



Original: **English**

No.: **ICC-RoC72-02/18**
Date of original: **7 June 2018**
Date: **1 September 2020**

THE PRESIDENCY

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

Public

Public redacted version of “Decision on the request to review the decision of the Registrar denying the inclusion of an applicant in the list of counsel”, ICC-RoC72-02/18-3-Conf, 7 June 2018

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

Applicant
[REDACTED]

REGISTRY

Registrar
Mr Peter Lewis

The Presidency of the International Criminal Court (the ‘Court’) has before it the request of [REDACTED] (the ‘Applicant’) dated 25 December 2017 for judicial review of a decision of the Registrar, dated 29 November 2017 and received by the Applicant on 24 December 2017, denying his inclusion in the list of counsel maintained by the Registrar pursuant to rule 21(2) of the Rules of Procedure and Evidence (the ‘Rules’).

The Request is rejected for the reasons set out below.

I. BACKGROUND

1. On 1 November 2016, the Registry received from the Applicant an application for inclusion in the list of counsel, with his curriculum vitae attached in support thereof.¹
2. On 29 November 2017, the Registry informed the Applicant that it was not in a position to respond favourably to his application for inclusion in the list of counsel (the ‘Impugned Decision’).²
3. On 25 December 2017, by way of e-mail addressed to the Registry, the Applicant sought from the Presidency judicial review of the Impugned Decision (the ‘Request’).³ Due to an ‘oversight’,⁴ the Registry only transmitted the Request to the Presidency on 28 May 2018.
4. On 29 May 2018, upon the Presidency’s instruction, the Registrar filed, on a confidential basis, the documents which formed part of the Applicant’s application for inclusion in the list of counsel.⁵
5. On 31 May 2018, the Presidency was informed that the Registrar did not intend to file a response to the Request, a possibility provided for in regulation 72(3) of the Regulations of the Court (the ‘Regulations’).⁶

¹ ICC-RoC72-02/18-2-Conf-AnxI; ICC-RoC72-02/18-2-Conf-AnxII.

² ICC-RoC72-02/18-2-Conf-AnxIII.

³ Annex I to ‘Registry’s Transmission of a Request for Review of the Registry’s Decision denying the Inclusion of Mr [REDACTED] in the List of Counsel’, 28 May 2018, ICC-RoC72-02/18-1-Conf.

⁴ ‘Registry’s Transmission of a Request for Review of the Registry’s Decision denying the Inclusion of Mr [REDACTED] in the List of Counsel’, 28 May 2018, ICC-RoC72-02/18-1-Conf, para. 6.

⁵ ‘Registry’s transmission of supporting material concerning the application of Mr [REDACTED] to the List of Counsel of the International Criminal Court’, 29 May 2018, ICC-RoC72-02/18-2-Conf.

⁶ E-mail of the Registry to the Presidency, 31 May 2018.

II. MERITS

A. Impugned Decision

6. The Impugned Decision rejects the Applicant's request for inclusion in the list of counsel. In support of his decision, the Registrar notes that while the requirements of 'competence' (rule 22(1)), 'knowledge of languages' (rule 22(1)) and 'absence of criminal and/or disciplinary sanctions' (regulation 67(2)) are fulfilled, the requirement of 'ten years of experience in criminal proceedings' (rule 22(1) and regulation 67(1)) is not met.
7. With respect to the latter requirement, the Registrar notes that while it is apparent from the Applicant's curriculum vitae that he has extensive experience in civil and commercial law, his experience in criminal proceedings whether as a judge, prosecutor, advocate or similar capacity has not been substantiated.

B. Submissions

8. In the Request, the Applicant contends that his file 'clearly states' that he has 14 (and more) years of experience in criminal proceedings. The Applicant further indicates that he stands ready to provide further information if required.

C. Determination of the Presidency

1. *Applicable law*

9. Pursuant to rule 21(2) of the Rules, the Registrar shall create and maintain a list of counsel who satisfy certain criteria. The requirements for inclusion in such list are enumerated in rule 22 of the Rules and regulation 67 of the Regulations, which provide, in relevant part:

Rule 22

Appointment and qualifications of Counsel for the defence

1. A counsel for the defence shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel for the defence shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. [...]

