

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-RoR221-05/12

Date: 22 February 2013

THE PRESIDENCY

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

Public Redacted

Decision on the application for judicial review dated 19 October 2012

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

Detainee
[REDACTED]

Legal representative
Mr Ghislain Mabanga

REGISTRY

Registrar
Ms Silvana Arbia

Deputy Registrar
Mr Didier Preira

Detention Section
Mr Patrick Craig

The Presidency of the International Criminal Court (“hereinafter Court”) has before it the application of [REDACTED] for judicial review of the Registrar’s decision concerning his telephone bill and communications.

I. PROCEDURAL HISTORY

1. On 19 September 2012, [REDACTED] (hereinafter “detainee”) complained to the Chief Custody Officer (hereinafter “CCO”), pursuant to regulation 217 of the Regulations of the Registry (hereinafter all references to regulations are to the Regulations of the Registry, unless otherwise provided), concerning his telephone bill for August and 1-13 September 2012 (hereinafter “telephone bill” or “bill”).¹ The detainee complained that he had not been informed of the technical failure of the invoicing machine, or of the fact that he had a negative balance on his telephone account.² The detainee contested the accuracy of the bill,³ the delayed invoicing resulting from the technical failure and the temporary ban imposed on making any calls, other than to his legal representatives and to the Independent Inspecting Authority – the International Committee of the Red Cross – (hereinafter “IIA”) until the settling of his bill to the amount of €155.87.⁴
2. On 1 October 2012, the CCO rejected the detainee’s complaint as unjustified, arguing that detainees were granted 100 additional free minutes to compensate for any inconvenience caused by the technical failure, that the telephone bill was accurate and that he had placed a temporary ban on making calls in order to prevent the detainee from accumulating debt and to ensure the proper management of the Court’s resources.⁵
3. That same date, the detainee addressed the Registrar, seeking a review of the CCO’s decision, pursuant to regulation 220.⁶
4. On 16 October 2012, the Registrar rejected that request as unjustified (hereinafter “Impugned Decision”), finding no causal link between the omission to inform the detainee of the technical failure and the number of calls made by the detainee,

¹ ICC-RoR221-05/12-3-Conf-Exp-Anx4.

² ICC-RoR221-05/12-3-Conf-Exp-Anx4.

³ ICC-RoR221-05/12-3-Conf-Exp-Anx4.

⁴ ICC-RoR221-05/12-3-Conf-Exp-Anx4.

⁵ ICC-RoR221-05/12-3-Conf-Exp-Anx4.

⁶ ICC-RoR221-05/12-3-Conf-Exp-Anx3.

confirming the CCO's calculation of the bill and determining that the decision to grant 100 free minutes was sufficient to compensate for possible inconvenience.⁷

5. The Registrar sought to reduce the debt by redeploying the 200 free minutes, to which the detainee would normally be entitled on a monthly basis, to cover the latter's debt.
6. On 19 October 2012, the detainee sought judicial review of the Impugned Decision before the Presidency (hereinafter "Application"), while also mentioning that his spouse had been hospitalised and that he was unable to contact her due to the ban.⁸ On 23 October 2012, the Registrar transmitted the Application and its related documents to the Presidency.⁹
7. On 5 November 2012, the Presidency ordered the Registrar to: (i) clarify whether the [...] technical problems may have impacted upon the telephone bills of detained persons and the nature of such impact if any, e.g. an increase in the number and/or duration of calls appearing on telephone bills of detained persons; and (ii) address the detainee's claim regarding contact with his spouse.¹⁰
8. On 14 November 2012, the detainee sent a letter to the President alleging that his daughter had been expelled from school due to unpaid schooling expenses to the amount of €120 and contesting the CCO's decision to allow the detainee to withdraw only €60 from his account for this purpose due to the outstanding telephone debt and use the remaining €60 for the repayment of the debt.¹¹
9. On 20 November 2012, the Registrar filed submissions in accordance with the order (hereinafter "Submission").¹²

II. PRELIMINARY PROCEDURAL MATTERS

10. The letter of the detainee of 14 November 2012, contesting the refusal of the CCO to transfer him the entire amount of €120 for his daughter's expenses, will be considered jointly with the Application and a single decision delivered given that they raise related issues. It is noted that the Registrar is also of the same view.¹³

⁷ ICC-RoR221-05/12-3-Conf-Exp-Anx2.

