UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1357

Elmira Ela Banaj

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Dimitrios Raikos Judge Martha Halfeld
Case No.:	2022-1723
Date of Decision:	30 June 2023
Date of Publication:	17 July 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	George G. Irving
Counsel for Respondent:	Amanda Stoltz

JUDGE GAO XIAOLI, PRESIDING.

1. Elmira Ela Banaj, a staff member of the United Nations Office on Drugs and Crime (UNODC), contested a decision to impose on her the disciplinary measure of demotion of one grade with deferment, for one year, of eligibility for consideration for promotion (contested Decision).

2. By Judgment No. UNDT/2022/060,[1] the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) rejected the application (impugned Judgment). Ms. Banaj lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

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

Facts and Procedure

4. On 1 January 2000, Ms. Banaj joined UNODC in Tirana, Albania, on a fixed-term appointment as a National Programme Officer at the NO-B level. Since her appointment, her service was limited to UNODC, whereas her contract was administered by the United Nations Development Programme (UNDP).[2]

5. On 1 January 2008, Ms. Banaj was promoted to the NO-C level. On 23 November 2012, her appointment was retroactively converted to a permanent appointment effective 30 June 2009. As a consequence of the disciplinary proceedings and her resulting demotion that are at issue in this appeal, she was serving at the NO-B level at the time of the rendering the impugned Judgment.[3]

6. On 18 July 2018, the Regional Representative for South-Eastern Europe (RR) at UNODC, reported Ms. Banaj to the Office of Audit and Investigations (OAI) of UNDP for possible misconduct, alleging that, in order to secure support for preserving her personal situation as the sole UNODC representative in Albania, she may have lobbied government officials against the

[1] *Banaj v. Secretary-General of the United Nations*, Judgment dated 21 June 2022.
[2] Impugned Judgment, para. 2.
[3] *Ibid.*, para. 3.

recruitment of the newly created P-4 Advisor Post in the UNODC Albania Office.[4] Having conducted a preliminary assessment, OAI also obtained information showing that Ms. Banaj may have communicated internal information, which she became aware of as a result of her official position with UNODC, to officials of the Albanian Government and the United States Embassy in Albania.

7. On 25 October 2018, Ms. Banaj was informed by OAI that she was the subject of an investigation, and was interviewed on 26 October 2018.[5]

8. On 29 October 2018, the RR informed Ms. Banaj that "it has been decided to effect a temporary reassignment of [her] functions" (Reassignment Decision) and instructed her as follows:[6]

> With immediate effect you shall focus your work exclusively on ongoing approved technical project activities linked to the Container Control Programme segment for Albania. You shall not engage [or] commit UNODC in any other matter. You shall limit your consultations with national project partners at technical level and refrain [from] representing UNODC at senior level including with Embassies and international counterparts based in Albania. Functions linked to the representation of UNODC and management of our wider portfolio for Albania will fall under my direct responsibility. A message informing of these interim measures will be addressed accordingly to our national and international counterparts, including Embassies, in Tirana and Heads of UNODC Global Programmes in Vienna.

9. On 1 May 2019, OAI sent to Ms. Banaj a draft investigation report and requested her to provide comments and any countervailing evidence, which she provided on 20 May 2019.[7]

10. On 21 May 2019, she filed an application before the UNDT, challenging the Reassignment Decision.[8] The application was registered under Case No. UNDT/GVA/2019/031.

11. On 23 July 2019, OAI issued its investigation report.[9]

[4] *Ibid.*, para. 4.
[5] *Ibid.*, para. 6.
[6] *Ibid.*, para. 7.
[7] *Ibid.*, para. 8.
[8] *Ibid.*, para. 9.
[9] *Ibid.*, para. 10.

12. By charge letter dated 21 May 2020, the Assistant Administrator, UNDP, charged Ms. Banaj with misconduct for intentionally disclosing internal information to officials of both the Albanian Government and the United States Embassy in Albania without authorization, and for sharing criticism of UNODC's activities and policy decisions with government officials against the interest of UNODC.[10] On 30 June 2020 and 1 July 2020, Ms. Banaj submitted her response to the charge letter.

13. By letter of 22 October 2020, the UNDP Associate Administrator informed Ms. Banaj of the contested Decision.[11]

14. On 16 December 2020, Ms. Banaj was advised that as a result of her demotion, the reassignment of her functions was now permanent.[12]

15. On 15 January 2021, Ms. Banaj filed an application in respect of the contested Decision.[13]

16. On 26 March 2021, the UNDT issued Judgment No. UNDT/2021/030 in Case No. UNDT/GVA/2019/031, rejecting her application in respect of the Reassignment Decision.[14]

17. By Judgment No. 2022-UNAT-1202,[15] the Appeals Tribunal set aside Judgment No. UNDT/2021/030 and, "[a]s to the remedies for the unlawful re-assignment of the Appellant's duties", remanded "these to the UNDT for consideration by it in conjunction with its judgment to be issued in relation to Ms. Banaj's substantive appeal against the finding of misconduct".[16] The Appeals Tribunal noted that the "question (…) of remedies for the wrongful imposition of the interim measures is closely linked to any remedies to which she may be entitled if she is successful in the substantive proceedings".[17]

18. By Order No. 55 (GVA/2022) of 22 April 2022, the UNDT informed the parties that it was fully informed on the matter and the case could be determined without holding a hearing.[18]

[10] *Ibid.*, para. 11.
[11] *Ibid.*, para. 13.
[12] *Ibid.*, para. 14.
[13] *Ibid.*, para. 15.
[14] *Ibid.*, para. 17.
[15] *Elmira Ela Banaj v. Secretary-General of the United Nations*, Judgment in Case No. 2021-1560.
[16] The Appeals Tribunal found is paragraphs 52 and 57 that the Reassignment Decision was unlawful as it was taken without the requisite jurisdiction and not taken by a person or body authorized to do so.
[17] Judgment No. 2022-UNAT-1202, para. 59.
[18] Impugned Judgment, para. 24.

Consequently, it instructed the parties to file their respective closing submissions by 6 May 2022, which they did.

The impugned Judgment

19. The UNDT rejected Ms. Banaj's application in its entirety.

20. The UNDT found that there was undisputed evidence that the facts on which the disciplinary measure was based ((a) Ms. Banaj, on several occasions, intentionally disclosed internal information to officials of the Albanian Government and the United States Embassy in Albania, without prior authorization; and (b) Ms. Banaj, on several occasions, acting against the interests of the Organization, shared criticism about the activities and policy decisions of UNODC with officials of the Albanian and United States Governments) had been established.[19]

21. The UNDT observed that the evidence showed that she forwarded internal e-mails containing information related to the creation of an Advisor Post in the UNODC Albania Office to the Albanian Deputy Minister of Interior, Mr. B.L., and to Mr. S.B., who was then a member of the United States Embassy in Albania.[20] There is evidence suggesting that Ms. Banaj shared the draft terms of reference (TOR) for the Advisor Post in her personal interests.[21]

22. The UNDT noted that the evidence indicated that by e-mail of 22 June 2018, Ms. Banaj forwarded the World Drug Report, while it was under embargo and without authorization, to three senior officials in the Albanian Ministry of Interior, knowing that the report was under embargo and that she was not allowed to share it without authorization from UNODC.[22]

23. The UNDT established that the evidence showed that Ms. Banaj had shared via e-mail her personal criticism of the UNODC's internal decision to create the Advisor Post with the then Secretary-General within the Ministry of Interior of the Government of Albania, Ms. A.T., Mr. B.L., and Mr. S.B.[23]

24. The UNDT considered that sharing of the draft TOR could give an advantage in recruitment if it was shared with prospective candidates, thereby potentially tainting the

[19] *Ibid.*, paras. 34–35.
[20] *Ibid.*, para. 37.
[21] *Ibid.*, para. 40.
[22] *Ibid.*, paras. 42–43.
[23] *Ibid.*, para. 48.

recruitment process.[24] Intentionally disclosing the internal information to governmental officials from Albania and the United States, and sharing personal criticism do not fall within the scope of "the normal course of [her] duties" under Staff Regulation 1.2(i). Ms. Banaj's conduct is prohibited under Staff Regulation 1.2(e), (f) and (i). The established facts legally amount to misconduct.

25. As to the proportionality of the sanction, the UNDT found that the Administration had duly considered aggravating factors: the potential impact of such misconduct on the reputation, independence and impartiality of the Organization; Ms. Banaj's relative professional seniority with twenty years of experience with the Organization; the absence of recognition of the inappropriateness of her conduct and the refusal to acknowledge any fault on her part; the misconduct consisting of repeated separate acts; the refusal to cooperate with the investigation by refusing to provide her UNODC-issued mobile phone and her personal phone, for which she received payment from UNODC and that she also used for official calls.[25]

26. The UNDT noted that the Administration had properly considered the relevant mitigating factors: Ms. Banaj's previously unblemished record of service and the fact that in two instances the forwarded critical comments against the Organization had already been shared with representatives of Member States.[26] Regarding the alleged lack of improper intent, it is relevant that she attempted to conceal her misconduct from UNODC.

27. The UNDT observed that Ms. Banaj had failed to provide any relevant evidence from UNDP's or the Secretary-General's practices to support her claim of inconsistency with prior precedent.[27] The disciplinary measure applied was proportionate to the offence.

28. The UNDT was satisfied that the key elements of Ms. Banaj's right to due process were met in the present case.[28] The demotion to the NO-B level was the result of her misconduct and not an arbitrary decision of the Organization to deprive her of her functions with the intent to constructively dismiss her. She has failed to show how the unlawfulness of the temporary reassignment of certain of her functions during the investigation process, as concluded by the

[24] *Ibid.*, para. 57.
[25] *Ibid.*, paras. 69–73.
[26] *Ibid.*, paras. 77–82.
[27] *Ibid.*, para. 86.
[28] *Ibid.*, para. 94.

Appeals Tribunal in Judgment No. 2022-UNAT-1202, negatively impacted the investigation and/or the disciplinary process.

29. The UNDT noted that whether Ms. Banaj was entitled to remedies, given the Appeals Tribunal's finding that the temporary reassignment of certain of her functions was unlawful, was reserved for the remanded case, which was registered under Case No. UNDT/GVA/2019/031/R1.[29]

Procedure before the Appeals Tribunal

30. On 19 August 2022, Ms. Banaj filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General filed an answer on 10 October 2022.

Submissions

Appellant's Appeal

31. Ms. Banaj requests the Appeals Tribunal to reverse the impugned Judgment, rescind the contested Decision and award compensation for moral damage in the amount of two years' net base salary.

32. She contends that the UNDT declined to consider that the allegations brought against her were improperly motivated by a desire to remove her from her post and that the investigation seriously overlooked critical information. The UNDT erred in considering the communication as unauthorized and failed to define the difference between "internal communication" and "working documents" (such as TORs, normally drafted in cooperation with the end user/beneficiary). The UNDT overlooked that the RR had specifically tasked her to follow up with the Albanian Government[30] and also that a document known as Information on Disclosure Policy does not consider TORs as confidential.

33. Ms. Banaj argues that the UNDT overlooked that by the time she shared the TORs, they were no longer drafts but were being circulated,[31] that the TORs were not watermarked as drafts or as confidential or as for internal use only, as required by the Secretary-General's Bulletin

[29] *Ibid.*, para. 105.
[30] Appellant refers to two witness statements provided in Annex 4 to the appeal.
[31] Appellant refers to a 4 May 2018 statement of a desk officer at the Ministry of Foreign Affairs of Albania.

ST/SGB/2007/6 (Information sensitivity, classification and handling), and that the TORs had been shared with the Deputy Minister of Interior of Albania.

34. She submits that the UNDT, regarding her personal interests, has not cited any evidence and had not identified such personal interests. The UNDT did not address why the RR never questioned Ms. Banaj's similar practices and mode of communication prior to the incident at hand. The UNDT overlooked that she regularly briefed the RR on the outcome of all her meetings and communication with national partners. The UNDT failed to appreciate the RR's mishandling of the proposal to create the new post. The UNDT failed to consider that officials who had been cited as having witnessed the communication of the privileged information later denied it, which renders the hearsay evidence unreliable.[32]

35. Ms. Banaj states that the "embargo" with regard to the World Drug Report was on its public release, not on sharing the report with Member States. The investigation report included that the World Drug Report "was shared with representatives of member states (…) on 20 June 2018". This suggests that the Albanian Ministry of Interior, through the Ministry of Foreign Affairs, received the World Drug Report two days earlier than the date on which she shared it (22 June 2018) with the Albanian senior officials.

