

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-RoR56-01/23

Date: 13 March 2023

THE PRESIDENCY

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

Public

**Decision on the Application to review the decision of the Registrar denying admission of
Mr Jean-Jacques Aernout to the list of experts**

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Applicant

Mr Jean-Jacques Aernout

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Presidency of the International Criminal Court (the ‘Court’) has before it the application of Mr Jean-Jacques Aernout (the ‘Applicant’) received by the Court on 30 January 2023 for judicial review of a decision issued by the Registrar on 30 January 2023, denying the Applicant inclusion in the list of experts created and maintained by the Registrar pursuant to regulation 44 of the Regulations of the Court (the ‘Application’).¹

The Application is dismissed without prejudice for the reasons set out below.

I. PROCEDURAL HISTORY

1. On 9 January 2023, the Registry received from the Applicant a request for inclusion in the list of experts, dated 13 December 2022 (the ‘Request for Inclusion’),² together with supporting documentation.³
2. On 19 January 2023, the Registry transmitted the Applicant’s Request for Inclusion to an expert tasked with assessing the expertise of applicants to the list of experts.⁴
3. On 23 January 2023, the Registry received the assessment of the expert which suggested not retaining the Applicant’s Request for Inclusion on the basis that his field of expertise and the related legal disputes did not fall within the mandate of the ICC.⁵
4. On 30 January 2023, the Registrar notified the Applicant of his decision to reject the Applicant’s Request for Inclusion in the list of experts and informed him of the 15-day deadline to apply for review before the Presidency (the ‘Impugned Decision’).⁶
5. On 30 January 2023, the Registry received the present Application for judicial review pursuant to regulation 56(2) of the Regulations of the Registry.⁷ The same day, the Registrar formally transmitted the Application to the Presidency, attaching thereto all the

¹ Registry, [Transmission of the Application for review of the Registrar’s decision to refuse Mr Aernout Jean-Jacques’s inclusion to the List of Experts](#), 1 February 2023, ICC-RoR56-01/23-1 (the ‘Transmission’), paras 1, 8, transmitting Application, ICC-RoR56-01/23-1-Conf-Anx5.

² [Transmission](#), ICC-RoR56-01/23-1, para. 4; Registry, Annex 1, ICC-RoR56-01/23-1-Conf-Anx1, *annexed to Transmission*, ICC-RoR56-01/23-1.

³ Registry, Annex 2, ICC-RoR56-01/23-1-Conf-Anx2, *annexed to Transmission*, ICC-RoR56-01/23-1.

⁴ [Transmission](#), ICC-RoR56-01/23-1, para. 5.

⁵ Registry, Annex 3, ICC-RoR56-01/23-1-Conf-Anx3, p. 1, *annexed to Transmission*, ICC-RoR56-01/23-1; [Transmission](#), ICC-RoR56-01/23-1, para. 6.

⁶ Registry, Annex 4, ICC-RoR56-01/23-1-Conf-Anx4, *annexed to Transmission*, ICC-RoR56-01/23-1; [Transmission](#), ICC-RoR56-01/23-1, para. 7.

⁷ [Transmission](#), ICC-RoR56-01/23-1, para. 8; Application, ICC-RoR56-01/23-1-Conf-Anx5.

above mentioned documents, and responded to the Application in accordance with regulation 56(3) of the Regulations of the Registry.⁸

II. MERITS

A. Impugned Decision

6. In the Impugned Decision, the Registrar informs the Applicant that, following a careful review, his Request for Inclusion in the list of experts is denied because the Applicant's expertise in industrial fraud is not being sought by the Court.⁹

B. Submissions

7. The Application requests the Presidency to consider his Request for Inclusion anew and in support further elaborates on the Applicant's experience and qualifications in his area of expertise.¹⁰
8. In response, the Registrar notes that in order to comply with the criteria set out for inclusion in the list of experts, a candidate must have a field of expertise relevant to the Court's proceedings as listed on the Court's website.¹¹ The Registrar submits that the Applicant failed to demonstrate the relevance of his expertise to the Court's proceedings and that he considered that the Applicant's expertise was neither relevant to the Court's mandate nor the current judicial proceedings.¹²

C. Determination of the Presidency

9. The Presidency observes that the Application is in the form of an email and that it seeks a *de novo* consideration of the Request for Inclusion without developing any arguments capable of supporting an application for judicial review.¹³

⁸ [Transmission](#), ICC-RoR56-01/23-1, paras 11-14.

