

Coalition for the International Criminal Court (CICC)
Questionnaire for ICC Judicial Candidates
December 2017 Elections

Please reply to some or all of the following questions as comprehensively or concisely as you wish.

To fill in the document please click in the grey box, which will then expand as it is filled in.

Name: Dragomir Vukoje

Nationality: Bosnia and Herzegovina

Nominating State: Bosnia and Herzegovina

Legal Background (*mark as appropriate*): List A X B

Gender: Female Male X

Background

1. Why do you wish to be elected a judge of the International Criminal Court (ICC)?

I believe it is a logical continuation of my professional career, since with my 24-year experience as a judge I can contribute to creating new case law, which would also be the pinnacle of my professional career as a judge, specialized in criminal, international and human rights law.

2. What do you believe are the most important challenges and achievements of the ICC in its first 15 years?

Over the past 15 years of ICC existence, the most important challenge the institution has faced is the challenging to its legitimacy from the aspect of political influence of certain powerful countries on initiating criminal prosecution of some of the perpetrators of serious violations of international humanitarian law. In that regard, the ICC must take root as an independent judicial institution in the manner as defined by the Rome Statute, and must be free from the use of double standards in order to affirm itself as a true dispenser of international justice.

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3. What do you believe are some of the major challenges confronting the ICC and Rome Statute system in the coming years?

It would, inter alia, be to somehow define and specify the crime of aggression within the Rome Statute.

Also, the ICC should show more determination to bring to justice those responsible for serious violations of international criminal law in the manner demonstrated by the ICTY.

Nomination Process

4. What are the qualifications required in the State of which you are a national for appointment to the highest judicial offices? Please explain how you meet these qualifications.

Eight years of relevant judicial experience following bar exam, plus the candidate must have high moral and professional qualities, as defined by the Law on the High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina.

Since 1993, I have been a judge, from basic courts to the State Court, all the time in criminal law. During my professional career I have never been subjected to any disciplinary proceedings, and I have always received highest performance evaluations from my superiors. For those reasons, I have been appointed a member of the HJPC, which is a body in charge of appointing judges and prosecutors in Bosnia and Herzegovina.

5. Have you provided the statement required by Article 36(4)(a) of the Rome Statute and by the nomination and election procedure adopted by the Assembly of States Parties? If not, please provide an explanation for this omission.

Yes, it was sent along with my CV by the HJPC, which is the body that nominated me as a candidate.

Legal System

6. The Rome Statute seeks judges representing all of the world's major legal systems.

- a) Which legal system is your country part of?

Civil law, with significant elements of common law (a mixed system).

- b) Please describe any knowledge or experience you have working in or with other legal systems.

Our national criminal law itself is a mixture of civil law and common law systems, so by default it has elements of and touches on both systems. All criminal offenses provided in the Rome Statute (Article 5, save the crime of aggression) are also included in our legal system, and in my daily practice I have been trying cases including such offenses, as well as other criminal offenses covered by international law (terrorism, human trafficking etc.).

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We also have direct connection with the ICTY, which has been regulated by law, which is how we get in touch with their system, which is more similar to and based on common law. Until 2013 we had international judges at our Court (from the U.S.A., the U.K., Australia, Germany, France, Belgium, Finland, Sweden, Malta, Norway, Italy), who worked together with national judges in trial panels, and who all conveyed the best practices from their national, mostly common law systems.

Facts established in ICTY judgments are sometimes used and admitted in our own trials, as also regulated by our law.

During our trials, we apply our national CPC, whose evidentiary procedure is designed completely after common law system (direct+cross examination, status conference etc.)

Besides, in the field of human rights, I have been directly applying the European Convention on Human Rights, whose basic principles are included in our Criminal Procedure Code.

Language Abilities

- 7.** The Rome Statute requires every candidate to have excellent knowledge of and be fluent in English or French.

- a) What is your native language?

Serb language

- b) What is your knowledge and fluency in English? If it is not your native language, please give an example of your experience working in English.

Medium. I have finished multiple English courses.

- c) What is your knowledge and fluency in French? If it is not your native language, please give an example of your experience working in French?

Excellent. I have completed an eight-month course at the ENM school in France, where all classes were held in French, plus I observed some trials in French courts. I have completed multiple French courses, including at the Malraux center in Sarajevo, Allianze in Paris, at the University of Clermont-Ferrand in Vichy, etc.

List A or B Criteria

- 8.** Your response to this question will depend on whether you were nominated as a List A candidate or a List B candidate. Since you may have the competence and experience to qualify for both lists, please feel free to answer both parts of this question to give the reader a more complete view of your background and experience.

- a) For List A candidates:

- Briefly describe your qualifications as a List A candidate.

