UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2020/021
Judgment No.: UNDT/2022/008
Date: 31 January 2022
Original: English

Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

CAHN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Jérôme Blanchard, LPAS, UNOG

Introduction

1. By application registered under Case No. UNDT/GVA/2020/021, the Applicant contests the decisions to:

a. Close his 5 February 2019 complaint against his First Reporting Officer ("FRO") pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) and not to refer her conduct to the Assistant Secretary-General for Human Resources;

b. Not to pay him compensation for moral harm resulting from harassment and abuse of authority by his FRO as well as from the Respondent's lack of protective measures; and

c. Not to take disciplinary or other appropriate action against his FRO, in accordance with sec. 5.19 of ST/SGB/2008/5, for making malicious allegations against him through a complaint filed on 4 April 2019.

Facts and procedural history

2. The Applicant is a Human Rights Officer (P-4) who has been serving with the Office of the United Nations High Commissioner for Human Rights ("OHCHR") since April 2009.

3. The Applicant's FRO took up her function as Regional Representative, Regional Office for Europe ("ROE"), OHCHR, in May 2017. The Applicant joined the ROE, OHCHR, in August 2017.

4. On 5 February 2019, the Applicant addressed to OHCHR Senior Management a memorandum alleging *inter alia* harassment and abuse of authority by his FRO, which in the Applicant's view was demonstrated by different actions of his FRO that he described in said memorandum. In this memorandum, the Applicant also raised attention to the impact on his health of his FRO's actions.

5. Due to ongoing conflicts within the ROE, OHCHR undertook a Human Resources mission on 14 February 2019 "to identify issues and provide possible avenues to resolve various concerns of the [ROE] staff".

6. On 2 April 2019, coming out of a work meeting, the Applicant had a complete collapse both physically and mentally. Thereafter, the Applicant was continuously on medically certified sick leave from 24 April 2019 to 4 September 2019.

7. On 4 April 2019, the Applicant's FRO filed a complaint against the Applicant under ST/SGB/2008/5.

8. On 9 April 2019, the Chief, Programme Support and Management Services ("PSMS"), OHCHR, appointed a fact-finding panel ("the panel") to investigate the Applicant's allegations in the above-mentioned memorandum. It was later agreed by all concerned that the same fact-finding panel would also investigate the 4 April 2019 complaint of the Applicant's FRO against the Applicant.

9. Between May and June 2019, OHCHR discussed with the Applicant and implemented different arrangements to accommodate him in connection with actions that he had requested the Organization to take.

10. On 31 July 2019, the panel issued its report on the Applicant's complaint ("investigation report").

11. On 10 September 2019, a new Secretary-General's Bulletin on addressing *inter alia* abuse of authority and harassment came into force, namely ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority).

12. By letter dated 9 October 2019, emailed to the Applicant on 17 October 2019, the then United Nations High Commissioner for Human Rights ("High Commissioner/OHCHR") *inter alia* communicated to the Applicant her:

a. Conclusion that, upon review of the investigation report, "the facts as established [did] not amount to evidence of possible harassment or abuse of authority on the part of [his FRO] against [him]"; and

b. Decision not to initiate disciplinary proceedings against the Applicant's FRO.

13. By letter dated 4 November 2019, the Applicant requested the High Commissioner/OHCHR to provide him with a copy of the report(s) of the panel into matters at the ROE.

14. By letter dated 22 November 2019, the Chief ad interim, PSMS, OHCHR, provided the Applicant with a detailed summary of the investigation report.

15. On 14 December 2019, the Applicant requested management evaluation of six decisions that in his view were contained in the 9 October 2019 letter of the High Commissioner/OHCHR. The three decisions outlined in para. 1 above were among the decisions for which the Applicant requested a review.

16. By letter dated 7 February 2020, emailed to the Applicant on 10 February 2020, the Under-Secretary-General for Management Strategy, Policy and Compliance responded to the Applicant's request for management evaluation, *inter alia* upholding the contested decision related to his complaint against his FRO.

17. On 23 April 2020, the Applicant filed an application contesting the decisions outlined in para. 1 above.

18. On 26 May 2020, the Respondent filed his reply. Three of the annexes to the reply, namely annexes 1, 3 and 9, were filed *ex parte*.

19. By motion dated 25 August 2020, the Applicant requested the disclosure of the above-mentioned three *ex parte* annexes.

20. By Order No. 101 (GVA/2021), the Tribunal:

a. Ordered the Respondent to file redacted versions of annexes 1, 3 and 9 to his reply together with the 64 annexes to which annex 9 referred to; and

b. Instructed the Applicant to subsequently file a rejoinder.

21. The Respondent complied with the Tribunal's above Order on 25 June 2021. By motion dated 7 July 2021, the Applicant objected to the level of redaction used by the Respondent and requested *inter alia* that the Respondent refile eight documents.

22. By Order No. 152 (GVA/2021), the Tribunal *inter alia* partially granted the Applicant's 7 July 2021 motion and ordered him to file his rejoinder by 25 October 2021, which he did.

