

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

N. L.

v.

ICC

124th Session

Judgment No. 3862

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs Y. N. L. against the International Criminal Court (ICC) on 23 February 2015, the ICC's reply of 30 June, the complainant's rejoinder of 21 October, corrected on 22 October 2015, the ICC's surrejoinder of 9 February 2016, its additional submissions of 17 and 31 March 2017 provided at the Tribunal's request and the complainant's comments thereon of 27 April 2017;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the termination of her appointment on disciplinary grounds.

Facts related to this case can be found in Judgment 3863, also delivered in public this day, concerning a complaint filed by the complainant's spouse.

By a letter of 25 November 2013 the Registrar of the Court informed the complainant that it was alleged that she had had unauthorized contact with, and had provided confidential information to, members of the defence team in a case which had been brought before the Court.

If those allegations were true, her actions would amount to serious misconduct which could lead to the imposition of disciplinary measures. Thus, the Registrar had decided to authorize a preliminary investigation into the matter and to suspend her for an initial period of three months (as from the date of her receipt of the letter), with pay, in accordance with Staff Rule 110.5, in order to ensure the integrity of the investigation. If necessary, the suspension would be shortened or extended, depending on the length of the preliminary investigation and any possible disciplinary proceedings.

On 17 February 2014 the Security and Safety Section (SSS), which had been tasked with conducting the preliminary investigation, submitted its report to the Registrar in which it was stated that the investigating officer was unable to confirm any breach of confidentiality or leak of under seal information by the complainant. However, there were grounds to believe that she had engaged in unsatisfactory conduct by failing to disclose or mention to her supervisors that she knew Mr K. and Mr M., members of the aforementioned defence team.

On 20 February the complainant's suspension from duty with pay was extended for one month.

By a letter of 3 March 2014 the complainant was notified of the allegations against her; she was provided with a copy of the documentary evidence of her alleged misconduct which comprised her statement to the investigator and a French translation of the transcription of a recorded telephone conversation between Mr K. and Mr M.

In an e-mail of 12 March 2014 the complainant denied the allegations and requested, in particular, disclosure of the audio file of the aforementioned telephone conversation (in its original language Lingala) and any transcription that had been made of that conversation in Lingala. The Administration did not respond to this request.

By a letter of 20 March the Registrar informed the complainant that he had decided to refer the matter to the Disciplinary Advisory Board (DAB) for advice and that her suspension from duty with pay would be extended for an additional two months until 20 May 2014.

By a letter of 22 April 2014 the DAB provided her with the entire dossier of the case, as submitted to the DAB by the Registrar. On 5 May the complainant made a detailed request for the disclosure of further evidence and she sought an extension of the deadline for making submissions to the DAB in order to examine that evidence.

On 19 May 2014 she was notified that her suspension with pay was extended for a further two-month period.

In a letter of 30 July the Registrar informed the complainant that the DAB had submitted its report and recommendations to him on 18 July, that her suspension with pay would be extended for an additional month until 25 August 2014, and that his final decision together with a copy of the DAB report would be transmitted to her on or before the expiration of her suspension. In an e-mail of 30 July the complainant pointed out that her request for discovery of documents and for an extension of the deadline for making submissions was still pending and she asked to be provided with a copy of the DAB report and its recommendations.

On 25 August 2014 the Registrar wrote to the complainant and stated that the DAB had requested an extension, which he had granted, in order to finalize its report and recommendations. In view of this, her suspension from duty with pay would be extended for an additional month. The following day the complainant sent an e-mail to the DAB objecting to the internal process on the grounds that there had been no decision on her requests for disclosure of evidence and the opportunity to make further submissions on that evidence. On 27 August she was informed by the Alternate Secretary of the DAB that her request for documents had been forwarded to the Registrar.

In a letter of 26 September the Registrar informed the complainant that the DAB had requested an extension of time in light of her request for disclosure of documents, which he had granted (until 13 October 2014). In addition, her suspension from duty with pay would be extended for one month until 25 October.

By an e-mail of 2 October the complainant was notified that on 23 September the Registrar had informed the DAB Panel that he was unable to accommodate the complainant's request for documents. Thus,

the DAB Panel found it appropriate to base its consideration of the case exclusively on the redacted report of the preliminary investigation; the complainant was given until 9 October to file a response. An exchange ensued variously between the complainant, the DAB Secretariat and the Administration regarding her request for disclosure of documents. On 29 October she was informed that the DAB Panel considered that her request for additional information had been satisfactorily accommodated and responded to and she was asked to file any final submissions on the matter by 5 November, which she did.

