Cour Pénale Internationale

International Criminal Court

Original: **English**

No.: **ICC-RoR221-01/12**
Date: **28 March 2012**

THE PRESIDENCY

Before: **Judge Sang-Hyun Song, President**
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

[REDACTED]

Public redacted

Decision on the request for judicial review dated 8 February 2012

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

[REDACTED]

REGISTRY

Registrar
Ms. Silvana Arbia

Deputy Registrar
Mr. Didier Preira

Detention Section
Mr. Patrick Craig

[REDACTED]

The Presidency of the International Criminal Court has before it the application of [REDACTED] for judicial review of the Registrar's decision concerning the late administering of his medication by custodial staff of the detention centre.

The application is granted in part for the reasons set forth below.

I. PROCEDURAL HISTORY

1. On 31 October 2011, [REDACTED] (hereinafter "detainee") did not receive his prescribed medication, which is usually administered to him in the morning, until 14h15 (hereinafter "incident"). It was explained to the detainee by the guards who later administered his medicine that this oversight was the fault of guards of the detention centre who had been working earlier that day.[1]
2. On 31 December 2011, the detainee filed a complaint before the Chief Custody Officer (hereinafter "CCO") of the detention centre in respect of this incident, pursuant to regulation 217 of the Regulations of the Registry (hereinafter all references to "Regulations" are to the Regulations of the Registry, unless otherwise indicated).
3. On 16 January 2012, the CCO, who had received the abovementioned complaint on 3 January 2012, decided that the detainee's complaint was justified to the extent that it related to the late administering of his medication and unjustified in relation to the detainee's expressed concerns regarding the general utilisation of guards to administer his medicine (hereinafter "CCO Decision").[2]
4. On 18 January 2012, the detainee addressed the Registrar, seeking review of the CCO Decision, pursuant to regulation 220 (hereinafter "18 January 2012 Application").[3]
5. On 2 February 2012, the Registrar rejected the request for review as unjustified (hereinafter "Impugned Decision"), informing the detainee that he could seek review of the Impugned Decision before the Presidency, pursuant to regulation 221.[4]
6. On 8 February 2012, the detainee sought judicial review of the Impugned Decision before the Presidency (hereinafter "Application").[5]

[1] ICC-RoR221-01/12-1-Conf-Exp-Anx4.
[2] ICC-RoR221-01/12-1-Conf-Exp-Anx4.
[3] ICC-RoR221-01/12-1-Conf-Exp-Anx3.
[4] ICC-RoR221-01/12-1-Conf-Exp-Anx2.
[5] ICC-RoR221-01/12-1-Conf-Exp-Anx1.

7. On 9 February 2012, the Director of the Division of Court Services transmitted the Application to the Presidency, annexing also the abovementioned documents.[6]
8. On 14 February 2012, the Presidency issued an order, requesting that the Registrar respond to the Application, providing a detailed description of the procedure for prescribing, dispensing and administering medication in the detention centre, as well as providing support for the statement in the Impugned Decision that the procedures used in the detention centre are standard practice in a number of national prison systems (hereinafter "Order").[7]
9. On 17 February 2012, the detainee made a filing before the Presidency, submitting two annexes related to recent events in the detention centre in respect of the administration of his medication and requesting that he be allowed to respond to the Registrar's forthcoming submissions to be made in accordance with the Order (hereinafter "Transmission").[8]
10. On 21 February 2012, the Presidency notified the detainee and the Registrar that it regarded the information contained in the annexes to the Transmission as distinct from those issues raised in the Application. The Presidency also informed the detainee that if it required a reply from him it would make an order to that effect.[9]
11. On 27 February 2012, the Registrar filed her submissions, in accordance with the Order (hereinafter "Submission").[10]

II. PRELIMINARY PROCEDURAL MATTERS

12. The detainee submits that the Impugned Decision was taken 15 calendar days after his 18 January 2012 Application, contrary to regulations 219 and 220, providing that such complaints should be addressed within "no more than 14 calendar days of the date of receipt".[11]
13. Regulation 33(1)(d) of the Regulations of the Court provides that "[f]or the purposes of any proceedings before the Court…[d]ocuments shall be filed with the Registry, at the latest, on the first working day of the Court following expiry of the time limit".

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[6] Transmission d'une requête en appel de la décision du Greffier en date du 2 février 2012 en application de la norme 221 du Règlement du Greffe, ICC-RoR221-01/12-1-Conf-Exp.
[7] Order concerning the request for judicial review dated 8 February 2012, ICC-RoR221-01/12-2-Conf-Exp.
[8] Transmission d'un courrier du [REDACTED] à la Présidence, ICC-RoR221-01/12-3-Conf.
[9] Notification concerning the "Transmission d'un courrier du [REDACTED] à la Présidence", ICC-RoR221-01/12-4-Conf.
[10] Registrar's submission pursuant to the "Order concerning the request for judicial review dated 8 February 2012", ICC-RoR221-01/12-5-Conf-Exp.
[11] Application, paragraphs 2-3.

The Presidency observes that the application of this provision in the current circumstances is complicated by the fact that regulation 33 creates a distinction between documents, decisions and orders, with regulation 33(1)(d) applying only to documents, rather than decisions. The Presidency considers that administrative decisions of the Registrar of this nature are not judicial decisions in the sense envisaged by article 33(1)(d), but, rather, are more appropriately understood as documents.

14. Thus, in view of regulation 33(1)(d) of the Regulations of the Court, noting that the time limit referred to in regulation 219(1) expired on 1 February 2012, the Impugned Decision, dated 2 February 2012, is in compliance with the manner in which time limits are generally calculated before the Court.
15. As a further preliminary procedural matter, the Presidency notes that its Order requested that the Registrar respond by 16h00 on 27 February 2012. The Registrar's Submission was filed at 17h18 on that date and marked "URGENT" on the cover page.
16. The Presidency notes that the Submission was therefore filed 78 minutes out of time without explanation. The Presidency will nevertheless accept the Submission as the infringement was negligible and caused no discernable delay to the proceedings, although the Presidency emphasises that it is important that the Registrar adhere to time limits.

III. MERITS

A. Relevant parts of the CCO Decision

17. The CCO Decision accepts that the incident occurred, indicating that a meeting was held on 5 January 2012 at which he and the detainee discussed this issue and at which the CCO indicated that there would be no further such incidents. The CCO states that he has issued new instructions to the guards to ensure that they scrupulously implement the instructions of the Medical Officer or nurse in respect of a detained person's medication. On this basis, the CCO Decision concludes that this aspect of the detainee's complaint has been rectified and the detainee has been informed.
18. The CCO Decision considers that the complaint of the detainee is not justified in so far as it relates to the role of the guards of the detention centre in administering medication. The CCO indicates that "la présence « à tout moment » d'une infirmière

au quartier pénitentiaire correspond à l'exigence d'une proximité des soins médicaux et que la présence physique d'une infirmière n'est pas absolue dans les faits, dans la mesure où il existe des heures de service correspondant à une présence physique sur le lieu de travail et que les heures ne correspondant pas aux heures ordinaires de travail sont couvertes par un service de permanence destiné à répondre aux urgences".[12] The CCO explains that in the absence of a nurse, as a matter of administrative efficiency and to ensure the continuity of medical care, the guards administer medication to detained persons in accordance with medical instructions, noting that such a system is standard practice in a number of national prison systems, as well as being compatible with the procedure followed when a detained person must receive medication during the time that he is attending Court.[13]

B. Relevant parts of the 18 January 2012 Application before the Registrar

19. In requesting review of the CCO Decision, the detainee requests that the guards responsible for the failure to administer his medicine on the morning of 31 October 2011 be identified and sanctioned. He also demands the conduct of an evaluation of the physical and psychological impact upon him caused by this deprivation of his medication.[14]
20. The detainee elaborates his argument that medical functions should not be performed by the guards of the detention centre, arguing that such guards are not medically trained but are, rather, trained to perform more mechanical tasks and that there is "un doute sérieux sur leur capacité réelle de toujours bien interpréter les instructions médicales en cas de suppléance de l'infirmier".[15]
21. The detainee argues that the legal texts of the Court are clear and irreproachable on the necessity of having a nurse available at all times at the detention centre, rather than just during working hours, referring to regulation 154 of the Regulations of the Registry and regulation 103(4) of the Regulations of the Court.[16]

[12] CCO Decision, pages 2-3.
[13] CCO Decision, page 3.
[14] 18 January 2012 Application, page 2.
[15] 18 January 2012 Application, pages 3-4.
[16] 18 January 2012 Application, page 4.

C. Relevant parts of the Impugned Decision

22. The Impugned Decision considers that there exists no obligation to divulge the identities of the guards involved in the incident, considering that such information could be disruptive to the atmosphere at the detention centre, as well as noting that such request appears to be motivated by the detainee's curiosity, an objective which is not consistent with a responsible investigation of the detainee's concerns. The Registrar also indicates that an investigation has been undertaken and measures have been taken in relation to the guards involved in the incident. [17]
23. In respect of the detainee's request for an evaluation of the physical and psychological impact of the incident on him, the Registrar refers to regulation 155(2) of the Regulations of the Registry which provides that "[t]he medical officer shall inform the Chief Custody Officer in writing whenever he or she considers that the physical or mental health of a detained person has been or will be adversely affected by any condition of or treatment in detention". The Registrar indicates that the Medical Officer has made no such communication to her in respect of the incident. Moreover, the Registrar further indicates that a medical specialist has been consulted and has confirmed that the late administering of the medication would not have impacted upon the medical treatment of the detainee.[18]
24. In respect of the presence of a nurse within the detention centre, the Registrar indicates that "l'exigence d'une présence en tout temps n'impose pas la présence physique des infirmiers dans l'aile du quartier pénitentiaire sans qu'il soit tenu compte des particularités propres au quartier pénitentiaire ou au service médical, notamment les heures de service. Dans la pratique cette exigence se concilie avec la nécessité de répondre à des situations d'urgence lorsqu'une présence médicale s'avère indispensable hors des heures régulières de service".[19]
25. The Registrar further indicates that she considers that the detainee's complaint is motivated by his concern that the guards may be able to determine the nature of his medical condition by reference to his medication. The Registrar explains that even if the guards are able to see the name of the medication being taken by the detainee, this does not identify his medical condition to them, as often the same medication may be used to treat a number of different ailments.[20]

[17] Impugned Decision, page 3.
[18] Impugned Decision, page 3.
[19] Impugned Decision, page 4.
[20] Impugned Decision, page 4.

26. The Registrar also refers to the administering of medication by guards as being consistent with both the standard operating procedures of the detention centre and the functions of custodial staff in a number of national prison systems.[21]
27. Finally, the Registrar notes that the language used by the detainee in his 18 January 2012 Application demonstrates a lack of courtesy and basic respect towards the guards of the detention centre, possibly amounting to a disciplinary infraction.[22]
28. For all of the above reasons, the Registrar rejects the 18 January 2012 Application as unjustified.[23]

D. Submissions of the parties

1. Arguments of the detainee

29. The detainee argues that, by the Impugned Decision, the Registrar has down played the gravity of the "acte criminel" which has been committed against him.[24] He argues that his medication was not simply administered late, but that it was withheld by the guards who were on duty from 07h00 – 14h00 on the relevant day.[25] He argues that, although he is able to recognise the guards in question, the Registrar's refusal to disclose their names is not justified on the basis of ensuring peace in the detention centre, arguing that, in any event, there is already a relationship of distrust between him and the management of the detention centre.[26]
30. The detainee also argues that the utility of the new instructions given by the CCO to ensure that his medicine is not administered late has not yet been assessed and, in any event, these instructions do not correct the "acte criminel" which has occurred against him.[27]
31. The detainee also notes that nothing has been done in relation to his request for an evaluation of the physical and psychological impact upon him of the late administering of his medicine.[28]
32. In relation to the involvement of the guards in administering his medication, the detainee argues that the legal texts of the Court do not permit the guards to assume the

[21] Impugned Decision, page 4.
[22] Impugned Decision, page 5.
[23] Impugned Decision, page 5.
[24] Application, paragraph 7.
[25] Application, paragraph 7.
[26] Application, paragraphs 8-9.
[27] Application, paragraph 11.
[28] Application, paragraph 12.

responsibilities of a Medical Officer, but rather stipulate that medical services should be available within the detention centre at all times.[29] The detainee emphasises that his concern does not relate to confidentiality, as characterised by the Registrar, but to the competence and responsibility of the guards.[30]

33. In relation to the Registrar's argument that the involvement of the guards in administering medicine is in accordance with the standard operating procedure of the detention centre, the detainee notes that he has requested access to these procedures but has received no response. He argues that, in any event, the existence of such standardised procedures cannot be used to justify a refusal to conduct a responsible analysis of the incident.[31]
34. Finally, the detainee submits that the Impugned Decision is intimidating, submitting that the Registrar is concerned with demonstrating authority, rather than seeking a solution to his problem.[32] He also indicates that his complaint has been incorrectly interpreted as a declaration of war. The detainee also argues that the Impugned Decision may not be unconnected to the deleterious atmosphere which has recently developed between himself and the guards.[33]
35. The detainee prays that the Presidency both consider his Application and assist in ameliorating the unhealthy atmosphere in the detention centre.[34]

