



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

Judgment No. 2017-UNAT-716



**Cohen
(Appellant)**

v.

Registrar



Registrar:

Weicheng Lin

Counsel for Ms. Cohen: April L. Carter

Counsel for ICJ: Jean-Pelé Fomété
Pierre Bodeau-Livinec

Reissued for technical reasons on 1 June 2017

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6. Ms. Cohen had previously filed, on 9 November 2013, a claim to the Secretariat of the

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malfeasance of senior officials of the ICJ. On 19 August 2016, the ICJ Registrar filed an ex-parte motion requesting an extension of time, until 28 September 2016, to file his answer. On

a blind eye to the harassment and abuse of authority, but essentially rewarding the prohibited conduct when it granted her supervisor, Ms. Rangel, a continuing appointment in October 2012.

22. Ms. Cohen accordingly requests compensation exceeding two years' net base salary. She also seeks a referral of her case in terms of Article 9(5) of the Statute to the President of the ICJ for possible action to enforce accountability of the ICJ Registrar and the relevant Administration members.

The ICJ Registrar's Answer

23. The ICJ Registrar argues that Ms. Cohen has failed to identify an administrative decision susceptible to judicial review. The ICJ Registrar was not silent in response to Ms. Cohen's 20 October 2014 claim; rather, the record shows he requested she provide the legal basis for it. Without that, the ICJ Registrar had no other option than to consider that no reviewable administrative decision existed. The Conciliation Committee's conclusion regarding the admissibility of Ms. Cohen's claim was erroneous. The Conciliation Committee does not take "decisions" susceptible to appeal; only the administrative decision or disciplinary action may be appealed and, since there is no administrative decision in this case, Ms. Cohen's "appeal" is non-receivable.

24. Moreover, the ICJ Registrar submits there is no legal basis for the monetary compensation Ms. Cohen seeks. Ms. Cohen's application, in his view, reflects confusion between a claim for an effective remedy and one for moral damages, and the jurisprudence relied upon is inapplicable and irrelevant. Sections 2.2 and 5.20 of ST/SGB/2008/5 indicate that the remedy contemplated in ST/SGB/2008/5 is the availability to staff members of a recourse mechanism. Nowhere does ST/SGB/2008/5, which provides for "comprehensive procedures", make any reference to the possibility, let alone duty, of the Administration to award monetary compensation. Judicial review is limited to the administrative activity (act or omission) after a request for investigation to determine if it was taken in accordance with applicable law and the legality of the investigation itself. Ms. Cohen's claim for monetary compensation to be awarded by the ICJ Registrar as an effective remedy pursuant to ST/SGB/2008/5 does not legally stand and should be dismissed in its entirety.

25. Similarly, Ms. Cohen fails to substantiate—legally and factually—her claims for moral damages. First, some of the “area of damages” claimed could not be made good by way of moral damages. Second, those that have been recognized as “service-incurred” are reimbursable under Appendix D. Third, the claims for moral injuries suffered fail to meet the stringent criteria established by the Appeals Tribunal, including the evidentiary requirement. Specifically, Ms. Cohen has failed to demonstrate that (a) the ICJ Registrar’s October 2014 decision, which she purports to challenge, constitutes a breach of a fundamental nature, and (b) the existence of a causal link between that alleged breach and the injuries suffered. While apparently more developed, her claims for “due process violations” also fail to explain how the administrative decision allegedly taken by the ICJ Registrar in October 2014 would have caused the harm for which compensation is requested.

26. Ms. Cohen’s bald assertion that the ICJ Registrar “must be held accountable” is unsubstantiated. She also fails to explain how the Appeals Tribunal could implement the judicial referral for accountability that she requests in the absence of specific provisions applicable to the ICJ in Article 9(5) of the Statute or in the 2011 exchange of letters between the ICJ and the Secretary-General of the United Nations regarding the jurisdiction of the Appeals Tribunal. Moreover, she fails to demonstrate how this case is “appropriate” for such a referral. Contrary to Ms. Cohen’s assertions, timely action was taken by the ICJ—both in 2010 when the situation regarding Ms. Rangel was first presented and again in 2013 when incidents were reported and Ms. Cohen filed her complaint. Throughout the difficult situation, the ICJ treated Ms. Cohen with empathy and provided her with extra support—e.g., providing her with full salary when she was entitled to only half and covering her medical insurance premiums.

27. The ICJ Registrar requests Ms. Cohen’s application be declared non-receivable or, alternatively, dismissed in its entirety including her request of referral for accountability.

Considerations

Preliminary matters

28. Ms. Cohen requested an oral hearing. We do not find that an oral hearing would assist in the expeditious and fair disposal of the case and for that reason the request for an oral hearing is denied.²

29. There are two preliminary motions requiring consideration. Ms. Cohen seeks

Merits

31. The application before the Appeals Tribunal is one in terms of Article 2(10) of the Statute. The relevant part of the provision reads:

The Appeals Tribunal shall be competen

34. Article 5 of the ICJ Staff Regulations regulates proceedings before the Conciliation Committee. Article 5.5 provides:

As soon as practicable after receiving the Registrar's answer, the Conciliation Committee shall endeavour to conciliate between the parties and shall hear them for that purpose. In the event of a successful conciliation, it shall record the agreement of the parties in a Minute. In the event of failure, it shall draw up a report summarizing the procedure followed, the arguments of the parties and the recommendations made by the Committee during the proceedings, and containing a statement of the relevant facts and law. That report shall be

decision where it has direct legal consequences.⁵ The implied administrative decision to deny Ms. Cohen compensation for the harm she suffered denied her the effective remedy to which she was contractually entitled under ST/SGB/2008/5. There is accordingly a legal basis for Ms. Cohen's claim for compensation before the Appeals Tribunal.

38. The fact that Ms. Cohen was the victim of harassment and has suffered harm is

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47. The applicant is awarded compensation in the amount of one year's net base salary.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Raikos

Entered in the Register on this 26th day of May 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar