

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

**No.: ICC-RoR56-02/09**

**Date: 5 November 2009**

**THE PRESIDENCY**

**Before:** Judge Sang-Hyun Song, President  
Judge Fatoumata Dembele Diarra, First Vice-President  
Judge Hans-Peter Kaul, Second Vice-President

**Public redacted**

**Decision on the application to review the decision of the Registrar denying the admission of X to the list of experts**

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

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Other**

X, Applicant

**Deputy Registrar**

Mr Didier Preira

The Presidency of the International Criminal Court (hereinafter “Court”) has before it the application of X for judicial review of the decision of the Registrar refusing to include him in the list of experts.

The Application is dismissed for the reasons set out below.

## I. PROCEDURAL HISTORY

1. On 3 September 2008,<sup>1</sup> X (hereinafter “applicant”) applied to the Registrar for inclusion in the list of experts,<sup>2</sup> a list which is created and maintained by the latter pursuant to regulation 44 of the Regulations of the Court.
2. On 17 April 2009, the Registrar rejected that application (hereinafter “Impugned Decision”).<sup>3</sup> The applicant stated that he received the Impugned Decision on 9 June 2009.<sup>4</sup>
3. On 11 June 2009, the applicant sought from the Presidency judicial review of the Impugned Decision pursuant to regulation 56(2) of the Regulations of the Registry (hereinafter “Application”).<sup>5</sup> The Presidency received the Application on 23 June 2009.
4. On 27 July 2009, the Presidency ordered the Registrar to transmit to it the applicant’s case file by 28 July 2009. Further, the Presidency, considering that the Registrar had not had sight of the Application, transmitted it to her and ordered her to provide any response to it within 15 calendar days of notification of the order in accordance with regulation 56(3) of the Regulations of the Registry (hereinafter “Order of 27 July 2009”).<sup>6</sup>
5. On 28 July 2009, the Registrar submitted her response to the Application (hereinafter “Response”),<sup>7</sup> attaching thereto the applicant’s case file.<sup>8</sup>

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<sup>1</sup> Date of transmission of the application for inclusion in the list of experts, dated 12 February 2008, to the Registrar.

<sup>2</sup> ICC-RoR56-02/09-2-Conf-Anx.

<sup>3</sup> ICC-RoR56-02/09-1-Conf-Anx2.

<sup>4</sup> ICC-RoR56-02/09-1-Conf-Anx1.

<sup>5</sup> ICC-RoR56-02/09-1-Conf-Anx1.

<sup>6</sup> ICC-RoR56-02/09-1-Conf.

<sup>7</sup> ICC-RoR56-02/09-2-Conf.

<sup>8</sup> ICC-RoR56-02/09-2-Conf-Anx.

## II. ADMISSIBILITY

6. The Presidency must resolve a preliminary issue concerning the admissibility of the Application.
7. Regulation 56(2) of the Regulations of the Registry provides, in relevant part, that where an application for inclusion in the list of experts is rejected, “the Registrar shall provide reasons and shall inform the person on how to apply to the Presidency for review of that decision within 15 calendar days of its notification”.
8. The applicant submits that he was notified of the Impugned Decision on 9 June 2009. Considering that a candidate for inclusion in the list of experts is afforded 15 calendar days to file an application for review from the date of notification of the impugned decision of the Registrar, in the instant case that 15-day period would have lapsed on 24 June 2009 in accordance with regulation 33(1)(b) of the Regulations of Court.<sup>9</sup> In accordance with regulation 33(1)(d) of the Regulations of the Court, documents shall be filed, at the latest, on the first working day of the Court following expiry of the time limit. The Application for judicial review was received by the Presidency on 23 June 2009.
9. The Registrar in her Response appears to be challenging the admissibility of the Application on the ground that it is improbable for the applicant to have received the Impugned Decision on 9 June 2009 as it was posted to him on 17 April 2009.<sup>10</sup> In the absence of evidence to the contrary being provided by the Registrar and considering that the letter was sent by normal post from The Hague to [REDACTED],<sup>11</sup> the Presidency accepts that the applicant was notified of the Impugned Decision on 9 June 2009 and accordingly accepts the Application as being properly before it.

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<sup>9</sup> Regulation 33(1)(b) provides that the day of notification of a decision shall not be counted as part of the time limit.

<sup>10</sup> Response, paragraphs 1-2.

<sup>11</sup> Response, paragraph 2.

### **III.MERITS**

#### **A. The Impugned Decision**

10. Given the brevity of the Impugned Decision, it is quoted in full:

Monsieur,

Nous vous remercions de l'intérêt que vous portez aux travaux de la Cour pénale internationale et pour votre candidature à la liste.

En dépit de vos compétences professionnelles manifestes, nous sommes au regret de vous informer ne pouvoir retenir votre candidature. En effet, la Cour recherche des personnes ayant une expertise spécifiquement en rapport avec les situations actuelles de la Cour, à savoir l'Ouganda, la République démocratique du Congo, le Darfour (Soudan) ou la République centrafricaine.

Veillez noter, que vous pouvez introduire un recours auprès de la Présidence pour une révision de cette décision dans les 15 jours de la notification, comme prévu à la norme 56(2) du Règlement du Greffe.

Veillez agréer, Monsieur, nos salutations distinguées.

#### **B. The submissions of the parties**

##### *1. The arguments of the applicant*

11. The applicant seeks to have the Impugned Decision reversed on the grounds that his obvious professional competence warrants his inclusion in the list of experts.<sup>12</sup>

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<sup>12</sup> Application.

