

Statement of qualifications

This statement of qualifications is submitted by the Government of the Czech Republic in accordance with article 36 of the Rome Statute and article 6 of the Resolution of the Assembly of States Parties relating to the procedure for the nomination and election of judges to the International Criminal Court (ICC-ASP/3/Res.6).

The Government of the Czech Republic has decided to nominate Judge Robert Fremr, a senior judge of the Supreme Court of the Czech Republic who currently holds the post of judge ad litem at the International Criminal Tribunal for Rwanda (ICTR), for election as a judge of the International Criminal Court in the elections that will take place during the tenth session of the Assembly of States Parties, scheduled to be held at United Nations Headquarters, New York, from 12 to 21 December 2011.

Judge Fremr, whose curriculum vitae in English and French is attached hereto, is nominated under the terms of article 36, paragraph 4(a)(i), of the Rome Statute and in accordance with the attached national Rules of Procedure of the Czech Republic.¹ The nomination of Judge Fremr was approved by the Government of the Czech Republic on 24 November 2010² upon the unanimous recommendation of a Selection Board consisting of the Minister of Foreign Affairs as the Chairperson of the Board, the President of the Constitutional Court, the President of the Supreme Administrative Court, a Judge of the Supreme Court, the Deputy Public Defender of Rights, the Supreme Public Prosecutor, a member of the National Group to the Permanent Court of Arbitration and a representative of the Ministry of Justice.

Judge Fremr is nominated for inclusion in List A, comprised of candidates with “established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings”. Judge Fremr fulfils all the conditions stipulated in article 36, paragraph 3(a), (b) and (c), of the Rome Statute.

Judge Fremr has served as judge of the Supreme Court of the Czech Republic since 2004. In September 2010 he has returned, at President Byron’s request, to the post of judge ad litem at the International Criminal Tribunal for Rwanda (his first term at the ICTR was from 2006 to 2008). Most of his previous career, spanning nearly 25 years, has been devoted to criminal law and procedure. Judge Fremr has served as a criminal judge in all four tiers of the Czech judicial system (the Czech Republic has a continental legal system), specializing in violent crime. His assignments included eight years as a presiding judge in the Appeals Chamber of the High Court in Prague, hearing appeals in the most serious cases of murder and other violent crime. In this and other positions, he has gained considerable expertise in managing complicated and time-intensive cases, including multi-accused cases, as well as in working with women and child victims of violent crime who require special treatment in court.

Judge Fremr has also extensive experience in the area of international criminal law and procedure. As an ICTR judge, he has dealt with criminal cases in the area of international humanitarian law and human rights law, including specific issues such as violence against women or children. He is currently dealing with the case *The Prosecutor v. Ildephonse Nizeyimana*. During his first term at the Tribunal (2006-2008), he heard the cases of *The Prosecutor v. Simeon Nchamihigo* and *The Prosecutor v. Simon Bikindi*, a short summary of which is attached hereto. In addition, Judge Fremr has been several times designated to sit on the ICTR Referral Bench dealing with cases under Rule 11bis of the Tribunal’s Rules of Procedure and Evidence (*The Prosecutor v. Laurent Bucyibaruta*, *The Prosecutor v. Wenceslas Munyeshyaka*, *The Prosecutor v. Fulgence Kayishema* and *The Prosecutor v. Jean Bosco Uwinkindi*).

¹Czech Republic Rules for the Selection of a Candidate for the Position of Judge of the International Criminal Court, annex to Government Resolution No. 478 of 14 June 2010.

² Government Resolution No. 834 of 24 November 2010.

In addition to his judicial practice, Judge Fremr has been active also in the academic field. He has lectured on criminal law at the Faculty of Law of Charles University in Prague and taught human rights courses to judges and trainee judges at the Judicial Academy of the Ministry of Justice of the Czech Republic. In this capacity, he has contributed to the building of the rule of law in his home country.

Finally, as mentioned in his curriculum vitae, Judge Fremr has attended many important international conferences (e.g. the ninth session of the Assembly of State Parties to the Rome Statute, official meetings within the Council of Europe, Organisation for Economic Co-operation and Development (OECD) etc.) and actively participated in various international bodies dealing with criminal law and human rights, such as the Multidisciplinary Group on Corruption of the Council of Europe which had prepared the text of the European Criminal Law Convention on Corruption. Judge Fremr continues to broaden his knowledge of international law and international criminal law. He uses every opportunity to take part in academic seminars and remains strongly committed to training and research. Recently, he has focused on the timely question of how to eliminate the setbacks in the proceedings before international criminal tribunals.

Judge Fremr is fluent in English and Russian, and understands French.

Judge Fremr is a national of Czech Republic.

Annexes:

- 1) Letter from the President of the Supreme Court of the Czech Republic
- 2) The Czech Republic's Rules for the Selection of a Candidate for the Position of Judge of the International Criminal Court
- 3) Summary of Judge Fremr's ICTR case law proving his legal expertise in terms of article 36, paragraph 8 (b), of the Rome Statute

Annex I

Letter from the President of the Supreme Court of the Czech Republic

Iva Brožová
Chief Justice of the Supreme Court of the Czech Republic

To whom it may concern

JUDr. Robert Fremr was appointed as a Judge of the Supreme Court in 2004. At the time he was already well recognized as an expert in the field of criminal law, having worked as a judge of both a trial court and a court of appeal. His moral and ethical integrity was and continues to be highly esteemed. At the Supreme Court, Judge Fremr has been sitting at the panel deciding upon the extraordinary remedies, becoming a presiding judge in November 2004.

On top of his decision making practice, Judge Fremr became involved in the international field of criminal justice. During the years 1998 to 2004, he was a representative of the Czech Republic to the Organisation for Economic Co-operation and Development (OECD), namely a member of a Working Group on Bribery of the Foreign Public Officials in the business transactions. During the years 1997 to 2000, Judge Fremr was a representative of the Czech Republic to the OCTOPUS Project (joint project of the Council of Europe and the European Commission focused on fight against various forms of organized crime). In 1996 and 1997, Judge Fremr took part in the intergovernmental negotiations between USA and the Czech Republic on the Extradition Treaty (Prague, Washington) as a member of the Czech delegation. Among other international activities it is worthy to mention his chairing of the Working Group on Corruption in Political Parties Funding (GMCF) preparing drafts of the EC Conventions in the field of fight against corruption and his participation in the expert team Group of the States Against Corruption (GRECO) monitoring Bosna and Hercegovina and Bulgaria. For eleven years, Judge Fremr has been a representative of the Czech Republic to the Consultative Council of European Judges of the Council of Europe (CCJE), an advisory body to the Committee of Ministers of the Council of Europe preparing opinions on essential judicial issues at European level.

JUDr. Fremr has been lecturing at various international conferences and seminars as a distinguished speaker. He is an external teacher at the Law Faculty of the Charles University in Prague and is involved in lecturing judges and legal practitioners at the conferences and seminars organized by the Czech Judicial Academy.

Annex II

Czech Republic Rules for the Selection of a Candidate for the Position of Judge of the International Criminal Court

GOVERNMENT OF THE CZECH REPUBLIC

Annex

to Government Resolution

No. 478 of 14 June 2010

RULES FOR THE SELECTION OF A CANDIDATE FOR THE POSITION OF JUDGE OF THE INTERNATIONAL CRIMINAL COURT

A candidate for the position of Judge of the International Criminal Court (hereinafter referred to as the “Court”) in terms of the Rome Statute of the International Criminal Court³ shall be selected through a selection process pursuant to the following rules:

Article 1

Timetable of the selection process

The call for applications for nomination as a candidate for the position of Judge of the Court shall be published by the Ministry of Foreign Affairs (hereinafter referred to as the “Ministry”). The interval between the publication of the call on the Ministry website pursuant to Article 3 (1) below and the deadline for the submission of applications shall be at least two months. The nomination shall be presented to the Government by the Minister of Foreign Affairs as a rule eight months before the anticipated date of the election of the Judge.

Article 2

Qualification requirements for candidates

(1) A candidate for the position of Judge of the Court shall:

- a) Be a national of the Czech Republic or a national of any State Party to the Rome Statute,
- b) Be a person of high moral character and possess the qualifications required in the Czech Republic for appointment to the highest judicial offices,⁴
- c) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings, or have established competence in relevant areas of international law (such as international humanitarian law and the law of human rights), and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court,
- d) Offer a guarantee of independence and impartiality in exercising the functions of Judge of the Court after his potential election,
- e) Have an excellent knowledge of and be fluent in at least one of the working languages of the Court.⁵

³ Published in the International Treaties Journal No. 84/2009.

⁴ The qualification requirements for the position of Judge of the Constitutional Court, Supreme Court or of the Supreme Administrative Court shall be applied *mutatis mutandis*.

- (2) A candidate for the position of Judge of the Court should:
- a) Have an active knowledge of the other working language of the Court,
 - b) Be a person whose potential election would not result in the necessity to disqualify him from the Court's cases.

Article 3

Submission of applications

(1) The Ministry shall take the appropriate measures to give the call for applications the widest possible publicity; in particular, it shall publish the call on its website and notify it, in an appropriate manner, to courts, Public Prosecutor's Offices and to Deans of the Faculties of Law of public higher education institutions in the Czech Republic.

(2) In the call for applications the Ministry shall specify the particulars to be included in the application as well as other details regarding their submission.

(3) The individual applicants shall submit their applications to the Ministry within the deadline set in the call.

Article 4

Composition of the Selection Board

(1) The Selection Board shall consist of the Minister of Foreign Affairs, who shall be its Chairperson, the Minister of Justice, the Presidents of the Constitutional Court, Supreme Court and of the Supreme Administrative Court, the Supreme Public Prosecutor, the Public Defender of Rights, and members of the National Group in the Permanent Court of Arbitration.

(2) A person who has submitted an application shall not be entitled to sit on the Board. In case the Minister of Foreign Affairs submits an application, the Board shall elect a Chairperson from among its members.

(3) If necessary, for reasons other than those referred to in paragraph (2) above, the individual members of the Board may each designate an alternate from his respective institution. This rule does not apply to members of the National Group in the Permanent Court of Arbitration.

(4) The Selection Board shall constitute a quorum if at least 6 members are present.

Article 5

Meetings of the Selection Board

(1) Meetings of the Board shall be convened by the Minister of Foreign Affairs within two months after the deadline set by the Ministry for the submission of applications. Resolutions of the Board shall be adopted by a majority of votes of members present; in case of equality of votes, the Chairperson of the Board shall have the casting vote.

(2) Any applications that manifestly fail to comply with the requirements specified in Article 2 (1) above or that have been delivered after the deadline set in the call for applications shall be excluded.

(3) The Board shall review the submitted applications and exclude any incomplete applications in cases where the applicant has not given any satisfactory reason for his failure to include any of the particulars specified in the call for applications pursuant to Article 3 (2) above.

(4) The Board shall then interview the applicants whose applications have not been excluded pursuant to (2) above. During the interview it shall comprehensively evaluate the applicant's qualifications for the position of Judge of the Court and determine his motivation. It may ask for additional documents and decide to carry out an additional assessment of linguistic qualifications for the position.

⁵ The working languages are English and French (Article 50 (2) of the Rome Statute).

(5) From the remaining applicants, the Board shall select the one who best meets the requirements specified in Article 2 above.

(6) The Board shall draw up a record of its deliberations, stating the reasons for its decisions. The Ministry shall inform the applicants about the result of the selection process not later than one month after the decision on the selection of a candidate.

(7) In case the candidate renounces his candidacy or ceases to meet the requirements specified in Article 2 (1) above, the Board shall select a substitute candidate without undue delay.

Article 6 **Approval of the candidate**

(1) The candidate shall be approved by the Government at the request of the Minister of Foreign Affairs.

(2) In case the Government does not approve the candidate, the Czech Republic shall not nominate any candidate for the given term, unless the Ministry of Foreign Affairs decides to repeat the selection process. In such case, and in the case of extraordinary elections, the deadlines mentioned in Article 1 above shall be reduced accordingly.

Article 7 **Scope of application**

These Rules shall apply, *mutatis mutandis*, to the selection of candidates for the position of Prosecutor of the Court.

Annex III

ICTR cases heard by Judge Fremr relevant to the legal expertise required in article 36, paragraph 8 (b) of the Rome Statute

1. *The Prosecutor v. Ildephonse Nizeyimana*

Ildephonse Nizeyimana is charged with six counts including genocide and extermination, murder and rape as crimes against humanity, murder as a violation of article 3 common to the Geneva Conventions and rape as a violation of article 3 of the Statute.

The defendant was the second-in-command in charge of intelligence and military operations at the Noncommissioned Officers School in Butare. According to the indictment, Nizeyimana, as a participant in a joint criminal enterprise, authorized, ordered or instigated subordinated soldiers and members of the Interahamwe militia to kill many civilians identified as Tutsis at Butare Hospital, Butare University and Cyahinda Parish and to rape Tutsi women in 1994. He also allegedly ordered the killing of the Tutsi Queen Dowager Rosalie Gicanda.

The presentation of evidence started in January and is to be closed in June. It has involved the questioning of raped women which requires special approach from judges. Closing arguments are planned for October. The judgement is to be delivered by February 2012.

2. *The Prosecutor v. Simon Bikindi*

Simon Bikindi was a famous Rwandan composer and singer. In 1994 he was also working at the Ministry of Youth and Association Movements. The ICTR Prosecutor charged him with six counts. More specifically, the indictment stated that Bikindi participated in the anti-Tutsi campaign in Rwanda in 1994, composing songs and making speeches at public gatherings that promoted hatred and violence against the Tutsis.

The case was specific as it involved hate speech and alleged incitement of genocide through song lyrics. The Trial Chamber had taken as proved that the broadcasting of Bikindi's songs had had an amplifying effect on the genocide. It concluded, however, that there was no evidence that Bikindi played any role in the dissemination of the three songs in question in 1994 and that the songs constituted direct and public incitement to commit genocide. Simon Bikindi's final conviction was based on the fact that, in one case in June 1994, he publicly addressed people encouraging them to kill the Tutsis. The Chamber found him guilty on this single count and not guilty on the five other counts. An aggravating factor was that Bikindi misused his status as a well-known and popular artist to incite the public to commit genocide. The Chamber sentenced Bikindi to 15 years imprisonment. This verdict was appealed both by the Prosecutor and the accused; however, the Appeals Chamber upheld it in its entirety.

During the presentation of evidence the Trial Chamber examined numerous victims of gross violence, including victims of massacres who survived by sheer luck.

3. *The Prosecutor v. Simeon Nchamihigo*

Simeon Nchamihigo was a deputy prosecutor in the Cyangugu Prefecture of Rwanda. The Trial Chamber sentenced him to life imprisonment after finding him guilty of genocide, extermination, murder and other acts constituting crimes against humanity because of his role in ordering or instigating the Interahamwe militia to kill Tutsi civilians throughout the 100-day Rwandan genocide.

During the presentation of evidence the Trial Chamber examined numerous victims of gross violence including victims of massacres who survived by sheer luck. On 18 March 2010, the Appeals Chamber reduced the sentence to 40 years imprisonment.

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