



**Before:** Judge Francesco Buffa

**Registry:** Geneva

**Registrar:** René M. Vargas M.

REITERER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

George G. Irving

**Counsel for Respondent:**

Isavella Maria Vasilogeorgi, AAS/ALD/OHR, UN Secretariat  
Susan Maddox, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a staff member of the United Nations Office for the Coordination of Humanitarian Affairs (“OCHA”), contests the decision to impose on him the disciplinary measure of “demotion by one grade with deferment, for one year, of eligibility for consideration for promotion and threatened reassignment”.

## **Facts and procedural history**

2. As of June 2013, the Applicant acted as the Chief of Civil-Military Coordination Section (“CMCS”), OCHA. In April 2017, he was promoted to the P-5 level as Chief, CMCS, OCHA.

3. On 31 January 2017, a Humanitarian Affairs Officer, OCHA (“first complainant”), filed a complaint for harassment and abuse of authority against the Applicant under ST/SGB/2008/5 (“Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”).

4. On 15 May 2017, a fact-finding panel (“first panel”) was appointed, and an investigation was conducted.

5. On 30 August 2017, another Humanitarian Affairs Officer, OCHA (“second complainant”), filed a complaint for harassment and abuse of authority against the Applicant under ST/SGB/2008/5.

6. On 25 October 2017, a fact-finding panel (“second panel”), composed of different investigators than the first panel, was appointed, and an investigation was conducted.

7. On 31 January 2018, the second panel issued its investigation report.

8. By memorandum dated 30 March 2018 and following a review of the second panel’s investigation report, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, OCHA (“USG/OCHA”), referred the matter for appropriate action to the Assistant Secretary-General, Office of Human Resources Management (“ASG/OHRM”), now the Office of Human Resources (“OHR”).

9. During its investigation, the second panel came across *prima facie* evidence related to the Applicant's involvement in the alleged irregular recruitment of a consultant and it recommended to separately investigate this matter. The same fact-finding panel was thus appointed and tasked to investigate that recruitment ("third panel").

10. On 19 June 2018, the first panel issued its investigation report.

11. On 28 June 2018, the third panel issued its investigation report.

12. By memoranda dated 17 August 2018 and following a review of the first and third panel's investigation reports, the USG/OCHA referred the matter for appropriate action to the ASG/OHRM.

13. By memorandum dated 19 February 2019 and following a review of the three investigation reports and supporting documentation (see paras. 8 and 12 above), the Officer-in-Charge, OHR:

- a. Issued formal allegations of misconduct against the Applicant arising from the matters investigated by the second and third panels; and
- b. Requested the Applicant's response to the allegations within two weeks of his receipt of the memorandum.

14. On 1 March 2019, the Applicant requested an extension of time to submit his comments on the allegations of misconduct until 30 April 2019, which was granted.

15. On 30 April 2019, the Office of Staff Legal Assistance ("OSLA") submitted, on the Applicant's behalf, a response to the allegations of misconduct.

16. By letter dated 27 June 2019, the ASG/OHR informed the Applicant that based on the review of the entirety of the record, including his comments, it had been:

a. Concluded that the allegations had been established by clear and convincing evidence; and

b. Decided to impose on him the disciplinary measure of demotion by one grade with deferment, for one year, of eligibility for consideration for promotion.

17. On 28 August 2019, the Applicant filed the application in connection to the contested decision referred to in para. 1 above.

18. On 27 September 2019, the Respondent filed his reply.

19. By Order No. 147 (GVA/2021), the Tribunal *inter alia* requested comments from the parties about its intention to hold a hearing on the merits. In response to this Order, the Respondent submitted that a hearing was not necessary, whereas the Applicant agreed with the holding of a hearing.

20. By Order No. 158 (GVA/2021), the Tribunal *inter alia* confirmed to the parties the holding of a hearing and communicated to them a tentative hearing schedule.

21. On 8 November 2021, the parties filed a joint bundle of documents and a list of authorities for the oral hearing. On the same day, the Applicant filed a motion for submission of evidence.

22. On 12 November 2021, the Respondent filed, at the Tribunal's request, his response to the Applicant's 8 November 2021 motion.

23. By Order No. 168 (GVA/2021), the Tribunal rejected the Applicant's motion for submission of evidence.

24. The Tribunal held a hearing on the merits with afternoon sessions (Geneva time) held on 22, 23, 24, 26 and 29 November 2021 and heard testimony as follows:

- a. On 22 November 2021:
    - i. The second complainant, who appeared in person at the Tribunal’s Geneva Courtroom; and
    - ii. The first complainant (witness 8 during the second panel’s investigation) through Microsoft Teams;
  - b. On 23 November 2021, the Applicant, who appeared in person at the Tribunal’s Geneva Courtroom;
  - c. On 24 November 2021:
    - i. The former Head, Operations and Field Support Unit (“OFSU”), CMCS, OCHA (witness 1 during the second panel’s investigation), through Microsoft Teams; and
    - ii. The current Head, OFSU, CMCS, OCHA (witness 9 during the second panel’s investigation), through Microsoft Teams;
  - d. On 26 November 2021:
    - i. The Head, Training and Partnership Unit (“TPU”), CMCS, OCHA, who appeared in person at the Tribunal’s Geneva Courtroom;
    - ii. The Head, Special Projects Unit (“SPU”), CMCS, OCHA, through Microsoft Teams;
    - iii. The Programme Assistant, CMCS Support Unit, OCHA (witness 2 during the second panel’s investigation), who appeared in person at the Tribunal’s Geneva Courtroom; and
    - iv. A former Director, OCHA, through Microsoft Teams.
25. The parties made oral closing submissions on 29 November 2021.

