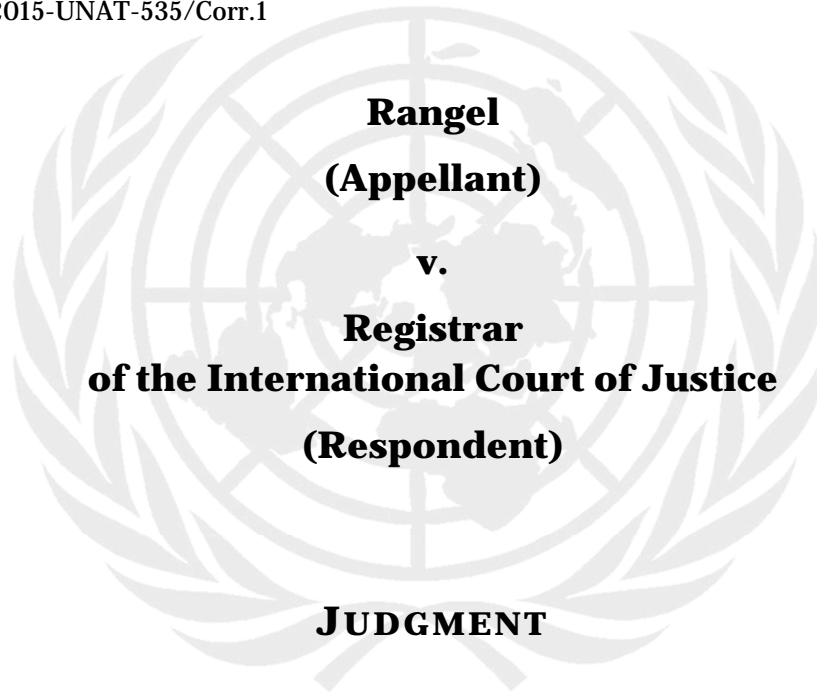




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2015-UNAT-535/Corr.1



**Rangel  
(Appellant)**

**v.**

**Registrar  
of the International Court of Justice  
(Respondent)**

**JUDGMENT**

---

**Before:** Judge Inés Weinberg de Roca, Presiding  
Judge Richard Lussick  
Judge Rosalyn Chapman

**Case Nos.:** 2014-611, 2014-674 & 2015-689

**Date:** 2 July 2015

**Registrar:** Weicheng Lin

---

**Counsel for Ms. Rangel:** Self-represented

**Counsel for ICJ:** Jean-Pele Fomété

**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).

Ms. Rangel filed her first appeal on 26 May 2014, her second appeal on 30 October 2014 and her third appeal on 31 December 2014.<sup>1</sup> The ICJ Registrar filed his answers to the three appeals on 11 August 2014, 22 January 2015 and 21 May 2015, respectively.

**Employment History**

2. Ms. Rangel joined the ICJ as Head of the ICJ's Documentation Service and Library at the P-4 level in June 2003. She was initially placed on fixed-term appointments and, in October 2012, she was granted a continuing appointment. Effective 13 February 2014, Ms. Rangel was placed on administrative leave. With effect from 11 April 2014, Ms. Rangel was separated from service, with compensation in lieu of notice.

**Facts and Procedure**

*Case No. 2014-611: Investigation*

3. On 13 March 2013, a verbal altercation took place between Ms. Rangel and the ICJ Chief Medical Officer in the latter's office. According to Ms. Rangel, in the morning of that day, she received a message from the Chief Medical Officer regarding the return to work of one

---

<sup>1</sup> As Ms. Rangel's third appeal was filed on 31 December 2014 during the 2014 winter recess, this case was registered after the 2015 New Year as 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 in her office, Ms. Rangel started yelling at her and calling her "a fool". Ms. Rangel told the Chief Medical Officer that the latter had disrupted the work of the Documentation Service and Library under her supervision and that Ms. Rangel would ruin her career. Ms. Rangel then left the Chief Medical Officer's office, "very angry", and in Ms. Rangel's own words, she "expressed her emotions in an inappropriate manner" by raising her voice at the Chief Medical Officer in the corridor.

4. After he was informed of the incident, the ICJ Registrar appointed Mr. Daman, Chief of Security Service, to conduct a fact-finding investigation. While the investigation was under way, Ms. Cohen, an indexer under Ms. Rangel's supervision, lodged a complaint of harassment and abuse of authority against Ms. Rangel under ST/SGB/2008/5 (Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority). On 24 May 2013, Ms. Rangel lodged a complaint against the Chief Medical Officer accusing the latter, *inter alia*, of "failing to provide medical assistance to a staff member visibly in distress".

