



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

76/H
bis

THE APPEALS CHAMBER

Before: Judge Claude JORDA, Presiding
Judge Mohamed SHAHABUDDEEN
Judge David HUNT
Judge Fausto POCAR
Judge Theodor MERON

Registry: Adama DIENG

Decision of: 1st February 2002

ICTR-99-52-A
1 FEBRUARY 2002
(76/H_{bis} - 76/H_{bi})

Jean-Bosco BARAYAGWIZA
(Appellant)

v/

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

Signature
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ICTR
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DECISION
(INTERLOCUTORY APPEAL AGAINST THE 27 AUGUST 2001 TRIAL CHAMBER I ORAL DECISION)

Counsel for the Appellant

Giacomo BARLETTA-CALDARERA
Alfred POGNON

Counsel for the Prosecutor

Stephen RAPP
William EGBE
Simone MONASEBIAN
Charity KAGWI
Alphonse VAN

ICTR Appeals Chamber
Date: 01/02/2002
Action: P. Gyalinier
Copied To: Concerned

Judges, the parties, Appeals Chamber, Unit Amaha. Thanks. A. Dieng
01/02/2002

THE APPEALS CHAMBER of the International Criminal 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" and the "Tribunal" respectively),

BEING SEISED of "*l'Acte d'appel interlocutoire*" of Jean-Bosco Barayagwiza (the "Appeal" and the "Appellant" respectively) filed on 13 September 2001 against the "Decision on an Urgent Motion for the Release of the Accused" rendered orally by Trial Chamber I on 27 August 2001 ("the Impugned Decision"), which dismissed the "Urgent Motion for the Release of Jean-Bosco Barayagwiza" ("the Motion") filed on 17 August 2001;

NOTING that, in the Motion, Counsel for the Appellant suggested the need for an amendment of the legal regime of the Tribunal so as to stipulate a minimum period for detention on remand without however seeking provisional release of the Appellant;

NOTING that, at the hearing on 27 August 2001, Counsel for the Appellant orally expanded the Motion and asked for provisional release of the Appellant;

NOTING that the Trial Chamber, in the Impugned Decision, rejected the Motion, as expanded, and advised the Appellant of the appropriate procedure to follow in seeking to amend the Rules of Procedure and Evidence ("the Rules"); it also suggested to the Appellant that, if he sought provisional release, he should bring a motion under Rule 65, but the Appellant did not do so;

NOTING the "Prosecutor's Response to the Defence Interlocutory Appeal against the 27 August 2001 Trial Chamber I Oral Decision dismissing the Urgent Motion for the Release of Jean-Bosco Barayagwiza", filed on 24 September 2001;

NOTING the "*Réplique à la réponse donnée par le Procureur à l'Acte interlocutoire de la Défense contre l'Ordonnance de rejet rendue par la Chambre de première instance I le 27 août 2001 sur une requête urgente aux fins de mise en liberté de l'accusé Jean-Bosco Barayagwiza*", filed on 2 October 2001;

NOTING that, in the Appeal, the Appellant prayed the Appeals Chamber to seize the "legislator" of the Tribunal for the purpose of settling on a legislative basis the problem of what is a reasonable period for detention on remand but did not challenge the Impugned Decision in relation to the question of provisional release;

74/H
Bis

CONSIDERING that the matters raised by the Appellant in the Appeal are not subject to interlocutory appeal;

CONSIDERING in addition that the Appeal is frivolous and constitutes an abuse of process under Rule 73(E) of the Rules read with Rule 107 thereof;

FOR THE FOREGOING REASONS,

DISMISSES the appeal;

DIRECTS the Registrar to retain payment of fees associated with the Appeal and costs thereof.

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

Claude Jorda,
Presiding

Done this 1st day of February, 2002
At The Hague
The Netherlands

[Seal of the Tribunal]