23. On 17 October 2021, the Applicant filed another application, registered under Case No. UNDT/GVA/2021/057, contesting "OHCHR's failure to timely investigate and take a final decision following a complaint of misconduct made against [him] by his [FRO]" pursuant to ST/SGB/2008/5.

24. By motion dated 1 November 2021, the Applicant requested to combine the proceedings under this case (Case No. UNDT/GVA/2020/021) with those under Case No. UNDT/GVA/2021/057.

25. By Order No. 162 (GVA/2021), the Tribunal rejected the Applicant's motion to combine proceedings and by Order No. 163 (GVA/2021) of 8 November 2021, it instructed the parties to file closing submissions by 18 November 2021.

26. By email of 17 November 2021, the Applicant's Counsel requested an extension of the deadline to file his closing submission on medical grounds. On the same day, the Tribunal extended the parties' deadline to file closing submissions to 25 November 2021.

27. On 25 November 2021, the parties filed their respective closing submission. The Applicant's closing submission included additional evidence, namely a medical attestation from his psychiatrist and his psychotherapist.

28. On 29 November 2021, the Applicant submitted an "addendum" to his closing submission.

29. By letter dated 7 December 2021, the Applicant's Counsel communicated to the Tribunal his withdrawal of the Applicant's representation.

Consideration

The complaint against the Applicant's FRO for harassment and abuse

30. The Applicant essentially contests OHCHR's decision not to take disciplinary action against his FRO following the investigation of the complaint he filed for harassment and abuse.

31. The Applicant complains about many incidents, which can be summarized as:

a. Denigration (by ad hominem emails and harsh comments against him, inappropriate communication, denigration of work product, "silent treatment", and his FRO showing an obsessive, hostile and animus bound frame-of-mind);

b. Removal of portfolios; and

c. Abuse in his performance evaluation.

32. The Tribunal recalls that in assessing the legality of the contested decision, it must examine whether the Organization breached its obligations pertaining to the review of the complaint and the investigation process that ensued, as set out primarily in ST/SGB/2008/5 (see *Belkhabbaz* UNDT/2018/016/Corr.1).

33. It is also relevant to recall that in cases of harassment and abuse of authority, the Tribunal is not to conduct a fresh investigation into the initial complaint (see *Messinger* 2011-UNAT-123, para. 27). It is also not the Tribunal's role to substitute its own judgment for that of the Organization (see, e.g., *Sanwidi* 2010-UNAT-084). The Tribunal may "consider whether relevant matters have been ignored and irrelevant matters considered" (see *Sanwidi*) and should the Tribunal find that the Organization acted irrationally or unreasonably in reaching its decision, it is obliged to strike it down.

34. It follows from the above, that the Tribunal does not ask itself if the contested decision is right or wrong but rather determines if the decision is one that a reasonable person might have reached (see *Belkhabbaz* 2018-UNAT-873). To do so, the Tribunal will consider the record before the decision-maker at the time of the contested decision. Consequently, documents not before the decision-maker have no relevance in the context of the Tribunal's judicial review of the outcome of complaints under ST/SGB/2008/5 or the more recent ST/SGB/2019/8. It follows that some of the affidavits annexed to the application (i.e., annexes 6, 7, and 10) have no bearing on this issue and the Tribunal highlights that two of them concern witnesses interviewed by the panel (see annexes 7 and 10 to the application together with annexes 16 and 29 to the investigation report).

35. Having examined the evidence on file, particularly the panel's investigation report and its annexes, the Tribunal is satisfied that OHCHR properly handled the Applicant's complaint against his FRO, and that the case record fully supports the reasonableness of the decision not to initiate disciplinary proceedings against said FRO.

36. The 31 July 2019 investigation report on the complaint the Applicant filed on 5 February 2019, which complies with the requirements set forth in sec. 5.17 of ST/SGB/2008/5, addresses each of the allegations in the Applicant's complaint, namely its sections three to five. The Applicant's claim that "numerous allegations appear not to have been investigated" is, therefore, unfounded.

37. The Tribunal notes that pursuant to sec. 5.16 of ST/SGB/2008/5, the panel interviewed individuals who, in its view, had "relevant information about the conduct alleged" and also considered documents about the working environment at the ROE, e.g., the report of the 14 February 2019 Human Resources mission. The record shows that the panel diligently investigated the Applicant's allegations through all relevant and available means.

38. The panel concluded that messages sent to the Applicant could reasonably be considered unpleasant but not threatening; that the actions taken by the Applicant's FRO were not "punitive" or a result of "sabotage" or "work denigration" but the result of an evaluation by a supervisor; that the removal of portfolio(s) was a simple result of the exercise of managerial powers and of the Applicant's FRO vision as Regional Representative; that the Applicant's performance evaluation was conducted in accordance with the applicable Rules and Policies and therefore could not be interpreted in this instance as "Harassment" or "Abuse of Authority" (and that it showed a mere disagreement on work performance and not a prohibited conduct); that the atmosphere in the ROE since the appointment of the Applicant's FRO in May 2017 and the subsequent deterioration of the working environment at the ROE was the result of a combination of factors, with responsibility falling on a number of individuals, situations and sequences of events. The panel concluded that none of the behaviours, actions, interactions or decisions made by the Applicant's FRO constituted "Harassment" or "Bullying" as he alleged or a breach of ST/SGB/2008/5 or the OHCHR's "Dignity@Work" policy.

