

**2023 ICC Judicial Elections**  
**Questionnaire to candidates**

**Name: Mirjana Lazarova Trajkovska**  
**Date: 22 June 2023**

**Motivation**

**1.** What motivates you to seek election as a judge of the International Criminal Court (ICC)?

With an experience of over 20 years of working in criminal law and human rights protection, I am profoundly dedicated to the fight against impunity and to human rights protection. As a former judge of the European Court of Human Rights (ECHR) and a current judge at the Macedonian Supreme Court working on high level criminal cases, I am motivated to further contribute to the international community with my knowledge and experiences from national and international courts. The ICC being a relatively young institution and court, compared with other international actors such as the ICJ and the ECHR, it is a particularly rewarding perspective for me to be able to participate in the ICC's work.

For me, becoming judge at the ICC is a great professional inspiration and I am keen to take part in its further development and to improving the work and working culture of the Court. It is for me a unique opportunity to partake in the advancing of the ICC's mission, in this turbulent and defining period, throughout which the Court is undergoing a significant reformatory process.

**Relevant experience as a criminal law practitioner (List A) or international law expert (List B)**

*For LIST A candidates*

**2.** Please describe your experience as a judge, prosecutor, or criminal lawyer in domestic or international criminal law cases, including information on the number and types of cases as well as challenges you faced.

Currently, I am judge of the Supreme Court of the Republic of North Macedonia, working in the criminal division. I engage daily with complex and grave criminal cases of terrorism, terrorist organizations, sexual offences on minors, domestic violence, femicide, gang violence, organized crime, murder, human trafficking, trafficking with narcotics and other grave crimes. As a judge reporter I work approximately on 450 complexed cases per year. My most complex case in the last year was on terrorism and terrorist organisation activity, involving 45 accused and sentenced individuals, of which 13 were sentenced to lifelong imprisonment. Although many challenges arise in dealing with cases of grave criminal offences, perhaps the most prevalent ones, in my opinion, relate to the factual and contextual complexity of such cases as well as the political pressure which can surround these cases.

In addition to my experience as a national judge, I have also had the opportunity to tackle criminal cases on an international level. I spent a total of nine years as a judge of the ECHR working on particularly complex cases, dealing with war crimes as well as serious international criminal offences. In addition to this, I was in several interstate cases and cases linked with terrorism and terrorist organizations, and asylum, including some of the leading cases of the ECHR (Cyprus v. Turkey, Varnava and others v. Turkey, Gafgen v. Germany, Hassan v. UK etc.). My first-hand experience and knowledge in international criminal law, international human rights law, and international humanitarian law, together with my capacity for effective collaboration with colleagues from 47 jurisdictions were highly relevant for the work of the ECHR. While at the ECHR I worked on 4 726 cases, of which 2 805 were judgments and 1 921 decisions.

**3.** During your judicial career, please share any instances when you applied Rome Statute provisions or other international criminal or humanitarian law sources, directly or through national legislation that incorporates Rome Statute offences and procedure. Have you ever referred to or applied jurisprudence of the ICC, *ad hoc*, or special tribunals? If yes, please indicate any relevant judicial decision or opinion that you authored or co-authored.

Throughout my judicial experience I have had the opportunity of relying on the Rome Statute and various international criminal and humanitarian law sources, when dealing with grave criminal cases. Among such national and international judgements, I sat on, particularly noteworthy cases were the ECHR Grand Chamber judgements on:

- **Hassan v. UK; [GC] - 29750/09 Judgment from 16.9.2014**, on Article 5-1 of the ECHR (Lawful arrest or detention) which relied on the Third and Fourth Geneva Conventions. The facts of this case were linked with the territorial jurisdiction of the ECHR in relation to imprisonment of an Iraqi national by the coalition of armed forces in Iraq. The ECHR reiterated that the Convention had to be interpreted in harmony with other rules of international law, including the rules of international humanitarian law. The Court had to endeavor to interpret and apply the Convention in a manner which was consistent with the international legal framework delineated by the International Court of Justice.
- **Maktouf and Damjanovic v. Bosnia and Herzegovina [GC] - 2312/08 and 34179/08, Judgment from 18.7.2013** on Article 7-1 (Heavier penalty) of the ECHR, pertaining to the retrospective application of criminal law laying down heavier sentences for war crimes than the law in force when the offences were committed. In rendering our judgement, the Court relied on international criminal law jurisdiction, in particular that of the International Criminal Tribunal for the former Yugoslavia.

(or)

For LIST B candidates

**2.** Please describe your international criminal law experience, particularly regarding legal research, legal opinions, and/or litigation concerning international criminal law matters and themes, as well as cases and situations. Please indicate any legal material, publication, or opinion that you authored or co-authored.

