



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

MUTEEGANDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Abbe Jolles

Counsel for Respondent:

Susan Maddox, ALS/OHRM

Matthias Schuster, ALS/OHRM

Introduction

1. On 5 February 2018, the Applicant, a former staff member of the United Nations Global Service Centre (“UNGSC”) filed an application with the Tribunal contesting the decision to dismiss him from service, following a disciplinary process for alleged misconduct.

Procedure before the Tribunal

2. On 19 March 2018, the Respondent filed his reply to the application.

3. By Order No. 72 (GVA/2019) dated 1 October 2019, the Tribunal ordered the parties to attend a case management discussion (“CMD”), which took place on 4 November 2019.

4. On 13 November 2019, the parties filed their respective list of potential witnesses for an oral hearing.

5. By Order No. 94 (GVA/2019) dated 15 November 2019, the Tribunal ordered the parties *inter alia* to attend a hearing on the merits on 11 and 18 December 2019. The Tribunal also granted leave to the Applicant to file a proper motion for production of documents.

6. On 14 November 2019, the Applicant filed a motion requesting the production of additional information by the Respondent.

7. By filing of 20 November 2019, the Applicant withdrew his request for a hearing and requested 30 days to file his closing submission as well as 30 days as of the filing of the Respondent’s closing submission to comment on it.

8. On 27 November 2019, the Respondent filed a response to the Applicant’s motion for production of additional information.

9. By Order No. 117 (GVA/2019) dated 16 December 2019, the Tribunal cancelled the hearing and granted the parties until 6 January 2020 to file their respective closing submission, which they did.

Facts

10. The Applicant joined the Organization in 2006. Prior to his dismissal, he was employed on a fixed-term contract as a P-3 Logistics Officer at UNGSC, Brindisi, Italy. Previously, he worked as a P-2 Supply Officer at the United Nations Operation in Ivory Coast (“UNOCI”) in Dalao, Ivory Coast.

11. While employed with UNOCI, the Applicant was the subject of an investigation by the Office of Internal Oversight Services (“OIOS”) in connection with allegations of sexual misconduct involving a minor (“the victim”).

12. OIOS investigators interviewed several witnesses including the victim, her mother and the Applicant, who was interviewed on 18 January 2017.

13. On 26 May 2017, OIOS issued its investigation report finding that there were reasonable grounds to believe that, sometime in 2014, the Applicant committed sexual misconduct against the victim.

14. On 30 June 2017, the Assistant Secretary-General for Field Support (“ASG/DFS”) referred the Applicant’s case to the Office of Human Resources Management (“OHRM”) for appropriate action. The referral was based on the OIOS report dated 26 May 2017, together with supporting documentation.

15. Effective 28 July 2017, the Applicant was placed on administrative leave without pay (“ALWOP”) for an initial period of three months or until completion of the disciplinary process, whichever was earlier. On 28 October 2017, the Applicant’s period of ALWOP was extended for another three months.

16. By memorandum dated 20 November 2017, the Chief, Human Resources Policy Service, OHRM, informed the Applicant about the formal allegations of misconduct against him and requested him to provide a response.

17. On 7 December 2017, the Applicant’s Counsel provided comments to the allegations of misconduct.

18. By letter dated 26 January 2018, the Applicant was informed that, based on a review of the entire dossier, including his comments, the Under-Secretary-General for Management had concluded that the allegations against him had been established by clear and convincing evidence and that she had decided to impose on him the disciplinary measure of dismissal from service.

Parties' submissions

19. The Applicant's principal contentions are:

- a. The incident upon which his dismissal was based never took place;
- b. The Applicant was not identified as the perpetrator;
- c. His dismissal was the result of a sloppy and haphazard investigation that ignored essential exculpatory eye witnesses;
- d. The victim described her attacker as having a "black skin colour". However, this does not implicate the Applicant any more than any other male member of the Ivory Coast population;
- e. The only evidence considered was the statements of the victim and her mother. However, these statements followed several blackmail attempts by them against the Applicant; and
- f. The Applicant requests the Tribunal to order the rescission of the contested decision, his reinstatement and the payment of compensation in the amount of USD150,000 for moral damages. He also requests to be paid his net base salary for the period that he was on ALWOP.

