UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/077
Judgment No.: UNDT/2024/100
Date: 27 November 2024
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

ATR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY AND RELIEF

Counsel for Applicant:
Ludovica Moro

Counsel for Respondent:
Jerome Blanchard, UNOG

Introduction

1. At the time of her application, the Applicant (henceforth referred to as "ATR" for privacy reasons) served on a fixed-term appointment at the Office of the United Nations High Commissioner for Refugees ("UNHCR") in Nairobi, Kenya.

Procedural History

2. On 15 October 2023, the Applicant filed an application with the United Nations Dispute Tribunal ("UNDT") sitting in Nairobi to challenge the actions of the Respondent in respect of a disciplinary process that found her to be a victim of sexual harassment. The outcome of the process was communicated to the Applicant in a letter dated 18 April 2023.

3. In the contested decision, the Assistant Secretary General for Human Resources (ASG/HR) informed the Applicant that the investigation found among others, that:

> a. [ATR] received from Mr. [Polinikis] Sophocleous unwelcome physical contact, hugs, kisses, stares, compliments on [her] attire, comments of appreciation;
>
> b. [ATR] was told by Mr. Sophocleous, together with a gesture, that he stroked a doll in his office while naked to relax when stressed;
>
> c. [ATR] was made to feel uncomfortable by Mr. Sophocleous, avoided him, altered the way that [she] dressed, looked for job opportunities outside FRMS to escape, and sought out staff counselling services; and
>
> d. [ATR's] account was credible as it was corroborated by various witness statements and was coherent and consistent with other accounts about Mr. Sophocleous's behaviour towards junior female colleagues.

4. The letter also said that the "Under-Secretary-General for Management Strategy, Policy and Compliance **decided to impose an appropriate disciplinary measure on Mr. Sophocleous**, who has been informed of this decision." (emphasis added)

5. The Applicant claims that she is entitled to "(i) confirmation of the specific measure imposed on Mr. Sophocleous; (ii) confirmation that he was included in the ClearCheck database; and (iii) moral damages for the impact on her health incurred due to the established sexual harassment suffered."

6. The Applicant specifically submits that

> [t]he letter does not provide any remedy to her as a victim of established harassment, notwithstanding the well documented damages to her health, it does not specify the measure imposed on the offender, and therefore it does not reassure her and other victims that they will not come across their harasser in their career within the UN system.

7. The Respondent claims that the Applicant is entitled to neither the information that she seeks nor any compensation. The Respondent also argues that the Applicant's request to be informed whether her harasser was listed in the ClearCheck database and her claim for damages are not receivable *ratione materiae.* The issue of receivability will be examined in the course of this judgment.

8. The Applicant moved the Tribunal to anonymise her name from issuances in these proceedings. The Respondent did not object, and the motion was granted in Order No. 151 (NBI/2024).

9. On 7 November 2024, the parties sought leave to refer to Judgment No. UNDT/2024/080 (*Sophocleous*) in their closing submissions. This was also granted in Order No. 151 (NBI/2024), and the parties have relied on it in their closing submissions.

Consideration

10. Given the unique nature of this case, some preliminary observations are appropriate before delving into the substantive issues to be addressed.

Naming Names

11. When it established the new system of internal justice, the General Assembly reaffirmed that it was "to ensure respect for the rights and obligations of staff

members and the accountability of managers and staff members alike." A/RES/61/261, para. 4.

12. Article 11.6 of the Statute of the Dispute Tribunal provides that judgments "shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal."

13. Although "personal data" is not defined in the statute, it is unlikely to include names. For example, Article 10.9 of the Statute of the Appeals Tribunal has identical language to that appearing in the Dispute Tribunal Statute. However, the Rules of Procedure of the Appeals Tribunal (which were also approved by the General Assembly), expressly provide that "published judgements will normally include the names of the parties." Article 20.2 UNAT Rules of Procedure

14. Even if names were within the ambit of "personal data", it appears clear that this Tribunal must balance the need for accountability with the need to protect personal data according to the circumstances of each case. In so doing, it is the general practice of this judge to avoid using names, other than the parties, to protect the anonymity of innocent persons somehow involved in the case. As a victim of sexual harassment, the Applicant would normally be anonymized. In this case, the Applicant expressly requested to be anonymous, which request was granted without objection.

15. As for the name of her harasser, the Dispute Tribunal has long held the considered view "that when individuals occupy high public offices, if the circumstances so warrant, their actions that lead to injustice should be exposed openly. This is also a component of transparent justice and accountability of public servants as reiterated by the General Assembly in resolution 63/253 of 17 March 2009." *Tadonki* UNDT/2013/032, para. 349; see also *Finiss* UNDT/2012/200 paras.12-19.

16. In this case, the Tribunal finds that the circumstances warrant publication of Mr. Sophocleous' name to further the purposes of transparent justice and accountability of public servants, particularly a UN manager at the D1 level. The Tribunal notes that he was found to have committed sexual harassment after being

afforded due process via the disciplinary process. *Sophocleous* UNDT/2024/080. *Cf. Luvai* 2014-UNAT-417, para. 66. Indeed, the Tribunal denied Mr. Sophocleous' request for anonymisation in his own case on the same grounds of transparency and accountability. *Sophocleous, supra.* paras. 17-23

The case of Sophocleous UNDT/2024/080

17. The parties both point out that shortly before the deadline for closing submissions in this case, the Dispute Tribunal (sitting in Geneva) issued its judgment in *Sophocleous* UNDT/2024/080, wherein ATR's harasser contested the decision to impose on him the disciplinary measure of demotion by one grade, with deferment for three years of consideration for eligibility for promotion[1]

18. The Applicant here relies on that judgment as confirmation that she was a victim of established sexual harassment at the hands of Mr. Sophocleous, aggravated by the imbalance of power between them.

19. The Respondent argues that the instant case is now moot because the *Sophocleous* judgment revealed the disciplinary measure imposed on him, which was the remedy sought by the Applicant in this case.

[1] The most astounding part of that judgment was the Administration's concession that, although sexual harassment most frequently results in termination of a UN staff member, if the harassment occurred in the workplace and "the offender is a manager with considerable power over the affected individuals, the most frequently imposed disciplinary measure is that of demotion with deferment of at last one year of eligibility for consideration for promotion." *Sophocleous, supra,* para. 126. Reduced punishment for higher-level workplace harassers is troubling in that it seems contrary to both common sense and to the Organization's professed zero-tolerance policy.

According to the record, the complaint against Mr. Sophocleous was filed with OIOS on 20 March 2019. The Applicant was interviewed on 30 September 2019 and the following day was seconded for two years to the Internation Maritime Organization (IMO) in London. On 31 March 2020, OIOS referred the case to OHR for appropriate action. Inexplicably, OHR took over 16 months to notify Mr. Sophocleous of the formal allegations of misconduct. It then granted him several extensions of time to submit his comments on these allegations before issuing the Sanction Letter on 15 March 2023. Ultimately, OHR took three years before deciding the appropriate disciplinary measure to impose for these egregious acts of sexual harassment. That delay alone raises legitimate questions about whether this high-level UN official was given preferential treatment.

When the Organization refuses to disclose the discipline it imposed, the harasser returns to work, and the Organization later admits that managers frequently receive lighter punishment that other for sexual harassment, even the most gullible person must wonder about the Organization's professed commitment to "zero tolerance".

Is this case moot?

20. The Respondent argues that the public revelation of the disciplinary measure imposed upon Mr. Sophocleous renders this case moot. The Tribunal disagrees.

21. First, the Applicant seeks more than just the right to be informed of the discipline imposed on Mr. Sophocleous. She also seeks to be informed whether Mr. Sophocleous was listed in the ClearCheck database and to be awarded compensation for the moral damages she incurred due to the established sexual harassment she suffered at the hands of Mr. Sophocleous. The publication of *Sophocleous* UNDT/2024/080 does not impact upon those claims at all.

22. Second, even though ATR now knows the discipline imposed on her sexual harasser, her claim that she had a right to be informed by the Organization has not been resolved. Her current knowledge results from serendipity and not by any action of the Respondent in rescinding the contested decision or otherwise recognizing her right to this information. *Cf., Gehr* 2011/UNDT/211, para. 37.

23. The Appeals Tribunal, sitting *en banc* pursuant to Article 10.2 of its Statute said in *Kallon* 2017-UNAT-742, that the doctrine of mootness

> should be applied with caution…. And a court should be astute to reject a claim of mootness in order to ensure effective judicial review, where it is warranted, particularly if the challenged conduct has continuing collateral consequences.

24. The Appeals Tribunal noted that the mootness doctrine is both an issue of judicial economy and judicial refusal to issue advisory or speculative opinions. *Kallon*, *supra*, para. 44, citing Kates and Burke, *Mootness in Judicial Proceedings: Toward a Coherent Theory*, 62 California Law Review 1385 (1974). The mootness doctrine includes a "continuing controversy" corollary whereby "if essentially the same controversy is likely to be presented again, judicial economy … may be better served by deciding the case presently before the court, provided that the parties remain sufficiently adverse to preserve the functional competence of the court." *Id.* p. 1418 and cases cited therein. The continuing controversy corollary to the mootness doctrine applies in this case.

25. The Respondent has taken the position that

> Aggrieved individuals are not entitled to be informed of the specific disciplinary or administrative measures taken against another staff member after the closure of a disciplinary process. The regulatory framework concerning the disciplinary process…provides no statutory grounds for the decision-maker to disclose to an aggrieved individual the specificities of the disciplinary and/or administrative measures.

26. This institutional policy is broadly stated and not restricted to only this Applicant. That policy indicates that the same controversy (whether a sexual harassment victim has a right to be informed of the discipline imposed on their harasser) is likely to be presented again, if not by this victim regarding this harasser, then by another victim against a different harasser. And, of course, the parties remain adverse as to the existence of this right to be informed. The Tribunal's competence is therefore preserved.

27. The Tribunal finds that the question of whether a victim of sexual harassment has the right to be informed of the discipline imposed on his/her harasser must be resolved. The Tribunal, therefore, declines to dismiss this case as moot.

Context - A Short History of Efforts to Combat Sexual Harassment in the UN

28. From its founding in 1945, the United Nations has declared its commitment to equal treatment of men and women in the Organization. Article 8 of the UN Charter unequivocally provides that

> The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in-its principal and subsidiary organs.

29. In 1979, guidelines for promoting equal treatment in the United Nations were issued and then reissued as information circular ST/IC/79/17/Rev.1 (Guidelines for Promoting Equal Treatment of Men and Women in the Secretariat) on 8 March 1982. That circular expressly provided in para. 9 that "[s]exual harassment of either sex is unacceptable. Sexist remarks, jokes and innuendoes are inappropriate in any circumstance." It also noted that "the Secretariat, because of its lofty purposes and varied composition, is in a unique position to provide

leadership in eradicating attitudes, behaviour and language stemming from discrimination based on sex." *Id*., para. 15.

30. Unfortunately, the Organization's "unique position to provide leadership" proved illusory, and Secretary-General Boutros Boutros-Ghali felt compelled to issue updated and strengthened guidelines a decade later as ST/SGB/253 (Promotion of Equal Treatment of Men and Women in the Secretariat and Prevention of Sexual Harassment) and ST/AI/379 (Procedures for Dealing with Sexual Harassment).

31. ST/SGB/253 confirmed that

> [a]ny form of harassment, particularly sexual harassment, at the workplace or in connection with work is contrary to these provisions of the Charter and, consequently to the policy of the Organization; it is a violation of the standards of conduct expected of every international civil servant and may lead to disciplinary action.

32. The accompanying Administrative Instruction, ST/AI/379, included for the first time a provision that

> [t]he alleged harasser and the aggrieved individual shall be informed promptly of the course of action decision upon by the Assistant Secretary-General for Human Resources Management. *Id*., para. 12.

33. Nonetheless, the intractable scourge of sexual harassment in the United Nations continued, and in 2008 Secretary-General Ban Ki-moon promulgated a more extensive bulletin directed at the "prohibition of discrimination, harassment, including sexual harassment, and abuse of authority". This document, ST/SGB/2008/5, continued the 1992 requirement that "[t]he Assistant Secretary-General for Human Resources Management will … inform the aggrieved individual of the outcome of the investigation and of the action taken." *Id*., para. 5.18(c).

34. ST/SGB/2008/5 also added more protections to victims of sexual harassment. It expressly authorized a victim as "an aggrieved individual" to appeal to this Tribunal where they have "grounds to believe that the procedure followed in respect of the allegations of prohibited conduct was improper." *Id*., para. 5.20.

35. Additionally, the 2008 SGB provided for monitoring both during the investigation and post-investigation. Regarding the latter, it stipulates at para. 6.5 that

> Once the investigation has been completed and a decision taken on the outcome, appropriate measures shall be taken by the head of department/office/mission to keep the situation under review. These measures may include, but are not limited to, the following:
>
> (a) Monitoring the status of the aggrieved party, the alleged offender and the work unit(s) concerned at regular intervals in order to ensure that no party is subjected to retaliation as a consequence of the investigation, its findings or the outcome. Where retaliation is detected, the Ethics Office shall be promptly notified;
>
> (b) Ensuring that any administrative or disciplinary measures taken as a result of the fact-finding investigation have been duly implemented;
>
> (c) Identifying other appropriate action, in particular preventative action, to be taken in order to ensure that the objectives of the present bulletin are fulfilled.
>
> The Office of Human Resources Management [OHR] may request information from the head of department or office, as necessary.

36. By 2017, allegations of sexual harassment within the United Nations were still rampant, and new Secretary-General Antonio Guterres made several public pronouncements on the need for a cultural change. At the second regular session for that year of the United Nations System Chief Executives Board (CEB), he "emphasized that addressing Sexual Harassment is a growing concern of the international community, which deserves maximum attention and commitment from the entire United Nations leadership, and that it is essential for the United Nations system to be exemplary in addressing it."[2] At his suggestion, the CEB created a Task Force on Addressing Sexual Harassment with the Organizations of the United Nations System under the leadership of the Under-Secretary-General for Management.

[2] 2018.hlcm_.14.add_.1_-_annexes_1-7_-_progress_report_by_the_ceb_task_force.pdf (interagencystandingcommittee.org)

37. In May of 2018, it was announced that a screening system had been established to prevent former employees found guilty of sexual misconduct from finding new jobs with UN agencies. The system constituted an electronic registry of information to be available across the UN, and this registry was eventually given the name "ClearCheck." On 12 July 2018, the Secretary-General reiterated that he was "determined to do all [he] can to tackle sexual harassment at the Secretariat and system-wide in the United Nations."[3]

38. Among other things, the UN commissioned a survey by Deloitte in 2018. The Safe Space Survey Report found that 38.7% of respondents reported experiencing sexual harassment while working at the UN and 33% reported experiencing at least one instance of sexual harassment in the prior two years. Victims of sexual harassment reported that 58.3% of their experiences occurred in the office while 17.1% occurred at work-related social events. Similarly, victims reported that three-quarters of the harassers were colleagues, managers or supervisors. (In this respect, see footnote 1 above.)

39. On 10 September 2019, the Secretary-General promulgated ST/SGB/2019/8 as an updated policy on "Addressing discrimination, harassment, including sexual harassment, and abuse of authority". This Bulletin maintained the provisions of ST/SGB/2008/5 mentioned above. *Compare*, *e.g.*, ST/SGB/2008/5 para. 5.18 (c) with ST/SGB/2019/8 para. 5.5(i) (iii); and ST/SGB/2008/5 para. 5.20 with ST/SGB/2019/8 para. 5.6.

40. However, the 2019 update also added additional provisions directed at supporting victims. It provides in para.5.5(j) that

> At the request of the affected individual or the offender or alleged offender, the Assistant Secretary-General for Human Resources may provide a statement on the outcome of the matter, which the affected individual or the offender or alleged offender may disclose to third parties, subject to staff regulation 1.2 (i). The statement shall respect the confidentiality of the process and preserve the privacy of those involved.

[3] https://x.com/antonioguterres/status/1017509904943403009

41. ST/SGB/2019/8 also added a new provision - that post-investigation measures may include "[e]nsuring that due consideration is given to any special requirements for the affected individual as a result of the prohibited conduct". *Id.,* para. 6.12(b).

42. Although the 2019 SGB also provided for periodic review, "every two years at a minimum", it appears that no additional revisions have been promulgated in the five years since it was issued.

Which Bulletin Applies?

43. Although the parties' arguments cite to on ST/SGB/2008/5, there is disagreement as to whether it is the applicable Bulletin.

44. Regarding implementation, para.8.3 of ST/SGB/2019/8 provides that

> Investigations initiated prior to the entry into force of the present bulletin shall continue to be handled in accordance with the provisions of Secretary-General's bulletin ST/SGB/2008/5. In all other respects, the present bulletin hereby supersedes ST/SGB/2008/5.

45. A clear reading of this provision is that ongoing investigations will continue to be handled under the 2008 SGB, but everything else involving the complaint will be governed by the new SGB.

46. This case does not involve the investigation itself, but the Organization's actions following the investigation. Thus, it falls within "all other respects", and it is clear that ST/SGB/2019/8 supersedes ST/SGB/2008/5. The Tribunal finds that ST/SGB/2019/8 is the governing document. However, as the parties agree, the analysis is the same under either bulletin.

Victim's Right to Be Informed of the Discipline Imposed on Their Harasser

47. With this context in mind, the Tribunal will examine the issues raised by the Applicant in this case.

48. On 18 April 2023, the ASG/HR informed the Applicant that an investigation substantiated the Applicant's complaints of sexual harassment by Mr. Sophocleous.

It further informed her that the "Under-Secretary-General for Management Strategy, Policy and Compliance decided to impose an appropriate disciplinary measure on Mr. Sophocleous, who has been informed of this decision."

49. ATR claims that "[d]espite several requests from the Applicant to be informed of the type of disciplinary measure imposed on Mr. Sophocleous, OHR refused to provide any concrete information to her on the steps taken against the individual."

50. The Respondent submits that aggrieved individuals are not entitled to be informed of the specific disciplinary and/or administrative measures taken against another staff member following a disciplinary process, because:

a. The purpose of ST/SGB/2008/5 is not to vest such right on an aggrieved individual;

b. Informing the aggrieved individual that a disciplinary measure has been taken against another staff member with no further details strikes a balance between the right of that individual and the privacy of the staff member, and the confidentiality of the process.

51. ST/SGB/2008/5 requires that, when a report indicates that allegations of sexual harassment are well-founded, the matter shall be referred to the ASG/HR "for disciplinary action." The ASG/HR in turn is required

> to proceed in accordance with the applicable disciplinary procedures and … also inform the aggrieved individual of the outcome of the investigation and of the action taken." *Id.* para. 5.18(c)

52. The question before the Tribunal, therefore, is whether informing the victim that the Organization has "decided to impose an appropriate disciplinary measure" complies with the requirement to disclose "the outcome of the investigation *and* of the action taken." The Tribunal determines that it does not.

53. In this context, saying that one took disciplinary action is not the same as disclosing "the action taken." It is a tautology; in other words, it is saying the same

thing twice over in different words. In effect, the ASG/HR told the victim here that "the action taken was to take action."

54. Initially, the Tribunal notes that the right of a victim to be to be informed "of the disposition of their cases" is recognized in para. 6(a) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which in 1985 was adopted by the United Nations General Assembly in A/RES/40/34, para. 3.

55. Further, it is observed that the right of a victim of sexual harassment to be informed of both the outcome of the investigation and the action taken is an exception to the general requirement that such information is confidential. See, e.g., section 10 of ST/AI/2017/1.

56. Thus, the Secretary-General considered and determined the appropriate balance between the right of the victim to information and the privacy of the staff in the promulgation of para. 5.18 (c) of ST/SGB/2008/5. It is not within the authority of either the USG/DMSPC or the ASG/HR to redo that exercise.

57. This was made even more clear in para. 5.5(i) of ST/SGB/2019/8 which stipulates that "[t]he affected individual … shall be informed on a strictly confidential basis of the outcome of the matter" and in para. 5.5(j) that

> [A]t, the request of the affected individual … , the [ASG/HR] may provide a statement on the outcome of the matter, which the affected individual … may disclose to third parties, subject to staff regulation 1.2 (i). The statement shall respect the confidentiality of the process and preserve the privacy of those involved.

58. In the required disclosure, the Secretary-General has already struck the balance between the right to know and the right to confidentiality by mandating that the victim be informed but must keep the information "strictly confidential." Only if the victim wishes to share the outcome with others, is the ASG/HR granted authority to either draft a statement so that it respects confidentiality and privacy or even to decline to provide a non-confidential statement.

59. Moreover, even if the ASG/HR were vested with any discretionary authority as to the obligatory disclosure, she failed to strike the balance properly in this case.

The clear purpose of these provisions in the Secretary-General's Bulletins is to create transparency, implementing the theory that "sunlight is an antiseptic" to the plague of sexual harassment. Informing a victim of sexual harassment that the Organization has decided to "impose an appropriate disciplinary measure" is opaque, not transparent, and an inadequate germicide for further sexual harassment.

60. Under staff rule 10.2(a), "an appropriate disciplinary measure" could be anything on the spectrum from a written censure to separation from service. A written censure is merely a slap on the wrist, while separation from service is the death penalty for a career within the international civil service. Thus, where on that spectrum any particular action falls matters immensely, and informing the victim that "an appropriate disciplinary measure" was taken says virtually nothing about the outcome of the matter.

61. Again, it is important to recall the context in which the Secretaries-General issued these bulletins, particularly ST/SGB/2019/8. That was the time of the #MeToo movement, and there was public uproar over the continued existence of sexual harassment in many aspects of society. With particular regard to the United Nations, there were numerous claims that the investigative system was not working and that favoured people were protected by the Organization.[4]

62. In this environment, among other new victim-centred provisions, ST/SGB/2019/8 directed that "appropriate measures shall be taken…to keep the situation under review. Those measures may include, but are not limited to:

[4] *See* e.g., UN reopens sexual assault investigation into top official Luiz Loures | CNN; Q&A: UN Women's first spokesperson on sexual harassment talks necessary changes at UN | Devex; https://unwatch.org/un-needs-accountability-recent-sexual-abuse-cases/; https://www.theguardian.com/global-development/2018/jan/18/sexual-assault-and-harassment-rife-at-united-nations-staff-claim; https://www.un.org/en/chronicle/article/timeisnow-solidarity-and-sisterhood; https://www.theguardian.com/global-development/2018/may/08/un-sexual-misconduct-chief-was-promoted-while-facing-harassment-claims; https://www.aljazeera.com/news/2018/12/13/defective-leadership-unaids-chief-to-quit-early-over-scandal; https://www.theguardian.com/global-development/2018/apr/30/un-suspends-key-witness-miriam-maluwa-unaids; https://www.passblue.com/2019/04/24/with-scandals-rife-across-the-un-are-managers-at-fault/

"(b) [e]nsuring that due consideration is given to any special requirements for the affected individual as a result of the prohibited conduct." *Id.,* para. 6.12.

63. In this case, ATR said that being informed of the disciplinary measure imposed on Mr. Sophocleous is crucial to "reassure [her] and other victims that [they] will not come across our harasser in our career within the UN system." The record indicates that the Organization failed to ensure that due consideration was given to this reasonable request for reassuring information.

64. As for the Respondent's position that the Bulletins do not grant rights to the Applicant as an aggrieved or affected individual, this is easily disposed of. Paragraph 5.20 of ST/SGB/2008/5 expressly provides that

> Where an aggrieved individual or alleged offender has grounds to believe that the procedure followed in respect of the allegations of prohibited conduct was improper, he or she may appeal pursuant to chapter XI of the Staff Rules.

65. Similarly, para. 5.6 of ST/SGB/2019/8, reaffirms this right:

> Where an affected individual … has grounds to believe that the procedure followed in respect of the handling of a formal report of prohibited conduct was improper upon being informed of the outcome of the matter in accordance with section 5.5 (i) above, the affected individual or alleged offender may contest the matter pursuant to chapter XI of the Staff Rules."[5]

66. Chapter XI of the Staff Rules, in turn, authorizes a staff member

> to appeal an administrative decision that is alleged to not be in compliance with a staff member's contract of employment or terms of appointment, including all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance. Rule 11.4 (g)(i).

67. By expressly granting victims the right to contest improper handling of sexual harassment complaints, the SGBs clearly acknowledge that victims have a vested

[5] The change in language between 2008 and 2019 is an apparent effort to clarify that the right of appeal is subject to management evaluation, as examined by the Appeals Tribunal in *Faust*, 2016- UNAT-695, para. 48. It is noted that the Applicant sought and received management evaluation before filing her appeal in this case.

right in their reports of sexual harassment being handled according to the procedures prescribed in ST/SGB/2008/5 and ST/SGB/2019/8.[6]

68. In sum, the Tribunal finds that the Organization unlawfully denied the Applicant's right to be informed about the disciplinary sanction that was imposed on the staff member who harassed her, Mr. Sophocleous.

Victim's Right to Be Informed if Harasser was entered into ClearCheck Database

69. The Applicant also claims that she is entitled to have the Organization confirm whether Mr. Sophocleous was registered in the ClearCheck database after he was found to have committed sexual harassment.

70. The Respondent argues that this claim is not receivable as there was no appealable administrative decision because the Applicant had no specific right to be informed whether her harasser was registered in ClearCheck; and the Applicant failed to identify how the failure to inform her produced direct legal consequences to her.

71. ST/SGB/2019/8 defines ClearCheck at para 1.17 as "a centralized job candidate screening application. It captures information on sexual harassment offenders and alleged offenders that is provided by the entities of the United Nations System Chief Executives Board for Coordination."[7]

72. However, after giving this definition, ST/SGB/2019/8 contains just a single reference to ClearCheck, whereby it requires that heads of entities "[e]xercise due diligence by screening job candidates using the ClearCheck database and other relevant internal databases during recruitment processes." *Id.*, para. 3.3(e). There is no provision in that Bulletin requiring registration of individuals into ClearCheck, nor under what conditions a person should be registered.[8]

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[6] Cf. Acknowledged *dicta* in *AAJ* 2023-UNAT-1317, para. 40 wherein the Appeals Tribunal observes that "AAJ does not raise any issue relating to the *procedure* following her complaint.

[7] ST/SGB/2008/5 predates the creation of ClearCheck and thus does not mention it, or any similar database.

[8] According to the ClearCheck Factsheet, the database includes, *inter alia*, "[i]ndividuals against whom allegations of SH [sexual harassment], while in service of an entity, were substantiated following an investigation and a disciplinary process." See, *Ngueto*, UNDT/2024/091, para. 19.

73. Unlike the requirement to inform the victim of the disciplinary action taken against their harasser, the Bulletins do not set out any procedure about entering names into ClearCheck. Nor does the Applicant cite to any such procedure. In addition, the Applicant does not claim that any head of entity failed to "exercise due diligence by screening job [Mr. Sophocleous] using the ClearCheck database."

74. As a result, the provisions in the SGBs authorizing an appeal (ST/SGB/2008/5, para. 5.20 and ST/SGB/2019/8, para. 5.6) do not apply to the ATR's claim that she has a right to know if Mr. Sophocleous was entered into ClearCheck, and the Applicant has no express or cognizable right to information about ClearCheck registration.

75. Additionally, the Applicant has not shown that she suffered any direct legal consequences individually to her terms of employment by not being informed whether Mr. Sophocleous was registered in ClearCheck. Appealable administrative decisions are "characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences." *Alvear*, 2024-UNAT-1464, para. 39, quoting *Ngokeng*, 2014-UNAT-460, para. 26. See also *Gehr*, 2013-UNAT-365, para. 14; Gehr, 2013-UNAT-313, para. 19; *Al Surkhi et al,* 2013-UNAT-304, paras. 26-28.

76. Registration in ClearCheck is obviously a policy of general and not individual application. It is designed to protect the Organization from hiring sexual harassers and thus exposing its employees to such predators. Not knowing whether Mr. Sophocleous has been registered may have some unsatisfactory practical and personal consequences to the Applicant, but it produces no direct legal consequences to her. As such, the implied decision to deny her that information is not an appealable administrative decision.

77. Thus, the Tribunal rejects as not receivable the claim that the Applicant has a right to know if a specific person is registered in ClearCheck.

The Right to Compensation

78. Finally, the Applicant claims she is "entitled to compensation for the moral damages and well substantiated damages to health, which are unquantifiable, incurred due to the established sexual harassment suffered."

79. Here too, the Respondent argues that this claim is not receivable under the legal framework. He points out that the SGBs do not provide a right to financial compensation and that this case is not a review of a decision denying compensation under Appendix D of the Staff Rules and Regulations.

80. The Respondent is correct on both points. Neither ST/SGB/2008/5 nor ST/SGB/2019/8 make any mention of compensation for harm caused by harassment. While Appendix D provides for compensation in the event of injury attributable to the performance of official duties, the record is devoid of any indication that ATR filed such a claim.

81. The record does contain allegations that the Applicant suffered severe health issues as a result of the sexual harassment, for which she sought biweekly counselling over the five years since her sexual harassment. She claims that "[t]o diminish her suffering and the damage to her health is tantamount to deny[ing] her trauma." However, she also concedes that a right to compensation is "not clearly established in the legal framework."

82. The Tribunal does not intend to diminish or deny the suffering that ATR undoubtedly suffered at the hands of Mr. Sophocleous. However, the Tribunal is obligated to apply the law (including applicable rules and regulations) as it currently exists and not as it wishes that the law should exist. The Tribunal agrees with the parties that a right to compensation for sexual harassment does not currently exist in the applicable legal framework.

83. The Tribunal takes note that numerous jurisdictions recognize a right to claim compensation from an employer for sexual harassment. See, e.g., Jane Aeberhard-Hodges, *Sexual Harassment in Employment: Recent Judicial and Arbitral Trends*, 135 International Labour Review 499 (1996), an in-depth albeit dated survey on the

topic. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power speaks at length about the need for fair restitution and/or compensation to victims. *Id*., paras. 8-13. By adopting this Declaration in 1985 (A/RES/40/34, para. 3), the United Nations General Assembly committed the Organization to the principle of compensating victims.

84. More recently, the International Labour Conference of the ILO adopted Convention No. 190 on Violence and Harassment (and its accompanying Recommendation No. 206) in 2019, which entered into force two years later. Article 10 of the Convention requires ratifying States to ensure appropriate and effective remedies, and Recommendation 206 says these could include "appropriate compensation for damages." *Id*., para. 14.

85. Perhaps it is time for the United Nations to adopt a system for compensating the victims of sexual harassment. However, that is beyond the ambit of this Tribunal. Until the appropriate authorities adopt such a system, the Tribunal has no choice but to deny the compensation claim brought by the Applicant in this case.

CONCLUSION

86. For the reasons set forth the Tribunal DECIDES to:

a. Grant the application on the issue of the Applicant's right to be informed as to the discipline imposed by the Organization on Mr. Polinikis Sophocleous for sexually harassing her; and

b. Deny the remaining claims of the Application.

(*Signed*)
Judge Sean Wallace
Dated this 27th day of November 2024

Entered in the Register on this 27th day of November 2024
(*Signed*)
Wanda L. Carter, Registrar, Nairobi