CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 545/2014 (Cynera JAFFREY v. Secretary General)

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,
Ms Mireille HEERS,
Mr Ömer Faruk ATEŞ, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation:

PROCEEDINGS

1. The appellant, Ms Cynera Jaffrey, lodged her appeal on 28 February 2014. It was registered on 3 March 2014 as no. 545/2014.

2. On 4 April 2014, the appellant filed a supplementary memorial. On that occasion she requested a medical assessment (Rule 25 of the Tribunal's Rules of Procedure).

3. On 23 July 2014, the Secretary General, who had been invited to present his observations, filed an "interlocutory memorial" in which he submitted a question for prior consideration by the Tribunal and requested permission to produce his observations on the merits only after the Tribunal had ruled on that question. The question was worded as follows: "How can the French law relating to gross negligence be reconciled with the substantive jurisdiction of the Administrative Tribunal of the Council of Europe?"

4. On 25 August 2014, the appellant submitted her "observations on the interlocutory request".

5. On 3 September 2014, the Secretary General submitted his observations in reply, which the Chair accepted even though he had not previously authorised their submission.

6. On 9 September 2014, the appellant submitted her observations in reply.

7. In an order of 17 September 2014, after consulting the other judges for their opinion, the Chair dismissed the Secretary General's request and gave him a period of thirty days in which to present his memorial on the merits of the appeal.

8. On 17 October 2014, the Secretary General submitted his observations on the merits. On that occasion he requested that the *Caisse Primaire d'Assurance Maladie du Bas-Rhin* (Bas-Rhin sickness insurance fund - CPAM) be invited to intervene in the proceedings and made a number of comments on the request for an expert assessment.

9. On 21 November 2014, the appellant filed a memorial in reply in which she requested that the Tribunal, before giving a ruling, order a visit to the site of the accident and the hearing of five witnesses. Then, with regard to the preparation of the case, in the first place she reiterated her request for an expert assessment, and in the alternative she too requested that the Tribunal invite the Bas-Rhin sickness insurance fund (CPAM) to intervene in the case.

10. On 22 December 2014 the Secretary General filed a rejoinder after being authorised to do so by the Chair.

11. By a decision of 29 January 2015, the Tribunal rejected the appellant's interlocutory requests (for an on-site visit and for the hearing of witnesses) and request for an expert assessment. The request of both parties for the Bas-Rhin sickness insurance fund (CPAM) to intervene in the case was likewise rejected. Finally, the Tribunal issued instructions to the appellant regarding the timing of the submission of her memorial quantifying the alleged detriment.

12. On 21 April 2015, the appellant submitted a memorial quantifying the detriment, and on 15 May 2015 a supplementary memorial on the same subject.

13. On 21 May 2015, the Secretary General submitted a memorial in reply to the two documents quantifying the detriment.

14. The public hearing took place on 26 June 2015 in the Administrative Tribunal's hearing room in Strasbourg. The appellant was represented by Ms Carine Cohen-Solal, lawyer at the Strasbourg bar, and the Secretary General by Ms Brigitte Beaumont, lawyer at the Paris bar, assisted by Mr Florian Moly, lawyer at the Paris bar, and Ms Sania Ivedi, Administrative Officer in the Council of Europe's Legal Advice Department.

15. During the discussions, the Secretary General's counsel presented a document to the Tribunal, a copy of which was given to the appellant's counsel on the spot.

16. The appellant having asked to submit documents after the hearing, the Chair authorised her to do so, and also gave the Secretary General a period of three weeks from the submission of those documents in which to reply to them.

The appellant produced the documents on 7 July 2015 and the Secretary General submitted his observations on 16 July 2015.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

17. The appellant is a conference interpreter who at the time of the facts that are the subject of this dispute had been working in the Council of Europe since 1982 on daily contracts. She was subsequently placed on disability leave by the competent French body.

18. On 21 November 2012, the appellant fell on a step leading to a platform in one of the Organisation's buildings while making her way to her interpreter's booth for her work.

19. During the hearing (paragraph 14 above) the Secretary General asserted that she had been on the telephone at the time of the accident, which the appellant did not deny.

