Cour
Pénale
Internationale

International
Criminal
Court

Original: **English**

No.: **ICC-01/05-01/13**
Date: **16 April 2014**

THE PRESIDENCY

Before: **Judge Sang-Hyun Song, President**
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC
The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido

Public

Decision on motion entitled "*Narcisse Arido's Emergency Motion for an Order Requiring Registrar von Hebel to Officially Recognize Ms. Abbe Jolles of Washington, DC-USA as His Lawyer and for Sanctions and Damages for Acting in Bad Faith Disregarding His Counsel Choice, Barring Counsel from Seeing Him, Disregarding and Interfering with, the Attorney Client Relationship, Attempting to Induce a Breach Through Deception, Undue Influence, Manipulation and Isolation Filed Pursuant to Rule 21(3) of the Rules of Procedure and Evidence*" and supplement to motion entitled "*Supplemental to Narcisse Arido's Emergency Motion for an Order Requiring Registrar von Hebel to Cease and Desist in Threatenting [sic], Coercing and Manipulating His Choice of Counsel – Serious Misconduct Requiring Removal under Article 46(1)(a) of the Rome Statute*"

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

The Office of the Prosecutor
Ms Fatou Bensouda
Mr James Stewart
Mr Kweku Vanderpuye

Counsel for Narcisse Arido
Mr Göran Sluiter

Counsel for Jean-Pierre Bemba Gombo
Mr Nicholas Kaufman

Counsel for Aimé Kilolo Musamba
Mr Ghislain Mabanga
Ms Catherine Mabille

Counsel for Jean-Jacques Mangenda Kabongo
Mr Jean Flamme

Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

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
Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Herman von Hebel

Counsel Support Section
Mr Esteban Peralta Losilla

Deputy Registrar

Detention Section
Mr Harry Tjonk

Victims and Witnesses Unit

Victims Participation and Reparations Section

Other
Ms Abbe Jolles

The Presidency of the International Criminal Court ("Court") has before it a motion pursuant to rule 21(3) of the Rules of Procedure and Evidence ("Rules") notified on 31 March 2014 ("Motion")[1] and a supplement to the motion notified on 4 April 2014 ("Supplement")[2] filed by Ms Abbe Jolles ("Complainant"). In the Motion and Supplement, the Complainant seeks judicial review and other relief in respect of her interactions with various organs of the Court, including the Registry, in connection with the legal representation of Mr Narcisse Arido in article 70 proceedings at the Court.[3]

The Motion and Supplement are denied.

I. PROCEDURAL HISTORY

1. On 12 March 2014, the Registry transmitted a public submission from the Complainant to the Single Judge of Pre-Trial Chamber II ("Single Judge"), which (i) notified the Single Judge that the Complainant "shall be officially registered as the lawyer for Narcisse Arido", (ii) certified that Mr Arido is indigent, (iii) notified the Registrar of Mr Arido's choice of counsel pursuant to regulation 123 of the Regulations of the Registry, and (iv) formally requested legal aid pursuant to regulation 131 of the Regulations of the Registry.[4] At the time of transmission, the Registry confirmed in writing to the Single Judge that the Complainant "ha[d] not been officially designated by the Court as Counsel of Defence for Mr. Narcisse Arido".[5]
2. On 18 March 2014, the Registry notified the Single Judge that the Registrar "ha[d] appointed Mr Xavier-Jean Keïta, principal counsel of the Office of Public Counsel for

[1] Narcisse Arido's Emergency Motion for an Order Requiring Registrar von Hebel to Officially Recognize Ms. Abbe Jolles of Washington, DC-USA as His Lawyer and for Sanctions and Damages for Acting in Bad Faith Disregarding His Counsel Choice, Barring Counsel from Seeing Him, Disregarding and Interfering with, the Attorney Client Relationship, Attempting to Induce a Breach Through Deception, Undue Influence, Manipulation and Isolation Filed Pursuant to Rule 21(3) of the Rules of Procedure and Evidence, ICC-01/05-01/13-303-Anx1.
[2] Supplemental to Narcisse Arido's Emergency Motion for an Order Requiring Registrar von Hebel to Cease and Desist in Threatenting [sic], Coercing and Manipulating His Choice of Counsel – Serious Misconduct Requiring Removal under Article 46(1)(a) of the Rome Statute, ICC-01/05-01/13-313-Anx1.
[3] The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, ICC-01/05-01/13.
[4] Narcisse Arido's Certificate of Official Registration of Attorney Abbe Jolles as His Lawyer and Notice of Narcisse Arido's Indigency, ICC-01/05-01/13-251-Anx1. The submission attached a power of attorney in support as a confidential annex. ICC-01/05-01/13-251-Conf-Exp-Anx2 and ICC-01/05-01/13-251-Conf-Exp-Anx3 (Confidential Annex 3, which also contains the power of attorney, was provided by the Complainant at the request of the Registrar for purposes of legibility).
[5] ICC-01/05-01/13-251, p. 3.

the Defence, as duty counsel to assist and represent the interests of Narcisse Arido immediately before, during and immediately after his first appearance".[6] The Registrar noted that representatives of the Counsel Support Section of the Registry would meet with Mr Arido upon his arrival and inform him of his rights regarding assistance of counsel pursuant to article 67(1)(d) of the Rome Statute ("Statute").[7]

3. Mr Arido was transferred to the ICC Detention Centre on 18 March 2014.[8] On the same date, the Single Judge issued a decision scheduling the initial appearance of Mr Arido before Pre-Trial Chamber II for 20 March 2014.[9]

4. On 19 March 2014, the Registry transmitted a public motion pursuant to regulation 35 of the Regulations of the Court from the Complainant to the Single Judge.[10] In the motion, the Complainant submitted that (i) she is an attorney based in Washington DC, United States of America, representing Mr Arido on the basis of a power of attorney filed with the Registrar on 7 March 2014, (ii) she was unable to "arrive in The Hague until Sunday March 23, 2014", (iii) in order "to fully protect [the] fair trial rights of Narcisse Arido a short extension is necessary and appropriate to allow counsel of his choice to be present", and (iv) the initial appearance should be "reset" for 24 March 2014.[11] At the time of transmission, the Registry confirmed in writing to the Single Judge that "during the admission of Mr Arido to the ICC Detention Centre he did not confirm the appointment of Ms Abbe Jolles as his Defence Counsel".[12]

5. On 19 March 2014, the Single Judge denied the Complainant's motion seeking to extend the time for the initial appearance, noting that (i) Mr Arido had yet to confirm to the Registry his choice of counsel to represent him in the proceedings before the Court, (ii) the appointment of Mr Keïta, principal counsel of the Office of Public Counsel for the Defence, as duty counsel for Mr Arido during his first appearance fully met the requirement that Mr Arido's rights be protected, (iii) the issue of Mr Arido's choice of counsel would be duly addressed during the initial appearance, (iv) it was unlikely that anyone could travel to the Court between 22-25 March 2014 due to the Nuclear Security Summit and expected disruptions, and that it was therefore

[6] ICC-01/05-01/13-268, p. 3.
[7] ICC-01/05-01/13-268, p. 3
[8] Press Release, "Initial appearance of Narcisse Arido scheduled for 20 March 2014", 18 March 2014, ICC-CPI-20140318-MA154.
[9] ICC-01/05-01/13-265.
[10] Narcisse Arido's Regulation 35 Motion to Extend Time for Initial Appearance to March 24, 2014 to Allow Attorney, Abbe Jolles, to Travel from Washington, DC, USA, ICC-01/05-01/13-272-Anx1.
[11] ICC-01/05-01/13-272-Anx1, pp. 4-5.
[12] ICC-01/05-01/13-272, p. 4.

unfeasible to hold the hearing for the initial appearance on those days, and (v) the initial appearance must be held promptly and its postponement would constitute a violation of Mr Arido's rights.[13] Based on the reasoning above, the Single Judge rejected the Complainant's motion as "no good cause has been shown within the meaning and for the purposes of regulation 35(2) of the Regulations of the Court".[14]

6. On 20 March 2014, Mr Arido appeared before the Single Judge. During the initial appearance he did not confirm that he had appointed the Complainant as his counsel.[15] Mr Arido confirmed that he had never met the Complainant in person, that his French lawyer had provided him with the power of attorney in respect of the Complainant, and that he had spoken to the Complainant one time on the telephone "merely because the form on which her name was written was handed over to me by the director of the penitentiary and it is this person who asked me to contact this lawyer."[16] The Single Judge granted Mr Arido additional time to consider his choice of counsel as he had not yet reached a determination on the matter.[17]
7. On 28 March 2014, the Registry notified the Single Judge that Mr Arido freely exercised his choice of counsel in favour of Mr Göran Sluiter[18] and provided three annexes: (i) the choice of counsel form signed by Mr Arido,[19] (ii) the acceptance of mandate signed by Mr Sluiter,[20] and (iii) the solemn undertakings of counsel signed by Mr Sluiter.[21]
8. On 31 March 2014, the Presidency received the Motion of the Complainant in which the Complainant requests an oral hearing and that the Presidency, pursuant to rule 21(3) of the Rules of Procedure and Evidence ("Rules"), order the Registry to appoint the Complainant as counsel for Mr Arido.[22] The Complainant requests further relief by way of an order to the Registrar to (i) facilitate an immediate visit to Mr Arido at the ICC Detention Centre, (ii) acknowledge and approve within 24 hours the Complainant's mission request form and plan for investigations, (iii) agree in writing to refrain from interfering in the attorney client relationship, including by reimbursing expenses and fees, and (iv) grant legal aid resources to cover the cost of three

[13] ICC-01/05-01/13-274, pp. 4-5.
[14] ICC-01/05-01/13-274, p. 5.
[15] ICC-01/05-01/13-T-4-Red2-ENG, p. 8.
[16] ICC-01/05-01/13-T-4-Red2-ENG, p. 13.
[17] ICC-01/05-01/13-T-4-Red2-ENG, p. 10.
[18] ICC-01/05-01/13-300.
[19] ICC-01/05-01/13-300-AnxI.
[20] ICC-01/05-01/13-300-AnxII.
[21] ICC-01/05-01/13-300-AnxIII.
[22] ICC-01/05-01/13-303-AnxI, pp. 11-12.

professional staff to assist the Complainant.[23] The Complainant also requests damages in the amount of 80,000.00 euros.[24]

9. On 3 April 2014, counsel for Mr Arido filed a response from Mr Arido to the Motion.[25] In the response, Mr Arido stated that in February 2014, prison authorities at La Santé prison in France "forced me to sign what [Abbe Jolles] now claims to be a mandate given to counsel."[26] Mr Arido submitted that he learned with "surprise and sadness" of the documents publicly filed by the Complainant and stated that "Ms Abbe Jolles has no capacity to file documents to the ICC or anywhere else on my behalf; Mr Göran SLUITER alone is responsible for my Defence at the current time."[27] Mr Arido also described the process that led to his "final free choice" of Mr Sluiter as his counsel.[28] This process included "present[ing] a list of five counsels to the detention authorities and . . . telephon[ing] them and check[ing] their availability" as well as receiving a visit from Mr Sluiter, after which Mr Arido "confirm[ed him] as [his] sole and exclusive counsel."[29] Finally, Mr Arido observed that he had been "duly informed of Ms Jolles's presence in The Hague" but that it was his "choice not to call her or accept her visit."[30]

10. On 4 April 2014, the Presidency received the Supplement of the Complainant filed pursuant to rule 21(3) of the Rules.[31] In the Supplement, the Complainant submits that Mr Arido's response dated 3 April 2014 was improperly before the Presidency and questioned its authenticity and veracity.[32] The Complainant further argues that "the fact that a fraudulent [purported attestation] was both prepared and presented to the Presidency, implicates Article 46 of the Rome Statute, subjecting the Registrar and/or Deputy Registrar to removal from office where he is *found to have committed serious misconduct.*"[33] The Complainant requested "a full and fair hearing on this matter."[34]

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[23] ICC-01/05-01/13-303-Anx1, pp. 11-12.
[24] ICC-01/05-01/13-303-Anx1, pp. 12.
[25] Notification of Communication of Mr. Narcisse Arido to the Presidency, ICC-01/05-01/13-312 and ICC-01/05-01/13-312-Anx1.
[26] ICC-01/05-01/13-312-Anx1, p. 4.
[27] ICC-01/05-01/13-312-Anx1, p. 4.
[28] ICC-01/05-01/13-312-Anx1, p. 5.
[29] ICC-01/05-01/13-312-Anx1, p. 5.
[30] ICC-01/05-01/13-312-Anx1, p. 5.
[31] ICC-01/05-01/13-313-Anx1.
[32] ICC-01/05-01/13-313-Anx1, pp. 5-7.
[33] ICC-01/05-01/13-313-Anx1, p. 7 (emphasis in original).
[34] ICC-01/05-01/13-313-Anx1, p. 7.

II. Determination of the Presidency

11. The Motion and Supplement are brought by the Complainant under rule 21(3) of the Rules. Rule 21 concerns the assignment of legal assistance and states in pertinent part:

> 1. Subject to article 55, paragraph 2 (c), and article 67, paragraph 1 (d), criteria and procedures for assignment of legal assistance shall be established in the Regulations . . .
>
> 2. The Registrar shall create and maintain a list of counsel who meet the criteria set forth in rule 22 and the Regulations. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list.
>
> 3. A person may seek from the Presidency a review of a decision to refuse a request for assignment of counsel. The decision of the Presidency shall be final. If a request is refused, a further request may be made by a person to the Registrar, upon showing a change in circumstances.

12. Pursuant to rule 21(3), the Presidency exercises judicial review functions of decisions of the Registrar refusing a request for the assignment of counsel. In the instant case, the Complainant primarily challenges the fact that she is not recognised as counsel for Mr Arido. She seeks relief by way of an order from the Presidency, *inter alia*, appointing her as "official ICC counsel for Narcisse Arido *nunc pro tunc* to 24 February 2014."[35] Based on the Complainant's request to be named as counsel for Mr Arido effective as of 24 February 2014, and considering that there is no indication that she wishes to share responsibility as co-counsel with Mr Arido's counsel, it appears that the Complainant is also challenging the appointment of Mr Keïta as duty counsel to represent Mr Arido at his initial appearance and the subsequent engagement of Mr Sluiter as Mr Arido's defence counsel.[36]

13. The Presidency determines that it must first consider whether the Complainant has standing to seek judicial review pursuant to rule 21(3) of (i) the appointment of Mr Keïta as duty counsel, (ii) the engagement of Mr Sluiter as defence counsel, and (iii) the non-recognition of the Complainant as counsel for Mr Arido. The question of standing concerns "[a] party's right to make a legal claim or seek judicial enforcement

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[35] ICC-01/05-01/13-303-Anx1 p. 9. According to the Motion, 24 February 2014 is the date that the Complainant "notified the ICC Counsel Support Section (ICC), the Registry and OPCD of her Mandate to represent Narcisse Arido before the ICC". ICC-01/05-01/13-312-Anx1, p. 4. The Complainant subsequently filed "*Narcisse Arido's Certificate of Official Registration of Attorney Abbe Jolles as His Lawyer and Notice of Narcisse Arido's Indigency*", which was transmitted to the Single Judge on 12 March 2014. ICC-01/05-01/13-251 and ICC-01/05-01/13-251-Anx1. Mr Arido was transferred to the ICC Detention Centre on 18 March 2014. See para. 3.

[36] The Presidency will not consider the remarks made by the Complainant suggesting misfeasance by either Mr Keïta or Mr Sluiter, nor will it consider the Complainant's remarks about Mr Sluiter's qualifications, as they are allegations extraneous to the scope of the Motion.

of a duty or right."[37] Standing is a threshold issue that must be met, for if the Complainant lacks the right to seek judicial review pursuant to rule 21(3), the Presidency cannot proceed to the merits of the Motion and Supplement.

14. The Presidency has not had occasion to expressly address the question of standing as it relates to rule 21(3). Prior decisions interpreting rule 21(3) have, however, included an analysis of admissibility, which provides guidance on the question of standing in respect of the Complainant's request for judicial review.[38]

A. Standing to request review of appointment of duty counsel

15. The Presidency recalls that in the *Lubanga* proceedings, it considered whether a person requiring legal assistance could bring an application under rule 21(3) against a decision of the Registrar appointing duty counsel, where it was alleged that the Registrar had failed to take the person's wishes into account when making the appointment.[39] The Presidency found that regulation 73(2),[40] which governs the appointment of duty counsel, "is designed to ensure the rights of a person to a fair and expeditious trial" and that "[t]he latter may be adversely affected where duty counsel is appointed in contravention of the Regulations of the Court or where the appointment of duty counsel is unreasonably refused."[41] The Presidency

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[37] *Black's Law Dictionary* 1442 (8th ed. 2004)
[38] ICC-01/04-01/06-937 and ICC-02/04-01/05-378.
[39] ICC-01/04-01/06-937, p. 9.
[40] At the time of the Presidency decision, regulation 73(2) provided:

> If any person requires urgent legal assistance and has not yet secured legal assistance, or where his or her counsel is unavailable, the Registrar may appoint duty counsel, taking into account the wishes of the person, and the geographical proximity of, and the languages spoken by, the counsel.

Regulation 73(2) was amended in 2 November 2011 and the revised regulation entered into force on 29 June 2012. Regulation 73(2) now provides:

> The Registrar may appoint duty counsel if a person requires legal assistance and has not yet secured that assistance, or when his or her counsel is unavailable and has consented to the appointment of duty counsel. The Registrar shall take into account the wishes of the person, the expertise of duty counsel, the geographical proximity of, and the languages spoken by, the counsel. Decisions taken pursuant to this sub-regulation may be reviewed by the relevant Chamber.

[41] ICC-01/04-01/06-937, p. 8. The Presidency cited to article 67(1)(d) of the Statute as applicable law in its decision. ICC-01/04-01/06-937, p. 6. This article provides:

> 1. In the determination of any charge, the accused shall be entitled to . . . the following minimum guarantees, in full equality:
>
> (d) . . . to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require . . .

acknowledged that "[w]hilst the appointment of duty counsel is not expressly mentioned within rule 21(3)," the situation alleged by the applicant – *i.e.* "that the Registrar unreasonably refused to take [his] wishes into account in the appointment of duty counsel" – "is so similar to the type of situation that the Presidency may review under rule 21(3) that, in these particular circumstances, the governing texts should be read as affording some avenue for review."[42] The Presidency concluded that the application was admissible under rule 21(3) for "[w]ere the situation otherwise, then a person for whom duty counsel is appointed in blatant disregard of his or her wishes would be unable to seek administrative remedies for his or her complaint that a decision of the Registrar failed to take into account his or her wishes in breach of regulation 73(2) of the Regulations of the Court."[43]

16. The Presidency's *Lubanga* decision on duty counsel impacts standing in so far as it recognised a category of persons who can seek relief under rule 21(3). The Presidency found that there must be an "avenue for review" for an individual who alleges that his rights, which are protected through the appointment of duty counsel under regulation 73(2), have been breached.[44] Since the appointment of duty counsel is "designed to ensure the rights of a person to a fair and expeditious trial", the right to seek judicial review pursuant to rule 21(3) is held by and will typically be exercised by a person requiring legal assistance (or by a person capable of making submissions on his or her behalf), in furtherance of the protection of his or her right to a fair and expeditious trial.[45] In the *Lubanga* decision, the applicant had standing because he was alleging that *his* right under regulation 73(2) – *i.e.* to have the Registrar take his wishes into account – was breached. In the instant case, it is Mr Arido who has the right to a fair and expeditious trial.[46] Accordingly, the Complainant does not have standing to challenge the appointment of Mr Keïta as Mr Arido's duty counsel.

17. The Presidency further notes that to confer standing on the Complainant in this matter would be akin to permitting any individual to assert a general claim pursuant to rule

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Although the Presidency's discussion of admissibility did not explicitly link article 67(1)(d) and regulation 73(2), the right of the accused in article 67(1)(d) "to conduct the defence . . . through legal assistance of the accused's choosing" is clearly reflected in regulation 73(2)'s provision (both in the prior and current versions) that the Registrar "take into account the wishes of the person" when appointing duty counsel.

[42] ICC-01/04-01/06-937, p. 9.

[43] ICC-01/04-01/06-937, p. 9.

[44] ICC-01/04-01/06-937, p. 9.

[45] ICC-01/04-01/06-937, p. 8.

[46] Mr Arido has at no point stated that his wishes have been unreasonably refused by the Registrar or that his right to a fair and expeditious trial has been infringed by the appointment by the Registrar of Mr Keïta as duty counsel. He failed to confirm the appointment of the Complainant as his counsel upon his arrival at the ICC Detention Centre. ICC-01/05-01/13-272, p. 4. The Complainant does not dispute this fact in the Motion and Supplement. Moreover, during his initial appearance with Mr Keïta before the Single Judge, Mr Arido again failed to confirm the appointment of the Complainant as his counsel. ICC-01/05-01/13-T-4-Red2-ENG, p. 8.

21(3) regardless of the position taken by the person actually requiring legal assistance, whose rights are protected under the regulations governing the appointment of duty counsel.

B. Standing to request review of engagement of defence counsel

18. The Presidency recalls that it has also previously considered whether Mr Jens Dieckmann, who was appointed as counsel under regulation 76(1), could obtain judicial review of his appointment on the ground, *inter alia*, that the Registrar did not take into account the wishes of the persons entitled to legal assistance.[47] The Presidency found that Dieckmann's request to review the Registrar's decision in relation to an appointment pursuant to regulation 76 was similar to the request in the *Lubanga* decision and therefore "f[e]ll within the ambit of rule 21(3)".[48]
19. Like regulation 73(2), which governs duty counsel, the regulations on defence through counsel (regulations 75 and 76) protect the rights of those persons entitled to legal assistance.[49] The relationship between the regulations on this matter and judicial review pursuant to rule 21(3), was clearly identified in the *Lubanga* decision.[50] The Presidency therefore considered counsel Dieckmann's application on the same basis as it did in *Lubanga*,[51] thereby recognising that rule 21(3) provides an avenue for review in matters related to the right of the person entitled to legal assistance.
20. While the Presidency did not opine on the purpose of regulations 75 or 76 in its decision on counsel Dieckmann's request, as it did with regulation 73(2) in the *Lubanga* decision on duty counsel, it notes here that regulations 73, 75 and 76 delineate the procedures which guarantee the rights of the accused in article 67(1)(d) of the Statute. In pertinent part, article 67(1)(d) provides that:

> 1. In the determination of any charge, the accused shall be entitled to . . . the following minimum guarantees in full equality:

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[47] ICC-02/04-01/05-378. Regulation 76(1) provides, in pertinent part, that "[a] Chamber, following consultation with the Registrar and, when appropriate, hearing from the person entitled to legal assistance, may appoint counsel in the circumstances specified in the Statute, Rules and these Regulations or where the interests of justice so require." Regulation 76(1) refers to the appointment of defence counsel to "the person entitled to legal assistance" whereas regulation 73(2) refers to the appointment of duty counsel to "a person requir[ing] legal assistance". The Presidency notes that for purposes of this decision, it does not recognize a distinction between these two categories of persons.
[48] ICC-02/04-01/05-378, p. 7.
[49] Regulation 76 governs the appointment of defence counsel by a Chamber whereas regulation 75 governs the choice of defence counsel by the person entitled to legal assistance.
[50] See paras. 15-16.
[51] ICC-02/04-01/05-378, p. 7.

> (d) . . . to conduct the defence . . . through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require . . .

The Presidency's determination in the *Lubanga* proceedings that regulation 73(2) was "designed to ensure the rights of a person to a fair and expeditious trial" applies equally to regulations 75 and 76. For decisions of the Registrar in respect of engagement of counsel, the right to seek judicial review pursuant to rule 21(3) is held by and will typically be exercised by a person entitled to legal assistance (or by a person capable of making submissions on his or her behalf), who is seeking to protect his or her right to a fair and expeditious trial.

21. In the instant case, Mr Arido exercised his rights pursuant to article 67(1)(d) of the Statute by choosing counsel included in the list of counsel in accordance with the procedure outlined in regulation 75(1).[52] Pursuant to regulation 75(1), the Registrar must contact the counsel chosen by the person entitled to legal assistance and, if the counsel is available, facilitate the issuance of the power of attorney for counsel. It is therefore Mr Arido who would have standing to seek enforcement of his right to a fair and expeditious trial.[53] Accordingly, the Complainant does not have standing to challenge the engagement of Mr Sluiter as Mr Arido's defence counsel.

C. Standing to request review of the non-recognition of Complainant as counsel

22. Finally, the Presidency notes that the Complainant's specific request for relief concerns the fact that she is not recognised as Mr Arido's counsel.[54] As discussed above, the right to seek review of a decision to appoint or engage counsel pursuant to rule 21(3) exists to protect the rights of a person to a fair and expeditious trial. Here, Mr Arido, who holds those rights, has made no indication that he wishes to engage the Complainant as his counsel and has, in fact, exercised his rights to select other

[52] Regulation 75(1) provides "If the person entitled to legal assistance chooses counsel included in the list of counsel, the Registrar shall contact that counsel. If the counsel is willing and ready to represent that person, the Registrar shall facilitate the issuance of a power of attorney for this counsel by the person."
[53] Mr Arido has at no point stated that his wishes have been unreasonably refused by the Registrar or that his right to a fair and expeditious trial has been infringed by the Registrar's actions pursuant to regulation 75(1) in respect of Mr Sluiter's engagement. As noted in paragraph 17 above, to confer standing on the Complainant in this matter would be akin to permitting any individual to assert a general claim pursuant to rule 21(3) regardless of the position taken by the person actually entitled to legal assistance, whose rights are protected under the regulations governing the appointment or choice of counsel.
[54] See, e.g. ICC-01/05-01/13-303-AnxI, pp. 9-10.

counsel.[55] Accordingly, the Complainant does not have standing to request judicial review under rule 21(3) of her non-recognition as counsel for Mr Arido.

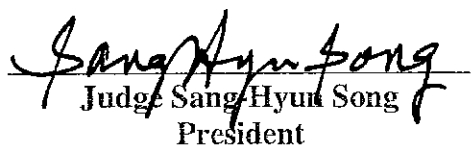
23. The Motion and Supplement are denied.

III. Observations

24. In the Supplement, the Complainant made allegations of serious misconduct against the Registrar and/or the Deputy Registrar warranting removal from office pursuant to article 46. As the Complainant has no standing to bring the Motion and Supplement, the Presidency has denied both without consideration as to the merits of any of the allegations contained therein.

25. The Presidency reminds the Complainant that any complaint containing allegations made in respect of article 46, paragraph 1, must be submitted confidentially in accordance with rule 26.

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



Judge Sang-Hyun Song
President

Dated this 16 April 2014

At The Hague, The Netherlands

[55] Mr Arido has already made clear his choice of Mr Sluiter to represent him as indicated by his signed choice of counsel form, ICC-01/05-01/13-300-AnxI, as well as his submission to the Presidency in this matter, ICC-01/05-01/13-312-Anx1. The Complainant's allegations that Mr Arido was "coerced" into choosing Mr Sluiter to represent him, ICC-01/05-01/13-303-Anx1, and that his submission to the Presidency "is a fraud on its face", ICC-01/05-01/13-313-Anx1, p. 7, are entirely unsupported.