



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

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Judgment No. 2025-UNAT-1550

**Reza Kavosh  
(Appellant)**

**v.**

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

## **JUDGMENT**

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge Leslie F. Forbang Judge Gao Xiaoli
Case No.:	2024-1933
Date of Decision:	27 June 2025
Date of Publication:	16 July 2025
Registrar:	Juliet E. Johnson

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Counsel for Appellant:	Wangeci Wahome Akedi
Counsel for Respondent:	Noam Wiener

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Mr. Reza Kavosh (Mr. Kavosh), a former staff member of the United Nations High Commissioner for Refugees (UNHCR) contested the decision to impose on him the disciplinary measure of dismissal for sexual exploitation, sexual harassment, breach of UNHCR rules on the use of Information Technology (IT), and failure to cooperate in an investigation (contested decision).

2. On 17 April 2024, by Judgment No. UNDT/2024/020 (impugned Judgment),<sup>1</sup> the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed Mr. Kavosh's application. Mr. Kavosh appeals to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

3. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure**

4. Mr. Kavosh joined UNHCR in January 2013 as a Field Assistant in the UNHCR Sub-Office (SO) in Shiraz, Iran. In 2017, he was promoted to the position of Assistant Protection Officer, at the National Officer A level. Between 1 October 2018 and 1 January 2020, he served as the Acting Head of the SO in Shiraz.

5. On 11 October 2020, the Inspector General's Office (IGO) received allegations that Mr. Kavosh had sexually harassed other staff members.<sup>2</sup>

6. On 18 January 2021, the IGO received additional allegations of sexual exploitation involving a refugee (the Complainant) against Mr. Kavosh.<sup>3</sup>

*Allegations of misconduct<sup>4</sup>*

7. In the summer of 2017, Mr. Kavosh met the Complainant, an Afghan refugee residing in Iran, during a UNHCR event for refugee students. Following this event, Mr. Kavosh began

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<sup>1</sup> *Kavosh v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/020.

<sup>2</sup> Investigation Report, para. 1.

<sup>3</sup> *Ibid.*

<sup>4</sup> Please note that Mr. Kavosh denies the allegation of sexual exploitation, but not most of the facts in the Investigation Report and the impugned Judgment regarding his relationship with the Complainant or the messages exchanged.

following the Complainant on social media and subsequently contacted her through WhatsApp.<sup>5</sup> Later that summer, Mr. Kavosh invited the Complainant to a coffee shop. According to the Complainant, this is when their relationship began.<sup>6</sup> He continued to message her on WhatsApp and invited her out to coffee shops and restaurants. She was fearful that relatives would see her out with him.

8. On 2 November 2017, on the Complainant's birthday, Mr. Kavosh invited her to his apartment, gave her a present, hugged her, and told her that he wanted her "to rely on him until the end of [her] life". From that date until February 2018, Mr. Kavosh and the Complainant continued to meet regularly at his apartment.<sup>7</sup> Although the Complainant "did not have any previous romantic or sexual experience and (...) [came] from an Islamic background in which women [were] expected to refrain from sex before marriage", she eventually agreed to engage in anal sex with him.<sup>8</sup> The Complainant explained that Mr. Kavosh had gained her trust.

9. On 14 February 2018, on Valentine's Day, Mr. Kavosh and the Complainant engaged in vaginal intercourse for the first time. According to the Complainant, Mr. Kavosh persuaded her by telling her that "he wanted to find out if she was a virgin before marrying her because he had a bad experience in the past" and that he "had studied Islamic law and (...) knew that vaginal sex was permissible if they read marriage verses to each other, and that they could obtain their families' consent for an official marriage later". The Complainant stated she was "persuaded" and that from that date until July 2020, she and Mr. Kavosh continued to see each other and had sexual intercourse several times a week.<sup>9</sup>

10. On 29 October 2018, while serving as the Acting Head of the UNHCR SO in Shiraz, Mr. Kavosh shared a sexually explicit document entitled "The Sex Bible" with staff members from his office via "WhatsApp", through a channel used by staff members for work-related matters. On the same date, he also shared the document separately with a colleague, M.H.

11. In July 2020, the Complainant noticed that Mr. Kavosh began distancing himself from her and that he had other sexual partners.<sup>10</sup>

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<sup>5</sup> Impugned Judgment, para. 60. See also Answer, para. 3.

<sup>6</sup> Investigation Report, para. 23.

<sup>7</sup> *Ibid.*, paras. 28-29. See also Answer, paras. 5-6.

<sup>8</sup> Impugned Judgment, para. 61.

<sup>9</sup> *Ibid.*, paras. 63-65.

<sup>10</sup> *Ibid.*, para. 66.

12. In November 2020, the Complainant explained to Mr. Kavosh that she had a suitor. In response, he told her that she should marry that suitor. When she explained that, due to their relationship and the fact that she was no longer a virgin, she could not marry another man, Mr. Kavosh denied that they ever had a relationship.<sup>11</sup>

13. On 21 November 2020, after facing this denial from Mr. Kavosh regarding their relationship, the Complainant recorded an intimate encounter with him at his apartment.<sup>12</sup>

14. On 27 November 2020, in an attempt to appease Mr. Kavosh, the Complainant agreed to perform various sexual acts that she found humiliating. Afterward, she recorded a second video with him.<sup>13</sup>

15. On 17 January 2021, after Mr. Kavosh again denied their relationship, the Complainant confronted him with the videos, stating that she would disclose their relationship to the Bureau for Aliens and Foreign Immigrant Affairs of the Government of Iran (BAFIA). According to the Complainant, Mr. Kavosh attempted to dissuade her from doing so by offering to pay her for her silence.<sup>14</sup> She stated that she was not interested in compensation.

### *Investigation*

16. On 25 January 2021, the IGO opened an investigation into the allegations of misconduct.<sup>15</sup>

17. On 16 February 2021, Mr. Kavosh was informed by letter that he was the subject of the investigation. The letter stated, among other things, that:<sup>16</sup>

All UNHCR personnel, including the Subject of an investigation, have a duty to cooperate with IGO investigations, and specifically, to respond fully and truthfully to all questions posed during an IGO interview as well as provide any relevant additional information. You must not interfere with an investigation. You must not withhold, destroy or tamper with evidence, or influence, coach, intimidate or retaliate against anyone associated with an investigation. Deliberate non-cooperation with an investigation, including the withholding of information that ought to have been known to be of relevance, may be reflected in the investigation findings and/or investigated as a separate case of possible misconduct.

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<sup>11</sup> *Ibid.*, para. 67.

<sup>12</sup> *Ibid.*, paras. 68-69.

