



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

Judgment No. 2024-UNAT-1476

**Simone Monasebian
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGEMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Kanwaldeep Sandhu Judge Leslie F. Forbang
Case No.:	2023-1820
Date of Decision:	28 June 2024
Date of Publication:	16 August 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant: George G. Irving

Counsel for Respondent: Rupa Mitra

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Ms. Simone Monasebian, a former Representative of the New York Liaison Office (LO) for the United Nations Office on Drugs and Crime (UNODC), contested the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) to impose on her the disciplinary sanction of demotion of one grade (D-1 level to P-5 level) with deferment, for three years, of eligibility for consideration for promotion (contested decision).
2. On 4 May 2023, the UNDT issued Judgment No. UNDT/2023/028 (impugned Judgment), dismissing Ms. Monasebian's application.¹
3. Ms. Monasebian filed an appeal with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons that follow, we dismiss the appeal and affirm the impugned Judgment.

Facts and Procedure

5. On 31 May 2005, Ms. Monasebian commenced service with the Secretariat. Prior to her demotion, she served as Representative at UNODC LO, at the D-1 level.²
6. In 2016 and 2017, four complaints of prohibited conduct were submitted against Ms. Monasebian alleging, *inter alia*, that she had created an intimidating, hostile and/or offensive work environment at the UNODC LO. The four complaints consisted of the following:³
 - (i) By letter dated 19 May 2016 to JL, Director, Division for Policy Analysis and Public Affairs, UNODC [Headquarters (HQ)], Vienna, former and then current staff members and interns of UNODC LO filed an anonymous complaint;
 - (ii) By letter dated 9 November 2017 to JL, three then-staff members of UNODC LO filed a formal complaint;
 - (iii) By letter dated 14 November 2017, a former intern of UNODC LO, filed a formal complaint; and
 - (iv) By letter dated 7 December 2017 to the Executive Director, UNODC, a staff member of UNODC LO filed a supplementary formal complaint.

¹ *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/028.

² *Ibid.*, para. 4.

³ *Ibid.*, para. 6.

7. On 12 January 2018, UNODC initiated a fact-finding investigation on allegations of misconduct against Ms. Monasebian pursuant to Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). During its investigation, the fact-finding panel (panel or investigation panel) interviewed 17 witnesses in connection with the complaints. The witnesses consisted of twelve current or former professional and general service staff members and interns of UNODC LO, New York; three current staff members of UNODC HQ, Vienna; and two additional witnesses who did not work for UNODC but had interacted with Ms. Monasebian on work-related matters.⁴

8. On 11 July 2018, following the completion of the investigation, the Director, Division for Management, UNODC HQ, referred Ms. Monasebian's case to the then Office of Human Resources Management (OHRM) for appropriate action.⁵

9. By memorandum dated 13 November 2018 (Allegations Memorandum), Ms. Monasebian was requested to respond to formal allegations of misconduct. The memorandum indicated that she had two weeks from receipt to provide written comments.⁶

10. On 4 March 2019, following a number of extensions of time, Ms. Monasebian submitted comments on the allegations of misconduct, and on 10 March 2019, she provided a revised version of her comments. On 14 March 2019, she provided additional documents related to her comments.⁷

11. By letter dated 3 May 2019 (Sanction Letter), Ms. Monasebian was informed that, based on a review of her entire dossier, including her comments, the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) concluded that it had been established by clear and convincing evidence that, between 2005 and 2018, Ms. Monasebian had created an intimidating, hostile and/or offensive work environment at UNODC LO. In particular, it was found that she had targeted the following staff members: a) LB, Administrative Assistant, between October 2005 and April 2007; b) SK, Programme Management Officer, between January 2010 and January 2012; c) YC, Programme Management Officer, between November 2015 and March 2018; d) SA, Administrative Assistant, between January 2017 and March 2018; and e) JO, Programme Assistant between December 2016 and December 2017.

⁴ *Ibid.*, paras. 7 and 8.

⁵ *Ibid.*, para. 9.

⁶ Annex 2 to Appeal.

⁷ Impugned Judgment, para. 11.

In addition, Ms. Monasebian behaved improperly towards interns at UNODC LO. The Sanction Letter further stated that Ms. Monasebian's actions amounted to misconduct in violation of Staff Regulations 1.2(a) and (f), Staff Rule 1.2(f) and Sections 2.1 and 3.2 of ST/SGB/2008/5 and that the disciplinary measure of demotion of one grade with deferment, for three years, of eligibility for consideration for promotion would be imposed on her.⁸

12. On 4 August 2019, Ms. Monasebian filed an application with the Dispute Tribunal contesting the disciplinary measures imposed on her by the USG/DMSPC.⁹

13. At Ms. Monasebian's request, on the basis of medical reasons, the UNDT suspended the deadline for the submissions in this case on several occasions from 2 November 2020 to 30 June 2022.¹⁰

14. On 4 May 2023, the UNDT issued the impugned Judgment, dismissing the application.

15. The UNDT found that it had been established by a preponderance of evidence that Ms. Monasebian had bullied and created a hostile work environment towards LB;¹¹ that she had verbally abused and belittled SK;¹² that she had belittled YC and made her cry;¹³ that she had shouted at SA and communicated towards her in an aggressive manner;¹⁴ and that she shouted at and belittled JO and made her cry.¹⁵ The UNDT also found "some evidence" that Ms. Monasebian had "shouted at and belittled" at least some of the interns.¹⁶

16. The UNDT concluded that there was a preponderance of the evidence that Ms. Monasebian, "a senior official of the Organization and head of the UNODC LO in New York, engaged in a pattern of conduct through which she created an intimidating, hostile and/or offensive work environment for her subordinate staff members" and "failed to uphold a conduct befitting her status as senior international civil servant".¹⁷ The UNDT held that Ms. Monasebian's actions constituted harassment and abuse of authority under ST/SGB/2008/5 and amounted to

⁸ Annex 4 to Appeal.

