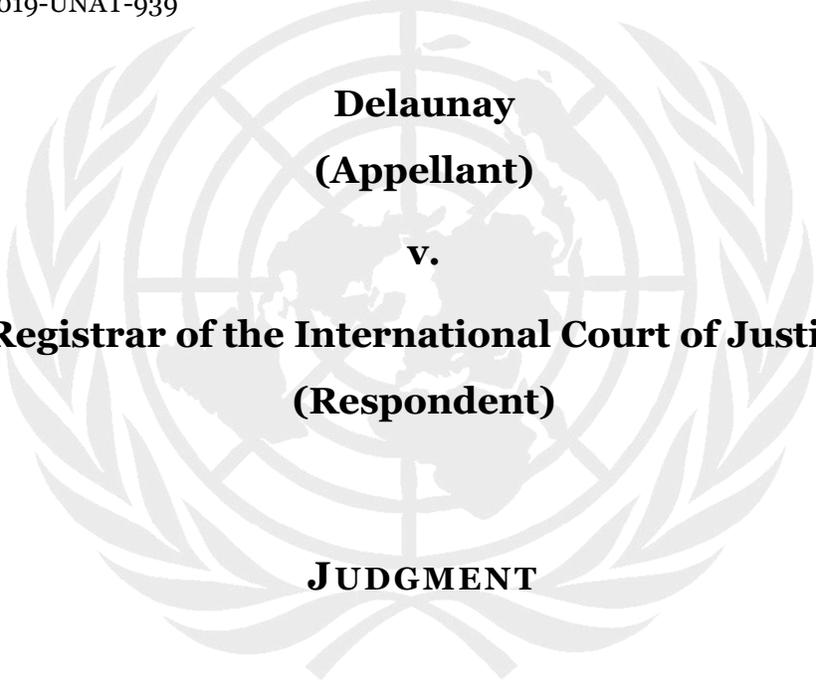




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2019-UNAT-939



**Delaunay
(Appellant)**
v.
**Registrar of the International Court of Justice
(Respondent)**

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Dimitrios Raikos Judge Sabine Knierim
Case No.:	2019-1235
Date:	28 June 2019
Registrar:	Weicheng Lin

Counsel for Ms. Delaunay:	Self-represented
Counsel for ICJ:	Jean-Pelé Fomété

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (“Appeals Tribunal”) has before it an appeal by Ms. Nathalie Delaunay against the implicit decision of the Registrar of the International Court of Justice (“the Court” or “ICJ”) dated 8 January 2018. Ms. Delaunay filed the appeal on 18 February 2019 and the ICJ Registrar filed his answer on 23 April 2019.

Facts and Procedure

2. From May 2009 to December 2015, Ms. Delaunay worked as a doctor at the Court under a 25 per cent part-time arrangement. Concurrently, from July 2009, Ms. Delaunay served as a doctor on a contractual basis at the European Patent Office (EPO), with its headquarters in Munich and a second campus in The Hague.

3. On 15 March 2010, Ms. Delaunay informed the Security Service of the ICJ Registry, and then the Netherlands medical services, of a “medical emergency situation” involving Ms. Rangel, the Head of the Library of the Court. The Registrar claims that, following that incident, he entrusted Ms. Delaunay, in her capacity as the Court’s doctor, with the monitoring of Ms. Rangel’s health in order to prevent the occurrence of similar incidents; Ms. Delaunay contests the Registrar’s claim.

4. On 13 July 2010, the Head of the Administrative and Personnel Division of ICJ wrote to the Registry, recommending that Ms. Rangel no longer be given any staff supervisory responsibilities and that senior management take action in order to prevent the occurrence of similar incidents.

5. On 13 March 2013, Ms. Delaunay informed Ms. Rangel by email that Ms. Cohen (a staff member working under Ms. Rangel’s supervision at the Library) could return to work after a period of sick leave. However, various measures were attached to this return to work, such as limiting the number of books to be indexed on a daily basis. Later that day, Ms. Delaunay informed the Registrar that Ms. Rangel had burst into her office and verbally assaulted her. She wanted Ms. Rangel “to be reminded that such behaviour is unacceptable and contrary to the applicable rules of the United Nations”. The same day, Ms. Rangel informed the Registrar that Ms. Delaunay had interfered in the management of her service, as she considered that Ms. Delaunay was exceeding her authority in determining what tasks Ms. Cohen should carry out.

6. On 24 May 2013, Ms. Rangel filed a complaint against Ms. Delaunay with the Registrar, accusing her, in the context of the incident of 13 March 2013, of “failing to provide medical assistance to a staff member visibly in distress”. She also accused Ms. Delaunay of “breaching medical ethics, in particular by attempting to obtain information from her psychotherapist on 27 June 2011”, despite Ms. Rangel’s explicit denial of consent. In addition, she accused Ms. Delaunay of “attempting to redesign the work assignments [of a subordinate]” without prior consultation.

7. On 21 June 2013, Ms. Rangel sent an email to the Registry, copying the President of the Court and the Staff Committee, to ask whether any action had been taken in response to her complaint against Ms. Delaunay. On 3 July 2013, the Registrar initiated an informal dispute resolution procedure between Ms. Delaunay and Ms. Rangel, which failed.

8. On 28 August 2013, Ms. Rangel sent an email to the Registrar, copying the President of the Court and the Staff Committee, asking once again whether any action had been taken in response to her complaint against Ms. Delaunay and stating that Ms. Delaunay was the subject of similar complaints at EPO and the French Medical Board.

9. On 3 September 2013, the Registry informed Ms. Delaunay of these new developments and of the Registrar’s decision to launch an investigation into the allegations against her, and suggested that she provide the panel with any relevant information. The same day, Ms. Delaunay responded in order to “formally complain” to the Registry about the “harassment”. She stated that she wanted “all appropriate measures to be taken” to put an end to Ms. Rangel’s behaviour and “a disciplinary or investigative process to be undertaken with a view to punishing those actions”.

10. On 24 September 2013, Ms. Delaunay “submitted a formal complaint about the defamation and slander” committed by Ms. Rangel and asked for a disciplinary procedure to be initiated. The same day, the Registrar mandated a panel to investigate the allegations made by Ms. Rangel and Ms. Delaunay.

11. On 22 January 2014, the panel submitted its report. The panel concluded that Ms. Rangel had verbally assaulted Ms. Delaunay on 13 March 2013, that nearly all Ms. Rangel’s allegations against Ms. Delaunay had not been supported by any evidence and had been shown to be deliberate lies and, consequently, that Ms. Rangel had harassed Ms. Delaunay.

12. On 5 February 2014, the Registry provided Ms. Delaunay with a copy of the investigation report, for comment. On 12 February 2014, the Registrar placed Ms. Rangel on administrative

leave. On 13 March 2014, Ms. Delaunay sent the Registrar her observations on the investigation report related to the incident of 13 March 2013.

13. On 3 April 2014, at the end of the disciplinary procedure, the Registrar informed Ms. Rangel that he had decided to terminate her employment with effect from 11 April 2014. On 9 April 2014, the Registry noted that the panel had taken the view that most of Ms. Rangel's allegations against Ms. Delaunay were unsubstantiated. The Registry informed Ms. Delaunay that the Registrar had concluded that Ms. Rangel's acts of harassment and defamation constituted misconduct and that the Registrar had decided to take disciplinary action against Ms. Rangel by terminating her employment.

14. On 22 November 2017, Ms. Delaunay submitted to the Registrar a document entitled "Brief of Dr. N. Delaunay. Complaint and request for compensation". In her introduction, she noted that the Appeals Tribunal had set out its position on concurrent, related and similar facts in the context of a complaint submitted by Ms. Cohen, who was also a victim of Ms. Rangel in 2013. The Appeals Tribunal had stated expressly that "both the investigative panel and the Conciliation Committee found that senior officials had prior knowledge that [Ms. Rangel] posed a danger to her subordinates, and failed to take appropriate steps to minimize the risk that her conduct might cause harm. There is no evidence before us to rebut those findings. It follows that the ICJ is in breach of its duty to protect its employees from (...) harassment."¹ She concluded by requesting two and a half years' salary for the harassment, EUR3,700 in reimbursement of her legal fees and EUR75,000 for the failings of the Court in the conduct of the investigation. She also asked the Court to provide an answer by 18 December 2017.

15. On 13 December 2017, in order to facilitate the consideration of Ms. Delaunay's brief in the light of the applicable texts, the Registrar asked Ms. Delaunay to indicate the legal basis for the proceedings that she intended to initiate, the financial claims made and the deadline imposed by her for the Registrar's answer.

16. On 19 December 2017, following an email exchange in which Ms. Delaunay stated her view that she had provided all the necessary information and the Registry stated its view that not all information necessary to proceed with her case had been supplied, Ms. Delaunay requested that the Registrar reconsider the implicit "negative response" to her request for compensation. On 7

¹ *Cohen* 2017-UNAT-716, para. 38.

February 2018, Ms. Delaunay informed the Conciliation Committee of the implicit rejection of her claim. In the absence of a conciliation procedure, on 18 January 2019 the Committee issued its report, in which it recommended the payment of USD1,000 “for the moral damage [she had] suffered as a result of the Administration having exceed[ed] her consent in the handling of her personal information”.

17. On 18 February 2019, Ms. Delaunay filed an appeal and on 23 April 2019, the Registrar of the Court filed his answer. On 2 May 2019, Ms. Delaunay requested authorization to reply to the ICJ answer. On 10 May 2019, the Registrar of the Court asked the Appeals Tribunal to declare his answer receivable.

Submissions

Ms. Delaunay’s Appeal

18. The Conciliation Committee found that Ms. Delaunay had indeed been a victim of harassment. However, it erred in not considering the report of the panel of 22 January 2014. The Appeals Tribunal did, of course, determine that “the report and the findings therein cannot be taken into consideration”. However, this conclusion is only true with regard to Ms. Rangel in connection with the disciplinary case against her that had led to her dismissal. The Registry made an error in the composition of the panel in question. It cannot now invoke the Tribunal’s conclusion against Ms. Delaunay. Having made the error, the Registry is not entitled to invoke the breach of the relevant Secretary-General’s bulletin (ST/SGB/2008/5) to exclude the report in question from consideration in the present case. This point is even more important in the light of the investigators’ clear conclusions regarding Ms. Rangel’s prior conduct and the lack of response by the Registry.

19. Ms. Delaunay was deeply distressed by the attacks and suffered for a long time as a result. In addition, Ms. Rangel subsequently seriously defamed Ms. Delaunay within the Court for four months, with no response from the Registry. Ms. Delaunay claims that the actions of Ms. Rangel between 5 June 2013 and 11 September 2013 amounted to defamation. Ms. Delaunay refers to the conclusions of the panel and to the findings of the Conciliation Committee.

20. The negligence of the Administration is demonstrated by various materials, testimonies, reports and judgments of the Appeals Tribunal from 2015 and 2017. The panel assigned to the case of Ms. Delaunay determined that:

Ms. Rangel's repeated abusive conduct towards Dr. Delaunay is not an isolated case. The investigation panel was informed of a number of other harassment complaints against Ms. Rangel made by staff members of the Court that had been brought to the attention of the [Court] Administration. This report should therefore be read in the light of previous investigation reports in order to have the full picture of how Ms. Rangel behaved towards several ICJ staff members for years.

21. The panel that investigated the complaint of Ms. Cohen against Ms. Rangel had already reached the same conclusion in its report of 24 October 2013, in which the panel members "unanimously regretted that there had never been an investigation into any of those instances". Lastly, recently, the Appeals Tribunal (with which Ms. Cohen filed an application requesting compensation) determined that "both the investigative panel and the Conciliation Committee found that senior officials had prior knowledge that Ms. Cohen's manager [Ms. Rangel] posed a danger to her subordinates, and failed to take appropriate steps to minimize the risk that her conduct might cause harm. There is no evidence before us to rebut those findings. It follows that the ICJ is in breach of its duty to protect its employees from ... harassment."

22. It was erroneous of the Conciliation Committee to uphold the position of the Registry that it had mandated Ms. Delaunay "to monitor Ms. Rangel in order to prevent the occurrence of similar incidents that could have a negative impact on the work environment and members of her department" and that Ms. Delaunay could not complain about the fact that this monitoring for which she was allegedly responsible did not produce effective results. First, there is no material evidence whatsoever that the Registry entrusted Ms. Delaunay with "monitoring Ms. Rangel in order to prevent the occurrence of similar incidents". The Registry provided no email with instructions to that effect, nor any meeting reports or notes from that time.