<sup>13</sup> *Ibid.*, paras. 72-74.

<sup>14</sup> *Ibid.*, para. 75.

<sup>15</sup> Investigation Report, para. 3.

<sup>16</sup> Notice of investigation dated 16 February 2021.

18. Between 16 and 17 February 2021, Mr. Kavosh “deleted 989 files in total (including text, photographs, and video files), cleared the search history and browser data, edited browser privacy settings, and reset passwords” on his UNHCR-issued laptop.<sup>17</sup>

19. On 17 February 2021, Mr. Kavosh surrendered his IT equipment and was placed on Administrative Leave Without Pay (ALWOP) until the completion of the disciplinary process.<sup>18</sup>

20. On 6 April 2021, the IGO sent Mr. Kavosh an updated notice of investigation by letter, which included two additional allegations of misconduct: i) prohibited use of UNHCR IT resources and assets; and ii) failure to fully cooperate with an IGO investigation.<sup>19</sup>

21. During its investigation, the IGO interviewed several witnesses, including Mr. Kavosh, on 8 April 2021.<sup>20</sup> On 29 April 2021, the IGO transmitted the draft of its Investigation Report to Mr. Kavosh, who submitted his comments on 13 May 2021.<sup>21</sup>

22. On 27 May 2021, the IGO issued its Investigation Report, in which it found that the following allegations had been substantiated:<sup>22</sup>

The IGO considers that the evidence supports that Mr. Kavosh:

- i. Invited [the Complainant] to his private apartment several times;
- ii. Agreed to receive a massage from [the Complainant];
- iii. Was naked in presence of a refugee, [the Complainant], on at least two occasions, documented on video;
- iv. Engaged in romantic and sexual relationship with [the Complainant] until end of November 2020 where Mr. Kavosh consistently promised her different things, such as marriage, paid studies and moving to Nigeria or Tehran;
- v. Offered to assist [the Complainant] with resettlement in a quid pro quo;
- vi. Did not disclose his romantic and sexual relationship with [the Complainant] to UNHCR;
- vii. Shared a sexually explicit document with the UNHCR Shiraz SO Protection Unit WhatsApp group while he was the Acting Head of Office;

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<sup>17</sup> Sanction letter dated 11 May 2022.

<sup>18</sup> Letter dated 16 February 2021 from the Administration to Mr. Kavosh.

<sup>19</sup> Notice of investigation dated 6 April 2021.

<sup>20</sup> Investigation Report, para. 10.

<sup>21</sup> *Ibid.*, para. 18.

<sup>22</sup> *Ibid.*, para. 359.

viii. Shared the same sexually explicit document with [M.H.] individually while he was the Acting Head of Office;

ix. Received and stored pictures of a pornographic nature on his official UNHCR work mobile phone;

x. Deleted a total of 989 files from his official UNHCR laptop computer after being notified he was the subject of the investigation and prior to the IGO forensic analysis of the laptop computer;

xi. Was purposely untruthful in his responses to the IGO and selective in submitting evidence that benefitted his position; and

xii. Attempted to call [the Complainant] via WhatsApp on 12 March 2021.

23. Addressing Mr. Kavosh's request to investigate additional witnesses, the IGO found that the witnesses he suggested did not appear to have been aware of or implicated in the incidents related to the allegations of misconduct. Specifically, the IGO observed that an alleged interpersonal conflict between staff members at the UNHCR SO in Shiraz was not the subject of the investigation.<sup>23</sup>

24. On 9 August 2021, Mr. Kavosh requested management evaluation of the decision to place him on SLWOP. On 3 September 2021, Mr. Kavosh's administrative leave was changed from SLWOP to partial pay, effective 1 August 2021.<sup>24</sup>

25. On 7 October 2021, Mr. Kavosh filed an application with the Dispute Tribunal challenging the decision to place him on administrative leave.<sup>25</sup>

26. On 20 December 2021, the Director of Human Resources (DHR) formally notified Mr. Kavosh by letter of the following allegations of misconduct issued against him and the initiation of a disciplinary process:<sup>26</sup>

(i) Engaging in sexual abuse and exploitation (SEA) by having sexual relations with [the Complainant], a refugee;

(ii) Engaging in sexual harassment by sharing a sexually explicit document, the 'Sex Bible', with the Protection Unit's WhatsApp group and with [M.H.] on or around 29 October 2018;

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<sup>23</sup> *Ibid.*, paras. 11-17.

<sup>24</sup> Letter from the Administration to Mr. Kavosh dated 3 September 2021.

<sup>25</sup> Impugned Judgment, para. 14.

<sup>26</sup> Letter of allegations of misconduct dated 20 December 2021.

- (iii) Engaging in prohibited use of UNHCR end-user devices by viewing, creating, downloading, hosting or transmitting pornographic pictures, namely, pictures of your genitalia, on your official UNHCR-issued mobile phone;
- (iv) Failing to cooperate and interfering with the investigation by deleting 989 files from your UNHCR-issued laptop after you were notified of the investigation, on 16 February 2021, before you handed in the laptop for forensic analysis, on 17 February 2021;
- (v) Breaching the terms of your administrative leave by attempting to contact [the Complainant], a person involved in the investigation, on 12 March 2021.

27. Mr. Kavosh was also provided with a copy of the Investigation Report and afforded an opportunity to respond to the allegations within one month, which he did on 15 February 2022.<sup>27</sup>

28. On 30 March 2022, by Judgment No. UNDT/2022/032, the UNDT rejected Mr. Kavosh's application challenging the decision to place him on administrative leave.<sup>28</sup>

*Contested decision*

29. By letter dated 11 May 2022, the DHR informed Mr. Kavosh that the High Commissioner had determined that the following allegations raised against him had been substantiated by clear and convincing evidence:<sup>29</sup>

[Count 1] Sexually exploited [the Complainant], an Afghan refugee, by engaging in a romantic and sexual relationship with her between late 2017 or early 2018 and November 2020. Underlying the relationship were your promises that you would marry [the Complainant], take her with you, and look after her as you advanced in your career, on which [the Complainant] relied;

[Count 2] Engaged in sexual harassment of multiple male and female colleagues by sharing a sexually explicit document, the 'Sex Bible', over WhatsApp on 29 October 2018, while you were Acting Head of the UNHCR Shiraz Sub-Office, Iran;

[Count 3] Breached UNHCR rules on the use of IT equipment by receiving and storing sexually explicit material on your official UNHCR-issued mobile phone; and

[Count 4] Failed to fully cooperate with the investigation by deleting 989 files from your UNHCR laptop before surrendering it as evidence for the investigation on 17 February 2021 as well [as] by being untruthful in your responses to the IGO's questions and selective in your submission of evidence.