⁹ Impugned Decision, ICC-RoR56-01/23-1-Conf-Anx4, p. 2.

¹⁰ Application, ICC-RoR56-01/23-1-Conf-Anx5, p. 2.

¹¹ [Transmission](#), ICC-RoR56-01/23-1, para. 12.

¹² [Transmission](#), ICC-RoR56-01/23-1, paras 13-14.

¹³ Application, ICC-RoR56-01/23-1-Conf-Anx5, p. 2.

10. It is apparent that the Applicant is unfamiliar with the judicial review process contemplated by regulation 56 of the Regulations of the Registry. Pursuant to regulation 56(2) of the Regulations of the Registry, where an application to be included in the list of experts is refused, the Registrar shall inform the person on how to apply to the Presidency for review. In conformity with this provision, applicants should be informed that review by the Presidency is a formal judicial process, which requires a fully reasoned application by way of a filing communicated through the Court Management Section (judoc@icc-cpi.int). Where persons seeking to be included in the list of experts are unfamiliar with the Court's processes, they may require assistance by the Registry on how to file an application for judicial review.
11. Furthermore, persons seeking judicial review before the Presidency pursuant to regulation 56(2) or 56(9) of the Regulations of the Registry, should be informed by the Registry of the standard of review that will be applied by the Presidency. Judicial review of decisions of the Registrar concerns the propriety of the procedure by which the latter reached a particular decision and the outcome of that decision. It involves a consideration of whether the Registrar has: acted without jurisdiction, committed an error of law, failed to act with procedural fairness, acted in a disproportionate manner, taken into account irrelevant factors, failed to take into account relevant factors or reached a conclusion which no sensible person who has properly applied his or her mind to the issue could have reached.¹⁴ In order to enable a meaningful judicial review process, any application for judicial review should provide arguments as to why the applicant considers that the decision of the Registrar may warrant review in accordance with this standard.
12. In the present case, the Application contains insufficient information to allow for a meaningful judicial review by the Presidency. The Applicant merely elaborates on his experience but fails to identify any error in the Impugned Decision and with respect to the Registrar's determination that the Applicant's expertise in industrial fraud is not being sought by the Court. Moreover, the Application addresses and seeks clarification from

¹⁴ The standard of judicial review was defined by the Presidency in its [Decision on the application to review the Registrar's decision denying the admission of Mr Ernest Midagu Bahati to the list of counsel](#), 29 December 2005, ICC-Pres-RoC72-02-05, para. 16 and supplemented in its Decision on the application to review the decision of the Registrar denying [REDACTED] privileged visits with Mr Lubanga Dyilo, under regulation 221 of the Regulations of the Registry, 27 November 2006, ICC-01/04-01/06-731-Conf, para. 24. *See also* Presidency, [Reasons for the 'Decision on the "Application for Review of Decision of the Registrar's Division of Victims and Counsel dated 2 January 2008 not to Admit Prof. Dr. Sluiter to the List of Counsel"'](#), 10 July 2008, ICC-RoC72-01/08-10, para. 20; Presidency, [Decision on the application to review the decision of the Registrar denying the admission of Ms Magdalena Ayoade to the list of experts](#), 6 August 2009, ICC-RoR56-01/09-2, para. 11.

the Registry. It does not directly address or otherwise set out information of relevance to the Presidency. The Presidency therefore considers that it is appropriate to provide the Applicant with the opportunity to submit a properly reasoned application for judicial review, should he consider that in light of the standards set forth in this decision such review would be warranted. Any such application should be made within 15 calendar days of the present decision.

THE PRESIDENCY HEREBY

DISMISSES the Application, without prejudice to the possibility for the Applicant to file a fully reasoned application for judicial review within 15 calendar days of this decision.

Done in both English and French, the English version being authoritative.



Judge Piotr Hofmański
President



Judge Luz del Carmen Ibáñez Carranza
First Vice-President



Judge Antoine Kesia-Mbe Mindua
Second Vice-President

Dated this 13 March 2023

At The Hague, The Netherlands