20. The appellant was then able to benefit from the coverage of a special insurance policy taken out by the Council of Europe to insure interpreters against the risks of accidents or sickness and insuring them for a maximum period of twelve months against loss of earnings resulting from temporary incapacity for work. She was also covered by the social insurance scheme that applies specifically to temporary staff members of the Organisation affiliated to the Bas-Rhin sickness insurance fund (CPAM).

21. On 19 December 2012 the CPAM informed the Organisation that it recognised the occupational nature of the accident. It stated that the circumstances allowed it to be established that the accident had occurred as a result of or in the course of the appellant's work, thus meeting the conditions set out in Article L 411-1 of the French Social Security Code. The appellant was therefore able to benefit from a daily allowance paid by the CPAM.

22. When the period of coverage of the aforementioned special policy ended, the appellant requested coverage under the Organisation's civil liability insurance policy.

23. On 4 November 2013, the Directorate of Logistics informed the appellant that the Organisation's civil liability insurer refused to cover the damages resulting from the accident. It explained that for the insurer to cover those damages, the Organisation's civil liability must be incurred. It added that a technical inspection of the premises had unfortunately shown that at the date of the accident (and to date) the applicable safety

standards were complied with. It concluded that the circumstances of the accident were not such as to allow any liability on the part of the Organisation to be established.

24. On 4 December 2013, the appellant lodged an administrative complaint with the Secretary General pursuant to Article 59, paragraph 2, of the Staff Regulations. She asked the Secretary General to recognise that the Organisation had indeed incurred liability for her occupational accident, the circumstances of which she described as follows:

> "On 21 November 2012, when I was working in the Agora building and wished to make my way to my interpreter's booth, I fell on the step leading to the platform in the main hall.
>
> While I was attempting to mount this "step", my foot caught on the raised edge of the nosing, causing me to fall full length, on my knees, my chin and then my right shoulder".

25. On 3 January 2014, the Secretary General rejected the administrative complaint as being unfounded. He held that in this instance the three conditions that were necessary for the Organisation's liability to be incurred – namely, gross negligence, the existence of a detriment and a cause-and-effect relationship between the first two conditions – were not met, as the Organisation was not guilty of any act of negligence.

26. On 28 February 2014, the appellant lodged the present appeal.

27. On 11 December 2014, the CPAM informed the appellant that her rate of permanent disability had been set at 30 % and that she was entitled to receive a pension as from 15 September 2014.

II. THE RELEVANT LAW

A. Seat Agreement

28. According to Article 1 of the Special Agreement relating to the Seat of the Council of Europe, signed on 2 September 1949 between the Council of Europe and the Government of the French Republic, "[e]xcept as otherwise provided in this Agreement or in the General Agreement on Privileges and Immunities, French law shall apply within the premises and buildings of the Council of Europe at its seat."

B. Agreement between the Council of Europe and the Government of France

29. On 12 January 2000, the Council of Europe and the Government of France signed an Agreement on the social protection of staff employed by the Organisation on French territory.

Article 4:

> "Staff who, in respect of all or some of the contingencies covered by the French social-security scheme, are ineligible for cover under the Council of Europe's private social-protection scheme shall be bound by French social-security legislation."

Article 5:

> "As the employer of the staff referred to in Articles 3 and 4 of the present agreement, the Council of Europe shall be bound by French social-security legislation except the rules contained therein on supervision and disputes."

30. Following that Agreement, the two parties signed an Administrative Arrangement to settle various questions that are not relevant for this case.

C. Insurance scheme covering the Organisation's freelance interpreters

31. The employment conditions of interpreters are set out in Rule No. 1201 of 24 November 2004 specifying the conditions of employment of conference interpreters paid on a daily basis, and by the Agreement between the International Association of Conference Interpreters (AIIC) and certain Coordinated Organisations. During the period of their employment by the Council of Europe, interpreters are therefore temporary staff members who come under the authority of the Secretary General.

Article 7:

> "Interpreters shall be subject to French social security legislation, with the exception of those who declare themselves to be affiliated on an individual basis to a health insurance scheme during the period of their employment by the Council of Europe.
>
> For interpreters resident in France, this scheme shall fall within the French social security system."

32. The parties did not supply any information about the special insurance policy for interpreters mentioned in connection with this case (paragraph 20 above).

D. The law on gross negligence in France

33. According to the information provided by the parties, the legislative provisions on gross negligence that apply in France are those of Articles L. 451-1 to L. 452-5 of the Social Security Code and the associated case-law, in particular as regards the extent of the victim's right to compensation.

34. Regarding the case-law of the French courts, the parties gave some information that it is not necessary to summarise here.

THE LAW

35. The appellant requests that the Tribunal declare the Council of Europe civilly liable for her occupational accident, set aside the decision of the Directorate of Logistics of 4 November 2013 and, finally, order the Organisation to pay compensation for the detriment suffered.

36. The Secretary General, in his main submissions and in pleadings submitted in the alternative and in the further alternative, asks the Tribunal to dismiss the appellant's request.

37. Before ruling on the merits, the Tribunal must make some procedural remarks.

I. REGARDING THE REQUEST FOR THE CPAM TO BE INVITED TO INTERVENE IN THE CASE

38. In his memorial of 17 October 2014 (paragraph 8 above), the Secretary General asked the Tribunal to invite the CPAM to intervene in the proceedings. In her observations in reply of 21 November 2014 (paragraph 9 above), the appellant did not dispute the need for such intervention if the Tribunal were to apply the French legislation on gross negligence.

39. In its decision of 29 January 2015 (paragraph 11 above), the Tribunal rejected the parties' request for the CPAM to be invited to intervene.

40. In a memorial submitted after that decision (paragraph 13 above), the Secretary General maintained his request, without, however, replying to the points made in the recitals of the Tribunal's decision of 29 January 2015 or explaining in what capacity he thought the CPAM should be invited to intervene in the case. Previously, however, in his memorial of 17 October 2014 (paragraph 8 above), after reiterating the terms of Article L. 371-1 paragraph 8, of the French Social Security Code, he had maintained that the fund "must be invited to be a party to the proceedings, failing which the forthcoming judgment could be declared null and void".

41. The Tribunal confirms its decision of 29 January 2015.

42. Indeed, not only do the regulations governing the workings of the Tribunal not authorise this type of intervention, given that the CPAM does not have standing to take a matter before the Tribunal (see the relevant decision), but also any arguments that the CPAM might have – although at no stage did it express any interest in the matter to the Tribunal – could be presented through the respondent party (see, *mutatis mutandis*, ATCE, Appeal No. 345/2005, Bendito (IV) v. Governor, decision of 19 May 2006, paragraph 4, in which, however, the Tribunal seems to implicitly acknowledge that the third party asking to intervene had standing to take the matter before it and hence to intervene in the proceedings).

43. Moreover, the Tribunal notes that it does not appear that there is any conflict between the CPAM and the appellant, or that she lodged an appeal against the pension granted (paragraph 27 above), or – contrary to what she did before the Tribunal – that she asked the CPAM for the increased amount that she could claim on the basis of the case-law in the area of gross negligence mentioned by the Organisation, and which the appellant in her alternative submissions asks the Tribunal to grant if it finds that there was gross negligence. In any event such a conflict would not be a matter for the Tribunal but rather for the French courts (see, *mutatis mutandis*, regarding the exercise of their respective jurisdiction in parallel litigation proceedings, ATCE, Appeals Nos. 211/1995, 213-214/1995, 220/1996, 222-223/1996, 227-228/1997, 229-230/1997, 242-243/1998, Taner and Claire BEYGO v/ Secretary General, decision of 28 April 1999).

44. Finally, according to the Tribunal's information, neither does it appear that the Organisation contested the CPAM's decision to consider the appellant's accident as an occupational accident (paragraph 21 above).

II. REGARDING THE APPLICABILITY OF FRENCH LAW TO THIS CASE

45. The Secretary General maintains that French law should apply in this case and that the Tribunal should not seek to determine whether there is civil liability on the part of the Organisation but should rather apply the French case-law on gross negligence that has developed in the field of labour law.

On this point, he refers to the Agreement and the Administrative Arrangement between the Organisation and the Government of France (paragraphs 29-30 above) in support of his argument that the provisions of French law, and more particularly those of the Social Security Code, should be applied in this case.

46. The appellant for her part maintains that the provisions relating to the recognition and reparation of detriment suffered by the victims of occupational accidents are unquestionably matters for the rules governing disputes and that, therefore, having regard to Article 5, paragraph 1, of the Agreement of 12 January 2000 (paragraph 29 above), those rules cannot be applied by the Tribunal. She adds that if that were not the case, the way in which the Organisation could be rendered liable would differ according to the type of employment contract held by a staff member, and that this would be contrary to the principle of equality between temporary and permanent staff.

47. The Tribunal for its part notes that the Organisation has immunity from jurisdiction with regard to the host country. Hence the Tribunal is not part of the French judicial system but is rather an independent court that is specific to the legal and institutional order constituted by the Organisation. However, as was pointed out by the appellant, pursuant to Article 5 of the Agreement between the Council of Europe and the Government of France – and hence by virtue of an independent decision on the part of the Organisation itself – the Organisation is bound by French social security legislation except as regards "the rules contained therein on supervision and disputes".

48. For the Tribunal, this means that in concluding that agreement with the French authorities the Organisation chose to be bound by the legislation issued by them. However, contrary to what the appellant claims, the provisions concerning the recognition and reparation of detriment, which are rules of substantive law, are not covered by the exception to the rules on disputes contained in Article 5 of the Agreement of 12 January 2000, but are indeed part of the French social security legislation that is applicable to the Organisation. The disputes referred to in this provision relate to the procedure, and not to the rules to be applied during a dispute.

49. Having arrived at that conclusion, the Tribunal must nonetheless specify that in its application of the French Social Security Code it is not bound by the interpretation thereof given by the French courts or by the rules of procedure laid down by that Code, because in the first instance it is a sovereign court within the Organisation, and in the second instance, those rules – such as the one requiring intervention by the sickness insurance fund – fall under the abovementioned exception in Article 5.

50. According to the appellant, that exception also concerns the substance of a dispute, whereas the Tribunal considers that it relates only to the procedure.

Hence, the principle of gross negligence applies in this case. However, given the context and the limits within which it must be applied in this instance, the Tribunal, as already stated, remains free to determine the extent and nature of its application to the matter pending before it.

It is up to the Tribunal to interpret the legislation in the instant case and to decide on the French case-law to be taken into account for its application.

51. In order to set this dispute properly in context, the Tribunal also finds it appropriate to point out that in the instant case the appellant was covered by two social insurance schemes: the one specific to the Organisation, by virtue of the agreement covering interpreters, and the one provided by the Republic of France, given that the Organisation’s temporary staff are affiliated to the French social security system.

52. In fact it is quite natural for a dispute arising within the Organisation to be governed by the latter’s own rules, whereas the rules of the French social security system should apply in full to any dispute being taken before the French labour courts.

III. REGARDING THE REQUESTS FOR INVESTIGATIVE MEASURES

53. Following the rejection of similar requests by the decision of 29 January 2015 (paragraph 11 above), the appellant asks that the Tribunal, before reaching a decision, order a visit to the site of the accident and hear as witnesses three members of the security and reception staff who were present on the premises on the day of the accident, and two members of the Organisation’s medical staff.

54. The Secretary General in his final written submissions does not explicitly comment on these interlocutory requests submitted by the appellant, but after asserting that "such measures can do little to alleviate the applicant's failure to adduce the required evidence", confines himself to noting that the Tribunal had already refused a request of a similar nature.

55. The Tribunal for its part notes that it does not need to conduct those investigative measures. Indeed, as regards the request for an on-site visit, the photographs supplied by the appellant give a sufficiently clear idea of the site of the accident and, in any case, the premises have been modified since those photographs were taken.

56. Regarding the hearing of witnesses, the Tribunal observes that both the security and reception staff and the medical staff would only have been able to testify to the existence of other accidents without being able to relate how they happened in detail. Furthermore, there was nothing to stop the appellant from asking those individuals to provide statements that she could have submitted to the Tribunal; indeed, this approach would have enabled the Tribunal to more clearly assess whether it was useful to call them as witnesses. Yet the appellant makes no mention to the Tribunal of any refusal by those individuals – who, had they been called by the Tribunal to appear, would have been compelled to do so – or of any difficulty with identifying the people concerned.

57. In any case, although the parties made no reference to this fact, the Tribunal notes that the Organisation's Health and Safety Committee carried out an inspection after the date of the accident (on 9 December 2013) and that in the observations and recommendations contained in its inspection report it noted that there was "a change in level leading to a risk of falls" and proposed, "as a preventive measure", the installation of a system to prevent people from falling, even if this is not required by the rules" (document available on the Health and Safety Committee's intranet site).

58. Since this is a public document drafted by an official body of the Organisation – and although it was not the subject of comments by the parties apart from a general reference by the Secretary General during the hearing – the Tribunal has no difficulty with taking it into account or with concluding that the Organisation could not disregard the opinion issued a year earlier by the Secretariat's technical services concerning the risk associated with the change in level. The Tribunal arrives at this conclusion even if there was no knowledge of other possible accidents and even if the Committee refers in its document to a preventive measure to be adopted despite the fact that the situation complied with the existing legislation.

IV. SUBMISSIONS OF THE PARTIES

59. The parties having set out their arguments in a way that considers several alternatives, the Tribunal will summarise here the arguments that are relevant for the judgment being issued in the instant case.

A. The appellant

60. The appellant raises three grounds: non-compliance with regulations applicable to buildings open to the public; non-compliance with workplace regulations; and, finally, the Council of Europe's negligence and failure to fulfil its duty of care.

1. Non-compliance with regulations applicable to buildings open to the public

61. With reference to Article 1 of the Special Agreement of 2 September 1949 relating to the Seat of the Council of Europe (paragraph 28 above), the appellant maintains that consideration must be given to the French legislation in force on the day of the accident in order to determine the Council of Europe's liability. She refers to:

a) Act 2005-102 of 11 February 2005 on the equal rights and opportunities, participation and citizenship of persons with disabilities;

b) the Order of 1 August 2006 on the application of Articles R. 111-19 to R. 111-19-3 and R. 111-19-6 of the Construction and Housing Code on access of persons with disabilities to public buildings and installations open to the public during their construction or establishment.

62. In her observations in reply to the Secretary General's memorial, the appellant argues that contrary to what he claims, these are mandatory provisions that can be relied on by any victim, disabled or able-bodied, irrespective of his/her state of health.

63. According to the appellant, the Organisation, however, failed to comply with Articles 6 and 2 of the abovementioned Order. The former contains provisions relating to horizontal internal passageways and the latter provisions relating to external passageways. The appellant notes in particular that the place where she tripped was an industrial beam that had been placed on the floor to act as a "step" and that she caught her foot on a raised edge measuring 7 cm. She points out that the total height was 21 cm – much more than the normal height of steps (17 cm) – and draws attention to the total absence of signs.

64. The appellant concludes that the site of the accident contained features that posed a risk for the public and that the fact that the City of Strasbourg had issued an order authorising the opening of the building to the public cannot not be used as an argument for claiming that the raised edge presented no risk.

2. Non-compliance with workplace regulations

65. The appellant argues that the Organisation's liability is incurred due to its non-compliance with Article R 4216-12, 3 of the Labour Code, which stipulates that "it is prohibited to place one or two isolated steps on principal passageways". With the aid of photos that she submitted to the Tribunal, she claims that in this case there was a step that was not only isolated, but also dangerous due to its height and raised edge. She

adds that in practice this was not a genuine step but an industrial beam set on the floor and as such unsuitable for normal movement within a building.

66. The appellant adds that after her accident the Organisation carried out work that resulted in the removal of that step and its replacement by access ramps at various points around the platform, coupled with a balustrade along the remaining sections to prevent any stepping up or down.

67. According to the appellant, therefore, the Organisation was aware of the hazardous nature of this location and took steps to rectify the situation.

3. Regarding the Organisation's negligence and breach of its duty of care

68. The appellant states that she was not the first person to injure herself at that location and that despite many falls, nothing was done to prevent her accident. She adds that if the Tribunal wished to have further clarification on that point it should question members of the Organisation's security and medical staff.

69. She argues that her accident would not have occurred if the Organisation had taken action to make the surroundings of the platform safe, or given preference to a traditional step with no raised edge, rather than a dangerous and totally useless industrial beam based on purely aesthetic considerations. She infers that the Organisation was negligent and can incur liability on that ground, pursuant to the case-law of the ILO Administrative Tribunal (ILOAT judgment no. 2804). She claims that for these reasons the Organisation breached its duty of care towards its staff and towards her in particular by failing to guarantee a safe working environment.

4. Conclusion

70. The applicant concludes that the Organisation incurs full liability for her accident and that she is therefore entitled to compensation for the detriment caused.

B. The Secretary General

71. After stressing the applicability of the French law relating to gross negligence as summarised above, the Secretary General bases his case on the absence of gross negligence on the part of the Organisation and on the lack of foundation for the appellant's claims.

1. Regarding the Council of Europe's lack of awareness of any risk

72. The Secretary General begins by pointing out that contrary to what the appellant states, there had been no accident of this type prior to 21 November 2012, i.e. the date of the accident in question, and that furthermore the building met safety requirements.

73. He adds that the change in level was perfectly visible and presented no particular risk; indeed there was a visual contrast between the covering of the higher level and the surrounding floor.

74. The Organisation, he says, could therefore not be aware of any particular risk.

2. Regarding the alleged non-compliance and hazardous nature of the "step"

75. In the first place, the Secretary General refers to the appellant's claim that the step constituted a danger due to the presence of a raised edge, which she said was in breach of the applicable legislation. He notes that the appellant did not present to the hearing any provisions prohibiting that type of edge. He adds that in any event, it has in no way been established that the raised edge played a causal role in the appellant's accident. He draws attention to the fact that the appellant's shoe got "caught" in the step, but that the occupational accident declaration simply reflected her statements and that there were no witnesses. He argues that since the appellant has supplied no other statements to support her claims, as the case stands there is no documentation to support her allegations.

76. In the second place the Secretary General contests the applicability to this case of the provisions of Articles 2 and 6 of the Order of 1 August 2006 (paragraph 61 above) and Article R.4216-12 of the Labour Code.

He asserts that the provisions of the first two articles concern the movement of disabled persons and therefore do not apply to the appellant.

Regarding the third article, the Secretary General takes the view that this provision does not apply in this instance. That article prohibits the location of one or two isolated steps on principal passageways, whereas, according to him, the "step" on which the appellant fell was not an "isolated step" within the meaning of that article but a change in level, which, moreover, was not located on a principal passageway but led to a defined rest area. Finally, he notes that the article in question comes from the fire safety regulations and that in May 2010, the Bas-Rhin *département* fire safety committee issued a favourable report on the building. Since it has not been established that the change in floor level was dangerous and non-compliant with the regulations, the Secretary General considers that the appellant has failed to furnish any proof of her claims.

3. *Conclusion*

77. The Secretary General therefore asks the Tribunal to dismiss out of hand the appellant's claim that her employer displayed gross negligence.

V. THE TRIBUNAL'S ASSESSMENT

1. Non-compliance with regulations applicable to buildings open to the public

78. The Tribunal notes that the provisions referred to by the appellant to justify raising this ground relate solely to disabled persons; this is clear from their terms and wording. Moreover, the appellant has not proved that they are, as she claims, mandatory and hence applicable to everyone. The Tribunal for its part finds no argument to justify the appellant's interpretation.

79. It is therefore not possible for the Tribunal to find that there was non-compliance with those regulations.

2. Non-compliance with workplace regulations

80. The provisions referred to by the appellant in support of this ground concern "principal passageways" (paragraph 65 above). The Tribunal considers that the place where the step/industrial beam (as it is variously described) was located was not a "principal passageway" (the term used by the French Labour Code to which the appellant refers). Indeed, although the step/industrial beam was situated in the entrance hall it was not located in a central position or along the normal route that would be taken to get to the offices/meeting rooms, but rather in a transit area leading to a rest area in which to sit down and/or take a break.

81. Moreover, the appellant bases her case not on the location of the step/industrial beam but solely on the fact that it was isolated. However, in the light of the preceding remarks, the appellant cannot make reference to that provision.

82. It follows that the Tribunal must dismiss this ground.

3. The Council of Europe's negligence and breach of its duty of care

83. In support of this ground the appellant claims that there have been other accidents and that the Council of Europe has therefore failed to fulfil its duty of care. However, she puts forward no information that would prove her assertions. Neither does she provide prima facie evidence – the fact of requesting a hearing of witnesses without giving details does not constitute such evidence – although it was up to her as the person alleging those facts to provide the proof or at the very least prima facie evidence that would give the Tribunal reason to consider that the Organisation was aware of the hazardous nature of the situation. It is true that the Health and Safety Committee expressed an opinion that tended towards such a conclusion. However, that opinion was only given preventively and above all, only after the appellant's accident. In any event, the fact that the City of Strasbourg issued an Order authorising the opening of the building does not constitute an argument in support of the claim that everything was in order and that the Organisation's liability could not be incurred.

84. In this regard there are two factual elements that the Tribunal deems to be of some importance.

85. Firstly, according to the information provided by the appellant herself, she was going up the step. It is clear that under normal circumstances going up a step is less hazardous than coming down.

86. The appellant claims not to have been the first person to injure themselves at this location and that despite numerous falls nothing was done to prevent her accident. She adds that if the Tribunal needed clarification on this point it should question members of the building's security staff and the medical staff.

87. The Tribunal notes that the Secretary General, who possesses factual information about the use of the building, contests the appellant's assertions about similar accidents having occurred at the site in question. The Tribunal has no reason to doubt the word or good faith of the Secretary General: were that not to be the case and if new facts were to come to the appellant's attention, she could initiate proceedings on the basis of that new information pursuant to Article 59 of the Staff Regulations, or ask the Tribunal to review its decision.

88. The appellant maintains that the accident would not have occurred if the Organisation had taken measures to make the surroundings of the platform safe, or if it had given preference to a traditional step rather than to a dangerous and totally unnecessary industrial beam based on purely aesthetic considerations.

89. However, it appears from an examination of the photographs produced that the presence of the "step" was perfectly visible given the direction in which the appellant was going – namely up the step – and that although it was higher than an ordinary step, the difference was not so great as to constitute a particular hazard. Moreover, the appellant does not claim to have been visiting the premises for the first time. The Tribunal is of the opinion that the accident was due to inattentiveness on the part of the appellant, who should have adapted her stride to the features of this change in level.

90. Therefore, the appellant's arguments do not convince the Tribunal that the Organisation was negligent and hence incurred liability in regard to her. In arriving at this conclusion, the Tribunal does not need to rule on the question, as requested by the Secretary General, of whether or not there was gross negligence.

3. Conclusion

91. This appeal is unfounded and the appellant's claim must therefore be dismissed.

IV. CLAIMS FOR COMPENSATION AND REIMBURSEMENT OF PROCEDURAL COSTS

92. Having arrived at the above conclusion, the Tribunal does not need to rule on the appellant's requests for compensation and for an expert assessment and for reimbursement of her procedural costs. In the first case, because the appeal was not

declared to be founded and in the second case, because the appellant did not file a claim pursuant to Article 11, paragraph 3, of the Tribunal's Statute.

93. However, the Tribunal must rule on the Secretary General's claim for reimbursement of 5 000 euros by way of irrecoverable expenses for which he remains liable.

94. The Tribunal notes that pursuant to the abovementioned Article 11, paragraph 1, the Tribunal may, if it deems that the appeal was an abuse of procedure, order the appellant to reimburse all or part of the costs.

95. Since the Tribunal does not deem this appeal to be an abuse of procedure, it must reject the Secretary General's request for reimbursement of the irrecoverable expenses for which he is still liable.

V. CONCLUSION

96. The Tribunal arrives at the conclusion that the appeal is unfounded and that each party must bear its own costs.

For these reasons the Administrative Tribunal:

Decides that it is unnecessary to invite the CPAM to intervene in the case;

Decides that its decision is to be made in accordance with the rules applicable in the Organisation and that it can take account of the French legislation on gross negligence;

Decides not to order the requested hearing of witnesses or to conduct an on-site visit;

Decides that there are no grounds for ordering an expert assessment;

Finds the appeal to be unfounded and dismisses it;

Rules that each party will bear its own costs and expenses.

Adopted by the Tribunal in Strasbourg on 22 October 2015, and delivered in writing pursuant to Article 35, paragraph 1, of the Rules of Procedure of the Tribunal, on 23 October 2015, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
S. SANSOTTA	C. ROZAKIS