36. She maintains that no harm has been demonstrated as a result of the sharing of the documents in question. The UNDT has not pointed to any adverse effects on UNODC policy and operations.

37. Ms. Banaj argues that the UNDT committed an error in finding that disclosing any information that has not been made public is an act of misconduct.

38. She contends that the UNDT has not cited any authority for interpreting her refusal to hand over her private SIM card as an aggravating factor.[33] There is no such obligation.

39. Ms. Banaj submits that the sanction was too severe with regard to prior precedents. The UNDT failed to cite examples of similar cases because there were none. The UNDT has

[32] Appellant refers to the Ambassador of the Albanian permanent mission to the international organizations in Vienna (Annex 6 to the appeal).
[33] Whereas Appellant refers to her private SIM card, such item is not mentioned in the contested Decision nor in the impugned Judgment. Rather, the aggravating circumstance was described as her refusal to provide to OAI (in addition to her UNODC-issued phone) her personal phone which she also used for official calls, which we take to be her argument on appeal.

undertaken no proportionality analysis and has failed to explain why the sanction is appropriate. The imposed demotion creates a financial penalty with implications for her pension, career and professional reputation.

40. She asserts that compensation for the stress and loss of opportunity should be awarded, considering that the reduction of her functions was broadly communicated outside the Organization, her degrading work conditions violated her rights and dignity, impaired her physical and mental health and compromised her reputation, the RR continuously excluded her from the exercise of her functions, provoked stress and uncertainty about her employment, and denied acknowledgement of her professional accomplishments.

The Secretary-General's Answer

41. The Secretary-General requests the Appeals Tribunal to dismiss Ms. Banaj's appeal in its entirety.

42. The Secretary-General argues that the UNDT properly found the contested Decision to be lawful. Ms. Banaj has failed to establish any grounds of appeal. She failed to establish that the UNDT erred in its (a) consideration of her claims of improper motive and of "flaws" in the OAI investigation; (b) consideration of the facts upon which the sanction was based and whether those facts qualified as misconduct; (c) determination that the sanction was proportionate to her conduct; and (d) consideration of remedies.

43. The Secretary-General contends that, contrary to Ms. Banaj's allegations of having overlooked specific facts and evidence, the UNDT had explicitly addressed each of those facts and evidence. Moreover, the UNDT had correctly noted that the fact that the TORs were accompanied by her personal criticisms of the proposal, suggested that she acted in her personal interest. Contrary to her submission, the consent or approval of the Albanian and United States Governments was not necessary for the creation of the Advisor Post. Ms. Banaj's denial does not demonstrate any error in the UNDT's finding that she had authored and shared the document containing the critical comments. Contrary to her contention, the UNDT correctly found that the embargo on the World Drug Report applied to her.

44. The Secretary-General submits that Ms. Banaj's allegation that none of the aggravating factors have been subjected to due process and are thus inapplicable, is not

receivable, having not been raised before the UNDT. The past practice of the Organization and the jurisprudence of the Appeals Tribunal demonstrated that her conduct fell within the realm of serious misconduct and that the sanction was generally consistent with sanctions imposed in similar cases. When imposing a particular disciplinary sanction, it is not required to demonstrate any specific benefit to the Organization.

45. With respect to Ms. Banaj's claim of compensation, the Secretary-General maintains that the UNDT specifically held that she only made general allegations and failed to provide any evidence of harm. Neither the repetition of claims raised before the UNDT nor the introduction of new elements to her claims can properly form any part of an appeal.

Considerations

46. The well-settled jurisprudence of the Appeals Tribunal requires that when reviewing disciplinary cases, the UNDT must establish: (i) whether the facts on which the sanction is based have been established; (ii) whether the established facts qualify as misconduct under the Staff Regulations and Rules; (iii) whether the sanction is proportionate to the offence; and (iv) whether the staff member's due process rights were respected during the investigation and the disciplinary process.[34]

47. The UNDT followed this approach and reviewed the contested Decision thoroughly and methodically before concluding that the contested Decision was lawful. On appeal, the Appellant alleges that the contested Decision failed on all four counts of judicial review. It is noteworthy from the outset that the UNAT is not a forum for a party to reargue their case without demonstrating on which grounds an impugned UNDT judgment is erroneous. Mere disagreement with the UNDT's conclusion is not a justification for the UNAT to interfere with the findings of the UNDT.[35] We will examine the above-mentioned four aspects in turn, based on both parties' submissions.

I. Whether the facts on which the sanction is based have been established

[34] *George M'mbetsa Nyawa v. Secretary-General of the United Nations,* Judgment No. 2020-UNAT-1024, para. 48; *Ladu v. Secretary-General of the United Nations,* Judgment No. 2019-UNAT-956, para. 15.
[35] *Ross v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1000, para. 65; *Gonzalo Ramos v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1256, para. 41.

48. Our jurisprudence has consistently held that when termination is a possible outcome, the standard of proof for fact-finding is that misconduct must be established by clear and convincing evidence, while in other disciplinary cases, it is "preponderance of evidence" which means that it is more like than not that the facts and circumstances underlying the misconduct exist or have occurred. In this case, we will examine whether the UNDT has established the following facts by a preponderance of evidence: (1) the Appellant intentionally disclosed internal information without prior authorization; and (2) the Appellant shared personal criticism about the activities and policy decisions of UNODC with officials of the Albanian and United States Governments.

Whether the Appellant intentionally disclosed internal information without prior authorization

49. The Appellant acknowledges in her submission that it is undisputed that the communications in question have occurred. The communications refer to numerous e-mails listed in the sanction letter dated from 21 November 2017 to 22 June 2018 between the Appellant and officials of the Albanian Government and the United States Embassy in Albania. The UNDT correctly found that the Appellant did not dispute the authenticity of the e-mails. Similar to the argument before the UNDT, the Appellant takes issue with the characterization of these e-mails as "internal information" and "without prior authorization" in her appeal.

The draft TOR of the Advisor Post

50. Firstly, the Appellant argues that the draft TOR of the Advisor Post should be considered only as a working document instead of internal information and that the UNDT failed to define the difference between "internal communication" and "working documents".

51. We cannot agree with this argument. Being a working document does not necessarily disqualify this document as internal information. The evidence on record indicates that the Appellant shared the draft TOR before its finalization and publication. It is obvious that the draft TOR is internal information before it is made public for the purpose of recruitment.

52. Secondly, the Appellant contends that the UNDP policy, reflected in the Information on Disclosure Policy, does not consider TORs as confidential and that the UNDT overlooked the fact that TORs were not labeled or watermarked as a draft or as confidential, or for internal use only, as required by ST/SGB/2007/6.

53. Contrary to her allegation, the UNDT did look into and answer her contention. The UNDT held that the obligation not to disclose internal information under the Staff Regulations and Rules is not limited to confidential information classified under ST/SGB/2007/6.[36]

54. ST/SGB/2007/6 (Information sensitivity, classification and handling) clearly stipulates its object of regulation, at the outset, as information deemed "confidential":

> **Section 1**
>
> **Classification principles**
>
> 1.1 The overall approach to classifying information entrusted to or originating from the United Nations is based on the understanding that the work of the United Nations should be open and transparent, except insofar as the nature of information concerned is deemed confidential in accordance with the guidelines set out in the present bulletin.

55. We agree with the UNDT that "internal information" is a broader concept than "confidential information". According to Staff Regulation 1.2(i), "internal information" refers to any information known to the staff members by reason of their official position that they know or ought to have known has not been made public. However, ST/SGB/2007/6 deals with the classification and secure handling of "confidential information" entrusted to or originating from the United Nations. Information may be classified as "confidential" or "highly confidential" pursuant to the classification principles and levels and requires corresponding identification and markings stipulated by ST/SGB/2007/6. ST/SGB/2007/6 does not require internal information, such as the draft TOR in this case, to be labeled or watermarked as a draft or as confidential, or for internal use only. The Appellant is misconstruing the relevant provisions.

56. Thirdly, the Appellant submits that by the time she shared the TOR, it was not a draft but already circulated by the RR with certain government officials. In this way, the Appellant intends to argue again that the TOR is not internal information when she shared it.

57. In view of the evidence on record, we cannot support this contention. Indeed, the evidence confirms that the RR may have discussed the proposal of creating the Advisor Post with relevant government or embassy officials as early as November 2017, during his mission to Albania, but it was not until early May 2018 that the RR circulated the draft TOR to the Albanian Ambassador and Permanent Representative to the United Nations in Vienna. The Appellant

[36] Impugned Judgment, para. 60.

shared the draft TOR with Mr. S.B., a member of the United States Embassy in Albania in her e-mail of 23 March 2018, and re-shared it with Mr. S.B. on 17 April 2018, earlier than the RR did. The Appellant's averment thus is not substantiated.

58. Fourthly, with regard to qualifying the e-mail communications in question as "without prior authorization", the Appellant repeats her argument made before the UNDT that she had to discharge her liaison functions and that she was appointed as the focal point by the RR for the newly proposed Advisor Post which required frequent communication with government partners.

59. We take note that in the sanction letter, the Administration pointed out that the charge against the Appellant was not that she had communicated with member states but that she had shared internal information which she had become aware of by virtue of her official functions. We are of the same view. The necessity for the Appellant to communicate with member states frequently did not dictate her communication of internal information to some member states without authorization. As a senior staff member who had been employed at UNODC for over 20 years, the Appellant should have known the limits of permissible interaction with member states, set forth by the Organization's regulations, rules and policies.

60. Fifthly, the Appellant contends that the UNDT erred in asserting that there was no operational purpose to sharing the TOR and that the Appellant acted in her personal interests. Specifically, the Appellant claims in her submissions that it was "not clear how sharing of TORs of a different post, not pertaining to the Appellant, would contribute to the protection of her personal interests"[37] and that "it was logical to share the details of the new proposal (…) to the international community in Albania".[38]

61. In our view, this contention is without merit and contrary to the evidence on record. The UNDT correctly pointed out that the Appellant had not demonstrated why she shared the draft TOR only with some officials from two member states and not with any other UNODC partners if she, as alleged, acted for operational purposes of sharing the draft TOR with the entire international community in Albania. On appeal, the Appellant fails to explain the apparent contradiction. Moreover, there is sufficient evidence in the investigation report concerning the Appellant's comments of her role being marginalized by the new Advisor Post. Her comments

[37] Appeal brief, para. 22.
[38] *Ibid.*, para. 23.

demonstrate, contrary to what she claimed, that the tentative Advisor Post was of concern to the Appellant at least in her mind, and thus she shared the draft TOR with her comments attached in her personal interests.

62. The Appellant submits other grounds for her appeal, such as the UNDT having misunderstood the reason for her communication of the TOR to the government officials, having failed to appreciate that resistance to the RR's proposal was not the fault of the Appellant but a consequence of the RR's own mishandling of the proposal, and that the charges against her were based on hearsay evidence.

63. These arguments were presented to the UNDT and we find no error in UNDT's response thereto. At any rate, these issues raised by the Appellant are inconsequential for her intended purposes in this appeal. We emphasize once again that the UNDT only examines whether the facts on which the disciplinary sanction, and not the charges, was based have been established. Furthermore, the subject matter under review in the present case is the Appellant's own conduct, not the conduct of other individuals.

The World Drug Report

64. With regard to the disclosure of the World Drug Report, the Appellant submits that the "embargo" was on its public release, not for sharing the report with member states.

65. Such is merely the Appellant's own interpretation. It was not supported by the evidence. The evidence on record clearly shows that the RR informed the Appellant that this report was under strict embargo and even within UNODC, its circulation was restricted to a limited number of staff. The Appellant sought authorization from her supervisor before sharing the report with the United Nations Resident Coordinator; in stark contrast, she did not do so when sharing the report with the Albanian government official. Her behavior indicated her awareness that the embargo was not limited to disclosures to the media.

