

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

Name: ZEMAN, Pavel

Date: 18/07/2023

Motivation

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

I am convinced that it is a logical development in my professional life. Having served as a prosecutor in various positions both at the national and international levels, I believe that my experience in application of criminal law and procedure, including in international judicial cooperation in criminal matters could be an asset for efficiency of the ICC.

Besides that, my current focus on methodology with respect to war crimes, genocide and cybercrime, including digital evidence, is particularly close to the work and the needs of the ICC.

I consider the ICC as a truly unique international criminal court for a number of reasons, including its universal jurisdiction and approach to rights of victims. I believe that due to my expertise in areas related to the mandate of the ICC, as further described below in more details, I will be able to enhance the judicial work of the ICC.

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.**

I am a life-long prosecutor with experience from both the district and regional Prosecutor's Offices, as well as from the Prosecutor General's Office where, among other positions, I served as a Prosecutor General of the Czech Republic (2011 – 2021). I have dealt with different range of crimes, including grave violent crimes with participation of vulnerable victims and with the most complex criminal cases. In general, the main challenges were quite similar in nature, although different in their scope: managing complicated and time-sensitive cases. Where relevant, it was essential to ensure sensitive treatment of vulnerable victims.

Between 2004 – 2010 I served as a National Member at Eurojust. Apart from facilitation and coordination of international judicial cooperation in criminal matters, I dealt with issues related to terrorism, security, and the European Arrest Warrant. The main challenge there, which I have enjoyed, was to work with colleagues from different legal systems, including bridging the differences between civil law and common law systems.

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.

I am currently focusing on methodology and drafting legal opinions for the prosecution service with respect to questions of war crimes and genocide, and I participate at the EU Genocide Network. In this regard, I have to be generally familiar with the relevant case law, as well as with the main decisions of national courts in different countries.

(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.

First, I consider participation of victims in the Rome Statute system as essential for a balanced approach between retributive and restorative functions of the ICC. Victims' rights as incorporated in the Rome Statute, including the provision on Trust Fund for Victims, reflect an important development in international criminal justice of recent years, and shall be fully respected.

I was personally conducting interviews and taking statements of victims, including vulnerable victims. I am one of the co-authors of a prosecutors' manual on how to approach vulnerable victims. I also cooperated with the Czech Police unit for witness protection. Thus, I am familiar with the procedures and I also know how difficult and responsible the work is.

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

I would cooperate closely with the Registry and with the Trust Fund for Victims. An effective victims' participation is only possible if the proceedings are carefully planned and scheduled and due attention is paid to vulnerable victims. In this regard, I would (for instance) ensure that all necessary measures to prevent secondary victimization of vulnerable victims are in place, including using special measures for victim's participation in a hearing such as audio-video tools.

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.

As indicated in my response to question no. 4, I have such experience / training. In particular, vulnerable victims deserve sensitive approach in order to avoid secondary victimization. I believe that the ultimate responsibility to guarantee such an approach is up to a judge. As already mentioned, I have closely cooperated with the victims' protection unit of the Czech Police.

Defence rights

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

The role of a prosecutor within the Czech Republic's legal system includes responsibilities in the area of upholding legality in penal proceedings (in particular in the pre-trial phase). While serving as a Prosecutor General, I had special competences related to protection of public interest. Rights of the accused were always part of my consideration. I have always paid attention to the defendant's right for effective investigation.

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"?

I understand the "high moral character" requirement as a combination of the virtues of integrity, independence, honesty, loyalty and courage. I believe that these characteristics should be also manifested by fairness in approach to colleagues and during the trial. How do I embody the characteristics of "high moral character" should be answered by my colleagues.

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.

No.

- 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?

I cannot envisage any difficulties in this regard. If elected, I am ready to honour my obligations stemming from the Rome Statute, with the independence at its core. As to the second question: judges shall departure neither from obligations of the Rome Statute nor from the content of the solemn undertaking. Apart from that, (Assembly of) States Parties should deal with political pressure, including if exerted upon judges and/or other representatives and staff of the ICC.

- 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.

No.

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 served in the position of Head of Public Prosecution Service of the Czech Republic for ten (10) years. During that time, I believe that I managed to consolidate the prosecution service, and improved communication both inside and outside the service. An important part of such endeavor was to build relationship with all my colleagues, a relationship of trust. I had to deal with one case of bullying which resulted into administrative measures issued against the person who abused his authority. The measures became known and such behavior has never repeated. Imbalances as mentioned in the question have not been an issue in the Czech prosecution service.

- 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.

I am convinced that the workplace culture is essential in order to deliver good work. I believe that I should lead by example, communicate with other judges and staff on regular basis, build a relationship of trust, and immediately deal with any hints of mistreatment. Regular informal meetings and discussions with a cup of coffee also serve very well for improvement of the working culture.

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

In general, diversity is a precondition for any inclusive and representative system, including a legal one. In this regard, gender perspective is very important in representation among organs of the Court and its staff, as well as it must be taken into account during proceedings. For instance, the gender element should be an inherent part of decision who will interview a vulnerable victim (victim-responsive approach).

From the managerial point of view, I have always given a fair chance to appoint both genders to leading positions in the prosecution service.

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.

As to the SGBCs, the Rome Statute explicitly recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence as distinct types of war crimes. The Rome Statute also specifically addresses crimes against children, in addition to the fact that children might be victims also of the above-mentioned crimes. For instance, the Rules of Procedure and Evidence consider commission of a crime where the victim is particularly defenseless etc. as an aggravating circumstance for the determination of sentence.

There is a clear understanding that victims of such crimes are vulnerable. This fact has to be reflected at all stages of the proceedings (victim-sensitive and child-sensitive approaches), in particular when hearing a victim or witness. I do have experience in handling vulnerable victims when I served as a prosecutor in both the district and regional level, as well when I held the position of Prosecutor General.

The relevant case law continues to develop. For instance, the case against Germain Katanga dealt with sexual crimes resulting into acquittal of those crimes. The acquittal indicated the difficulties related to the concept of common purpose liability under Article 25 (3) (d) of the Rome Statute. The acquittal off Jean-Pierre Bemba illustrated how uneasy is to prove command responsibility in the absence of clear orders to commit sexual violence. More recently, the convictions of and Bosco Ntaganda (first final conviction for sexual crimes) and Dominic Ongwen (prosecution of forced pregnancy) showed further development.

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 convinced that both induction and continuous trainings shall be mandatory. Judges (in particular) should more frequently share lessons learned and discuss ways how to contribute to efficiency of the decision-making process. I have taken part in trainings in the Czech Republic and also when working at Eurojust and I believe that by participation in trainings one can strongly benefit in order to familiarize himself/herself with new developments. In addition to that, participation in trainings in mixed groups (both judges and staff) can contribute to the improvement of the working culture.

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 detailed information, please refer to 2023 ICC Judicial Elections Questionnaire to nominating States, which as I understand has been already submitted. The text of the Rules for the selection of a candidate for the position of judge of the ICC is also publicly available at the ASP website.

Thank you.

Thank you.