20. The Respondent's principal contentions are the following:

- a. There is clear and convincing evidence that the Applicant had sexual relations with a person under the age of 18;

- b. The Applicant's actions amounted to misconduct justifying the imposed sanction. He violated staff regulations 1.2(b) and 1.2(f), staff rule 1.2(e) and section 3.1 and 3.2(b) of the Secretary-General's Bulletin on the Special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13);
- c. Given the seriousness of the misconduct and in particular the Organization's zero-tolerance policy towards sexual exploitation and abuse, the imposed sanction of dismissal was proportionate to the Applicant's misconduct;
- d. The Applicant's fairness rights were respected throughout the investigation and the disciplinary process;
- e. OIOS conducted a thorough investigation, which included interviewing numerous witnesses and collecting other relevant evidence; and
- f. The Applicant is not entitled to any compensation. He has made unsubstantiated claims and has not adduced any evidence that would support an award for compensation.

Consideration

Motion for confidentiality

21. The Respondent has requested the Tribunal to redact the names of the victim and her family from "any public filings in this case". The Tribunal considers this request reasonable and decides to refrain from using the victim's name as well as the name of the members of her family in its judgment to preserve their privacy and to protect them from any negative repercussion.

22. The Tribunal's decision is also in line with the rights of victims to privacy and confidentiality set out in the recently adopted United Nations Protocol on the provision of assistance to victims of sexual exploitation and abuse.

Other procedural issues

23. In the present case, the Applicant contests the decision to summarily dismiss him following an OIOS investigation and a finding of misconduct related to sexual exploitation and abuse.

24. While in the present proceedings the Applicant repeatedly refers to the decision to place him on ALWOP, the Tribunal considers that this issue is *res judicata* as this Tribunal and the Appeals Tribunal have already adjudicated it (see *Muteeganda* UNDT/2018/009 and *Muteeganda* 2018-UNAT-869). Therefore, the Tribunal will not address any of the Applicant's allegations or requests in relation to his placement on ALWOP.

25. The Tribunal further notes that in the course of the present proceedings, the Applicant withdrew his request for a hearing and requested instead to be granted leave to file a closing submission. Consequently, the Tribunal cancelled the hearing and did not hear *viva voce* evidence.

26. Therefore, under art. 19 of its Rules of Procedure, the Tribunal will adjudicate the case at hand based on the evidence on file, i.e., the investigation report, its annexes and the documentary evidence provided by the parties.

27. The Tribunal has carefully analysed all the evidence produced in the present case and finds that the investigation report is complete. It contains a thorough assessment of the facts, a description of all the steps taken during the investigation, as well as detailed transcripts or summaries of the audio recorded interviews with the witnesses and relevant documents such as the copy of the victim's birth certificate and her medical records.

Scope of judicial review

28. The scope of judicial review in disciplinary cases has long been established by the Appeals Tribunal jurisprudence. See *Applicant* 2013-UNAT-302 para. 29, which provides that:

Judicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration [(footnote omitted)]. In this context, the UNDT is “to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is proportionate to the offence” [(footnote omitted)]. And, of course, “the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred” [(footnote omitted)]. “[W]hen termination is a possible outcome, misconduct must be established by clear and convincing evidence”, which “means that the truth of the facts asserted is highly probable” [(footnote omitted)].

29. The Appeals Tribunal has recently reiterated the standard of review in disciplinary cases in *Nadasan* 2019-UNAT-918, para. 38, as follows:

In disciplinary cases under Article 2(1)(b) of the UNDT Statute, the UNDT will examine the following: i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of evidence, but where termination is a possible sanction, the facts must be established by clear and convincing evidence); ii) whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member’s due process rights were respected.

30. The Tribunal will now turn into the analysis of the above-mentioned requirements.

Have the facts on which the disciplinary measure was based been established by clear and convincing evidence?

31. The Tribunal is mindful that crimes of a sexual nature are difficult to investigate, particularly, when persons under the age of 18 are involved.

32. These difficulties are also linked to the sensitive nature of the offense, the fact that these events often take place in an intimate context (in which only the offender and the victim are present) and the fact that there is usually a significant time lapse between the incident and the investigation.

33. In the current case, the Tribunal also took into consideration the social, educational and economical background of the victim and her family. The Tribunal notes that the incident took place in Ivory Coast in late 2014 or early 2015, involving the victim, a minor, who was then around 16 years old. The victim was living with her mother who had to provide, on her own, to the subsistence of the family.

34. The Tribunal is mindful of the vulnerable context involving the victim. It also notes that the Organization has developed a series of legal instruments to improve its system-wide approach to prevent and respond to sexual exploitation and abuse, and has adopted a zero tolerance policy in this regard.¹

35. After having carefully read the whole file and the evidence contained therein, the Tribunal will proceed to review the relevant facts to determine whether they have been established by clear and convincing evidence.

The incident

36. The Tribunal has assessed the victim's testimony before OIOS investigators and found it consistent and credible. The victim's narrative was very clear as she was able to explain how she became acquainted with the Applicant and how the incident took place.

37. According to the her testimony, the Applicant called her on the phone that he had bought for her and invited her to his residence to collect perfume and biscuits. The Tribunal compared the transcript of the victim's testimony, which was provided in French, with the summary of her testimony in the investigation report and it found that the summary properly reflects the content of her testimony as follows:

[The victim] took a taxi to [the Applicant's] house and when she entered the living room, Bock told her to go into his room to collect the perfume, [the victim] did so and Bock followed her. When she entered his room, Bock locked the door and [raped] her.

¹ See the Secretary General's Report to the General Assembly on Special Measures for protection from sexual exploitation and abuse: a new approach, A/71/818.

Bock first asked her to touch him. When she refused, he undressed her by taking off the lower part of her jeans and ripping off her underwear and when she was lying on top of her, he took off the bottom half of his clothes.

[The victim] confirmed that Bock penetrated her vagina, with his penis. [The victim] indicated that he wore a condom. Bock stopped with the intercourse '*lorsqu'il a fait sortir les trucs blancs*' – when he made the white things come out. The victim had never had sex before.

After he had raped her, Bock gave [the victim] back her clothes; she dressed and ran out of the room. She left the house and asked the warden – who was outside the house – to open the gate. Nobody else was inside the house. After that [the victim] called her mother from a public telephone cabin and went home in a taxi. [The victim] then fell sick.

38. In her testimony, the victim was perfectly able to describe the whole situation, consistently and coherently. She was even able to identify the Applicant's residence, as corroborated by the OIOS investigators.

39. In the Applicant's testimony, he explained how, sometime between April and July 2013, he became acquainted with the victim and her mother. He indicated that he had first met the victim, when he was passing by a church with his car and gave her and her sister a lift to their house. That episode was the beginning of a series of contacts between the Applicant and the victim's family, which lasted until July 2013 when he purportedly stopped the contact after noticing that they were taking food from his freezer.

40. The Tribunal remarks that in his testimony, the Applicant admitted that he had given the victim a phone for her birthday and that he had communicated with her through it. He also conceded that the victim used to visit him at his residence but indicated that she was always accompanied by her sister or a cousin.

41. The Applicant denied having sexually abused the victim. However, he admitted that sometime in January or February 2015, the victim and her mother showed up at his residence claiming that the victim had a sexual disease that was allegedly the result of a sexual encounter with him and that he had chased them away.

