

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-RoR125-01/25**

Date: **6 February 2025**

THE PRESIDENCY

Before:

**Judge Tomoko Akane, President
Judge Rosario Salvatore Aitala, First Vice-President
Judge Reine Alapini-Gansou, Second Vice-President**

Confidential

**Decision on the Application to review the decision of the Registrar denying admission of
Ms Andrea Margarita Maria Duque Uribe to the list of assistants to counsel**

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

- | | |
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| ☐ The Office of the Prosecutor | ☐ Counsel for the Defence |
| ☐ 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 Zavala Giler, Osvaldo | ☒ Counsel Support Section |
| ☐ Victims and Witnesses Unit | ☐ Detention Section |
| ☐ Victims Participation and Reparations
Section | ☒ Other
Applicant |

The Presidency of the International Criminal Court (the ‘Court’) has before it the application of Ms Andrea Margarita Maria Duque Uribe (the ‘Applicant’) received by the Court on 30 October 2024 seeking judicial review of a decision issued by the Registrar on 15 October 2024 which denied the Applicant’s inclusion in the list of assistants to counsel (the ‘Application’).¹

I. PROCEDURAL HISTORY

1. On 13 March 2024, the Applicant submitted to the Registry an updated version of her application for inclusion in the list of assistants to counsel originally dated 17 December 2022 (the ‘Request for Inclusion’),² together with her *curriculum vitae*.³
2. On 15 October 2024, the Registry Counsel Support Section notified the Applicant of the Registrar’s decision to reject her Request for Inclusion, and the Applicant was informed of the 15-day deadline to apply for review before the Presidency (the ‘Impugned Decision’).⁴
3. On 30 October 2024, the Applicant submitted the present Application for judicial review.⁵
4. On 23 December 2024, the Registrar transmitted to the Presidency, *inter alia*, the Request for Inclusion and the Applicant’s *curriculum vitae* submitted by the Applicant on 13 March 2024.⁶ The Registrar did not submit any observations pursuant to regulation 125(5) of the Regulations.

II. MERITS

A. Impugned Decision

5. The Impugned Decision informs the Applicant that, following careful assessment, her Request for Inclusion in the list of assistants to counsel is denied because she does not

¹ Applicant, [Application for Review - Appeal against the Decision of 15 October 2024 Refusing Inclusion in the List of Assistants to Counsel](#), 30 October 2024 (notified on 8 November 2024), ICC-RoC72-01/24-1-tENG.

² Annex II, ICC-RoC72-01/24-2-Conf-AnxII, *annexed to* Registry, Registry’s transmission of supporting material concerning the application of Ms Andrea Margarita Maria Duque Uribe to the List of Assistants to counsel of the International Criminal Court, 23 December 2024, ICC-RoR72-01/24-2-Conf (the ‘Registry’s Transmission’).

³ Annex III, ICC-RoC72-01/24-2-Conf-AnxIII, *annexed to* Registry’s Transmission, ICC-RoR72-01/24-2-Conf.

⁴ Annex, ICC-RoC72-01/24-1-Conf-Anx, pp. 3-4, *annexed to* Application, ICC-RoC72-01/24-1.

⁵ Application, ICC-RoC72-01/24-1.

⁶ Registry’s Transmission, ICC-RoR72-01/24-2-Conf.

fulfil the requirements set forth in regulation 124 of the Regulations.⁷ The Registrar considers that the Applicant neither possesses five years of relevant experience, nor specific competence in international or criminal law and procedure.⁸

6. The Impugned Decision specifies that the Applicant's experience and internships in the following organisations were considered relevant: Public Prosecutor's Office in Medellín, Colombia (08/2018-07/2019), Public Law Division at the Pio XII Legal Clinic at the Pontifical Bolivarian University (01/2019-06/2019), Garcia Rincon (12/2020), Asselineau Law Firm (09/2021-12/2021), Béryl Brown Law Firm (06/2022-07/2022), Mabile-Sauvade Law Firm (09/2022-03/2023) and Alexis Guedj-Emmanuel Altit (05/2023).⁹ Noting that internships, fellowships and volunteer work are counted at half credit, the Impugned Decision concludes that the Applicant's overall experience in criminal proceedings falls short of the required five years.¹⁰
7. The Impugned Decision further elaborates that the other activities listed in the Applicant's *curriculum vitae*, in particular her internship at Truth, Reconciliation and National Unity Commission of Seychelles (04/2021–06/2021), was considered to assess whether the Applicant fulfils the criterion of specific competence in international or criminal law and procedure.¹¹ The Impugned Decision finds this limited experience insufficient to fulfil this criterion.¹²

B. Submissions

8. The Applicant seeks judicial review of the Impugned Decision, arguing that she has specific competence in international or criminal law and procedure, as required under regulations 124 of the Regulations.¹³ She submits that her experience in international law and criminal proceedings at the national level, considered in the Impugned Decision under the first criterion of regulation 124 of the Regulations, ought to also be considered under the second criterion of this provision.¹⁴ In this regard, she points to her professional experience as a lawyer and intern which she argues should have been taken into account

⁷ Impugned Decision, ICC-RoC72-01/24-1-Conf-Anx, p. 3.

⁸ Impugned Decision, ICC-RoC72-01/24-1-Conf-Anx, pp. 3-4.

⁹ Impugned Decision, ICC-RoC72-01/24-1-Conf-Anx, p. 3.

¹⁰ Impugned Decision, ICC-RoC72-01/24-1-Conf-Anx, pp. 3-4.

¹¹ Impugned Decision, ICC-RoC72-01/24-1-Conf-Anx, p. 4.

¹² Impugned Decision, ICC-RoC72-01/24-1-Conf-Anx, p. 4.

¹³ Application, ICC-RoC72-01/24-1-Conf-Anx, p. 2.

¹⁴ Application, ICC-RoC72-01/24-1-Conf-Anx, p. 2.

under the second criterion of regulation 124.¹⁵ She also submits that she has gained knowledge of criminal law and international criminal law through her academic background, indicating that she holds a *Master 2* in international criminal justice.¹⁶

C. Determination of the Presidency

9. The Presidency recalls that the 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 reasonable person who has properly applied his or her mind to the issue could have reached.¹⁷
10. The Presidency further recalls that inclusion in the list of assistants to counsel is governed by regulation 68 of the Regulations of the Court and regulation 124 and 125 of the Regulations. Regulation 124 of the Regulations sets forth two alternative criteria for admission to the list of assistants to counsel, either: (i) five years of relevant experience in criminal proceedings; or (ii) specific competence in international or criminal law and procedure. In addition, rule 22(1) of the Rules of Procedure and Evidence (the 'Rules') provides that 'Counsel for the defence may be assisted by other persons, including professors of law, with relevant expertise'.
11. It is not disputed that the Applicant does not satisfy the first criterion contained in regulation 124 of 'five years or relevant experience in criminal proceedings'. The Applicant, rather, argues that the Registrar erred in his assessment of the second criterion of 'specific competence in international or criminal law and procedure' and that he should have taken into account, when assessing this criterion, the Applicant's experience in

¹⁵ Application, ICC-RoC72-01/24-1-Conf-Anx, p. 3.

¹⁶ Application, ICC-RoC72-01/24-1-Conf-Anx, p. 4.

¹⁷ 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](#), 20 December 2005, ICC-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.

criminal proceedings, considered relevant to the fulfilment of the first criterion, as well as her academic background.¹⁸

12. In reaching the conclusion that the Applicant does not fulfil the specific competence criterion, the Impugned Decision took into account the activities other than those considered as relevant experience in criminal proceedings.¹⁹ It noted, in this regard, that ‘insufficient experience in criminal proceedings cannot be computed when evaluating the specific competence in international or criminal law and procedure of a candidate’.²⁰ The Presidency recalls that it has previously emphasised that the specific competence criterion permits the Registrar certain discretion in its application but that it is incumbent upon the Registrar, when applying this criterion, to assess relevant factors without being unduly doctrinaire.²¹ As the Presidency previously elucidated, although the assessment of whether each of the criteria in regulation 124 is satisfied must occur separately, it is evident that certain experiences relevant to the fulfilment of one criterion may be *equally relevant* to the fulfilment of the other.²² While the specific competence criterion does not function as a ‘catch all’ category for persons who do not meet the five-year experience criterion, relevant factors, including professional experience which may *also* fall within the scope of ‘relevant experience in criminal experience in criminal proceedings’, should be considered as a whole when assessing specific competence.²³ The Presidency therefore finds that the Impugned Decisions erred in failing to consider any of the Applicant’s professional experience in criminal proceedings to assess the specific competence criterion.

13. Nonetheless, despite this error, the Presidency considers that there is no need to remit the matter to the Registrar for a new decision-making process on this occasion because the Applicant nonetheless evidently fails to satisfy the specific competence criterion.