66. Next, the Appellant contends that the Albanian Ministry of Interior had received the report two days before she sent it to the Albanian senior officials.

67. We note that the Appellant's statement might be true, as the Administration admitted in the sanction letter that the report had been shared online with the member states on 20 June 2018. Nevertheless, that fact could not absolve the Appellant from her obligation to

comply with the embargo until 26 June 2018. The fact that the report had been previously shared through official channels did not entitle the Appellant to share it without authorization.

68. Lastly, the Appellant claims that the Respondent and the UNDT did not point to any adverse effects on UNODC policy resulting from her actions of sharing the report.

69. We find that any adverse effect is irrelevant to the facts on which the disciplinary measure was based, namely unauthorized sharing of the report that was still under embargo.

Whether the Appellant shared personal criticism about the activities and policy decisions of UNODC with officials of the Albanian and United States Governments

70. The Appellant argues that the document entitled "information" which she sent to Mr. S.B. at the United States Embassy in Albania on 23 March 2018 had been written by a United States official several years earlier, and neither OAI nor UNODC interviewed that person.

71. We note that this issue has been addressed by the UNDT. The UNDT found that the metadata of the disputed document listed the Appellant as the author and the Appellant provided inconsistent accounts regarding the source of the document. The Appellant claims on appeal that in disciplinary matters the burden of proof lies with the Respondent, therefore, the Respondent should bear the burden of verifying the source of the document. This is a misinterpretation of the burden of proof. The Administration bears the burden to prove that the facts underlying the disciplinary measure have been established and the Appellant bears the burden to provide sufficient and credible evidence to substantiate her allegations adduced in her defense. It is a principle in evidence law that the burden of proof lies with the party who presents a claim. In this case, the metadata listed the Appellant as the author of the "information" document, which demonstrated a *prima facie* fact in favor of the Administration's position. The burden of proof then shifted to the Appellant to demonstrate otherwise, which she failed. Therefore, the UNDT correctly concluded that the Appellant failed to provide evidence that she received the document from another individual.

72. The Appellant also argues that no harm has been demonstrated in connection with the sharing of the above-mentioned document and at most this was a potential issue for her performance review.

73. In this regard, no harm was required for establishing the facts on which the disciplinary measure was based. The Appellant's sharing of personal criticism about the activities and policy decisions of UNODC has been unambiguously proven by her e-mails to the officials of the Albanian Government and the United States Embassy in Albania on several occasions, which the Appellant did not dispute.

74. In light of the foregoing, we affirm that the UNDT did not err in finding that the facts on which the disciplinary measure was based have been established by preponderance of evidence.

II. Whether the established facts qualify as misconduct under the Staff Regulations and Rules

75. We turn to the question of whether the established facts legally amount to misconduct under Staff Regulations and Rules. The applicable legal framework for this issue is Staff Regulation 1.2(e), 1.2(f) and 1.2(i), and Staff Rule 10.1(a).

76. Specifically, Staff Regulation 1.2 provides the basic rights and obligations of staff. The relevant provisions read as follows:[39]

> ...
>
> **General rights and obligations**
>
> ...
>
> (e) By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct *with the interests of the Organization only in view*. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants;
>
> (f) While staff members' personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions *do not adversely affect their official duties or the interests of the United Nations*. They shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in *any activity* that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid *any action* and, in particular, *any* kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status;

[39] Emphasis added.

> ...
>
> (i) Staff members shall exercise *the utmost discretion* with regard to all matters of official business. They shall not communicate to *any Government, entity, person or any other source any information* known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. These obligations do not cease upon separation from service[.]

77. Additionally, Staff Rule 10.1(a) defines what may constitute misconduct by a staff member. It provides:

> Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

78. According to these provisions, we are satisfied that the Appellant's conduct is clearly in noncompliance with her obligation as a United Nations staff member. We agree with the UNDT's detailed and accurate analysis on the illegality of the Appellant's conduct.

79. The Appellant claims that the UNDT committed an error in finding that disclosing any information that has not been made public is an act of misconduct. She argues that both the TOR of the Advisor Post and the World Drug Report were intended for public information and had already been shared outside of UNODC by UNODC itself.

80. We cannot agree with this assertion. Staff Regulation 1.2(i) stipulates that staff members shall not communicate to "any" Government, entity, person or "any" other source, "any" information known to them by reason of their official position that they know or ought to have known has not been made public. The expression "any", especially used in a repetitive manner to carry some emphasis, indicates an extensive prohibition and conveys a strict attitude of the Organization towards the prohibited action of disclosing internal information without authorization. This is also reflected in "the utmost discretion" requirement on staff in Staff Regulation 1.2(i). This strict obligation has only two exceptions: communication appropriate in the normal course of the staff member' duties or authorized by the Secretary-General. The evidence on record, including the e-mail communications, the testimonies of the witnesses, and even the statement of the Appellant, confirms that the Appellant intentionally disclosed internal

information without prior authorization. Her action could not be justified by appropriateness of the communication in the normal course of discharging her functions.

81. The Appellant is correct that the draft TOR and the World Drug Report were both intended for public information, but before their final publication, they were still internal documents. The Appellant sent the draft TOR to officials of some member states before its finalization and shared the report with some government officials before the embargo on the document ended. Even if the World Drug Report had been shared online by UNODC before, it was done through the official channel and limited to a small group. Information disclosed in such a manner cannot be read as already having been made public.

82. Lastly, we highlight that due deference should be given to the Administration in determining whether or not misconduct has been established. The Appeals Tribunal has provided the rationale behind this position in *Nadasan*:[40]

> The judicial review of decisions of whether or not misconduct has been established dictates that due deference be given to the Secretary-General to hold staff members to the highest standards of integrity of its rule-making discretion. The Administration is better placed to understand the nature of the work, the circumstances of the work environment and what rules are warranted by its operational requirements.

83. In conclusion, we find that the UNDT did not err in determining that the Appellant's actions legally amounted to misconduct.

