



Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda

7138bis/A  
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-1581/2

ICTR-99-52-A

17-11-2008

(7138bis/A - 7135bis/A)

PRE-APPEAL JUDGE

Before: Judge Andréia Vaz, Pre-Appeal Judge  
Registrar: Adama Dieng  
Date rendered: 20 April 2006

**FERDINAND NAHIMANA  
JEAN-BOSCO BARAYAGWIZA  
HASSAN NGEZE**  
*(Appellants)*

v.

**THE PROSECUTOR**  
*(Respondent)*

Case No. ICTR-99-52-A

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JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON FERDINAND NAHIMANA'S "REQUÊTE AUX FINS  
D'EXTENSION DU NOMBRE DE PAGES AUTORISÉES POUR  
LA RÉPLIQUE DE LA DÉFENSE"**

Counsel for Ferdinand Nahimana:  
Jean-Marie Biju-Duval  
Diana Ellis

Office of the Prosecutor:  
James K. Stewart  
Neville Weston

Counsel for Jean-Bosco Barayagwiza:  
D. Peter Herbert  
Tanoo Mylvaganam

Counsel for Hassan Ngeze:  
Bharat B. Chadha  
Behram N. Shroff

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**I, ANDRÉSIA VAZ**, Judge of 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) and Pre-Appeal Judge in the instant case;<sup>1</sup>

**CONSIDERING** the “*Requête urgente aux fins d’extension du nombre de pages autorisées pour la réplique de la Défense*” filed on 13 April 2006 by Ferdinand Nahimana (the “*Requête*” and the “Appellant”, respectively) by which he is seeking “*autorisation de déposer un mémoire en réplique de 60 pages ou 18.000 mots*”<sup>2</sup> [leave to file a brief in reply of 60 pages or 18,000 words];

**CONSIDERING** that the Appellant’s brief in reply must be filed within 15 days from 7 April 2006,<sup>3</sup> when the French translation of the Respondent’s consolidated brief<sup>4</sup> was disclosed to the Defence for the Appellant, that is on 24 April 2006 at the latest;

**DECIDE**, pursuant to paragraph 6 of the Practice Direction on the Length of Briefs and Motions on Appeal (the “Practice Direction”), to rule on the Motion without waiting for the expiration of the 10-day time-limit prescribed for the Prosecutor to reply thereto,<sup>5</sup> since he will suffer no prejudice in the instant case;

**WHEREAS** paragraph 1(c) of the Practice Direction provides that “[t]he reply brief of an appellant in an appeal from a final judgement of a Trial Chamber will not exceed 30 pages or 9,000 words, whichever is greater”;

**WHEREAS** by seeking leave to exceed this limit, the party concerned “must provide an explanation of the exceptional circumstances that necessitate the oversized filing”;<sup>6</sup>

**WHEREAS** the Appellant bases his application on the principle of equality of arms and his right to have the necessary facilities to prepare his defence by relying on the fact that the Prosecutor has filed, with leave of the Chamber,<sup>7</sup> his Respondent’s Brief of 198 pages, thus exceeding by 28 pages the limit set by the Practice Direction,<sup>8</sup> which allegedly enabled him to “*développer de nombreux arguments en réponse aux moyens qui n’ont pas pu être suffisamment étayés par l’Appellant*”<sup>9</sup> [present many arguments in response to grounds not sufficiently supported by the Appellant];

<sup>1</sup> Order of the Presiding Judge Designating the Pre-Appeal Judge, 19 August 2005 and Corrigendum to the Order entitled “Order of the Presiding Judge Designating the Pre-Appeal Judge”, 25 August 2005.

<sup>2</sup> *Requête*, p. 2.

<sup>3</sup> Scheduling Order Concerning the Filing of Ferdinand Nahimana’s Reply to the Consolidated Respondent’s Brief, 6 December 2005, p. 3; T. Status Conference of 7 April 2006, pp. 4-6.

<sup>4</sup> Respondent’s Consolidated Brief, 22 November 2005 (French translation filed on 4 April 2005) (“Respondent’s Brief”).

<sup>5</sup> Practice Direction on formal requirements for appeals from judgement, para. 11.

<sup>6</sup> *Ibid.*, para. 5.

<sup>7</sup> The “*Requête*”, on pages 2 and 3, refers to the Pre-Appeal Judge’s Decision of 15 November 2005 [Decision on the Prosecutor’s Extremely Urgent Motion for Extension of Page Limits, 15 November 2005 (“15 November 2005 Decision”)].

<sup>8</sup> *Requête*, p. 2.