39. The Tribunal further observes that the Applicant's due process rights as set forth in ST/SGB/2008/5 and ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) were respected. The Applicant was *inter alia* interviewed and given an opportunity to provide his version of events and informed of the outcome on his complaint, which was complemented by a summary of the investigation report. This is in line with what is required under sec. 5.5(i)(ii) of ST/SGB/2019/8, which was in force at the time of and governed the contested decision.

40. The Applicant may disagree with the degree of information provided in the above-mentioned summary. The Tribunal underlines, however, that requiring the Organization to inform the aggrieved individual of the final action taken on a complaint seeks to strike a balance between the right of an aggrieved individual, the right to privacy of the alleged offender and the need for sensitivity and confidentiality of the process. Having examined the supporting documentation, the Tribunal finds that the Organization met its obligation to inform the Applicant about the outcome of his complaint while succeeding in balancing the above-mentioned rights and needs.

41. Finally, it has to be noted that the Applicant neither provided any evidence of bias towards him nor he substantiated his generic accusation of gender discrimination.

42. In view of the foregoing, the Tribunal finds that the investigation of the Applicant's complaint against his FRO was not flawed. It follows that no compensation arises in this respect.

The complaint against the Applicant's FRO for making malicious allegations against him by means of a counter complaint

43. The Applicant also challenged the Organization's decision not to take disciplinary or other appropriate action against his FRO for making malicious allegations against him by means of a complaint that the latter filed on 4 April 2019.

44. At the outset, the Tribunal recalls that "the instigation of disciplinary charges against a staff member is the privilege of the Organization itself, and it is not legally possible to compel the [Organization] to take disciplinary action" (see, e.g., *Nadeau* 2017-UNAT-733, para. 33). The Tribunal may, however, examine the process leading to a decision not to pursue disciplinary proceedings (see also paras. 33 and 34 above).

45. The Applicant claims that disciplinary proceedings against his FRO were warranted as the latter's complaint against him contained malicious allegations. As the fact-finding investigation and the contested decision are governed by two issuances (ST/SGB/2008/5 for the former and ST/SGB/2019/8 for the latter), the Tribunal finds it relevant to recall the following provisions setting the circumstances under which a complainant could be the subject of disciplinary proceedings.

46. Sec. 5.19 of ST/SGB/2008/5 provides that (emphasis added)

> Should the report indicate that the **allegations** of prohibited conduct **were unfounded and based on malicious intent**, the Assistant Secretary-General for Human Resources Management shall decide whether disciplinary or other appropriate action should be initiated against the person who made the complaint or report.

47. Sec. 5.5(k) of ST/SGB/2019/8 provides that (emphasis added)

> **If** it is indicated in an investigation report that **the report of prohibited conduct was knowingly false**, the responsible official or, if appropriate, the Assistant Secretary-General for Human Resources shall refer the matter to OIOS as possible unsatisfactory conduct in accordance with ST/AI/2017/1.

48. In response to the Tribunal's Order No. 152 (GVA/2021) (see para. 22 above), the Respondent filed a copy of the investigation report on the complaint filed against the Applicant by his FRO. The Tribunal observes that the respective investigation report did not indicate that the allegations of the Applicant's FRO were unfounded or based on malicious intent or false.

49. Consequently, the Tribunal finds that the decision not to initiate disciplinary proceedings against the Applicant's FRO in connection with her complaint against the Applicant is supported by the documentary evidence on record and, thus, lawful.

50. The Tribunal considers that the Applicant's FRO's complaint against the Applicant may be regarded as a sign of managerial weakness of the FRO in handling the conflict with subordinates in the office rather than as retaliation for the complaint filed by the Applicant (as the Applicant perceived it).In any case, the Applicant's FRO's complaint was filed when workplace conflict at the REO had started, the relationship with the Applicant was really tense, and his health was already compromised. Therefore, the Tribunal is of the view that the FRO's complaint increased the harm caused to the Applicant.

The Organization's infringement of its duty of care towards the Applicant and the Applicant's request for damages

51. In his application, the Applicant complains about OHCHR's decision not to pay him compensation for moral harm resulting from harassment and abuse of authority by his FRO, as well as of its lack of protective measures. In particular, he requests compensation equivalent to one year of net base salary for moral harm sustained because of OHCHR's failure to exercise its duty of care towards him.

52. Concerning the Applicant's request for compensation due to OHCHR's failure to exercise its duty of care towards him, the Respondent opposes such award on the grounds that OHCHR took "proper and prompt actions … to fully accommodate the Applicant and organized his lateral transfer to an agreeable position at Headquarters … three months after his submitting his complaint and one month after the beginning of the investigation".