In the meantime, by a letter of 27 October she was informed that her suspension from duty with pay would be extended for an additional month until 25 November 2014.

In its report of 12 November 2014 the DAB found that the complainant had been afforded her right to due process. It considered that the allegation concerning her relationship with Mr K. should not be pursued. In addition, based on the evidence before it, it could not find that the complainant had shared any confidential information (in relation to her participation in the *ex parte* hearing of 25 September 2013) with her spouse or any other person. However, the DAB considered that she had violated Section 4.4 of the Code of Conduct by failing to advise her supervisor of her relationship with Mr M. as from the date of her participation in the *ex parte* hearing and that this amounted to unsatisfactory conduct. The DAB recommended that a written censure be placed on her permanent record or that she lose not more than two within-grade step increments, or both. It further recommended that she be transferred, if possible, to another department where she would not need to handle sensitive information similar to the information which was at issue in the proceedings before the DAB.

By a letter of 25 November 2014, the Registrar notified the complainant that, after reviewing the DAB report, the preliminary investigation report, and the report of the DAB in a case concerning the complainant's spouse (the latter case being the subject of Judgment 3863), he had concluded that it was proven beyond a reasonable doubt that she had disclosed under-seal information to her spouse who had in turn disclosed this information to Mr M. In addition, he endorsed the finding

of the DAB that she had failed to inform her supervisor of her relationship with Mr M., in violation of two sections of the Code of Conduct, and that this amounted to unsatisfactory conduct. Thus, he had decided to terminate her appointment with immediate effect, pursuant to Staff Rule 110.6(vii) (*recte* 110.6(a)(vii)). That is the impugned decision.

By a letter of 16 January 2015 to the Registrar the complainant requested all of the material he had reviewed in both her disciplinary case and that of her spouse, and she reiterated her earlier requests for disclosure. In his reply of 26 February 2015 the Registrar stated that all the material he had reviewed in taking the final decision of 25 November 2014 had been made available to the complainant. In the absence of written authorization from the complainant's spouse, he would not be able to grant her request for documents related to her spouse's case.

The complainant asks the Tribunal to set aside the impugned decision and to order its removal from her official status file. She seeks reinstatement to her former post. She claims material damages in amount equal to her lost earnings and benefits from the date of the termination of her appointment to the date of her reinstatement, including appropriate interest. In the alternative, she claims material damages in an amount equivalent to five years' salary, benefits, and pension contributions, including appropriate interest. She seeks consequential damages, moral damages, and legal costs in an amount to be determined.

The ICC asks the Tribunal to dismiss the complaint in its entirety and to deny the complainant the relief she seeks.

CONSIDERATIONS

1. By letter dated 25 November 2014, the Registrar of the Court terminated the complainant's appointment with immediate effect. This is the decision impugned in these proceedings.

2. In another complaint dealt with by the Tribunal which is the subject of Judgment 3863, also delivered in public this day, the complainant's spouse impugns a decision of the Registrar also dated 25 November 2014 terminating his appointment. The substratum of

facts in each case is substantially the same and the same or similar legal issues are raised. However for reasons which emerge in this judgment as well as Judgment 3863, it is important for the Tribunal to consider separately each complaint.

3. At the material time the complainant was employed with the ICC as a Court Clerk in the Court Management Section at ICC Headquarters. On 25 September 2013 she attended, in that capacity, an *ex parte* hearing concerning the prosecution of Mr B. and others. During that hearing “she was informed about an investigation against [Mr B.’s] Defence team” (as described in a report by the SSS referred to shortly). This was admitted by the complainant during a preliminary investigation. One of the members of that defence team was Mr M. Another was Mr K. The genesis of the decision to terminate the complainant’s appointment was an intercepted telephone conversation which took place between Mr M. and Mr K. in the evening of 11 October 2013 at approximately 10:00 p.m. Shortly before this intercepted conversation, Mr M. had been talking with the complainant’s spouse, as Mr M. walked to his car following a dinner at the home of the complainant and her spouse, who were both friends (at least in the sense they had an amicable relationship) with Mr M. Central to the Registrar’s decision to terminate the complainant’s appointment was his conclusion that the complainant had gained confidential information concerning, amongst others, Mr M. in the course of her employment with the ICC, had relayed that confidential information to her spouse who, in turn, imparted that information to Mr M.