<sup>9</sup> *Ibid.*, p. 3.

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**WHEREAS** the Appellant specifies that the Prosecutor has presented new arguments, “*parfois fondés sur une jurisprudence récente, postérieure au mémoire de l’Appelant*”, [sometimes based on a recent case-law, subsequent to the Appellant’s Brief] especially in connection with the form of his individual criminal responsibility under Article 6(1) of the Tribunal’s Statute, an issue which the Appellant had moreover failed to develop in his appeal brief “*en raison de l’absence de motivation du jugement*”<sup>10</sup> [because no reasoned opinion was provided in the Judgement];

**WHEREAS** the Appellant thus claims to have been placed “*dans une situation qui n’est même pas celle de la rédaction d’un mémoire d’appel, mais bien plutôt celle de la rédaction d’un mémoire de première instance, en réponse à un mémoire préalable du Procureur*”;<sup>11</sup> [in a situation where the issue is not even the drafting of an appeal brief, but rather that of drafting a trial brief in response to the Prosecutor’s Pre-Trial Brief];

**WHEREAS**, regarding the Prosecutor’s arguments on the Appellant’s responsibility under Article 6(1) of the Tribunal’s Statute, the Appellant contends that “*envisager les déclinaisons de chaque proposition*” [to contemplate dismissing each point] developed in the Respondent’s Brief, his rebuttal must be at least twice longer;<sup>12</sup>

**WHEREAS**, in his Respondent’s Brief, the Prosecutor had to respond to the notices of appeal and the briefs of the three co-Appellants which contained a considerable number of alleged errors,<sup>13</sup> while the Appellant only had to reply to the Respondent’s Brief insofar as he was responding to the arguments he had presented in his own notice of appeal and Appellant’s Brief;<sup>14</sup>

**WHEREAS** the Appellant submits that the Prosecutor’s arguments on the form of the Appellant’s individual criminal responsibility, endorsed pursuant to Article 6(1) of the Tribunal’s Statute in the Trial Chamber’s Judgement,<sup>15</sup> are developed on eight pages of the Respondent’s Brief;<sup>16</sup>

**CONSIDERING** that a brief filed in reply must be limited only to arguments presented in reply to the Respondent’s Brief<sup>17</sup> and that its effectiveness is not necessarily due to its length, but rather to its clarity and the relevance of the arguments presented;

**CONSIDERING** that the Appeals Chamber may, should the need arise, request the parties to specify or present their arguments on certain issues in writing or orally in court;<sup>18</sup>

<sup>10</sup> *Ibid.*, p. 4.

<sup>11</sup> *Ibid.*, pp. 3-4.

<sup>12</sup> *Ibid.*, p. 5.

<sup>13</sup> 15 November 2005 Decision, p. 3.

<sup>14</sup> Decision on Jean-Bosco Barayagwiza’s and Hassan Ngeze’s Urgent Motions for Extension of Page and Time Limits for their Replies to the Consolidated Prosecution Response, 6 December 2005 (“6 December 2005 Decision”), p. 4.

<sup>15</sup> *The Prosecutor v. Nahimana et al.*, ICTR-99-52-T, Judgement, 3 December 2003 (certified French translation filed on 2 March 2006).

<sup>16</sup> *Requête*, p. 5; see in particular the Respondent’s Brief, paras. 335-355 (five pages, French version).

<sup>17</sup> Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005, para. 6.

<sup>18</sup> *Ibid.*, p. 5; see also Decision on “Appellant Jean-Bosco Barayagwiza’s Urgent Motion for Leave to Have Further Time to File the Appeal Brief and the Appeal Notice”, 17 May 2005, p. 3; Decision on Ferdinand Nahimana’s Second Motion for an Extension of Page Limits for Appellant’s Brief, 31 August 2004, p. 3;

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**CONSIDERING** that the Appellant has failed to show how his right to a fair trial and the principle of equality of arms would be violated by the refusal to grant him leave to exceed the prescribed page limit;

**CONSIDERING** that the Appellant has failed to explain the exceptional circumstances that necessitate the oversized filing of an appellant's brief in reply;

**FOR THE FOREGOING REASONS**

**DENY** the Motion in its entirety.

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

[Signed]

Andrésia Vaz  
Pre-Appeal Judge

Done on 20 April 2006 at Arusha (Tanzania).

[Seal of the Tribunal]

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Decision on Ferdinand Nahimana's Motion for an Extension of Page Limits for Appellant's Brief and on Prosecution's Motion Objecting to Nahimana's Appellant's Brief, 24 June 2004, p. 3.