

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-RoR220-03/22**

Date: **26 May 2023**

Date of original: **17 February 2023**

THE PRESIDENCY

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD NGAÏSSONA

Public

Public redacted version of “Decision on the ‘Application for Judicial Review of Registrar’s Decision of 2 September 2022’, dated 12 September 2022 (ICC-RoR220-03/22-1-Conf-Exp)” dated 17 February 2023 (ICC-RoR220-03/22-5-Conf-Exp)

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**The Office of the Prosecutor****Counsel for Mr Yekatom**

Ms Mylène Dimitri

Mr Thomas Hannis

Legal Representatives of the Victims**Legal Representatives of the Applicants****Unrepresented Victims****Unrepresented Applicants
(Participation/Reparation)****The Office of Public Counsel for Victims****The Office of Public Counsel for the
Defence****States' Representatives****Amicus Curiae****REGISTRY****Registrar**

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit****Detention Section**

Mr Harry Tjonk

**Victims Participation and Reparations
Section****Other**

The Presidency of the International Criminal Court (the ‘Court’) has before it the application filed by Mr Alfred Yekatom (‘Mr Yekatom’) on 12 September 2022, seeking judicial review pursuant to regulation 220 of the Regulations of the Registry (the ‘Regulations’) of a decision of the Registrar issued on 2 September 2022 (the ‘Application’).¹ The Application requests the Presidency to: (i) find that the current food management at the Detention Centre is in violation of regulation 199(1) of the Regulations; and (ii) order the Registrar to immediately take concrete measures to remedy this violation.²

I. PROCEDURAL HISTORY

1. On 24 September 2021, Mr Yekatom submitted a complaint to the Chief Custody Officer pursuant to regulations 217 and 218 of the Regulations, submitting that the food management at the Detention Centre comprised a violation of the right afforded to Mr Yekatom pursuant to regulation 199 of the Regulations (the ‘Complaint’).³ He requested that: (i) the Detention Centre immediately [REDACTED].⁴
2. On 11 October 2021, the Acting Chief Custody Officer rejected the Complaint finding that it was not properly addressed to him (the ‘First CCO Decision’).⁵ The Acting Chief Custody Officer held that [REDACTED].⁶ The Acting Chief Custody Officer considered that he was therefore [REDACTED].⁷
3. On 19 October 2021, Mr Yekatom submitted a request for review of the First CCO Decision to the Registrar (the ‘First Request for Review’).⁸ On 1 November 2021, the Registrar found that the Acting Chief Custody Officer erred in rejecting the Complaint

¹ Defence for Mr Alfred Yekatom, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Application for Judicial Review of Registrar’s Decision of 2 September 2022, 12 September 2022, ICC-RoR220-03/22-1-Conf-Exp.

² Application, ICC-RoR220-03/22-1-Conf-Exp, paras 2, 66.

³ Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Complaint, ICC-RoR220-03/22-2-Conf-Exp-AnxI, pp. 2-50, p. 5, annexed to Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Transmission pursuant to Regulation 220(3) of the Regulations of the Registry, 14 September 2022, ICC-RoR220-03/22-2-Conf-Exp (the ‘Transmission’).

⁴ Complaint, ICC-RoR220-03/22-2-Conf-Exp-AnxI, pp. 5, 8-10.

⁵ First CCO Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxI, pp. 51-55, paras 9, 22, annexed to Transmission, ICC-RoR220-03/22-2-Conf-Exp.

⁶ First CCO Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxI, pp. 51-55, para. 8.

⁷ First CCO Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxI, pp. 51-55, para. 9.

⁸ Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, First Request for Review, ICC-RoR220-03/22-2-Conf-Exp-AnxII, annexed to Transmission, ICC-RoR220-03/22-2-Conf-Exp.

and remitted the matter to the Acting Chief Custody Officer to decide on the Complaint in full, instructing him to [REDACTED] (the ‘First Registrar Decision’).⁹

4. On 28 July 2022, Mr Yekatom filed a request for review pursuant to regulation 219 of the Regulations directly before the Registrar, noting that nine months had passed and that the Acting Chief Custody Officer had failed to issue a decision on the remitted Complaint (the ‘Second Request for Review’).¹⁰ He therefore requested that the Registrar determine himself the merits of the Complaint.¹¹
5. On 10 August 2022, the Acting Chief Custody Officer issued a decision on the merits of the Complaint, finding that the current food management of the Detention Centre was not in violation of regulation 199 of the Regulations and that the Complaint was not justified (the ‘Second CCO Decision’).¹² He noted that all detained persons were being provided with meals that conform to the highest standards of nutrition and the Court’s regulations and that significant efforts had been made to provide detained persons with culturally appropriate meals.¹³ He further observed that Mr Yekatom was being provided with special meals in accordance with his medical requirements.¹⁴ In addition, all detained persons receive a weekly food allowance to purchase additional items from various shopping lists to further adjust the meals to their personal taste and cultural requirements, and the Registrar decided to temporarily increase this allowance.¹⁵ Regarding the [REDACTED], the Second CCO Decision observed that [REDACTED].¹⁶
6. On 12 August 2022, the Registrar dismissed the Second Request for Review as moot, considering that the Chief Custody Officer had in the meantime issued his decision on the Complaint (the ‘Second Registrar Decision’).¹⁷

⁹ Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, First Registrar Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxIII, paras 3, 18, *annexed to* Transmission, ICC-RoR220-03/22-2-Conf-Exp.

¹⁰ Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Second Request for Review, ICC-RoR220-03/22-2-Conf-Exp-AnxIV, paras 2-3, 17, *annexed to* Transmission, ICC-RoR220-03/22-2-Conf-Exp.

¹¹ Second Request for Review, ICC-RoR220-03/22-2-Conf-Exp-AnxIV, paras 4, 32.

¹² Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Second CCO Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxV, para. 30, *annexed to* Transmission, ICC-RoR220-03/22-2-Conf-Exp.

¹³ Second CCO Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxV, para. 11.

¹⁴ Second CCO Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxV, para. 12.

¹⁵ Second CCO Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxV, paras 13-14.

¹⁶ Second CCO Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxV, para. 18.

¹⁷ Registrar, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Second Registrar Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVI, paras 2, 8, 10, *annexed to* Transmission, ICC-RoR220-03/22-2-Conf-Exp.

7. On 18 August 2022, Mr Yekatom submitted a request for review of the Second CCO Decision to the Registrar pursuant to regulation 219 of the Regulations, requesting the Registrar to: (i) find that the current food management at the Detention Centre constitutes a violation of regulation 199(1) of the Regulations; and (ii) [REDACTED] (the ‘Third Request for Review’).¹⁸
8. On 2 September 2022, the Registrar issued a decision rejecting the Third Request for Review as unjustified, considering that the food management at the Detention Centre was in accordance with regulation 199(1) of the Regulations (the ‘Impugned Decision’).¹⁹
9. On 12 September 2022, Mr Yekatom submitted the present Application for review of the Impugned Decision, requesting that the Presidency: (i) find that the current food management at the Detention Centre violates regulation 199(1) of the Regulations; and (ii) order the Registrar to immediately take concrete steps to remedy this violation – for instance, by employing a cook or a catering company to prepare and provide culturally appropriate meals at the Detention Centre.²⁰
10. On 14 September 2022, the Registrar transmitted the supporting documents to the Presidency in accordance with regulation 220(3) of the Regulations.²¹ The Registrar did not submit any observations pursuant to regulation 220(4) of the Regulations.
11. On 2 November 2022, the Presidency issued an order requesting the Registrar to submit additional factual information on the food available to Mr Yekatom, including examples of meals and all shopping lists available to Mr Yekatom.²² On 15 November 2022, the Registry submitted such additional information (the ‘Registry Report’).²³ The Registry Report clarifies that in addition to an *à la carte* breakfast, detained persons receive two

¹⁸ Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Third Request for Review, ICC-RoR220-03/22-2-Conf-Exp-AnxVII, paras 1, 15-17, *annexed to* Transmission, ICC-RoR220-03/22-2-Conf-Exp.

¹⁹ Registrar, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, paras 2, 35, *annexed to* Transmission, ICC-RoR220-03/22-2-Conf-Exp.

²⁰ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 2, 66.

²¹ Transmission, ICC-RoR220-03/22-2-Conf-Exp, with confidential *ex parte* annexes I-VIII.

²² Presidency, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Order concerning the ‘Application for Judicial Review of Registrar’s Decision of 2 September 2022’, dated 12 September 2022 (ICC-RoR220-03/22-1-Conf-Exp), 2 November 2022, ICC-RoR220-03/22-3-Conf-Exp, p. 3.

