



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

Judgment No. 2024-UNAT-1507

**Mahmoud Ahmad Ali
(Appellant)**

v.

**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Nassib G. Ziadé Judge Kanwaldeep Sandhu
Case No.:	2024-1887
Date of Decision:	25 October 2024
Date of Publication:	20 December 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Matthew Hoisington

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Mr. Mahmoud Ahmad Ali, an employee of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency), has filed an appeal of Judgment No. UNRWA/DT/2023/044 (impugned Judgment)¹ with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
2. In the impugned Judgment, the UNRWA Dispute Tribunal (UNRWA DT or Dispute Tribunal) rejected his application in which he challenged the Agency’s decision to place him on Administrative Leave without Pay (ALWOP) pending the outcome of an investigation into allegations of sexual abuse (contested decision).
3. For the reasons set forth herein, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. At the time of the events in question, Mr. Ali held a fixed-term appointment with the Agency and was working as a Practical Nurse at the Dbayeh Camp Health Centre out of the Lebanon Field Office (LFO).²
5. At some point, Mr. Ali’s ex-wife (the Complainant) filed a complaint with a Juvenile Court in Lebanon alleging that Mr. Ali had sexually abused their children.³
6. On 17 February 2017, the Juvenile Court ordered that the three minor children have treatment sessions with a therapist, that Mr. Ali and the Complainant undergo psychological evaluations, and that reports of these sessions would be made to the Court. In the interim, the children were placed in temporary custody with the Complainant (First Decision).⁴
7. A clinical psychologist from an NGO, Médecins Sans Frontières (MSF), met four times with one of Mr. Ali’s children, and on 8 March 2018, recorded in a “medical/mental health certification” the conclusion that the children had been exposed to “inappropriate behaviour” from their father.⁵

¹ *Ali v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. UNRWA/DT/2023/044 (31 October 2023).

² *Ibid.*, para. 4.

³ *Ibid.*, para. 5.

⁴ English translation of Juvenile Court’s First Decision.

⁵ Impugned Judgment, para. 7.

8. On 4 April 2018, after hearing testimony from the children, the Juvenile Court concluded that “it appeared (...) that they were subject to sexual molestation by their father” and that the children were at risk. The Juvenile Court thus awarded temporary custody of the children to the Complainant. In addition, Mr. Ali was barred from visiting the children under penalty of a fine, and he was ordered to undergo psychological treatment. The Court also ordered that the Agency be informed of the Court’s decision (Second Decision).⁶

9. On 7 August 2018, the Grievances Officer, LFO, formally interviewed the Complainant regarding her allegations of sexual abuse by Mr. Ali towards their three children and recorded them in a confidential note to file. The Complainant stated that (i) her children suffered multiple incidents of sexual abuse by their father; (ii) Mr. Ali left the house in 2017 pursuant to a court order; and (iii) she had received support from UNRWA’s gender-based violence program for two years. The Complainant asked the Agency to bar Mr. Ali from visiting their children at school.⁷

10. In August 2018, the LFO referred the Complainant’s allegations to the Department of Internal Oversight Services (DIOS) for investigation, and Mr. Ali was reassigned to administrative duties in the same Health Centre where he had been working.⁸

11. On 10 December 2018, the Juvenile Court confirmed the Second Decision after taking statements from all parties, including hearing from the children outside of the presence of their parents (Third Decision).

12. On 27 February 2019, a Ja’fari Shari’a Court approved a divorce agreement between Mr. Ali and the Complainant, in which (i) he agreed to pay the Complainant a dowry and monthly support amount, waived custody of the children, and agreed he could visit them twice a week in the presence of the Complainant or one of her relatives, and (ii) the Complainant agreed to drop all complaints against him.⁹ The certificate of divorce also stated that there had to be mutual consent in relation to the children’s travel.¹⁰

13. On 27 February 2019, the Complainant withdrew her complaint from the Juvenile Court.¹¹

⁶ *Ibid.*, para. 8.

⁷ *Ibid.*, para. 9.

⁸ *Ibid.*, para. 10.

⁹ *Ibid.*, para. 12.

¹⁰ English translation of divorce certificate dated 27 February 2019.

¹¹ Impugned Judgment, para. 13.

14. In a hearing on 10 April 2019, the Juvenile Court (i) decided “not to consider” parts of the divorce agreement; (ii) confirmed the Second Decision; (iii) found that Mr. Ali had violated the Court’s order by visiting the children; and (iv) ordered that the children be further assessed by an MSF psychiatrist (Fourth Decision).¹²

15. On 11 August 2021, the Deputy Director of UNRWA Affairs, Lebanon (D/DUA/L) documented in a note for the record that (i) the Complainant had informed the D/DUA/L in a video call that Mr. Ali had threatened her and warned her to withdraw her complaint with the Agency, and that (ii) a Protection Officer in LFO had refused to assist the D/DUA/L in relation to the complaint because Mr. Ali had previously threatened the Protection Officer due to her involvement in the Complainant’s case.

16. On 19 August 2021, the Complainant withdrew her complaint against Mr. Ali with the Agency and undertook not to revoke her withdrawal. This withdrawal was in writing, and Mr. Ali and two UNRWA staff members also signed it.

17. On 6 April 2022, the Commissioner-General of UNRWA placed Mr. Ali on ALWOP pending the outcome of an investigation into allegations that he had engaged in sexual abuse of his three minor children (contested decision). The letter conveying this decision stated:¹³

As you are aware credible allegations were initially received in August 2018 by the Lebanon Field Office and referred to the Department of Internal Oversight Services (DIOS) for investigation. In light of the allegations received, you were reassigned to administrative duties in the Health Centre, where you are currently working.

In May 2022, the Agency received detailed evidence from the Juvenile Court in Baabda, Lebanon, in relation to the sexual abuse allegations. On review of these allegations and the new evidence provided, I consider, pursuant to Area Staff Regulation 110.2, that there is probable cause that you have engaged in sexual abuse warranting your placement on administrative leave without pay.

18. On 29 April 2022, the Association pour la Protection de l’Enfant de la Guerre (APEG), the association that was allegedly assigned to undertake the psychiatric exam following the First Decision of the Juvenile Court, issued a letter stating that from their evaluation of the children, they found it “unlikely that the children were subject to sexual harassment by their

¹² *Ibid.*, para. 14.

¹³ 6 April 2022 Letter from the Commissioner-General. The reference to May 2022 was corrected to March 2022 and acknowledged by Mr. Ali.

father”¹⁴ and that the “information that [they] were able to capture (...) does not support the possibility that the children were subjected to sexual harassment”.¹⁵

19. On 24 May 2022, Mr. Ali filed a Request for Decision Review (RDR) with the Director of UNRWA Affairs, Lebanon (DUA/L). The DUA/L responded that he was unable to review a decision of the Commissioner-General who was his superior officer.¹⁶

20. On 23 November 2022, APEG issued another letter stating: “The clinical findings from the psychological assessment that Mr. Mahmoud Ali and his three children underwent, did not meet [the] clinical threshold suggesting the implication of a potential sexual assault.” It was further concluded that Mr. Ali “was not a threat to his children”.¹⁷

Impugned Judgment

21. On 17 August 2022, Mr. Ali filed an application with the UNRWA DT challenging the contested decision.

22. The issue before the UNRWA DT was whether the Agency had grounds to place Mr. Ali on administrative leave, and whether there was probable cause to believe that he had engaged in sexual abuse, such that this leave was required, pursuant to Area Staff Rule 110.2(3), to be without pay. According to the UNRWA DT, probable cause required the Agency to show it had “a reasonable suspicion or reasonable grounds to believe” that sexual abuse occurred.¹⁸

23. The UNRWA DT considered the totality of the evidence relied upon by the Agency and concluded that the Agency had reasonable grounds to believe that Mr. Ali had engaged in sexual abuse, requiring that he be placed on ALWOP.¹⁹

24. The UNRWA DT noted that the Agency had interviewed the Complainant and also had evidence from the Juvenile Court. The Second and Third Decisions reflected testimony from the Complainant and the children, both separately and in front of their father. The 2018 report from MSF provided a detailed description of one of the children’s symptoms of trauma.²⁰

¹⁴ 29 April 2022 Letter from APEG.

¹⁵ Impugned Judgment, para. 25.

¹⁶ *Ibid.*, paras. 21-22.

¹⁷ 23 November 2022 Letter from APEG.

¹⁸ Impugned Judgment, para. 36.

¹⁹ *Ibid.*, para. 46.

²⁰ *Ibid.*, paras. 38-39.

25. The UNRWA DT rejected Mr. Ali's argument that he was never convicted, pointing out that a conviction is not required for placement on ALWOP, which only requires probable cause.²¹

26. The UNRWA DT noted that Mr. Ali claimed that an APEG report in 2017 exonerated him, but no such report was provided to the Dispute Tribunal.²²

27. The UNRWA DT also dismissed Mr. Ali's reliance on the APEG letters. The Dispute Tribunal noted that the APEG letters from 2022 were dated four years after the events in question, and also post-dated the contested decision. Moreover, the letters were signed by someone other than the APEG psychologist who conducted the assessment. The letters also failed to provide any details about the basis for their conclusion. Accordingly, the Tribunal found that the letters were of limited probative value.²³

28. The UNRWA DT was not persuaded by Mr. Ali's argument that the Complainant withdrew her complaint in Juvenile Court, noting that this was the product of their divorce agreement. The Dispute Tribunal noted that the Juvenile Court largely disregarded the withdrawal in light of the testimony of the children.²⁴

29. The UNRWA DT was also not convinced by the Complainant's withdrawal of her complaint to the Agency, given the prior reports that Mr. Ali threatened her to withdraw it, and that he was present at the time of her withdrawal.²⁵

30. The UNRWA DT concluded that there was *prima facie* evidence of Mr. Ali's misconduct, and that there were reasonable grounds to believe that he had engaged in sexual abuse, such that his administrative leave was required under the Agency's regulatory framework to be without pay. The Dispute Tribunal emphasized that this conclusion did not prejudice the outcome of the investigation, nor did it constitute clear and convincing evidence that the misconduct occurred.²⁶

31. The UNRWA DT dismissed his application.

²¹ *Ibid.*, para. 42.

²² *Ibid.*, para. 43.

²³ *Ibid.*

²⁴ *Ibid.*, para. 44.

²⁵ *Ibid.*

²⁶ *Ibid.*, para. 46.

32. On 29 December 2023, Mr. Ali submitted an appeal of the impugned Judgment to the Appeals Tribunal, to which the Commissioner-General submitted his answer on 2 April 2024.

Submissions

Mr. Ali's Appeal

33. Mr. Ali alleges that beginning in 2015 he had a marital dispute with his ex-wife. He alleges that in order for her to get custody of their three children, which is not possible in Ja'fari courts, the Complainant slandered him with the claim that he had molested their children. He submits that this was an attempt to pressure and discredit him to obtain a judicial ruling that she would have custody of the children.

34. Mr. Ali alleges that in 2017, APEG produced a report to the Juvenile Court in which it concluded that there was no danger to the children, that the children had not been sexually molested by him, and that he should be permitted to see them.

35. Mr. Ali submits that in 2018, when a new Judge was appointed to the Juvenile Court, she issued the Second Decision which contradicted the proceedings. He argues that the Second Decision was based on the fabricated report of MSF, which was not the organization commissioned by the Court in the First Decision, which was APEG.

36. Mr. Ali claims that he was investigated by the Agency in 2018, and that this investigation ended with him staying in his post as Practical Nurse until October 2020, when he was abruptly assigned administrative duties.

37. Mr. Ali points out that in 2019 the Complainant retracted her testimony and withdrew her malicious allegation before a notary public, in exchange for him giving up custody of their children.

38. Mr. Ali further submits that in 2021, the Complainant also retracted her testimony and allegations with the Agency. Nonetheless, he was placed on ALWOP on 6 April 2022.

39. Mr. Ali submits that the UNRWA DT erred in ignoring the fact that the Complainant had withdrawn her complaints, not once but twice.

40. Mr. Ali notes that in March 2022, the Complainant traveled with their three children without his permission outside of Lebanon to an unknown destination, and she was assisted in this by the Agency. At this time, the Agency received a copy of the proceedings from the Juvenile Court.

41. Mr. Ali submits that he was investigated by the Agency for a second time in July 2022, notwithstanding the earlier investigation in 2018.

42. Mr. Ali submits that the UNRWA DT erred in concluding that there was probable cause for his placement on ALWOP. Mr. Ali points out that he received the contested decision in 2022, even though the reports were from 2017 and 2018, and the first investigation had ended.

43. Mr. Ali reminds the UNAT that the letter conveying the contested decision states that the allegations of sexual abuse were credible, yet he had been working as a nurse until October 2020, for two years after it had already been proven by the first investigation in 2018 that he was not implicated in any crime or violation.

44. Mr. Ali submits that the UNRWA DT erred in treating the Juvenile Court decision, which was a protective order, as if it were a conviction. This was a decision to protect minor children issued against the backdrop of phony allegations that they were abused by their father. These are not credible allegations. This decision from the Juvenile Court is completely different in legal nature and significance from a judgment handed down by a competent criminal court that the abuse did indeed occur.

45. Mr. Ali claims that the UNRWA DT erred in its conclusion that he committed the crime of abuse despite the Agency not producing a shred of evidence in support.

46. Mr. Ali states that the Agency failed to produce a copy of any court decision authorizing the report from MSF. He also says that the MSF failed to interview him or give him a clinical or psychological exam. The MSF report failed to state what was his “inappropriate behavior” that the children were subjected to.

47. Mr. Ali submits that the UNRWA DT erred in ignoring the APEG’s “scientific report” which “clearly and explicitly denied that [Mr. Ali] was implicated in any sexual abuse”.

48. Mr. Ali claims that the UNRWA DT also erred in ignoring the report of the forensic doctor hired by the Agency. He submits that the report did not contain any evidence of physical abuse of the children.

49. Mr. Ali submits that the UNRWA DT made a flagrant error in concluding that the Agency had reason to conclude that it was contrary to its interests for him to remain working as a nurse practitioner when there has never been any report of misconduct in relation to his work with patients, including children, from 2015 to 2022. To the contrary, he received a citation for good behavior from the Agency. He has also completed the Agency's course on mental health and psychosocial support.

50. Mr. Ali contends that the MSF report from 2018 has never been produced, and that is because it does not exist.

51. Mr. Ali claims that the Agency erred in allowing a staff member in the legal department to incite the Complainant to slander him. Mr. Ali has an audio-recording that he can send to the UNAT which clearly and explicitly indicates that the Complainant was incited by this person in the investigations department to press her allegations against Mr. Ali.

52. Mr. Ali points out that the Agency exceeded its jurisdiction when it reopened this case after more than five years without a single shred of evidence. There had been two explicit retractions of these false allegations, confirming the case was fabricated mainly because he would not allow his children to travel with the Complainant.

53. Mr. Ali sums up that the main reason behind this case is that the Complainant wished to pressure him to get a divorce, award full custody of the children to her, and be able to travel with his children.

54. Mr. Ali concludes with his plea that the UNAT overturn the impugned Judgment. He states that the most notable violation of law is that the UNRWA DT treated the Juvenile Court's protective order as if it were a sexual abuse conviction and ignored the report of the forensic doctor and the APEG letters.

55. Mr. Ali submits that the UNAT should overturn the impugned Judgment because it flies in the face of the fact that there is no evidence he posed a threat to the Agency and the Complainant retracted her allegations.

56. Mr. Ali submits that the Agency's decision to suspend him without pay should be rescinded, and he should be restored to his original job as a nurse and paid all of the wages and entitlements he is owed by UNRWA for the time that he was separated from work owing to the contested decision.

The Commissioner-General's Answer

57. The Commissioner-General submits that the UNRWA DT correctly dismissed Mr. Ali's application, after carefully assessing the evidence and applying the relevant standard of proof.

58. The Commissioner-General avers that the appeal is not well-founded, because Mr. Ali is effectively relitigating his case by making the same submissions that were already considered and rejected by the UNRWA DT.