**Parties' submissions**

26. The Applicant's principal contentions are:

- a. The facts on which the allegations are based have not been established:
  - i. The second panel did not verify the accuracy of the statements recorded concerning the complaint of the second complainant, which are largely based on subjective impressions or hearsay;
  - ii. The disagreements with the second complainant are mainly performance issues that should not be perceived as harassment;
  - iii. The Administration has failed to indicate what interest the Applicant had in the outcome of the award of the consultancy contract or how it entailed "private gain";
  - iv. The actual decision-makers in the hiring of the consultant confirmed that they provided a free and positive assessment of the consultancy candidate and that her service was entirely satisfactory;
- b. There is no basis for a finding that misconduct occurred;
- c. The sanction imposed is disproportionate to the alleged offence;
- d. The decision was tainted by violations of due process, including a two-year delay in investigating the claims; and
- e. He suffered from severe emotional distress from the handling of his case and the wrongful accusations made against him by his colleagues.

27. The Respondent's principal contentions are:

- a. The facts are established by clear and convincing evidence:
  - i. The Applicant created a hostile, offensive and intimidating work environment for the second complainant; and

- ii. The Applicant also facilitated the recruitment of a consultant, who was the daughter of one of his friends, and enabled her continued employment as well as her official travels including a mission to Jordan;
- b. The Applicant's conduct in relation to the second complainant constituted harassment and abuse of authority under ST/SGB/2008/5 and it also violated staff regulation 1.2(a) and staff rule 1.2(f);
- c. In relation to the hiring of the consultant, through his conduct he violated staff regulations 1.2(b), 1.2(f), 1.2(g) and 1.2(m);
- d. The Applicant's conduct amounts to misconduct under Chapter X of the Staff Rules;
- e. The disciplinary sanction is proportionate to the offence committed;
- f. The Applicant's due process rights were respected throughout the process; and
- g. The Applicant provided no evidence of any harm.

### **Consideration**

#### *The scope of judicial review in disciplinary cases*

28. The Appeals Tribunal has held that judicial review is focused on how the decision-maker reached the impugned decision and not on the merits of the decision (see *Sanwidi* 2010-UNAT-084 and *Santos* 2014-UNAT-415).

29. The Appeals Tribunal has also determined what the role of this Tribunal is when reviewing disciplinary cases (see *Mahdi* 2010-UNAT-018 and *Haniya* 2010-UNAT-024). In the case at hand, this Tribunal must examine the following issues:

- a. Whether the facts on which the disciplinary measure was based have been established according to the applicable standard;

b. Whether the established facts legally amount to misconduct under the Staff Regulations and Rules;

c. Whether the disciplinary measure applied is proportionate to the offence; and

d. Whether the Applicant's due process rights were respected during the investigation and the disciplinary process.

30. In the case at hand, the Tribunal's examination of the above-mentioned issues focuses on two accusation counts levelled against the Applicant set forth in the 27 June 2019 contested decision (see para. 16 above), namely:

a. Count one, based on the investigation report of the second panel: to have created between 2015 and 2017 "a hostile, offensive and humiliating work environment for [the second complainant], by one or more of the following: (i) shouting at him in his office about a work assignment; (ii) instructing him not to move away from his desk during work hours, even after he raised concerns of being less productive following the instruction; (iii) replacing him with an intern in the emergency response to Hurricane Matthew; and (iv) cancelling his training mission to the United Nations Disaster Assessment and Coordination ("UNDAC") without consulting or informing him of such action"; and

b. Count two, based on the investigation report of the third panel: having "abused [his] authority as Chief, [CMCS, OCHA], in 2017 by one or more of the following: (i) facilitating the recruitment and [a contract] extension of [a consultant], who was [the] daughter of [his] friend ... while she had no special skills or knowledge in the areas of civil-military coordination training; and/or (ii) facilitating [the Consultant's] official travels that were not included in her terms of reference, including [a] two-month mission to Jordan for the purpose of helping her gain field experience".



*Have the facts on which the disciplinary measure was based been established?*

31. According to the jurisprudence of the Appeals Tribunal, when the disciplinary sanction results in separation from service, the alleged misconduct must be established by clear and convincing evidence. This standard of proof requires more than a preponderance of evidence but less than proof beyond a reasonable doubt. In other words, it means that the truth of the facts asserted is highly probable (see *Molari* 2011-UNAT-164).

32. As the disciplinary sanction imposed in this matter was not termination but demotion by one grade with deferment, for one year, of eligibility for consideration for promotion, the standard of proof required is preponderance of evidence (see *Suleiman* 2020-UNAT-1006).

33. The Tribunal will now assess whether the evidence collected by the Organization to establish the facts meets the applicable standard of proof.