## 2. *The arguments of the Registrar*

12. The reasoning of the Registrar, as contained in the Impugned Decision, is further explained in her Response. She submits that the applicant's expertise is not relevant within the meaning of regulation 44(1) of the Regulations of the Court.<sup>13</sup>
13. The Registrar submits that the Registry selects candidates with expertise useful to the organs of the Court and the participants in the proceedings.<sup>14</sup> In the field of policing, in light of the proceedings before the Court, the Registrar selects candidates with policing expertise in the countries in which the Court is conducting investigations or candidates with a specific expertise.<sup>15</sup> The Registrar explains that the website of the Court was amended in order to seek candidates with policing expertise linked to the four situations currently before the Court.<sup>16</sup> The Registrar maintains that the applicant's experience in [REDACTED] is not related to the situation countries before the Court.<sup>17</sup>

### **C. Determination of the Presidency**

14. 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.<sup>18</sup>

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<sup>13</sup> Response, paragraph 3.

<sup>14</sup> Response, paragraph 3.

<sup>15</sup> Response, paragraph 3.

<sup>16</sup> Response, paragraph 5.

<sup>17</sup> Response, paragraph 4.

<sup>18</sup> The standard of judicial review was defined by the Presidency in its decision of 20 December 2005, ICC-Pres-RoC72-02-5, paragraph 16 and supplemented in its decision of 27 November 2006, ICC-01/04-01/06-731-Conf, paragraph 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, paragraph 11, ICC-RoR56-01/09-2.

15. 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. Regulation 44 of the Regulations of the Court provides, in relevant part, as follows:

- (1) The Registrar shall create and maintain a list of experts accessible at all times to all organs of the Court and to all participants. Experts shall be included on such a list following an appropriate indication of expertise in the relevant field. A person may seek review by the Presidency of a negative decision of the Registrar.

Regulation 56 of the Regulations of the Registry provides, in relevant part, as follows:

- (1) For the purpose of regulation 44 of the Regulations of the Court, a person seeking to be included in the list of experts shall provide the Registry with the following documentation:

...

- (c) An appropriate indication of his or her expertise in the relevant field;

...

16. Turning to the Impugned Decision, the Registrar substantiates her position in rejecting the application for inclusion in the list of experts on the ground that the applicant's expertise is not relevant within the meaning of regulation 44 of the Regulations of the Court, as it is not related to any of the four situations currently before the Court.<sup>19</sup>

17. The Presidency notes that the applicant's field of expertise, which is "policing", is specifically listed on the website of the Court, on the page calling for experts, as a field in which the Court is seeking experts. The Presidency notes the footnote currently displayed on that page which qualifies that field to policing with "a particular focus" on the four situations currently before the Court, namely: Uganda, the Democratic Republic of the Congo, Darfur (Sudan) and the Central African Republic.<sup>20</sup> The Presidency accepts this qualification to be a reasonable one in light of the needs of the Court.

18. The Presidency, in assessing the argument of the applicant that he possesses the relevant expertise to be included in the list of experts, has had regard to his original application to

<sup>19</sup> Response, paragraphs 3-4.

<sup>20</sup> <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Registry/Experts/>, last accessed on 20 July 2009.

the Registrar for inclusion in the said list, including his *curriculum vitae*. The Presidency notes that, throughout his extensive professional career, the applicant has been appointed to numerous esteemed positions in the field of policing, for example the applicant is currently the [REDACTED] and has previously held the posts of: [REDACTED].<sup>21</sup> However, the Presidency notes that despite the obvious extensive professional competence of the applicant in the field of policing as set out in his *curriculum vitae* submitted to the Registrar, he does not possess the specific experience sought by the latter, namely experience in the four situations currently before the Court. Nor has the applicant, in these judicial review proceedings, demonstrated to the Presidency how his experience is relevant, as defined by the Registrar, within the meaning of regulation 44(1) of the Regulations of Court.

19. In light of the foregoing reasons, the Presidency detects no error in the Impugned Decision. The Presidency is satisfied that the Registrar has adequately discharged the obligation upon her, pursuant to regulation 56(2) of the Regulations of the Registry, to provide sufficiently clear reasoning in refusing the application for inclusion in the list of experts; the level of detail in the Impugned Decision being enough to explain to the applicant the legal and factual basis upon which it was taken.

#### IV. CLASSIFICATION

20. The Presidency notes that its order, to which the Application was annexed, was filed with a confidential classification due to the possible confidential nature of information that might have been disclosed by the parties during the judicial review proceedings. This decision maintains that classification. However, in the view of the Presidency, nothing said herein *prima facie* qualifies it as confidential. If there is any factual or legal basis for retaining the confidential classification of the instant decision or if there is any information requiring redaction prior to publication, the applicant may inform the Presidency thereof 15 days from the date of its receipt.<sup>22</sup> The Registrar may file any response thereto or provide any additional reasons as to why the instant decision should retain its confidential classification or indicate whether there is any additional information

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<sup>21</sup> ICC-RoR56-02/09-2-Conf-Anx, page 8.

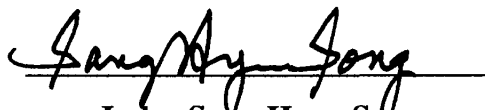
<sup>22</sup> The decision will be transmitted to the applicant via DHL.



requiring redaction prior to publication by 30 November 2009.<sup>23</sup> The Presidency will thereafter rule on whether the classification should be maintained and the need for any redactions.

The Application is dismissed.

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

  
Judge Sang-Hyun Song  
President

Dated this 5 November 2009

At The Hague, The Netherlands

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<sup>23</sup> This time line is based upon the period that it took the applicant to receive the Impugned Decision in [REDACTED].