

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT
QUESTIONNAIRE FOR ICC JUDICIAL CANDIDATES
DECEMBER 2011 ELECTIONS**

Conscious of the restrictions placed upon of ICC judges in making extra-curial comments which might affect the independence referred to in Article 40 of the Rome Statute and Rule 34 of the Rules of Procedure and Evidence, we invite judicial candidates to please reply to the following questions as comprehensively or concisely as possible.

Name: CZAPLIŃSKI

Nationality: POLISH

Nominating State: POLAND

List: (tick one by clicking twice on a box and selecting “Checked”)

- A**
B

Background:

1. Why do you wish to be elected a judge of the ICC?

Firstly, because my government decided that my professional position, qualifications and skills are appropriate for this function. Secondly, because this is a very good opportunity to serve to the international community in a new quality, as international judge. Thirdly, because Polish national experience makes us qualified to evaluate to what extent law (international and criminal) can be use as meanings of redress of historical wrongs.

2. What do you think would be the biggest challenges you would face if you were elected as an ICC judge?

Decisively lack of practical experience in criminal proceedings – however, this is exactly same challenge as insufficient knowledge of international law for criminal judges. The practice of Yugoslav and Rwandan courts shows that this obstacle can be eliminated.

3. What do you believe are some of the major challenges currently facing the Court? What do you believe will be some of the major challenges in the coming years?

Growing download of cases connected with lack of efficiency and long judicial proceeding seems to be the most difficult challenge.

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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.

Professors of law can be appointed judges at the Constitutional Court, Supreme Court and Supreme Administrative Court without passing the whole judicial career. I was nominated full professor of law (which is a honorary title granted upon merits, and is not connected with any specific chair at the university or any other academic institution) by the President of the Republic in 2000, and since that time I could be elected judge at the courts mentioned above.

5. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure under which you were nominated. Please also provide any relevant information such as the national law governing the procedure for the nomination of candidates to the highest judicial office in the nominating state (an Article 36(4)(a)(i) nomination) or the nominating letter from the Permanent Court of Arbitration national group (an Article 36(4)(a)(ii) nomination).

I have been formally proposed by the Polish national group at the Permanent Court of Arbitration ; however, in the domestic proceeding my candidature has been supported by group of experts: members of the International Law Advisory Board to the Minister of Foreign Affairs, as well as by the President of the Supreme Administrative Court. Nomination was presented jointly by Minister of Foreign Affairs and Minister of Justice, and approved by the Prime Minister of the Republic of Poland.

6. 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

Legal System and Language Abilities:

7. a) Which legal system does your country belong to?

Continental system, based mostly on German approach to law

- b) Do you have knowledge or experience working in other legal systems?

In my academic work I have experience not only with continental legal orders, but also (first of all) with international public law and European Union law, that follow to a certain extent common law legal method. I participated in a special program on American legal system, organized by the Columbia University, so I am somehow familiar with the US system (including criminal law)

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c) What difficulties do you envision encountering working with judges from other legal systems? How would you resolve such difficulties?

I do not think of meeting specific difficulties.

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

a) What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in English?

Fluent in speaking and writing. I have participated in different events (international conferences) in English and lectured at foreign universities

b) What is your knowledge and fluency in French, if it is not your native language? Do you have experience working in French?

Fluent in speaking and writing. I have participated in different international conferences in French and lectured at foreign universities (including several visiting professorships in Nice and Paris)

List A or B Criteria:

Your response to this question will depend 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.

9. a) For List A candidates:

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

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

b) For List B candidates:

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

I have been dealing with different aspects of state responsibility and law on the use of force; I published extensively on these topics in Polish and international law reviews. I was involved in proceedings before the Strasbourg court in the domain of the European Convention on Human Rights and Fundamental Freedoms

- How would you describe your professional legal experience that is of relevance to the judicial work of the Court?

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I am senior partner in a law firm in Warsaw, so I do have some experience in managing cases before the court

Expertise and Experience:

10. Please describe your qualifications for this position. Please also 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.

I am full (ordinary) professor of international law. As to my experience, see above (No.9).

11. Do you have legal expertise in relevant areas such as the crimes over which the Court has jurisdiction; the management of complex criminal and mass crimes cases; or the disclosure of evidence?

I dealt in my research with many aspects of international crimes, including the practice of ad hoc tribunals.