Count one: Creating a hostile, offensive and humiliating work environment for the second complainant

34. The Tribunal notes that the Applicant is accused of specific incidents (see para. 30.a above) in a general framework of harassment and abuse of authority, which for the reasons outlined below the Tribunal deems demonstrated.

35. The Tribunal finds it relevant to recall the findings and conclusions of the second panel on the four incidents supporting count one (emphasis added):

95. The panel reviewed the matter related to [the Applicant's] shouting at [the second complainant] when he wanted to seek clarification on an email dated 8 September 2015 addressed to [the second complainant] and four other addressees. The panel reviewed the email exchange between [the Applicant] and [the second complainant] and found the query raised by [the second complainant] to be appropriate. The panel have considered the statements of complainant, subject and the witness and is of the view that [the Applicant] shouting at [the second complainant] is inappropriate and demeaning. The panel is of the view that it is the supervisor's responsibility to guide and coach his team mates. **Shouting by the supervisor when asked for clarification in the presence of others amounts to demeaning or humiliating treatment and can reasonably be considered as harassment.**

96. The panel reviewed the matter related to [the Applicant's] directions by emails to [the second complainant] to spend more time at his desk and to keep the office door open. The panel have considered the statements of complainant, subject and witnesses and is of the view that the corridor is a noisy place and the instruction to keep the door open affects efficiency, as does being required to remain in the office as acknowledged by [the Applicant] in his email copied to his superiors. [the Applicant's] instruction to keep the door open is unnecessary and reflects poor judgement. **The panel considered the fact that [the Applicant's] actions were inappropriate and amount to exerting unnecessary pressure, causing stress and contributing to an intimidating work environment.**

97. The panel reviewed the matter related to [the Applicant's] decision to cancel a training mission of [the second complainant] on the pretext that he just returned from sick leave. The panel have considered the statements of complainant, subject and witnesses and has established that [the Applicant's] decision to cancel [the second complainant's] training mission without prior discussion was arbitrary, unfair and unjustified. The panel also noticed that since his return from sick leave, [the second complainant] has not been allowed to travel on as many missions and is concerned that this represents sidelining of the staff member. The only travel [the second complainant] made was in September as UNDAC team leader in Dominica and that was approved by his direct supervisor W-9. It would have been more appropriate, if [the Applicant] or [the second complainant's] direct supervisor discussed the matter with [the second complainant] before making a decision. **The panel considers that [the Applicant's] actions have caused unnecessary stress and have contributed to an intimidating work environment.**

...

100. The panel reviewed the matter related to [the Applicant's] reassignment of the hurricane Mathew file to an inexperienced intern. The panel have considered the statements of complainant, subject and witnesses and is of the opinion that although as manager [the Applicant] can assign or reassign a task to any of his team members, taking away an important task and giving it to an inexperienced intern without prior discussion or any justification is uncalled for. The explanation given by [the Applicant] in his interview, that [the second complainant] was too busy does not [seem] to be true and appears to be an act to undermine or humiliate the supervisee. **The panel considers that as an isolated incident it may not appear a serious incident, but if it is seen in the context of other incidents it supports the pattern of harassment and abuse of authority against [the second complainant].**

36. The above findings and conclusions were based on witnesses' statements gathered by the second panel confirming a hostile, offensive and humiliating work atmosphere (testimonies of witnesses 7, 5 and 3) and the Applicant's demeaning treatment of the second complainant (testimonies of witnesses 7, 5 and 8, the latter being also the first complainant). The existence of two groups within CMCS (i.e., "with" the Applicant or "against" him) was so evident that the second panel asked witnesses directly to which group they belonged to.

37. In particular, as to the general atmosphere of the work environment, according to witness 5 the Applicant was "very authoritarian" and used a "humiliating" and "mocking" tone in addressing those he did not favour; the witness found it extremely difficult to work with the Applicant; the second complainant was put aside and some of his tasks were given to interns; the first complainant was subjected to humiliations by the Applicant, who used "a mocking tone, and was quite violent in his discussions" and often criticized the former "behind his back using sarcasm and putting him down", "all very negative and to be honest creating a very toxic atmosphere". The witness also referred to a general coercion exerted by the Applicant through intermediate staffers towards his subordinates, recalling for instance that one of the former "made people cry and nothing happened". The same witness recalled she "was honestly scared of talking to [the first complainant] because then [the Applicant] would think that [she] was whispering against him. In the same way [she] was worried about being seen with [the second complainant] and with [a third staff member]. [The Applicant] tries to isolate people and if he sees you too much with them, meaning you go for lunch or talk to them for five minutes; then you are immediately categorized as being against him and then you have a really hard time".

38. According to witness 7, the complainants were badly treated by the Applicant and the latter shared negative comments about them with her, which "scared" her and made her uncomfortable.

39. According to witness 3, there was division and favouritism within CMCS and the Applicant took "even simple suggestions" as "a personal attack", so that the atmosphere in the workplace was very tense.

40. These two witnesses were not heard at the hearing, but the evidence collected by the second panel from them is credible as it is consistent with other evidence.

41. As to the Applicant's humiliating treatment of the second complainant, the findings of the second panel were based on witnesses' statements and emails by the Applicant. In particular, according to witness 1 who was then supervisor of the second complainant, the Applicant told him that he "did not want [the second complainant] to move from his desk and to keep the door open at all times", and, in response to the objection that the subordinate would be "less productive" if he could not meet colleagues out of his office as required by his tasks, by e-mail dated 15 September 2015, the Applicant instructed the second complainant to "spend more time at [his] desk" and to "spend 8 hours at work" and at least six working hours per day in the office (taking "lunch breaks only from 12.30 to 13.30").

42. The second complainant stated to the second panel that the Applicant's treatment "started to affect [him] quite deeply, and [he] even had to take sick leave because [he] could not cope with the bad environment, humiliations, bullying, the way [he was] treated in general, not only professionally, but also personally".

43. The work environment described by the second panel was also observed by the first panel, composed of different staff members than those on the second panel. Indeed, in its report, the first panel concluded the following:

160. The panel found evidence that the work environment (D) was divided into two separate sides, one with which [the Applicant] engaged positively, and the other which was treated more negatively. In this light, it was the opinion of the Panel that a harmonious work environment was not established, as required in paras. 2.2 and 3.2 of ST/SGB/2008/5 and the Panel was able to establish the fact that there were incidences of conduct that might reasonably be expected or be perceived to cause humiliation to others.

44. Testimonies collected during the hearing provided a general confirmation of the findings and conclusions of the three panel's reports.

45. For instance, the second complainant testified that he received no explanation about why he had to remain at his desk and also questioned why this was not also imposed on others. He added that the Applicant was aware of the negative impact of such requirement on the effectiveness of his work as his tasks required meeting people within and outside office premises. He also stated that although he has a grade of captain, with 15 years of experience and good results obtained all over the world in the field, which shows that he can lead people, he “felt like a schoolboy in a corner”, when the Applicant asked his First Reporting Officer (“FRO”) to move to his office to control him.

46. The first complainant testified that the Applicant was unable to solve conflict. In this connection, he recalled a meeting at the Diplomats’ Lobby of the Palace of Nations (Geneva) where instead of reconciling with him, which was the supposed aim of the meeting, the Applicant continued offending him. The first complainant also stated that the Applicant was aggressive and forceful, did not recognize the work and achievements of others and had directives targeting specific people (e.g., like the “door open” asked from the second complainant). The first complainant confirmed witnessing the Applicant shouting at the second complainant, which he found embarrassing, and stated that other people specifically indicated to have experienced or experiencing demeaning and humiliating treatment within CMCS.

47. Both complainants recalled an accumulation of events affecting different colleagues (including a P-3 colleague whose contract was not renewed), creating a tense work environment and where no assistance was provided by their FROs or by other officers in higher positions.

48. The former Head of Operations and Field Support Unit, CMCS, OCHA (witness 1 during the second panel’s investigation), testified that the second complainant shared his problems with him and that he had the impression that the situation was affecting the second complainant’s self-esteem who was feeling frustrated for always being under close and unfair scrutiny and constraints.

49. The Tribunal is satisfied that the evidence on record shows that the Applicant did indeed shout at the second complainant (incident one, count one) and that his instruction to the second complainant to not move from his office (incident two, count one), even if this entailed less productivity, is neither normal nor justified, particularly bearing in mind that the Applicant himself acknowledged that there were no issues with the second complainant's performance, which is supported by the relevant performance evaluations. The Tribunal notes that the second complainant was very esteemed in the field, and he was one of the most frequent travellers in CMCS, in many countries all over the world and often in emergency situations, which confirms his skills and experience. Furthermore, the Applicant was the second complainant's Second Reporting Officer and in the absence of complaints from the second complainant's FRO, the Applicant had no standing micromanaging the second complainant.

50. Concerning the Hurricane Mathew incident (incident three, count one), the evidence also shows that the Applicant did not discuss with the second complainant that he was replacing him with an intern.

51. With reference to the training cancellation (incident four, count one), it results from the record that it was decided similarly without prior discussion with the second complainant and, moreover, that its rationale, namely the second complainant's being on sick leave or returning shortly before the start of the training, was unreasonable as the training took place one month after the second complainant's return from sick leave.

52. In summary, there is evidence of the Applicant's failure to create a harmonious work environment and of his inability to solve and prevent conflicts, foster team spirit and encourage others' views, as well as of his difficulty with hearing criticism and an inclination for favouritism.

53. From the evidence on file, it results that the Applicant exercised a management style characterized by ill-mannered behaviour where staff were shouted at, discretionary management authority was used to assign travels, tasks and interns, attendance and working hours were selectively monitored and

enforced, coffee invitations were sent only to certain subordinates, and parties in the office to celebrate work success were organised only for some.

54. In addition, the Tribunal observes an accumulation of events forming a pattern of behaviour indicating, firstly, an intention to marginalize and punish certain subordinates and, secondly, showing that the Applicant's actions were neither the manifestation of ordinary conflicts in the workplace, nor a bad exercise of managerial authority, nor impolite behaviour but harassment and abuse of authority.

55. Not only the Applicant, mandated as a manager under the governing policy framework to "promote a harmonious work environment, free of intimidation, hostility and any form of prohibited conduct", failed at preventing and solving conflicts, but the Applicant's conduct, particularly in relation to the second complainant, constituted harassment and abuse of authority and failed to uphold and respect the dignity and worth of a human person.

#### Count two: Irregular recruitment of a consultant

56. The legal framework governing the recruitment of consultants is Administrative Instruction ST/AI/2013/4 (Consultants and individual contractors), the relevant parts of which read as follows:

#### **Section 2 Definitions**

The following definitions apply for the purpose of the present instruction:

(a) A consultant is an individual who is a recognized authority or specialist in a specific field, engaged by the United Nations under a temporary contract in an advisory or consultative capacity to the Secretariat. A consultant must have special skills or knowledge not normally possessed by the regular staff of the Organization and for which there is no continuing need in the Secretariat. The functions of a consultant are results-oriented and normally involve analysing problems, facilitating seminars or training courses, preparing documents for conferences and meetings or writing reports on the matters within their area of expertise on which their advice or assistance is sought.

...

### **Section 3** **Conditions for contracting**

#### *Terms of reference*

...

3.2 The terms of reference are mandatory and shall form part of the individual contract. The terms of reference shall include the outputs to be delivered and the functions to be performed. The outputs and functions shall be specific, measurable, attainable, results-based and time-bound and include:

(a) Tangible and measurable outputs, objectives and targets of the work assignment, as well as specific activities to achieve the required outputs and targets;

(b) Specific delivery dates and details as to how the work must be delivered (e.g. electronic submission, hard copy). The dates and details shall be subdivided into “milestones” where appropriate;

(c) Indicators for the evaluation of outputs (including timeliness, achievement of goals and quality of work);

(d) Name and title of the supervisor(s).

...

### **Section 4** **Selection process**

4.1 Rosters of consultants and individual contractors should be utilized where available, as they provide easy access to a screened pool of individuals with a relevant track record. Candidates maintained on any roster should be screened for qualifications, references and prior work experience. Owing to the particular needs of the various offices of the Secretariat, every department, office and mission is required to develop its own roster of consultants and individual contractors based on its requirements. Executive, administrative or human resources offices shall start developing these rosters through the appropriate openings in the electronic platform provided for this purpose by the Office of Human Resources Management and shall keep them centrally in the department, office or mission, including for monitoring and audit purposes.

...



4.3 In the process of selecting a consultant or individual contractor, heads of departments, offices and missions are responsible for instituting competitive selection procedures. The competitive selection procedure can take several forms, including the evaluation of individuals identified from a roster of qualified individuals maintained by the executive, administrative or human resources offices, through the issuance of a consultancy or individual contractor opening in the electronic platform provided for this purpose, through the department, office or mission website or through any other appropriate means. For each assignment, every effort shall be made to shortlist for consideration a minimum of three candidates from the widest possible geographical basis. Travel costs may be considered but may not distort the geographical balance in the awarding of contracts.

57. The Tribunal recalls that the investigation report of the second panel was the basis for launching an investigation into a specific recruitment of a consultant in CMCS (“the selected consultant”), given that testimony gathered during the investigation of the second complainant’s complaint indicated that:

- a. Lack of in-house competence/skills was a requirement to consider hiring consultants (witness 8, who was also the first complainant), which was not met in the case of the hiring of the selected consultant;
- b. The selected consultant did not have “humanitarian experience” (witness 3);
- c. The Applicant had recruited the selected consultant who was the daughter of his best friend/friend (witnesses 7 and 3), and later admitted that in reality he intended to recruit the selected consultant’s sister (witness 8); and
- d. The Applicant was furious because of the rumours of irregularities surrounding the recruitment of the selected consultant (witness 2).

58. The Tribunal also finds it pertinent to recall the work environment within CMCS as per the investigation report of the third panel, which was tasked with examining the recruitment of the selected consultant:

70. The Panel reviewed statements of the staff and is of the view that staff members in the former CMCS are scared of possible retaliation in case if they do not act as per [the Applicant's] direction.

59. All three panels identified a divided working atmosphere (see paras. 35 to 43 above for remarks on the matter from the first and second panels) where it was difficult for some staff members to suggest a course of action other than the one set by the Applicant for fear of retaliation.

60. In that working context, the third panel found and concluded the following (emphasis added):

65. The Panel considered section 2 a of UN Administrative Instruction ST/AI/[ ]2013/4 related to Consultant[s] and Individual Contractors which defines consultant as *an individual who is a recognized authority or specialist in a specific field, engage by the United Nations in an advisory or consultative capacity. A consultant must have special skills or knowledge not normally possessed by the regular staff or the organization and for which there is no continuing need of the Secretariat* (italics in the original). In view of the definition above, the panel reviewed the [Personal History Profile (“PHP”)] of [the selected consultant] and found that the skills and academic credentials do not match the requirements of the Consultancy Forecast or TOR (footnote omitted). The Consultancy Forecast specifically requires a person with extensive experience in design and development methodologies for e-course as well as formal training events. The ToR also require the skills to deliver and develop training courses and translate into French. However, [the selected consultant] neither has any formal expertise and qualifications as a trainer nor relevant software knowledge and certification for developing an e-course, for which she was hired. The panel also noted that [the selected consultant] has no formal training or certification in French language and she has been hired to translate the English e-learning course on UN-Civil Military Coordination Course into French, a task, the panel was told, which was completed by a French-speaking intern.

66. The panel considered section 3.2 of ST/AI/2013/4 which states that the TOR shall include the outputs to be delivered and the functions to be performed. The output and functions shall be specific, measurable, attainable, result-based and time-bound. The panel noted that [the selected consultant] was hired and even a request for extension was made, despite recognition in the performance evaluation that parts of the ToR could not be

accomplished, attributed to non-arrangement of the desired funds. Timelines were also absent from the TOR.

The panel found the comments made by Human Resources in denying the request for extension to be justified and validate the observation on the travel of [the selected consultant] beyond her TOR. [The Applicant] confirmed that [the selected consultant] travelled to at least eight different places however, in her TOR only three were mentioned. The travel dates in Umoja confirm that [the selected consultant] travelled to a total of 10 destinations, with some trips to multiple destinations.

67. The panel reviewed the forecast for ESB consultants that clearly indicates under Civil Military Coordination Section the need of consultants for Humanitarian Military Gateway, UN-CM coordination e Course and preparation of UN-CM Coordination courses. However, the criteria for selection are extensive experience in course development, delivery, and facilitation including latest technologies applicable to learning and training. The TOR drafted by [the Head, TPU, CMCS, OCHA] does not specify criteria for what was mentioned in the approved forecast[.] It appears that the TOR is drafted to suit [the selected consultant's] selection and does not support the forecast requirement.

68. The panel reviewed the statement of [the Programme Assistant, CMCS Support Unit, OCHA], who stated that [the Applicant] specifically asked her to hire [the selected consultant] and she prepared the comparative analysis without enquiring as to the availability of the two other candidates, purely indicating that they were not available, and over-rated [the selected consultant's] skills as "outstanding" to comply with [the Applicant's] instructions.

69. The panel reviewed the statement of [the Head, TPU, CMCS, OCHA] who confirmed that after the informal interview with [the selected consultant] (on 23 March 2017), [the Head, SPU, CMCS, OCHA] advised [the selected consultant] to prepare her PHP and apply for consultancy position in Inspira on 28 March 2017. The panel further noted that [the Head, TPU, CMCS, OCHA] drafted the TOR that are clearly favourable to [the selected consultant] and in contravention of the experience requirement for the consultant in the approved forecast.

...

**71. The Panel concludes that there is sufficient evidence to establish that [the selected consultant] was irregularly hired on the direction of [the Applicant] without having requisite skills and experience. Misrepresentation was also made in the comparative analysis for the recruitment of consultant by**

**overrating the skills of [the selected consultant] and showing non-availability of other candidates.**

61. In particular, from the testimonies heard by the third panel (and in particular the statements of the Programme Assistant, CMCS Support Unit, OCHA; the Head, TPU, CMCS, OCHA and the Head, SPU, CMCS, OCHA) it emerges that there were in house competencies, especially for simple tasks that anybody could do; that the choice of the selected consultant was made by the Applicant; that the selected consultant had no specific competences being a photographer and not a French native speaker; that an existing roster was not utilized; that there was not an effective comparative procedure; that although other candidates were available, their unavailability was a misrepresentation made at the Applicant's direction; that the Applicant took responsibility to select and hire, as other persons involved in the process did not select or hire; that the criterion to follow in the selection was vague (statement of the Head, TPU, CMCS, OCHA: among three main points, namely knowledge, skills and attitude, the latter was crucial) allowing a wide margin of manoeuvre; that the Applicant knew well the family of the hired consultant (statements of the Head, TPU, CMCS, OCHA and the Head, SPU, CMCS, OCHA); that the Applicant was interested in the recruitment of a specific person (see also the testimony before the second panel of: witness 7 (the applicant "recruited the daughter of his best friend"), witness 5 (the Applicant shared to "have recruited the wrong sister") and witness 3 (the applicant "hired the daughter of a friend"))).

62. Testimonies gathered during the hearing confirmed the findings and conclusions of the third panel and the Tribunal is convinced that ST/AI/2013/4 was not followed for the recruitment of the selected consultant.

63. The Head, PTU, CMCS, OCHA, testified, in particular, that there was a reduction in number and levels of consultants since 2013; the selected consultant's PHP was seen only after the recruitment; travel is unusual for junior consultants and the selected consultant's mission to Jordan was not part of her contract. She also added that the selected consultant was recruited for her attitude (more than skills or knowledge) and that she was outstanding; that prior to the recruitment she

conversed only over the phone with the selected consultant for 30 to 40 minutes and that the selected consultant mentioned to her, on a different occasion after her recruitment, that her parents knew the Applicant from their childhood.

64. The Head, SPU, CMCS, OCHA, testified, in particular, that she looked for communication and technical skills as well as attitude, and she was impressed, after a simple Skype meeting, in particular by the selected consultant's enthusiasm and politeness. She also stated that the selected consultant was neither a journalist nor a media expert nor an information technologies expert and that the main task required was essentially to send standard emails.

65. The witness further confirmed that it was through the Applicant that she heard for the first time about the selected consultant, and that the Applicant acknowledged knowing the selected consultant's family.

66. In response to a question from the undersigned Judge as to whether it was unusual to have such an applicant's enthusiasm and politeness, the witness added that the selected consultant matched the expected requirements and pointed to a contradiction in the system because a consultant should be an "authority", but the employment level is P-1.

67. The former Director, OCHA, testified that the Applicant's performance evaluation was "stricter" in the 2018-2019 cycle due to a general restriction of the UN ratings. He added that during his tenure there was more rigidity about consultants due to the need to reduce travel and also the number of consultants due to budgetary constraints, and because he preferred staff members performing tasks.

68. The Programme Assistant, CMCS Support Unit, OCHA, testified that the Applicant gave her the selected consultant's PHP only after posting the job opening in Inspira; there were only two names in the same category of training in Inspira; as to the candidate's matrix, she was told by the Head, TPU, CMCS, OCHA what to input, and noted that she had performed for years the duties later entrusted to the selected consultant.

69. The second complainant testified that CMCS had in-house capacity for the selected consultant's functions and that the selected consultant had no humanitarian experience.

70. The first complainant testified that the selected consultant was the daughter of the Applicant's best friend from school and that she was not a specialist.

71. In response to a question from the undersigned Judge, the Applicant acknowledged that a former consultant had confirmed to him not wanting to continue to do consultancy work for health and personal reasons. The Tribunal notes that despite knowing this, the Applicant included the name of the former consultant in the "comparative assessment".

72. The Applicant testified that they did not speak to other candidates because they knew them and that there was no policy in CMCS about undertaking a comparative recruitment. He added that the office did not have Photoshop and Web Page design capacity. The Applicant further acknowledged not knowing the selected consultant prior to the recruitment and that he, therefore, did not know her competences. The Applicant recalled being appealed by the selected consultant's profile in LinkedIn after a generic search (not a search by name). He also added, surprisingly, that recruitment of consultants was independent from the tasks to be performed since what was sought was the "potential" of the person.

73. Given the full picture emerging from the recalled testimonies, the Tribunal is of the view that:

- a. There was no need to recruit a consultant, particularly in a context of reduction of consultants for budgetary reasons;
- b. It was unclear what additional tasks were needed, as it was referred from time to time by the witnesses to the need of French translations, or to the use of PowerPoint and Photoshop software, or to preparation (not the delivering) of courses;

c. No evidence was given about the lack of in-house capacity for the said tasks;

d. The selected consultant did not file any application for the consultancy post prior to being contacted by the Administration “out of the blue”;

e. The consultant had no competencies in civil and military coordination in the field, nor in delivering courses, nor in public relation abilities nor in software or information and telecommunication technologies;

f. No assessment of the selected consultant’s competencies for the specific required tasks was done; although she was found “outstanding” after short and remote conversations with her, this assessment was based on the selected consultant’s motivation and “enthusiasm” rather than on her abilities; and

g. No real comparative/competitive selection was made; there is no evidence on record, indeed, showing that the existing roster was consulted, which is in violation of sec. 4.1 of ST/AI/2013/4, and it is established that there was no real competitive process followed, in violation of sec. 4.3 of ST/AI/2013/4, as candidates “considered” were either knowingly not available or not contacted at all.

74. The Tribunal observes that, in general, the simpler the tasks are, the stricter the selection process must be, because anyone can do those tasks (and other staff members too, instead of consultants). In the case at hand, having in mind the tasks to be performed (and in particular the French translations), the Tribunal further notes that the consultant, who did not speak well French, was hired although another candidate, a French native speaker, was available although not even contacted.

75. As to the role of the Applicant in the recruitment process, it has to be preliminary noted that although that process involves several persons, the Applicant was ultimately responsible for safeguarding the integrity of the recruitment process by following the applicable rules to recruit a qualified candidate. Whether the

selected candidate was good or not is irrelevant when examining if the process conformed with the applicable rules.

76. Something else results from many testimonies. The Applicant, indeed, directly promoted the hiring of the selected consultant notwithstanding the existence of in-house capacity and the budgetary restrictions in force, imposed the decision to recruit the selected consultant (who did not even file any application), directly chose the person, follow the recruitment procedure in detail (in the above-mentioned working conditions, where other persons involved in the process were submissive to the Applicant).

77. This situation of multiple irregularities and unusual practice confirms the suspicion, stressed by the Respondent, that the Applicant bore a personal interest in the recruitment of the selected consultant because of a personal relationship with selected consultant's family, a relationship confirmed by many witnesses, as above recalled.

78. The Tribunal acknowledges that it may happen that a hiring manager knows one or more of the candidates and that this could be in general terms not relevant. However, the situation imposes in any case an obligation of transparency and, in some specific circumstances, the duty to abstain from the process; indeed, the presence of a conflict of interest arising for instance from a personal relationship with the candidates or their families should prevent a hiring manager to deal, even indirectly or through subordinates, with the recruitment process.

79. In the case at hand, instead, notwithstanding the existence of such a conflict of interest, the Applicant concealed his personal knowledge of the candidate, or at the very least was not clear in disclosing it to the Administration from the very beginning of the process and, moreover, he directly and personally led the recruitment process of the selected consultant and infringed the above-mentioned rules.



80. The Tribunal further notes that several travels/missions that the selected consultant undertook were out of the contract's provisions, in particular the mission to Jordan, and although carried to perform official functions, their main rationale was to make the selected consultant "gain experience". It is clear for the Tribunal that the selected consultant's recruitment was done primarily in her interest rather than that of the Organization.

81. This confirms the Applicant's personal interest too in advancing the selected consultant's career.

82. In light of the above, the Tribunal finds that the Applicant's behaviour is incompatible with the standards of conduct expected from an international civil servant.

83. In view of the foregoing, the Tribunal finds that the facts in support of counts one and two and on which the disciplinary measure was based have been established not only by preponderance of evidence, the applicable threshold, but also by clear and convincing evidence.

*Do the established facts amount to misconduct?*

84. The record shows that the Applicant's actions, established even beyond the applicable standard of proof, were in violation of the applicable legal framework, namely ST/SGB/2008/5 concerning count one and ST/AI/2013/4 concerning count two.

85. The Applicant's conduct in relation to the second complainant constituted harassment and abuse of authority under ST/SGB/2008/5 and also violated staff regulation 1.2(a) (by failing to uphold and respect the dignity and worth of the human person) and staff rule 1.2(f) (by engaging in harassment and abusive conduct at workplace).

86. Through his conduct relating to the consultancy, the Applicant violated staff regulations 1.2(b) (by failing to uphold the highest standards of integrity, including impartiality and fairness), 1.2(f) (by engaging in an activity that is incompatible with the proper discharge of his duties as the manager of the section), 1.2(g) (by using his office or his knowledge gained from his official functions for the selected consultant's private gain), and 1.2(m) (by failing to disclose an actual conflict of interest arising from his personal connection to the selected consultant's family in connection with his facilitation of her appointment).

87. The Tribunal therefore cannot but answer in the affirmative the above-mentioned question.

*Was the disciplinary measure applied proportionate to the offences?*

88. It is well-established jurisprudence that the Secretary-General has wide discretion in applying sanctions for misconduct and that at all relevant times he must adhere to the principle of proportionality (*Applicant* 2013- UNAT- 280). Once misconduct has been established, the level of sanction can only be reviewed in cases of obvious absurdity or flagrant arbitrariness (*Aqel* 2010-UNAT-040).

89. The Tribunal notes that cases involving the creation of a hostile and offensive work environment have resulted in sanctions ranging from censure to demotion. Indeed, the Compendium of disciplinary measures reflecting the practice of the Secretary-General in disciplinary matters and cases of criminal behaviour from 1 July 2009 to 31 December 2020 ("the Compendium") lists the following sanctions:

- a. Written censure, fine in the amount of one-month's net base salary, and loss of two steps in grade imposed on a staff member who created a hostile work environment for several staff members by shouting at, and verbally abusing them and repeatedly making accusations of incompetence while other staff members were present and threatening their contractual status (Compendium, reference number 437, period from 1 January to 31 December 2019);

b. Deferment, for two years, of eligibility for consideration for promotion, a fine in the amount of one month's net base salary and loss of two steps in grade imposed on a staff member who created an intimidating, hostile and offensive work environment for two staff members by repeatedly and publicly accusing them of incompetence in the execution of their functions and by verbally abusing them (Compendium, reference number 372, period from 1 July to 30 December 2017); and

c. Demotion, with deferment of three years in eligibility for consideration for promotion imposed on a staff member in a senior position who harassed a subordinate, improperly favoured another staff member, and created a hostile working environment (Compendium, reference number 209, period from 1 July 2014 to 30 June 2015).

90. Concerning cases involving conflict of interest in the context of or interference with a recruitment process, the Compendium shows that sanctions ranged from a fine plus censure to demotion listing, for instance, the following:

a. Censure and a fine of one month's net base salary imposed on a staff member who placed himself in a situation with clear potential for a conflict of interest in relation to a recruitment process, which affected the process (Compendium, reference number 063, period from 1 July 2010 to 30 June 2011); and

b. Written censure and loss of two steps in grade imposed on a staff member who interfered with a recruitment exercise, provided access to the recruitment platform to a non-authorized, more senior staff member, and failed to report the potential misconduct of that more senior staff member (Compendium, reference number 555, period from 1 January to 31 December 2020).

91. The Tribunal finds no grounds to review the level of the sanction imposed on the Applicant and concludes that it is proportionate even if it had only been applied to either of the two counts levelled against him.

*Were the Applicant's due process rights respected during the investigation and the disciplinary process?*

92. According to the Appeals Tribunal's jurisprudence, due process entitlements only come into play in their entirety once a disciplinary proceeding is initiated (*Akello* 2013-UNAT-336), whereas at the preliminary investigation stage only limited due process rights apply (*Powell* 2013-UNAT-295).

93. Having carefully examined the investigation and disciplinary process followed and considered the complexity of the facts to investigate, the number of witnesses interviewed as well as the reports drafted, the Tribunal finds justified the time taken to reach the imposition of disciplinary measures on the Applicant.

94. The Tribunal is also satisfied that the Applicant's due process' rights were respected all along the investigation and the disciplinary process as the Applicant was informed in writing of the allegations/charges against him and he had the opportunity to respond to the allegations/charges orally (interviewed thrice) and in writing.

### **Conclusion**

95. In view of the foregoing, the Tribunal DECIDES to dismiss the application in its entirety.

*(Signed)*

Judge Francesco Buffa

Dated this 11<sup>th</sup> day of February 2022

Entered in the Register on this 11<sup>th</sup> day of February 2022

*(Signed)*

René M. Vargas M., Registrar, Geneva