¹⁸ Application, ICC-RoC72-01/24-1-Conf-Anx, pp. 2-3.

¹⁹ Impugned Decision, ICC-RoC72-01/24-1-Conf-Anx, p. 4.

²⁰ Impugned Decision, ICC-RoC72-01/24-1-Conf-Anx, p. 3.

²¹ Presidency, [Public redacted version of “Decision on the ‘Request for Review of Decision to Deny the Applicant admission to the List of Assistant to Counsel Pursuant to Regulation 125\(4\) of the Regulations of the Registry’”](#), 4 September 2015, ICC-RoR125-01/15-5-Cond-Exp, 4 September, ICC-RoR125-01/15-5-Red2015 (a public redacted version was filed on 1 October 2015) (the ‘Presidency Decision of 4 September 2015’), para. 30.

²² [Presidency Decision of 4 September 2015](#), ICC-RoR125-01/15-5-Red, para. 32.

²³ See Presidency, [Public redacted version of “Decision on the Application to review the decision of the Registrar denying admission \[REDACTED\] to the list of assistants to counsel” dated 20 May 2021 \(ICC-RoR125-01/21-3-Conf\)](#), 20 May 2021, ICC-RoR125-01/21-3-Red (a public redacted version was filed on 18 October 2022), (the ‘Presidency Decision of 20 May 2021’), para. 18; [Presidency Decision of 4 September 2015](#), ICC-RoR125-01/15-5-Red, para. 30.

14. When regulation 124 of the Regulations is read in conjunction with rule 22(1) of the Rules, it is apparent that the second criterion of specific competence in international or criminal law and procedure has to be understood as seeking individuals with a certain level of expertise.²⁴ As an example of persons with specific expertise assisting counsel, rule 22(1) lists ‘professors of law’. This emphasis on expertise is also reflected in the Registry’s Guide for applicants to the ICC List of Counsel and Assistants to Counsel which, in addition to professors, refers to other academic experts who have relevant expertise in international or criminal law.²⁵ The Presidency also recalls that it has previously held that although the second criterion may not be quantifiably measurable, the nature of such specific competence must bear an approximate equivalence to the first criterion.²⁶
15. Having analysed the Request for Inclusion and the Applicant’s *curriculum vitae*, the Presidency notes that the Applicant has some experience in national criminal proceedings, international criminal law and other areas of law but that these experiences, even when taken together, do neither quantitatively nor qualitatively establish any specific competence or expertise in international law or criminal law and procedure, which would be approximately equivalent to five years of relevant experience in criminal proceedings. In light of this, the Presidency finds that the Registrar has not erred in his overall conclusion that the Applicant does not fulfil the requisite criteria set forth in regulation 124 of the Regulations.
16. In view of the above, the Presidency confirms the Registrar’s decision to not include the Applicant in the list of assistants to counsel. The Presidency notes, however, that this is without prejudice to the Applicant submitting a new request for inclusion in the list of assistants to counsel once she fulfils the necessary requirements under either criterion.

²⁴ [Presidency Decision of 20 May 2021](#), ICC-RoR125-01/21-3-Red, para. 18.

²⁵ Registry, [Guide for applicants to the ICC List of counsel and Assistants to counsel](#), p. 5.

²⁶ [Presidency Decision of 20 May 2021](#), ICC-RoR125-01/21-3-Red, para 18; [Presidency Decision of 4 September 2015](#), ICC-RoR125-01/15-5-Red, para. 31.

III. CLASSIFICATION

17. In view of the confidential classification of the Impugned Decision, the Request for Inclusion and the Applicant's *curriculum vitae*, the present decision is classified as confidential. The Presidency takes the view, however, that nothing stated in this decision *prima facie* qualifies it as confidential and that this decision could be of relevance more broadly to future applicants for inclusion in the list of assistants to counsel. As such the Presidency hereby indicates its intention to reclassify the present decision as public. If there is any factual or legal basis for retaining the confidential classification of this decision or if there is any information requiring redaction prior to publication, the Applicant and/or the Registrar may inform the Presidency thereof no later than by 4pm on 20 February 2025, by way of a filing communicated through the Court Management Section (judoc@icc-cpi.int).

THE PRESIDENCY HEREBY

CONFIRMS the Impugned Decision in its operative part.

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

赤根 智子

Judge Tomoko Akane
President



Judge Rosario Salvatore Aitala
First Vice-President



Judge Reine Alapini-Gansou
Second Vice-President

Dated this 6 February 2025

At The Hague, The Netherlands