced Michel Bagaragaza to eight years of imprisonment.¹ On 15 March 2010, the Registrar filed submissions pursuant to Rule 33 (B) of the Rules of Procedure and Evidence seeking guidance from the Chamber with respect to the computation of time spent in custody to be deducted in Bagaragaza's sentence.

DELIBERATIONS

2. As a preliminary matter, the Chamber notes that, while the written sentencing judgement was issued on 17 November 2009, the Judgement was rendered orally on 5 November 2009.

3. In its Judgement, the Chamber decided that Michel Bagaragaza would be entitled to credit for the time spent in custody since the date of his surrender to the Tribunal on 15 August 2005.²

4. The Chamber recalls that after his voluntary surrender on 15 August 2005, Michel Bagaragaza was transferred to the Detention Unit of the International Criminal Tribunal for the former Yugoslavia ("ICTY") in The Hague, in accordance with a decision from the President of the Tribunal.³ After a first failed attempt to transfer the case to the Kingdom of Norway,⁴ the Trial Chamber granted the Prosecution's Motion for referral of the case to the Kingdom of the Netherlands.⁵ However, on 17 August 2007, the Chamber revoked the

¹ T. 5 November 2009.

² *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-2005-86, Sentencing Judgement, 17 November 2009, para. 43.

³ *Bagaragaza*, Order for Special Detention Measures (President), 13 August 2005. The President of the Tribunal then granted several motions from the Prosecution to extend the Accused's detention in The Hague: *see Bagaragaza*, Order for the Continued Detention of Michel Bagaragaza at the ICTY Detention Unit in The Hague, The Netherlands (President), 17 February 2006; *Bagaragaza*, Order for the Continued Detention of Michel Bagaragaza at the ICTY Detention Unit in The Hague, The Netherlands (President), 16 August 2006; Order for the Continued Detention of Michel Bagaragaza at the ICTY Detention Unit in The Hague, The Netherlands (President), 14 February 2007.

⁴ *See Bagaragaza*, Decision on the Prosecution Motion for Referral to the Kingdom of Norway (TC), 19 May 2006, para. 16; *Bagaragaza*, Decision on Rule 11 bis Appeal (AC), 30 August 2006.

⁵ *Bagaragaza*, Decision on Prosecutor's Request for Referral of the Indictment to the Kingdom of the Netherlands (TC), 13 April 2007.



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referral of the case, following a formal notification that Dutch Courts did not have jurisdiction to try the crimes alleged in the Indictment.⁶ On 20 May 2008, Bagaragaza was transferred by the Dutch authorities back to the United Nations Detention Facility ("UNDF") in Arusha pending trial.⁷ He has been detained at the UNDF since then.

5. The Registrar submits that Michel Bagaragaza was not anymore in the Tribunal's custody from 13 April 2007 to 17 August 2007 as his case had been transferred to the Dutch jurisdictions pursuant to Rule 11 *bis* of the Tribunal.

6. Rule 101 (C) provides that "[c]redit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal." The Chamber notes that the Rules of Procedure and Evidence do not specifically address the issue of credit for the time spent in custody since the date of arrest or surrender to the Tribunal when an accused, after his case has been transferred to a national jurisdiction and the referral has been revoked, is finally tried by the Tribunal.

7. The Chamber observes that since his surrender to the Tribunal, on 15 August 2005, Michel Bagaragaza was at all time the subject of an Indictment issued by this Tribunal. The Chamber further notes that when Bagaragaza was under the custody of the Dutch authorities from 13 April to 17 August 2007, this was done under the authority of an Indictment issued by this Tribunal.

8. The Chamber considers that it would be against the interest of justice and unfair to Michel Bagaragaza to deny him credit for the time from 13 April to 17 August 2007 he spent in the custody of the Dutch authorities until he was again transferred to custody of the Tribunal following the revocation of the referral of his case. Consequently, the Chamber considers that this period of time shall be taken into account for the computation of the credit for time spent in custody by Bagaragaza since his surrender to the Tribunal.

⁶ *Bagaragaza*, Decision on Prosecutor's Extremely Urgent Motion for the Revocation of the Referral to the Kingdom of the Netherlands pursuant to Rule 11 *bis* (F) and (G) (TC), 17 August 2007.

⁷ When the Chamber revoked the referral of the case to the Kingdom of the Netherlands on 17 August 2007, a warrant of arrest and transfer was also issued (*Bagaragaza*, Warrant of Arrest and Order for Transfer and Detention (TC), 17 August 2009). The President of the Tribunal denied the Defence's application for detention at the ICTY Detention Unit in The Hague on 29 August 2007 (*Bagaragaza*, Decision on Defence Application for Modification of Detention Conditions of the Accused (President), 29 August 2007) and denied a joint motion on the same issue again on 6 March 2008 (*Bagaragaza*, Decision on Joint Prosecution and Defence Application for Modification of Detention Conditions of the Accused (President), 6 March 2008).

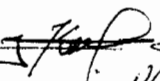


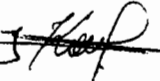
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FOR THE ABOVE REASONS, THE CHAMBER

CONSIDERS that the period of time between 13 April and 17 August 2007, during which Michel Bagaragaza was in the custody of the Dutch authorities, shall be taken into account in the computation of the time spent in custody since his surrender to the Tribunal on 15 August 2005 to be deducted in his sentence.

Arusha, 1 A 2010, done in English.


P/O Vagn Joensen
Presiding Judge
(in absentia)


P/O Bakhtiyar Tuzmukhamedov
Judge
(in absentia)


Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