4. As will be apparent later in this judgment, it is necessary to focus with some care on what evidence was relied on by the Registrar in forming the views he did about the facts founding his decision to terminate the complainant’s appointment (as summarised in the preceding consideration) and the extent to which, as alleged by the complainant in the present case, it was not evidence provided to her by the ICC in the period leading up to and immediately preceding the decision to terminate her appointment.

5. The decision to terminate the complainant's appointment was not based solely on the conclusion she had revealed confidential information. The Registrar also concluded that she had been involved in a conflict of interest that should have been, but was not, made known to her supervisor. Both the breach of confidentiality and the conflict of interest were considered to amount to unsatisfactory conduct.

6. Before the final consideration of the evidence by the Registrar leading to his conclusion that the complainant had engaged in misconduct and there had been an undisclosed conflict of interest, the facts and evidence had been assessed twice. The first occasion was in an internal investigation undertaken by the SSS culminating in a report dated 17 February 2014. The second occasion was the consideration of the matter as it concerned the complainant by the DAB which reported on 12 November 2014.

7. On the question of breach of confidentiality, the SSS report recounted:

"The investigating officer was unable to confirm any 'breach of confidentiality' by [the complainant] and/or a leak of under seal information in relation to the Prosecutor vs [Mr B.] [...] after her attendance [at] the *ex parte* proceedings [...] on 25.09.2013 and after she was informed during the hearing that an investigation against Mr [B.'s] Defence team had been initiated."

8. However the SSS report went on to recount that the investigating officer had found grounds to believe that the complainant had "adopted an unsatisfactory conduct" because she had never disclosed or mentioned to her supervisors her personal relationships with members of Mr B.'s defence team and that this also involved a violation of the obligation to act with integrity, contrary to the relevant provisions of the Staff Regulations and Staff Rules and an Administrative Instruction.

9. The DAB report reached broadly similar conclusions. The DAB Panel concluded that the complainant had failed to advise her supervisor about her relationship with Mr M. "as of the occasion of the

ex parte hearing” and this constituted unsatisfactory conduct. On the breach of confidentiality the Panel said:

“The Panel cannot find, based on the evidence before it, that the [complainant] shared any information with her spouse or any other person in relation to her participation to the *ex parte* hearing of 25 September 2013 [...].”

10. The complainant advances several arguments in order to establish that the consideration of the case against her was flawed in material respects. The first two are related. The first is that there was a breach of due process and fair hearing requirements. In particular, the complainant argues that the Registrar unfairly based his decision on evidence and information he did not disclose to her and that he exceeded his authority by withholding evidence, including exculpatory evidence. The second argument is that there was a violation of her right to administrative review, again based on the withholding of evidence.

11. The case law of the Tribunal establishes that, as a general rule, a staff member must have access to all evidence on which the authority bases (or intends to base) its decision against her or him. Under normal circumstances, such evidence cannot be withheld on grounds of confidentiality (see Judgment 2700, consideration 6, cited recently in Judgments 3688, 3613, 3586, 3490, 3380, 3347, 3290, 3285, 3272 and 3264, for example). As the complainant points out, these obligations are generally expressly reflected in Administrative Instruction ICC/AI/2008/001 of 5 February 2008 concerning Disciplinary Procedures.

12. In the impugned decision, the Registrar commences by saying he had reviewed the DAB report, the preliminary investigation report and a DAB report regarding the complainant’s spouse. He then sets out a number of pieces of evidence upon which he relied. The complainant does not identify any one of those pieces of evidence as having not been contained in the material that, in fact, she had been given. The complainant argues that she “was prevented from raising a defence fully informed by the evidence” without even hinting as to what that defence might have been.

13. However notwithstanding these general comments, there is an obvious flaw in the procedures followed by the ICC that has a material impact on the basis on which the Registrar made his decision. In the impugned decision the Registrar addressed the question of whether the conversation between the complainant's spouse and Mr M. concerned only witness corruption in the Kenya situation, which was what the complainant's spouse claimed. The Registrar said: "I do not believe that it is the truth." He then quoted two passages from the DAB report regarding the complainant's spouse, and after quoting those passages he said: "I find this entirely persuasive." The quoted passages addressed the friendly relationship between the complainant's spouse and Mr M. and, indirectly, the role of Mr M. and Mr K. in the defence team of Mr B., the likely common interest between Mr M. and Mr K. in what was discussed in the intercepted telephone conversation and the identity of the person (the complainant's spouse) who had imparted the information to Mr M. which was, at least in part, the subject matter of the intercepted telephone conversation. One of the quoted passages concluded with the following observation: "[T]he Panel is of the opinion that it is highly probable that [the complainant's spouse] could indeed have warned his friend [Mr M.] about the investigation concerning [Mr B.'s] defence team."

14. The Registrar then addressed the question of whether the disclosure had been deliberate, a matter considered by the DAB in its report concerning the complainant's spouse. The Registrar said:

"However, even if there were some requirement that the disclosure of the confidential information must be deliberate, the circumstances of the present case as found by the DAB Panel in [its report regarding the complainant's spouse] only confirm that such disclosure by [the complainant's spouse] was indeed deliberate, as opposed to inadvertent. The conclusion by the DAB Panel in [its report regarding the complainant's spouse] that there are high probabilities that [the complainant's spouse] disclosed confidential information underscores the probative nature of the evidence."

This conclusion was a springboard to a consideration by the Registrar of where the information imparted by the complainant's spouse might have come from and his ultimate conclusion that it came from the complainant.

15. In its pleas before the Tribunal the ICC does not address, directly, the fact that the DAB's report regarding the complainant's spouse was not provided to the complainant. It is conceivable that a detailed analysis of the material provided to the complainant, including a transcript of the intercepted telephone conversation (though the complainant raises the issue that she was not provided with a transcript of that conversation in the language in which the conversation actually took place), the detailed SSS report and the DAB report regarding her own case, would reveal most if not all of the primary facts indirectly adverted to by the Registrar when he relied on the passages quoted from the DAB report on the complainant's spouse. But, in the circumstances of this case, that would not be sufficient. That is particularly so because the SSS report expressed the conclusion that the evidence failed to establish a breach of confidentiality by either the complainant or her spouse or "the leak of under-seal information in relation to the [Mr B.] case". The complainant relied on this conclusion in the written submissions she made to the DAB on 5 November 2014. It is a conclusion at odds with the reasoning of the DAB in its report regarding the complainant's spouse that was relied on by the Registrar in the impugned decision.

16. What, in substance, the Registrar was doing was relying on inferences drawn by the DAB in its report regarding the complainant's spouse by reference to primary facts and expressing his agreement with those inferences. Given the nature of this reliance, the complainant was entitled to be provided with a copy of the DAB report regarding her spouse and given an opportunity to comment on it. In a letter dated 26 February 2015 from the ICC to the complainant concerning what information had been provided to her, it is said that the report concerning the complainant's spouse had been provided to him and "is also readily accessible through the latter [the spouse]". Whether this is true is a matter of conjecture only, as is the question of whether the complainant's spouse would have consented to the ICC providing a copy of the report relating to him. To presume he would involves assumptions about the nature of the specific relationship, as a matter of fact, between the complainant and her spouse.

17. But what the Tribunal is concerned with is due process. The ICC should have ascertained whether the complainant's spouse objected to a copy of the DAB report concerning his case being provided to the complainant. If there was no objection, the ICC should have provided a copy given the use that was later made of it. If there was an objection then it would have been necessary for the ICC to review the use that could be made of that report. In the result, the complainant was not afforded due process because she was not provided by the ICC with a document on which the impugned decision was materially based and provided with an opportunity to comment on that document.

18. Article 70 of the Rome Statute of the International Criminal Court creates certain offences concerning the administration of justice including corruptly influencing witnesses and interfering with the testimony of witnesses. It appears that shortly after the conversation of 11 October 2013, Mr M. and Mr K. were arrested and charged with an offence or offences under Article 70 which were then to be the subject of a criminal trial. In fact, in due course, Mr M. and Mr K. were convicted. Without descending into detail, the Tribunal is satisfied that it was open to the ICC not to disclose certain information to the complainant because of the pending criminal proceedings (see Judgments 1756, consideration 10, and 2700, consideration 6).

19. The next issue raised by the complainant concerns the adequacy of the reasons of the Registrar. It will be necessary to consider the Registrar's assessment of the evidence on which he founded his decision and the applicable legal principles that operate in circumstances such as the present.

20. The applicable legal principles can be stated briefly. The executive head of an international organisation is not bound to follow a recommendation of any internal appeal body nor bound to adopt the reasoning of that body. However an executive head who departs from a recommendation of such a body must state the reasons for disregarding it and must motivate the decision actually reached. In addition, according to the well-settled case law of the Tribunal, the

burden of proof rests on an organisation to prove allegations of misconduct beyond a reasonable doubt before a disciplinary sanction can be imposed (see, for example, Judgment 3649, consideration 14). It is equally well settled that the “Tribunal will not engage in a determination as to whether the burden of proof has been met, instead, the Tribunal will review the evidence to determine whether a finding of guilt beyond a reasonable doubt could properly have been made by the primary trier of fact” (see Judgment 2699, consideration 9).

21. The following analysis disregards the fact that, as discussed earlier, the Registrar erroneously relied upon the DAB report regarding the complainant’s spouse without disclosing that report to the complainant. In the impugned decision the Registrar began the substance of the letter with his ultimate conclusion, namely that the complainant had disclosed “under-seal information” to her spouse who in turn had relayed the information to Mr M. Several subsidiary conclusions led to that ultimate conclusion. The first was that the complainant’s spouse had told Mr M. that there were rumours that Mr M. and Mr K. were paying witnesses and that an investigation had been initiated. Another finding was that the complainant’s spouse told Mr M. to be careful. Having regard to the translation of the transcript of the intercepted telephone conversation, these findings were clearly available to the Registrar, even applying the “beyond a reasonable doubt” test. While what Mr M. said in the conversation with Mr K. about the identity of the person who told him these things might be viewed as hearsay, such evidence may nonetheless be admissible and it is simply a question of evaluating its probative value (see Judgment 2771, consideration 17). It was clearly open to the Registrar, in the absence of any other plausible explanation, to conclude that, in circumstances where Mr M. had just had a conversation with the complainant’s spouse and the subject matter of that conversation, as described in the intercepted telephone conversation, was seen by Mr M. as sufficiently important to discuss with Mr K. late in the evening, the matters discussed in the intercepted telephone conversation were a product of the discussion with the complainant’s spouse. For similar reasons, it was clearly open to the Registrar to reject the account of the complainant’s spouse that what he discussed with Mr M. was generally

a public warning by the ICC Prosecutor about witness interference contained in a video and a press release concerning bribery in a case concerning circumstances in Kenya. The account of the complainant's spouse is entirely at odds with the actual conversation revealed in the intercepted telephone conversation.

22. The next subsidiary finding of the Registrar was that what the complainant's spouse told Mr M. was based on information the complainant had passed on to her spouse following the hearing on 25 September 2013. The critical question is whether this finding was an available finding conformable with the high burden of proof in cases such as the present. The Registrar based this finding on two subsidiary findings. The first was that the complainant had this information as a result of the hearing. This finding was obviously open to the Registrar.

23. The second subsidiary finding was that the complainant's spouse did not have access to this confidential information through his work at the ICC. This finding is more problematic, particularly given that it entails the difficult task of proving a negative. That is to say, it involves proof that the complainant's spouse did not get the information from another source. However it has to be borne in mind that the complainant's spouse did not say or suggest he got the information from another source. His account involved a denial of imparting the confidential information at all. Thus, on his account, the question of where he got the information from did not arise. In any event, the complainant made no attempt to adduce rebutting evidence to establish that her spouse obtained it from elsewhere (see Judgment 3297, consideration 8). It was open to the Registrar to conclude that the confidential information had come from the complainant notwithstanding her denial that she communicated it. The complainant and her spouse had an association with Mr M. and Mr K. The association was a friendly one. The complainant's friendship with Mr M. and his family dated back to 2008. The question is not whether the Tribunal is satisfied beyond a reasonable doubt that the complainant revealed to her spouse the confidential information obtained at the hearing on 25 September 2013. Rather it is whether the Tribunal is satisfied that it was open to the Registrar to reach that

conclusion by reference to that standard of proof. The Tribunal is satisfied it was. In evaluating evidence, minds can reasonably differ about the probative value of that evidence. In the present case, the SSS report and DAB report manifest an unwillingness by the respective authors of those reports to treat the evidence as proving the alleged misconduct beyond a reasonable doubt (involving the revelation of confidential information). However it does not follow that the contrary view is inherently or necessarily wrong.