3. During your international law career, have you provided legal opinions or commentaries on Rome Statute provisions or other sources of international criminal or humanitarian law? Have you commented on the jurisprudence of the ICC, *ad hoc*, or special tribunals? If yes, please indicate relevant materials and publications.

### **Victims' rights**

Victims of Rome Statute crimes are the *raison d'être* of the ICC, and they have the right to participate in proceedings and to reparations, as well as to be effectively protected.

4. Please describe your experience and/or expertise relevant to victims' rights to participate in criminal proceedings and to obtain reparations, as well as your understanding of such rights before the ICC.

I have worked with victims in especially sensitive and complex cases, particularly relating to sexual and violent crimes, and have tackled numerous cases involving serious domestic violence and sexual offences. As such, I developed a profound expertise in the handling of vulnerable witnesses, particularly victims of alleged sexual violence and children under the age of 14. I gained the necessary knowledge and experience on victims' rights throughout my education, and a constant improvement of my theoretical knowledge through practical experiences by working with victims daily.

Article 68(3) of the Rome Statute sets a clear in ensuring the protection of the rights of the victims by holding that "Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner, which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial". This is then balanced with the rights of the accused protected under article 66 of the Rome Statute. In effect, the Rome Statute, ensures the protection of victim's rights while balancing these rights with those of the accused and while being governed by the principle of presumption of innocence.

5. How would you ensure victims' statutory rights to participate in proceedings and to reparations are meaningfully achieved?

Victims' statutory rights to participate in proceedings and reparations are at the center of the notion of fair trial of the Rome Statute and the ICC Rules of Procedure and Evidence. Protection of the victims and witnesses and their participation in the proceedings are clearly stipulated in Article 68 of the Rome Statute. Namely, the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. For that purpose, the Court shall have regard to different relevant factors, including age, gender (as defined in article 7, paragraph 3), health, and the nature of the crime but not limited to, where the crime involves sexual or gender violence or violence against children. The Chambers

of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. Such measures are implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

**6.** Describe any specialized training and/or experience you have in providing protection and support to victims (and witnesses) participating in judicial proceedings, including expertise in assessing harm, trauma, and the risks of re-traumatization.

I was part of different programs and trainings, most of the time as one of the trainers. The most recent specialized event was “The access to justice and fair trial challenges due to the armed conflict”. This side event was organized during the Supplementary Human Dimension Meeting of the OSCE which took place on 24 and 25 April in Vienna with the focus on “Torture and Other Grave Breaches of International Humanitarian Law and Gross Violations of International Human Rights Law.”

### **Defence rights**

**7.** Please describe any relevant experience implementing the rights of the accused, including specific experience managing fair trial considerations in criminal proceedings.

A significant experience in implementing the rights of the accused for me was my participation to the ECHR Chamber judgement that ended with a Grand chamber judgement, *Dvorski v. Croatia* [GC] - 25703/11 Judgment from 20.10.2015. This case is derived from criminal proceedings and its focus was on fair hearing and on denial, without relevant and sufficient reasons, of access to a lawyer of the suspect’s own choosing during police questioning. The case pertained to a situation where the applicant had been afforded access to a lawyer for his first interrogation, but not to a lawyer of his own choosing. The ECHR concluded that although there had been evidence against the applicant, the significantly likely impact of his initial confession on the further development of the criminal proceedings could not be ignored. In these circumstances, the consequence of the police’s conduct in preventing the chosen lawyer from having access to the applicant had undermined the fairness of the subsequent criminal proceedings taken on as a whole.

### **High moral character, independence, and impartiality**

**8.** Share your understanding of the “high moral character” Rome Statute requirement (article 36(3)(a)), and how you embody these characteristics. What qualities or activities would be contrary to a “high moral character”?

As an internationally recognized expert, I have had practical experience in taking part in different bodies and panels responsible for the filtering of professional qualities and monitoring the requirement of high moral character for candidates of high level national and international courts. As such, I was a member of the Public Council of International Experts for election of judges for the High Anti-corruption Court in Ukraine as an international specialist on judicial integrity. I am also currently sitting as a member of the Advisory Panel of Experts on Candidates for Election of Judges to the European Court of Human Rights. A particularly important element which undermines the high moral character of a judge pertains to any activity of the judge which is incompatible with their judicial functions or which undermines the image of the judiciary and the Court they represent.

**9.** Have you ever been accused (formally or informally) of bullying, harassment, abuse of power, serious misconduct, including sexual harassment/misconduct, or unacceptable behavior? If so, please explain.

I have never been accused formally or informally of bullying, harassment, abuse of power, or of any serious misconduct including sexual harassment/misconduct or unacceptable behavior.

**10.** What difficulties, if any, can you envisage in taking a position independent of, and possibly contrary to, the position of your state of nationality? How would you act in cases where significant (direct or indirect) political pressure was exerted upon you and/or your colleagues?

Art. 40 of the Rome Statute states that judges must be independent and distinct from the authorities of their countries of origin. As such, a judge cannot be a member of any organisation which had, has, or eventually may have, dealings with the Court. Personally, I have significant professional experience in working in high pressure environments and politically sensitive contexts. As such, I have been in situations where I was under direct or indirect pressure from state authorities, media, or the wider public. For instance, as a judge of the Constitutional Court, I was judge rapporteur in a highly sensitive cases on the constitutionality or in cases linked with human rights. Similarly, as a judge at European Court of Human Rights, and currently as a judge at the Supreme Court, I have dealt with high-profile cases which have attracted strong media and political attention. In this context, it is of primordial importance that the ICC’s judges remain neutral and independent from bodies which may influence their work as judges of the Court.

**11.** Have you ever worked in the executive or legislative branches of government in your country? If so, please provide details about the capacities in which you served, the duration of these positions, and confidentiality obligations you may have undertaken.

I have continuously been in the judiciary branch at national and international level in the last 20 years. However, I was also part of the executive branch of government from 1988 till 2003 on different professional positions. There are no confidentiality obligations that I have undertaken in these positions. My main professional experiences as part of the executive branches are emphasized hereafter. This is done in a chronological order:

- From 1988 to 1993, practicing as legal representative of the Ministry of Internal Affairs in front of the national courts in criminal, civil and administrative cases.
- From 1993 to 2001, after the dissolution of Yugoslavia I practiced International Private Law and International Human Rights Law, while working on the implementation of international and national standards on nationality at a time of state succession and focusing on asylum protection as well protection of non-nationals on the territory following armed conflicts in the Western Balkans.
- Immediately after the armed conflict in my country in 2001, from 2002 till May 2003 I was President of the State Election Commission and successfully coordinated its work demonstrating high integrity and impartiality, leadership, and a capacity to work in high pressure environments in a time of an on-going armed conflict.
- Between 2001 and 2003, as a head of the Department on Human Rights of the Ministry of Foreign Affairs, I was responsible for the promotion of Rule of Law and Democracy.

### **Management and workplace culture**

**12.** Please describe your relevant human resources management skills and experience, including: how you managed allegations of discrimination, harassment (including sexual harassment), bullying and/or abuse of authority on the part of staff members; ways you addressed chronic imbalances in geographical representation/race and gender in senior management positions; and how you grappled with issues that disproportionately affect women, minorities, and people of color.

I have behind me more than 25 years of professional experience in the methodology and the organization of the work of different national institutions, national courts, international courts, and international organizations. Currently, parallel with my work at the criminal division of the Supreme Court, I am president of the Supreme Court department dealing with length of the proceeding appeals pertaining to all levels of the judiciary in my country. As a President of this department, I am responsible for organising the work of 12 judges and 12 legal clerks.

Before that at the ECHR, as President of the First Section, I was responsible for the organisation of and for presiding over every section meeting. The First Section was responsible for Single judge cases, Committee, and Chamber judgements and decisions for 10 countries, reported by 10 judges. My work was supported by the Registry and Deputy Registry of the First Section and approximately by 80 lawyers.

I was also Head of Human Rights Department at the Ministry of Foreign affair. Despite the small number of legal advisors on our team, the work was always finished on time and strong communication with different international organisations was continuously ensured.

Further, as a President of the State Election Commission of the Republic of North Macedonia (2002 – 2003), I coordinated and directed the election commissions (State, Regional, Municipality and Electoral Boards) and the organization of the 2002 post-conflict state elections, dealing with thousands of internally displaced electors. In doing so, I ensured the strict following of legal procedures and rules, while working under high pressure and in a particularly fragile political context. Demonstrating expertise in leadership, team-coordination, as well as high integrity and impartiality.

Throughout these experiences, I have never faced any allegations of discrimination, harassment (including sexual harassment), bullying and/or abuse of authority on the part of staff members. On the contrary, the working culture was always at a very high level. I am proud to say that for example, out of 10 judges at the First Section 3 later became Presidents of the ECHR and two of the Senior Lawyers today are Registrar and Deputy Registrar of the ECtHR. My personal approach towards colleagues is based on dialog and appreciation of joint work.

Concerning the imbalances in geographical representation/race and gender in senior management positions, coming from a multicultural and multireligious state I consider this as a very important question that should be part of the strategy of the institution. In this line, I am convinced that the determination of a candidate's suitability for a post must be based on their professional skills, high moral character, their impartiality, and integrity. However, positive preference in favour of an underrepresented gender or geographical region between candidates of equal professional and academic profiles, is also important to ensure a greater diversity within the institution. Ensuring such diversity within the institution brings added value in combination with high professionalism.

**13.** If elected, what concrete measures will you take to improve the workplace culture in the ICC's judiciary? Include examples in which you acted to improve the workplace culture.

If elected, I will use my previous gained experience to promote a stronger work culture of the Court. A better working environment will contribute to effective judicial proceedings in the fight against impunity. In this regard, it is important to build a general atmosphere of mutual trust, confidence, and reliability between all units, officials, and staff of the Court to ensure a deeper work culture within the Court, and to guarantee the efficiency and proper administration of the Court. For that purpose, the ICC needs judges who, beyond the necessary formal qualifications, have also a solid inner compass and proven commitment to the cause of international justice. A good example from my practical experience is introducing a "mentoring system" for newcomers. Namely, at the ECtHR, this was a form of help to new judges from more senior judges to facilitate their integration within the Court. In practice it helped a lot for judges from different working cultures to accept the working methodology and new working environment. This model was introduced by the Committee on Working methods. The Committee was composed of judges and senior lawyers, and it was an excellent form of exchange of views and

ideas among them with the final goal of improving methods of work and working environment as well.

**14.** Please share examples of when you applied a gender perspective during your professional career.

Most recently, alongside the current President of the ECHR, judge Siofra O’Leary, and other former and acting judges of the ECHR, I am member of the Board of Patrons of the Gender Champions in the Judiciary (GCJ) Network. This has given me the opportunity to partake in encouraging and promoting gender equality in the judiciary. Further, throughout my career I was investing a lot of energy in focusing on gender perspectives from different angles. Indeed, balanced gender representation in judiciary is extremely important and I have focused on this topic during several lectures I held in different universities or academies for judges.

### **Sexual and gender-based crimes (SGBCs) and crimes against children**

**15.** What do you consider are the main advancements in the Rome Statute regarding sexual and gender-based crimes and crimes against children, as well as the relevant jurisprudence and charges brought so far at the Court? Please describe challenges and opportunities for improvement in adjudicating these crimes, and any experience you may have in this area, including addressing misconceptions relating to SGBCs.

The Rome Statute is the key international instrument that clearly includes various forms of sexual and gender-based crimes (rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms) as acts of crimes against humanity and war crimes committed in international and non-international armed conflicts. The Statute also criminalises persecution based on gender as a crime against humanity. Sexual and gender-based crimes may also fall under the Court’s jurisdiction if they constitute acts of genocide or other acts of crimes against humanity or war crimes. Similarly, the Rules of Procedure and Evidence are a strong base for key procedural and evidentiary advancements in ensuring the protection of victims’ interests and ending impunity for sexual and gender-based crimes.

### **Judicial training**

The ICC is a unique institution and ICC judges face many distinct challenges. Even judges with significant prior experience managing complex criminal trials may not necessarily possess all requisite skills and knowledge needed to manage these challenges.

**16.** In this context, is there any area of your expertise, knowledge, or skillset which you think could be enhanced through workplace training? Would you make yourself available to take part in such professional training?

I am always willing to learn more about my profession and I try to improve my professional skills. I will be available for training and dialog with trainers and judges from other courts on different topics. In any case, in this era of advanced technology I will need to improve my skills in digital technology and how to use new forms of proceedings in the judicial procedure.



## National nomination procedure

- 17.** What is the current national selection and nomination procedure for ICC judicial candidates in your country of nationality? Please provide information on the procedure, including the application process, criteria, rules and legislation, public outcome of the process, bodies or organs involved in the selection process, and any other relevant information.

For the first time my country is nominating a candidate for ICC. The nomination process was organized under the terms of article 36, paragraph 4(a) (i), of the Rome Statute in accordance with the Constitution of the Republic of North Macedonia (Article 105), Law on Courts, Law on Judicial Council and national Rules of Procedure of the Republic of North Macedonia for nomination of candidates for judges of the Constitutional or Supreme Court which are publicly available on the website of the Judicial Council. The Judicial Council is the only authority responsible for the election of judges of the high courts of the country and for nomination of two candidates for the Constitutional Court. On the initiative of the Ministry of Foreign Affairs, the Judicial Council established the nomination in a transparent procedure based on a merit system (decision No. 03-577/2). The proposal for nomination was at the public plenary meeting of the Judicial Council, in the presence of journalist and non-governmental association. This information was broadly disseminated by the media. All comments from the side of public were positive. The nomination was supported also by the President of the State, who according to the Constitution proposes to the parliament two members of the Constitutional Court. Throughout the process there has continuously been strong coverage and support by the media. The publicity and transparency of the procedure of nomination is acknowledged also by the broad support from a number of civil society organizations that are focused on criminal procedures and criminal courts.

Thank you.