

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-RoC72
Date: **31st March 2021**

THE PRESIDENT

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

SITUATION IN

**IN THE CASE OF
*THE PROSECUTOR v.***

Public Document

Appeal of a decision regarding an application to the list of Counsels

Source: Juan Branco / Applicant

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

The Office of the Prosecutor
[2 names maximum]

Counsel for the Defence
[2 names per team maximum]

Legal Representatives of the Victims
[1 name per team maximum]

Legal Representatives of the Applicants
[1 name per team maximum]

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for Victims
[2 names maximum]

The Office of Public Counsel for the Defence
[2 names maximum]

States' Representatives

Amicus Curiae

REGISTRY

Registrar
M. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

This document constitutes an appeal to the decision refusing my application to the List of Counsels of the ICC, dated March 29th, 2021, and referenced by the Registry under the following number : CSS/2021/176.

The appealed decision is attached to this file.

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In September 2020, after careful preparation, I submitted an application to be included in the list of counsels of the International Criminal Court. The foreseen delays to provide with an answer to complete applications, as stated in the Guide for Applicants to the List of Counsels of the ICC edited by the Registry, is of a month.

I planned important professional matters, including some dependent on this application, taking into account this timing.

In November 2020, I entered into contact with the Registry. My application had been received at the time of its submission but had visibly been forgotten since. I was produced with an apology, was asked to provide again with the documents in an electronic version as well as to answer a few questions, my application was deemed complete. and I was promised a quick answer. I was nonetheless not provided with that answer in the following months.

I understood the sanitary situation could delay the treatment of the file. Nonetheless, as time passed and I received no answers to my requests for a schedule, I seized Mr. Lewis of the situation, via email on March 18th, 2021. Mr. Lewis responded through his special assistant on March 19th, specifying that Mr. Debuissou had been asked to look into the situation.

An explanation and an apology to the delays were provided on March 29th to me by Mr. Lewis, and a response was provided to my application on the same day March, 29th, 2021, by Mr. Esteban Peralta Losilla, head of the Support Unit for Counsels.

In this letter, Mr. Losilla indicated that it had been considered that all but the experience criteria, including competence, languages and lack of disciplinary or criminal sanctions, were met for my application. Regarding experience, it was considered that in spite of its “amplitude”, it did not meet the criteria established by the rules and regulations of the Court, and that therefore the application could not be accepted at this time.

The letter mentioned the possibility to appeal the decision, as well as to apply to the List of assistants to counsel, as my experience was sufficient for the latter.

I wish to stress that the Registry has shown at all times an extreme *courtoisie*, in spite of the initial deficiency in the handling of the matter, and that I am thankful that the issues triggered by those delays were taken seriously, once they were raised at the appropriate level.

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This document challenges the decision taken on my application by the Registry’s Counsel’s Support Unit, and more specifically its evaluation of the professional experience that is to be taken into account in its evaluations.

The Unit has considered that, even though "ample", my admissible professional experience was of five and a half year, in spite of the 10 years required. This evaluation appears to be mistaken, as it only includes my years of practice as a lawyer and excludes my experience as a civil servant and as an academic in international criminal law – functions that I implicated a direct link with and regular interventions in Criminal proceedings.

his exclusion appears to be in contradiction with the regulations of the Court which should be interpreted as considering those functions as « analog » to the ones required by the rule 22 of the RPE.

I therefore request the Presidency to reevaluate my admissible professional experience and overturn the decision of the Registry

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I have created my law office the 17th of April 2017 and, after having practiced under the intermediary status of « élève avocat » for 18 months - which allows to intervene in Court -, I have been acting as a full-time lawyer in the Court of Appeal of Paris since. It appears that only these two experiences have been taken into account in the evaluation of my file.

I had nonetheless, in the previous years, pursued the following experiences – all under contractual status – directly connected to international criminal law proceedings, experiences that should be considered as « analog » to the specific statuses (lawyer, judge, prosecutor or “analog”) mentioned by the RPE in order to evaluate the applications to the list of Counsels :

- Liaison officer of the Prosecutor, Office of the Prosecutor of the International Criminal Court (2010-2011, four renewed contracts of three months ; following a six months internship at the JCCD and an interim of two months of the special assistant to the prosecutor, in the immediate office of the prosecutor), during which I was mainly responsible for activities related to the extradition of individuals investigated by the Office of the Prosecutor.
- Collaborateur extérieur du ministre des affaires étrangères français, 2012-2013, full year contract), position in which I was put in charge of following, for the minister, the activities of the ministry related to international justice and human rights.
- Visiting Lecturer, Visiting Researcher, Yale & Yale Law School (2013-2014, full academic year contract with Full Faculty status), positions pursued in parallel to my International Criminal Law PhD, which focused on the Katanga Case, and which were accompanied by interventions in criminal cases, in the frame of sexual violence notably, and consultancy activities in international law, see below, *Baltasar Garzon*)
- Senior Research Fellow at the Max Planck Institute for International Procedural Law, in International Criminal Law (2015-2016, full-time contractual position)
- Legal adviser to Baltasar Garzon, in charge of the UN, ICJ and asylum proceedings in the Wikileaks case and interventions for third-parties in their ICC interventions (2013-2017, part-time and then full-time contractual)
- Special adviser to the Prosecutor of the Cour pénale spéciale (MINUSCA, Bangui, Central African Republic, 2017, contractual)
- PhD on the Katanga case at the Ecole Normale Supérieure and La Sorbonne (2011-2014), Summa Cum Laude, prized by the Institut Varennes and published by LGDJ, an academic experience that produced teachings, research assistance, consultancies, the publication of two books, etc.

All the documents related to these experiences have been submitted to the Registry in due time.

As the guide of applications for the list of counsels states, the academic experience in law, when professional, is to be taken into account - if it has been accompanied by interventions in Courts and criminal proceedings - as a full-time experience.

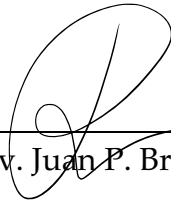
As exposed, my academic and civil servant experiences not only were directly related to criminal court activities, with direct interactions with judges, lawyers, clients, prosecutors and victims, but most importantly were always related to international criminal law, and should therefore be considered as fully admissible in the evaluation of my experience.

These experiences have furthermore nourished important and direct contributions to international criminal law proceedings, including a communication in 2019 regarding the migratory policies in the Central Mediterranean, submitted after two years of work and that has been deemed admissible by the office of the Prosecutor. This communication will be followed by a second one, expanding the initial work, in 2021, with the assistance of students from the PSIA Clinic of SciencesPo Paris.

The prestige of the institutions in which these experiences were developed, their direct connection to international criminal proceedings, their systematic correlation with practice and criminal proceedings, and the factual and verifiable inputs that they have triggered in the concerned fields, are all supporting arguments in the necessity to consider them as admissible.

Depending on how these experiences should be considered as admissible and calculated, they would amount to a total of 10,5 to 12 years of admissible professional experience.

It is why I request the Presidency to reevaluate the decision of the Registry, consider as admissible the exposed professional experiences, determine that they go beyond the minimal requirements applicable, and deem as accepted my application to the list of Counsels of the ICC.



Dr. Adv. Juan P. Branco

Dated this March 31st 2021

At Paris, France