²³ Registry, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, ‘Registry Report pursuant to “Order concerning the ‘Application for Judicial Review of Registrar’s Decision of 2 September 2022’, dated 12 September 2022 (ICC-RoR220-03/22-1-Conf-Exp)”, 2 November 2022, ICC-ROR220-03/22-3-Conf-Exp’, 15 November 2022, ICC-ROR220-03/22-4-Conf-Exp, with confidential *ex parte* annexes I-IV.

pre-prepared meals per day.²⁴ For the pre-prepared meals, they can chose between regular meals and special meals.²⁵ Special meals include the options of a ‘Medical Meal’ with various sub-categories to cater for different medical needs, or of an ‘African Meal’ with [REDACTED].²⁶ The Registrar observed in this context that ‘Africa is a large continent with different cultures and, therefore, a wide variety of food preferences’ and clarified that there is not an option for a ‘Medical African Meal’.²⁷ In addition, the Registry provides a [REDACTED] weekly food allowance to purchase food items from the General or African Shop Lists.²⁸

II. IMPUGNED DECISION

12. The Impugned Decision rejects the Complaint as unjustified.²⁹ It finds that the current food provision system in detention is managed in accordance with regulation 199(1) of the Regulations and that the argument that no due regard is given to cultural requirements is without merit.³⁰ The Registrar stresses that a number of measures have been taken by the Acting Chief Custody Officer [REDACTED].³¹ More specifically, two of the remedies requested in the Complaint have been largely addressed, namely to [REDACTED].³² Furthermore, the food management at the Detention Centre [REDACTED].³³
13. The Impugned Decision notes that what remains at issue seems to be food *preparation*.³⁴ Mr Yekatom takes issue, firstly, with the fact that the meals labelled as African do not correspond to his cultural culinary requirements; and secondly, that pre-cooked meals are being provided, which he considers culturally inadequate.³⁵
14. In addition, the Impugned Decision addresses other remaining aspects such as Mr Yekatom’s submissions that the Acting Chief Custody Officer misconceives

²⁴ Registry Report, ICC-ROR220-03/22-4-Conf-Exp, para. 5.

²⁵ Registry Report, ICC-ROR220-03/22-4-Conf-Exp, para. 5.

²⁶ Registry Report, ICC-ROR220-03/22-4-Conf-Exp, paras 5-7.

²⁷ Registry Report, ICC-ROR220-03/22-4-Conf-Exp, paras 7-8.

²⁸ Registry Report, ICC-ROR220-03/22-4-Conf-Exp, paras 7, 13.

²⁹ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, paras 2, 35.

³⁰ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, paras 19, 30.

³¹ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 21.

³² Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 22.

³³ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 21.

³⁴ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 24.

³⁵ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 24.

regulation 199(1) of the Regulations and that Mr Yekatom is not in the habit of cooking his own food.³⁶ In response to the arguments made in the Application, the Registrar specifies, first, that he considers that due regard has been given to the specific situation and cultural difference of Mr Yekatom.³⁷ Recalling that Mr Yekatom has a health condition requiring him to take special meals, the Impugned Decision holds that the Acting Chief Custody Officer properly advised that Mr Yekatom meet with the Medical Officer in order to discuss how to take into account all requirements under regulation 199(1) of the Regulations as regards healthy and culturally adapted food.³⁸ Second, the Registrar observes that, when deciding on the most adequate food system in detention, one must inevitably strike a balance between different requirements such as health, food security, hygiene and cultural requirements.³⁹ He explains that the pre-cooked African Meals are delivered cold for food security and hygienic reasons taking into account the cooling chain, and are to be warmed up in a microwave.⁴⁰ While microwaving food may not be in Mr Yekatom's habit, it is reasonably acceptable considering food security requirements, noting that in any event it was also possible to heat it in a normal oven.⁴¹ As a result, detained persons have the opportunity to receive two warm meals per day, which is above international or Dutch standards.⁴²

15. Third, as regards the contention that the provided meals are not properly African, the Impugned Decision observes that at least one detained person from Africa does not reject the meals and that creative solutions are being proposed to address this particular problem.⁴³ Moreover, efforts are ongoing to [REDACTED].⁴⁴ As to Mr Yekatom's suggestion that a cook should be hired since he is not culturally in the habit of cooking, the Impugned Decision notes that he does cook for himself and others but that there have been issues with the quality of the food he prepares in light of his special needs.⁴⁵

³⁶ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 25.

³⁷ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 26.

³⁸ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 26.

³⁹ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 27.

⁴⁰ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 27.

⁴¹ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 27.

⁴² Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 27.

⁴³ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 28.

⁴⁴ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 28.

⁴⁵ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 29; Registry Report, ICC-ROR220-03/22-4-Conf-Exp, fn. 13.

Furthermore, this argument contradicts his own submission that cooking classes would greatly facilitate the self-management of food in detention.⁴⁶

16. In addressing Mr Yekatom's request to either hire a cook or engage a catering company, the Impugned Decision indicates that hiring a cook is currently not feasible for reasons of operational complexities and a potential lack of significant added benefit.⁴⁷ Nevertheless, the Registry [REDACTED].⁴⁸ As regards engaging a catering company, the Impugned Decision observes that [REDACTED].⁴⁹ The Impugned Decision highlights that [REDACTED].⁵⁰ In conclusion, the Impugned Decision notes that the current scheme of the provision of food by an external supplier is safe and provides for the delivery of meals that take into account medical restrictions/diets, and cultural and religious beliefs.⁵¹ Finally, the Impugned Decision observes that the pricing issue of the Africa Shop List was temporarily resolved by increasing the food allowance.⁵²

III. THE APPLICATION

17. The Application submits that the current food management system violates regulation 199(1) of the Regulations,⁵³ emphasising in particular that the pre-prepared meals provided to the detained persons are not culturally appropriate, both in terms of their content and the manner of distribution,⁵⁴ and that access to the Africa Shop List does not absolve the Detention Centre of its duties under regulation 199(1) of the Regulations.⁵⁵ In this respect, the Application also refers to the limited cooking proficiency of detained persons who are culturally neither in the habit of cooking nor know how to cook, which restricts their ability to prepare culturally appropriate, as well as balanced and healthy, meals.⁵⁶ In addition, accounting for African culinary cultural requirements is not simply a matter of culturally adapting pre-prepared meals by adding products from the Africa

⁴⁶ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 29, *referring to* First Request for Review, ICC-RoR220-03/22-2-Conf-Exp-AnxII, paras 41-42.

⁴⁷ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, paras 31-32.

⁴⁸ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 32.

⁴⁹ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 33.

⁵⁰ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 33.

⁵¹ Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 34.

⁵² Impugned Decision, ICC-RoR220-03/22-2-Conf-Exp-AnxVIII, para. 34.

⁵³ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 2, 18, 26.

⁵⁴ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 26-31.

⁵⁵ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 32-35.

⁵⁶ Application, ICC-RoR220-03/22-1-Conf-Exp, para. 34.

Shop List.⁵⁷ Mr Yekatom requests that the Registrar be ordered to immediately take concrete steps to remedy this violation – for instance, by employing a cook or a catering company to prepare and provide culturally appropriate meals at the Detention Centre.⁵⁸

18. The Application develops three main arguments. First, Mr Yekatom submits that the Registrar erred in law by misinterpreting the obligations set out in regulation 199(1) of the Regulations.⁵⁹ He considers that the current food management system is based on the misconception that this provision can be read disjunctively, i.e. that it guarantees either that prepared food be provided or access to culturally appropriate food products and cooking facilities.⁶⁰ Mr Yekatom argues that such an understanding is not reasonably available from the wording of regulation 199(1) of the Regulations and that ensuring respect for culinary requirements, guaranteed under that regulation, and reflected in multiple international human rights instruments, cannot simply be outsourced to the detained persons themselves.⁶¹

19. Second, Mr Yekatom submits that the Registrar's decision-making was improper as he failed to address or take into account international human rights instruments and standards that enshrine and echo Mr Yekatom's right to culturally appropriate food and the importance of due respect for cultural requirements in food preparation and distribution.⁶² Third, Mr Yekatom submits that the Impugned Decision takes into account irrelevant factors, namely: (i) his health condition; [REDACTED] (iv) the fact that at least one African detained person eats the pre-cooked meals labelled as African; and (v) that Mr Yekatom currently prepares his own meals.⁶³ He considers that the reference to these factors is misguided or has no bearing on the cultural inappropriateness of the meals and the current food management.⁶⁴

⁵⁷ Application, ICC-RoR220-03/22-1-Conf-Exp, para. 35.

⁵⁸ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 2, 66.

⁵⁹ Application, ICC-RoR220-03/22-1-Conf-Exp, para. 23.

⁶⁰ Application, ICC-RoR220-03/22-1-Conf-Exp, para. 20.

⁶¹ Application, ICC-RoR220-03/22-1-Conf-Exp, para. 22.

⁶² Application, ICC-RoR220-03/22-1-Conf-Exp, paras 36-40.

⁶³ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 42-60.

⁶⁴ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 48, 50-55, 58, 60.

IV. DETERMINATION OF THE PRESIDENCY

A. Standard for judicial review

20. The Presidency recalls 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 reasonable person who has properly applied his or her mind to the issue could have reached.⁶⁵

B. Merits

21. Mr Yekatom submits that the Registrar erred in law,⁶⁶ failed to take into account international human rights instruments and standards on the importance of due respect for cultural requirements in food preparation and distribution⁶⁷ and took into account irrelevant factors in reaching the Impugned Decision.⁶⁸

(i) Whether the Registrar erred in law in interpreting regulation 199(1) of the Regulations

22. The Presidency recalls that food in the Detention Centre is governed by regulation 199(1) of the Regulations, which provides:

Each detained person shall be provided with food which is suitably prepared and presented and satisfies, in quality and quantity, the standards of dietetics and modern hygiene. The age, health, religion and cultural requirements of the detained person shall be taken into account in the preparation and in the distribution of food.

⁶⁵ The standard of judicial review was defined by the Presidency in its [Decision on the Application to Review the Registrar's Decision Denying the Admission of Mr Ernest Midagu Bahati to the list of Counsel](#), 20 December 2005, ICC-RoC72-02/05, para. 16; and supplemented in its Decision on the application to review the decision of the Registrar denying [REDACTED] privileged visits with Mr Lubanga Dyilo, under regulation 221 of the Regulations of the Registry, 27 November 2006, ICC-01/04-01/06-731-Conf, para. 24. *See also* Presidency, [Reasons for the 'Decision on the "Application for Review of Decision of the Registrar's Division of Victims and Counsel dated 2 January 2008 not to Admit Prof. Dr. Sluiter to the List of Counsel"'](#), 10 July 2008, ICC-RoC72-01/08-10, para. 20; Presidency, [Decision on the application to review the decision of the Registrar denying the admission of Ms Magdalena Ayoade to the list of experts](#), 6 August 2009, ICC-RoR56-01/09-2, para. 11.

⁶⁶ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 19-23.

⁶⁷ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 36-41.

⁶⁸ Application, ICC-RoR220-03/22-1-Conf-Exp, paras 42-60.

23. The question before the Presidency is how the requirement that the ‘age, health, religion and cultural requirements of the detained person shall be taken into account in the preparation and in the distribution of food’ should be interpreted and how it relates to the first sentence of regulation 199(1). The Application argues that the Registry has erroneously treated regulation 199(1) of the Regulations as though it is disjunctive – requiring either that prepared food be provided *or* the availability of culturally appropriate food.⁶⁹
24. Regulation 199(1) of the Regulations needs to be interpreted as a whole and in accordance with the ordinary meaning of its terms. The Presidency, acting by majority consisting of Judge Ibáñez Carranza and Judge Mindua, emphasises that the second sentence of regulation 199(1) of the Regulations provides that cultural requirements shall be taken into account in the *preparation and in the distribution* of food. This language necessarily implies that food will be provided to detained persons already prepared, without obliging detained persons to engage in cooking themselves in order to have their cultural requirements taken into account. This is further supported by a contextual interpretation when reading the second sentence of regulation 199(1) of the Regulations together with the first sentence of the regulation, which unequivocally stipulates that the detained person shall be provided with *prepared* food. Following this reasoning, detained persons need to be provided with suitably prepared and presented meals which take into account, *inter alia*, cultural requirements. The Presidency, acting by majority consisting of Judge Ibáñez Carranza and Judge Mindua, considers that regulation 199(1) of the Regulations does not support an interpretation by which involuntary self-cooking becomes the only available mean to obtain food which takes cultural requirements into account.
25. Turning to the specific situation of Mr Yekatom, the Registry Report clarifies that there are no culturally adapted Medical Meals available.⁷⁰ Yet, regulation 199 clearly requires that *both* health *and* cultural requirements be taken into account. The only means offered to Mr Yekatom to ensure the cultural requirements of his Medical Meals is to purchase ingredients from the Africa Shop List and prepare his own food, either to supplement or *in lieu* of the provided meals. The Presidency, acting by majority consisting of Judge Ibáñez Carranza and Judge Mindua, considers that this is not consistent with the

⁶⁹ Application, ICC-RoR220-03/22-1-Conf-Exp, para. 20.