53. The Tribunal observes that it is, in general, an employer's duty to protect the health, safety and welfare of its employees and other people who might be affected by its business. Employers must do whatever is reasonably practicable to achieve this. This means making sure that workers and others are protected from anything that may cause harm, effectively controlling any risks to injury or health that could arise in the workplace.

54. As per the comprehensive definition contained in para. 8 of the Final Report of the High-Level Committee on Management ("HLCM") Working Groupon "Reconciling Duty of Care for UN personnel while operating in high risk environments" (see CEB/2016/HLCM/11 dated 15 March 2016), the duty of care of the United Nations corresponds to a "non-waivable duty on the part of the organizations to mitigate or otherwise address foreseeable risks that may harm or injure its personnel and their eligible family members".

55. Based on the HLCM's report, duty of care risks are constituted not only of occupational security risk (e.g., due to an armed conflict) or health risks (e.g., due to exposure to contagious diseases) or safety risks (e.g., work in substandard facilities), but also of risks arising from the prolonged exposure to high stress situations, instances of violence, harassment or discrimination, and any factor compromising health, security and wellbeing in the workplaces as well.

56. The standard of care is determined by requirements of reasonableness. It will vary depending on the circumstances of the case.

57. Duty of care is crystallised in an implicit and explicit way in the obligations the Organization has towards its staff that are contained in both hard and soft law instruments, Policies, Regulations and Rules, Administrative Instructions and other internal acts of the Organization.

58. On this topic, it is worthwhile to recall that Appendix D to the Staff Rules establishes the "Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations", setting a regime of objective responsibility for such events, by which the Organization is to afford compensation regardless of whether it bears any fault in the matter.

59. Staff regulation 1.2(c) also enshrines an obligation of duty of care incumbent on the United Nations vis-à-vis its staff members as follows:

> Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.

60. The Organization's duty of care vis-à-vis its staff members is also addressed in the context of the Organization's efforts to prohibit discrimination, harassment, including sexual harassment, and abuse of authority and is reflected in the applicable legal framework. Indeed, the Tribunal underlines the following sections of ST/SGB/2008/5, the applicable legal framework at the relevant time, namely between December 2018 and July 2019:

> Sec. 2.1:
>
> every staff member has the right to be treated with dignity and respect and to work in an environment free from discrimination, harassment and abuse.
>
> Sec. 2.2:
>
> [t]he Organization has the duty to take all appropriate measures towards ensuring a harmonious work environment, and to protect its staff from exposure to any form of prohibited conduct, through preventive measures and the provision of effective remedies when prevention has failed.
>
> Sec. 5.3:
>
> Managers and supervisors have the duty to take prompt and concrete action in response to reports and allegations of prohibited conduct. Failure to take action may be considered a breach of duty and result in administrative action and/or the institution of disciplinary proceedings.
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> Sec. 5.9, which sets the obligation to:
>
> provide continuing support to the aggrieved party at every stage of the process, in consultation with the appropriate officials, taking into account the positive or negative consequences of the proposed course of action.

Sec. 6.4., which requires that

> appropriate measures shall be taken by the head of department, office or mission to monitor the status of the aggrieved party, the alleged offender and the work unit(s) concerned until such time as the fact-finding investigation report has been submitted. The purpose of such monitoring shall be to ensure that all parties comply with their duty to cooperate with the fact-finding investigation and that no party is subjected to retaliation as a result of the complaint or the fact-finding investigation.

61. Finally, the "Standards of conduct for the international civil service", drawn up by the International Civil Service Commission in its 2001 report (A/56/30), which the General Assembly noted with satisfaction in its resolution 56/244 and the Secretary-General cited in his bulletin ST/SGB/2002/13 (Status, basic rights and duties of United Nations staff members), state the following in its relevant part:

> **Working relations**
>
> 15. Managers and supervisors are in positions of leadership and it is their responsibility to ensure a harmonious workplace based on mutual respect; they should be open to all views and opinions and make sure that the merits of staff are properly recognized. They need to provide support to them; this is particularly important when they are subject to criticism arising from the carrying out of their duties. Managers are also responsible for guiding and motivating their staff and promoting their development.

62. It is also jurisprudentially established that the Organization has a duty of care towards its staff members (see *Applicant* UNDT/2021/043 (para. 177), *Kusuma* UNDT/2014/143, *McKay* UNDT/2012/018 (confirmed in *McKay* 2013-UNAT-287), *Edwards* UNDT/2011/022.

63. In its Judgments No. 1125, *Mwangi* (2003), and No. 1204, *Durand* (2005), the former UN Administrative Tribunal ("UNAdT") took the view that staff regulation 1.2(c) codified a duty of protection having the value of a general principle of law. In *Mwangi*, the UNAdT stated that

> even were such obligation not expressly spelled out in the Regulations and Rules, general principles of law would impose such an obligation, as would normally be expected of every employer. The United Nations, as an exemplary employer, should be held to

> higher standards and the Respondent is therefore expected to treat staff members with the respect they deserve, including the respect for their well being.

64. Moreover, in its Judgment No. 1194, *Haile* (2004), the UNAdT recognised that the Organization had a duty to "maintain a healthy working environment", which extended to protection of staff members' physical and psychological integrity.