59. The Commissioner-General submits that Mr. Ali's claim that the UNRWA DT erred in not recognizing that the Agency exceeded its jurisdiction by reopening the investigation is without merit. Not only was this argument not presented to the UNRWA DT, but it is lawful for the Agency to reopen an investigation if new evidence is presented. Moreover, the Agency did receive new evidence in March 2022, which is when the Agency received copies of the judicial file from the Juvenile Court. The UNRWA DT correctly noted that it was at this time that the Agency received the Third and Fourth Decisions and the 2018 MSF report with annexes.

60. The Commissioner-General refutes Mr. Ali's claim that the UNRWA DT erred in considering that he had likely committed the crime of sexual harassment when there was no conclusive evidence. The Commissioner-General points out that the UNRWA DT correctly assessed the evidence according to the applicable standard of proof, which is probable cause, and which standard does not require conclusive evidence to substantiate allegations of sexual abuse.

61. The Commissioner-General submits that "conclusive evidence" is irrelevant to the lawfulness of the contested decision.

62. The Commissioner-General argues that Mr. Ali has mischaracterized the UNRWA DT's evaluation of the evidence before the Agency. Contrary to Mr. Ali's claim, there was more evidence than just the MSF report, there was also the Second and Third Decisions of the Juvenile Court which reflected the testimony of the children, as well as the Complainant's statements. The UNRWA DT also acknowledged deficiencies in the MSF report, but even if this report is

disregarded, the Commissioner-General submits that there was sufficient evidence in the record to uphold the lawfulness of the contested decision.

63. The Commissioner-General refutes Mr. Ali's claim that the UNRWA DT did not understand the difference between a protective order and a criminal conviction. The Dispute Tribunal was cognizant of the difference but pointed out that a criminal conviction was not required to place a staff member on ALWOP, which only requires probable cause.

64. The Commissioner-General submits that the UNRWA DT did not err in failing to consider the report of the forensic doctor, given that the existence of this report was not before the Agency when it took the contested decision as it came to light during the investigation. In any event, Mr. Ali failed to raise this point before the UNRWA DT and it should be disregarded.

65. The Commissioner-General objects to Mr. Ali's reference to the production of various documents and the investigation report, because the investigation report was completed later, and was not available to the Agency at the time of the contested decision.

66. The Commissioner-General argues that Mr. Ali's claim that the UNRWA DT failed to consider the Complainant's withdrawal of her complaints is without merit. Indeed, the Dispute Tribunal specifically discussed these withdrawals, at paragraph 44 of the impugned Judgment, and why it did not find them to have probative value.

67. The Commissioner-General submits that the UNRWA DT drew the entirely reasonable conclusion that given the nature of the allegations it presented a risk to the Agency's reputation and credibility for Mr. Ali to remain on staff at the Health Centre.

68. The Commissioner-General avers that Mr. Ali's complaints that the UNRWA DT did not consider the scientific report issued by APEG to be without merit, because Mr. Ali never submitted such report to the UNRWA DT. All Mr. Ali submitted were the two APEG letters, which the UNRWA DT correctly found to be of limited probative value for the reasons stated in the impugned Judgment.

69. The Commissioner-General submits that there was no error by the UNRWA DT in failing to consider Mr. Ali's purportedly "good morals", when the mere fact of probable cause of sexual misconduct required that he be placed on ALWOP.

70. The Commissioner-General requests that the Appeals Tribunal dismiss the appeal because the UNRWA DT was cognizant of the applicable law, carefully assessed the parties' submissions and evidence, and correctly dismissed Mr. Ali's application. Mr. Ali has failed to establish any reversible error of fact, law or procedure.

Considerations

71. Mr. Ali maintains that the UNRWA DT erred in law when it grounded its determinations on mere suspicion, rather than on solid evidence, established facts, and full conviction of his culpability. He also submits that the UNRWA DT erred in law when it overlooked the agreement reached between him and his ex-wife to settle their disputes and to discontinue all on-going proceedings. Finally, he contends that the UNRWA DT erred in its appreciation of the facts related to the charges of sexual abuse made against him.

Did the UNRWA DT err when it grounded its determinations on mere suspicion?

72. The error of law advanced by Mr. Ali is without merit.

73. Suspension from functions through administrative leave, with or without pay, is governed by Area Staff Regulation 10.4, Area Staff Rule 110.2, and Area Personnel Directive A/10/Rev. 3 on Disciplinary Measures and Procedures.

74. Area Staff Regulation 10.4 provides:

If a charge of serious misconduct is made against a staff member and the Commissioner-General considers that the charge is 'prima-facie' well founded or that the staff member's continuance in office pending an investigation of the charge would prejudice the interests of the Agency, the staff member may be suspended, with or without pay, from his/her functions pending investigations, such suspension being without prejudice to the rights of the staff member.

75. Further, Area Staff Rule 110.2, on Administrative Leave Pending Investigation, reads:

1. A staff member may be suspended pending investigation by being placed on administrative leave, subject to conditions specified by the Commissioner-General, at any time pending an investigation until the completion of the disciplinary process.

2. In determining whether to place a staff member on administrative leave pending an investigation, the Commissioner-General shall consider whether there is prima facie evidence in support of the allegation of misconduct and whether the staff member's

continuance in the post and/or the duty station would be contrary to the interests of the Agency.

3. Such administrative leave shall be with full pay except (i) in cases in which there is probable cause that a staff member has engaged in sexual exploitation and sexual abuse, or (ii) when the Commissioner-General decides that exceptional circumstances exist which warrant the placement of a staff member on administrative leave with partial pay or without pay.

...

5. Such administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.

6. If such administrative leave is without pay and either the allegation of misconduct is subsequently not sustained or it is subsequently found that the conduct at issue does not warrant dismissal, any salary and entitlements withheld shall be restored without delay.

76. In the same vein, Area Personnel Directive A/10/Rev. 3, on Disciplinary Measures and Procedures, provides:

13. Where there is prima facie evidence in support of an allegation of misconduct, and where the staff member's continuance in their post or duty station would be contrary to the interests of the Agency, the staff member may be placed on administrative leave at any time pending an investigation until the completion of the disciplinary process. Circumstances that may be considered when making such a determination include, but are not limited to: the risk of repeated wrongdoing; the potential danger posed to other staff members or the Agency; and/or the risk of evidence being destroyed or concealed. A staff member placed on administrative leave is notified in writing of this determination.

14. Administrative leave is normally with pay unless the Commissioner-General decides that exceptional circumstances warrant administrative leave without pay, in both cases without prejudice to the staff member's rights. A staff member's placement on administrative leave is not a disciplinary measure.

77. It follows that suspension from functions through administrative leave, with or without pay, is not a disciplinary sanction, but rather a temporary preventive measure which the Agency may impose on the staff member during investigations conducted against him or her. As such, the applicable standard of proof for the Agency to impose administrative leave is not comparable to the proof required for the imposition of disciplinary measures. The legal provisions cited above require the existence of "prima-facie" evidence, and, for cases of sexual abuse in which ALWOP is mandatory, the existence of "probable cause". In both cases, the Agency's determination to place the staff member on Administrative Leave With Pay (ALWP)

or on ALWOP is made after a cursory review, considering the evidence available at that point in time, before a complete investigation of the subject matter, and without prejudice to the subject's rights of defense.

78. The concepts of "prima-facie" and "probable cause" both share the requirement of serious or reasonable grounds to believe (with stronger emphasis in the case of "probable cause"), that the staff member might have in fact committed the alleged misconduct.²⁷ The Administration is not, therefore, required, at this early stage of investigation, to satisfy itself that there is a preponderance of evidence to support the misconduct allegation, or to meet the higher bar of clear and convincing evidence. Evidence showing reasonable grounds would suffice for the decision of placing a staff member on ALWP or on ALWOP.

79. In the impugned Judgment, the UNRWA DT rightly identified the applicable standard of proof, limiting its review to the required standard of reasonable suspicion or reasonable grounds to believe.²⁸ In doing so, we find that the UNRWA DT did not err in law, and Mr. Ali's contention cannot succeed.

Did the UNRWA DT err when it overlooked the agreement reached between Mr. Ali and his ex-wife to settle their disputes and to discontinue all proceedings between them?

80. Mr. Ali and his ex-wife concluded two agreements on 27 February 2019: (i) an agreement on divorce and custody before the Ja'fari Shari'a Court, and (ii) an authenticated settlement agreement before a notary public. In both agreements, the parties agreed to drop all claims and charges initiated against each other. In this context, Mr. Ali's ex-wife presented a withdrawal of her complaint to the Agency on 19 August 2021.

81. Drawing on these agreements and on his ex-wife's withdrawal of her complaint, Mr. Ali contended that the Agency should have stopped all the investigations pending against him and should not have placed him on ALWOP. However, in the impugned Judgment, the UNRWA DT considered that the withdrawal of the complaint before the Juvenile Court was the result of the divorce and custody agreement concluded between the parties before the Ja'fari Shari'a Court. The Juvenile Court disregarded parts of that agreement related to the dropping of charges and the allowance of parental visits to Mr. Ali. The UNRWA DT further decided that

²⁷ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1187, para. 62; *Gisage v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-973, para. 35.

²⁸ Impugned Judgment, paras. 34-36.

the withdrawal by Mr. Ali's ex-wife of her complaint to the Agency appeared to be made under duress which significantly undermined the reliability of such withdrawal.

82. Mr. Ali takes issue with that second determination. He contends that his ex-wife voluntarily agreed before the notary public in 2019 to withdraw the complaint she made to the Agency, before presenting that withdrawal in 2021. Therefore, he claims that the UNRWA DT erred in law when it disregarded her voluntary act.

83. We find no need to assess the contentions raised by Mr. Ali or to opine on the reasoning adopted by the UNRWA DT. This is because it appears from the case record that the Agency was notified of the allegations of sexual abuse against Mr. Ali by the Juvenile Court in its decision of 4 April 2018. Therefore, even if Mr. Ali's ex-wife voluntarily requested termination of the investigations before UNRWA, her withdrawal would have had no effect since the investigations were the result of information that was lawfully transmitted from the Juvenile Court to the Agency. Even assuming, *arguendo*, that Mr. Ali's ex-wife was at the origin of the complaint before the UNRWA, the Agency, following a complete assessment of the situation, can still proceed with its investigations despite the withdrawal of the initial complaint if it has gathered other evidence. This is due to the objective nature of the disciplinary process within the UNRWA legal framework that is not designed to assess the subjective claims between the parties, but rather to ascertain whether misconduct, contrary to the public interests of the Agency, was committed.

84. Mr. Ali's contention must, therefore, be denied.

Did the UNRWA DT err in its appreciation of facts related to the charges of sexual abuse made against Mr. Ali?

85. Under Article 2(1)(e) of the Appeals Tribunal Statute, this Tribunal examines the impugned Judgment for errors of fact, resulting in a manifestly unreasonable decision. Hence, not every error of fact would render the impugned Judgment defective. Rather, an error of fact must be of such significance that it must have led the lower court to reach an unreasonable decision. It is the appellant's burden to show that such error exists.

86. In this respect, our Tribunal has consistently held that:²⁹

²⁹ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 26.

... (...) In order to overturn a finding of fact by the UNDT, the Appeals Tribunal must be satisfied that the finding is not supported by the evidence or that it is unreasonable. The Appeals Tribunal considers 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.

87. In the present appeal, Mr. Ali takes issue with the UNRWA DT's assessment of multiple facts that, in his view, led the Dispute Tribunal to render an unreasonable decision.

88. We recall first that part of Mr. Ali's contentions on the assessment of facts derived from his belief that the UNRWA DT erred in not grounding its decision on strong evidence. As we have held earlier, the UNRWA DT did not need to do so, as serious grounds to form a reasonable belief suffice to reach the conclusion that misconduct could have occurred. In so affirming, we find no need to address that part of Mr. Ali's contentions which were firmly related to his incorrect understanding of the applicable standard of proof.

89. We turn now to Mr. Ali's contentions of the UNRWA DT's assessment of facts.

90. Mr. Ali first contends that the long duration between the beginning of the first investigation in 2018 and the rendering of the contested decision in 2022 casts serious doubts on the proper grounds of that decision. However, it appears, as observed by the UNRWA DT, that the Agency did not have all the documentation related to the alleged sexual abuse misconduct against Mr. Ali, including the MSF report, until such documentation was requested by the Agency and released by the Juvenile Court in March 2022, following the escalating dispute between Mr. Ali and his ex-wife. The contested decision was made directly after the Agency's assessment of such documentation, on 6 April 2022. Therefore, we do not find, in the circumstances, that the UNRWA DT erred in fact when it did not consider the extended period between the beginning of the investigation and the placement of Mr. Ali on ALWOP as a determinative factor such that it would undermine the proper grounds of the contested decision.

91. Mr. Ali also took issue with the UNRWA DT's reliance on the MSF medical report, while ignoring the APEG's letters. We agree with Mr. Ali that the case record does not support the narrative that MSF, as an entity, was requested by the Juvenile Court's First Decision to prepare a medical report on the allegations of sexual abuse made against him. However, the same could be said for APEG as the record shows that the Juvenile Court did not order APEG to do anything either, but rather ordered an examination by a named psychiatrist, without

referring to any particular entity. Furthermore, the record shows that the Juvenile Court relied, in its Second Decision, on the medical report prepared by MSF to conclude that Mr. Ali's children were subject to sexual abuse. The MSF report was part of the documentation sent from the Juvenile Court to UNRWA, and the Agency did not have the APEG letter before making its determinations.³⁰ In any event, the MSF report, although being very brief and incomplete in some parts, shows with some degree of authority that a psychological assessment had been made of Mr. Ali's children, showing a psychological reaction to inappropriate actions made by their father. Although, as contended by Mr. Ali, the report does not define those "inappropriate actions", it can be reasonably inferred, drawing on the transcripts of the hearings before the Juvenile Court and on the UNRWA confidential note to file of 7 August 2018, that such actions were related to the alleged sexual abuse inflicted by Mr. Ali on his children. In contrast, the APEG letters provided by Mr. Ali were merely letters not medical reports, which were made four years after the alleged assessment, and signed by a person other than the psychologist who undertook the assessment. Therefore, we do not find that the UNRWA DT erred in fact, resulting in an unreasonable decision, when it considered the MSF medical report while finding that the APEG letters had "limited probative value". Mr. Ali's contentions are, therefore, dismissed.

92. Mr. Ali also contended that the UNRWA DT erred in disregarding the report of the forensic doctor appointed by the Agency itself. The Commissioner-General submits that this issue was not raised before the UNRWA DT and cannot, therefore, be raised for the first time on appeal. We have reviewed the full case record and could not find that Mr. Ali had raised this issue before the UNRWA DT. As rightly observed by the Commissioner-General, this issue cannot be raised for the first time on appeal. If Mr. Ali had discovered a fact related to that document after the issuance of the impugned Judgment, he should have filed an application for revision, pursuant to Article 12(1) of the UNRWA DT Statute, or requested this Tribunal to exceptionally admit that supplementary evidence to the case record. Mr. Ali neglected to do either and his contention cannot, therefore, be reviewed.

93. Finally, Mr. Ali submits that the UNRWA DT erred when it disregarded his unblemished record and academic achievements, including in the period between 2017 to 2022. Indeed, the UNRWA DT did not specifically address this issue in the impugned

³⁰ Indeed, the APEG letter that Mr. Ali refers to as being ignored is dated 23 November 2022, which post-dates the contested decision, which was taken on 6 April 2022.

Judgment. However, as we have constantly held, the UNRWA DT is not required to address every and each claim made by an applicant, especially when such claims have no merit.³¹ In the present case, it can be reasonably inferred that the UNRWA DT, having found evidence to support reasonable grounds that sexual abuse had taken place, did not consider his good record and academic achievements as a relevant exculpatory factor. In doing so, the UNRWA DT did not err.

94. For these reasons, Mr. Ali's appeal is dismissed.

³¹ *Abu Jarbou vs. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees*, Judgment No. 2013-UNAT-292, para. 47.

Judgment

95. Mr. Ali's appeal is dismissed, and Judgment No. UNRWA/DT/2023/044 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 20th day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar