

2019-UNAT-939, Delaunay

UNAT Held or UNDT Pronouncements

UNAT held that the ICJ had breached its duty to protect the staff member against harassment by another staff member. UNAT held that, once senior management had become aware of the incidents, it should have envisaged that similar incidents could happen in the future, and it failed to take the appropriate measures to protect its staff. UNAT awarded USD 12,500 to compensate the staff member for the harm suffered, and especially the harm to her reputation during the course of the investigations. UNAT also awarded 3,630 Euros in legal fees.

Decision Contested or Judgment/OrderAppealed

ICJ Conciliation Committee's Report and ICJ Registrar's Decision: From 2009, the staff member served as a doctor at the ICJ under a 25 per cent part-time arrangement. Concurrently, she served as a doctor on a contractual basis at the European Patent Office (EPO). In 2010, she informed the Security Service of the Registry of a "medical emergency situation" involving the Head of the ICJ Library. In March 2013, she informed the Registrar of a second incident again involving the Head of the Library. The Head of the Library in turn complained that the staff member had interfered in the management of her service, that she had failed to provide medical assistance to a staff member visibly in distress, and breached medical ethics. She also alleged that the medical doctor was the subject of similar complaints at EPO and the French Medical Board. She followed up several times, each time copying others, including the ICJ President and the Staff Committee on her correspondence. In September 2013, the Registry informed the staff member of the allegations against her and of the Registrar's decision to launch an investigation into the allegations. She responded in order to "formally complain" about harassment, requesting that appropriate measures be taken and "a disciplinary or investigative process" be undertaken. Subsequently, she submitted a formal complaint about the defamation and slander committed by the Head of the Library. That same day, the Registrar mandated a panel to investigate the allegations made by the staff

members against each other. In January 2014, the panel submitted its report to the Registrar concluding that the Head of the Library had verbally assaulted the medical doctor in March 2013, that nearly all of the allegations against her had not been supported by any evidence and had been shown to be deliberate lies and, consequently, the Head of the Library had harassed the medical doctor. In April 2014, the Registrar informed the staff member that he had concluded that the Head of the Library had committed misconduct by her involvement in acts of harassment and defamation against her and that he had decided to take disciplinary action against the Head of the Library by terminating her employment. The Registry also informed the staff member that most of the allegations by the Head of the Library against her had not been substantiated. In November 2017, the staff member submitted a document to the Registrar in which she alleged that senior officials had prior knowledge that the Head of the Library posed a danger to her subordinates and that the ICJ was in breach of its duty to protect its employees from harassment. In January 2019, the Conciliation Committee issued its report in which it recommended payment of USD 1,000 “for the moral damage [she had] suffered as a result of the Administration having exceeded her consent in the handling of her personal information”.

Legal Principle(s)

The Organisation has a duty to protect its staff from harassment. A failure to fulfill this duty may lead to an award of compensation.

Outcome

Appeal granted in part

Outcome Extra Text

Only financial compensation; Only financial compensation.

Full judgment

[Full judgment](#)

Applicants/Appellants

Delaunay

Entity

ICJ

Case Number(s)

2019-1235

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2019

Language of Judgment

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Harassment (non-sexual)

Applicable Law

Laws of other entities (rules, regulations etc.)

- ICJ Former Staff Regulations, Regulation 11.5
- ICJ Former Staff Regulations, Regulation 11.7

Secretary-General's bulletins

- ST/SGB/2008/5

UNAT Statute

- Article 2.10

Related Judgments and Orders

2017-UNAT-716

2018-UNAT-835

2017-UNAT-773

2016-UNAT-689