Cour
Pénale
Internationale

International
Criminal
Court

Original: **English**

No. ICC-RoC72-02/11
Date: **25 October 2011**

THE PRESIDENCY

Before: **Judge Sang-Hyun Song, President**
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

Public

Response of the Registrar on the "Application for Review" (Regulation 72(1) (a) of the Regulations of the Court" dated 10 October 2011

Source: **Registrar**

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

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Counsel for the Defence

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States' Representatives

Amicus Curiae

REGISTRY

Registrar
Ms. Silvana Arbia

Counsel Support Section
Mr. Esteban Peralta Losilla

Deputy Registrar
Mr Didier Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other
Allison Turner, Attorney

In accordance with Regulation 72-3 of the Regulations of the Court, the Registrar respectfully submits the following observations in Response to the "Application for Review (Regulation 72(1) (a) of the Regulations of the Court) (the "Application") filed before the Presidency by Ms. Allison Turner (the "Applicant").

PROCEDURAL HISTORY

1. On 17 January 2011 the Registry received an application from the Applicant to be admitted to the International Criminal Court's (ICC) List of Counsel. A previous request submitted by the Applicant to be admitted to the list had been denied, on the grounds that the candidate had only two and a half years of experience in criminal proceedings, by a decision dated 1st September 2008 (Annex I)[1];

2. The Registry invited the Applicant to submit additional information[2] on the 28 January 2011 and 15 September 2011, and the Applicant submitted the additional information supporting her application on the 31 January 2011 (Annex II and III) and the 15 September 2011[3] respectively;

3. The Registrar, in accordance with Regulation 70(2) of the Regulations of the Court (hereinafter "the Regulations"), notified the Applicant of the decision not to include her in the List of Counsel ("the Decision"), by letter dated 20 September 2011[4];

4. On the 28 September 2011 the Applicant requested to be admitted to the list of Assistants to Counsel (Annex IV);[5]

[1] Letter ref: 2008/DSS/2008/226/ss.
[2] In accordance with Regulation 70(1) of the Regulations of the Court
[3] See Annex II of the Application.
[4] See Annex I of the Application.
[5] Letter from the Applicant to the Registry dated on 28 September 2011, amongst others requesting to be added to the List of Assistants to Counsel.

5. By letter dated 6 October 2011, the Registry (Counsel Support Section) notified the Applicant of the decision to admit her to the List of Assistants to Counsel (Annex V)[6];

6. On the 10 October 2011, the Applicant filed with the Presidency an Application for Review, on which the Registrar hereby presents the following observations.

THE REGISTRAR'S OBSERVATIONS

7. The Registrar observes that in the proper discharge of her functions in the management of the list of counsel, all information submitted by the Applicant in support of her Application at all stages of the evaluation procedure was carefully examined in accordance with the relevant texts of the ICC[7], with the result that she was found, based on the merits of her application, to be ineligible to be admitted to the List of Counsel based on the ground expounded in the Decision;

On the requirement of at least ten years of experience

8. Based on Rule 22 and Regulation 67 of the Regulations of the Court, candidates applying to be admitted to the List of Counsel must demonstrate *inter alia* that they meet the minimum requirement of at least 10 years necessary relevant experience in criminal proceedings. The latter text, as the

[6] Letter dated 6 October 2011 admitting the Applicant to the List of Assistants to Counsel.
[7] See Rule 22 of the Rules of Procedure and Evidence and Regulations 67 of the Regulations of the Court.

Presidency has had the opportunity to recall, "does not provide for any waiver in the application of that criterion";[8]

9. In the calculation of this necessary relevant experience, the Registrar considers cases handled by the applicant to gauge the volume and relevancy of the specific experience of each candidate in criminal proceedings and decides whether the experience amounts to at least 10 years as required. The Registrar often seeks clarifications from candidates – as was done in this case[9] – to arrive to an informed decision based on all supporting information and materials provided. In the present case, the Applicant was given the opportunity to provide all necessary information to substantiate her years of relevant experience in criminal proceedings;

10. The Registrar submits that, in the due consideration of all applications from candidates with civil and/or criminal background, only the experience in criminal proceedings is considered relevant in accordance with Rule 22 (1) of the of the Rules of Procedure and Evidence ("RPE") and Regulation 67 of the Regulations-. The Registrar's Decision therefore did not compute the impressive academic record of the Applicant or, contrary to her allegation in paragraph 15 line 7 of the Application, her civil work, but only her experience in criminal proceedings by representing an accused in a DUI case[10]. This approach is consistent with other International Tribunals' practice.[11] ;

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[8] 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, ICC-Pres-RoC72-01-8-10 (10 July 2008), para. 24.
[9] See Annex I and II.
[10] See page 3 of the Decision.
[11] *ICTY Manual on Developed Practices*, 2009, p. 207, par. 11.

11. The Decision is, therefore, not only consistent with the texts of the Court[12] but was also procedurally administered fairly and is based solely on the relevant factors and the full information provided by the Applicant. After taking into account that information, as evidenced on her file, the Registrar submits that no other reasonable conclusion could be reached than to deny her admission to the List.

On the proportion of criminal proceedings in a lawyer's practice

12. The Registrar notes that the Applicant alleges in paragraphs 5 and 8 of the Application that the requirement of "relevant experience in criminal proceedings", which she does not dispute,[13] was applied arbitrarily, but rather challenges " … the procedural fairness of applying Requirement 4 liberally for general practitioners and strictly in cases such as mine where counsel specializes in either civil or criminal law" and further states that in the Decision the "Registry considers partial criminal experience in a general practice 'criminal proceedings experience'. Lawyers possessing the equivalent of fewer than ten years of exclusive criminal proceedings experience, therefore, are being admitted to the ICC List of Counsel";

13. In the view of the Registrar, no legal text requires that the necessary relevant experience be acquired on an exclusive basis; should that be the case, the Court would be ignoring the reality of the legal profession, where most of its members do not confine themselves to a particular area of the law.

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[12] See Rule 22 of the Rules of Procedure and Evidence and Regulations 67 of the Regulations of the Court.
[13] See Application, paragraph 5.

On the request to give different value to experience acquired on an exclusive basis

14. The Applicant requests that the Presidency adopts different methods of assessing her experience in order to grant her admission to the List of Counsel;

15. The first proposal is to consider her three years of civil practice as relevant experience in the computation of ten years experience, "to ensure that I am treated on a par with general practitioners who have the equivalent *or less* than (…) seven years of exclusively criminal experience", or alternatively "'upgrading' [her] seven years of *highly relevant* international criminal experience such that each of my years qualifies as 1.5 years for the purposes of Requirement 4"[14];

16. The Registrar observes that experience in civil proceedings is not encompassed by the relevant legal texts of the Court. Hence, this experience cannot be computed into the necessary relevant years of experience prescribed in Rule 22 (1) of the RPE and Regulation 67 of the Regulations;

17. The Registry further observes that upgrading a year experience in criminal proceeding to 1.5 years would be in itself a contravention of Regulation 67 (2) of the Regulations, and would introduce a new computing method whereby a person might be admitted to the List of Counsel with only 6 years and eight months of exclusive experience in criminal proceedings, instead of the ten years required by the aforementioned Regulation, which was established by the Honourable Judges of the Court with the aim of ensuring that all persons involved in its proceedings receive the appropriate legal representation, therefore guaranteeing the rights of defendants and victims.

[14] See paragraphs 6 and 16 of the Application.

On the request to receive information on the application of the criteria to other persons

18. In concluding her arguments in paragraph 6 of the Application, the Applicant seeks confirmation that "each member of the List of Counsel possesses at a minimum the equivalent of ten years *exclusive* criminal proceedings experience", and alleges that, in the Registrar's implementation of requirement 4, some lawyers may have been admitted to the List without possessing the relevant years of experience, based on the general nature lawyers advertise their services and on another lawyer having been called to the Bar in 2001;

19. The Registrar notes that the Applicant proceeded solely on the information found on the internet, which does not necessarily reflect the information in the files submitted by the candidates to support their application to be on the List, and that information found on the internet for the purposes of advertisement of professional services cannot be considered as a conclusive factor to decide to admit a lawyer to the List of Counsel;

20. The Registrar respectfully submits that Regulations 69 and 70 of the Regulations governing the proof and control of criteria to be made by Counsel and for the inclusion in the List of Counsel respectively explain clearly the procedure for the admission to the List. In accordance with these Regulations, each candidate shall submit the relevant information dictated and the Registry decides on the eligibility based on this information. The Registrar applied the same condition for the Applicant and all other applications for admission to the List of Counsel.

CONCLUSION

21. The Registrar submits that the remedies requested in the Application challenge the legal regime governing the criteria for inclusion in the List of Counsel established by the texts of the Court, and that granting them would constitute a contravention of those same texts.

FOR THESE REASONS,

The Registrar respectfully requests the Presidency to dismiss this Application and deny the reliefs sought in their entirety as being wrong in law and fact.

Silvana Arbia

Registrar

Dated this 25 October 2011

At The Hague, The Netherlands