⁸ ICC-RoR221-05/12-3-Conf-Exp-Anx1.

⁹ Transmission d'une requête en appel de la décision du Greffier en date du 16 octobre 2012 en application de la norme 221 du Règlement du Greffe, ICC-RoR221-05/12-3-Conf-Exp.

¹⁰ ICC-RoR221-05/12-2-Conf-Exp.

¹¹ Annex 1 to the present Decision.

¹² ICC-RoR221-05/12-3-Conf-Exp.

¹³ ICC-RoR221-05/12-3-Conf-Exp.

III. MERITS

A. Relevant parts of the Impugned Decision

11. The Registrar accepts that the invoicing was delayed due to a technical failure and that the information on this failure was not communicated to the detainee. The Registrar upholds the decision to compensate the possible inconvenience caused by the technical failure and the delayed invoicing by retroactively granting the detainee 100 free minutes,¹⁴ and concurs with the CCO that the sum due amounts to €155.87.¹⁵
12. The Registrar accepts that detainees are free to communicate with their family and friends, as long as this is within the Court's legal framework. She refers to regulation 176(2) which specifies that the costs of telephone calls borne by the Court are made within the limits determined by the Registrar. In this regard, she explains that 200 free minutes per month are granted to indigent detainees. She also refers to paragraph 3 of the same regulation which stipulates that it is possible to impose limits on the number and duration of calls made by an indigent detained person. The Registrar submits that if an indigent detained person does not have sufficient financial means to make telephone calls, restrictions can be imposed.¹⁶
13. Finally, the Registrar submits that the detainee has neither justified nor explained how the omission of information on the technical failure had the effect of him making more calls than necessary. She thus concludes that the increase in calls is not a result of the technical failure but correlated to the number of calls made by the detainee.¹⁷

B. Arguments of the detainee in his Application to the Presidency

14. The detainee is challenging the accuracy of the telephone bill based on the fact that it lists a call to his daughter, whereas he has not spoken to her since 21 August 2012 as her phone has been out of order.¹⁸
15. Moreover, the detainee alleges that he would have reduced the number of telephone calls had he been informed of the relevant developments in real time. He asserts that it is a custom and a rule that every Friday detainees are informed of their financial

¹⁴ Impugned Decision, paragraph 2.

¹⁵ Impugned Decision, paragraph 3.

¹⁶ Impugned Decision, paragraph 4.

¹⁷ Impugned Decision, paragraph 5.

¹⁸ Application, page 5.

balance and of their remaining free credit in order to avoid any excess.¹⁹ The detainee is therefore dissatisfied with 100 free minutes allocated as compensation for the inconvenience caused.²⁰

16. The detainee claims that he has meanwhile found out, through his legal representative, that his spouse has been hospitalised. He says that the IIA has demanded that, for humanitarian reasons, he be able to contact his spouse. The detainee claims that, after two weeks, there has been no response in this regard.²¹
17. Finally, the detainee submits that he has met with the Deputy CCO in the meantime and proposed to pay 50% of the telephone bill, with the other 50% to be paid by the detention administration, which the Deputy CCO rejected.²² The detainee reiterates this proposal.²³

C. Submissions of the Registrar

18. Following the Presidency's order of 5 November 2012, the Registrar provided more information regarding the nature of the technical problems. The Registrar clarifies that the technical problems had an impact on all detained persons and that this impact concerned only the date on which the telephone bills were communicated to the detained persons.²⁴
19. To counter the detainee's claim that he has not spoken to his daughter since 21 August 2012, the Registrar encloses the list of all calls made by the detainee which includes calls to his daughter. The Registrar informs the Presidency that it is possible to listen to these communications, if the Presidency deems it necessary, to determine whether the disputed phone calls were indeed made.²⁵
20. As for the detainee's claim of being unable to contact his spouse who was hospitalised, the Registrar submits that the detainee never lodged an official request to contact his spouse and that if he had done so, his request would have been accepted, given the exceptional circumstances. The Registrar also notes that the detainee requested a transfer of €80 to cover the medical expenses for his spouse on

¹⁹ Application, page 5.

²⁰ Application, page 7.

²¹ Application, pages 2-3.

²² Application, page 2.

²³ Application, page 7.

²⁴ ICC-RoR221-05/12-3-Conf-Exp.

²⁵ ICC-RoR221-05/12-3-Conf-Exp.

10 October 2012, which was duly accepted. The Registrar finally notes that the detainee's spouse has since been released from hospital.²⁶

D. Determination of the Presidency

21. 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.²⁷
22. In light of the Registrar's clarification in her Submission that the detainee's spouse has been released from hospital, the Presidency does not find it necessary to address the issue of the detainee's contact with his spouse.

1. Whether the telephone bill as calculated by the CCO was erroneous

23. The Presidency accepts that the technical failure of the telephone system could not have wrongly led to an increase in the number and/or duration of calls made by the detainee. Satisfied with the evidence presented by the Registrar on this issue, in the annexes to her Submission, the Presidency rejects the detainee's claim that the telephone bill is erroneous, discerning no inaccuracy in the calculation made by the CCO which sets out the outstanding debt for the detainee's telephone bill at €155.87.
24. In relation to the detainee's proposal to split repayment of his outstanding debt with the Registry, the Presidency, having found the above, considers that the detainee is liable for the repayment of the whole debt.

²⁶ ICC-RoR221-05/12-3-Conf-Exp.

²⁷ 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.

2. Whether the granting of additional 100 free minutes was proportionate to the inconvenience caused

25. The Presidency does not find a clear link between the omission of the information regarding the technical failure and the number of calls made by the detainee. While the lack of timely information regarding the telephone balance may impair the detainee's ability to have an overall picture of his balance, the Presidency notes that the detainee was compensated for the delayed invoicing with 100 additional minutes, representing half of the monthly amount of free minutes given to indigent detained persons. The Presidency finds this reasonable compensation for the inconvenience caused.

3. Whether the CCO's decision to temporarily ban the detainee from making telephone calls other than to his legal representatives and to the IIA was justified

26. The right of detained persons to communicate with persons outside of the detention centre is clearly established by regulation 99(1)(i) of the Regulations of the Court, which provides that "[e]very detained person shall be entitled...[t]o communicate by letter or telephone with his or her family and other persons". The significance of detained persons maintaining contact with family members in particular has been recognised by the Presidency in previous decisions.²⁸

27. However, that right is not absolute. In case of an indigent detained person, as the Registrar submits, the CCO "may impose limits on the number and duration of calls", in accordance with regulation 176(3). Furthermore, pursuant to regulation 176(2), costs of outgoing calls made by an indigent detained person "shall be borne by the Court to an extent decided by the Registrar". The Presidency notes no discernable error on the part of the Registrar.

²⁸ Decision of 4 November 2008, ICC-RoR217-01/08-10-Conf-Exp, paragraph 57 and Decision of 10 March 2009 entitled "Decision on 'Mr Mathieu Ngudjolo's Complaint Under Regulation 221(1) of the Regulations of the Registry Against the Registrar's Decision of 18 November 2008'", ICC-RoR217-02/08-8, paragraph 35.

4. *Whether the CCO's decision to allow for only a partial withdrawal for the schooling of the detainee's daughter was justified*

28. In light of the findings above and noting the CCO's duty to ensure the proper management of the Court's resources allocated to the detention centre, the Presidency confirms the Registrar's right to recover the debt incurred by the detainee, including by redeploying the 200 free minutes which would ordinarily be granted to the detainee.
29. Prior to the CCO's decision to allow the detainee to withdraw only €60 rather than €120 from his account, for the purpose of his daughter's expenses, and to use the remaining €60 for the repayment of the debt, the Registrar's repayment plan had, however, been based solely on redeploying the 200 free minutes. The deduction of €60 was thus not foreseeable and had an alleged adverse impact on the daughter, through the interruption of her schooling, due to unpaid school fees. As such, the Presidency finds that the full transfer of €120 should be allowed.

[REDACTED]

The Application is dismissed in part. The Registrar shall take all reasonable measures to recover the debt within a reasonable time, after devising a coherent repayment plan.

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


Judge Sang-Hyun Song
President

Dated this 22 February 2013

At The Hague, The Netherlands