2. Arguments of the Registrar

36. By her Submission, the Registrar provides a detailed description of the procedure for prescribing, dispensing and administering medication. The Registrar explains that the giving of medicines as described below is in accordance with the standard operating procedures in the detention centre as set out in Detention Operational Order No. 8.2.[35]
37. In respect of the dispensing of medicine and its administration by custodial staff, the Registrar explains that, acting under the instructions of the Medical Officer, the nurse prepares the medication of detained persons and places it in specialised medical boxes.[36] Such boxes have seven strips, with each strip being marked by a day of the week and the name of the detained person. Each strip has four compartments which

[29] Application, paragraphs 13-14.
[30] Application, paragraph 16.
[31] Application, paragraph 15.
[32] Application, paragraphs 17-18.
[33] Application, paragraph 20.
[34] Application, paragraph 21.
[35] ICC-RoR221-01/12-5-Conf-Exp-Anx1.
[36] Submission, paragraph 4(c).

represent the four times at which medication is to be given, namely 08h00 (or 09h00 during the weekend), 12h00, 17h00 and 20h30.[37]

38. The guards of the detention centre then give the daily medication to the detained persons, according to the instructions of the Medical Officer. The medication must be taken in the presence of the custody officer.[38]
39. The Registrar indicates that the decision to utilise the above procedures was influenced by a number of factors such as the size of the detention centre, its population, the available medical services and the *modus operandi* for the provision of detention services, as agreed between the Court and the host prison.[39]
40. The Registrar explains that the medical services available in the building hosting the detention centre are two nurses and a Medical Officer, who provide the required medical services to both the Court's detention centre and the United Nations' Detention Unit during normal working hours (08h00 – 17h00). The Medical Officer is available three times per week.[40]
41. The Registrar submits that the procedure whereby custodial staff are involved in the distribution of medicine to detained persons is consistent with practice in a number of national and international jurisdictions, including Canada, the Netherlands and the International Criminal Tribunal for the former Yugoslavia.[41] The Registrar also indicates, however, that other jurisdictions largely vest the responsibility of distributing medication to medical staff, referring to the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, France and Luxembourg.[42]
42. The Registrar submits that any increase to the level of medical staff would have implications, such as necessitating alteration of the product price agreement which governs the detention services provided by the Host State and would also have financial implications which require both discussion with the Committee on Budget and Finance and a decision of the Assembly of States Parties.[43]

E. Determination of the Presidency

43. It is recalled that the judicial review of decisions of the Registrar concerns the propriety of the procedure by which the latter reached a particular decision and the

[37] Submission, paragraph 4(d).
[38] Submission, paragraph 4(e).
[39] Submission, paragraph 5.
[40] Submission, paragraph 6.
[41] Submission, paragraphs 8-11.
[42] Submission, paragraphs 12-15.
[43] Submission, paragraphs 16-17.

outcome of that decision. It involves a consideration of whether the Registrar has: acted without jurisdiction, committed an error of law, failed to act with procedural fairness, acted in a disproportionate manner, taken into account irrelevant factors, failed to take into account relevant factors, or reached a conclusion which no sensible person who has properly applied his or her mind to the issue could have reached.[44]

1. The availability of a nurse and the involvement of guards in administering medication

44. Regulation 103(4) of the Regulations of the Court provides, *inter alia*, that "[a] qualified medical officer with experience in psychiatry shall be available to attend the detention centre. A nurse shall be present at the detention centre at all times".
45. The Presidency notes that the regulation is mandatory, using the language of *shall* and the similarly clear language of "at all times". When the two sentences extracted above are read together, it is clear that the word "present" denotes something different from mere availability, which is used in the previous sentence. The Presidency notes that the ordinary meaning of the word "present" denotes a physical or temporal immediacy.[45] In the context of regulation 103(4) of the Regulations of the Court, it is therefore evident on the face of the text that the physical presence of a nurse at the detention centre *at all times* is mandated.
46. The Presidency observes that the current practice, as described by both the CCO and Registrar, is that a nurse is only physically present at the detention centre during working hours (08h00 – 17h00),[46] although, at other times, access to a nurse is still ensured.[47] Such approach is inconsistent with the clear mandatory language of regulation 103(4) of the Regulations of the Court.
47. The Registrar is hereby ordered to take all steps necessary to rectify this situation.
48. The Presidency notes, however, that although the presence of a nurse at the detention centre is necessary at all times, this does not resolve the issue of whether guards may administer medicine.
49. There is nothing in the legal texts which mandates that only a nurse or medically-trained professional may administer medicine. The Presidency has reviewed the practice of a range of national and international jurisdictions and concludes that although there appears to be a trend favouring the administration of medicine by

[44] The standard of judicial review was defined by the Presidency in its decision of 20 December 2005, ICC-Pres-RoC72-02-5, paragraph 16, and supplemented in its decision of 27 November 2006, 1CC-01/04-01/06-731-Conf, paragraph 24. See also the decision of the Presidency of 10 July 2008, ICC-Pres-RoC72-01-8-10, paragraph 20.
[45] The Oxford English Dictionary defines the relevant sense of "present" as meaning "being besides, within the same place as the person who or thing which is the point of reference, being in the place in question".
[46] Submission, paragraph 6.
[47] Rule 9.1, House Rules for Detained Persons.

nurses, rather than custodial staff, such practice is not uniform.[48] Thus, given the lack of clear international or national norms, as well as the silence of the Court's own legal texts on this issue, if the Medical Officer sees fit to allow custodial staff to administer medication based on his or her instructions, the Presidency sees no reason to interfere with such expert medical assessment of the appropriate procedure.

50. As the custodial staff may continue to administer medicine, the Presidency notes that the requirements of regulation 103(4) of the Regulations of the Court may, in practice, be unnecessary. This is compounded by the limited number of detained persons currently in the detention centre, noting also that the nature of the detention centre is such that it is unlikely to ever host a very large number of detained persons at any one time.

51. The Presidency also observes that regulation 103(4) of the Regulations of the Court creates a standard which appears rather onerous, when compared to similar standards. For example, the United Nations' Standard Minimum Rules for the Treatment of Prisoners provides that medical personnel must be "available", but does not use language which demands their physical presence at all times.[49] The standards established by the Council of Europe demand that "[i]n order to satisfy the health requirements of the inmates, doctors and qualified nurses should be available on a full-time basis in the large penal institutions, depending on the number and the turnover of inmates and their average state of health",[50] with this provision explicitly

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[48] For example, the following sources indicate that only nurses or qualified medical personnel should administer medicine: See e.g. the practice of the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, France and Luxembourg as outlined in the Registrar's Submissions; See also United Kingdom: South Stafforshire National Health Service Primary Care Trust, Policy for Medicines Administration in Prisons, section 3.2 provides that "[a] nurse or a qualified healthcare assistance in medicines administration ... will only administer medicines to a patient" and Sefton National Health Service Primary Care Trust, Policy for the Management of Medicines at Her Majesty's Prison (HMP) Kennet, page 20 provides that "[f]or medicines that are not in possession, PCT [Primary Care Trust] staff must administer the medicines in compliance with the prescriber's instructions"; Irish Prison Service, IPS Policy on Medication Administration, HC Policy C/8 provides that "[o]nly Nurse Officers and Medical Orderlies are entitled to administer medication"; American Bar Association Criminal Justice Standards on the Treatment of Prisoners, June 2011, standard 23-6.3 provides that "[o]rdinarily, only health care staff should administer prescription drugs ... In an emergency, or when necessary in a facility in which health care staff are available only part-time, medically trained correctional staff should be permitted to administer prescription drugs at the direction of qualified health care professionals"; Oklahoma Department of Corrections, "Pharmacy Operations", section VII.A provides that "[a]dministration of medication is performed by qualified health care professionals properly trained and under the supervision of the health authority"; See also *Flynn et al v. Doyle*, Case No. 06-C-537, US District Court, Eastern District of Wisconsin.
Whereas, the following sources indicate that custodial staff may administer medicine under strictly controlled conditions: See e.g. the practice of Canada, the Netherlands and the United Nations' Detention Unit as outlined in the Registrar's Submissions; See also Report to the President of the ICTY on the Death of Slobodan Milošević, Vice-President Kevin Parker, 30 May 2006, paragraphs 131-133; Government of Western Australia, Department of Corrective Services, Adult Custodial Rule 10: "Issue of Medication by Officers", section 3; American Public Health Association, Standards for health services in correctional institutions, 2003, page 94.

[49] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rule 22(1).

[50] Recommendation No. R (98) 7 of the Committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison, Adopted by the Committee of Ministers on 8 April 1998 at the 627th meeting of the Ministers' Deputies, paragraph 2.

taking into account factors such as the size and nature of the penal institution in question. That same document later provides that "[p]risoners should have access to a doctor, when necessary, at any time during the day and the night. Someone competent to provide first aid should always be present on the prison premises",[51] a standard which requires only *access* to a doctor at all times, with the requirement for physical presence extending only to someone with first aid training and not necessarily to nursing staff. The language used in the European Prison Rules similarly does not require the physical presence of medical personnel at all times.[52] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in its report focusing on health care in the prison context, uses language indicating that detained persons should be able to *access* a doctor at any time and that certain medical services should be *available* to detained persons. More specifically it provides that "someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification", a statement which only prefers, rather than mandates, the presence of a nurse at all times.[53] The International Criminal Tribunal for the former Yugoslavia provides that medical services shall be fully available to all detained persons, but only requires the physical presence of a person capable of providing first aid, making no specific reference to a nurse.[54]

52. Although the Presidency finds that these considerations do not allow it to depart from the clear and mandatory language contained in the second sentence of regulation 103(4) of the Regulations of the Court, the Registrar, as the officer with overall responsibility for all aspects of the management of the detention centre and given her knowledge of its operational needs, is invited to assess whether the requirements of that regulation are viable in practice given all the circumstances of the detention centre. In the event that the Registrar considers regulation 103(4) to be practically unfeasible, the desirability of its amendment could be considered, pursuant to the process outlined in regulations 4 and 6(1) of the Regulations of the Court. This is without prejudice to the ongoing application of regulation 103(4) of the Regulations of the Court in the manner described above at paragraphs 44-47.

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[51] Ibid, paragraph 4.

[52] Council of Europe, Rec (2006)2 of the Committee of Ministers to member States on the European Prison Rules adopted by the Committee of Ministers of the Council of Europe on 11 January 2006, 952nd meeting of the Ministers' Deputies, rule 41.

[53] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Third General Report on the CPT's activities covering the period 1 January to 31 December 1992, CPT/Inf (93) 12 [EN], paragraph 35.

[54] Rules governing the detention of persons awaiting trial or appeal before the tribunal or otherwise detained on the authority of the tribunal, rule 30.

2. Evaluation of the physical and psychological impact of the incident

53. In respect of the detainee's request for an evaluation of the impact of the incident upon him, the Presidency notes that the Impugned Decision indicates that a medical specialist has been consulted who has confirmed that the incident would not have negatively impacted upon the detainee's treatment. In addition, the Medical Officer has given no indication, pursuant to regulation 155(2), that the physical or mental health of the detainee has been affected by the incident. In such circumstances, the Presidency discerns no error in the Impugned Decision's assessment that it was not necessary for the Registrar to order an evaluation.

3. Identification and sanction of the relevant guards

54. The Presidency sees no error in the Registrar's decision not to identify the guards responsible for the incident, considering that such identification is irrelevant to addressing the principal issue of whether custodial staff may administer medication.

4. The tenor of the Impugned Decision

55. The detainee argues that the Impugned Decision is a "demonstration d'autorité" by the Registrar, arguing also that his Application has been misunderstood as a "declaration de guerre", with these factors together contributing to the creation of a hostile atmosphere between himself and the guards.
56. The Presidency has reviewed the Impugned Decision and considers that its tenor is comparable to other decisions of its nature, giving no cause for concern.
57. In respect of the atmosphere of hostility at the detention centre, the Presidency orders the Registrar and the CCO to explore ways of addressing any problems regarding the relationship between the detainee and the guards in a co-operative and consultative manner and to update the Presidency thereon.

F. Classification

58. The Presidency notes that all documents in the instant Application have been filed confidentially and/or *ex parte*. The Presidency considers such classification to be generally appropriate given that the Application relates to private and confidential matters concerning the detainee's personal medical treatment.
59. Noting, however, that the issues contained in this current decision may be of broader relevance, the Presidency considers that it may be desirable to issue a public redacted version of this decision, redacting all information which could identify the detainee. If there is any factual and/or legal basis for retaining the confidential *ex parte*

classification of this decision or if there is any specific information requiring redaction before publication, the detainee and the Registrar are each ordered to inform the Presidency thereof by 16h00 on 23 March 2012. The Presidency will thereafter rule on whether the classification should be maintained and, if necessary, the need for any redactions.

The Application is granted in part.

Done in both English and French, the English version being authoritative.

Judge Sang-Hyun Song
President

Dated this 28 March 2012
At The Hague, The Netherlands