42. The Applicant claimed that the report of sexual abuse implicating him was part of a campaign launched against him by the Office of the Special Representative of the Secretary-General (“SRSG”) at UNOCI, after money was stolen from his possession during an armed robbery in September 2014.

43. The Tribunal found no evidence of bias or of ulterior motives that could question the credibility of either the victim’s statement and/or of that of her mother. Contrary to what the Applicant alleges, the Tribunal found no evidence of a conspiracy.

44. On the contrary, the Tribunal notes, in particular, the wicked way in which the Applicant manipulated the victim by inviting her to his residence, while her mother was out of the country, saying that he had a perfume for her, and then sexually abusing her.

45. There is a significant number of details in the evidence presented that, after a close scrutiny, leads the Tribunal to conclude, as the investigators did, that the Applicant sexually abused the victim, a minor, when he was deployed in the Ivory Coast.

46. Moreover, the record of the interviews with the Applicant and Mr. Adebisi, then Regional Administrative Officer with UNOCI, show clear inconsistencies and contradictions in relation to the financial assistance to the victim’s family and the settlement negotiations that render the Applicant’s version very fragile if not totally unreliable.

Financial assistance to the victim’s family

47. In her testimony, the victim stated that the Applicant gave her gifts prior to the incident and that whenever she needed something, the Applicant would provide her with it. This is corroborated by Mr. Adebisi who affirmed that the Applicant had admitted to him that he had a good relationship with the family and that he had been financially assisting them on a monthly basis for a long time.

48. The Applicant stated in his interview that he did not provide any financial assistance to the victim or her mother. He indicated that he only sent them money twice, via Orange Money, at Mr. Adebisi's request whilst the latter was on leave. However, Mr. Adebisi stated that contrary to the Applicant's contention, he never asked the Applicant to transfer money to the family in his absence.

49. The fact that the Applicant provided financial assistance to the family is supported by:

- a. The statement of the victim's mother, who confirmed in her interview that the Applicant made eight weekly transfers to her via Orange Money to cover medical expenses; and
- b. By the audio-recording of the meeting at the Hotel Akakro where the Applicant acknowledged that he had provided, on a humanitarian basis, financial assistance to the victim's mother.

50. While Mr. Adebisi testified that he had assisted the family financially with medical and other expenses on an humanitarian basis after he became aware of the incident, the evidence rather shows that, most probably, the financial assistance came from the Applicant via Mr. Adebisi.

The settlement negotiations with the victim's family

51. Another relevant element that undermines the Applicant's case is the fact that, after being confronted with the allegations of rape, he agreed to meet the victim's mother at Hotel Akakro to discuss a possible compensation for the reported rape of her daughter.

52. The victim's mother, the victim's aunt, Mr. Adebisi, the Applicant and Mr. Madou, who assisted as an interpreter, participated at the meeting. Mr. Madou audio-recorded that meeting in his mobile telephone. The audio recording shows that it was Mr. Adebisi who suggested handling the matter amongst themselves. In the meeting, the Applicant acknowledged to have assisted the victim's family financially on an humanitarian basis and not as an acknowledgement of guilt and

stated that they were provided with more than FCFA600,000 (approximately USD1,020).

53. It is therefore undisputed that the Applicant engaged in settlement negotiations with the victim's family after they had reported the incident to Mr. Adebiyi.

54. Although Mr. Adebiyi's involvement in the globality of events is unclear, it is evident that instead of reporting the allegations of possible misconduct as he was obliged to do, he acted as an intermediary and assisted the Applicant in the settlement negotiations with the victim's family. The Tribunal is, therefore, not persuaded that Mr. Adebiyi had not tried to help the Applicant to cover up the situation.

55. The Tribunal notes that while the Applicant argues that he was "blackmailed" by the victim's family, he neither reported it to the Organization nor he went to the local police to press any charges. Instead, he decided to seek Mr. Adebiyi's advice and to start informal settlement negotiations.

The victim's age at the time of the incident

56. Another controversial point raised by the Applicant relates to the victim's age. The Applicant argues that the investigators couldn't demonstrate that the victim was a minor as there was no reliable evidence on file, or at least, he was not aware of it.

57. The Tribunal recalls that in accordance with section 3.2(b) of ST/SGB/2003/13, "sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally" and that ["m]istaken belief in the age of a child is not a defence".

58. Nonetheless, the Tribunal underlines that the file contains clear and convincing evidence that, at the time of the incident, the victim was under the age of 18.

59. The victim's birth date is 12 May 1998 in accordance with her birth certificate and school identification card. The investigation report includes a copy of these documents and the Tribunal sees no reason to question their authenticity.

60. In her interview, the victim stated that she met the Applicant sometime in 2014 or 2015 when she was 16 years old. The uncertainty about the precise date of the incident is of no consequence. The logic and sequence of the course of events, including the involvement of Mr. Adebisi, puts the incident at some time in late 2014 and early 2015, which adequately supports a conclusion that the victim was a minor at the time.

The victim's failure to identify the Applicant

61. Another argument raised by the Applicant relates to the fact that the victim failed to identify him on a photo array. This argument is however not decisive and does not impress the Tribunal for the following reasons.

62. First, this fact is inconsequential in light of it being undisputed that the Applicant had a relationship with the victim and her mother.

63. Second, even though the victim did not know the Applicant's full name, she identified him as "Bock" which is similar to "Bob" (the Applicant's short name in English). The difference is of a phonetic nature and can be explained by the fact that the victim is of French mother tongue. The victim also described the Applicant as being "in good shape" and of black skin color.

64. Third, the victim was able to indicate that the Applicant worked for UNOCI and drove an UNOCI vehicle. She also knew where the Applicant lived and managed to describe his residence.

65. While the Tribunal will not engage in speculations in relation to the reasons for the victim's failure to identify him on a photo array, the Tribunal can plausibly infer that the victim may not have wanted to identify him, or perhaps, she was afraid to do so. It is also possible that the victim's inconsistency was due to the shaming effects of sexual abuse.

The victim's medical examination

66. The Tribunal is also not impressed with the fact that the medical examination was inconclusive in relation to a possible sexual assault.

67. It is clear that the examination took place long after the incident. According to the evidence on file, the victim was medically examined only on 20 February 2015, whereas the incident took place between late 2014 and early 2015 while the victim's mother was out of the country.

68. Consequently, the Tribunal notes that it cannot take adverse inferences from the fact that the records of the medical examination of the victim did not provide direct evidence of rape.

69. The Tribunal is not aware of any forensic examination being performed on the victim. The Tribunal only has evidence in relation to an abdominal echography and blood analysis in relation to potential sexually transmittable diseases.

70. Nevertheless, the Tribunal recalls that in the context of administrative investigations, such as in the present case, it is not essential (even in cases of sexual assault) to perform forensic exams on victims to meet the threshold of clear and convincing evidence, provided that other relevant elements are available.

71. Based on the evidence on file, the Tribunal finds that the facts on which the disciplinary measure was based have been established by clear and convincing evidence. Indeed, it is highly probable that the Applicant sexually abused the victim.

Do the established facts amount to misconduct?

72. Staff members of the United Nations are bound by a strict set of internal rules and regulations that do not only impose legal rights and obligations but also set ethical standards.

73. Article 1 of the staff regulations stipulates the duties, obligations and privileges of staff members. Staff regulation 1.2 specifies the “Basic rights and obligations of staff” and reads as follows in its relevant parts:

(b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

...

(f) [Staff members] shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations.

74. Staff rule 1.2(e) specifically provides as follows:

Sexual exploitation and abuse is prohibited. Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or the age of consent locally... Mistaken belief in the age of a child is not a defence... United Nations staff members are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse.

75. The Tribunal also refers to section 3.1 and 3.2(b) of ST/SGB/2003/13, which states:

3.1 Sexual exploitation and sexual abuse violate universally recognized international legal norms and standards and have always been unacceptable behaviour and prohibited conduct for United Nations staff. Such conduct is prohibited by the United Nations Staff Regulations and Rules.

3.2 In order to further protect the most vulnerable populations, especially women and children, the following specific standards which reiterate existing general obligations under the United Nations Staff Regulations and Rules, are promulgated:

...

(b) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence.

76. The Tribunal finds that the Applicant's actions constitute a serious breach of the core values, ethical standards and obligations expected of him as a United Nations staff member and, therefore, amount to misconduct, under staff regulations 1.2(b) and 1.2(f), staff rule 1.2(e) and sections 3.1 and 3.2(b) of ST/SGB/2003/13.

77. Since the Applicant had been working for the Organization since 2006, he perfectly knew or should have known that he was subject not only to the Regulations and Rules of the Organization but also to the highest ethical standards.

Whether the sanction is proportionate to the offence

78. In the context of disciplinary cases, proportionality comes into play as an essential principle that guides the decision-maker when choosing the appropriate sanction-according to the gravity of an offence and the specific circumstances of a case-from a set of different possible ones.

79. The Tribunal notes that the letter dated 26 January 2018 informing the Applicant of the decision to dismiss him from service provides *inter alia* as follows:

In determining the appropriate sanction, the Under-Secretary-General for Management has considered the nature of your actions, the past practice of the Organization in matters of comparable misconduct, as well as whether any mitigating or aggravating factors apply to your case. Cases involving sexual exploitation and abuse have resulted in sanctions up to, and including, dismissal.

The Under-Secretary-General for Management considered there were no aggravating nor mitigating factors present in your case.

On the basis of the foregoing considerations, the Under-Secretary-General for Management has decided to impose on you the disciplinary sanction of dismissal from service, in accordance with Staff Rule 10.2 (a) (ix).

80. The Tribunal is of the view that the sanction was adequate and proportionate to the gravity of the offence, and that it is aligned with the zero tolerance policy of the Organization in relation to sexual exploitation and abuse.

81. The sanction was the consequence of the Applicant's actions and his lack of insight, as well as of his reckless attitude in relation to the victim and her family.

Were the Applicant's due process rights guaranteed?

82. In relation to the investigation and the disciplinary process, the Applicant raises the following issues:

- a. The decision to dismiss him was the result of a sloppy and haphazard investigation that ignored essential exculpatory witnesses;
- b. The OIOS investigation report was based on unsupported evidence;
- c. Between 26 May 2017 and 19 November 2017 "no additional evidence was gathered" by the investigators; and
- d. The Applicant was not informed of the ongoing investigation.

83. The Tribunal recalls that it is incumbent on the Applicant to identify the errors and breaches of due process rights committed, if any, during the investigation and the disciplinary process.

84. The Tribunal reminds that a disciplinary process is not of a criminal nature and, as consequence, the applicable procedural safeguards are different and less stringent.

85. It is constant jurisprudence of the Appeals Tribunal that full procedural guarantees only come into play in the context of a disciplinary process, not earlier (see *Powell* 2013-UNAT-295 and *Akello* 2013-UNAT-336).

86. After a close analysis of the case, the Tribunal found no breach of the Applicant's due process rights within the applicable legal framework.

87. The evidence shows that upon referral by the Conduct and Discipline Team ("CDT"), UNOCI, OIOS conducted a thorough investigation that included interviewing several witnesses, collecting and analysing relevant documents as well as conducting site visits to material locations in Daloa. Therefore, the Applicant's

argument that the OIOS investigation was “sloppy” and “haphazard” is unsubstantiated.

88. The Tribunal further notes that the Applicant was interviewed on 18 January 2017, his interview was audio-recorded and he was provided with a copy of the audio-recording. In the allegations memorandum, dated 20 November 2017, the Applicant was informed of his right to seek the assistance of counsel and was given the opportunity to comment on the allegations. The Applicant submitted his comments on the allegations of misconduct on 7 December 2017, which were considered by the Under-Secretary-General for Management in the assessment of the case. Therefore, the Tribunal is satisfied that the Applicant’s due process rights were respected throughout the investigation and the disciplinary process.

89. While the Applicant claims that he was not informed of the ongoing investigation, the evidence shows that he was interviewed by OIOS investigators on 18 January 2017, and that he was informed that he was the subject of an investigation concerning allegations of sexual exploitation and abuse.

90. Similarly, the Applicant’s claim that between the date of referral of the allegations against him to OIOS by the Chief, CDT, UNOCI, namely 26 May 2016, and the issuance of the memorandum of allegations on 20 November 2017 “no additional evidence was gathered” is incorrect. In fact, by email dated 26 May 2016, the Chief, CDT, UNOCI, noting that the existing information at the time was “too vague to formally notify [the Department of Field Support] [in] New York of the matter”, recommended OIOS to conduct “an initial fact-finding into the case”. OIOS then proceeded to conduct a proper investigation as reflected in the investigation report dated 26 May 2017.

91. Having said the above, the Tribunal points out that, at the judicial stage, the Applicant was also given the opportunity to provide further evidence and to have a hearing on the merits of his case. Nonetheless, he was not able to properly identify his own witnesses and, ultimately, requested the cancellation of the hearing.

92. Under such circumstances, the Tribunal strongly refutes the allegation made by the Applicant in his closing submission that the Tribunal “refused to allow the alleged victim to testify”. In fact, the victim was identified as a witness by the Tribunal as indicated in its Order No. 94 (GVA/2019) dated 15 November 2019. However, since the Respondent informed the Tribunal that he had not been successful in contacting the victim, as it appeared that she had moved out from Dalao, the Tribunal decided to proceed with the hearing without the victim. The hearing was later on cancelled at the Applicant’s request.

93. The Tribunal calls the attention of Counsel for the Applicant of her obligations under the Code of Conduct for Legal Representatives and Litigants in Person adopted by the General Assembly in its resolution 71/266, which provides in its art. 4.4 that “[l]egal representatives shall maintain the highest standards of professionalism and shall act in the best interests of the party they represent, subject always to upholding the interests of justice and ethical standards”. The Tribunal is concerned by the seriousness of the Applicant’s allegation and its lack of accuracy.

94. The Tribunal also notes for the record that it has ensured that the Applicant had access to the investigation report and its annexes, including all the material collected by OIOS during the investigation. The Applicant was also allowed to request the production of further documents from the Respondent.

95. However, what the Tribunal cannot and will not do, is to engage in a “fishing expedition” as the Applicant pretends.

96. In light of the above, the Tribunal is satisfied that all the procedural rights foreseen in the internal legal framework were granted to the Applicant.

The Applicant’s request for compensation

97. The Applicant has requested the rescission of the disciplinary sanction, his reinstatement and the payment of USD150,000 as compensation for moral damages.

98. Under art. 10.5(b) of the Tribunal's Statute, compensation for harm can only be granted if it is supported by evidence and, in general, if the contested decision is unlawful.

99. In the case at hand, none of those requirements is met since the Tribunal has found that the decision to dismiss the Applicant was neither unlawful nor disproportionate. Furthermore, the Applicant did not provide any evidence to demonstrate the alleged harm suffered. Under these circumstances, the Applicant's request for compensation is rejected.

Conclusion

100. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

(Signed)

Judge Teresa Bravo

Dated this 6th day of April 2020

Entered in the Register on this 6th day of April 2020

(Signed)

René M. Vargas M., Registrar, Geneva