⁷⁰ Registry Report, ICC-ROR220-03/22-4-Conf-Exp, paras 6-8.

requirement in regulation 199(1) of the Regulations that the Court must provide prepared food, which already takes into account cultural requirements. While the majority of the Presidency acknowledges the practical difficulties encountered by the Registrar in finding a workable solution for this problem, it nevertheless urges the Registrar to explore other options to ensure that the Detention Centre can provide food that satisfy the requirements of regulation 199(1) of the Regulations to Mr Yekatom.

26. By contrast, Judge Hofmański considers that the obligations set out in the first and in the second sentence of regulation 199(1) of the Regulations are not of the same nature. The first sentence contains a positive obligation of result (*obligation de résultat*) whereas the second sentence, in particular the language used that certain requirements be ‘taken into account’, makes clear that what is intended is an obligation to duly consider cultural requirements and employ diligence and best efforts to achieve the desired result (*obligation de moyens*). The ordinary meaning of the phrase ‘to take into account’ is to consider or take into consideration.⁷¹ Moreover, the first sentence requires that detained persons be provided with food, rather than meals. Judge Hofmański therefore finds that regulation 199(1) of the Regulations contains no firm obligation that the food in detention *must* be culturally appropriate in terms of its preparation and distribution, rather it is a factor that must be given due consideration. He stresses that the requirements set out in the second sentence of regulation 199 are nonetheless intended to be of considerable importance – health, age, religion and cultural requirements are intrinsically linked to the physical or mental wellbeing of detained persons – and the Detention Centre should employ due diligence and meaningful efforts to fulfil the duty to take these requirements into account.

27. With respect to Mr Yekatom, Judge Hofmański considers that the Court’s Detention Centre has properly exercised due diligence and made meaningful efforts to fulfil its duty to take cultural requirements into account, while also accounting for his health requirements. The wording of regulation 199(1) neither specifies how the food needs to be prepared nor does it preclude the preparation of food by detained persons. The involvement of detained persons in the preparation of their meals is a common practice, which is not inconsistent with international instruments concerning the standards of

⁷¹ See e.g. Oxford English Dictionary, online version, available at: [account, n. : Oxford English Dictionary \(oed.com\)](https://www.oed.com) (last visited on 16 February 2023).

treatment of detained persons. Judge Hofmański can therefore find no legal error in the Registrar's interpretation that the ability to purchase culturally appropriate food items which need to be self-prepared by detained persons sufficiently satisfies the requirements of the second sentence of regulation 199(1) of the Regulations.

28. In view of the above, the majority of the Presidency remits the matter to the Registrar for reconsideration. In light of this finding, there is no need to further examine Mr Yekatom's other submissions. As regards the requested relief, the Presidency considers that it is for the Registrar to determine which measures can be reasonably taken to ensure that cultural requirements are adequately taken into account in the preparation and distribution of food available to Mr Yekatom.

V. CLASSIFICATION

29. In light of the classification of the Application, the present decision is classified as confidential and *ex parte*. The Presidency takes the view, however, that it would be beneficial to make this decision publicly available, including for the benefit of other detained persons. If there is any factual or legal basis for retaining the confidential classification of this decision or if there is any information in this decision requiring redaction prior to publication, Mr Yekatom and/or the Registrar may inform the Presidency thereof no later than by 4pm on 6 March 2023.
30. The Presidency also notes that despite Mr Yekatom's indication that he intends to file a public redacted version of the Application,⁷² to date no public redacted version has been filed. Mr Yekatom is requested to file a public redacted version of the Application as soon as possible.

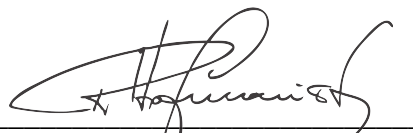
⁷² Application, ICC-RoR220-03/22-1-Conf-Exp, para. 65.

In light of the above, the Presidency, acting by majority consisting of Judge Ibáñez Carranza and Judge Mindua, hereby:

REVERSES the Impugned Decision; and

REMITTS the matter to the Registrar for reconsideration in accordance with this decision.


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



Judge Piotr Hofmański
President



Judge Luz del Carmen Ibáñez Carranza
First Vice-President



Judge Antoine Kesia-Mbe Mindua
Second Vice-President

Dated this 17 February 2023

At The Hague, The Netherlands