

**To the
Bureau of the Assembly of States Parties
Oude Waalsdorperweg 10
2597 AK DEN HAAG
The Netherlands**

Milan, Italy on 31 July 2020

Dear Ladies and Gentlemen,

My name is Cuno J. Tarfusser and in my capacity as a candidate to the position of Prosecutor of the International Criminal Court, I would like to submit to the Secretariat of the Assembly of States Parties to the Rome Statute and in extension to all States Parties to the Rome Statute, the following:

1. On the deadline of October 31st, 2019, I submitted my complete application¹ following the procedure as foreseen in the vacancy announcement.
2. On November 1st at 10.18 hours, i.e. after the expiration of the deadline of 31st October (!)², I received an email simply informing that the deadline *“has been extended until 25 November 2019”* and that the *“deadline for submission of the required additional documentation will be 26 November 2019”*.

No comment, no reasons, no explanation, no indication by whom and why the deadline was extended.

3. On November 26 at 17.46 hours, I received a further email confirming the *“receipt of the documentation [I] have provided”* and that my *“application is complete and will be forwarded to the Committee on the Election of the Prosecutor”*.

I stress and repeat that it was complete already on 31st October.

4. On February 28 at 17.18 hours, I received the following email: *“On behalf of the Committee on the Election of the Prosecutor, the Secretariat of the Assembly of States Parties regrets to inform you that, after careful consideration by the members of the Committee and panel of experts, you are not among the candidates to be interviewed for the position of Prosecutor of the International Criminal Court”*.

No whatsoever comments, no reasons, no explanations.

¹ My complete application documents are attached.

² The postponement of the deadline after its expiration makes the whole selection process highly suspicious. In every national system based on the rule of law, such postponement would be a reason for rendering the whole process invalid. Not only, it would also trigger an investigation the first step being the identification of the persons that did not make it to submit or to complete the application within the time limit of 31 October; the second step being of course self-evident.

5. From the media I came to know that on 30 June 2020 the Committee on the Election of the Prosecutor submitted a shortlist of four candidates to the Secretariat of the States Parties.
6. On 3 July 2020, the Chairperson of the Committee on the Election of the Prosecutor gave an interview to www.asymmetricalhaircuts.com³ where she explained the criteria the Committee applied during the selection process. Among other highly debatable statements⁴, on the critics raised by the interviewer to the fact that three out of four of the shortlisted candidates never had run major teams or a big division before, she answered as follows: *“The OTP has what, 500 people in it? How many Prosecutors could you name of hand who have managed a team that size? And the answer is that there aren’t very many. So, what you then look for? You look for somebody who is capable of managing a team that size and that is a question of aptitude, of approach, is the person willing to delegate, how do they understand accountability, do they understand diversity, do they understand the value of different perspectives and all of those things are things we were looking for.”*⁵

I was ready and willing to react much earlier to my exclusion even from the shortlist of the candidates to be interviewed, as I am very much confident of meeting all the subjective and objective requirements listed under number 6 in the vacancy announcement but I restrained myself from doing so. However, after having listened to what the Chairperson said in the interview mentioned above, I decided to react because it is my firm believe some of her statements cannot remain uncommented.

It might indeed be right to say, as she says, that there are not very many Prosecutors who have managed huge teams, but not very many means also that there are some and if only one of them is among the candidates, the Committee cannot ignore such candidate. Well, every Italian Chief Prosecutor, and I was one from 2001 to 2009, is the head not only of his immediate prosecutorial office (deputy prosecutors, staff members and investigators), which numbers already go into the hundreds, but is the head also of all the investigative police units within his district. This, as far as my position is concerned, amounts to far more than 500 people.

The capability and aptitude of managing teams of that size, the capacity to delegate and to be accountable; the readiness to be open and discuss different perspectives, but also the willingness, responsibility and capacity to take informed decisions, an important quality of a Prosecutor the Chairperson has forgotten to mention, is something I have a proven and documented record of.

A further astonishing statement of the Chairperson in the interview cannot remain uncommented because it goes to the very integrity of all applicants. I am referring to the *“wetting process”* candidates were unilaterally subjected to by the ICC Safety and Security

³ <https://www.asymmetricalhaircuts.com/episodes/justice-update-the-heat-is-on/>

⁴ On the reasons for the postponement of the deadlines for the completion and submission of the applications from 31 October to 25 November she says that such postponement was triggered by the *“far fewer”* (timestamp: 6.00 min) applications than expected and that the four week extension *“did work because quite a few more in the last four weeks... , so that was very gratifying”* (timestamp: 7.02 min). This explanation makes the extension even more suspicious considering that by 31 October the applications were already 116 (*“far fewer”* than expected?) and that in the four weeks of extension only 28 (!) more candidates applied.

⁵ Timestamp 11.55

Section (SSS) in order to verify their *"high moral character"*. The Chairperson of the Committee says that the wetting process *"gave a very important dimension to the discussions we had. Verifying candidates' claims I think is very important"*⁶. Further in the interview she says also that *"it was very clear to us that civil society which to us constitutes a large part of what the Court is for and about, that in order for the process to be a legitimate one, we had to introduce something like that to ensure that the qualifications under article 42.3 of the Rome Statute are in fact met and that is the high moral character."*⁷

.....and this in a Court of Law....

This said and given the pledges of transparency by the Bureau of the Assembly of States Parties, I ask for the exhibition of all documents, records and minutes in which my position as candidate to the position of Prosecutor of the ICC was discussed, evaluated and decided upon by the Committee.

By asking for such documents, I expressly release all the members of the Committee, of the Bureau, and any other person who feels to be bound by it, from the obligation of confidentiality in relation to my position.

Please find attached for your convenience my complete application documents and in particular my Motivation Letter and Curriculum Vitae so as the three reference letters, from the supervisor, Appeals Court President Judge Claudio Castelli, from the peer, Professor Salvatore Zappalà and from the supervisees, Generals of the Carabinieri Giovanni Paone and Carlo Wilhelm Messina.

I ask for this letter to be answered by 31st August 2020 to be able, in case the documents are unsatisfying, to take all possible steps for a review of the outcome of Committee.

Kind regards,



Cuno J. Tarfusser

⁶ Timestamp 13.38

⁷ Timestamp 14. 13