Cour
Pénale
Internationale

International
Criminal
Court

Original: **English**

No.: **ICC-RoC72-02/11**
Date: **14 November 2011**

THE PRESIDENCY

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

Public

Decision on the application to review the decision of the Registrar denying the inclusion of Ms. Allison Turner in the list of counsel

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

REGISTRY

Registrar Ms. Silvana Arbia	**Counsel Support Section** Mr. Esteban Peralta Losilla
Deputy Registrar Mr. Didier Preira	**Other** Ms. Allison Turner, Applicant

The Presidency of the International Criminal Court (hereinafter "Court") has before it the application of Ms. Allison Turner for judicial review of the decision of the Registrar denying her inclusion in the list of counsel.

The application is denied for the reasons set out below.

I. PROCEDURAL HISTORY

1. On 6 January 2011, Ms. Allison Turner (hereinafter "applicant") submitted an application to the Registrar, pursuant to regulation 69 of the Regulations of the Court (hereinafter all references to regulations are to the Regulations of the Court, unless otherwise stated), seeking inclusion in the list of counsel.
2. On 20 September 2011, the Registrar refused to admit the applicant to the list of counsel, pursuant to regulation 70(2) (hereinafter "Impugned Decision").[1] Thereafter, the applicant sought judicial review of the Impugned Decision from the Presidency (hereinafter "Application").[2]
3. On 25 October 2011, the Registrar submitted observations in response to the Application, pursuant to regulation 72(3) (hereinafter "Response").[3]
4. On 2 November 2011, the Presidency ordered the Registrar to provide clarification on one specific issue (hereinafter "Order"),[4] which was duly provided by the latter on 8 November 2011 (hereinafter "Clarification").[5]

II. MERITS

A. Relevant part of the Impugned Decision

[1] ICC-RoC72-02/11-1-Anx1.
[2] Application for Review (Regulation 72(1)(a) of the Regulations of the Court), ICC-RoC72-02/11-1, 10 October 2011.
[3] Response of the Registrar on the "Application for Review" (Regulation 72(1)(a) of the Regulations of the Court" dated 10 October 2011, ICC-RoC72-02/11-2.
[4] Order concerning the application to review the decision of the Registrar denying the inclusion of Ms. Allison Turner in the list of counsel, ICC-RoC72-02/11-3.
[5] Clarifications of the Registrar in accordance with the "Order concerning the application to review the decision of the Registrar denying the inclusion of Ms. Allison Turner in the list of counsel" dated 02 November 2011, ICC-RoC72-02/11-4.

5. The Registrar informed the applicant that she did not satisfy the requirements for inclusion in the list of counsel specified in rule 22(1) of the Rules of Procedure and Evidence (hereinafter "Rules") and regulation 67, pursuant to which candidates must demonstrate that they possess established competence in international or criminal law and procedure, excellent knowledge of at least one of the working languages of the Court, relevant experience in criminal proceedings of at least ten years' duration and have not been convicted of a serious criminal or disciplinary offence.[6]
6. The Registrar found that the applicant did not satisfy the requirement of ten years' experience, determining that she had, at best, seven years and two months of relevant experience in criminal proceedings.[7] The Registrar explained that in assessing such experience in criminal proceedings, she had taken into account the applicant's professional practice from September 2005 when she commenced working as defence counsel before the International Criminal Tribunal for Rwanda and two months' experience in June and July 1993 when the applicant had carriage of a drunk driving case.[8] The Registrar noted that the applicant's experience in academia, whilst relevant to demonstrating her established competence in international or criminal law and procedure, could not be considered in assessing her years of experience in criminal proceedings.[9] The Registrar also noted that the applicant's extensive civil practice could not be considered in assessing her relevant experience in criminal proceedings.[10]

B. The arguments of the parties

1. The arguments of the applicant

7. The applicant argues that the requirement of ten years' relevant experience in criminal proceedings (hereinafter "ten-year requirement") has been applied arbitrarily. The applicant submits that her legal practice experience, consisting of eleven years in civil law, before practising for seven years in criminal law, has been treated inconsistently compared to the experience of others who have engaged in mixed or general practice

[6] Impugned Decision, pages 2-3.
[7] Impugned Decision, page 5.
[8] Impugned Decision, page 4.
[9] Impugned Decision, page 4.
[10] Impugned Decision, page 5.

(i.e. working simultaneously in criminal and non-criminal proceedings), submitting such distinction to be arbitrary and procedurally unfair.[11] The applicant supports this allegation by reference to the fact that she was credited with two months' relevant criminal experience for June and July 1993 when she had one criminal case (a drunk driving matter) which constituted 5-10% of her predominantly civil practice.[12] The applicant argues that if other candidates for inclusion in the list of counsel are similarly assessed, those working in mixed practices could have some civil experience credited towards the ten-year requirement whereas she could not.[13] In support of this claim, the applicant also offers information based on internet searches of names in the list of counsel, indicating that 24 out of 30 persons practice in multiple areas of law.[14]

8. The applicant submits that the Registrar should count three of her eleven years of civil experience towards her relevant experience in criminal proceedings, thus satisfying the ten-year requirement,[15] as only then would she be treated in the same manner as other practitioners.

9. The applicant alternatively submits that greater weight should be accorded to her "highly relevant experience of 7 years of exclusive international criminal proceedings practice" by upgrading each such year of experience to 1½ years, for the purpose of assessing whether she satisfies the ten-year requirement.[16]

2. *The arguments of the Registrar*

10. The Registrar submits that she based her findings on rule 22 and regulation 67, duly considering whether the applicant satisfied the ten-year requirement.[17] The Registrar submits that in assessing the necessary relevant experience of a candidate, she examines the volume and the relevancy of the cases handled by such candidate in criminal proceedings and decides whether such experience amounts to the requisite ten years, seeking further information where necessary.[18] The Registrar further submits that only relevant experience in *criminal proceedings* is considered, thus the

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[11] Application, paragraphs 8-9.
[12] Application, paragraphs 4, 9, 15.
[13] Application, paragraphs 9-12.
[14] Application, paragraph 10.
[15] Application, paragraph 16.
[16] Application, paragraph 16.
[17] Response, paragraph 8.
[18] Response, paragraph 9.

non-assessment of both the applicant's academic record and her experience in civil proceedings is consistent with the requirements under regulation 67.[19]

11. The Registrar submits that she is not required to only admit practitioners who have acquired the necessary relevant experience in criminal proceedings on an exclusive basis, indicating that such requirement would disregard the reality of multiple practice areas in the legal profession.[20]
12. The Registrar submits that the applicant's request to compute her experience in international criminal proceedings with a value of 1½ years is inconsistent with the relevant legal texts of the Court,[21] as is the request to include a number of years of civil practice towards the ten-year requirement.[22]
13. In respect of the applicant's allegation that some lawyers may have been included in the list of counsel without the relevant years of experience, the Registrar submits that the applicant has based her information on details found by perusing the internet, which is not necessarily consistent with the detailed information which prospective candidates have submitted to the Court.[23] The Registrar also submits that she has applied the same conditions to her assessment of the applicant as she has to all other applications for inclusion in the list of counsel.[24]

C. Determination by the Presidency

14. It is recalled 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 sensible person who has properly applied his or her mind to the issue could have reached.[25]

[19] Response, paragraphs 10, 16.
[20] Response, paragraph 13.
[21] Response, paragraph 17.
[22] Response, paragraph 16.
[23] Response, paragraph 19.
[24] Response, paragraph 20.
[25] The standard of judicial review was defined by the Presidency in its decision of 20 December 2005, ICC-Pres-RoC72-02-5, paragraph 16, and supplemented in its decision of 27 November 2006, 1CC-01/04-01/06-731-Conf, paragraph 24; See also the decision of the Presidency of 10 July 2008, ICC-Pres-RoC72-01-8-10, paragraph 20.

1. Relief sought

15. The applicant requests that the Presidency review and reverse the Impugned Decision, directing the Registrar to include the applicant in the list of counsel or, alternatively, directing the Registrar to provide confirmation that every person in the list of counsel has a minimum of "ten years of exclusively criminal proceedings experience".[26]

2. Arbitrary treatment

16. The applicant submits that, having had a criminal practice and civil practice at different times in her career, it is arbitrary that her experience in civil proceedings is not included in the ten-year requirement, whereas those practitioners who practice simultaneously in civil and criminal law have some civil experience credited towards the ten-year requirement. In support of this claim, the applicant submits that she was credited relevant criminal experience for a two-month period in 1993 during which she engaged in mixed practice, even though the carriage of a criminal case constituted only 5-10% of her workload during this period.

17. In response to the Presidency's Order, the Registrar clarified that at the time of the Impugned Decision she was not aware that the criminal case handled by the applicant constituted only 5-10% of her practice.[27] The Registrar further indicated in her Clarification that when the applicant was requested to provide additional information about her experience in criminal proceedings, she did not provide this specification.

18. The applicant's submission of arbitrary practice is based on an underlying assumption that if some of her civil experience was counted towards the ten-year requirement during June and July 1993, then the civil experience of others in mixed practice must be similarly assessed. In view, however, of the Registrar's very clear statement that her practice in the calculation of a candidate's necessary relevant experience is to consider "cases handed by the applicant to gauge the *volume* and *relevancy* of the *specific experience of each candidate in criminal proceedings* and decide whether the experience amounts to at least 10 years as required" (emphasis added), including requesting further clarification from candidates in order to arrive at an informed

[26] Application, page 9.
[27] Clarification, paragraph 1.

decision,[28] the Presidency takes the view that the applicant's incidental crediting of some civil experience towards the ten-year requirement for a very limited period was an isolated error. The Registrar is ordered to re-calculate the applicant's experience in a manner consistent with her stated practice, taking account of the fact that the applicant's criminal caseload during June and July 1993 was 5-10% of her total workload.

19. Given that any inclusion of civil experience towards the ten-year requirement arose erroneously as a result of incomplete information before the Registrar, the only other support offered for the applicant's contention that those in mixed practices receive credit for their civil experience is the fact that a number of practitioners in the list of counsel practice in areas other than international law, criminal law or international criminal law, according to various websites. The existence of practitioners with mixed practices in the list of counsel does not demonstrate that such practitioners were not properly assessed in terms of the volume and relevancy of their specific experience in criminal proceedings. Accordingly, the Presidency considers that the Application demonstrates no differential treatment between practitioners and denies the applicant's request to direct the Registrar to provide confirmation that each person included in the list of counsel possesses a minimum of ten years' experience exclusively[29] in criminal proceedings.

3. *Inclusion of experience in civil proceedings*

20. The Application requests that three of her eleven years practicing in civil litigation be counted towards her experience in criminal proceedings so as to enable her to meet the ten-year requirement. The Presidency notes that rule 22(1) clearly states that counsel before the Court shall have "the relevant necessary experience, whether as judge, prosecutor, advocate or in other similar capacity, *in criminal proceedings*" (emphasis added). Regulation 67(1) then specifies that such necessary relevant experience is at least ten years. The Presidency notes that these applicable texts clearly demand ten years' experience in *criminal* proceedings, thus the Registrar

[28] Response, paragraph 9.
[29] The Presidency notes that the applicant and the Registrar appear to ascribe different meaning to the term "exclusively" (See e.g. Response paragraph 13). The Presidency has understood it to mean that the "necessary relevant experience" must be *only* in criminal proceedings and not in any other field of law, but this does not mean that a practitioner cannot practice any other type of law simultaneously (such other practice is not impermissible, it is simply not assessed for the purpose of the calculation).

correctly assessed that there is no legal basis by which the applicant's experience in civil litigation could be credited towards her satisfaction of the ten-year requirement.

4. Upgrading "highly relevant" experience

21. Alternatively, the applicant submits that her seven years' experience exclusively in international criminal proceedings is the most useful experience a person could have in relation to potential inclusion in the list of counsel and should be assessed on a preferential basis, with each year assessed as 1½ years of relevant criminal proceedings experience.[30] The Presidency considers that there is no basis in the legal texts to provide any such "upgrade", as the Registrar has correctly observed.

The Application is denied.

The Registrar is ordered to re-assess the experience credited to the applicant for her carriage of a criminal case during June and July 1993, as outlined in paragraph 18 above.

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

Judge Fatoumata Dembele Diarra
First Vice-President

Dated this 14 November 2011
At The Hague, The Netherlands

[30] Application, paragraph 16.