23. Second, there had been allegations by staff of problems with Ms. Rangel for years, long before the recruitment of Ms. Delaunay to the Court in May 2009. In all that time, the senior staff of the Registry never took any measures. The Registry now responds by saying that it fulfilled its obligations to protect staff by seeking the services of the Medical Unit in 2010. Ms. Delaunay questions how seeking the services of the Medical Unit could possibly have been an appropriate and useful response to allegations of harassment made since at least 2006 by various staff members, with no action on the part of the Registry.

24. Third, at the time, Ms. Delaunay had no knowledge of the harassment allegations as listed in the note of the Personnel Division of 17 April 2013. This information was only brought to her

attention in April 2013, after she and Ms. Cohen had been attacked by Ms. Rangel. Ms. Delaunay wonders what the Registry is claiming that she, as the Court's doctor, should or could have done to prevent potential harassment at the Library, given that she had no knowledge of the prior context.

25. Fourth, "monitoring [staff] in order to prevent the occurrence of [potential disciplinary] incidents" is in no way part of the job description of the Senior Medical Officer of ICJ. Ms. Delaunay questions how a doctor can be expected to respond to potential disciplinary matters and whether a doctor is even equipped to "prevent the occurrence of incidents" that could affect Library staff, whereas the Registry could simply have revoked Ms. Rangel's managerial functions. When a problem arises, the Registry is responsible for taking managerial measures and/or investigating, and, when necessary, imposing punishments.

26. Fifth, there are contradictions within the Registry's position. On the one hand, it claims to have sought the services of Ms. Delaunay to prevent the occurrence of potential incidents caused by Ms. Rangel. On the other hand, at the same time, the Registry rewarded Ms. Rangel by granting her a continuing contract. Against this backdrop, it was predictable for the Registry that, without investigating and, where necessary, taking managerial or disciplinary measures, Ms. Rangel's conduct might continue. This happened with Ms. Cohen and Ms. Delaunay.

27. The Registry and the Conciliation Committee argue that the Registry took the necessary measures to protect the Library staff and that the incident and harassment of which Ms. Delaunay was the victim would not have been predictable because Ms. Delaunay was from outside the Library. Such reasoning ignores the reality of the law and the facts. The Registry's reasoning is explicitly based on the erroneous position that harassment can only be inflicted by a supervisor on his or her subordinates. In addition, it portrays the Library as an isolated entity within the Court, with no link to other staff, departments and bodies. The reality is that the Library is not a quarantined unit, cut off from the rest of the Court. It interacts with many sections and individuals. Moreover, there are only around 120 staff members at the Court and everyone interacts professionally with everyone. The Registry's protection obligation is therefore not limited to protecting only the staff of the small unit represented by the Library. The Registry had the obligation to protect all staff who might come into contact with Ms. Rangel, regardless of where they worked or their rank.

28. In any case, the incident and harassment of which Ms. Delaunay was the victim are directly linked to the operations of the Library. Ms. Delaunay was responsible for monitoring Library staff

on the same basis as all Court staff. She was thus in professional contact with Ms. Rangel. It is in this precise context that Ms. Rangel came to attack Ms. Delaunay when Ms. Delaunay informed her of the restrictions on Ms. Cohen's return to work, which Ms. Rangel was required to implement as Ms. Cohen's manager.

29. In view of all the prior allegations, if the Registry had taken the necessary follow-up action in response to the memorandum of the Head of Personnel of 13 July 2010 and had revoked all Ms. Rangel's managerial functions, Ms. Rangel would no longer have been Ms. Cohen's supervisor and Ms. Rangel would not have come to attack and then harass Ms. Delaunay.

30. With regard to the composition of the investigative panel and the spread of defamatory allegations outside the Court, the Appeals Tribunal determined in response to Ms. Rangel's appeal that "when he appointed individuals from outside the ICJ to ... the investigation, the Registrar breached ... bulletin ST/SGB/2008/5 [on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority]". Whatever the quality and experience of the appointed investigators from the International Tribunal for the Former Yugoslavia (ICTY), this caused the defamatory allegations of which Ms. Delaunay was the victim to spread beyond the Court: external investigators were informed and the ICTY authorities were necessarily consulted. This in itself caused harm to Ms. Delaunay.

31. Ms. Delaunay requests that the Appeals Tribunal consider the fact that the burden of proof was reversed in her case. The burden of proof lies with the person making an allegation. This is even more true in the case of defamation, as it is obviously difficult to prove a non-existent fact. The Registrar knew this, but nevertheless asked Ms. Delaunay to prove that Ms. Rangel's allegations were unfounded. The Registry was aware that Ms. Delaunay did not agree with this approach. According to the Head of Personnel, the Deputy Registrar proposed that either the Deputy Registrar or Ms. Delaunay ask Ms. Delaunay's supervisor at EPO to provide a statement. Consequently, Ms. Delaunay felt compelled to explain to her supervisor at EPO what was happening at ICJ. Ms. Delaunay obtained the statement of her supervisor on 24 September 2013. She also obtained a statement from the French Medical Board on 18 September 2013.

32. In spite of this, the Deputy Registrar persisted in obtaining additional proof from EPO. Following insistent emails from the Deputy Registrar, Ms. Delaunay felt compelled to authorize the Registrar to call EPO. The Deputy Registrar clearly understood that the authorization to contact EPO applied only to the Registrar. However, in January 2014, it

became clear that the investigators from ICTY had also contacted EPO headquarters in Munich. Ms. Delaunay was summoned by the Vice-President of EPO, to whom she was required to explain herself and provide materials relating to the situation that had led the investigators from ICTY to contact EPO. Ultimately, the Vice-President of EPO confirmed by email to the investigative panel on 20 January 2014 that there were no complaints against Ms. Delaunay with his organization.

33. Thus, as at 2013, (a) the Registry was perfectly aware of the prior allegations against Ms. Rangel; (b) the Registry was aware of the statements made by Ms. Rangel on 13 March 2013 indicating her intention to “destroy” Ms. Delaunay; (c) Ms. Rangel had provided no proof of her allegations despite the two express requests by the Registry; (d) Ms. Rangel had already refused at least twice to be heard by the investigators from ICTY, proof that she had no evidence to support her false allegations; and (e) Ms. Delaunay had already provided two documents attesting to her professionalism. ICJ should therefore have exercised caution and concluded that, as Ms. Rangel had in no way proven her allegations, her statements were defamatory.

34. The intrusive investigation acts by the Court with EPO concerning Ms. Delaunay’s professional integrity were improper, harmful and caused the harassment of Ms. Delaunay to spread externally. The Conciliation Committee recognized that there was damage but clearly underestimated this damage. The humiliation and stress generated were even more serious given that Ms. Delaunay’s work contract at EPO was subject to renewal and competition that year. She also observed changes in the behaviour of some individuals at EPO towards her. In total, Ms. Delaunay is requesting EUR25,000 in damages on this ground.

35. Given the extent of the personal and professional harm suffered by Ms. Delaunay, the trauma of the attack and the stress caused, the duration of the harassment and the serious defamatory allegations communicated to many ICJ staff members and Judges over a period of several months, Ms. Delaunay is requesting two and a half years’ salary (considering that she worked under a 25 per cent arrangement but suffered 100 per cent harm). She is also requesting EUR3,700 in reimbursement of the legal fees that she spent to defend herself during the investigation conducted within ICJ.

36. Ms. Delaunay also requests ICJ to produce the memorandum of 13 July 2010 (drafted by the Head of Human Resources) containing the handwritten response of the Registrar.

Request of Ms. Delaunay for authorization to reply to the ICJ answer

37. Ms. Delaunay requests authorization to reply to the ICJ answer. The ICJ answer was submitted late, on 23 April 2019, and it is therefore not receivable. The Registry received the complaint on 19 February 2019. It should therefore have made its submission by Monday, 22 April 2019, which was a working day at the Appeals Tribunal. The holidays that a party gives itself are irrelevant. The working days of the Appeals Tribunal are what matter.

38. Ms. Delaunay also addresses some of the allegations made by the Registry in the ICJ answer.

Request of ICJ for the Appeals Tribunal to find its answer receivable

39. ICJ requests that the Appeals Tribunal either deem its answer to have been submitted by the deadline or, failing that, extend the deadline. The Registry of the Appeals Tribunal sent Ms. Delaunay's appeal to the ICJ Registry by email on 19 February 2019, at 8.02 p.m. local time in The Hague. The ICJ Registry received the email on 20 February 2019; therefore, notification of the appeal, in accordance with article 9 (4) of the Rules of Procedure of the Appeals Tribunal ("Rules of Procedure"), was not complete until that date. Accordingly, the final day of the 60-day period for filing an answer was 21 April 2019. Given that 21 April 2019 was a Sunday and that Friday, 19 April 2019 and Monday, 22 April 2019 were official holidays at ICJ, the deadline was not until Tuesday, 23 April 2019, which was the day that ICJ submitted its answer.

40. ICJ believed in good faith that the deadline was 23 April 2019. It seems reasonable that the official holidays of the party would be factored in to the deadline set. In addition, extending the deadline would be in the interests of justice, especially since acquiescing to the ICJ Registrar's request would not be prejudicial to Ms. Delaunay. Moreover, the ICJ answer will help the deliberations of the Appeals Tribunal and will not delay the conclusion of the case.

Considerations

Preliminary considerations

Request of ICJ for the Appeals Tribunal to find its answer receivable

41. According to article 9 (3) of the Rules of Procedure, the answer to an appeal must be submitted within 60 days of the date on which the Respondent received the appeal transmitted by

the Registrar. The rules for the calculation of time limits are set out in article 29 of the Rules of Procedure, which stipulates that the time limits refer to calendar days, but shall not include the day on which the appeal was received and shall include the next working day when the last day of the period is not a working day.

42. The ICJ Registry argues that the appeal was sent by the Appeals Tribunal on 19 February 2019 at 8.02 p.m. local time in The Hague, but that the Registry only received it the following day, which made 20 February 2019 the first day of the 60-day period for submitting an answer. However, in the light of Practice Direction No. 1, section I.A, paragraph 4, this reasoning is erroneous. According to paragraph 4, which relates to the filing of documents with the Appeals Tribunal, filings transmitted electronically by 11.59 p.m. New York time shall be deemed as filed on that calendar day.

43. Granted, paragraph 4 does not cover the receipt of documents sent by the Registry, but they do support two conclusions: (a) it is the time in New York, where the Appeals Tribunal has its headquarters, and not the time in The Hague, that matters when it comes to calculating deadlines; and (b) filings transmitted electronically by 11.59 p.m. are considered to have been filed on that day. Given that the appeal was sent electronically on 19 February 2019 at 8.02 p.m., it is considered to have been transmitted that day. Accordingly, the 60-day period began the following day, meaning that the deadline for submitting the answer was 20 April 2019, not 22 or 23 April 2019, as argued by the ICJ Registry.

44. In any case, the fact that 22 April was an official holiday in The Hague would not have affected the deadline for the submission of the answer by the ICJ Registry. What matters are the official holidays of the tribunal competent to receive the relevant document.² The Appeals Tribunal has repeatedly emphasized the need for statutory time limits to be observed strictly,³ even in the case of *de minimis* delays,⁴ which was not the case in this instance.

45. Furthermore, the Appeals Tribunal considers that there is insufficient evidence to support the granting of an extension of the deadline. In the absence of any factors that prevented or significantly hampered the timely submission of the answer, the ICJ Registry should have asked for the deadline to be extended before its expiration, which was not the case.

² *Kataye* 2018-UNAT-835, para. 18.

³ *Ali* 2017-UNAT-773, para. 13, and *Shehadeh* 2016-UNAT-689, para. 19.

⁴ *Rüger* 2016-UNAT-693, para. 18.

46. Accordingly, the answer submitted by the ICJ Registrar to the appeal filed by Ms. Delaunay is not receivable.

Request for authorization to reply to the ICJ answer

47. In the light of the above, Ms. Delaunay's request is not applicable.

Jurisdiction of the United Nations Appeals Tribunal

48. The competence of the Appeals Tribunal to hear the present case is established in article 2 (10) of the Statute of the Appeals Tribunal, which states that:

The Appeals Tribunal shall be competent to hear and pass judgment on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Appeals Tribunal, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgments of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal. Such special agreement shall also contain other provisions required for the Appeals Tribunal to carry out its functions vis-a-vis the agency, organization or entity. Such special agreement may only be concluded if the agency, organization or entity utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law. In such cases remands, if any, shall be to the first instance process of the agency, organization or entity.

49. ICJ signed an agreement accepting the jurisdiction of the Appeals Tribunal following correspondence between the President of ICJ and the Secretary-General of the United Nations in 2011.

50. ICJ recently accepted the jurisdiction of the entire internal justice system of the United Nations through an exchange of letters between the Secretary-General of the United Nations and the ICJ Registrar dated 17 December 2018 and 16 January 2019. However, the present case was

referred to the Conciliation Committee prior to this exchange of letters. Accordingly, the applicable dispute resolution process is the one set out in the letters dated 20 April 2011 and 10 June 2011, which stipulate that the contested decision must first be submitted to the Conciliation Committee and that if the amicable dispute resolution process fails, the staff member can contest the decision before the Appeals Tribunal.⁵

Compensation requested for the alleged harm

51. In its report, the Conciliation Committee concluded that Ms. Rangel's attempts to damage Ms. Delaunay's reputation, starting from the incident of 13 March 2013 and in the ensuing months, did indeed constitute harassment.⁶ The Committee examined the definition of harassment contained in the relevant Secretary-General's bulletin (ST/SGB/2008/5) and considered the facts of the case in the light of that definition. The Committee cited the report of the Head of the Security and General Assistance Division of 27 May 2013, as well as eyewitness statements and the aggressor's own account of what happened.⁷ The Committee also took into account the aggressive email sent by Ms. Rangel to Ms. Delaunay on the day of the incident.

52. The Committee found that Ms. Delaunay had been a victim of harassment as a result of Ms. Rangel's conduct: Ms. Rangel, in her emails following up on her complaint of 24 May 2013, repeatedly copied the President of the Court, the Registrar, the Deputy Registrar, Judges and the Staff Committee, among others, as evidenced by her email of 28 August 2013. According to the Committee, this caused the allegations against Ms. Delaunay to spread as if they were established facts, even though they had never been supported by any evidence whatsoever. The Committee concluded that this resulted in the defamation and harassment of Ms. Delaunay.⁸ The Committee's conclusion has not been contested.

53. The Appeals Tribunal finds that the Conciliation Committee erred in its conclusion that the Administration did not breach its duty to protect Ms. Delaunay from harassment by Ms. Rangel.⁹ Once senior management became aware of Ms. Rangel's grave and repeated actions, it should have

⁵ Article 11 (5) and (7) of the previous Staff Regulations for the Registry.

⁶ Report of the Conciliation Committee, para. 77.

⁷ *Id.*, para. 74.

⁸ *Id.*, para. 76.

⁹ *Id.*, para. 91. See also *Cohen* 2017-UNAT-716, para. 38 ff.

predicted that such conduct might continue, including beyond the confines of the Library, as was the case with the incident of 15 March 2010, in which the Deputy Registrar himself was involved.

54. The incident of 15 March 2010 merits examination. Given the seriousness of the incident and the key details contained in the report on the incident prepared by the ICJ Security Coordinator, the Conciliation Committee cited that report *in extenso* in its own report.¹⁰ The Appeals Tribunal is not, therefore, entirely in agreement with the assessment that following the incident of 15 March 2010, only measures of a medical nature, to monitor Ms. Rangel's health, were required. That is not to say that disciplinary action should definitely have been taken; given the nature of the incident, a medical approach was no doubt warranted (indeed, Ms. Rangel subsequently went on sick leave). However, the Administration failed to take managerial action, which was also essential in this case. Proactive management is central to preventing conflicts and maintaining good relationships in the workplace.

55. It was for these reasons that the Head of the Administrative and Personnel Division of the Court sent a memorandum to the Registry on 13 July 2010, in which he recalled a number of incidents and disagreements related to the management of the Library stretching back to 2006 and, with a view to preventing the occurrence of further incidents similar to the one of 15 March 2010, recommended that Ms. Rangel no longer be given any staff supervisory responsibilities upon her return to work. The memorandum concluded with an appeal for senior management to take action, in order to prevent the occurrence of similar incidents.

56. When Ms. Delaunay, who was responsible for monitoring Ms. Cohen's return to work (by then, the Appeals Tribunal had ruled that Ms. Cohen had been harassed by Ms. Rangel), sent Ms. Rangel, who was still the Head of the Library at that time, an email on 13 March 2013 informing her of the restrictions attached to Ms. Cohen's return to work, the potential for conflict was high, and indeed the conflict would go on to last for several months, with news of it spreading widely, as noted by the Conciliation Committee in its report.¹¹

57. Following the violent incident of 13 March 2013, which was not the first such incident, the Administration decided that it was sufficient to initiate an amicable dispute resolution procedure (which failed because Ms. Rangel did not agree to it). Then, in September 2013, as a result of the allegations made by Ms. Rangel, the Administration launched an investigation, the findings of

¹⁰ Report of the Conciliation Committee, para. 86.

¹¹ *Id.*, para. 77.

which were later invalidated by the Appeals Tribunal owing to the errors in the composition of the panels.

58. For months, no practical measures were taken to remedy the situation. On the contrary, during this period, Ms. Delaunay was the victim of further defamatory emails, in particular the email of 28 August 2013 that was copied to the senior management of the Court.¹² At the same time, Ms. Delaunay was the victim of false allegations relating to the French Medical Board and EPO, which led to her being summoned before the President of EPO to explain herself. The Administration should have waited to hear from the French Medical Board and EPO, which sent letters on 18 September 2013 and 24 September 2013, respectively, attesting to her professionalism and confirming that there were no complaints against her. Even after receiving the letters, the external investigators contacted both organizations in connection with the investigation into Ms. Delaunay, despite the fact that Ms. Delaunay had only authorized the Registrar of the Court to do so. The investigators did not submit their reports until January 2014; comments thereon were submitted in March 2014.¹³

59. It follows that the measures taken by the Administration were not sufficient to remedy the situation. Even if one considers that the Administration had a duty to uphold Ms. Rangel's rights, in the light of her repeated acts of aggression and the severity of the situation as a whole, the Administration should have applied section 2.2 of the Secretary-General's bulletin (ST/SGB/2008/5), pursuant to which it has the duty to take all appropriate measures towards ensuring a harmonious work environment, and to protect its staff from exposure to any form of prohibited conduct, through preventive measures and the provision of effective remedies. When prevention fails, section 5.3 of the bulletin stipulates that managers and supervisors have the duty to take prompt and concrete action in response to allegations of prohibited conduct, and that failure to take action may be considered a breach of duty and result in administrative or disciplinary action. These provisions are evidence of the Organization's commitment to maintaining good relationships in the workplace.

¹² *Id.*, para. 7.

¹³ The decision to terminate Ms. Rangel's employment, on the basis of these reports, was later overturned by the Appeals Tribunal, owing to the procedural irregularities during the disciplinary proceedings against her (*Rangel* 2015-UNAT-535/Corr.1).

60. The Administration clearly failed in its duty to protect Ms. Delaunay against discrimination and harassment. The conclusion of the Conciliation Committee on that count was erroneous¹⁴ and must be corrected, given that the Administration's negligence has been proven.

Compensation for the damage suffered

61. The Conciliation Committee recommended that Ms. Delaunay be awarded a symbolic amount of USD1,000 for the damage suffered as a result of the inappropriate handling of her personal information. The Committee based this symbolic award on the fact that the damage suffered by Ms. Delaunay was lessened by the final conclusion of the investigative panel, which found that Ms. Delaunay's conduct had indeed been professional.

62. In the light of the facts established above, the Appeals Tribunal partially concurs with Ms. Delaunay's request for an increase in the amount of compensation awarded, and awards her a lump sum of USD12,500, which includes compensation for the damage done to her reputation during the course of the investigation. In calculating this amount, the Appeals Tribunal has taken into account the fact that Ms. Delaunay took a long time, following the occurrence of the most serious incidents, to file a claim for compensation with the Registry.

Reimbursement of legal fees – material harm

63. Given that the Conciliation Committee acknowledged in its report that Ms. Delaunay suffered harm as a result of the Administration's flawed handling of the allegations against her, it follows that the legal costs she incurred to defend herself before the Administration were also the result of this flawed handling. Since the accessory follows the principal, the appeal must be allowed on this count, given that Ms. Delaunay has provided proof of the expenses she incurred as a result of the Administration's improper actions.

64. The Tribunal therefore orders the Administration to reimburse Ms. Delaunay EUR3,630 in legal fees, on the basis of the receipt provided by Ms. Delaunay.

65. The amounts awarded must be paid within 60 days of the date of publication of the present Judgment, failing which they shall be increased in line with the United States prime rate.

¹⁴ Report of the Conciliation Committee, para. 91.

Judgment

66. The appeal is granted in part and Ms. Delaunay is awarded compensation for moral damage in the amount of USD12,500, as well as EUR3,630 in reimbursement of her legal fees. The amounts awarded must be paid within 60 days of the date of publication of the present Judgment, failing which they shall be increased in line with the United States prime rate.

Original and Authoritative Version: French

Dated this 28th day of June 2019 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

Entered in the Register on this 19th day of August 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar