



Original: English

No. ICC-RoR125-01/15

Date: 19 August 2015

THE PRESIDENCY

Before: Judge Silvia Fernández de Gurmendi, President
Judge Joyce Aluoch, First Vice-President
Judge Kuniko Ozaki, Second Vice-President

Confidential

With one Confidential Annex

Observations on the “Request for Review of Decision to Deny the Applicant admission to the List of Assistant to Counsel Pursuant to Regulation 125(4) of the Regulations of the Registry”

Source: Registrar

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

The Office of the Prosecutor

Applicant


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 Herman von Hebel

Counsel Support Section

Mr Esteban Peralta Losilla

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the “Court”),

NOTING the *Request for review of decision to deny the applicant admission [sic] to the list of assistant [sic] to counsel pursuant to regulation 125(4) of the Regulations of the Registry* (“the Request”)¹;

NOTING regulation 23*bis* of the Regulations of the Court (“RoC”) and regulations 124 and 125 of the Regulations of the Registry (“RoR”);

CONSIDERING 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.²

RESPECTFULLY SUBMITS the following observations:

1. Pursuant to regulation 23*bis*(2) of the RoC, the present observations are classified Confidential *ex parte* - only available to the Presidency, Registry, Defence [REDACTED] and Applicant –, as it is the current classification of the Request.
2. The scope of the present request for review cannot and should not be whether [REDACTED] (“the Applicant”) has specific competence in criminal or international law, but rather whether the Registrar should, with the elements at his disposal, have reached a different conclusion than the one challenged here.

¹ ICC-RoR125-01/15-3-Conf-Exp, 6 August 2015.

² ICC-RoC85-01/13-21-Corr-Red, par. 66.

3. The Registrar will therefore not comment on facts which were not mentioned in her Candidate Application form (annex) nor in her *curriculum vitae*, such as the “prize for the best memorial in international law, the [REDACTED] award for the best Master Thesis in Public International Law” or her having been “short-listed for the [REDACTED] Thesis Prize at [REDACTED] University”.³ The first two are in any case local awards that would not have been sufficient to supplement the Applicant’s qualifications to the necessary degree. The third is not even an award but only a shortlist for a local prize that the Applicant did not get in the end. The relevance of this information, if any, thus remains extremely limited.

4. The Registrar will also not enter into comparisons with the [REDACTED] [REDACTED], drawn by the applicant at paragraph 16, and with “trusted member[s] of [REDACTED] [sic] staff at the ICC” as mentioned in paragraph 20. The role of the Registry is to assess whether every applicant, on the basis of the information submitted, meets the criteria established in regulation 124 of the RoR.

5. The Registrar notes the applicant’s request for urgency in disposing of this matter in order for her to immediately assume duties in the [REDACTED] defence team. The Registry has no comment on the timeframe the Presidency takes for deliberations and issuance of decisions, but respectfully informs the Presidency that the defence team⁴ was presented with the option of appointing the applicant in a capacity that does not have the same mandatory legal requirements as that of a legal assistant pending the adjudication of the present matter in order to ensure that the team would have the immediate assistance of any chosen person.

6. The Regulations of the Registry establish a system pursuant to which one person can be admitted to the list of assistants to counsel on the basis of two alternative criteria: five years of relevant experience in criminal proceedings or specific competence in international or criminal law and procedure.

³ *Id.*, para 14.

⁴ [REDACTED]

7. The fact that these criteria are alternative requires that the qualifications of any given candidate with respect of each of them are assessed on an exclusive basis. In the calculation of the first of the two criteria, the Registrar considers cases handled by applicants to gauge the volume and relevancy of the specific experience of each candidate in criminal proceedings and decides whether the experience amounts to at least five years as required. In the due consideration of all applications from candidates seeking inclusion in the list of assistants to counsel, only the experience in criminal proceedings is considered relevant in accordance with regulation 124 of the RoR.

8. The second criterion is less well defined than the first. The Registrar has consistently required that the required specific competence be supported by a higher degree than required for admission to practice and be in an area of direct relevance for the work of the Court.

9. An insufficient experience in criminal proceedings cannot be invoked to justify by itself – as stated in paragraph 17 of the request – that the candidate meets the other, alternative requirement of specific competence, and cannot be computed when evaluating the specific competence of a candidate, even where her performance has exceeded the expectations of her supervisor⁵.

10. A specific degree in international law, although added to her previous degree in [REDACTED] does not add specific competence to the level required to be added to the list of assistants. A doctorate in a relevant field, for example, or continuous involvement in academic activities relevant for the work of the Court might have constituted relevant factors in the assessment of the Applicant's competence. The exact weight to be attached to the doctorate or academic activities of course depends on their subject matter and whether these are connected with the activities of the Court.

⁵ *Id.*, para 16.

11. “Managing a potential and complex dispute before the [REDACTED] [REDACTED] can hardly be considered as providing specific competence in international or criminal law and procedure for the purpose of regulation 124 of the RoR. First, this preparation does not appear documented in the application; second, there is no indication of how much time she spent on that task and in which proportion, since her tenure at [REDACTED] included several other tasks completely unrelated to international or criminal law; third, the fact that she “managed” such a “potential” dispute does not give sufficient information as to the nature and level of involvement of the Applicant and as to what is exactly meant by “potential” dispute. The Registry further submits that, though of an international nature, [REDACTED] can only be seen as of a limited relevance for the purpose of assessing the Applicant’s competence in relation to criminal proceedings before the Court.

12. Other points mentioned in the *curriculum vitae* submitted are not sufficient to establish specific competence, such as the fact that the applicant received training on sexual and gender-based violence mentioned in paragraph 18, even if the non-governmental organisation providing it is “on the List of Actors working in the field of Complimentarity [sic]”⁶ or the four lectures included in her *curriculum vitae*.

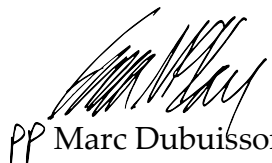
13. The Registrar, in the proper discharge of his functions, as stipulated in regulation 125(1) of the RoR, carefully examined all the materials submitted by the Applicant in support of the application for inclusion in the Court’s list of assistants to counsel, with the result that [REDACTED] was found to be ineligible for admission to the list of assistants to counsel. The Registrar’s decision to refuse the admission of [REDACTED] [REDACTED] in the list of assistants is not only consistent with the texts of the Court, but also procedurally administered fairly and is based solely on the relevant factors and the full information provided by the Applicant.

⁶ ICC-RoR125-01/15-3-Conf-Exp, par 29.

14. Based on the information provided by the Applicant in her application and on supporting materials, the opinion of the Registrar is that the Applicant does not yet meet the requirements to be admitted to the list of assistants. Her application for admission on the List of Assistants to Counsel was thus denied.

15. This finding shall not prevent the Applicant from submitting a new application, with all relevant information and supporting documents, once she considers that she meets the requirements under regulation 124 of the RoR. Should the Applicant believe that she already meets the criteria under regulation 124 of the RoR for reasons which were not stated in her application, she is invited to submit a new application forthwith, which will be determined in light of the new information provided.

16. The Registrar remains at the disposal of The Honourable Judges of the Presidency should further amplifications or information be required.


PP Marc Dubuisson, Director of Judicial Services
per delegation of
Herman von Hebel, Registrar

Dated this 19 August 2015
At The Hague, The Netherlands