

BELGIUM

[Original: English and French]

According to article 36, paragraph 4, i), of the Rome Statute, the nomination of the Belgian candidate for the next elections of judges at the International Criminal Court (ICC) took place pursuant to the selection process provided for by article 42 of the Act of 29 March 2004 on cooperation with the International Criminal Court and Criminal Tribunals.

This selection process is inspired by the procedures applied in domestic law for the selection and appointment of magistrates in Belgium and is adjusted to the specificities of the elections of judges for the International Criminal Court. This procedure guarantees an impartial intervention by the High Council of Justice (HCJ), responsible for drawing up the ranking of candidates in two lists of profiles as set up in Article 36, § 3, (b), i and ii), of the Rome Statute.

The HCJ is a federal body enshrined in the Constitution and established in 2000. The HCJ consists of 44 members, each appointed for a four-year term of office. Every four years, 22 magistrates are elected by all the magistrates in Belgium and 22 non-magistrates (8 lawyers, 6 university professors and 8 representatives of the civil society) are appointed by the Senate. At the end of their office, members may apply for re-election, only once.

One of the three key tasks of the HCJ is to organise the judiciary entrance examinations and makes recommendations to the Justice Minister on the nomination of judges. This task is carried out by the nominations and appointments boards of the HCJ.

The HCJ is totally autonomous with regard to its functioning and operates independently of the government, as well as of the judiciary and the parliament.

The text of above mentioned Article 42, which determines the selection process of a candidate by Belgium for the elections of judges at the ICC, is as follows: [UNOFFICIAL TRANSLATION]

« Art. 42. § 1. A vacancy for the post of judge at the International Criminal Court shall be published in the Belgian Official Journal when the Council of Ministers, on a proposal of the Minister of Justice, decides to put forward a candidate for such an election. The announcement published in the Belgian Official Journal shall set out the qualifications of candidates on the basis of Article 36 of the Statute and indicate the deadline for applications to reach the Minister of Justice.

§ 2. When the deadline comes to pass, the Minister of Justice shall ask the joint nominations and appointments board of the High Council of Justice to draw up two lists of candidates, one ranking the applicants having the qualifications specified in Article 36, Paragraph 3(b)(i), of the Statute, the other ranking applicants who are part of the category specified in Article 36, Paragraph 3(b)(ii), of the Statute. Both lists shall be established after the candidates have been heard by the joint nominations and appointments board. That board shall transmit the lists within 60 clear days as from the date of the transmission of the applicant files by the Minister of Justice. However, only one of those lists shall be drawn up if the vacant posts relate to only one of the categories referred to in Article 36, Paragraph 3(b), of the Statute.

§ 3. At the end of the 60-day period referred to in Paragraph 2 above, the King shall have 60 clear days to choose, by a decree discussed in the Council of Ministers, the candidate who will be put forward by Belgium for the vacant seat. His choice must be the person ranked first on the list, in the case of a single list, and one of the two persons ranked first on either list where two lists have been established pursuant to Paragraph 2 above.

§ 4. The King can, by decree discussed in the Council of Ministers, oppose the choice of the board with a reasoned refusal. The board shall have 15 clear days to submit one or two new lists of candidates pursuant to Paragraph 2. At the end of that time period, the King shall have 30 clear days either to choose, by a decree discussed in the Council of Ministers, the candidate who will be presented by Belgium for the vacant seat according to the same procedure as referred in Paragraph 3, in fine, or to decide, by a decree discussed in the Council of Ministers, having recourse to a reasoned refusal, not to put forward any of the candidates proposed, and thereby to close the procedure. »

Pursuant to this provision, the decision to put forward a candidate for Belgium at the occasion of the next elections of six judges of the International Criminal Court was made by the federal Council of Ministers on January 17, 2020 on a proposal tabled by the Minister of Justice.

A call for candidates regarding the vacancy for the post of judge at the International Criminal Court was subsequently published in the Belgian Official Journal on January 21.

This announcement mentioned the required qualifications for this post, as set out in Article 36 of the Rome Statute.

Twelve applications have reached the Minister of Justice in the legal deadline, accompanied with detailed documents indicating the merits of each candidate. These were transmitted on February 6 to the joint nominations and appointments board of the High Council of Justice (HCJ) in order to draw up two lists of candidates, one ranking the applicants having the qualifications specified in Article 36, Paragraph 3(b)(i), of the Rome Statute, the other ranking applicants who are part of the category specified in Article 36, Paragraph 3(b)(ii), of the Statute.

Eleven candidates have been heard by the joint nominations and appointments board of the High Council of Justice on March 11, as one of the candidates withdrew his application in the meanwhile.

The ranking lists drawn up by the board of the High Council of Justice were then transmitted to the Minister of Justice, allowing the federal Council of Ministers to make a choice on one of the two persons ranked first on either list to be the candidate of Belgium for the next elections of judges.

According to the decision made by the Council of Minister on March 20, the candidate who was ranked as first on the list of applicants having the qualifications specified in Article 36, Paragraph 3(b)(i), of the Rome Statute, being Mrs Laurence Massart, First President of the Court of Appeal of Brussels, has been nominated by Royal Decree adopted on March 23 (published in the Belgian Official Journal on March 25).

This nomination was transmitted on March 27, 2020 to the Secretariat of the Assembly of States Parties to the Rome statute, indicating that the candidate is being nominated for inclusion in list A for the purposes of article 36, paragraph 5, of the Statute.