



Original: English

No.: ICC-RoR220-04/19

Date: 10 December 2019

THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, First Vice-President
Judge Marc Perrin de Brichambaut, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR V. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on ‘Yekatom Defence Request for Review of Registrar’s Family Visits
Decision’ dated 18 November 2019 (ICC-RoR220-04/19-1)**

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

The Office of the Prosecutor

Counsel for the Defence

Mylène Dimitri

Peter Robinson

Legal Representatives of the Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

REGISTRY

Registrar

Peter Lewis

Detention Section

Paddy Craig

Victims and Witness Unit

**Victims Participation and Reparations
Section**

The Presidency of the International Criminal Court ('Court') has before it the application filed on 18 November 2019 by Mr Yekatom, referring to regulation 220 of the Regulations of the Registry ('Regulations'), requesting judicial review of a decision of the Registrar concerning his request for supported family visits by the Court ('Application').¹

I. PROCEDURAL HISTORY

1. On 30 September 2019, Mr Yekatom submitted a request for a supported family visit, with the relevant documentation, for his wife and two of his children to the Chief Custody Officer ('CCO') ('Request').²
2. On 3 October 2019, Counsel for Mr Yekatom sent a letter to the Director of the Division of Judicial Support Services ('DJSS') renewing the Request on behalf of Mr Yekatom.³
3. On 15 October 2019, the Director of the DJSS responded by email that there were no funds available in the Trust Fund for Family Visits ('TFFV') to support the requested family visit; and that the Registry was currently exploring alternative feasible solutions.⁴
4. From 16 October 2019, several email exchanges occurred between the Defence for Mr Yekatom and the DJSS on the subject matter,⁵ with the Office of the DJSS specifying on 14 November 2019 that there were currently no alternative means to support the requested family visit on a temporary basis pending provision of the TFFV and that Mr Yekatom would be informed by the Detention Section when there would be available funds or available alternative feasible solutions.⁶
5. On 18 November 2019, Mr Yekatom filed the Application pursuant to regulation 220 of the Regulations, requesting judicial review by the Presidency on the grounds that the Registrar erred in law by refusing to grant the Request.⁷

¹ Yekatom Defence Request for Review of Registrar's Family Visit Decision, 18 November 2019, ICC-RoR220-04/19-1, with confidential annexes A to H.

² Confidential annex A, pp. 7-11, see also Response, para. 11.

³ See confidential annex A.

⁴ See confidential annex B.

⁵ See Application paras. 6-7 and confidential annexes C to G, such exchanges occurred on 16 and 18 October 2019, and on 8, 11 and 13 November 2019.

⁶ Application, para. 7; Confidential annex H.

⁷ Application, para. 9.

6. On 26 November 2019, the Registrar filed its response to the Application,⁸ submitting that the Application does not comply with the ‘Complaints Procedure’ set out under section 5 of chapter 5 of the Regulations (‘Response’).⁹

II. ARGUMENTS

7. The Application argues that the Registrar committed an error of law by refusing to temporarily fund the family visit from his budget as requested by Mr Yekatom.¹⁰ It relies on email responses from the DJSS indicating that there are currently no funds in the TFFV and no alternative means to support the requested family visit¹¹ to seek judicial review by the Presidency pursuant to regulation 220 of the Regulations.
8. The Registrar responds that the Application should be dismissed on the basis that it does not fulfil the procedural requirements for judicial review by the Presidency as set out in the ‘Complaints Procedure’ under section 5 of chapter 5 of the Regulations.¹² In particular, the Response argues that the CCO never took a decision on the Request and that the Registrar never exercised his administrative review function pursuant to regulation 219.¹³

III. PRELIMINARY ISSUES

9. The Presidency notes that, whilst the Application has been submitted publicly, its annexes have been filed on a confidential basis. The Response has appropriately been filed on a confidential basis as it refers to the details of information contained in the confidential annexes to the Application.¹⁴ The Presidency considers that there is no reason to retain the confidential classification of the Response, subject to ensuring the redaction of confidential information contained therein.

⁸ Registry Submission on “Yekatom Defence Request for Review the Registrar’s Family Visit Decision”, 26 November 2019, ICC-RoR220-04/19-2-Conf.

⁹ Response, para. 1.

¹⁰ See Application, paras. 9-11.

¹¹ Application, paras. 5-7; Confidential annexes B to H.

¹² Response, paras. 1, 9-11.

¹³ Response, para. 9.

¹⁴ Response, para. 2.

IV. ADMISSIBILITY

10. The Presidency recalls that the ‘Complaints Procedure’ set out in section 5 of chapter 5 of the Regulations provides, at regulation 218, for two distinct procedural routes for judicial review by the Presidency.
11. By the first procedure, a complaint against any matter concerning detention is filed before the CCO.¹⁵ The CCO’s decision is subject to review by the Registrar.¹⁶ That decision of the Registrar is subject to judicial review by the Presidency.¹⁷
12. By the second procedure, where the initial complaint itself concerns a decision or order already made by the Registrar, it is not necessary for the detained person to first address the CCO. Rather, the detained person may directly address a complaint *to the Registrar*.¹⁸ That latter decision of the Registrar is then subject to judicial review by the Presidency.¹⁹
13. The obvious rationale underlying the second procedure is that there is minimal value in first addressing the CCO with a complaint when the subject matter of the complaint is a determination which has already been made by the Registrar. Nonetheless, even where a complaint is based on an initial decision or order of the Registrar, it is still necessary to first address a reasoned complaint to the Registrar, prior to addressing the Presidency. This provides the Registrar with an opportunity to consider the matter with the benefit of the arguments of the detained person for the first time. It enables a fully-fledged administrative decision-making process to first take place within the Registry and ensures that there is a fully reasoned formal written decision of the Registrar which may be the subject of judicial review by the Presidency.
14. The Presidency notes that the admissibility of the present Application is complicated by two factors, each of which will be addressed in turn. First, whether a decision on the Request has actually been made within the Registry. Second, the applicable procedural route to address the Presidency is unclear.
15. The Response argues that no negative decision on the Request for a supported family visit has been made, with the email correspondence relied upon in the Application

¹⁵ Regulation 218(1).

¹⁶ Regulations 218(6), 219(1).

¹⁷ Regulations 219(4), 220(1).

¹⁸ Regulation 218(1).

¹⁹ Regulations 218(6), 220(1).

constituting, in actuality, an update of information.²⁰ The Presidency acknowledges that, indeed, no formal decision on the Request appears to have been made, whether by the CCO, the DJSS or his office or the Registrar. Nonetheless, Mr Yekatom has received a clear communication that there are currently no funds to cover the cost of his requested supported family visit and that the Registry will revert to him when and if this situation changes. This effectively functions to deny Mr Yekatom's current request for a supported family visit. The fact that the Registry continues to seek potential funding sources to enable it to potentially grant the Request in future should not result in the Request remaining unresolved, thereby denying the detained person's access to review mechanisms, particularly where such potential funding is hypothetical and not time bound in anyway. Where a request for supported family visit has been effectively denied due to the lack of available funds, a detained person must still be able to access an appropriate review process.

16. The second complexity is that it is not entirely evident which procedural route for review is presently applicable. Such complexity is derived from a potential lack of clarity as to the manner in which the procedure for a request for a supported family visits interacts with the 'Complaints Procedure'. The Detention Centre Policy on Family Visits ('Family Visits Policy')²¹ provides that applications to visit a detained person shall be made to the Registrar²² who, in case of a denial, shall notify the detained person of the reasons in writing.²³ The detained person may then file a complaint following the 'Complaints Procedure'.²⁴ Although this applies to requests for *any* visit, and is not specifically referred to in section XII which addresses *supported family* visits, it is evident that requests for supported family visits may equally be subject to review under the 'Complaints Procedure' in the event of a denial.

17. Accordingly, the issue becomes which of the two procedures set out at paragraphs 11 and 12 above is presently applicable. The Response posits that a complaint should have been first transmitted to the CCO.²⁵ The Response indicates that it was the Defence which sought to interact with the DJSS on the matter, rather than with the

²⁰ Response, paras. 9, 11-13.

²¹ As amended on 1 September 2014.

²² See Family Visits Policy, Sections V and XII.

²³ See Family Visits Policy, Section V, para. 29.

²⁴ See Family Visits Policy, Section V.

²⁵ Response, paras. 9, 11.

CCO.²⁶ Regardless, it is evident that, once the DJSS responded to the Defence and engaged on this issue (rather than, for example, immediately referring the Defence to the CCO), it was reasonable for the Defence to understand that it was interacting with the appropriate interlocutor within the Registry in respect of the Request.

18. The Presidency notes that the Registry's practice in respect of requests for supported family visits by detained persons appears to vary. Whilst in some instances the CCO has first addressed such requests,²⁷ in others it appears that the DJSS acts directly.²⁸ Further, under sections V and XII of the Family Visits Policy it appears that the *Registrar* is designated as the decision-making authority,²⁹ although ambiguity may still remain in that the Family Visits Policy may not displace provisions of the Regulations.³⁰ In light of this, it may have been a reasonable assumption that the DJSS was acting on behalf of the Registrar since the latter is designated as the decision-making authority by the Family Visits Policy. The Presidency thus considers that while the Defence could have formally approached the CCO with a complaint using the procedure set out at paragraph 11, the procedure set out at paragraph 12 was equally available.

19. As it may be desirable to ensure greater clarity for detained persons in this regard, the Presidency recalls its previous finding that 'the decision-making process on requests for supported family visits is not clearly set out in the Family Visits Policy',³¹ and reiterates its recommendation for its clarification, in particular with regard to the respective roles of the CCO and the Registrar,³² as well as that of the Director of the DJSS.

20. Nonetheless, it remains that the Defence failed to address a complaint in respect of the effective denial of the Request to the CCO or to the Registrar, as required by regulation 218, thereby failing to properly initiate the 'Complaints Procedure'. Rather,

²⁶ Response, para. 11.

²⁷ See for instance, Decision on the 'Application to review the 'Decision on Complaint to the Registrar by [REDACTED] concerning Supported Family Visit'' dated [REDACTED] 2016; ICC-RoR221-02/16-3-Red, para. 25.

²⁸ See Public redacted version of "Decision on Defence 'Request for review of the Registrar's decision of 21 June 2019' dated 5 July 2019 (ICC-RoR220-01/19-1-Conf-Exp)", 17 September 2019, ICC-RoR220-01/19-2-Conf-Exp, 10 December 2019, ICC-RoR220-01/19-2-Red, para. 15.

²⁹ It is noted that the Family Visits Policy attributes a very limited role to the CCO (see paragraph 26) and none to the DJSS.

³⁰ Family Visits Policy, Section XIII, para. 55.

³¹ Decision on the 'Application to review the 'Decision on Complaint to the Registrar by [REDACTED] concerning Supported Family Visit'' dated [REDACTED] 2016; ICC-RoR221-02/16-3-Red, para. 25.

³² Decision on the 'Application to review the 'Decision on Complaint to the Registrar by [REDACTED] concerning Supported Family Visit'' dated [REDACTED] 2016; ICC-RoR221-02/16-3-Red, p. 13.

it approached the Presidency directly. Yet, regulation 220(1) is entirely clear that the Presidency may only review decisions taken by the Registrar under either regulation 218(5) or 219(3). No such decision of the Registrar presently exists.

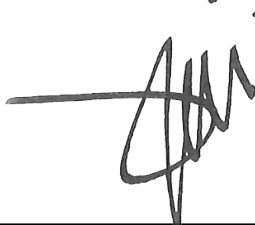
21. The Application is accordingly dismissed as inadmissible. The Defence should properly follow the 'Complaints Procedure', using either the procedure set out in paragraphs 11 or 12 above, if it wishes to seek review of the effective denial of the Request.

THE PRESIDENCY HEREBY

ORDERS the Registrar to file a public redacted version of the Response as specified at paragraph 9 of this decision;

DISMISSES the Application as inadmissible.

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



Judge Chile Eboe-Osuji
President

Dated this 10 December 2019

At The Hague, The Netherlands