



Original: **English**

No.: **ICC-RoR56-01/20**

Date: **7 January 2021**

THE PRESIDENCY

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

Public

**Decision on the Application to review the decision of the Registrar denying admission of
Mr Michel Cohas to the list of experts**

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

Applicant

Mr Michel Cohas

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of 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 (the ‘Court’) has before it the application of Mr Michel Cohas (the ‘Applicant’) received by the Court on 16 November 2020 for judicial review of a decision of the Registrar dated 11 November 2020, denying the Applicant’s inclusion in the list of experts created and maintained by the Registrar pursuant to regulation 44 of the Regulations of the Court (the ‘Application’).¹

The Application is denied for the reasons set out below.

I. PROCEDURAL HISTORY

1. On 30 September 2020, the Registry received from the Applicant a request for inclusion in the list of experts (the ‘Request for Inclusion’),² together with the required supporting documentation.³
2. On 21 October 2020, the Registry transmitted the Applicant’s Request for Inclusion to an expert in charge of assessing applications for inclusion in the list of experts.⁴
3. On 23 October 2020, the Registry received the assessment results from the expert which suggested not retaining the Applicant’s Request for Inclusion.⁵
4. On 11 November 2020, the Registrar denied the Applicant’s Request for Inclusion in the list of experts (the ‘Impugned Decision’).⁶ The Registrar additionally informed the Applicant of the 15-day deadline to apply for review before the Presidency.⁷
5. On 16 November 2020, the Registry received the present Application, whereby the Applicant sought reconsideration by the Registrar of the Impugned Decision (the ‘Request for Reconsideration’) and judicial review by the Presidency pursuant to regulation 56(2) of the Regulations of the Registry.⁸

¹ Registry, Transmission of the Application for Review of the Registrar's Decision denying Mr Michel Cohas' Inclusion in the List of Experts, 20 November 2020, ICC-RoR56-01/20-1 (the ‘Transmission’) *transmitting* Application, ICC-RoR56-01/20-1-Conf-Anx5.

² Transmission, para. 4; Request for Inclusion, ICC-RoR56-01/20-1-Conf-Anx1.

³ Supporting Documentation, ICC-RoR56-01/20-1-Conf-Anx2.

⁴ Transmission, ICC-RoR56-01/20-1, para. 5.

⁵ Expert Recommendation, ICC-RoR56-01/20-1-Conf-Anx3, p. 2.

⁶ Impugned Decision, ICC-RoR56-01/20-1-Conf-Anx4, p. 2.

⁷ Impugned Decision, ICC-RoR56-01/20-1-Conf-Anx4, p. 2.

⁸ Transmission, ICC-RoR56-01/20-1, para. 8; Application, ICC-RoR56-01/20-1-Conf-Anx5, p. 2.

6. On 16 November 2020, the Registry forwarded the Request for Reconsideration to the expert who responded, on 17 November 2020, that he maintains his position that the Applicant's fields of expertise do not fall within the Court's mandate.⁹
7. On 20 November 2020, the Registrar formally transmitted the Application to the Presidency, attaching thereto all the above mentioned documents. In such transmission, the Registrar also responded to the Application, as foreseen by regulation 56(3) of the Regulations of the Registry, indicating that he maintains his view that the Applicant's expertise is not relevant to the Court's mandate or the current judicial proceedings.¹⁰ It is evident from this transmission that the Applicant had previously applied for admission in the list of experts in 2018, an application which was then rejected on the basis that his fields of expertise were not relevant to the mandate of the Court.¹¹

II. MERITS

A. Impugned Decision

8. In the Impugned Decision, the Director of the Registry's Division of Judicial Services informs the Applicant, in the name of the Registrar, that following a review of his request for inclusion in the list of experts, it has been concluded that his expertise in thermal building and renewable energies falls outside of the Court's mandate and hence is not being sought by the Court at present.¹² On this basis, the Applicant is denied inclusion in the list of experts.¹³

B. Submissions

9. The Applicant seeks judicial review of the Impugned Decision, arguing that his associate has been admitted to the Court's list of experts and that the Applicant is an expert in the same field of building, civil engineering and property management as the associate in question.¹⁴

⁹ Expert Reassessment, ICC-RoR56-01/20-1-Conf-Anx6, p. 3.

¹⁰ Transmission, ICC-RoR56-01/20-1, paras 11-16.

¹¹ Transmission, ICC-RoR56-01/20-1, para. 6.

¹² Impugned Decision, ICC-RoR56-01/20-1-Conf-Anx4, p. 2; Request, ICC-RoR56-01/20-1-Conf-Anx1, p. 4.

¹³ Impugned Decision, ICC-RoR56-01/20-1-Conf-Anx4, p. 2.

¹⁴ Application, ICC-RoR56-01/20-1-Conf-Anx5, p. 2.

10. In response, the Registrar notes that in order to comply with the criteria set out for inclusion in the list of experts, a candidate must have a field of expertise relevant to the Court's proceedings.¹⁵ If a candidate's expertise does not fall into one of the fields sought by the Court as listed on the web-site, the candidate must demonstrate that his or her expertise is relevant to the Court's proceedings.¹⁶ The Registrar notes that the Applicant's expertise is neither part of the fields of expertise sought by the Court nor has he demonstrated how his expertise is relevant to the Court's proceedings.¹⁷ Regarding the argument that the Applicant's associate was admitted to the lists of experts, the Registrar responds that, according to the expert, the said associate had additional expertise in the fields of historic and religious monuments, in particular in numerous African countries.¹⁸

C. Determination of the Presidency

11. 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.¹⁹
12. The creation of, and addition to, the list of experts is governed by regulation 44 of the Regulations of the Court and regulation 56 of the Regulations of the Registry.
13. The Presidency notes at the outset that the Applicant's expertise in the fields of thermal building and renewable energies is not in question, the question is simply whether these fields of expertise are relevant to the Court's proceedings.
14. The Presidency understands the list of areas of expertise published on the Court's website²⁰ to reflect the Registry's determination of the current needs of the Court.²¹

¹⁵ Transmission, ICC-RoR56-01/20-1, para. 12.

¹⁶ Transmission, ICC-RoR56-01/20-1, para. 13.

¹⁷ Transmission, ICC-RoR56-01/20-1, paras 12-13.

¹⁸ Transmission, ICC-RoR56-01/20-1, paras 14-15.

¹⁹ The standard of judicial review was defined by the Presidency in its decision of 20 December 2005, ICC-Pres-RoC72-02-05, para. 16 and supplemented in its decision of 27 November 2006, ICC-01/04/01/06-731-Conf, para. 24. *See also* 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.

²⁰ <https://www.icc-cpi.int/get-involved/Pages/experts.aspx> (accessed on 5 January 2021).

The fields of thermal building and renewable energies are not part of that list. Yet, as further indicated on the Court's website, an expert in a field not listed on the Court's website is not barred from applying for inclusion in the list of experts, but it is incumbent upon the applicant to explain how her or his expertise is relevant to the Court's proceedings.²² The Applicant provided no explanation as to the relevance of his expertise to the Court's proceedings in his Request for Inclusion.

15. 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. Considering the mandate of the Court and the current proceedings before it, the Presidency finds the Registrar's conclusion that the Applicant's expertise in thermal building and renewable energies falls outside of the Court's mandate is reasonable.
16. Regarding the argument that the Applicant's associate was admitted to the list of experts, the Presidency considers that such comparisons are of limited relevance as each request for inclusion in the list of experts needs to be assessed on its own merits. Moreover, the Presidency notes that this point was raised by the Registry with the expert tasked with providing recommendations on applications for inclusion who clarified that said associate had additional expertise of relevance to the Court's proceedings. This was taken into account by the Registrar in reconsidering the Impugned Decision. In light of this, the Presidency considers that the Application failed to demonstrate any error in the Impugned Decision.

The Application is denied.

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

²¹ Transmission, para. 12. *See also* Decision on the application to review the decision of the Registrar denying the admission of X to the list of experts, 5 November 2009, ICC-RoR56-02/09-3-Red, para. 17.

²² <https://www.icc-cpi.int/get-involved/Pages/experts.aspx> (accessed on 5 January 2021). The Presidency considers such a requirement to be reasonable, noting that it can be derived from the reference in both regulation 44(1) of the Regulations of the Court and regulation 56(1)(c) of the Regulations of the Registry to expertise in the "relevant field" (emphasis added).



Judge Robert Fremr
First Vice-President

Dated this 7 January 2021

At The Hague, The Netherlands