

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it three appeals filed by Ms. Juliana Rangel against:
 - a) The declaration by the Conciliation Committee of the International Court of Justice (Conciliation Committee and ICJ, respectively) of 28 April 2014, finding that her complaints of 30 July 2013, 8 November 2013, 19 December 2013 and 16 January 2014 were non-receivable (Case No. 2014-611);
 - b) The decision of the Conciliation Committee of 30 September 2014 affirming the placement of Ms. Rangel on administrative leave with pay (Case No. 2014-674); and
 - c) The decision of the Conciliation Committee of 28 November 2014 affirming the termination of Ms. Rangel and her separation from service (Case No. 2015-689).

of the Library staff, Ms. Cohen, an indexer then on sick leave. She telephoned the Chief Medical Officer without success. Ms. Rangel then went to the Chief Medical Officer's office, knocked on the door, and without waiting for a response, she entered the latter's office. According to the Chief Medical Officer, once

8. Between 30 July 2013 and 16 January 2014, Ms. Rangel filed four complaints with the Conciliation Committee against the ICJ Registrar's refusal to refer one of the claims against her to the United Nations Ombudsman's Office or the ICJ Judges, his refusal to annul the proceedings of Panel One, his appointment of the two ICTY security officers on Panel Two, and the ICJ Registrar's alleged actions to cover up the mistakes/omissions committed by the ICJ Chief Medical Officer.

9. In its report of 28 April 2014, the Conciliation Committee rejected Ms. Rangel's four complaints in their entirety. It determined that there was no appealable administrative decision when the ICJ Administration advised Ms. Rangel against seeking the intervention of the United Nations Ombudsman's Office or the ICJ Judges, that it was within the discretion of the ICJ Registrar not to annul the proceedings of Panel One and not to replace Mr. Daman, that the appointment of the two ICTY security officers on Panel Two did not violate Ms. Rangel's contract of employment or conditions of service, and that there was no merit in Ms. Rangel's claims that the ICJ Administration had covered up the mistakes/omissions allegedly committed by the ICJ Chief Medical Officer, or that she had been subjected to discrimination, harassment and abuse of authority.

Case No. 2014-674: Placement on Administrative Leave

10. As noted above, in the wake of the complaints filed by Ms. Cohen, Ms. Rangel and the ICJ Chief Medical Officer, the ICJ Registrar established Panel One and Panel Two.

11. On 9 January 2014, Panel One filed its report. It found Ms. Cohen's allegations of harassment and abuse of authority against Ms. Rangel were "well founded" and "corroborated by clear and convincing evidence". It determined that Ms. Rangel had subjected Ms. Cohen to harassment and thereby abused her position of authority.

12. On 22 January 2014, Panel Two submitted its report. It found the complaint of harassment lodged by the ICJ Chief Medical Officer against Ms. Rangel established. It determined that Ms. Rangel had created an intimidating and hostile environment for the ICJ Chief Medical Officer and had moreover launched a smear campaign against the latter within and outside of the ICJ. Regarding Ms. Rangel's allegations that the ICJ Chief Medical Officer had failed to provide medical assistance to her when she was distressed on 13 March 2013 and had breached medical ethics principles in 2011, Panel Two found them

either baseless or false. In the opinion of Panel Two, Ms. Rangel's actions had caused reputational damage and financial loss to the

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Ms. Rangel had provided and the jurisprudence of the administrative tribunals that she had cited. It acted outside of its mandate when it passed judgment on the merits of her claims, instead of limiting itself to conciliation.

22. Ms. Rangel requests that the Appeals Tribunal declare that she was the victim of discrimination, psychological harassment and abuse and misuse of authority, and that the ICJ Registrar had failed to discharge his duties. She also requests that the Appeals Tribunal order the ICJ to pay her an unspecified amount of damages in compensation for the exceptional damage and suffering that she had to endure for a number of years, especially during the period from March 2013 to April 2014.

Case No. 2014-674: Placement on Administrative Leave

23. Ms. Rangel claims that the Conciliation Committee was “inconsistent, either as result of its complicity with the Administration or of

Committee never criticized the ICJ Registrar for terminating her service without awaiting the completion of the procedural period for conciliation.

27. Many passages of the Conciliation Committee's report reveal that her personality – perhaps even her Latin American origins – was being judged, in violation of the texts governing the United Nations and the obligations of its staff members. In this regard, Ms. Rangel informs the Appeals Tribunal that an ICJ Judge is available to provide information by telephone about her as a person and about her work.

28. Ms. Rangel makes submissions as to the hand delivering of documents to her residence by ICJ staff members in diplomatic vehicles and the fact that staff members talked to her neighbours in her absence about her private life while she was placed on administrative leave. She also refers to the Dutch police visiting her residence on 2 December 2014 and her subsequent fear for her safety in her own home in The Hague. She claims that all those events show the continuing harassment and abuse or misuse of authority against her by the ICJ Registrar.

29. Ms. Rangel requests that the Appeals Tribunal rescind the Conciliation Committee's report, order the ICJ Registrar to pay her three years' salary as moral damages, six years' salary as material damages and one year's salary for the errors/irregularities committed by the Conciliation Committee.

The ICJ Registrar's Answers

Case No. 2014-611: Investigation

30. Ms. Rangel's request for an oral hearing should be rejected. There is no need for such a hearing due to the straightforward nature of the present case and for reasons of judicial economy.

31. Ms. Rangel has failed to identify, as required on appeal by the Statute of the Appeals Tribunal, errors in fact and in law committed by the Conciliation Committee. She has filed with the Appeals Tribunal the original complaints that she had filed with the Conciliation Committee. She has failed to provide a critical analysis of the report of the Conciliation Committee and has merely repeated the arguments that she made before that committee. What she is seeking is beyond the competence of the Appeals Tribunal. The defects in the present appeal call its receivability into question.

32. If the Appeals Tribunal considers the present appeal receivable, the Respondent submits, on the merits, that Ms. Rangel's allegations about the lack of independence and impartiality of the Conciliation Committee, the threats against her witnesses and the possible undue influence on the witnesses are vague, lack specificity and are baseless.

33. The Respondent requests that the Appeals Tribunal declare the present appeal

of 2 December 2014 in her residence, which arose after the Conciliation Committee had issued its report.

38. Ms. Rangel's criticism of the Conciliation Committee's report is founded on non-proven allegations, and not based in law. She has failed to provide concrete evidence in support of her claims or allegations.

39. The Appeals Tribunal is requested to reject Ms. Rangel's appeal in its entirety.

Considerations

40. The Appeals Tribunal has considered the parties' written submissions and decided that an oral hearing is not necessary, since it would not assist in the expeditious and fair disposal of the case.²

41. Subsequent to the issuance of Judgment No. 2015-UNAT-531 (*Rangel v. Registrar of the International Court of Justice*) on 17 April 2015, Ms. Rangel filed two new motions: "Motion for transmission of recent information having an impact on UNAT on-going cases (UNAT-2014-611, 674 and 689)", which she filed on 27 April 2015, and "Motion for the transmission of written evidence regarding the misrepresentation of facts by the ICJ Registrar in his response dated 15 May 2015 notified on 22 May 2015", which she filed on 26 May 2015. These two motions will not be admitted to the case file, because the documents or materials that Ms. Rangel sought to adduce under these motions will not assist us in our consideration of the mw()TjETeadoTw[(n) cor c432 0 TDdr (35nti)-75(Uh4.5(n).d-(n).TD-.00A)-5.9

44. The Appeals Tribunal has before it three decisions of the Conciliation Committee: the first regarding the establishment of the two inquiry panels, Panel One and Panel Two; the second in respect of the decision to place Ms. Rangel on administrative leave with pay, and the third concerning the decision to separate her from service.

45. Ms. Rangel is a qualified librarian who performed her duties satisfactorily from 1 June 2003 until 13 March 2013. She was granted a continuing appointment in October 2012.

46. On 13 March 2013, an incident occurred between Ms. Rangel and the ICJ's Chief Medical Officer regarding Ms. Cohen, the indexer working in the Library headed by Ms. Rangel. This incident escalated. In May 2013, the indexer submitted a complaint of harassment and abuse of authority against Ms. Rangel under ST/SGB/2008/5.

47. Ms. Rangel reacted four days later by submitting a complaint against the Chief Medical Officer for failing to provide her with medical assistance when she was visibly distressed, and for alleged violations of medical ethics dating back to 2011.

48. As a general principle, the instigation of disciplinary charges against a staff member is the privilege of the Organization itself, and it is not legally possible to compel the Administration to take disciplinary action. The Administration has a degree of discretion as to how to conduct a review and assessment of a complaint and may decide whether to undertake an investigation regarding all or some of the allegations.³ Sections 5.14 and 5.15 of ST/SGB/2008/5 read as follows:

5.14 Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, the responsible office shall promptly appoint a panel of at least two individuals from the department, office or mission concerned who have been trained in investigating allegations.

investigation or result in intimidation or retaliation shall not be disclosed to the alleged offender at that point. This may include the names of witnesses or particular details of incidents. All persons interviewed in the course of the investigation shall be reminded of the policy introduced by ST/SGB/2005/21.^[4]

49. By way of preliminary observation, the Appeals Tribunal finds that notwithstanding that there had been no complaint made by staff members against Ms. Rangel prior to the incident of 13 March 2013, the ICJ Registrar correctly determined that the issues raised in Ms. Cohen's complaint were sufficient to give him reason to believe that misconduct may have occurred and thereby justified the decision to commence a fact-finding investigation.

Panel One

50. Panel One dealt with the complaint lodged by Ms. Cohen, the indexer, against Ms. Rangel. On 9 January 2014, it finalized its report.

51. There is no basis for Ms. Rangel's complaints regarding Panel One. The ICJ Registrar applied ST/SGB/2008/5 when he constituted Panel One. All of its members had been trained in investigating allegations of prohibited conduct at the Organization for the Prohibition of Chemical Weapons.⁵

52. The Chief of the ICJ Security Service, a member of Panel One, had previously written a report (27 March 2013 report) on the incident of 13 March 2013. That report included the statements of Ms. Rangel, the Chief Medical Officer and the indexer, together with the evidence provided by three staff members of the ICJ Registry.

53. Panel One initially presented its first report on 24 October 2013. The ICJ Registrar subsequently requested a technical review of the report by the Chief of Security and Safety of the ICTY and the Chief Security Advisor of the United Nations for the Netherlands. While some of the comments made during the technical review were incorporated into the report, the findings and conclusions of Panel One remained unchanged.⁶

⁴ ST/SGB/2005/21 (Protection against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations), dated 19 December 2005.

⁵ Report of the Panel in the case of possible misconduct, dated 9 January 2014, para. 4.4 (Panel One Report).

⁶ Ibid., Introduction.

54. That Panel explained its mandate and determined it was to conduct a formal fact-finding investigation on Ms. Cohen's complaint, giving a full account of the facts ascertained.

55. It investigated the reason for the removal of Ms. Cohen from the Library's reading room. It considered Ms. Rangel's allegations in relation to Ms. Cohen's behaviour but did not find them to be persuasive "in light of the multiple opposite statements".⁷

56. Ms. Cohen complained that at one time she had wanted to discuss her physical and personal problems with Ms. Rangel, but was reduced by the latter to tears and apologies with humiliating questions. On another occasion, Ms. Rangel made reference to not extending Ms. Cohen's contract. Ms. Cohen was told during a meeting with Ms. Rangel and Ms. Cohen's direct supervisor that there would be suggestions for improvement of her performance in her performance appraisal system (PAS) report.⁸

57. Panel One opined that disagreement on work performance or other work-related issues were normally not considered harassment and consequently not dealt with under ST/SGB/2008/5. However, it did not believe that there were objective reasons to believe that Ms. Cohen's work performance was not satisfactory.⁹

58. It found that Ms. Rangel had "tasked Ms. Cohen repeatedly and disproportionately with physical tasks".¹⁰

59. It also found that Ms. Rangel had harassed another staff member, although the latter denied it.¹¹ Panel One noted five other known cases of former library staff members who had valid reasons to believe that they had been victims of harassment by Ms. Rangel.¹² Although Panel One was only mandated to investigate the facts giving rise to possible misconduct by Ms. Rangel vis-à-vis Ms. Cohen, it considered its mandate to include all the allegations expressed by Ms. Cohen, as, in its view, "harassment normally implies a series of incidents".¹³ Panel One found that there were strong factual indications that Ms. Cohen was not the first

⁷ *Ibid.*, para. 10.3.

⁸ *Ibid.*, paras. 12.2.1 and 12.2.2.

⁹ *Ibid.*, para. 13.3.

¹⁰ *Ibid.*, para. 14.3.

¹¹ *Ibid.*, para. 15.2.3.

¹² *Ibid.*, para. 15.2.4.

¹³ *Ibid.*, para. 15.3.

THE UNITED NATIONS APPEALS T

appoint a panel of at least two individuals from the department, office or mission concerned who have been trained in investigating allegations of prohibited conduct or, if necessary, from the Office of Human Resources Management roster.

64. The ICJ Registrar breached Section 5.14 of ST/SGB/2008/5, when he appointed individuals from outside the ICJ to conduct the investigation. In *Oummih*, we held that where an investigation is conducted by unauthorized persons, the investigation report and its findings cannot be taken into account.¹⁵ The same reasoning applies here.

Administrative leave with pay

65. Ms. Rangel contests the Administration's decision to place her on administrative leave while the Panel's investigation was ongoing. The Staff Regulations for the Registry, in Section 4(a) of Annex VI, provide that:

A staff member may be placed on administrative leave, subject to conditions specified by the Registrar, at any time pending an investigation concerning allegations of misconduct.

66. Accordingly, we dismiss her challenge in this regard.

67. Ms. Rangel has also not shown that she was prejudiced in her ability to defend herself by being placed on administrative leave. Thus, there is no merit to her claim regarding administrative leave.¹⁶

Disciplinary procedure

68. Following the investigation by Panels One and Two, the ICJ Registrar initiated disciplinary proceedings against Ms. Rangel.

69. Section 3(a) of Annex VI entitled "Disciplinary procedure applicable to Registry staff members" of the ICJ Staff Regulations for the Registry, reads:

... no disciplinary measure or non-disciplinary measure may be imposed on a staff member following the completion of an investigation unless he or she has

¹⁵ *Oummih v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-518, para. 38.

¹⁶ *Khan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-486, para. 51.

been notified, in writing, of the charges against him or her, and has been given the opportunity to respond to those charges.

70.

THE UNITED NATIONS APPEALS TRIBUNAL

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Lussick

(Signed)

Judge Chapman

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar