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The institute of appealing decisions of acquittal or conviction and other decisions in the International Criminal Court

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Abstract. The Appeals Chamber of the International Criminal Court has the authority to consider cases concerning the appeal against the decision of acquittal or conviction or against sentence, the appeal against other decisions, as well as the revision of the conviction or sentence. This article considers only one of the competencies of the Appeals Chamber - the institute of appeal. Within the framework of this institution, the content of the grounds and standards necessary to satisfy an appeal petition is disclosed, in accordance with the Rome Statute and the practice of the Court. The grounds set out in article 81 of the Statute relating to the decision of acquittal or conviction and sentence include: procedural error, error in law, error in fact, as well as any other ground that affects the fairness or reliability of the proceedings or decision. The standards include a "material" affect on the final decision, the meaning of which is also subject to interpretation, as well as the fact that the contested trial was unfair in a way that calls into question the credibility of the decision or sentence. The nature of the procedure for appealing other decisions, as set out in article 82 of the Statute, is being studied. An emphasis is also placed on the interpretation of the provisions of the Statute, that is, how the various grounds and standards set out in different articles correlate in the context of article 83 of the Statute and among themselves.

Key words: international criminal justice, International Criminal Court, Appeals Chamber, appeal, criminal proceedings.

Халықаралық қылмыстық соттың қызметіндегі кінәлі екендігі туралы шешімдер мен өзге де шешімдерге шағымдану институты

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Аңдатпа. Халықаралық қылмыстық соттың апелляциялық палатасы ақтау туралы шешімге, кінәлі деп тану туралы шешімге шағымдану, үкімге және аралық шешімдерге шағымдану, сондай-ақ айыптау үкімін немесе үкім бойынша жазаны қайта қарау рәсімдеріне қатысты өкілеттіктерге ие. Бұл мақалада Апелляциялық палата құзыреттерінің бірі шағым беру институты қарастырылады. Осы институт шеңберінде Рим Жарғысы мен сот практикасына сәйкес шағымдану туралы өтінішті қанағаттандыру үшін қажетті негіздер мен стандарттардың мазмұны ашылады. Жарғының 81-бабында кінәлілік пен үкім туралы шешімге қатысты бекітілген негіздерге мыналар жатады: процестік қателік, құқықтағы қателік, фактідегі қателік, сондай-ақ сот талқылауының немесе шешімнің әділдігіне күмәндануға себеп болатын кез келген басқа негіз. Стандарттарға түпкілікті шешімге «елеулі» әсер ету жатады, оның мәні өз кезегінде түсіндіруге жатады, сонымен қатар шағымданған сот ісін жүргізу әділетсіз болғандығы, бұл шешімге немесе үкімге күмән келтіреді. Жарғының 82-бабында бекітілген өзге шешімдерге шағымдану рәсімінің сипаты зерделенеді. Сондай-ақ, Жарғының ережелерін түсіндіруге, әртүрлі баптарда бекітілген әртүрлі негіздер мен стандарттардың Жарғының 83-бабы контекстінде және өзара байланысына баса назар аударылады.

Түйінді сөздер: халықаралық қылмыстық сот төрелігі, Халықаралық қылмыстық сот, Апелляциялық палата, шағымдану, қылмыстық іс жүргізу.

Институт обжалования решений о виновности и прочих решений в деятельности Международного уголовного суда

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Аннотация. Апелляционная палата Международного уголовного суда обладает полномочиями в отношении процедур обжалования решения об оправдании, решения о признании виновным, обжалования приговора и промежуточных решений, а также пересмотра обвинительного приговора или наказания по приговору. В данной статье рассматривается одна из компетенций Апелляционной палаты - институт обжалования. В рамках данного института раскрывается содержание оснований и стандартов, необходимых для удовлетворения ходатайства об обжаловании в соответствии с Римским статутом и практикой Суда. К основаниям, закрепленным в статье 81 Статута, относящейся к решению о виновности и приговору, относятся: процессуальная

ошибка, ошибка в праве, ошибка в факте, а также любое другое основание, которое дает повод усомниться в справедливости судебного разбирательства или решения. Стандарты включают в себя «существенное» влияние на окончательное решение, значение которого, в свою очередь, тоже подлежит толкованию, а также факт того, что обжалуемое судебное разбирательство было несправедливым с тем, что это ставит под сомнение решение или приговор. Изучается природа процедуры обжалования иных решений, закрепленной в статье 82 Статута. Также делается акцент на толковании положений Статута, на то, каким образом различные основания и стандарты, закрепленные в разных статьях, коррелируют в контексте статьи 83 Статута и между собой.

Ключевые слова: международное уголовное правосудие, Международный уголовный суд, Апелляционная палата, обжалование, уголовный процесс.

Introduction

Modern international criminal justice bodies, such as the International Criminal Court (hereinafter referred to as the ICC) and hybrid tribunals, include an Appeals Chamber within their structure, whose functions encompass the filing of appeals and the revision of decisions. These institutions serve as crucial instruments for the protection of human rights and represent, in general terms, a procedural mechanism aimed at altering the outcome of a case. Depending on who files the motion, on what grounds, and against which decision, either the appeal procedure for judgments or interlocutory decisions, or the revision procedure will be applied.

The appeal procedure can be invoked in relation to decisions of conviction or acquittal, as well as other rulings (interlocutory decisions). The majority of the ICC's practice involves appeals against interlocutory decisions, although judges themselves consider such decisions to often hinder the progress of the trial. Moreover, in practice, standards for granting motions to appeal interlocutory decisions have been applied beyond those explicitly set forth in Article 82 of the Rome Statute (hereinafter referred to as the Statute). Cases involving appeals against convictions are less common and are subject to relatively stringent requirements.

Materials and Methods

The methodological foundation of this study is based on the general scientific dialectical method of understanding socio-legal phenomena, which allows for their examination in a state of constant development, close interconnection, and interdependence. Additionally, specialized scientific methods such as comparative legal analysis and formal-logical reasoning were comprehensively employed during the research.

The materials include, besides the Rome Statute and its commentaries, the case law of international criminal justice bodies and doctrinal sources.

Discussion

The Right to Appeal Acquittal or Conviction Decisions

According to Article 81(1)(b) of the Statute, an appeal may be filed by a person convicted or by the Prosecutor on their behalf on the grounds of: 1) procedural error, 2) error in fact, 3) error in law, or 4) any other ground that casts doubt on the fairness of the trial or decision. However, on the latter ground, the Prosecutor may not appeal as the party bringing the charges.

Neither the Statute nor the ICC's Rules of Procedure and Evidence (hereinafter the Rules) clearly define the standards for these grounds—that is, what conditions must be met to establish such errors. Nevertheless, auxiliary tools and judicial practice, although not exhaustively, shed light on this issue.

Procedural Error

A procedural error is understood as the failure to comply with mandatory procedural requirements of the Statute and the Rules, as well as the erroneous exercise of discretionary powers by the Trial Chamber (Klamberg, 2023, p. 559), which significantly influenced the final decision (Mosna, 2017, p. 275). The term “significant influence” means that, had the error not occurred, the decision would have been fundamentally different.

Failure to comply with mandatory procedural directives also encompasses situations involving violations of the rights of the accused as enshrined in Article 67 of the Statute, since Article 64 obliges the Trial Chamber to ensure a fair trial with respect for the rights of the accused (Mosna, 2017, p. 275).

For an appeal based on erroneous exercise of discretionary powers to be granted, the appellant must demonstrate that the exercise of discretion was founded on a misinterpretation of the law, incorrect application of a legal principle, a manifestly erroneous finding of fact, or that the decision was so unfair and unreasonable as to constitute an abuse of discretion (Mosna, 2017, p. 275).

Regarding the exercise of discretionary powers based on alleged errors in law or fact, the ICC Appeals Chamber has ruled that it will apply the respective standards for errors of law and errors of fact (IBA ICC, 2022, p. 29).

Misuse of discretionary powers constituting a procedural error occurs when the Trial Chamber attaches weight to irrelevant considerations or, conversely, fails to give due weight to material findings, thereby unreasonably exercising its discretion.

Procedural error closely resembles an error of law, the latter involving incorrect interpretation of procedural law norms by the Trial Chamber. However, the distinction lies in procedural error relating specifically to formal breaches of prescribed norms (Hartwig, 2012, p. 537).

Notably, the statutes of many hybrid tribunals do not define procedural error as a ground for appeal; instead, this standard is subsumed under either error of fact or error of law.

Error of Law

An error of law consists of the Trial Chamber's incorrect interpretation of substantive or procedural law applicable to the case (Klamberg, 2023, p. 559). Not every error will warrant altering the decision—only those that materially affected the final outcome, meaning the decision could have been fundamentally different but for

the error. This standard is codified in Article 83(2) of the Statute. It is noteworthy that hybrid tribunals often apply stricter standards for appeals on this ground.

When determining whether an error of law has occurred, the Appeals Chamber's task is not to immediately assess the Trial Chamber's interpretation for correctness, but rather to interpret the law independently and then decide whether the Trial Chamber's interpretation was correct. Thus, the Appeals Chamber develops its own criteria for interpreting the applicable law in each case (Schabas, 2016, p. 1214). Scholars suggest these criteria should avoid contradictions and be applicable across both common law and civil law systems (Gray, 2020, p. 953).

Error of Fact

Error of fact comprises two types: first, where the Trial Chamber, based on the evidence, reached factual conclusions different from those it should have; second, where the Trial Chamber's initial factual conclusions appeared correct based on the evidence, but new evidence presented on appeal casts doubt on their validity (Klamberg, 2023, p. 559).

Regarding the first type, the Appeals Chamber does not conduct a new trial on the premise that the Trial Chamber might more likely have reached a correct decision upon re-examining evidence. It only overturns factual findings that fail to meet the "beyond reasonable doubt" standard, thus assessing the Trial Chamber's reasonableness in evaluating evidence. However, scholars criticize this procedure for lacking a full re-examination of primary evidence and for combining the worst features of common and civil law systems (Gray, 2020, p. 980). Yet, requiring the Appeals Chamber to review evidence as the Trial Chamber does would prolong already lengthy proceedings and detention periods.

The second type of error raises challenges regarding the admissibility of new evidence, for which specific criteria exist.

The standard for both types is similar: only errors of fact that materially affected the final decision justify granting an appeal, meaning a different decision could have been made absent the error.

Any Other Ground Casting Doubt on the Fairness of the Trial or Decision

This provision is comprehensive, intended to ensure justice when grounds for appeal are not covered by the previous three. In practice, however, the standards for error of law, error of fact, and procedural error are broad enough to encompass issues relating to the fairness of the trial and decision (Mosna, 2017, p. 279).

The Appeals Chamber has established a two-step test for this ground: first, determining whether the convicted person's rights were violated; second, whether such violations affected the reliability of the conviction. This ground pertains specifically to the conviction decision, as it is available only to the convicted person and the Prosecutor acting on their behalf under Article 81(1)(b).

It can be inferred that since Article 82(2) is applied together with Article 81 and includes two standards—one for "material effect" relating to errors of law, fact, or procedure, and another for "the impugned proceedings were unfair to the extent that it casts doubt on the decision"—the latter standard corresponds to the ground relating to

fairness or confidence in the trial or decision (Article 81(2)(d)), as applying a standard without a ground would be illogical. Given this ground is accessible only to the convicted person and the Prosecutor acting on their behalf, the standard under Article 81(2)(d) cannot apply to the Prosecutor acting independently. The difference in wording between the ground and the standard creates different burdens of proof: the standard is stricter, requiring proof that the trial was unfair (cause), that confidence in the decision is undermined (effect), and that a causal link exists between them.

Right to Appeal the Sentence

Both the Prosecutor and the convicted person have this right. The Prosecutor may request an increase in the sentence since the Statute does not specify whether the Prosecutor exercises this right on their own behalf or on behalf of the convicted person, thus nothing prevents its exercise (Staker & Eckelmans, 2016, p. 1921).

Grounds for appeal include the sentence's disproportion to the crime committed. Article 83(2) supplements this ground with procedural error, error of law, or fact, establishing the "material effect" standard, and further requires that the impugned proceedings were unfair to the extent that confidence in the sentence is undermined.

In summary, the requirements for granting an appeal on sentence include:

1. Disproportionate sentence (ground) AND error of law (ground) + material effect on sentence (standard);
2. Disproportionate sentence (ground) AND error of fact (ground) + material effect on sentence (standard);
3. Disproportionate sentence (ground) AND procedural error (ground) + material effect on sentence (standard);
4. Disproportionate sentence (ground) + unfairness of proceedings undermining confidence in sentence (standard).

Right to Appeal Interlocutory Decisions

The right to appeal decisions of the Pre-Trial Chamber and Trial Chamber is governed by Article 82 of the Rome Statute. Not every appeal request will be entertained by the Appeals Chamber, as grounds such as procedural error, error of law, or fact (Article 81(1)(a)) also apply to Article 82.

A contentious issue is whether the standards in Article 83(2)—that errors or procedural errors must materially affect the decision or that the trial was unfair to the extent it affected the decision's reliability—apply equally to interlocutory decisions as they do to decisions on guilt, acquittal, or sentence. The Court's practice is inconsistent. Initially, the Appeals Chamber held that errors might not materially affect interlocutory decisions for appeal under Article 82(2). However, subsequent decisions applied the stricter standard, which has been criticized for unduly restricting appeal rights and other fundamental defense rights (Mosna, 2017, p. 282).

The ICC also has a system of leave to appeal interlocutory decisions. Certain decisions, such as those on jurisdiction or admissibility (Article 82(1)(a)), decisions permitting or denying release (Article 82(1)(b)), or decisions by the Pre-Trial Chamber acting *proprio motu* under Article 56(3) (Article 82(1)(c)) may be appealed without leave. However, decisions significantly affecting the fairness or expeditiousness of the

trial or its outcome, or where immediate appeal would materially advance the proceedings, require leave from the Pre-Trial or Trial Chamber (Article 82(1)(d)). Also, decisions authorizing special investigative measures require leave (Article 82(2)).

The criterion of significant impact on fairness or expeditiousness and the criterion of material advancement of proceedings are applied jointly, complicating appeals (Friman, 2023, p. 583).

The leave to appeal procedure faces criticism: first, since the chamber issuing the decision also grants leave, there is a risk of bias (Mosna, 2017, p. 285); second, such interlocutory appeals are rarely granted, as they are seen as inefficient and disruptive (Mosna, 2017, p. 286); third, denial of leave is not appealable. While this does not violate human rights norms, which guarantee appeal only for final decisions (e.g., ICCPR Article 14(5)), some argue that since Article 82(1)(d) concerns fairness rights (a human right under ICCPR Article 14(1)), denial of leave may violate Article 21(3) of the Statute, which mandates interpretation consistent with recognized human rights. This argument suggests that denial of leave under Article 82(1)(d) could be challenged under Article 82(1)(a) for jurisdiction/admissibility grounds due to human rights violations, though ICC practice has yet to confirm this.

Thus, the practical application of Article 82 creates substantial obstacles, as the appeals process for interlocutory decisions is legally constrained by numerous conditions.

Conclusions

In conclusion, procedural norms governing appeals provide only a framework. A deeper understanding of Articles 81–83 requires reference to case law, which is sometimes inconsistent and occasionally relies on discretionary powers and broad interpretation beyond the Statute's provisions. For example, the Court applies appeal standards for interlocutory decisions akin to those for verdicts, creating significant barriers to appeal rights. Nevertheless, the use of discretion and expansive interpretation aimed at delivering justice may benefit the defense.

It should be noted that ICC law and hybrid tribunal law differ in many respects. In protecting the rights of the convicted, ICC law is sometimes more progressive, and in other instances, hybrid tribunal law is.

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