Regulation 67**Criteria to be met by counsel**

1. Subject to regulation 78, sub-regulation 2, the necessary relevant experience for counsel as described in rule 22 shall be at least ten years for lead counsel and at least eight years for associate counsel.
2. Counsel should not have been convicted of a serious criminal or disciplinary offence considered to be incompatible with the nature of the office of counsel before the Court.

10. The Presidency recalls that the judicial review of decisions of the Registrar, including decisions on the inclusion in the list of counsel, 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.⁷

2. Analysis

11. The Presidency has held that ‘an applicant [for inclusion in the list of counsel] bears the burden to demonstrate his or her qualifications for inclusion in the list of counsel, including the details of the relevant necessary experience in criminal proceedings’.⁸ The Presidency notes that beyond general references to ‘criminal law’, the Applicant did not provide in his initial application or his curriculum vitae any details as to his experience in criminal proceedings. In his application form, the Applicant merely asserts that he has 14 years of experience in criminal proceedings, without any further explanation.⁹ The accompanying curriculum vitae simply refers to ‘criminal law’ amongst a range of other listed areas of law and expertise, again without including any further details.¹⁰ Absent any substantiation of this criminal law practice in the documents placed before the Registrar, the Presidency does not discern any error in the Registrar’s finding that the Applicant has not substantiated that he satisfies the requirement of ten years of experience in criminal proceedings.

⁷ See ‘Reasons for the “Decision on the “Application for Review of Decision of the Registrar’s Division of Victims and Counsel dated 2nd January not to Admit Prof. Dr. Sluiter to the List of Counsel”’, 10 July 2008, ICC-RoC72-01/08-10, para. 20.

⁸ ‘Decision on the request to review the decision of the Registrar denying the inclusion of Ms Ana Cristina Rodríguez Pineda in the list of counsel’, 20 April 2018, ICC-RoC72-01/18-6, para. 25.

⁹ See ICC-RoC72-02/18-2-Conf-AnxI, pp. 7-8.

¹⁰ ICC-RoC72-02/18-2-Conf-AnxII, p. 3.

12. The Presidency emphasises the present decision is without prejudice to the Applicant submitting a new application to the Registrar, with appropriate substantiation provided in support thereof.
13. The Presidency further notes that the Request itself is extremely brief and does not provide meaningful submissions as to why the decision of the Registrar should be reviewed. Rather, it merely re-iterates the assertion that the Applicant has the requisite experience in criminal proceedings without providing any further details.¹¹ The Presidency notes that it is implicit in regulation 72 of the Regulations that any applicant seeking review of a decision of the Registrar should provide a reasoned request.
14. Finally, the Applicant invites the Presidency to request more information from him, but states that he does not know ‘what else [he] could provide’.¹² The Presidency notes that, in the current circumstances, in which the Applicant has not sought to provide any supporting explanations or documentation to substantiate his claimed criminal experience at any stage of the process, it would be inappropriate for the Presidency to seek further information from the Applicant, thereby placing itself in a position where it would have to consider a range of information which was not before the Registrar. As is evident in regulation 72 of the Regulations and noted in para. 10 above, the role of the Presidency is to review decisions of the Registrar, rather than to act as a first instance decision-maker. Accordingly, it is suggested to the Applicant that if he does not know what further information he should provide to substantiate his criminal experience, he should contact the Counsel Support Section for guidance prior to submitting any new application for inclusion in the list.

III. CLASSIFICATION

15. 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 this decision could be of relevance more broadly to future applicants for inclusion in the list of counsel. The Presidency hereby indicates its intention to file a public redacted version of the present decision, with the name of the

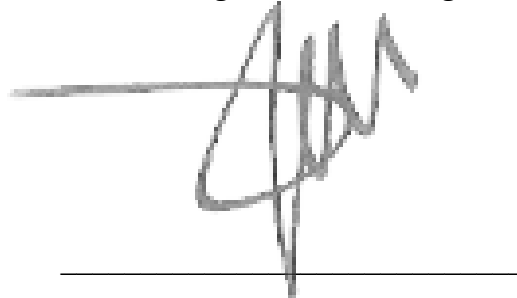
¹¹ ICC-RoC72-02/18-1-Conf-AnxI, p. 3.

¹² *Ibid.*

Applicant and personal details redacted. If there is any other 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 Request is *hereby rejected*.

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

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke extending to the left, positioned above a solid horizontal line.

Judge Chile Eboe-Osuji
President

Dated this 7 June 2018

At The Hague, The Netherlands