12. The ICC is a unique institution, and judges serving on the court will inevitably face a number of unprecedented challenges (including managing a regime of victims' participation and protecting witnesses 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 can hardly imagine that any judge could renounce such training. In my opinion, a mutual exchange of knowledge and practical experience is of extreme importance. I researched a practice of the Strasbourg court on human rights, and I know how many difficulties the judges have in applying international law. Criminal judges of ad hoc tribunals also demonstrate judicial activism, and setting limits for this phenomenon would certainly be an important task of experienced international lawyer at the ICC.

b) Do you consider such training to be important?

As already emphasized, it is important; however, all judges must realize this importance and subject themselves to training.

13. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalised or overlooked.

a) Please describe any expertise and/or experience you may have in dealing with crimes of sexual and/or gender based violence.

No – however, I have to state that sexual violence is just one of many different forms of A right evaluation depends of current, specific situation.

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b) Are there situations or cases in the past where you believe you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted? If so, to what effect?

14. Victims have a recognised right to participate in ICC proceedings and to apply for reparations under Article 75 of the Rome Statute. Please describe any experience that you have, which would be relevant to these provisions.

I do not have any relevant practical experience. However, the particular rights of victims must be balanced with requirements of the proceeding, in order not to paralyze it.

15. Under Article 68(3) of the Rome Statute, victims are entitled to present their views and concerns and have them considered at stages of the proceedings to be determined 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.

a) Please describe any experience you may have that would make you particularly sensitive/understanding to the participation of victims in the courtroom?

b) Do you have any experience in balancing victims' participation with the rights of the accused to due process and a fair and impartial trial? If so, please describe.

16. Have you advocated for the adoption and/or implementation of human rights or international humanitarian law treaties or other instruments? Please describe your experience.

17. 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 context of your judicial activity or legal experience?

18. 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? If so please describe the context in which you did.

19. Have you ever referred to or applied the jurisprudence of the ICC, *ad hoc*, or special tribunals? If so, please describe the context.

I have participated in two large research projects concerning the jurisprudence of the *ad hoc* tribunals, and currently I supervise a third one – all the three dealt with classification of crimes in the judicial practice.

20. Have you served on the staff or board of directors of human rights or international humanitarian law organisations? Please describe your experience.

No, I have only collaborated in some projects with the Helsinki Committee in Poland – reference can be given by the presidency

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21. a) Please provide us with a list of and/or links to your writings and opinions relevant to evaluating your experience.

b) Please provide us with an electronic copy of and/or links to any writing or opinion describing your experience as outlined in questions 1a), 1b) and 5.

c) Is there any other information in the public domain that would support your candidacy or provide additional evidence of your qualification as a judge at the ICC?

Other matters:

22. 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.

No

23. Have you ever been found by a governmental, legal or professional body to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status, or any other grounds of discrimination? If yes, please describe the circumstances.

No

24. 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, colour, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff, Court officials and others subject to his or her direction and control to refrain from such words or conduct.

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

I suppose this is a normal human conduct and it is not necessary to undertake any special measures to meet this requirement. I do not think I have ever had any difficulty with that regard.

b) Please provide any relevant information regarding your ability to meet this expectation.

25. 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 your taking a position on any matter independent of, and possibly contrary to, your government?

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I have often been critical to my government (including publishing an article criticizing a Polish participation in the war in Iraq of 2003); in my research activity I have never met any form of pressure by the government

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 whether an investigation by your government on a matter of which the ICC was seized was genuine?

This is clear that I accept such a situation, if deciding to present myself to the elections

26. The Rome Statute requires that judges elected to the Court 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. In addition, a judge is expected to be on the bench or otherwise handle legal matters for at least seven hours per day, five days per week, and at times a judge's responsibilities may require him or her to be on the bench or at work into the evenings and on weekends. It may also include working on more than one case at a time and for Pre-Trial Division and Trial Division judges, the possibility of temporary attachment to the opposite Division.

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

Yes, I do

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.

I am ready to give up my other engagements and to devote to the largest possible extent to my judicial activity

27. If there are any questions you wish were asked in this questionnaire but were not, or if there are any matters that you otherwise wish to bring to the attention of the Coalition in this questionnaire, please feel free to address them here.

Thank you for completing this questionnaire.