24. The reasons of the Registrar were, in the circumstances, adequate notwithstanding that his conclusion involved a rejection of the recommendation of the DAB. This is particularly so given that the DAB did little more than recite the evidence and then express its conclusion. It did not provide any reasoning for reaching that conclusion.

25. The next issue concerns the alleged violation of Administrative Instruction ICC/AI/2011/002 of 4 April 2011 concerning the Code of Conduct for Staff Members. Section 4 addresses conflict of interest. Section 4.1 relevantly provides that staff members shall not allow personal relationships to influence the performance of their official duties and shall avoid situations which may create a conflict of interest. Section 4.4 requires disclosure in advance of any potential conflict of interest and disclosure where a conflict does arise. The disclosure is, relevantly, to the staff member's supervisor. The gist of the allegation against the complainant is that at the time of the *ex parte* hearing on 25 September 2013 it should have been apparent to her that because of her amicable relationship with Mr M., whose name was mentioned in the context of an investigation under Article 70 of the Rome Statute, she should have revealed that relationship to her supervisor. A conclusion that this was so is found in both the SSS report and DAB report as well as the impugned decision.

26. The complainant argues that this conclusion involves an error of law and the provisions concerning a potential conflict of interest are engaged when the conflict might improperly influence the performance of official duties and responsibilities. A Court Clerk does not perform duties which might be influenced by such a conflict and, accordingly,

the provisions did not operate to require disclosure. However this argument involves too narrow a reading of the provisions which, particularly in relation to a court, should be construed purposefully. That is to say, they should be construed in a way that achieves the objects of the provisions which, in large measure, are intended to preserve and maintain the integrity of the organisation to which they apply. Courts must not only administer justice fairly and impartially (while this is obviously true of judges it is also true of the administrative structures supporting the judges) but must also be seen to be doing so.

27. The obligation to disclose serves several purposes. One is that once the conflict is disclosed remedial action might be taken by persons in authority to offset the effect or possible effect of bias created by the conflict. That might include the review or revision of decisions taken by a conflicted staff member or the allocation of tasks to a staff member who was not conflicted. Another is to enable persons in positions of authority (including supervisors) to counsel staff members about how best to manage and deal with the conflict of interest. In the present case, the former may have been undertaken (for example, no longer involving the complainant with proceedings involving the investigation of Mr M. under Article 70) to avoid any risk of disclosure and most likely the latter (counselling the complainant to withdraw from social engagement with Mr M.). The Tribunal rejects the complainant's argument that the decision concerning her conflict of interest was vitiated by an error of law.

28. The complainant's last argument concerns what is said to be excessive delay in the disciplinary proceedings. The complainant's case was referred to the DAB on 26 March 2014 and it reported on 12 November 2014. The Registrar took the impugned decision on 25 November 2014. The Tribunal notes that not only did the DAB have to interview the investigating officer who prepared the SSS report and evaluate the evidence from him, it also had to deal with the live issue of whether the Registrar had provided and should be required to provide certain information to the complainant. The allegations against the complainant were serious and demanded a considered response. The Tribunal is not satisfied that the time frame within which this occurred was excessive. Accordingly, the argument that it was is rejected.

29. This leads to a question of what relief should be afforded the complainant. She has demonstrated a procedural flaw which denied her due process. However the findings of the Registrar and his decision to terminate the complainant's appointment were open to him. In the circumstances, the complainant is entitled to moral damages which the Tribunal assesses in the amount of 20,000 euros. She is also entitled to 5,000 euros for legal costs.

30. At this point it is convenient to discuss a procedural issue that has arisen in the present case. The parties have made additional submissions with respect to the confidentiality of some of the pleadings and evidence that have been submitted to the Tribunal. The Tribunal has taken note of these submissions and has referred to the evidence that it considers necessary in order to achieve justice between the parties.

DECISION

For the above reasons,

1. The ICC shall pay the complainant moral damages in the amount of 20,000 euros.
2. It shall also pay the complainant 5,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 10 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