As stated above, and in my CV, I am one of the first three national trial panel presiding judges since the establishment of Section I for War Crimes at the Court of BiH. The Section was established based on the initiative from the UN Security Council in the framework of a transition mechanism for the transfer of war crimes cases to domestic courts.

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Also, I have been an appellate judge at the same Section since 2007.

- How would you describe your competence in criminal law and procedure?

The judgments I took part in, whether as the judge rapporteur or a panel member, all cite the doctrine of international criminal law, plus there are my years of experience. I was the first judge at my court who acted upon the cases transferred from the ICTY under Article 11 bis (Stankovic case).

- How would you describe your experience as a judge, prosecutor, counsel, or in another similar capacity, in criminal proceedings?

In my work, I have been applying customary international law and conventional law in war crimes cases, while naturally consulting the jurisprudence of both national and international courts, for instance regarding the application of the JCI, command responsibility, complicity, forms of individual responsibility etc..

b) For **List B** candidates:

- Briefly describe your qualifications as a List B candidate.

Besides my experience as a judge in my daily work, in the matter related to the application of international criminal law or violations of international humanitarian law, I would like to note that I have engaged in relevant theoretical work by preparing multiple professional articles (as mentioned in my CV), by participating in multiple conferences and seminars. Ultimately, I hold a Master's Degree (crimes against humanity) and a PhD (the right to a fair trial in war crimes cases), which includes the application of the human rights law and international humanitarian law.

- How would you describe your competence in relevant areas of international law, such as international humanitarian law and international human rights law? See above.

- How would you describe your professional legal experience that is of relevance to the judicial work of the ICC? See above.

Other Expertise and Experience

- 9.** Please describe the aspects of your career, experience or expertise outside your professional competence that you consider especially relevant to the work of an ICC judge.

As is the case with most of my colleagues, I believe I have a vast educational basis, regarding the knowledge of history, international relations, international politics, sociology and culturology, which I believe is an important basis for putting a criminal event, including its legal aspects and frameworks, into a broader phenomenological context.

- 10.** Please provide examples of your legal expertise in other relevant areas such as the crimes over which the ICC has jurisdiction, the management of complex criminal and mass crimes cases, or the disclosure of evidence.

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Those are all examples from my daily practice of trying complex cases, including defense objections to non-disclosure, intercepted conversations etc., which is a relative novelty in our practice. I would like to stress the Trbic case, where I was the judge rapporteur, when it comes to complex cases, in which the defendant was convicted for genocide. The case had been transferred from the ICTY, and was the first one where the court panel returned the verdict of genocide.

- 11.** The ICC is a unique institution, and ICC judges will face a number of unprecedented challenges (including managing a regime of victims' participation and witness protection in situations of ongoing conflict). Even judges with significant prior experience managing complex criminal trials may not necessarily possess requisite skills and knowledge needed to manage these challenges.

- a) Are you willing to participate in ongoing workplace training aimed at promoting legal innovation and coordination among all judicial chambers in adjudicating complex questions relating to law and policy?

Yes. I am aware that the Rome Statute has envisioned significant participation of victims and I believe it is justifiable not only from legal but also moral aspects. In ongoing cases before my court, I apply national law provisions on a daily basis, related to the vulnerable witnesses and witnesses under threat, which is an integral part of my work. At my court, there is a special department, comprising experts providing protection to witnesses before, during and after trial, a lot like the ICTY, which is a long-standing practice in which I have significant experience.

- a) Do you consider such training to be important?

Yes, important and useful.

Experience (and perspective) related to gender crimes and crimes of sexual violence

- 12.** Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked. Please describe any experience you may have in dealing with sexual and/or gender-based crimes and where you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted.

I have had numerous cases that included all the foregoing aspects of sexual violence, by men against women and children, but also against other men. During the war in BiH, there were numerous systematic rapes, where especially women found themselves in most horrific situations without any way out, in coercive circumstances. Also, I had a case involving sexual abuse in the region of Jablanica, where two brothers were forced to perform oral sex, which left hard trauma on their lives, a consequence being that the two do not talk to each other any more.

I would also like to say that in those cases relevant punishments were ultimately imposed.

Victims-related work

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- 13.** Victims have a recognized right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. Please describe any experience that you may have relevant to these provisions and that would make you particularly sensitive to/have understanding of the participation of victims in the courtroom.

Our CPC does not envision broad participation of victims in terms of managing the proceedings, given the ex officio and accusatory principle and the principle of legality, where the state prosecutor is the one who must initiate criminal proceedings. Already during the investigation, the prosecutor has the obligation to advise the victim about the right to seek reparations against the accused, and he/she also has the obligation to collect evidence regarding the amount of reparations, which is the right the victim may exercise until the end of the criminal proceeding. Trial panels usually advise victims to pursue their reparation requests in civil proceedings, although in some of the recent cases including the foregoing crimes the reparation requests were dealt with in the framework of the criminal proceeding, to the benefit of the victims.

- 14.** How would you address the need for a balance between victims' participation with the rights of the accused to due process and a fair and impartial trial? Do you have any relevant experience in dealing with this issue?

The essence of the question relates to judge's daily work, which is a drama of any judicial proceedings. On the one hand, the judge faces the request by the state authority to prosecute perpetrators of most serious crimes to protect social values, and on the other hand the need to effectively protect the rights of the accused in the context of their right to a fair trial. In that process, victims are 'joined' with the prosecutor's case, and the court has the obligation to maintain due respect for their interests given their vulnerability. Under our law, victims are entitled to file appeals from trial judgments regarding the decision on the costs of criminal proceedings and reparation claims, and my experience moves within that domain.

I believe one should thread carefully when it comes to victims' participation in the investigation run by the prosecutor, for the reasons of sensitivity of investigation as a stage of criminal proceeding within which evidence is collected.

Human rights and Humanitarian Law experience

- 15.** Do you have any experience working with or within international human rights bodies or courts and/or have you served on the staff or board of directors of human rights or international humanitarian law organizations? Is so, please briefly describe this experience.

I am aware of the broad human rights jurisprudence since I used to be a candidate for a judge at the European Court of Human Rights in Strasbourg. In 2015, I was an active participant in the international ICRC conference at Geneva, on international humanitarian law, as mentioned in my CV.

- 16.** Have you ever referred to or applied any specific provisions of international human rights or international humanitarian law treaties within any judicial decision that you may have issued within the scope of your judicial activity or legal experience?

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Under our Constitution, the ECHR has primacy over all other national law, which means it applies directly to all national cases. Also, I have been applying on a daily basis, in war crimes cases, the provisions related to violations of international humanitarian law, which is visible in all judgments posted on the web side of the Court of Bosnia and Herzegovina. For example, this includes the application of common Article 3 etc.

Implementation of the Rome Statute and International Criminal Law

- 17.** During the course of your judicial activity, if any, have you ever applied the provisions of the Rome Statute directly or through the equivalent 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 describe the context in which you did.

Since our Criminal Code has been to a large extent harmonized with the Rome Statute, through the application of our law we have been applying the Rome Statute standards as well. We have also been applying ICTY, ICTR, Sierra Leone and Cambodia Tribunal case law.

Other matters:

- 18.** Have you ever resigned from a position as a member of the bar of any country or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.

None of the above.

- 19.** It is expected that a judge shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status.

- a) Do you disagree or have difficulty with this expectation?

*This is above all a legal obligation in Bosnia and Herzegovina. As a member of the HJPC Disciplinary Committee I am in a position to sanction those judges and prosecutors who have acted contrary to the judicial and prosecutorial ethical standards, in the manner which would bring into question their impartiality from the aspect of both subjective and objective perception, or who would find themselves in the conflict of interest, which would render them ineligible to hold any prosecutorial or judicial office. Also, manifesting or appearing to condone any discrimination against anyone on any of the above grounds would *eo ipso* mean their automatic dismissal, which does not preclude their criminal responsibility under domestic law.*

- b) Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on these grounds? If yes, please describe the circumstances.

Absolutely not.

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20. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions. Members of the CICC and governments are concerned about the difficulties a judge may experience in independently interpreting articles of the Rome Statute on which his or her government has expressed an opinion.

- a) Do you expect to have any difficulties in taking a position independent of, and possibly contrary to, the position of your government?

I do not expect any difficulties whatsoever, as I have not had any so far.

- b) Article 41 requires a judge's recusal "in any case in which his or her impartiality might be doubted on any ground." Do you feel you could participate in a judicial decision involving a matter in which your government has an interest, such as on whether an investigation by your government into a matter of which the ICC was seized was genuine?

If elected an ICC judge, I will be a judge of that court, with the responsibility that position entails, and will not have any responsibility to the government of my country whatsoever. After all, I am in a similar position today, even though I work in BiH, I am not an officer of my government, but an independent judge.

21. The Rome Statute requires that judges elected to the ICC be available from the commencement of their terms, to serve a non-renewable nine-year term, and possibly to remain in office to complete any trials or appeals. A judge is expected to handle legal matters for at least seven hours per day, five days per week.

- a) Do you expect to be able to serve at the commencement and for the duration of your term, if elected?

Yes, the same or similar conditions apply to my current post as well.

- b) Do you expect to be able to perform the judicial tasks described above on your own or with reasonable accommodation? If no, please describe the circumstances.

Yes I do.

22. If there are any other points/issues you wish to bring to the attention of the CICC in this questionnaire, please feel free to address them here.

Thank you.

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