5. On 27 May 2013, Mr. Daman submitted a final report on the 13 March 2013 incident. Ms. Rangel wrote to the ICJ Registrar highlighting her concern about procedural mistakes, including "omission of evidence in [her] favour" that Mr. Daman had allegedly found during his investigation.

6. The ICJ Registrar subsequently established two panels of inquiry, one to investigate Ms. Cohen's complaint of harassment and abuse of authority against Ms. Rangel (Panel One) and the other to investigate Ms. Rangel's complaint against the Chief Medical Officer and the Chief Medical Officer's 3 September 2013 complaint of harassment against Ms. Rangel (Panel Two). Panel One included Mr. Daman as its member. Panel Two consisted of two security officers working for the International Criminal Tribunal for the former Yugoslavia (ICTY).

7. Between September and November 2013, Ms. Rangel made requests to the ICJ Registrar that the proceedings of Panel One be annulled, that the appointment of Mr. Daman to Panel One be reconsidered, and that the appointment of the two ICTY security officers on Panel Two also be reconsidered. The ICJ Registrar did not accede to any of Ms. Rangel's requests.

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 ICJ Chief Medical Officer and had harmed the reputation of the ICJ.

13. Under cover of a letter dated 12 February 2014, the ICJ Deputy Registrar forwarded to Ms. Rangel the reports of Panel One and Panel Two and invited her to make final comments and observations thereon by 13 March 2014. In the same letter, he also advised Ms. Rangel of its decision to place her on administrative leave with pay effective 13 February 2014 "for an initial period of two months" so as to give her "the necessary time to prepare her response" to the two reports. The ICJ Deputy Registrar stressed that the administrative leave was "not a disciplinary measure" and asked Ms. Rangel to "seek prior approval from the Administration" in case she wished to enter the ICJ premises, leave the duty station or contact the library staff during the period of administrative leave.

14. By letter dated 10 March 2014, Ms. Rangel asked the ICJ Registrar to reconsider the decision to place her on administrative leave and to extend the deadline by which she should submit her comments and observations on the two reports. On 20 March 2014, Ms. Rangel was informed that the contested decision of administrative leave was maintained.

15. On 31 March 2014, Ms. Rangel filed an appeal with the Conciliation Committee against the decision to place her on administrative leave. In the appeal, she also challenged the two reports issued by Panel One and Panel Two, as, in her view, they were linked to the decision under appeal.

16. In its report dated 30 September 2014, the Conciliation Committee rejected Ms. Rangel's appeal. It found that the ICJ Administration did not do anything irregular when it notified Ms. Rangel of its decision to place her on administrative leave and took the related measures to implement that decision. In its view, the grounds for her placement on administrative leave were clear, the reasons proffered were legitimate and the wording of the 12 February 2014 letter was sufficiently precise.

*Case No. 2015-689: Termination*

17. While Ms. Rangel was on administrative leave, by letter dated 3 April 2014, the ICJ Registrar informed her of his decision to impose on her the "disciplinary measure of separation from service" effective 11 April 2014, with compensation in lieu of notice and a

termination indemnity. The ICJ Registrar referred to the findings of Panel One and Panel Two and concluded that there was sufficient credible evidence that Ms. Rangel had committed misconduct in violation of the pertinent Staff Regulations and Rules, as well as Section 2.1 of ST/SGB/2008/5.

18. On 11 April 2014, Ms. Rangel appealed that decision to the Conciliation Committee.

19. On 28 November 2014, the Conciliation Committee issued its decision finding that Ms. Rangel's appeal was receivable, but that the decision to terminate and separate her from service was taken in a regular manner. In its view, the facts underpinning the disciplinary measure of termination were established, Ms. Rangel was duly notified in writing of the charges against her and had the opportunity to defend herself, her conduct constituted "serious misconduct", and separation with compensation in lieu of notice was an entirely appropriate sanction in the circumstances of the case. The Conciliation Committee rejected Ms. Rangel's allegations that she was victim of harassment, discrimination and abuse or misuse of authority, finding that Ms. Rangel had failed to provide tangible evidence to support her serious allegations.

*Ms. Rangel's procedural motions before the Appeals Tribunal*

20. From mid-July 2014 to the end of 2014, Ms. Rangel filed seven motions with the Appeals Tribunal. In Judgment No. 2015-UNAT-531, the Appeals Tribunal dismissed all of them. The Appeals Tribunal also decided to review Ms. Rangel's appeals during the Appeals Tribunal's 2015 Summer Session.

**Submissions**

**Ms. Rangel's Appeals**

*Case No. 2014-611: Investigation*

21. Ms. Rangel claims that it was not possible for the Conciliation Committee to be truly independent when three members of that committee worked for the ICJ under the direct supervision and authority of the ICJ Registrar, who "exerted complete control over every last administrative action of the Registry", in an "climate of subservience and fear". The Conciliation Committee disregarded the arguments, evidence and legal points that

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 negligence leading to unequal treatment”. The Conciliation Committee disregarded all the evidence proving intimidation and disproportionality on the part of the ICJ Registrar in the wake of his decision to place her on administrative leave. To her surprise, the Conciliation Committee refused to examine the reports of the two panels on the ground that Ms. Rangel did not request review of those reports in her request for administrative review, yet it quoted the conclusions of each of the reports. This is “irrefutable evidence of its connivance with the Administration”.

24. Ms. Rangel requests inter alia that the Appeals Tribunal quash the reports of the two panels in view of their serious omissions, order the ICJ Registrar to pay her two years’ salary as moral damages, three years’ salary as material damages and one year’s salary for the errors/irregularities committed by the Conciliation Committee.

*Case No. 2015-689: Separation from Service*

25. Ms. Rangel refers the Appeals Tribunal to her previous appeals and complaints to the Conciliation Committee for background and details of her grievances.

26. Ms. Rangel maintains that the report of the Conciliation Committee is characterized by errors, and fails to examine the substance of the reports of Panel One and Panel Two. Despite irregularities during the disciplinary proceedings against Ms. Rangel, the Conciliation

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 non-receivable as Ms. Rangel has failed to identify errors in the report of the Conciliation Committee.

*Case No. 2014-674: Placement on Administrative Leave*

34. The Respondent does not agree with Ms. Rangel that the independence of the Conciliation Committee is questionable. He recalls the mandate of the Conciliation Committee is to assist in conciliation of disagreements between staff members and the management after having heard the parties. If it does not succeed in this effort, the Conciliation Committee issues a report that includes the procedures followed, the contentions of the parties, the recommendations made by the Committee during the proceedings and an analysis of the relevant facts and law. This first neutral instance is consistent with Article 11 of the ICJ Staff Regulations, Article 2(10) of the Statute of the Appeals Tribunal and the Appeals Tribunal's jurisprudence. The ICJ Registrar stresses that he has only a "very restricted role" in respect of the composition of the Conciliation Committee, as the latter functions in a neutral and impartial manner.

35. Ms. Rangel has failed to provide any legal basis for her claim that the ICJ Administration could not have placed her on administrative leave while the Conciliation Committee was seized of one of her complaints.

36. The Respondent requests that the Appeals Tribunal reject Ms. Rangel's appeal in its entirety as unfounded.

*Case No. 2015-689: Termination*

37. The Appeals Tribunal has limited jurisdiction as defined in Article 2 of its Statute. Consequently, it may not review matters that have not been presented to the Conciliation Committee, such as Ms. Rangel's allegations in respect of the incident

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.<sup>2</sup>

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 merits of the present cases.

42. Through an exchange of letters between the President of the ICJ and the Secretary-General of the United Nations in April and June 2011, the ICJ accepted the jurisdiction of the Appeals Tribunal. The ICJ has amended its Staff Regulations accordingly.

43. Article 11(7) of the Staff Regulations for the ICJ Registry reads:

In the event of a failure to achieve a conciliation, the administrative decision or disciplinary action may be the subject of an Application to the United Nations Appeals Tribunal, in accordance with the Statute of that Tribunal and under the conditions to be determined by exchange of letters between the President of the Court and the Secretary-General of the United Nations.

---

<sup>2</sup> The Appeals Tribunal Statute, Article 8(3); the Appeals Tribunal Rules of Procedure, Article 18(1).

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.<sup>3</sup> 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 of prohibited conduct or, if necessary, from the Office of Human Resources Management roster.

5.15 At the beginning of the fact-finding investigation, the panel shall inform the alleged offender of the nature of the allegation(s) against him or her. In order to preserve the integrity of the process, information that may undermine the conduct of the fact-finding

---

<sup>3</sup> *Oummih v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-518, para. 31, citing *Abboud v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-100.

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.<sup>[4]</sup>

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.<sup>5</sup>

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.<sup>6</sup>

---

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

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

<sup>6</sup> *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".<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

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

59. It also found that Ms. Rangel had harassed another staff member, although the latter denied it.<sup>11</sup> 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.<sup>12</sup> 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".<sup>13</sup> Panel One found that there were strong factual indications that Ms. Cohen was not the first

---

<sup>7</sup> *Ibid.*, para. 10.3.

<sup>8</sup> *Ibid.*, paras. 12.2.1 and 12.2.2.

