

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-RoR221-02/12

Date: 22 June 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 application for judicial review dated 5 April 2012

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

Detainee
[REDACTED]

REGISTRY

Registrar
Ms. Silvana Arbia

Deputy Registrar
Mr. Didier Preira

Detention Section
Mr. Patrick Craig

[REDACTED]

The Presidency of the International Criminal Court (“Court”) has before it the application of [REDACTED] for judicial review of the Registrar’s decision concerning access to a computer in the common space of the detention centre.

The application is granted for the reasons set out below.

I. PROCEDURAL HISTORY

1. On 27 December 2011, [REDACTED] (hereinafter “detainee”) requested the detaining authorities to provide him with a computer and information technology training.¹
2. On 9 January 2012, the detainee then addressed the Registrar, requesting access to a computer for the purpose of information technology training.²
3. On 23 January 2012, the Registrar rejected the aforementioned request as premature and unjustified by reference to the fact that contact with the Host Prison had commenced on this matter and ordered the Chief Custody Officer (hereinafter “CCO”) to study the feasibility of making a computer available in the common space of the detention centre and report to her thereon.³
4. On 28 February 2012, the detainee made a new complaint to the CCO on the basis of the non-installation of a computer in the detention centre, referring to the Registrar’s above decision of 23 January 2012.⁴
5. On 12 March 2012, the CCO rejected the detainee’s complaint as unjustified, arguing that the Registrar’s decision of 23 January 2012 did not require him to install a computer in the common area but merely to study the feasibility of such.⁵
6. On 14 March 2012, the CCO submitted a report to the Registrar on the feasibility of installing a computer in the communal area, concluding that such installation should not take place at the present time due to, *inter alia*, a lack of space.⁶

¹ ICC-RoR221-02/12-3-Conf-Exp-Anx2.

² ICC-RoR221-02/12-1-Conf-Exp-Anx6.

³ ICC-RoR221-02/12-1-Conf-Exp-Anx5.

⁴ ICC-RoR221-02/12-1-Conf-Exp-Anx4.

⁵ ICC-RoR221-02/12-1-Conf-Exp-Anx4.

7. On 16 March 2012, the detainee requested that the Registrar review the decision of the CCO of 12 March 2012.⁷
8. On 30 March 2012, the Registrar rejected the above request for review as unjustified (hereinafter “Impugned Decision”).⁸ On 5 April 2012, the detainee requested review of the Impugned Decision by the Presidency, pursuant to regulation 221 of the Regulations of the Registry (hereinafter “Application”).⁹
9. On 5 April 2012, the Registrar transmitted the Application and its related documents to the Presidency, with the latter being notified thereof on 10 April 2012.¹⁰
10. On 12 April 2012, the Presidency ordered the Registrar to provide two further documents,¹¹ which were duly transmitted by the Registrar that same day.¹²

II. MERITS

A. Relevant parts of the Impugned Decision

11. By the Impugned Decision, the Registrar explains that, in the past, computers have been installed in the cells of detained persons, with this being possible due to the number of cells in use and the space available. As the number of detained persons increased, it became necessary to evaluate the possible installation of a computer in the common space. Accordingly, she decided, on 23 January 2012, to request that the CCO study and report on the feasibility of this option.¹³
12. The Registrar refers also to regulation 99 of the Regulations of the Court (hereinafter all references to Regulations are to the Regulations of the Court unless otherwise indicated), which provides at regulation 99(1)(e), for “a common space equipped with reading and writing materials, a television, radio and computer, which shall be provided for the general use of all detained persons”. She submits that the principal

⁶ ICC-RoR221-02/12-3-Conf-Exp-Anx1.

⁷ ICC-RoR221-02/12-1-Conf-Exp-Anx3.

⁸ ICC-RoR221-02/12-1-Conf-Exp-Anx2.

⁹ ICC-RoR221-02/12-1-Conf-Exp-Anx1.

¹⁰ Transmission d’une requête en appel de la décision du Greffier en date du 30 mars 2012 en application de la norme 221 du Règlement du Greffe, ICC-RoR221-02/12-1-Conf-Exp.

¹¹ Order concerning the application for judicial review dated 5 April 2012, ICC-RoR221-02/12-2-Conf-Exp.

¹² Transmission de documents à la Présidence en application de l’ordonnance du 12 avril 2012 (ICC-RoR221-02/12-2-Conf-Exp), ICC-RoR221-02/12-3-Conf-Exp.

¹³ Impugned Decision, paragraph 2.

function of the installation of computers is not for the educational needs of detained persons but to enable them to properly prepare their defence before the Court, accessing evidence and other case documents electronically.¹⁴

13. The Registrar recalls that on 14 March 2012, the CCO submitted a report, pursuant to her request of 23 January 2012, providing reasons for the impracticability of the installation of a computer in the common space, referring to the lack of available space given the presence of a piano, dining table and guard station.¹⁵ The Registrar thus accepts the conclusion of the CCO that the placement of a computer in the common space is impractical.¹⁶
14. The Registrar also explains, by reference to regulation 91(2) that there has been no discrimination between the detainee and other detained persons who have computers installed in their cells, referring to the information at paragraph 12 above that such differential treatment is based not on the detainee's status as a detained witness but on the need of other detained persons to access computers in order to participate in their defence before the Court.¹⁷
15. In view of the above, the Registrar rejects the detainee's complaint as unjustified. She also orders the CCO to report on the progress of the steps being taken with the Host Prison to provide English language classes.¹⁸

B. Arguments of the detainee

16. The detainee explains that on 7 December 2011, the Director of the Division of Court Services came to the detention centre to meet with the detained persons and he explained that detained persons could benefit from all the rights inherent to their detention, such as family visits and educational and work opportunities.¹⁹ The detainee explains that following this meeting, he requested to follow a course of information technology training by DVD ("la méthode du clavier facile"), for which he required access to a computer.²⁰

¹⁴ Impugned Decision, paragraphs 1, 7.

¹⁵ Impugned Decision, paragraph 4.

¹⁶ Impugned Decision, paragraph 6.

¹⁷ Impugned Decision, paragraph 7.

¹⁸ Impugned Decision, page 6.

¹⁹ Application, page 2.

²⁰ Application, pages 2-3.

17. The detainee submits that the CCO categorically refused this request. He notes that he then addressed the Registrar and she decided on 23 January 2012 to order the CCO to study the modalities of installing a computer in the common space and report thereon. The detainee submits that one month later the CCO had not made any response to the Registrar's request, thus he submitted a new complaint regarding the non-installation of a computer.²¹
18. The detainee argues that the CCO's claim that there is no space available has not been verified by any independent authority and notes also that there is a cell which is empty and available. He also submits that regulation 99(1)(e) contains no reference to the claim in the Impugned Decision that the need for access to a computer is linked uniquely to the need to prepare a defence before the Court, submitting that this condition has been imposed entirely by the Registry.²²
19. The detainee also refers to regulation 91(2), arguing that differential treatment between different categories of prisoners is prohibited, referring in particular to his status as a detained witness.²³

C. Determination of the Presidency

20. 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 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.²⁴
21. Regulation 99(1)(e) provides in clear and mandatory language that "[e]very detained person *shall be entitled* ... to the use of a common space equipped with reading and writing materials, a television, radio and *computer*, which shall be provided for the *general use of all detained persons*" (emphasis added). Regulation 2 of the

²¹ Application, page 3.

²² Application, pages 4-5.

²³ Application, page 5.

²⁴ 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, ICC-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.

Regulations of the Registry defines a detained person as “any person detained in a detention centre”.

22. In addition to the fact that regulation 99(1)(e) specifically indicates that the purpose of the computer is “general use”, the Presidency notes that regulation 99(1) sets out the general entitlements of detained persons and that the nature of those entitlements is clearly aimed at ensuring basic quality of life, for example, through enabling detained persons to participate in work, recreational and educational opportunities, engage in outdoor exercise and sporting activity and communicate with the outside world. Further, the Presidency has also noted regulation 164(1) of the Regulations of the Registry, entitled “Communal area for recreational activities”, which provides that “[t]he Registry shall make available within the detention centre an area where detained persons can associate with one another. This communal area shall be equipped in such a way as to enable detained persons to follow social, educational and recreational pursuits”.
23. The applicable legal provisions thus consistently and clearly indicate that the entitlement to a computer pursuant to regulation 99(1)(e) is not connected to the need to prepare a defence, but is, rather, linked to the entitlement of all detained persons to access social, educational and recreational opportunities.
24. The above finding is without prejudice to the possibility that those detained persons who are party to proceedings before the Court may indeed require private access to a computer. Thus, the Presidency commends the Registrar’s recognition that the provision of computers in the cells of such detained persons may be imperative to their ongoing participation in proceedings before an electronic court. Nonetheless, this does not remove the mandatory requirement in regulation 99(1)(e) that a computer be provided for the general use of all detained persons.
25. Further, the Presidency notes that the explanation endorsed by the Registrar that there is insufficient room in the common space for a computer is unconvincing. The memorandum of the CCO of 14 March 2012, as well as the Impugned Decision, fail to fully explore the options for giving effect to regulation 99(1)(e) in a manner which does not affect the availability of any other resources currently provided in such space, for example, through the use of a laptop computer.
26. Accordingly, the Registrar is ordered to comply with regulation 99(1)(e) by providing a computer for the general use of all detained persons in the common space or

equivalent, without affecting the availability of any other resources currently provided.

27. Considering that the above finding ensures that all detained persons will have access to a computer, the Presidency does not consider it necessary to address the arguments concerning regulation 91(2).
28. Finally, the Presidency encourages the ongoing efforts of the Registrar and the CCO to ensure access to other educational and recreational activities, such as English language courses.

D. Classification

29. The Presidency notes that all documents in the instant Application have been filed confidentially and *ex parte*. The Presidency considers that, *prima facie*, there is no reason to retain the confidential *ex parte* classification of this decision and the related documents in the file, subject to ensuring the redaction of any information which may identify the detainee.
30. If there is any factual and/or legal basis for retaining the confidential *ex parte* classification of this decision or that of any of its related documents, 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 11 May 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.

The Registrar is ordered to ensure the provision of a computer in the common space of the detention centre, in accordance with paragraph 26 above.

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



Judge Sang-Hyun Song
President

Dated this 22 June 2012

At The Hague, The Netherlands