65. The components of the duty of care have been further delineated through the jurisprudence of several Administrative Tribunals (see, among others, UNAdT Judgments No. 872, *Hjelmqvist* (1998) and No. 1273, *Aidenbaum* (2006); Administrative Tribunal of the International Labour Organization ("ILOAT") Judgment No. 402, In re *Grasshoff* (Nos. 1 and 2) (1980); Administrative Tribunal of the Asian Development Bank Decision No. 5, *Bares* (1995)).

66. Furthermore, in its Judgment No. 4171, *F. (Nos. 5, 6 and 7)* (2019), a case where the complainant challenged the decisions to dismiss her internal complaints of moral harassment, the ILOAT referred to the duty of care owed by all international organizations (see consideration 11) and highlighted that in its case law,

> the Tribunal has emphasised that the relations between an international organisation and its staff members must be governed by good faith, respect, transparency and consideration for their dignity (see Judgment 1479, consideration 12). An organisation must therefore treat its staff with proper consideration and avoid causing them undue injury. It must care for the dignity of its staff members and not cause them unnecessary personal distress and disappointment where this could be avoided (see, for example, Judgments 1756, consideration 10(a), and 3353, consideration 26). As the Tribunal held in Judgment 2524, an international organisation has a duty to provide a safe and adequate environment for its staff (see also Judgment 2706, consideration 5).

67. In the same judgment, the ILOAT also quoted the following relevant parts of paras. 5 and 57 of item 18 of UNESCO's Human Resources Manual

> Para. 5:
>
> (a) in accordance with the Standards of Conduct for the International Civil Service, every employee of UNESCO shall treat one another fairly, with courtesy, respect and dignity, without verbal or physical abuse, regardless of rank or contractual status.
>
> (b) [...]
>
> (c) Focus shall be placed on preventive action against harassment. [...] Each UNESCO employee, at any level, and in particular at supervisory level, is responsible for building a positive work environment and a climate of trust and tolerance, free of all forms of harassment. [...].”
>
> Paragraph 57:
>
> Managers and supervisors are responsible for:
>
> (a) Ensuring a positive and harmonious working environment, free of intimidation, hostility or offence and any form of harassment;
>
> (b) Taking steps, at an early stage, to prevent and/or resolve conflicts between staff/employees in their Sector, Division, Section, Unit, Field Office.

68. The ILOAT then stated that the above provisions “simply apply the duty of care, to which the complainant also refers, owed by all international organisations”.

69. In consideration 12 of Judgment No. 4171, the ILOAT further noted that “the Organization did not do everything in its power to alleviate the situation and to effect a transfer that several of its appeal bodies felt was desirable”. In its consideration 13, the ILOAT went on to state that

> In view of the findings set out by the Appeals Board in its opinions, the Director-General was wrong to consider that UNESCO’s rules had been correctly applied and to reject, firstly, the recommendation that the managers should have found a sustainable solution to the complainant’s problems that was consistent with their normal managerial authority and duty of care and, secondly, the recommendation that the complainant should have been given the opportunity to prove her worth in another sector. Paragraphs 5 and 57 cited above and, more generally, the duty of care require the Organization to ensure a positive and harmonious working environment, free from intimidation and hostility.

> In this case, that duty was further reinforced by the worsening health of the complainant, who has provided various medical certificates, the number of which, their sequence and the nature of the health conditions identified are such as to raise suspicion that her health problems were work-related in origin.
>
> Even though the charge of harassment cannot stand, an international organisation fails in its duty to treat staff members with dignity and avoid causing them undue and unnecessary injury if the organisation is aware of an unhealthy working atmosphere in the service where a staff member works but allows it to remain without taking adequate measures to remedy the situation (see, to this effect, Judgment 2067, considerations 16 and 17).

70. In its Judgment No. 2067, *In re Annabi (No. 2)* (2001), considerations 16 and 17, the ILOAT stressed that even if a plea of harassment cannot succeed, an Organization may be held responsible for failing

> in the duty incumbent on all international organisations to treat staff members with dignity and avoid causing them undue and unnecessary injury.
>
> […] the ILO was aware of the unhealthy working atmosphere in the department where the complainant was employed. That atmosphere was allowed to linger without the necessary assistance being given to sort matters out. Moreover, it failed to draw all the necessary conclusions from the fact that one interpreter had made unfounded accusations against the complainant which had seriously impaired his good name and dignity.

71. In its Judgment No. 3995, *B (No. 3)* (2018), where the complainant challenged the measures taken by IFAD following its investigation into his allegations of harassment, the ILOAT stressed that

> [a]ccording to the Tribunal's case law, by virtue of the principle that an international organisation must provide its staff members with a safe and healthy working environment, it is liable for all injuries caused to a staff member by a supervisor when the victim is subjected to treatment that is an affront to her or his dignity (see, for example, Judgments 1609, under 16, 1875, under 32, 2706, under 5, or 3170, under 33).

72. In the same dated Judgment No. 3994, *O.-E.* (2018), consideration 8, the ILOAT recalled that

> [w]hile the Tribunal's case law obliges international organisations to take appropriate measures to protect their officials' health and safety (see Judgment 3689, under 5; see also Judgments 3025, under 2, and 2706, under 5), the measures requested must be reasonable and based on objective evidence of their necessity.

73. Important principles have been affirmed also by UNAT, in particular in its Judgment *Cohen*2017-UNAT-716, where it was at stake if the Administration was to bear

> "aggravated responsibility for recklessly exposing Ms. Cohen to the known risks posed by her manager" in direct contravention of the duty imposed by ST/SGB/2008/5 to provide a safe workplace and to protect its staff from harassment based on the right of all staff members to a harmonious work environment that protects their physical and psychological integrity.

74. UNAT stated, among others, the following:

> 37. […]. The Appeals Tribunal has consistently held that the absence of a response to a claim or a complaint can in certain circumstances constitute an appealable administrative decision where it has direct legal consequences (footnote omitted). The implied administrative decision to deny Ms. Cohen compensation for the harm she suffered denied her the effective remedy to which she was contractually entitled under ST/SGB/2008/5. There is accordingly a legal basis for Ms. Cohen's claim for compensation before the Appeals Tribunal.
>
> 38. The fact that Ms. Cohen was the victim of harassment and has suffered harm is common cause, as is the fact that the harm was work related. The conduct has resulted in her disablement from employment. Both the investigative panel and the Conciliation Committee found that senior officials had prior knowledge that Ms. Cohen's manager posed a danger to her subordinates, and failed to take appropriate steps to minimize the risk that her conduct might cause harm. There is no evidence before us to rebut those findings. It follows that the ICJ is in breach of its duty to protect its employees from discrimination and harassment.

75. In the case at hand, the Respondent in his reply and the investigation reports on the Applicant's and his FRO's complaints recognized that there was a "deterioration of working conditions" at the ROE.

76. The Tribunal considers the working conditions in an objective way, irrespectively of the responsibility in causing them (which cannot be put on the Applicant only but is the consequence of multiple factors as the investigators stressed).

77. In the said situation, the Applicant recalled that he had sought, from early January 2019, the assistance of OHCHR Management and in particular of his Second Reporting Officer ("SRO"),with a view to seek intervention or mediation that might stop the negative treatment he felt to receive. On 5 February 2019,he submitted a complaint to OHCHR Senior Management in which he also raised attention to the impact that his FRO's actions had on his health.He specifically stated in the complaint in this respect that:

> 7. Health impact
>
> On 18 January 2019, my General Practitioner reviewed my oral summary of the above [(referring to the content of his complaint)], together with my description of symptoms including a prolonged period in which I am able to manage only 1-3 hours of sleep, and stated that I am now at "high risk of serious health impact.
>
> 8. Conclusions
>
> …
>
> I am currently deeply concerned, both for my own well-being and mental health, as well as for that of my family.

78. The degrading conditions of work violated the Applicant's rights and dignity, going as far as to impair his physical and mental health as well as compromising his professional and personal future.

79. It results from the record that, on 2 April 2019, the Applicant's workplace stress-related health issues culminated with a complete nervous breakdown in the office, during a staff meeting. According to the Applicant, the specific trigger for this breakdown was a visit by his SRO, who was also the official responsible for supervision of the ROE. The Applicant recalled that "[his SRO and FRO] conducted a staff meeting as if absolutely nothing was amiss, notwithstanding the fact that virtually all of the staff of the office had complained to management about the conduct of the head of office". The Applicant suffered a breakdown during the meeting and subsequently collapsed into uncontrollable crying.

80. Thereafter, the Applicant was continuously on medically certified sick leave from 24 April 2019 to 4 September 2019.

81. This prolonged period of medically-certified sick leave followed sick leave absence periods including 8 February 2019, 11 to 20 February 2019, 14-15 March 2019, 3 to 5 April 2019, 8 to 11 April 2019, resulting from the same circumstances.

82. There is also contemporary evidence on record, namely a 10 May 2019 letter of one of the Applicant's treating physicians and a 9 May 2019 letter from a psychosocial support worker, about the Applicant's work-related stress and sick leave as of January 2019.

83. About the general working conditions at the ROE, particularly meaningful and alarming is the affidavit (Annex A10 to the Application) from a Human Rights Officer, Council Treaty Mechanism, OHCHR (Geneva), who was also a member of the OHCHR Staff Committee:

> Since January 2019, several staff members of the Regional Office of Brussels approached OHCHR Staff Committee. They reported several incidents occurred in the Regional Office related to harassment, abuse of authority and poor working environment leading to deteriorating mental health situations. Based on the Staff Committee's mandate and on other UN policy documents, and particularly the SG Bulletin on Prohibition of Discrimination, Harassment and Abuse of Authority and the Secretary-General's UN-wide Mental Health and Well-being strategy for 2018-2023, the Staff Committee followed up on the above-mentioned allegations,

which were brought to the attention of OHCHR Human Resources and OHCHR Management. The incidents reported by staff members in the Regional Office included:

- Stress and uncertainty about their portfolios as a result of: significant number of matters under their responsibility drastically reduced; decisions to cut down portfolios done without any involvement or prior discussion with the staff concerned, decisions presented to staff members as final and staff being summarily informed that grounds for the decision were changes introduced to the Annual Work Plan for the office,
- Not being acknowledged for their work-related accomplishments, no recognition of their work,
- Anxiety after having been informed that their work performance was considered poor and being requested to consider leaving the organization or requested to find new jobs,
- Fear of their contracts not being renewed,
- Fear of being considered or labelled as challenging the views of the manager if they express their views in a team meeting or in front of other colleagues,
- Fear of receiving emails with harsh messages, after having received email content belittling them or treating them poorly,
- Working in isolation,
- Fear to communicate with other colleagues,
- Fear to gather in groups during lunchtime or after working hours, as these gatherings were considered as occasions for undermining the regional office's management,
- Being subjected to micro-aggressions; ex. being reminded in front of other staff of duties such us servicing coffee,
- Experiencing symptoms of anxiety when called to talk with the manager,
- Working without enthusiasm or motivation,
- Having received threats that they would be formally accused of prohibited behaviour,
- Fear of retaliation for having reported misconduct,
- Receiving harsh emails during weekends,
- Being accused for misusing private social media;
- Experiencing having no longer any trust in their relation with the manager,
- Anxiety in having to cope with stressful situations on a continuing basis,
- Feel demoted because of having stopped working on substantive issues.
- Anxiety in going to work on a daily basis,

> - Poor quality of sleeping hours, flashbacks of stressful situations,
> - Over smoking or drinking to cope with stress,
> - **Long periods of sick leave due to depression, burn-out and emotional breakdown** (emphasis added),
> - Felt compelled to consider start looking for other job opportunities in order to avoid continuing working in an unhealthy environment,
> - Feeling that management was not responding properly to their allegations and requests,
> - Feeling their allegations were not taken seriously,
> - Feeling they were blamed for the unhealthy working environment in the Regional Office,
> - Feeling caught in surprise for changes or attempts to introduce changes of their First reporting Officers without being properly consulted,
> - Feeling uncomfortable and embarrassed in front of outsiders inquiring about changes in the Office's priorities and changes in portfolios,
> - Being under regular surveillance by their medical practitioners, burnout counsellors, or psychologists,
> - Having been advised by their medical practitioners or psychologist to try to do whatever was possible to leave the unhealthy working environment,
> - Experiencing anxiety in their interaction with family members,
> - Experiencing living in a **toxic working environment, not in line with standards in force in the United Nations.** (emphasis added)

84. The impact of the working conditions on the Applicant's health is described by the affidavit of the former Deputy, ROE (Annex A7 to the Application):

> I am … a direct witness to his having collapsed in tears, his whole body shaking, immediately after [the 2 April 2019] meeting, before going on sick-leave, from which he did not return before September 2019. It is my view that this is the **direct result of his having been left under an abusive supervisor for months** (emphasis added)**,** despite his efforts to raise his situation with colleagues outside Brussels, in the hope that the treatment he was suffering would be addressed. When I recollect those times, **I count myself lucky that I myself was not reduced to a similar state**. (emphasis added) In short, I have witnessed, during the period in question, the gradual degradation of a valued colleague because of bullying.

85. It also results from the statement of the Applicant's Psychiatrist (Annex A9 to the Application) that:

> [The Applicant] is a 51-year-old man, consulting for first time on 12/07/2019, due to a mixed anxiety-depressive disorder caused by toxic work environment.
>
> As a reminder, he has been working at the United Nations, for many years. He is married and father of two children.
>
> Since January 2019, he has begun to feel a form of insidious and repeated harassment and bullying by his unit manager. … **[S]everal colleagues in his unit were experiencing the same process at this period.** (emphasis added).
>
> Under these stress conditions, he started to feel oppressed, anxious and with sleep disturbances.
>
> Also, and given the persistence of the deleterious atmosphere at work he reports very precisely that some months later, in April 2019, coming out of a work meeting, he had a complete collapse both physically and mentally.
>
> He described also how this professional issue had major negative impact in his family.
>
> In a first time, he consulted [a] general practitioner, and [a coach] for psychosocial support. [The former] requested a psychiatric consultation.
>
> …
>
> Conclusion:
>
> [The Applicant] has suffered from mixed anxiety depressive disorder caused by toxic work environment.

86. A long period of sick leave for depression and burnout, related to work (see medical certificates on record) results from the file.

87. The Applicant documented many symptoms affecting his health, which included: fear at the idea of returning to work; frequent bouts of crying; difficulty in falling asleep and frequent sleep interruptions as a result of nightmares; insomnia; loss of self-esteem; feelings of devaluation and guilt; physical and mental exhaustion; trouble concentrating and loss of memory; feelings of guilt and

powerlessness vis-à-vis colleagues; re-traumatization; social withdrawal; and sentiments of injustice and powerlessness in the face of the situation, all due to the feeling of being harassed by his supervisor, as well as prolonged exposure to a toxic work environment. In addition, the Applicant recalled stress-related harm concerning his family.

88. Given the objective incidents flagged by the Applicant in his 5 February 2019 complaint, the occurrence of collapse of the Applicant during a meeting in the office, and the long certified sick leave of the Applicant, the Tribunal cannot doubt about the awareness by the OHCHR management of the Applicant's health issues and about its objective origin from the work conditions.

89. Despite the Applicant's alarming and unequivocal requests for help and protection as well as complaints from other colleagues about the Applicant's FRO, the Senior Management of OHCHR did not take any action to protect the Applicant from further harm.

90. Duty of care would have required OHCHR to take immediate protective action after having received the Applicant's alarming complaint. Instead, OHCHR Senior Management took no action to protect the Applicant from a toxic working environment.

91. The Tribunal observes that five months elapsed between the Applicant seeking assistance and the start of the discussions to accommodate him. The Tribunal also highlights that, in the meantime, a Human Resources mission to the ROE was conducted and that there is no evidence of any attempts during that mission to respond to the Applicant's call for help. The Respondent conceded in his reply that discussions with the Applicant to accommodate him started in May 2019.

92. It was only at the beginning of May 2019, after the Applicant had suffered a nervous breakdown and four months after the Applicant's complaint, that OHCHR discovered the issue and later started to take measures to protect the Applicant.

93. The Tribunal notes, however, that the effect of the infringement of the duty of care affected the Applicant at least until 4 September2019, when he was able to return to work.

94. The damage claimed by the Applicant is directly attributable to OHCHR as it failed to protect him for many months despite having been asked to intervene and having been aware of the serious impact of the working environment on the health of the Applicant. Despite the Applicant's repeated calls for help, OHCHR did not take any protective action.

95. The Applicant complained against his FRO not only to seek to have her disciplined (and this right to have a third party punished is provided for in but limited by the rules), but in particular to protect himself: this is a perfect right of a staff member, whose basis is in the duty of care by the Organization.

96. Notwithstanding the claim by the Applicant on the negative effects on his health by his allegedly harassing FRO, the violation of the obligation to protect the staff member was not investigated at all. The Tribunal notes that in its 31 July 2019 investigation report, the panel wrote:

> G. "Circumstances of the Staff Member" and "Health Impact"
>
> 63. In his 05 February 2019 complaint, and subsequent correspondence, [the Applicant] elaborates on his personal, familial circumstances as well as the impact the workplace difficulties are reportedly having on his health. The panel takes note of these passages but is not in a position to either evaluate or comment on their content.

97. In sum, the situation was clear to OHCHR and also to the panel but was not investigated at all.

98. It is worth to recall that it is a general principle in Labour and Social Security laws of any system that the obligation of an employer concerning the protection of its employees' health from the negative effects of the working environment is directly connected to the simple role of the employer, as fully and exclusively

empowered to rule on the working environment. In other terms, this duty of care exists irrespectively of the factors which caused the danger at work.

99. This means also that the obligation of an employer to prevent any damage to the health of the employee stands also when alleged harassment remains undemonstrated, because the duty of care involves also the alleged victim of harassment (whatever will be the result of the harassment investigation).Indeed, the subjective perception of being harassed—when sustained by an objective situation of crisis or conflict in the workplace and producing a certain negative impact on the health conditions of the staff member—may already be relevant in causing moral damage (see ILOAT Judgment No. 4171).

100. This liability by the Organization is general and objective and encounters a limitation only in the behaviour of the affected staff member as sole cause of the situation.

101. The Tribunal finds the Organization fell short of its duty to promptly address situations where the work environment was not harmonious, that the Applicant has sufficiently demonstrated the negative impact on his health of the environment in which he had to work and that there are grounds for the award of compensation.

102. Regarding the amount of compensation, the Applicant notes that in *Cohen*, which concerns a case similar to the Applicant's (where the Administration failed to protect a staff member from harassment), the Appeals Tribunal awarded one year of net base salary as compensation for moral harm.

103. In the Applicant's case, the Tribunal is entertaining compensation due to OHCHR's failure to timely protect him from a toxic work environment. Given the discretion to determine the amount of compensation based on its assessment of the evidence concerning the nature, extent and effects of the harm, having considered all relevant factors and circumstances and, moreover,having in mind the criteria set out in *Cohen* by UNAT, the Tribunal finds that the harm suffered by the Applicant can be compensated by an award of one month of net base salary for each month of infringement of the duty of care by OHCHR, that is the period running from

OHCHR's inertia until the Applicant's return to work, namely from February to August 2019 (seven months).

Conclusion

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

a. The application is partially granted;

b. The Respondent shall pay to the Applicant compensation in an amount equivalent to seven months of net base salary for harm suffered; and

c. The aforementioned compensation shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable.

(*Signed*)
Judge Francesco Buffa
Dated this 31st day of January 2022

Entered in the Register on this 31st day of January 2022
(*Signed*)
René M. Vargas M., Registrar, Geneva