

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-RoR56-01/19**

Date: **13 August 2019**

THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, First Vice-President
Judge Marc Pierre Perrin de Brichambaut, Second Vice-President

Confidential

**Decision on the Application to review the decision of the Registrar denying admission of
Ms Andrea Romaoli Garcia to the list of experts**

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

Applicant

Ms Andrea Romaoli Garcia

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 Peter Lewis

Detention Section

Division of Court Services

The Presidency of the International Criminal Court ('Court') has before it the application of Ms Andrea Romaoli Garcia (the 'Applicant') dated 14 February 2019 for judicial review of a decision of the Registrar dated 5 July 2019, denying her inclusion in the list of experts created and maintained by the latter pursuant to regulation 44 of the Regulations of the Court ('Application').

The Application is denied for the reasons set out below.

I. PROCEDURAL HISTORY

1. On 20 February 2019, the Registry received from the Applicant a request for inclusion in the list of experts, dated 14 February 2019, together with the required supporting documentation ('Initial Application').¹
2. On 27 June 2019, the Registry transmitted the Applicant's request to an independent expert in charge of assessing the expertise of applicants to the list of experts.²
3. On 30 June 2019, the Registry received the assessment results from the independent expert which recommended not to retain the Applicant's request on the basis that her fields of expertise did not fall within the mandate of the Court.³
4. On 5 July 2019, the Registrar denied the Applicant's request for inclusion in the list of experts and informed the Applicant of the 15-day deadline to apply for review before the Presidency ('Impugned Decision').⁴
5. On 27 July 2019, the Applicant filed the Application seeking from the Presidency judicial review of the Impugned Decision pursuant to regulation 56(2) of the Regulations of the Registry.⁵
6. On 31 July 2019, the Registrar formally transmitted the Application to the Presidency, attaching thereto all the above mentioned documents. The Registrar also responded to

¹ ICC-RoR56-01/19-1, para. 4; ICC-RoR56-01/19-1-Conf-Anx1. As noted by the Registry, there appears to be a mistake as to the date of the request for inclusion on the list of experts.

² ICC-RoR56-01/19-1, para. 5.

³ ICC-RoR56-01/19-1, para. 6.

⁴ ICC-RoR56-01/19-1-Conf-Anx4.

⁵ ICC-RoR56-01/19-1-Conf-Anx5. The Applicant attached to the Application additional supporting documentation.

the Application pursuant to regulation 56(3) of the Regulations of the Registry ('Transmission').⁶

II. MERITS

A. Impugned Decision

7. The Impugned Decision denied the Applicant's request for inclusion in the list of experts on the basis that the Applicant's expertise 'is currently not sought by the Court'.⁷

B. Submissions

8. In the Application, the Applicant explains how, in her opinion, her expertise in the field of finance may assist the Court in addressing crimes, making specific reference to corruption and financial crimes such as money laundering.⁸ In addition, the Applicant argues that financial crimes, which have increased since 2005, require specific professional skills. The Applicant thus submits that her expertise in the field is all the more relevant.⁹
9. In response, the Registrar argues that 'in order to comply with the criteria set out for inclusion in the List of Experts, a candidate must have expertise relevant to the Court's proceedings'.¹⁰ In this respect, the Registrar notes that the Applicant's areas of expertise are not currently sought by the Court, making reference to the list of expertise provided on the Court's official website.¹¹ In addition, the Registrar submits that the Applicant fails to demonstrate how her expertise is otherwise relevant to the Court's proceedings.¹² The Registrar specifies that following the Registry's assessment, it was determined that the Applicant's expertise was not relevant to the Court's mandate or to the current judicial proceedings.¹³

⁶ ICC-RoR56-01/19-1.

⁷ Impugned Decision.

⁸ Application, pp. 2-3.

⁹ Application, pp. 3-4.

¹⁰ Transmission, para. 12.

¹¹ Transmission, para. 12.

¹² Transmission, para. 13.

¹³ Transmission, para. 14.

C. Determination of the Presidency

10. The Presidency first recalls that, pursuant to regulation 56(2) of the Regulations of the Registry, an applicant seeking review of a decision of the Registrar refusing his or her inclusion on the list of experts must file such request before the Presidency within 15 calendar days of the notification of the decision. The Presidency notes that the Impugned Decision was notified to the Applicant on 5 July 2019 and that the Application, which was submitted on 27 July 2019, was filed after the time limit of 15 calendar days, provided in regulation 56 (2). For this reason, the Presidency considers that the Application has not been properly filed before it and dismisses it *in limine*.
11. In any case, the Presidency considers that, on its merits, the Application fails to demonstrate that judicial review of the Impugned Decision is warranted in the present case. 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 sensible person who has properly applied his or her mind to the issue could have reached.¹⁴
12. The Presidency notes that regulation 44 of the Regulations of the Court and regulation 56 of the Regulation of the Registry govern the creation, and addition to, the list of experts. The Presidency will not lightly interfere with the Registrar's assessment of the relevance of a given field of expertise to the Court's proceedings.
13. The Presidency notes that the Applicant's expertise within the areas of tax law, finance and global economy is not in dispute and that the issue is rather whether such expertise is relevant to the Court's proceedings. The Presidency understands that the areas of expertise listed and published on the Court's official website reflect the Registry's determination of the current needs of the Court.¹⁵ In this respect, it is noted that the Court's official website lists 'Finance (to work on financial investigation/freezing assets)' as one of the general areas of expertise sought by the Court.¹⁶ The Presidency

¹⁴ See ICC-PresRoC72-02-5, para. 16; ICC-01/04-01/06-731-Conf, para. 24; ICC-RoR56-01/09-2, para. 11.

¹⁵ Transmission, para. 12.

¹⁶ See <https://www.icc-cpi.int/get-involved/Pages/Experts.aspx> (last accessed on 13 August 2019).

recalls its previous finding that the needs of the Court in the field of finance may be limited to the specific fields of financial investigations and assets freezing and tracing.¹⁷

14. The Presidency observes that, although both the Initial Application and the Application provide information on the nature of the Applicant's expertise, such information fails to demonstrate the relevance of her expertise to the Court's proceedings. The information concerning the Applicant's expertise, as described in the Initial Application as relating to 'Tax Law, Finance and Global Economy'¹⁸ does not on its face show the relevance of such expertise to the Court's work. The Presidency observes however that in the Application, further explanations on the relevance of the Applicant's expertise are provided. It is stated that such expertise relates to 'Finance (to work on financial investigation/freezing assets), with additional information provided in this respect (including in the accompanying supplementary documentation). Notwithstanding such further information, the Presidency considers that the Applicant fails to sufficiently link her expertise to the proceedings of the Court.

15. For these reasons, it is the Presidency's view that, in the instant case, judicial review of the Impugned Decision on the basis of the information provided in the Application is not warranted. The Presidency discerns no impropriety with regard to the procedure by which the Registrar reached the Impugned Decision or in its outcome. It is however noted that the denial of the Application is without prejudice to the Applicant either submitting a new application for inclusion in the list of experts or the Registrar assessing anew her expertise, should the needs of the Court change.

III. CLASSIFICATION

16. In view of the confidential classification of the documents transmitted to the Presidency, 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 experts. 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

¹⁷ ICC-RoR56-02/16-Conf, para. 17.

¹⁸ Initial Application, p. 2.

information requiring redaction prior to publication, the Applicant may inform the Presidency thereof no later than two weeks from notification of the present decision, by way of a filing communicated through the Court Management Section (judoc@icc-cpi.int).

The Application is denied.

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



Judge Chile Eboe-Osuji
President

Dated this 13 August 2019

At The Hague