<sup>9</sup> *Ibid.*, para. 13.3.

<sup>10</sup> *Ibid.*, para. 14.3.

<sup>11</sup> *Ibid.*, para. 15.2.3.

<sup>12</sup> *Ibid.*, para. 15.2.4.

<sup>13</sup> *Ibid.*, para. 15.3.

staff member in the Library Division harassed by Ms. Rangel; there were indications that there had been at least one serious incident involving Ms. Rangel on 15 March 2010, when Ms. Rangel locked herself in a meeting room on the ground floor of the Peace Palace, screaming and shouting at several staff members of the Court, including the former Deputy Registrar. Panel One thus concluded that Ms. Rangel had fallen short of the standards expected of an international civil servant.<sup>14</sup>

60. Panel One unanimously regretted that there had never been an investigation into any of those instances given that they could have amounted to possible misconduct. In this regard, we note that in October 2012, Ms. Rangel was granted a continuing appointment with the ICJ, indicating a fully satisfactory performance. There is no evidence on record showing that the ICJ Administration had formally drawn Ms. Rangel's attention to her inappropriate behaviour towards the staff under her supervision that Panel One criticised in its report.

61. Panel One did not limit itself to establishing the facts; it made a determination as to what conduct legally qualified as harassment or abuse of authority. It cross-checked testimonies and made findings, undertaking a detailed examination of the merits of the case in its entirety.

62. It analysed the factual basis for the allegations and complaints, the witnesses' testimonies and relevant documents, for the purpose of determining consistency and veracity of statements. In other words, it examined evidence, defined which facts it would consider established and determined whether the established facts constituted a prima facie case. Ms. Rangel did not appear before Panel One for reasons of her own; she did not provide any explanations.

*Panel Two*

63. In view of the special circumstances of the present case, it is worthwhile to recite Section 5.14 of ST/SGB/2008/5:

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

---

<sup>14</sup> *Ibid.*

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.<sup>15</sup> 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.<sup>16</sup>

*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

---

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

<sup>16</sup> *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. In the instant case, we find that Ms. Rangel was not notified in writing of the charges against her.

71. The Conciliation Committee in its Report of 28 November 2014 noted that Ms. Rangel had been asked to send comments or observations she might wish to make with respect to the two investigation reports. It thus concluded that in this manner Ms. Rangel “was notified in writing of the charges against her” in compliance with Article 3(a) quoted above. The Appeals Tribunal disagrees.

72. The “charges” are the legal conclusions that the Administration has reached on the basis of an investigation and that assert that somebody has committed misconduct. Panels One and Two were tasked with conducting a “fact-finding investigation” and not making legal conclusions or “charges” as to the possible resultant misconduct. In the present case, sending the reports of the two investigation panels to Ms. Rangel was not the same as charging her with misconduct. In other words, Ms. Rangel was not apprised of the charges when she was asked to respond to the two investigation reports.

73. We must disregard the findings of Panel One and Panel Two.

74. Article 3 of Annex VI of the ICJ Staff Regulations is entitled “Due process in the disciplinary process”. A breach of due process occurred and constituted a serious infringement of the rights of Ms. Rangel when she was not informed of the concrete or specific charges against her that could result in her termination.

75. Absent such charges, Ms. Rangel was not put on notice of the possible “misconduct” which she was considered to have committed.

76. For the reasons set out above, it follows that her termination is legally unsustainable.

77. Under Article 9 of the Statute, the Appeals Tribunal may only order rescission of the contested administrative decision or monetary compensation in lieu of the rescission normally not exceeding the equivalent of two years’ net base salary. In her appeal against the termination, Ms. Rangel requests payment of 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.

78. We order Ms. Rangel's reinstatement or, if the Respondent so chooses, the award of two years' net base salary at the rate in effect at the date of her separation in lieu of rescission of the termination.

79. Further damages for violations of due process rights are not exemplary or punitive; but they should be awarded with great care and be of a reasonable amount.

80. In the instant case, this Tribunal finds no grounds for the award of moral damages of which there has been no evidence, taking into consideration Ms. Rangel's inappropriate behaviour and her failure to cooperate during the proceedings of the Conciliation Committee.

### **Judgment**

81. The appeal is allowed and the decision of the Conciliation Committee of 28 November 2014 that Ms. Rangel's termination was lawful is reversed. We order Ms. Rangel's reinstatement or, if the ICJ Administration so chooses, the award to her of two years' net base salary at the rate in effect at the date of her separation in lieu of rescission of the termination.

Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of July 2015 in Geneva, Switzerland.

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Lussick

*(Signed)*

Judge Chapman

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

*(Signed)*

Weicheng Lin, Registrar