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<sup>27</sup> Impugned Judgment, para. 16.

<sup>28</sup> *Kavosh v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/032.

<sup>29</sup> Sanction letter dated 11 May 2022.

30. As a result, the DHR imposed the disciplinary measure of dismissal in accordance with Staff Rule 10.2(a)(ix) and Mr. Kavosh's name was included in the ClearCheck database.

31. In reaching its decision, the High Commissioner considered Mr. Kavosh's eight years of service with UNHCR as a mitigating factor. Conversely, the following facts were considered aggravating factors:<sup>30</sup>

(i) [His] misconduct concerning sexual exploitation goes to the heart of UNHCR's protection mandate and its mission to find solutions for refugees;

(ii) [He] held the position of Assistant Protection Officer, which carries a heightened necessity of integrity in the dealing with refugees; and

(iii) [His] sexual harassment was particularly serious on account of [his] position as manager, which carries a specific obligation to act as a role model.

32. The High Commissioner also considered the parity principle, noting that "the Secretary-General and the High Commissioner [had] invariably imposed the disciplinary measures of dismissal or separation from service on all 19 staff members who were found to have engaged in sexual abuse and exploitation in the last eight years. Similarly, since 2017 the High Commissioner has imposed the measures of dismissal or separation from service on all 13 staff members who committed sexual harassment".

*Procedures before the Dispute Tribunal*

33. On 8 August 2022, Mr. Kavosh filed an application before the Dispute Tribunal challenging the contested decision.

34. On 23 and 24 January 2024, the UNDT held a hearing on the merits of the case, during which it heard oral evidence from six witnesses: Mr. Kavosh, the Complainant, D.M. (a Protection Assistant Officer), J.M. (a former UNHCR Resettlement Expert), E.C.R. (the UNHCR Chief of the Refugee Status Determination Section in the Division of International Protection) and E.R. (an IGO Senior Investigation Specialist).<sup>31</sup>

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<sup>30</sup> *Ibid.*

<sup>31</sup> Impugned Judgment, para. 34.



35. On 24 January 2024, at the conclusion of the hearing, Mr. Kavosh's counsel requested that the UNDT anonymize his client's name. The UNDT responded: "Well, it's kind of a motion you can file in your submission, okay. Okay. Please be prompt, okay?"<sup>32</sup>

36. On 5 February 2024, the UNDT issued Order No. 12 (GVA/2024), in which it noted: "During the hearing, [Mr. Kavosh] indicated his interest in filing a motion for anonymity. However, no motion has been filed to date. In this respect, the Tribunal considers it appropriate to indicate a deadline for [Mr. Kavosh] to file it, if any." The UNDT further ordered that Mr. Kavosh file a motion for anonymity, if any, by 12 February 2024.<sup>33</sup>

37. On 19 February 2024, Mr. Kavosh filed a motion for anonymity along with his closing submissions.

38. On the same date, the Secretary-General filed, among other things, a motion for leave to file an objection to Mr. Kavosh's late filing of his motion for anonymity.

#### *Impugned Judgment*

39. On 17 April 2024, the Dispute Tribunal issued the impugned Judgment dismissing Mr. Kavosh's application.

40. The UNDT first denied Mr. Kavosh's motion for anonymity, noting that it had been filed after the 12 February 2024 deadline and "without having sought and obtained an extension of the given deadline or even indicating the reasons for his late submission".<sup>34</sup>

41. Turning to the merits of the case, with respect to Count 1, the UNDT found that it had been established that Mr. Kavosh sexually exploited the Complainant by engaging in a romantic and sexual relationship with her between late 2017 or early 2018 and November 2020.

42. The UNDT found that the Complainant gave a "coherent, detailed, and reliable account of the events", noting that her testimony was consistent with her initial interview with the IGO and that there was no inconsistency that could have undermined her credibility.<sup>35</sup> The Complainant described how Mr. Kavosh sought out her contact information and later contacted her, gained her

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<sup>32</sup> Hearing transcript, 24 January 2024, Closing submissions, p. 164: 1-2.

<sup>33</sup> *Kavosh v. Secretary-General of the United Nations*, Order No. 12 (GVA/2024), paras. 7 and 11(b).

<sup>34</sup> Impugned Judgment, para. 37.

<sup>35</sup> *Ibid.*, para. 95.

trust, and established a relationship with her. She had no previous romantic or sexual experience. The UNDT also highlighted that her testimony was corroborated by several text messages demonstrating more than a mere friendship, as well as two explicit videos, in which Mr. Kavosh “[was] shown naked, touching his private parts, and carefree in the Complainant’s presence”, which supported a finding that sexual relationship existed.<sup>36</sup>

43. In contrast, the UNDT found that Mr. Kavosh’s testimony, which consisted of a denial that he was involved in any romantic or sexual relationship with the Complainant, and his claim that she “entrapped him by offering him her masseuse services and later blackmailed him as part of a conspiracy by UNHCR and BAFIA officials against him”, lacked credibility.<sup>37</sup> Specifically, regarding his allegation that the Complainant was a masseuse, the UNDT preferred the Complainant’s account, in which she stated that she had offered him a massage as part of their relationship.<sup>38</sup>

44. The UNDT also found that Mr. Kavosh’s suggestion that he had a “friends with benefits relationship” with the Complainant lacked merit, noting that the evidence showed that he had deleted two text messages in which he stated, “I love several people. Something that you don’t like”, a message that tended to demonstrate they were in a relationship.<sup>39</sup>

45. The UNDT further rejected Mr. Kavosh’s allegations of conspiracy, noting that “while tensions may have arisen among colleagues following [his] promotion (...), this [did] not prove that the Complainant conspired with BAFIA or UNHCR to get him fired”.<sup>40</sup> On the contrary, the UNDT held that it was Mr. Kavosh who, according to the transcript of the voice recording from 17 January 2021, attempted to intimidate the Complainant by offering to “help her with her ‘university application’ if she did not report to UNHCR and he stayed in the Organization, which he called a ‘win-win situation’”, while also threatening her with filing a case before a local court against her and having their respective families involved, and trying to negotiate financial compensation with her.<sup>41</sup>

46. The UNDT held that there was clear and convincing evidence that Mr. Kavosh sexually exploited the Complainant. The UNDT emphasized that Mr. Kavosh, a staff member who was “in

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<sup>36</sup> *Ibid.*, paras. 81-82.

<sup>37</sup> *Ibid.*, para. 79.

<sup>38</sup> *Ibid.*, paras. 84-85.

<sup>39</sup> *Ibid.*, para. 83.

<sup>40</sup> *Ibid.*, para. 90.

<sup>41</sup> *Ibid.*, paras. 87-88.

a position of trust and power not only in the refugee community in Shiraz but also vis-à-vis the Organization and BAFIA” abused his power by engaging in a sexual relationship with the Complainant, “a refugee in Iran from an Islamic background, [who] was in a vulnerable position and put herself in great danger by reporting [him]”.<sup>42</sup> The UNDT also found that Mr. Kavosh abused the Complainant’s trust and vulnerability by convincing her “to have sexual relations by giving her reassurances of a marriage in the future based on his knowledge of Islamic law”, as well as by threatening her not to disclose their relationship.<sup>43</sup>

47. As to Count 2, the UNDT found that it had been established by clear and convincing evidence that Mr. Kavosh shared a sexually explicit book, namely “The Sex Bible”, with his colleagues via WhatsApp on 29 October 2018, while serving as the Acting Head of the UNHCR SO in Shiraz. Further, Mr. Kavosh sent the material to M.H. separately a few minutes later stating it was “useful” and asking whether she had seen it. M.H. and S.F. (who were some of the colleagues who received the WhatsApp messages and the material) testified that they were “shocked” when they received it and considered the action inappropriate.

48. The UNDT held that Mr. Kavosh’s actions amounted to sexual harassment, as they were sexual in nature and caused offence to his colleagues. It found that Mr. Kavosh failed to conduct himself in a manner befitting his status of international civil servant and to act as a role model, particularly as he had shared “The Sex Bible” with supervisees in a professional setting while serving as Acting Head of the UNHCR SO in Shiraz.<sup>44</sup>

49. Concerning Count 3, the UNDT concluded that it had been established that Mr. Kavosh received and stored sexually explicit material on his official UNHCR-issued mobile phone. Specifically, the UNDT found that the evidence showed that the IGO “retrieved nine pictures showing [Mr. Kavosh] nude or semi-nude (...), three of [which were] pornographic in nature, showing [his] private parts”.<sup>45</sup>

50. The UNDT found that these actions also constituted misconduct, as they contravened paragraphs 7 and 10.1 of Administrative Instruction on End User Computing (UNHCR/AI/2019/13), which governs the appropriate use of UNHCR-issued devices and

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<sup>42</sup> *Ibid.*, paras. 135-137.

<sup>43</sup> *Ibid.*, paras. 138 and 141-143.

<sup>44</sup> *Ibid.*, paras. 151-154.

<sup>45</sup> *Ibid.*, para. 116.

explicitly prohibits “viewing, creating, downloading, hosting, or transmitting pornographic, offensive, or obscene material”.<sup>46</sup>

51. Last, regarding Count 4, the UNDT held that it had been demonstrated clearly and convincingly that Mr. Kavosh failed to fully cooperate with the investigation by deleting 989 files from his UNHCR-issued laptop before surrendering it as evidence on 17 February 2021, as well as by being untruthful in his response to the IGO and selective in his submission of evidence. The UNDT found that Mr. Kavosh changed his version of events when confronted with evidence and provided misleading information to the IGO. For example, the UNDT observed that he deleted two messages, which undermined his own position and supported the Complainant’s account that they were in a relationship.<sup>47</sup>

52. The UNDT also rejected Mr. Kavosh’s claim that the deleted files were unrelated to the investigation, stating that “if these files were unrelated to the investigation [Mr. Kavosh] had no interest in deleting them from the laptop”.<sup>48</sup> Regarding Mr. Kavosh’s submission that that he was prejudiced due to his inability to understand “legal jargon in English” and lack of awareness of the prohibited rules, the UNDT found these arguments unpersuasive, noting that he was proficient in English, “as demonstrated by his professional work experience, which includ[ed] being a translator and interpreter”.<sup>49</sup> The Tribunal also noted that the IGO notice of investigation dated 16 February 2021 specified, *inter alia*, that he “must not withhold, destroy or tamper with evidence” and that he acknowledged receipt of this notice and confirmed that “[he had] read and understood its contents”.<sup>50</sup>

53. The UNDT concluded that such conduct violated Staff Rule 1.2(c), paragraphs 26 and 28 of Administrative Instruction on Conducting Investigations in UNHCR (UNHCR/AI/2019/15), as well as the general obligation to cooperate with an investigation.<sup>51</sup>

54. The UNDT found that Mr. Kavosh’s due process rights had been respected during both the investigation and the disciplinary process. In particular, it noted that Mr. Kavosh had been given every opportunity to respond to the allegations raised against him and to provide supporting

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<sup>46</sup> *Ibid.*, para. 158.

<sup>47</sup> *Ibid.*, para. 126.

<sup>48</sup> *Ibid.*, para. 124.

<sup>49</sup> *Ibid.*, para. 123.

<sup>50</sup> *Ibid.*

<sup>51</sup> *AAE v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332, para. 140.

evidence.<sup>52</sup> It further observed that, contrary to Mr. Kavosh's contentions, "[t]he reasoning for not interviewing each of the witnesses proposed by [him was] properly addressed and documented in the methodology section of the investigation report".<sup>53</sup>

55. Last, the UNDT found that the sanction imposed on Mr. Kavosh was proportionate to his offence. It emphasized that Mr. Kavosh's conduct had "led to the employment relationship being seriously damaged so as to render its continuation intolerable".<sup>54</sup>

### **Submissions**

#### **Mr. Kavosh's Appeal**

56. Mr. Kavosh requests the Appeals Tribunal to grant his motion for anonymity, to reverse the impugned Judgment, to declare that the contested decision was unlawful and to award him compensation as well as the costs of the appeal.

57. First, Mr. Kavosh submits that the UNDT erred in fact and in law by failing to consider his motion for anonymity.

58. Turning to the merits of the appeal, regarding Count 1, Mr. Kavosh contends that the UNDT erred by failing to consider the "overall circumstances and facts" surrounding his relationship with the Complainant.

59. First, he argues that the UNDT wrongly concluded that the Complainant was a refugee, despite her possession of a valid Afghan passport, being born in Iran, holding a valid visa in Iran, and lacking an Amayesh card. Second, Mr. Kavosh asserts that the UNDT erroneously focused solely on the final stage of their relationship, ignoring its "genesis". In any event, he maintains that even if there was evidence of a sexual relationship, it would not, by itself, amount to sexual exploitation. Third, Mr. Kavosh contends that the UNDT failed to consider exculpatory evidence that he submitted, including text messages, witness statements, and expert opinions. Last, he argues that the Complainant's allegations were part of "a vendetta" against him.

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<sup>52</sup> Impugned Judgment, para. 174.

<sup>53</sup> *Ibid.*, para. 177.

<sup>54</sup> *Ibid.*, para. 193.

60. Concerning Count 2, Mr. Kavosh argues that the UNDT failed to consider that he had “rectified his mistake”. He also claims that his conduct had effectively been resolved “by virtue of the delay in lodging the complaint”.

61. Regarding Counts 3 and 4, Mr. Kavosh submits that the UNDT erred by failing to acknowledge that the allegations concerning the use of UNHCR devices arose upon the commencement of disciplinary action. He notes that his breach of the relevant rules was “inadvertent”, that he admitted his fault and that, since the other misconduct charges were not substantiated, this breach alone did not warrant dismissal.

### **The Secretary-General’s Answer**

62. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

63. The Secretary-General submits that the UNDT correctly denied Mr. Kavosh’s motion for anonymity. He further contends that the UNDT did not err in deciding that the motion for anonymity was time-barred.

64. Regarding Count 1, the Secretary-General submits that the UNDT correctly concluded that Mr. Kavosh sexually exploited the Complainant.

65. In this regard, the Secretary-General first contends that the UNDT appropriately determined that the Complainant had the status of a refugee for UNHCR, emphasizing that she was recognized as such in the UNHCR database thorough her relationship with Mr. Kavosh.<sup>55</sup> The Secretary-General further asserts that Mr. Kavosh was aware of the Complainant’s status, as evidenced by the following facts: i) they met at an event for refugee students;<sup>56</sup> ii) he promised to assist her with applications related to her refugee status;<sup>57</sup> iii) he included her in a list of refugee leaders on 2 March 2020;<sup>58</sup> and iv) when she asked him to fulfil his promise to marry her, he threatened to have her refugee cards revoked.<sup>59</sup> The Secretary-General also recalls that “neither individual UNHCR staff members, nor the UNDT and the UNAT have the competence to unilaterally substitute their own refugee status determination with those already concluded by UNHCR”. In any event, he notes that E.C.R. testified as an expert witness, explaining

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<sup>55</sup> See Annex 21 to the Investigation Report, Extract from the UNHCR ProGress registry.

<sup>56</sup> Impugned Judgment, para. 60.

<sup>57</sup> *Ibid.*, para. 87.

<sup>58</sup> E-mail dated 2 March 2020 from the Complainant to the Administration.

<sup>59</sup> Impugned Judgment, para. 141.

that the issuance of a passport by the Government of Afghanistan did not negate the Complainant's status as a refugee.<sup>60</sup>

66. Second, the Secretary-General submits that the UNDT correctly considered the context in which Mr. Kavosh's conduct occurred. He emphasizes that the UNDT appropriately recognized that Mr. Kavosh was in a position of power as a UNHCR staff member, while the Complainant was vulnerable, and thus correctly determined that he exploited this power differential by engaging in a relationship with her, which amounted to sexual exploitation as defined in Section 1 of Secretary-General's Bulletin ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse). The Secretary-General contends that since "the facts underlying the complaint have been demonstrated by the evidence to be true, the Complainant's motivation for filing the complaint is not material to [his] conduct and responsibility".

67. Concerning Count 2, the Secretary-General submits that the UNDT correctly found that Mr. Kavosh sexually harassed his colleagues. The Secretary-General observes that it is undisputed that he sent "The Sex Bible" to his colleagues via WhatsApp, through a channel used by staff members for work-related matters, and then separately to a colleague, M.H. He submits that the fact that the IGO began an investigation only in January 2021 does not demonstrate that the sexual harassment complaint was "malicious", pointing out that the intervening period cannot be considered as excessive and highlighting that there may have been "myriad good reasons" for the delay in initiating the investigation.

68. Regarding Counts 3 and 4, the Secretary-General submits that the UNDT correctly concluded that Mr. Kavosh violated the Organization's IT policies by storing sexually explicit material on the Organization's devices and that he interfered with the investigation by purging his work computer of files after being notified of the initiation of the investigation. He further notes that, contrary to Mr. Kavosh's assertion, his dismissal was not solely due to violations of the Organization's IT policies but also resulted from his sexual exploitation of the Complainant and sexual harassment of his colleagues.

69. Last, the Secretary-General contends that the UNDT correctly found that the IGO properly conducted its investigation and that Mr. Kavosh's due process rights were respected.

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<sup>60</sup> Hearing transcript, 24 January 2024, E.C.R.'s testimony, p. 77: 19-21.

### **Considerations**

70. Mr. Kavosh contends that the UNDT erred in upholding the finding of misconduct and his dismissal from service, and in not granting him anonymity during the UNDT proceedings. He also requests an oral hearing before the Appeals Tribunal.

#### *Request for an oral hearing before the Appeals Tribunal*

71. Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules) provides that the Appeals Tribunal “may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case”.

72. Mr. Kavosh requests an oral hearing before the Appeals Tribunal to “lead the Tribunal on the relevant factual issues ignored by the Dispute Tribunal”, as well as “to orally guide this Tribunal on the directions given by the Dispute Tribunal and further on the grounds supporting the motion for anonymity”. The Secretary-General does not respond to this request.

73. The request for an oral hearing is denied. Mr. Kavosh’s rationale for “leading” or “guiding” the Appeals Tribunal does not justify an oral hearing. The Appeals Tribunal has before it the extensive hearing record, including transcripts and audio recording, and written submissions from the parties, including Mr. Kavosh’s submissions of the alleged errors made by the UNDT on the merits of his application and on his motion for anonymity.

74. Therefore, we do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of our Rules.

#### *Motion for anonymity*

75. Mr. Kavosh says that the UNDT contravened Article 11(1) of the Dispute Tribunal Statute (UNDT Statute) by failing to consider the merits of his motion for anonymity. Article 11(1) provides that “judgements of the Dispute Tribunal shall be issued in writing and shall state the reasons, facts and law on which they are based”.

76. Mr. Kavosh asserts that, on 24 January 2024 during the hearing, the UNDT indicated that he could file his motion for anonymity as part of his closing submissions, the deadline for which was set for 19 February 2024. He further states that it was only in Order No. 12 (GVA/2024) that the UNDT “reversed its prior directions” and required that any motion for anonymity be submitted



by 12 February 2024. He argues that this constituted a “manifest procedural error and grave judicial mistake”. Regarding the merits of its motion for anonymity, Mr. Kavosh contends that the impugned Judgment has had a serious impact on his social life.

77. The Secretary-General notes that, contrary to Mr. Kavosh’s contention, the UNDT did not establish a specific date for submissions at the 24 January 2024 hearing but indicated that the deadline would be specified in a forthcoming order, which it did in Order No. 12 (GVA/2024). Since Mr. Kavosh submitted his motion for anonymity a week late, the Secretary-General asserts that the UNDT appropriately exercised its discretion in managing the case by denying his motion. Therefore, in accordance with Appeals Tribunal jurisprudence, the Secretary-General submits that the Appeals Tribunal should refrain from intervening in that case management decision.<sup>61</sup>

78. The UNDT did not err in fact, law or procedure when it summarily dismissed Mr. Kavosh’s late motion for anonymity. In the impugned Judgment, the UNDT stated the facts and reasons for the dismissal of the motion. It held that Mr. Kavosh disregarded the deadline of 12 February 2024 without having sought and obtained an extension of the deadline and without indicating the reasons for his late submissions.

79. A review of the hearing transcript for the final day of the hearing indicates that Mr. Kavosh’s counsel merely raised the possibility of not disclosing Mr. Kavosh’s identity as an aside, and the UNDT responded that it was a motion to be filed promptly with his submissions.<sup>62</sup> Contrary to Mr. Kavosh’s assertion, the UNDT did not set out a deadline for the motion at the hearing. The deadline was set out in the subsequent written and formal Order No. 12 (GVA/2024) issued by the UNDT on 5 February 2024. In that Order, the UNDT set the deadline as 12 February 2019, which Mr. Kavosh did not comply with. If there was any confusion on the part of Mr. Kavosh’s counsel, he certainly did not contact the UNDT after receiving the Order to clarify this confusion or seek an extension. Rather, he expressly disregarded the Order and filed a late motion contrary to its terms.

80. In terms of process, Article 19 of the UNDT Rules of Procedure (UNDT Rules) provides that the UNDT “may at any time, either on application of a party or on its own initiative, issue any

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<sup>61</sup> *Emma Reilly v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1309, para. 112; *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-981, paras. 47-48;

<sup>62</sup> Hearing transcript, 24 January 2024, Closing submissions, p. 163: 23-25 and p. 164: 1-2.

order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”.

81. The Appeals Tribunal has consistently held that “the UNDT has broad discretion with respect to case management. (...) As the court of first instance, the UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties. The Appeals Tribunal will not interfere lightly with the broad discretion of the UNDT in the management of cases”.<sup>63</sup>

82. Therefore, we find that the UNDT exercised its discretion judiciously and made no error in dismissing the late motion for anonymity.

*Merits of the appeal*

83. In hearing an application challenging an administrative decision imposing a disciplinary measure, it is well established that the Dispute Tribunal must consider:<sup>64</sup>

- (a) whether the facts on which the sanction is based have been established by the Secretary-General by clear and convincing evidence when termination is a possible outcome,
- (b) whether the established facts qualify as misconduct under the Staff Regulations and Rules,
- (c) whether the sanction is proportionate to the offence and the circumstances, and
- (d) whether the staff member’s due process rights were observed in the investigation and disciplinary process.

84. The Administration has the burden of establishing the facts underlying the alleged misconduct resulting in termination or separation from employment. These facts must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt; it means that the

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<sup>63</sup> *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, paras. 22-23. See also *Monarawila v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-694, para. 28; *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354, para. 8;

<sup>64</sup> *Michael David Antoine v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1449. See also *Maguy Bamba v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1259, para. 37; *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, para. 29.

truth of the facts asserted is highly probable.<sup>65</sup> To meet this standard, “[t]here must be very solid support for the finding”<sup>66</sup> including “direct evidence of events or (...) evidential inferences that can be properly drawn from other direct evidence”.<sup>67</sup>

*Did the Administration establish the facts on which the sanction is based by clear and convincing evidence?*

85. In the contested decision, and as affirmed by the UNDT in the impugned Judgment, the Secretary-General determined that Mr. Kavosh committed four counts of misconduct, namely sexual exploitation, sexual harassment, misuse of United Nations property and failure to cooperate in an investigation.

*Count 1: Did Mr. Kavosh sexually exploit the Complainant?*

86. In the impugned Judgment, the UNDT found that it had been established by clear and convincing evidence that Mr. Kavosh sexually exploited the Complainant by engaging in a romantic and sexual relationship with her between late 2017 or early 2018 and November 2020. The UNDT relied on the credibility of the Complainant’s testimony, which was corroborated by written communications including WhatsApp messages, e-mails and video recordings. The Appeals Tribunal has consistently 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”.<sup>68</sup>

87. Mr. Kavosh does not now appear to dispute that he and the Complainant had sexual relations but seems to argue that he did not sexually exploit the Complainant based on the circumstances. Initially, Mr. Kavosh denied any romantic or sexual relationship between him and the Complainant. However, the UNDT heard testimony from the Complainant and Mr. Kavosh and found the Complainant’s evidence credible, consistent and cogent, and corroborated by WhatsApp messages and graphic video recordings. The UNDT made no factual error when it held that they engaged in a romantic and sexual relationship.

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<sup>65</sup> *Ibrahim v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-776, para. 44; *Molari* Judgment, *op. cit.*, paras. 30-31.

<sup>66</sup> *Applicant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1187, para. 64.

<sup>67</sup> *Sisay Negussie v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1033, para. 45.

<sup>68</sup> *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-972, para. 70.

88. In terms of sexual exploitation, Staff Rule 1.2(e) clearly prohibits sexual exploitation and abuse. It provides that “[t]he exchange of money, employment, goods or services for sex, including sexual favours or other form of humiliating, degrading or exploitative behaviour is prohibited”.

89. Sexual exploitation is defined in Section 1 of ST/SGB/2003/13 as “[a]ny actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another”.

90. Mr. Kavosh submits that the UNDT erred in fact and law by failing to consider the “overall circumstances and facts” of his relationship with the Complainant. He argues that there is insufficient evidence of sexual exploitation.

91. First, he argues that the UNDT wrongly concluded that the Complainant was a refugee, despite her possession of a valid Afghan passport, being born in Iran, holding a valid visa in Iran, and lacking an Amayesh card. He further claims that the UNDT improperly relied on the UNHCR database, which he describes as “known to contain outdated and inaccurate information”.

92. The UNDT correctly determined that the evidence demonstrated that the Complainant had the status of refugee as recognized by UNHCR.<sup>69</sup> The Complainant was registered as a “person of concern” in the UNHCR database and had been recognized as a refugee. E.C.R., the UNHCR Chief of the Refugee Status Determination Section in the Division of International Protection, testified that UNHCR has the authority to determine who is a person of concern and that not having an “Amayesh card” or having a national passport does not affect this determination. Therefore, it was not an error for the UNDT to find that the Complainant had refugee status for UNHCR and that Mr. Kavosh was aware of this status, as reinforced by e-mails and WhatsApp messages.

93. Second, Mr. Kavosh asserts that the UNDT “misapprehended” his conversations with the Complainant and erroneously focused solely on the final stage of their relationship, ignoring its “genesis”. He notes that the Complainant had no problem with their relationship until it ended, at which point their conversations reflected “natural reactions of anger (...) like any other relationship when it’s at its dying stage”. He describes her as a “disgruntled person” trying to harm his

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<sup>69</sup> *Ibid.*, paras. 54-57.

reputation and career. Further, he asserts that the IGO did not subject the Complainant's evidence to sufficient scrutiny during the investigation, thereby rendering it biased.

94. There is no evidence to support Mr. Kavosh's contention that the investigation was biased. This is not a case where the entirety of the matter turns on the credibility of the accused staff member or a complainant, although the UNDT clearly found that the Complainant's evidence was highly consistent and credible. Rather, as outlined in the impugned Judgment, there is an abundance of direct evidence that corroborates the Complainant's account, including WhatsApp messages, e-mails, voice recordings, explicit video recordings and photographs. The Investigation Report and the impugned Judgment relied on both the statements of the parties, witnesses, and this direct evidence, to fairly and properly establish the facts.

95. As such, there was no misapprehension of the relationship. It is clear from a review of the evidence that the Complainant was in a vulnerable position as a refugee from an Islamic background and put herself in danger in engaging in an premarital relationship with Mr. Kavosh, contrary to her religious and cultural beliefs and her family's expectations. Conversely, Mr. Kavosh was in a position of trust and power in his UNHCR role. There was a power differential, which he exploited. He promised to marry her and take her with him, and in doing so, convinced her to engage in sexual relations with him. In an attempt to dissuade her from reporting him, he promised that it would be beneficial to her if he stayed with the Organization. When she pushed him on his promises, he tried to intimidate her by threatening that an investigation would lead to the cancellation of her family's refugee status and damage their reputation.<sup>70</sup> He abused his position, the Complainant's trust, and her vulnerability.

96. Mr. Kavosh contends that the UNDT failed to consider exculpatory evidence that he submitted, including text messages, witness statements, and expert opinions. We disagree. The UNDT reviewed the evidence before it in a clear and measured manner, arriving at conclusions and findings of fact entirely supported by the evidence. The UNDT considered Mr. Kavosh's submissions and evidence and provided sufficient reasons for why it did not accept them.

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<sup>70</sup> See Annex 14 to the Investigation Report, text message exchange between the Complainant and Mr. Kavosh of 17 January 2021.

97. In conclusion, Mr. Kavosh's conduct constituted an "actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes", amounting to prohibited sexual exploitation in violation of the Staff Regulations and Rules and ST/SGB/2003/13.

98. Further, he contravened Principle 7 of the UNHCR Code of Conduct, which provides that staff members undertake not to "abuse the power and influence that [they] have by virtue of [their] position over the lives and well-being of refugees and other persons of concern" and must "never engage in exploitative relationships (...) with refugees or other persons of concern".

99. As a result, we find that the UNDT did not err in finding that Mr. Kavosh engaged in misconduct by sexually exploiting the Complainant.

*Count 2: Did Mr. Kavosh engage in sexual harassment?*

100. The UNDT held that there was clear and convincing evidence that Mr. Kavosh shared a sexually explicit book, "The Sex Bible", with his colleagues over WhatsApp on 29 October 2018, while he was Acting Head of the UNHCR SO in Shiraz. Mr. Kavosh does not seem to dispute this before us.

101. However, he submits that the UNDT erred in fact and law by failing to consider that no complaint had ever been made and that the discovery of this allegation during the course of an ongoing investigation fell outside the initial scope of that investigation. Therefore, he argues that he was unfairly prejudiced by this allegation of misconduct.

102. In particular, he asserts that the IGO's decision to wait until January 2021 to open an investigation suggests that any complaint was "malicious" and stemmed from interpersonal conflicts existing at the UNHCR SO in Shiraz – conflicts which, he argues, the UNDT also failed to consider. Mr. Kavosh further alleges that the IGO's investigation was a "fishing expedition" aimed at finding grounds for dismissal in the absence of sufficient evidence to substantiate the sexual exploitation allegations. He concludes that the UNDT erred by "failing to consider the rules of substantive justice", including his right to a fair hearing and protection from discrimination.

103. There is no evidence that Mr. Kavosh was denied the right to a fair hearing. He was given the opportunity to respond to the allegations and evidence both during the investigative stage and the proceedings before the UNDT. Similarly, there is no evidence that Mr. Kavosh was subjected to discrimination, bias, or any improper motive.

104. In the impugned Judgment, the UNDT considered Mr. Kavosh's challenge to the "sincerity" and motives behind the complaint of sexual harassment but was not persuaded by this argument. He now repeats similar arguments on appeal. The motive for the complaint of sexual harassment is irrelevant, as the facts have been established by clear and convincing evidence. In fact, Mr. Kavosh does not dispute that he sent sexually explicit material to his colleagues. Similarly, the existence of any interpersonal conflicts at the UNHCR SO in Shiraz is irrelevant to the question of whether Mr. Kavosh inappropriately sent sexually explicit material to his colleagues.

105. 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".

106. Paragraph 5.3 of the UNHCR Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority (UNHCR/HCP/2014/4) defines sexual harassment as "any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another. (...) While typically involving a pattern of behaviour, it can take the form of a single incident".

107. The material Mr. Kavosh shared, "The Sex Bible", consisted of numerous sexually explicit and graphic photographs and writings. The evidence before the UNDT demonstrated that he sent this material to his colleagues in a WhatsApp group that included S.F. and M.H. They both considered it inappropriate and were "shocked". Further, Mr. Kavosh shared it again, individually, to M.H., who stated that she disliked it. Therefore, it can be reasonably inferred that Mr. Kavosh's sharing of sexually explicit material with his female colleagues was unwelcome and could reasonably be expected or perceived to cause offence.

108. There was absolutely no professional reason for Mr. Kavosh, who was Acting Head of the UNHCR SO in Shiraz, to send sexually explicit and graphic material to his colleagues and supervisees.

109. Accordingly, we find that the UNDT did not err when it held that there was clear and convincing evidence to support the sexual harassment allegation. As such, Mr. Kavosh violated the highest standard of integrity and professionalism expected of an international civil servant and

failed to act as a role model, as required by Staff Regulation 1.2(b) and paragraphs 4.2 and 4.3 of UNHCR/HCP/2014/4.

*Counts 3 and 4: Did Mr. Kavosh misuse UNHCR-issued equipment and fail to cooperate with the investigation?*

110. The UNDT found that there was clear and convincing evidence that Mr. Kavosh received and stored sexually explicit material in his UNHCR-issued mobile phone and failed to fully cooperate with the investigation by deleting 989 files from his UNHCR laptop and by being untruthful to the investigators.

111. In his submissions, Mr. Kavosh admits to having nude pictures on his UNHCR-issued device and to deleting 989 files from his UNHCR laptop. However, he argues that he “inadvertently” breached the rules on the use of IT devices and contends that these breaches alone are not sufficient to justify his dismissal.

112. Regarding the storage of sexually explicit material on his UNHCR-issued mobile phone, the UNDT correctly held that Mr. Kavosh was not credible in his explanations. He initially claimed that the nude, semi-nude, and pornographic photographs on his UNHCR mobile phone were the result of a “synchronization issue between his official mobile phone and his personal phone number”, which led to the “inadvertent” transfer of these photographs to his UNHCR-issued mobile phone.<sup>71</sup> However, in cross-examination, he admitted that he sent three explicit photographs of his genitals from his private number to his UNHCR number and device.<sup>72</sup>

113. As for the failure to cooperate, Mr. Kavosh admitted to deleting 989 files from his UNHCR laptop despite having been notified on 16 February 2021 that he must not destroy or tamper with evidence. In addition, he provided misleading evidence about his relationship with the Complainant to the IGO, initially stating they were “friends with benefits”, but then deleting two messages in which he implied that he loved her. His decision to delete and destroy relevant evidence after being notified that he was the subject of an investigation leads to the reasonable inference that he did so with the intent and knowledge to hinder and interfere with the investigation.

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<sup>71</sup> Impugned Judgment, para. 117.

<sup>72</sup> *Ibid.*, para. 118.



114. Mr. Kavosh's storage of sexually explicit material on his UNHCR-issued device and his deletion of files and messages were discovered during the investigation into sexual exploitation and harassment allegations. This was not a "fishing expedition", as the investigators discovered his misconduct underlying Counts 2 and 3 in the course of an ongoing investigation.

115. Further, Mr. Kavosh's explanations to the investigators and the UNDT about these matters, as well as about his relationship with the Complainant, have not been truthful. He has changed his account and arguments at each stage of the process. For example, when the IGO asked him whether he had ever had a romantic relationship with a refugee, he responded that he had not, even though he had and there was direct evidence to support this.<sup>73</sup>

116. Staff Rule 1.2(c) mandates staff members to cooperate with duly authorized audits and investigations. Paragraphs 26 and 28 of UNHCR/AI/2019/15 outline the duty of UNHCR personnel "to cooperate fully and in good faith with all duly authorized investigations by UNHCR and other [United Nations] entities". Further, investigation participants are required not to interfere with an investigation by withholding, destroying or tampering with evidence.

117. As for the use of UNHCR-owned equipment, paragraphs 7 and 10.1 of UNHCR/AI/2019/13 provide that UNHCR-owned devices must not be used for "[v]iewing, creating, downloading, hosting, or transmitting pornographic, offensive, or obscene material".

118. In summary, the UNDT did not err in concluding that there was clear and convincing evidence that Mr. Kavosh misconducted himself by receiving and storing sexually explicit material in his official UNHCR-issued mobile phone as well as by being untruthful and failing to fully cooperate with the investigation.

*Were Mr. Kavosh's due process rights observed during the investigation and disciplinary process?*

119. Mr. Kavosh contends that the UNDT failed to address his allegations of bias and procedural irregularities during the investigation process, which he alleges led to a "predetermined outcome". Specifically, he points to the IGO's refusal to interview some witnesses he had proposed, its decision not to obtain CCTV footage, and what he describes as its "selective use of evidence".

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<sup>73</sup> Investigation Report, paras. 102, 109 and 121.

120. The onus is on Mr. Kavosh to provide proof of lack of due process and substantial procedural irregularities that negatively impacted the outcome of the investigation or disciplinary process.

121. There is no evidence that the investigation was biased, or that Mr. Kavosh was subjected to discrimination. The onus of showing improper motive rests on the party asserting it, and Mr. Kavosh has not met that burden. The Dispute Tribunal correctly reviewed his allegations, found them unsubstantiated and provided reasons for its findings. There is no indication that it erred in its analysis.

122. A review of the impugned Judgment also reveals that the UNDT did not ignore Mr. Kavosh's arguments. On the contrary, the UNDT addressed his allegations of bias and procedural irregularities in paragraphs 165 to 182 of the impugned Judgment.

123. We also agree with the UNDT that the IGO correctly deemed it unnecessary to request CCTV footage near Mr. Kavosh's apartment, since it was undisputed that the Complainant had visited his apartment.<sup>74</sup> The UNDT also correctly noted that Mr. Kavosh's allegations of conspiracy were adequately considered and dismissed by the IGO.<sup>75</sup> This did not amount to a violation of his due process rights, given that he did not provide any relevant evidentiary basis for the CCTV footage to be requested or for his witnesses to be interviewed. As we have held in *Wu*, "the question of whether to call a certain person to testify (...) [is] within the discretion of the UNDT and [does] not merit a reversal except in clear cases of denial of due process of law affecting the right to produce evidence".<sup>76</sup>

*Was the disciplinary measure imposed proportionate to the misconduct?*

124. Mr. Kavosh does not provide detailed submissions on this issue, other than stating that the UNDT erred in fact and law by failing to consider that the sanction imposed was manifestly disproportionate when viewed in isolation from the proven allegations relating to the use or abuse of UNHCR-issued ICT devices.

125. However, all four misconduct allegations were proven by clear and convincing evidence, including the serious misconduct of sexual exploitation and sexual harassment. The UNDT did

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<sup>74</sup> Impugned Judgment, para. 179.

<sup>75</sup> *Ibid.*, para. 181.

<sup>76</sup> *Wu v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-597, para. 35.

not err in finding that the Secretary-General exercised his discretion judiciously in imposing the sanction, having considered relevant mitigating and aggravating factors. His actions were contrary to the professional standards of conduct expected of an international civil servant of the United Nations. Given the serious nature of Mr. Kavosh's misconduct, its gravity and impact on the Organization, continuation of his employment relationship was no longer possible, and the only available outcome in these circumstances was termination.

126. In all respects, the appeal fails and is dismissed.

**Judgment**

127. Mr. Kavosh's appeal is dismissed, and Judgment No. UNDT/2024/020 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27<sup>th</sup> day of June 2025 in New York, United States.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Forbang

*(Signed)*

Judge Gao

Judgment published and entered into the Register on this 16<sup>th</sup> day of July 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson,  
Registrar