



Original: **English**

No.: **ICC-RoR221-03/12**

Date: **4 October 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 18 August 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

Other
[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 the provision of bedding in the detention centre.

The application is denied for the reasons set out below.

I. PROCEDURAL HISTORY

1. On 6 August 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 a guard’s refusal to provide him with an additional set of sheets and pillowcases due to perspiration during the heat.¹
2. On 8 August 2012, the Deputy CCO responded to the abovementioned complaint, denying it on the basis that the detainee was provided with two sets of bedding each week and that the detention centre was equipped with a washing machine which could be used by the detainee to wash the bedding if necessary. The Deputy CCO determined that this was adequate for the detainee to maintain a sufficient level of personal hygiene.²
3. That same date, the detainee, pursuant to regulation 220, sought review of the abovementioned decision by the Registrar.³ The detainee submitted that the Deputy CCO’s claim that he received two sets of bedding per week was incorrect and that he only received one such set. The detainee also stated that he had never requested to use a washing machine for this purpose and submitted that this suggestion of the CCO was maliciously motivated.
4. On 16 August 2012, the Registrar rejected the abovementioned request for review (hereinafter “Impugned Decision”).⁴
5. On 22 August 2012, the detainee sought review of the Impugned Decision before the Presidency, pursuant to regulation 221 (hereinafter “Application”).⁵ That same date, the Registry transmitted all relevant documents to the Presidency.⁶

¹ ICC-RoR221-03/12-1-Conf-Exp-Anx4.

² ICC-RoR221-03/12-1-Conf-Exp-Anx4.

³ ICC-RoR221-03/12-1-Conf-Exp-Anx3.

⁴ ICC-RoR221-03/12-1-Conf-Exp-Anx2.

6. On 29 August 2012, the Presidency ordered the Registrar to respond to the Application,⁷ which the Registrar did on 6 September 2012.⁸

II. MERITS

A. Relevant parts of the Impugned Decision

7. By the Impugned Decision, the Registrar indicated that she understood the central issue raised by the Application to be “si le Requéranr reçoit une literie suffisante et s’il lui faut recourir à la machine à laver pour sa literie, lorsqu’elle est sale”.⁹
8. The Registrar noted that regulation 193(3) provided that “[a] detained person shall be provided with his or her own bed, and with sufficient bedding, which shall be clean when issued, kept in good order and changed regularly to ensure cleanliness”. The Registrar referred also to rule 19 of the Standard Minimum Rules for the Treatment of Prisoners, which provided that “[e]very prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness”. The Registrar noted that neither of these provisions specified the content of sufficient bedding, noting that it was thus her role to determine whether the detention centre bedding satisfied the requirement of sufficiency.¹⁰
9. The Registrar further explained the system for the provision of bedding within the detention centre. She explained that the regulations of the Host State prison provide that once per fortnight each detained person is issued with a set of bedding and the set which had been in use is returned to the prison administration for washing. The Registrar explained that the practice within the Court’s detention centre was different in that, on a weekly basis, each detained person received two sets of bedding. If, at the time of the issuing of the bedding, the detained person was currently using one set of bedding, then only one additional set of bedding would be provided. Thus, a detained

⁵ ICC-RoR221-03/12-1-Conf-Exp-Anx 1.

⁶ Transmission d’une requête en appel de la décision du Greffier en date du 16 aout en application de la norme 221 du Règlement du Greffe, ICC-RoR221-03/12-1-Conf-Exp.

⁷ ICC-RoR221-03/12-2-Conf-Exp.

⁸ ICC-RoR221-03/12-3-Conf-Exp.

⁹ Impugned Decision, paragraph 2.

¹⁰ Impugned Decision, paragraph 3.

person has two sets of bedding at any given time. The Registrar noted that this regime is thus more generous than that used by the Host State prison.¹¹ The Registrar thus considered that the detainee received, on a weekly basis, sufficient bedding in a clean state.¹² The Registrar further considered this amount to be sufficient even during higher temperatures.¹³

10. The Registrar also considered the Deputy CCO's suggestion that if the detainee used both his sets of bedding for the week over a short period he could have recourse to the washing machine, noting that there was no basis to consider that this comment had any malicious intent and noting that the use of such washing machine could be potentially useful.¹⁴ In this respect, the Registrar also commended the fact that the detainee had been provided a fan for use in his cell.¹⁵
11. For all the above reasons, the Registrar rejected the detainee's request to reconsider the decision of the Deputy CCO.

B. Relevant parts of the Application

12. The detainee submitted that the Impugned Decision erred in several respects. He argued that the provision of a fan was irrelevant to the issue of whether he should be given an additional set of bedding when necessary. He also referred to regulation 193(3) and rule 19 of the Standard Minimum Rules for the Treatment of Prisoners, arguing that their silence on the precise content of sufficient bedding should not restrict the detention centre in responding to requests from detained persons for additional bedding. The detainee submitted that given the lack of international legal standards as to the precise quantity of sufficient bedding it was shameful and unfortunate to take a "polemic" approach to a set of bedding.¹⁶
13. The detainee also submitted that he has been treated in a discriminatory manner because other detained persons had been given additional bedding upon request.¹⁷ He

¹¹ Impugned Decision, paragraph 4.

¹² Impugned Decision, paragraph 5.

¹³ Impugned Decision, paragraph 6.

¹⁴ Impugned Decision, paragraphs 7-8.

¹⁵ Impugned Decision, paragraph 7.

¹⁶ Application, pages 4-5.

¹⁷ Application, page 5.

similarly argues that it was unduly constraining that he is imposed upon to wash his set of bedding when this is not the case for other detained persons.¹⁸

C. Submissions of the Registrar

14. Following the Presidency's order of 29 August 2012, the Registrar provided more information relating to the detainee's allegations regarding discrimination in the bedding regime in the detention centre. [REDACTED] The Registrar further informed that in exceptional circumstances the normal linen routine could be altered for medical reasons, as given by the medical officer of the detention centre or by an external medical practitioner.²⁰

D. Determination of the Presidency

15. 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.²¹

16. The Presidency notes that regulation 193(3) entitles a detained person to "sufficient bedding, which shall be clean when issued, kept in good order and changed regularly to ensure cleanliness". This is related to the broader objective described in regulation 191(1) that "[a]ccommodation for detained persons shall meet the requirements of health, hygiene and human dignity and shall be equipped with lighting, heating, ventilation and any other necessary equipment, in accordance with the internationally recognised standards".

¹⁸ Application, page 5.

²⁰ ICC-RoR221-03/12-3-Conf-Exp, paragraph 3.

²¹ 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.

17. The Presidency notes that the legal texts of the Court do not provide further details as to how frequently bedding should be changed in order to ensure cleanliness. Relevant international standards are similarly general. The United Nations Standard Minimum Rules for the Treatment of Prisoners provides that “[e]very prisoner shall ... be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed frequently enough to ensure its cleanliness”.²² The European Prison Rules similarly provide that “[e]very prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness”.²³ None of these international guidelines further elucidate the frequency with which bedding should be changed in order to ensure cleanliness.
18. By way of guidance, the Presidency has noted jurisprudence of the European Court of Human Rights (hereinafter “European Court”) which has considered sufficiency of bedding as a relevant factor in cases concerning the prohibition on inhuman or degrading treatment or punishment. The European Court has assessed prison conditions in which, *inter alia*, detained persons were provided with bedding which was changed once each fortnight, finding that such material conditions did not violate the rights of detained persons.²⁴ In other cases, although eventually finding a violation due to conditions of overcrowding, the European Court has noted that the cleanliness and sanitary conditions of prisons have been adequate in circumstances where, *inter alia*, clean bedding was provided once per week.²⁵ Thus, the European Court has not expressed any concerns in circumstances where a single set of clean bedding has been provided on either a fortnightly or weekly basis.
19. In the present circumstances, two sets of clean bedding are provided to the detainee on a weekly basis, thus at any given time the detainee always has one set of bedding in use and an additional “spare” set. Moreover, the detainee also has access to washing facilities if he desires his bedding to be cleaned more frequently than weekly. In view of the generality of the requirements in the Court’s legal texts and the relevant

²² 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 19.

²³ 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 21.

²⁴ *Malechkov v. Bulgaria*, no. 57830/00, Judgment of 28 June 2007, paragraph 15; *Valašinas v. Lithuania*, no. 44558/98, Judgment of 24 July 2001, paragraphs 49, 104, 113.

²⁵ *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, Judgment of 20 October 2011, paragraphs 18, 79; *Štrucl and others v. Slovenia*, nos. 5903/10, 6003/10 and 6544/10, Judgment of 20 October 2011, paragraphs 27, 88.

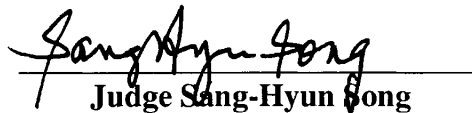
international standards and the general guidance contained in the jurisprudence of the European Court, the Presidency sees no error in the Registrar's determination that the current provision of bedding to the detainee is sufficient.

E. Classification

20. 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 and the guard named in the case file.
21. 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 4pm on 28 September 2012. The Presidency will thereafter rule on whether the classification should be maintained and, if necessary, the need for any redactions.

The Application is denied.

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



Judge Sang-Hyun Song
President

Dated this 4 October 2012

At The Hague, The Netherlands