III. Whether the sanction is proportionate to the offence

84. The Appeals Tribunal's analysis of this issue begins, as it must, from the relevant legal provisions. As such, Staff Rule 10.2(a) provides that disciplinary measures may take one or more of the following forms:

> …
>
> (i) Written censure;
>
> (ii) Loss of one or more steps in grade;
>
> (iii) Deferment, for a specified period, of eligibility for salary increment;
>
> (iv) Suspension without pay for a specified period;

[40] *Nadasan v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-918, para. 41.

> (v) Fine;
>
> (vi) Deferment, for a specified period, of eligibility for consideration for promotion;
>
> (vii) Demotion with deferment, for a specified period, of eligibility for consideration for promotion;
>
> (viii) Separation from service, with notice or compensation in lieu of notice, notwithstanding staff rule 9.7, and with or without termination indemnity pursuant to paragraph (c) of annex III to the Staff Regulations;
>
> (ix) Dismissal.

85. In addition, Staff Rule 10.3 (Due process in the disciplinary process) sets out the requirement of proportionality of sanction:

> …
>
> (b) Any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct.
>
> …

86. We are mindful that the Organization has a variety of disciplinary sanctions at its disposal. As listed above, Staff Rule 10.2(a) provides a range of disciplinary measures. Staff Rule 10.3(b) stipulates that any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct. In this case, the Secretary-General imposed demotion of one grade with deferment, for one year, of eligibility for consideration for promotion on the Appellant.

87. Concerning judicial review of the proportionality of a disciplinary sanction, our jurisprudence has been consistent, which is best described in *Sanwidi*:[41]

> (…) In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. (…) This entails examining the balance struck by the decision-maker between competing considerations and priorities in deciding what action to take. However, courts also recognize that decision-makers have some latitude or margin of discretion to make legitimate choices between competing considerations and priorities in exercising their judgment about what action to take.

[41] *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, paras. 39 and 40.

> When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

88. Furthermore, in *Samandarov*, we have noted:[42]

> (…) With regard to the discretion of the Secretary-General to impose a sanction, the UNDT noted that this discretion is not unfettered, in that there is a duty to act fairly and reasonably in terms of which the UNDT is permitted to interfere where the sanction is lacking in proportionality. The proportionality principle limits the discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the desired result. The purpose of proportionality is to avoid an imbalance between the adverse and beneficial effects of an administrative decision and to encourage the administrator to consider both the need for the action and the possible use of less drastic or oppressive means to accomplish the desired end. The essential elements of proportionality are balance, necessity and suitability.

89. The Appeals Tribunal has granted extensive discretion to the Secretary-General to determine whether a staff member's conduct amounted to misconduct, and to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.[43] The Administration is best suited to select a sanction able to adequately fulfil its general purpose within the limits stated by the respective norms, i.e. a measure sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity.[44]

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[42] *Samandarov v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-859, para. 23 (footnote omitted).
[43] *Mohammed Yousef abd el-Qader Abu Osba v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1061, para. 56.
[44] *George M'mbetsa Nyawa*, *op. cit.*, para. 89.

90. We recall that while the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair. This obliges the UNDT to objectively assess the basis, purpose and effects of any relevant administrative decision.[45] In doing so, even if the UNDT does not agree with the administrative decision, this would not change the assessment of the reasonableness of the decision. Similarly, if the UNDT does not agree with the choice of the sanction imposed by the Administration, this would not make the implementation of the sanction arbitrary and/or disproportionate.[46]

91. In the present case, we find that the UNDT fully followed our settled jurisprudence in reviewing whether the imposed sanction was proportionate to the misconduct of the Appellant. Specifically, the UNDT examined whether the Administration duly considered any aggravating and mitigating factors, and whether the sanction applied was consistent with prior precedent. We cannot detect any error in the UNDT's approach and its conclusion that the disciplinary measure applied was proportionate to the offence.

92. Specifically, the Appellant argues that (1) the UNDT erred in considering as an aggravating factor the Appellant's refusal to hand over her private SIM card; (2) the UNDT failed to cite examples of similar cases because there are none; (3) the sanction was disproportionate and harsh, effectively removing the Appellant from her position permanently; (4) prior to its imposition, no proportionality analysis was undertaken pursuant to our Judgment in *Kennedy*[47] and no explanation was given as to why this penalty, as opposed to lesser sanctions or warnings, was appropriate; (5) none of the alleged aggravating factors have been verified or subjected to due process; and (6) there is no demonstrable benefit to the Organization, and all parties suffer a loss due to this vindictive and unnecessary action.

93. For the first contention, the Appellant further claims that "there is no obligation cited for turning over personal phones or computers for a fishing expedition". The Appellant relies on Order No. 172 (NBI/2020)[48] for her argument. The Tribunal points out from the outset that what is in question is the Appellant's refusal to provide her UNODC-issued mobile phone and

[45] *Samandarov*, *op. cit.*, para. 24.
[46] *Appellant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1216, para. 58.
[47] The Appellant references *Timothy Kennedy v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1184.
[48] *Antoine v. Secretary-General of the United Nations*, UNDT Order No. 172 (NBI/2020).

her personal phone which she also used for official calls and for which she received payment from UNODC, not her private SIM card as she claimed.

94. The UNDT thoroughly considered this issue and was correct in applying Section 6.2 of Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), which states:

> *Duty to cooperate*
>
> 6.2 Pursuant to staff regulation 1.2 (r) and staff rule 1.2 (c), staff members are required to fully cooperate with all duly authorized investigations and to provide any records, documents, information and communications technology equipment or other information under the control of the Organization or under the staff member's control, as requested. Failure to cooperate may be considered unsatisfactory conduct that may amount to misconduct.

95. According to this provision, a staff member's failure to cooperate with a duly authorized investigation may amount to misconduct, so it is undisputed that the Appellant's refusal to hand over the relevant equipment could be considered as an aggravating factor.

96. The Appellant's reliance on UNDT Order No. 172 (NBI/2020) is misplaced. That case mainly dealt with the allegation of seizure of the Applicant's personal smart phone for the purpose of an investigation, while the current case involves requesting the Appellant to hand over her UNDOC-issued phone and personal phone which was also used for official purposes. Therefore, the issue in the present case is not primarily whether one piece of the requested equipment could still be deemed her "personal phone" even though she received payment from UNODC for using it for official calls. The requested equipment included a UNODC-issued mobile phone which she refused to hand over as well. Moreover, even in the cited case, while acknowledging that taking possession of a private asset may only be through a staff member's consent, the UNDT stated in that Order that a refusal may constitute a failure to cooperate which may be considered unsatisfactory conduct. The UNDT explained in that Order that "the claim to have a mobile phone (including a private one) surrendered for the purpose of processing information under ST/AI/2017/1 is derived from the staff member's duty to cooperate with an investigation [49]". The Appellant is therefore misconstruing the cited case.

[49] *Op. cit.*, para. 47.

97. The Appellant's second contention about lack of relevant citations of past practice of the Organization in similar matters is obviously groundless. The UNDT actually cited three cases and made a detailed and convincing analysis of the circumstances of each case, among which one was less serious than the Appellant's case, another was more serious, and one was similar (Case No. 103). The Appellant merely expresses disagreement with the similarity of the cases cited by the UNDT, arguing that they involve more severe instances of misconduct. In holding that the disciplinary measure applied in the present case was consistent with prior precedent, the UNDT relied on Case No. 103 which it considered most similar as to the facts of the staff member's misconduct. The Appellant's disagreement with respect to the other two cases is therefore misplaced. With regard to Case No. 103, however, the Appellant has not demonstrated or substantiated that it is incomparable to her circumstances. The UNDT noted that, in Case No. 103, a staff member issued, without authorization, letters to various government offices, seeking assistance in issuing visas to persons accompanying an official United States mission. The UNDT was of the view that, much as the present case, it involved communications with the governments of member states without authorization, and the disciplinary measure imposed was almost the same. There is nothing in the Appellant's submission to support that it was not open to the UNDT to deem that case similar. We find no error in the UNDT's conclusion.

98. The third contention that the sanction amounted to a constructive dismissal also has no merit. We agree with the UNDT that the demotion was the result of the Appellant's misconduct and not an arbitrary decision of the Administration. The alleged intention of "effectively removing the Appellant from her position permanently" is merely her speculation which contradicts the facts.

99. With regard to the fourth contention, we recall that in *Kennedy*, the Appeals Tribunal made a comprehensive analysis of the method of reviewing the proportionality of a disciplinary sanction, in particular the factors relevant for consideration. We stated that the Administration should provide adequate reasons for the sanction selected as follows:[50]

> (…) The obligation of the Administration to provide adequate reasons for the exercise of discretion in imposing disciplinary sanctions is important in light of established jurisprudence that a tribunal cannot substitute its own decision for that the

[50] *Timothy Kennedy*, *op. cit.*, para. 67.

> Secretary-General. (…) Without the "why" in the reasons, the test of rational connection or relationship to the misconduct and the purpose of discipline cannot be met.

100. Furthermore, based on what has been expounded in *Rajan*,[51] the UNAT listed four aspects as relevant considerations for the proportionality analysis: (1) the staff member's intent or whether the action was accidental, careless, reckless or deliberate; (2) the nature of the misconduct or whether the misconduct was minor or technical, or substantive or severe; (3) the harm or damage to the Organization, employer, colleagues and other staff members, and clients and the public, which can range from none to significant; and (4) the disciplinary history or future of the staff member, namely whether the staff member has a history of disciplinary violations or other misconducts and sanctions.[52] Under each aspect, specific examples were enumerated.

101. In *Rajan*,[53] the Appeals Tribunal noted in relevant part:

> (…) The most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency.

102. From *Rajan* to *Kennedy*, our jurisprudence is evolving and endeavoring to provide the Dispute Tribunals with a more potent toolkit to determine whether the Administration has duly considered relevant factors when imposing a sanction.

103. In *Kennedy*, the disciplinary sanctions were deemed arbitrary by the UNAT because the Administration did not outline relevant factors for imposing the disciplinary measures in the sanction letter, such as the lack of intent, the lack of previous misconduct, the performance history of the staff member, and the circumstances surrounding the staff member's lapse in judgment. It was therefore difficult for the Tribunals to ascertain from the record or the sanction letter whether these relevant factors were actually considered. The Administration merely stated in the sanction letter that the "nature of [the staff member's] actions, the past practice of the Organization in matters of comparable misconduct, as well as whether any mitigating or aggravating factors apply to [the] case" were considered.[54] This blanket statement could not

[51] *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, para. 48.
[52] *Timothy Kennedy*, *op. cit.*, para. 69.
[53] *Rajan*, *op. cit.*, para.48.
[54] *Timothy Kennedy*, *op. cit.*, para. 65.

satisfy the UNAT that a rational connection or suitable relationship existed between the misconduct and the sanctions.

104. This case is different from *Kennedy*. Contrary to the argument of the Appellant, the Administration did take relevant factors into consideration when deciding the sanctions imposed, specifically the sanction letter listed two mitigating factors and four aggravating factors. Similarly, the UNDT not only reviewed these mitigating and aggravating factors carefully, but also went to great lengths to examine the Organization's past practice and analyzed comparable cases. In our view, the UNDT properly carried out a detailed proportionality analysis pursuant to *Kennedy*. the Administration has provided "adequate reasons" for the exercise of its discretion in imposing the sanction, as required. Concerning the consideration of particular aggravating and mitigating factors, there are, after all, no two identical cases. As emphasized in *Kennedy*, "what factors are relevant considerations will necessarily depend on the circumstances and nature of the misconduct."[55] The Appellant's argument in this regard is thus not supported.

105. The Appellant's fifth contention that the aggravating factors were not verified has no merit as well. The UNDT considered various aggravating factors, such as the nature of her offence (besides disclosing internal information, also criticizing UNODC's policy decisions and activities), her relatively senior position, her lack of any expression of remorse, repeated violation and refusal to cooperate with the investigation, which were all supported by the evidence on record.

106. As for the sixth contention, it is recalled that there is no legal requirement that the Organization has to demonstrate benefitting from imposing the sanction. Similarly, the allegation that "all lose from this vindictive and unnecessary action" is irrelevant and has no basis. We find no reasons to doubt that the sanction bears a rational connection to the purpose of corrective discipline.

107. In light of the foregoing, the UNDT did not err in fact or law in conducting the proportionality analysis.

[55] *Op. cit.*, para. 69.

IV. Whether the staff member's due process rights were respected during the investigation and the disciplinary process

108. Regarding a staff member's due process rights afforded during the investigation and the disciplinary process, the Appeals Tribunal has consistently held that only substantial procedural irregularities can render a disciplinary sanction unlawful.[56] This means that even if there are some procedural irregularities during the investigation and the disciplinary process, as long as they were not serious enough to vitiate the outcome of the process, the Tribunals will not lightly interfere with the process.[57] In this vein, the so-called "no difference principle" may find application.[58]

109. In determining whether a procedural irregularity is serious enough, we note that the key elements of the Appellant's right to due process must be met. Staff Rule 10.3(a) is the basis for judging what constitute the key elements of the due process right. It provides:

> The Secretary-General may initiate the disciplinary process where the findings of an investigation indicate that misconduct may have occurred. No disciplinary measure may be imposed on a staff member following the completion of an investigation unless he or she has been notified, in writing, of the formal allegations of misconduct against him or her and had been given the opportunity to respond to those formal allegations. The staff member shall also be informed of the right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance, or from outside counsel at his or her own expense.

110. In this connection, we recall that procedural fairness is a highly variable concept and is context specific. "The essential question is whether the staff member is adequately appraised of any allegations and had a reasonable opportunity to make representations before action was taken against him."[59]

111. The UNDT concluded that the key elements of the Appellant's right to due process were met in the present case. After reviewing the whole case record, we are satisfied with the UNDT's conclusion. Indeed, the Appellant was interviewed by the investigators, provided her comments and countervailing evidence to the draft investigation report, was fully informed of the charges

[56] *Mohammed Yousef abd el-Qader Abu Osba, op. cit.*, para. 66.
[57] See, e.g., *El Sadek v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East,* Judgment No. 2019-UNAT-900, para. 45.
[58] *Michaud v. Secretary-General of the United Nations,* Judgment No. 2017-UNAT-761, para. 60.
[59] *Ibid.*, para. 56.

against her by the charge letter and the attached formal investigation report, was given opportunity to respond to the formal allegations and was informed of the right to seek the assistance of counsel.

112. In her appeal, the Appellant mentions in the "Facts of the Case" section that the investigation was seriously flawed by a lack of impartiality and of verification of the accuracy of the recorded statements and by selective presentation of the evidence and the statements. She also raises issues with the outcome of her own allegations of harassment against her supervisor and his deputy. We point out that these were her assertions, not the facts of the case. The Appellant only made general allegations on the flaws of the investigation without identifying the specific grounds on which the UNDT made any errors. Her allegations regarding her due process rights violations were submitted to and duly considered by the UNDT. As for the issues concerning her own allegations against her supervisor, it is not the subject matter of the current case and not presently within our jurisdiction.

113. Concerning the Appellant's allegation of procedural irregularity of the temporary reassignment of her certain functions during the investigation process, the UNDT found that the Applicant failed to show how this irregularity negatively impacted the investigation and/or the disciplinary process and this alleged procedural irregularity is of no consequence, given the kind and amount of evidence proving the Appellant's misconduct. In our view, the temporary reassignment of the Appellant's functions is the subject matter of another case. The Reassignment Decision was an independent administrative decision which was previously appealed and deemed unlawful in another Judgment.[60] Moreover, the UNDT has decided the issue of the remedies resulting from the unlawfulness of that administrative decision in Judgment No. UNDT/2022/114[61]. We do not think that there is any irregularity in the investigation and disciplinary process in the present case. In this regard, we find no error in the impugned Judgment warranting our intervention.

V. Damages

114. On appeal, the Appellant asks for compensation for moral damage in the amount of two years' net base pay.

[60] Judgment No. 2022-UNAT-1202.
[61] *Banaj v. Secretary-General of the United Nations*, Case No. UNDT/GVA/2019/031/R1.

115. The UNAT jurisprudence on the issue of compensation has been consistent in many precedents. For example, in *AAA*, we noted:[62]

> (…) As for compensation for harm, there must be evidence to support the existence of harm, an illegality, and a nexus between the two. As per our findings above, there is no illegality here, and therefore, there can be no nexus between an illegality and harm to support an award for compensation for moral damages or harm.

116. In addition, in *Israbhakdi*, the UNAT stated:[63]

> (…) It is not enough to demonstrate an illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. If these other two elements of the notion of responsibility are not justified, only the illegality can be declared but compensation cannot be awarded.

117. In *Kebede*, the UNAT reiterated:[64]

> (…) It is universally accepted that compensation for harm shall be supported by three elements: the harm itself; an illegality; and a *nexus* between them. It is not enough to demonstrate an illegality to obtain compensation; the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. (…)

118. As we have concluded based on the analysis above, illegality is absent from the contested decision. Therefore, there cannot be compensation. For this reason, the Appellant's claim for damages must be rejected.

119. At any rate, we observe that the harm the Appellant claims to have incurred is actually linked to her allegations of harassment against her supervisor and his deputy, and the temporary reassignment of her certain functions, and not to the subject matter of this case. Additionally, the UNDT has ordered the Secretary-General to pay the Appellant two months' net base salary

[62] *AAA v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1280, para. 82 (footnote omitted).
[63] *Israbhakdi v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-277, para. 24.
[64] *Kebede v. Secretary-General of the United Nations,* Judgment No. 2018-UNAT-874, para. 20 (footnote omitted).

at the grade that she encumbered at the time of the Reassignment Decision, as compensation for moral damages, when it considered the Appellant's temporary reassignment case.[65]

120. In light of the foregoing, the Appellant's claim for damages is rejected.

Judgment

121. Ms. Banaj's appeal is dismissed, and Judgment No. UNDT/2022/060 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Gao, Presiding	Judge Raikos	Judge Halfeld

Judgment published and entered into the Register on this 17th day of July 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar

[65] Judgment No. UNDT/2022/114.