⁹ Impugned Judgment, para. 14.

¹⁰ *Ibid.*, para. 15.

¹¹ *Ibid.*, para. 33.

¹² *Ibid.*, para. 40.

¹³ *Ibid.*, para. 56.

¹⁴ *Ibid.*, para. 64.

¹⁵ *Ibid.*, paras. 65 to 74.

¹⁶ *Ibid.*, para. 85.

¹⁷ *Ibid.*, paras. 93 and 102.

misconduct.¹⁸ The UNDT also found that, while there were some procedural flaws in the investigation, the flaws were later cured, and Ms. Monasebian’s due process rights had ultimately been respected.¹⁹ The UNDT moreover concluded that the disciplinary measure was proportionate.²⁰

17. Ms. Monasebian filed an appeal on 30 June 2023, and the Secretary-General filed his answer on 5 September 2023.

Submissions

Ms. Monasebian’s Appeal

18. Ms. Monasebian claims that the UNDT arbitrarily concluded that the investigative flaws it found were immaterial. In particular, she emphasizes the fact that the UNDT found that a panel member indicated that the panel had not made efforts to verify the truth of any of the factual allegations made or to contact available key witnesses and that this constituted an “egregious violation” of the “HR Guidelines”, which with “other violations of due process amount[ed] to an abuse of process”. Furthermore, the UNDT improperly relied on “unverified” witness statements and “the seriously flawed Investigation Report” in reaching its conclusions. She was only given a limited opportunity to examine two of her accusers. Ms. Monasebian contends that the errors of the investigation permeated and tainted the entire proceeding.

19. Ms. Monasebian claims that the UNDT conflated issues of management style with misconduct in the interest of promoting its anti-harassment policy and made errors of fact by relying on “generalized” evidence to support some of the allegations based on testimony of witnesses that it had dismissed as not supporting other allegations. In the absence of proof of each of the factual allegations in the Sanction Letter, the UNDT merely invoked opinions about her management style.

20. Ms. Monasebian asserts that the UNDT improperly relied on the evidence of staff members with known animus against her and improperly ignored the testimony of three of her witnesses AC (the former UNODC Executive Director), and PB and MP (the two Liaison Office Deputy Chiefs), which evidence was in her favour. She takes issue with the finding of the UNDT that limited weight

¹⁸ *Ibid.*, para. 102.

¹⁹ *Ibid.*, paras. 115 and 116.

²⁰ *Ibid.*, para. 126.

be given to the testimonies of MP and PB on the basis that a breach of integrity and confidentiality had tainted their testimonies in that Ms. Monasebian had improperly shared other witnesses' confidential statements with them. This appears to be based on the mistaken notion that when witnesses are called to testify, they cannot be in advance presented with the evidence arising out of the investigation. This interpretation, which would make it impossible for an appellant to present rebuttal testimony, or even to know whether a witness has anything to say, seems to confuse confidentiality during the initial investigation phase.

21. Ms. Monasebian did not receive, share or discuss any witness statements during the investigation. Only after being presented with all the evidence after the close of the investigation, in an effort to present a defence to the charges, Ms. Monasebian appropriately and necessarily shared relevant information with MP and PB so it could be addressed, since the investigation panel refused to interview PB and failed to ask MP relevant questions, as the UNDT conceded.

22. Ms. Monasebian challenges the UNDT's finding that there was some evidence that she had shouted at and belittled at least some staff members or that the evidence proved a pattern of her behaviour over a long period. The UNDT failed to establish, as it was required to do, each incident of shouting separately and specifically witnessed and corroborated; absent which it was required to find them not to have been proved.

23. In particular, Ms. Monasebian alleges that the UNDT wrongly found a preponderance of evidence that she had bullied LB and created a hostile work environment for her. In this regard, the UNDT improperly relied on AT's witness statement and failed to address other witness statements or testimony in regard to LB. Ms. Monasebian also challenges the UNDT's finding that she "belittled" SK when SK did not state this anywhere, nor did any other witnesses state this with regard to SK. She also claims that the UNDT erred in finding that SK's testimony was supported by SC's interview.

24. Turning to YC, Ms. Monasebian claims that the UNDT arbitrarily failed to consider a statement of an intern, JB, whom YC indicated was present when it was alleged that Ms. Monasebian shouted at her for some "15 minutes" "non-stop" on the office loudspeaker. She claims that, because YC indicated that JB was present at the time, the UNDT erred in not considering the latter's statement and in not including her on the list of witnesses at the hearings. Furthermore, the UNDT erred in finding that YC's testimony was supported by the statements of

JO, TL, GM, MP, and MC. She asserts that JO, TL and GM did not claim to have witnessed any of the allegations regarding YC.

25. Ms. Monasebian also challenges the UNDT's findings regarding SA. She contends that the UNDT found SA "an unreliable witness in a variety of respects". She did not file a formal complaint and none of the factual allegations in the Sanction Letter had been substantiated by other witnesses. She also claims that the UNDT improperly relied on a new charge (paragraph 43 of the Sanction Letter) that had never even been set forth with regard to SA in the Allegations Memorandum. Ms. Monasebian also challenges the UNDT's findings in relation to JO as well as the interns with respect to whom the UNDT dismissed the allegations, yet without any basis or explanation opined that there was some evidence that she had shouted at and belittled some interns.

26. Ms. Monasebian requests the UNAT to continue the anonymization that the UNDT applied in its Judgment, citing "the sensitive nature of the information contained in any prospective judgment" and recalls the reasons put forward in UNAT Judgment *AAE*.

27. Ms. Monasebian asks that the UNAT reverse the impugned Judgment, rescind the contested decision and award compensation for material losses and damage to Ms. Monasebian's dignitas.

The Secretary-General's Answer

28. The Secretary-General submits that there is no merit to Ms. Monasebian's claims that the UNDT erred in fact in relying on "generalized" evidence to support allegations based on testimony of witnesses that it had dismissed as not supporting other allegations, and that rather than presenting proof for each of the factual allegations, the UNDT invoked opinions about management style. The UNDT did not rely on "generalized evidence" but took into account the large number of staff members who came forward with congruent testimony covering individual key incidents as well as establishing a clear pattern of conduct, over a prolonged period of time, which was very abusive and detrimental to subordinate staff. Ms. Monasebian fails to identify any specific findings that she wishes to challenge and makes no attempt to address the specific corroborating evidence that the UNDT cited in support of some of its findings of credibility. Moreover, in reaching its findings that some of the allegations were substantiated with a preponderance of the evidence, the UNDT did not rely on the same evidence that it had dismissed

in support of other allegations. In this regard, the jurisprudence cited by Ms. Monasebian has no relevance to the present case.

29. The Secretary-General contends that there is no merit to Ms. Monasebian's contention that the UNDT improperly cited staff members with "known animus against" her. In addition, the UNDT found no basis for her allegation that GM and JR were biased against her and found "implausible that they would have convinced almost all the staff who were subordinate to [Ms. Monasebian] to complain against her". Ms. Monasebian merely disagrees without demonstrating any judicial error.

30. The Secretary-General submits that Ms. Monasebian demonstrates no material errors of fact and law with regard to the five victims of her harassment and abuse of authority. She has shown no reversible error regarding the UNDT's finding a preponderance of evidence that she had bullied LB and created a hostile work environment for her, and verbally abused and belittled SK.

31. She has also shown no error regarding the UNDT's findings on YC, whose evidence detailed many examples of Ms. Monasebian's misconduct including that she would shout at her and had on one occasion shouted at her for some "15 minutes" "non-stop" on the office loudspeaker. Her contention that the UNDT erred in not considering the statement of an intern, JB, who was present at the time of this latter incident, was irrelevant given that the UNDT is entitled to limit oral evidence. Furthermore, Ms. Monasebian's claim that the UNDT erroneously found YC's testimony was supported by the statements of JO, TL, GM, MP, and MC, although these witnesses did not directly observe the incidents that YC experienced, does not negate the fact that the evidence of these witnesses was that Ms. Monasebian had engaged in a longstanding pattern of shouting at and humiliating her subordinates. The UNDT was well within its judicial discretion when it found that YC's hearing testimony was compelling, genuine and consistent and that the charges relating to YC were supported by a preponderance of the evidence.

32. The Secretary-General contends that Ms. Monasebian has also shown no error with regard to the UNDT's findings on SA's evidence. Her contention that the UNDT found that SA was an unreliable witness in a variety of respects was an inaccurate characterization of the UNDT's findings. The UNDT found SA's testimony compelling, genuine and consistent, but concluded that the facts established in SA's testimony did not amount to misconduct, but only micromanagement. This conclusion was consistent with the UNDT's finding that SA's testimony was credible. Contrary to Ms. Monasebian's claim, the UNDT also did not improperly rely, with

respect to SA, on a new charge from the Sanction Letter that had not been set forth in the Allegations Memorandum.

33. The Secretary-General contends that Ms. Monasebian shows no error regarding the UNDT's findings on JO. She merely disagrees with the UNDT regarding JO's credibility and fails to specify any errors on the part of the UNDT. Even though the UNDT considered that there was a possibility that JO had misunderstood Ms. Monasebian's conduct on 20 November 2017, when JO was taken to medical services, the UNDT rightly focused on the reactions of Ms. Monasebian's subordinates, rather than Ms. Monasebian's intentions on that day. This was because the UNDT had concluded that Ms. Monasebian "had failed to develop a healthy work environment where subordinate staff felt respected and safe" and instead felt unsure and fearful of her reactions.

34. Ms. Monasebian shows no error in the UNDT's findings on the interns and merely repeats her arguments about alleged flaws in the investigation and disciplinary process. She does not show how the UNDT erred in finding that there was some evidence that she "shouted at and belittled" at least some of them.

35. The Secretary-General submits that Ms. Monasebian has not shown any error of law in the UNDT's findings on Ms. Monasebian's witnesses. It did not, as Ms. Monasebian claims, fail to consider the testimony of PB or that of UNODC Executive Director and gave reasons for why other statements were given limited weight. The UNDT found there was a breach of integrity and confidentiality that tainted the testimonies of MP and PB, as Ms. Monasebian had improperly shared other witnesses' confidential statements with them. As a result, the UNDT gave limited weight to their testimonies. There is no merit to Ms. Monasebian's contention that it would be impossible for an appellant to present rebuttal testimony or even to know whether a witness has anything relevant to say without providing witnesses and even potential witnesses with confidential witness statements from an investigation report. It is obviously possible to ask potential witnesses as well as confirmed witnesses questions about their direct experience relevant to the matters at issue without actually providing them with statements of other witnesses.

36. The UNDT found there was a prevalent pattern of abusive behaviour over a long stretch of time, as established by a large number of staff members who were Ms. Monasebian's subordinates. Ms. Monasebian has not demonstrated how this established pattern would have been substantially undermined by the evidence of her peers and superiors. Furthermore, her claim that the UNDT erred by conflating testimonies fails to demonstrate any reversible error in the Judgment. She also

fails to explain what the material impact would have been on the UNDT's conclusions. In the face of the overwhelming, consistent, credible and corroborated evidence of so many staff members, over such a long period of time, Ms. Monasebian's claim that a citation was wrongly conflated with another, or that the investigators received a statement from a witness that they did not rely upon in any case, should be dismissed.

37. The UNDT correctly found that Ms. Monasebian's due process rights had been respected. In its Judgment, the UNDT included a thorough and careful review of her due process rights in the disciplinary process, finding procedural flaws in the panel's investigation process, but concluding that her due process rights had ultimately been respected. Ms. Monasebian has not shown any error on the part of the UNDT in this respect. The UNDT clearly set out its reasoning and found the procedural flaws, although "regrettable," were eventually cured when Ms. Monasebian was informed of all of the charges and was provided with more than four months (after her multiple requests for additional time were granted) to respond to the allegations. The UNDT correctly highlighted that, upon review of Ms. Monasebian's response to the charges, the Administration dropped some of the allegations which shows that not only had she an opportunity to provide input, but that such input was carefully considered. The UNAT has also consistently held that, with regard to due process, only substantial procedural irregularities can render an administrative decision unlawful.

38. Ms. Monasebian has not shown that the UNDT erred in finding that her due process rights were respected. The UNDT undertook a careful review of the oral testimonies and compared them to the Sanction Letter. It took into account a number of pertinent factors, including whether there were discrepancies within and among the testimonies, the level of detail in the testimonies, whether they were consistent with the complaints that had been made and with the panel interviews, whether there was corroborating testimony and in some cases documentary support, such as in the form of e-mail correspondence, and whether the testimonies were credible or compelling. Ultimately, the UNDT concluded that a number of the allegations and charges were not supported by a preponderance of the evidence.

39. Ms. Monasebian fails to show any error in the UNDT's finding that the sanction was proportionate. The UNDT found that Ms. Monasebian's conduct constituted harassment and abuse of authority and was satisfied that the imposed disciplinary measure of demotion of one grade with deferment, for three years, of eligibility for consideration for promotion was in line with the past practice of the Organization in matters of comparable misconduct. Ms. Monasebian's

claim that the UNDT conflated issues of management style with misconduct does not demonstrate any error in the Judgment, and her mere declaratory statement should be dismissed.

40. Finally, the Secretary-General contends that Ms. Monasebian has not shown any need for anonymity in the UNAT Judgment. The UNAT has repeatedly held that any deviation from the principles of transparency and accountability can only be granted in the most sensitive cases and in exceptional circumstances. The Appellant has not submitted any circumstances, let alone exceptional ones, justifying anonymity. She fails to show that she is in greater need than any other litigant for confidentiality, and her request should be rejected.

41. The Secretary-General requests the UNAT to dismiss the appeal in its entirety.

Considerations

Anonymity

42. Following the anonymization order made by the UNDT and placing reliance on *AAE*,²¹ Ms. Monasebian has sought that we anonymize our Judgment given the sensitive nature of the information concerned in this matter. This request is opposed by the Secretary-General on the basis that Ms. Monasebian has not explained what information is sensitive, nor put forward any other information to justify this.

43. Article 10(9) of the UNAT Statute provides that the judgments of this Tribunal “shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. Article 20(2) of the Rules of Procedure of the UNAT states that “published judgements will normally include the names of the parties”.

44. UNAT Practice Direction No. 1 states in Section II.C that:

A person who has been granted anonymity by the UNDT or the neutral first instance process of an entity accepting UNAT’s jurisdiction need not request it at UNAT as such order will remain in effect, unless there is a challenge to such anonymity on appeal and UNAT has given its judgment on the issue. A person who wishes anonymity before UNAT for the first time may file a motion to request anonymity in exceptional circumstances and for good cause.

²¹ *AAE v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332.

45. Ms. Monasebian, who is legally represented, has provided limited reasons to support her request for anonymity, relying on the sensitive nature of the information contained in this Judgment and recalling the reasons put forward in *AAE*.²²

46. We recognize that there have been increasing calls for greater privacy protections for individuals and parties in judgments in many jurisdictions, including in the UNDT and UNAT, given increased access to judgments online and that requests for anonymity must be balanced against the interests of transparency and accountability.²³ We have previously found that personal embarrassment and discomfort are not sufficient grounds for redaction,²⁴ with redaction only to occur in the most sensitive of cases.²⁵ What is required is that an individual put up sufficient material to show that there is a need for anonymization which justifies a departure from the ordinary rule.

47. A decision to anonymize entails balancing competing factors. Included in the factors to be considered are the nature and extent of the misconduct; the position and employment record of the staff member; the impact of the decision on the staff member; the impact of such decision on the complainants; the impact of the decision on transparency, general deterrence, future and past conduct, both of the staff member and others; and other such factors.

48. Ms. Monasebian and the UNDT provided little or no reason for the anonymization other than the “sensitive nature” of the information. There is no identification of what information is alleged to be sensitive or how it is sensitive. Given the lack of rationale provided, there is insufficient reason or evidence to support the need for anonymization. The Secretary-General’s challenge to the anonymization is allowed.

49. On the material before us it has not been shown that the matter is one of such a sensitive nature as to warrant anonymization, and no circumstances advanced or existing on the record indicate that these are sufficient to meet the threshold of exceptionality. Therefore, recognizing that Article 20(2) of the Rules of Procedure of the UNAT provides that “[t]he published judgements

²² *Ibid.*

²³ See, e.g., Administration of justice at the United Nations, Report of the Internal Justice Council, A/77/130, para. 22 and Recommendation 3; *Mobanga v. Secretary-General of the United Nations*, 2017-UNAT-741, para. 22.

²⁴ *Buff v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-639, para. 21.

²⁵ *Mobanga Judgment, op. cit.*, para. 22.

will normally include the names of the parties”, after balancing the competing interests, we take the view that the anonymization of Ms. Monasebian’s name is not warranted.

50. For the reasons stated, Ms. Monasebian’s name is not to be anonymized.

Merits

51. In its review of disciplinary matters, the task of the UNDT is to determine: (a) whether the facts on which the disciplinary measure is based have been established; (b) whether the established facts legally amount to misconduct; (c) whether the disciplinary measure applied was proportionate to the offence;²⁶ and (d) whether the staff member’s due process rights were respected during the investigation and disciplinary process.²⁷ In disciplinary matters where termination is a possible outcome, misconduct must be established by clear and convincing evidence, with the truth of the facts asserted shown to have been highly probable.²⁸ For any other disciplinary measure, the applicable standard of proof is that of a preponderance of the evidence.²⁹ This requires that the misconduct is shown to be more likely than not based on the facts and circumstances established, with the established facts found to constitute misconduct under the Staff Regulations and Rules.

52. In undertaking its judicial review of an administrative decision taken, the UNDT must consider whether the decision taken is legal, rational, procedurally correct and proportionate. This requires that it consider whether relevant matters have been ignored and irrelevant matters considered, and whether the decision taken is absurd or perverse. The role of the UNDT is not to determine the correctness of the choice made by the Secretary-General from amongst the various courses of action available to him.³⁰

53. Article 2(1) of the UNAT Statute provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the [UNDT] in which it is asserted that the Dispute Tribunal has:

²⁶ See e.g. *Ladu v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-956, para. 15, with references.

²⁷ *Doreen Nimusiima v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1431, para. 88.

²⁸ *Ibid.*

²⁹ Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), Section 9.1(b).

³⁰ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

54. The Staff Regulations and Rules reflect an unequivocal commitment to ensuring that the dignity and worth of human beings, their equal rights, including their right not to be discriminated against, are valued and protected. Staff members are obliged to treat others with dignity and respect in an environment free from discrimination, harassment or abuse, including any abuse of power or authority. The work environment is to be free of intimidation, hostility, offence and any other form of prohibited conduct, with managers and supervisors under a duty to ensure the promotion of such an environment, one in which all staff members are able to engage constructively.

55. Where any staff member engages in behaviour which does not conform with the standard of conduct required of staff, such conduct must be investigated and acted upon in a manner which ensures that the rights of all staff members are protected, and that the workplace is not hostile for other staff members.

56. Staff Regulation 1.2(a) provides as follows:

Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them.

57. Staff Regulation 1.2(f) requires that staff members “conduct themselves at all times in a manner befitting their status as international civil servants”. Furthermore, Staff Rule 1.2(f) provides that “[a]ny form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited”.³¹

58. Harassment is defined in Section 1.2 of ST/SGB/2008/5 as:

³¹ Staff Regulation 1.2(f).

any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management.

59. An abuse of authority is defined in Section 1.4 of ST/SGB/2008/5 as:

the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

60. Section 2.1 states that:

...every staff member has the right to be treated with dignity and respect, and to work in an environment free from discrimination, harassment and abuse. Consequently, any form of discrimination, harassment, including sexual harassment, and abuse of authority is prohibited.

61. Section 3.2 provides that:

[m]anagers and supervisors have the duty to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct. They must act as role models by upholding the highest standards of conduct. Managers and supervisors have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner. Failure on the part of managers and supervisors to fulfil their obligations under the present bulletin may be considered a breach of duty, which, if established, shall be reflected in their annual performance appraisal, and they will be subject to administrative or disciplinary action, as appropriate.

62. The Sanction Letter stated that it had been established, by clear and convincing evidence, that Ms. Monasebian committed numerous instances of misconduct. She created an intimidating, hostile and/or offensive work environment; in particular, she targeted LB, an

Administrative Assistant, between October 2005 and April 2007; SK, a Programme Management Officer, between January 2010 and January 2012; YC, a Programme Management Officer, between November 2015 and March 2018; SA, an Administrative Assistant, between January 2017 and March 2018; and JO, a Programme Assistant, between December 2016 and December 2017. In addition, Ms. Monasebian behaved improperly towards interns at UNODC LO.³²

63. The disciplinary action taken against Ms. Monasebian, including each finding of misconduct, was comprehensively considered by the UNDT in its review of the decision of the Secretary-General. It did so having regard to the applicable legal framework and the Staff Regulations and Rules which prescribe the standard of conduct required of staff members. The UNDT found that on the clear and credible evidence before it, key aspects of which were found to have been corroborated by other witnesses, it was proved on a preponderance of evidence that, in her leadership style and as a manager, Ms. Monasebian had engaged in a pattern of behaviour which created a hostile working environment for a number of her subordinates over an extended period of time.³³ This behaviour constituted harassment and abuse of authority as well as a breach of her duties as a senior staff member pursuant to ST/SGB/2008/5.³⁴

64. In particular, the evidence was found to show that Ms. Monasebian had bullied and created a hostile work environment for LB, whose evidence was corroborated by AT's account that the work environment created by Ms. Monasebian was toxic.³⁵ In addition, Ms. Monasebian's lack of respectful communication with LB was found to have been documented in e-mails sent to her.³⁶ While some of the charges were found not to have been sufficiently supported by evidence, the UNDT concluded that, on a preponderance of evidence, LB had been harassed by Ms. Monasebian and that LB's allegations that a toxic working environment had been created by her were corroborated, including by AT, who had recorded her concerns in an anonymous letter in May 2016, complained in 2016 to OIOS and referred Ms. Monasebian's behaviour to AC.³⁷ Given LB's clear evidence on the merits of her complaints and the corroboration of important aspects of such evidence, we are unable to find that the UNDT erred in reaching the

³² Impugned Judgment, para. 19; Annex 4 to Apepeal, Sanction Letter, pages 1 and 2.

³³ Impugned Judgment, paras. 93 and 94.

³⁴ *Ibid.*, para. 102.

³⁵ *Ibid.*, paras. 27 and 28.

³⁶ *Ibid.*, para. 28.

³⁷ *Ibid.*, paras. 26 to 28.

finding that it did, or that it relied improperly on the witness statement of AT or failed to consider other witness statements which related to LB's complaints.

65. The testimony of SK that he had been verbally abused and belittled by Ms. Monasebian was found by the UNDT to be credible and established by a preponderance of evidence, with the specific facts stated by SK recognized to fall into a pattern of behaviour on the part of Ms. Monasebian which was corroborated by several other testimonies.³⁸ SK's evidence was found to have been supported by SC who indicated that Ms. Monasebian engaged in "daily shouting" at work and that she "was particularly hard on SK".³⁹ On appeal, Ms. Monasebian takes issue with the UNDT's finding that she "belittled" SK, when neither SK nor any witnesses stated as much. We are unable to find that the UNDT erred in its finding in this regard given the credible and reliable evidence that Ms. Monasebian had verbally abused SK as a subordinate and the clear evidence of its impact on him.⁴⁰ Having had regard to the body of the evidence before the UNDT, the UNDT did not err in concluding that SK's evidence was credible and reliable, more so in the context of the body of evidence of other witnesses, that Ms. Monasebian had through her conduct created a difficult work environment and particularly for subordinate staff members who worked with her.⁴¹

66. The UNDT found that the complaints related to YC had been proved on a preponderance of evidence, including that Ms. Monasebian on one occasion shouted at her "between 10 to 15 minutes" on the office loudspeaker.⁴² We are unable to find that the UNDT erred in finding that YC's testimony regarding Ms. Monasebian's conduct was compelling, genuine and consistent with her report and interview with the investigation panel and her claim that Ms. Monasebian would shout at her confirmed by several other witnesses.⁴³ YC sought advice from the Director, Division for Policy Analysis and Public Affairs, UNODC Vienna and also consulted the Office of the Ombudsman and the Staff Counsellor.⁴⁴ She was aware of the potential negative repercussions for her career, but nevertheless felt obliged to file a complaint, both in the

³⁸ *Ibid.*, paras. 36 and 40.

³⁹ *Ibid.*, para. 36.

⁴⁰ *Ibid.*, paras. 34 to 40.

⁴¹ *Ibid.*, para. 94.

⁴² *Ibid.*, para. 44.

⁴³ *Ibid.*, paras. 46 and 47.

⁴⁴ *Ibid.*, para. 97.

interests of other staff and to ensure that Ms. Monasebian's behaviour would not carry on in the future.⁴⁵

67. Although on appeal Ms. Monasebian takes issue with the UNDT's failure to consider the statement of the intern JB, we are not persuaded that even if such statement had been considered to the extent Ms. Monasebian considered appropriate, it was shown how it would have influenced the outcome of the decision in her favour.

68. Ms. Monasebian also takes issue with the fact that YC was not called as a witness at the hearing and claims that the UNDT "erroneously found YC's testimony was supported by" the statements of JO, TL, GM, MP, and MC when JO, TL and GM did not claim to have witnessed any of the allegations regarding YC. However, these contentions overlook the fact that the UNDT had regard to several testimonies which had provided similar accounts of the adverse impact of Ms. Monasebian's conduct and management style on staff. These accounts supported the finding that Ms. Monasebian had failed to adhere to her duty as a senior staff member or the standard of care required of her as a manager in relation to YC. Given the body of evidence before the UNDT we are unable to find that it erred in making the findings that it did in relation to Ms. Monasebian's conduct directed at YC.

69. The UNDT's findings that it had been proved that Ms. Monasebian shouted at SA and communicated with her in an aggressive manner on a preponderance of evidence are similarly found to be unimpeachable. The evidence of SA was accepted as compelling, genuine and consistent with her complaint in 2017 and her interview with the investigation panel.⁴⁶ YC's oral testimony, including her evidence that Ms. Monasebian often shouted at SA and that her treatment of SA was "terrible", was correctly found to support the evidence as to her conduct towards SA.⁴⁷ This led the UNDT to find that SA's claim of being shouted at and belittled by Ms. Monasebian was consistent with the testimonies of other staff members that her style of management and conduct was abusive, demeaning, intimidating, belittling, and humiliating. We find further there to be no merit in Ms. Monasebian's contention that the UNDT found SA "an unreliable witness in a variety of respects" and that it improperly relied on a new charge from

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*, para. 59.

⁴⁷ *Ibid.*

paragraph 43 of the Sanction Letter that was not previously detailed by SA, having regard to the conspectus of the evidence before the UNDT.

70. In relation to JO, the UNDT found no evidence of any ulterior motives in the testimonies of other staff members and found established the charges that Ms. Monasebian had failed to develop a healthy work environment where subordinate staff felt respected and safe, especially when difficulties such as a medical emergency arose in the office environment.⁴⁸ The UNDT accepted the evidence that staff were left feeling distressed, unsure of Ms. Monasebian's reactions and anticipating that she may lash out.⁴⁹ Further, in relation to the treatment of interns, the UNDT found that even if it were exaggerated to say that Ms. Monasebian systematically harassed interns, there was evidence that she "shouted at and belittled" at least some of them.⁵⁰

71. Having had regard to the conspectus of the evidence before the UNDT, we find that the UNDT did not err in finding that on a preponderance of the evidence Ms. Monasebian, as a manager and senior official, engaged in a pattern of conduct through which she created an intimidating, hostile and offensive work environment for a number of subordinate staff members. The UNDT properly had regard to the conspectus of evidence before it, assessing the credibility, relevance and weight to be attached to the evidence in the manner required. It did not engage in a wholesale acceptance of the version advanced by staff members against Ms. Monasebian, finding in some instances that not all charges were supported by evidence. What emerged was congruent testimonies which proved a pattern of behaviour and corroborated the claims of staff members that their experience of working with Ms. Monasebian was difficult and that her conduct created a working environment that was intimidating, unhealthy, hostile and at times humiliating for staff.

72. The result was a body of evidence before the UNDT which was correctly found to prove on a preponderance of probabilities that Ms. Monasebian had engaged in a clear pattern of conduct that over an extended period was contrary to what was required of her in her senior role. What the evidence illustrated was that in spite of her position of authority and the duty of care that she owed towards her colleagues, her conduct was at times abusive and detrimental to the dignity and wellbeing of subordinate staff and caused them substantial distress. This

⁴⁸ *Ibid.*, para. 74.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, para. 85.

conduct amounted to a significant failure on her part as a senior manager, even accepting that her leadership had at the same time yielded substantive success for her office's mandate.

73. The UNDT did not err in finding there to be no evidence that Ms. Monasebian was a victim of "mobbing" or the bias of disgruntled or ambitious colleagues who harboured ulterior motives against her. Instead, it properly concluded that the evidence showed that significant efforts had been made by the affected staff members to contend with Ms. Monasebian's management style, with attempts made to appease her, attend to their own emotional distress, and seek counsel from others about the situation. Collectively when the situation reached a saturation point, the staff members took steps to report the conduct for the Administration's review.⁵¹

74. We are similarly unable to find that the UNDT erred in finding that the flaws alleged by Ms. Monasebian in the investigative process were immaterial. An effort was made by the panel to investigate the factual allegations raised, and in its approach to this task there is no evidence of an "egregious violation" of the "HR Guidelines", or other "violations of due process amounting to an abuse of process", nor evidence that the investigation report was seriously flawed in reaching the conclusions that it did. The UNDT cannot be faulted for finding that Ms. Monasebian's due process rights had not been violated despite some flaws in the investigative process. Yet, it correctly determined that such flaws were not sufficiently substantive to render the disciplinary measure taken unlawful.⁵² Having regard to each of the complaints raised by Ms. Monasebian, we find there to be no support for her contention that the investigation process was defective or that the panel was biased towards her or that the requirements of due process were not met. Ms. Monasebian was notified of the formal allegations of misconduct and was given the opportunity to respond to those allegations. We are satisfied that the UNDT was correct in concluding that any flaws in the investigative process were not of a sufficiently material nature as to taint the fact-finding process and that Ms. Monasebian's due process rights were observed in the investigation and the disciplinary process.

75. The UNDT accepted that from the statements filed in support of Ms. Monasebian by senior staff members it was clear that she was held in high regard, with a recognized passion

⁵¹ *Ibid.*, paras. 97 and 98.

⁵² *Ibid.*, paras. 114 to 116. Cf. *Sall v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-889, paras. 33 and 39.

and dedication towards UNODC and the United Nations.⁵³ However, while the evidence of PB and MP, her P-4 level Deputies, was that her managerial style could be demanding but that they had not seen her acting abusively towards staff, the UNDT found Ms. Monasebian did not behave in the same way with PB and MP as her direct collaborators as she did with her more junior staff.⁵⁴ In this regard, we are satisfied that the UNDT did not err. Although Ms. Monasebian took issue with the fact that the UNDT gave limited weight to the testimonies of PB and MP on the basis that she had shared other witnesses' confidential statements with them, on a conspectus of the evidence, its findings that Ms. Monasebian treated PB and MP differently to junior staff members hold merit.

76. We have previously held that some degree of deference should be given to the factual findings by the UNDT as the court of first instance, particularly where oral evidence is heard. The UNDT has the advantage of assessing the demeanour of witnesses while they are giving evidence, and this is critical for assessing the credibility of the witnesses and the persuasiveness of their evidence.⁵⁵

77. From the evidence of the pattern of conduct engaged in by Ms. Monasebian, it is apparent that she did not create a safe and open work environment for junior staff members and that her conduct was not that expected of a manager in her position. The UNDT in fulfilling its function as a first instance tribunal cannot as a result be faulted for finding that the evidence showed that through her conduct Ms. Monasebian displayed a lack of respect and sensitivity in managing staff and that she had failed to create a healthy work environment, and her submission that the UNDT erred in conflating issues of management style with misconduct in breach of the anti-harassment policy is without foundation.

78. The Administration has a broad discretion in disciplinary matters which will not be lightly interfered with on judicial review.⁵⁶ The UNDT did not err in finding that in relation to Ms. Monasebian this discretion was exercised in a manner which was lawful, rational and procedurally correct.

⁵³ Impugned Judgment, para. 100.

⁵⁴ *Ibid.*, para. 101.

⁵⁵ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 26.

⁵⁶ *Iyad Youssef Zaout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1183, para. 32; *Ladu* Judgment, *op. cit.*, para. 40.

79. Turning to the issue of proportionality, as stated, the role of the UNDT is not to consider the correctness of the choice made by the Administration amongst the various courses of action open to it or to substitute its own decision for that of the Administration.⁵⁷ Any disciplinary measure imposed on a staff member must be proportionate to the nature and gravity of the misconduct⁵⁸ and be lawful, reasonable and procedurally fair.⁵⁹ The disciplinary measures of demotion of one grade with deferment, for three years, of eligibility for consideration for promotion which were imposed were found to comply with past practice in comparable matters. Such measures were not “illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity”,⁶⁰ with no indication that the Secretary-General failed to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.⁶¹

80. It follows that we are satisfied that the UNDT did not err in finding that the decision taken by the Secretary-General was legal, rational, procedurally correct and proportionate. In doing so the UNDT correctly concluded that the allegations against Ms. Monasebian had been established by a preponderance of the evidence and constituted misconduct in violation of the Staff Regulations and Rules. Ms. Monasebian, as a senior manager, held a duty of care to promote a “harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct”,⁶² which she failed to do. Her actions as established by the facts, and in the absence of any substantial procedural irregularity, constituted harassment and an abuse of authority under the applicable Staff Regulations and Rules, and as such, amounted to misconduct. The disciplinary measures imposed were not unlawful, arbitrary, excessive, abusive, discriminatory or absurd in their severity, but were imposed within accepted limits with due regard to the applicable norms, the purpose of discipline and its potential to be constructive and corrective, driving personal growth and development in a staff member to ensure that their conduct in future complies with the accepted norms and standards of the Organisation.

⁵⁷ *Zaqout Judgment, op. cit.*, para. 38, citing *Sanwidi Judgment, op. cit.*, para. 40.

⁵⁸ Staff Rule 10.3(b).

⁵⁹ *Samandarov v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-859, para. 24.

⁶⁰ *Ladu Judgment, op. cit.*, para. 39, citing *Portillo Moya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-523, para. 20.

⁶¹ *Ladu Judgment, op. cit.*, para. 40.

⁶² ST/SGB/2008/5, Section 3.2.

Judgment

81. The appeal is dismissed and Judgment No. UNDT/2023/028 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 16th day of August 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar