



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

REILLY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jérôme Blanchard, UNOG

Introduction

1. The Applicant, a Human Rights Officer in the Office of the High Commissioner for Human Rights (“OHCHR”), contests the:

- a. “Ongoing workplace harassment based on protected activity for reporting and objecting to wrongdoing by management”, including the decision to conclude an investigation of harassment only with managerial actions; and
- b. “Violation of staff member privacy rights and defamation of character”, including the related decision to state that her claims were found unsubstantiated in a press release.

Facts

The harassment complaint

2. The Applicant started to work with OHCHR at the P-3 level, in the Human Rights Council and Treaty Mechanism Division (“HRCTMD”), Human Rights Council Branch, in 2012.

3. From September to December 2013, she was on a temporary assignment with the Thematic Engagement, Special Procedures and Right to Development Division (“TESPRDD”).

4. From January to March 2014, she was on a temporary assignment with TESPRDD, Development and Economic and Social Issues Branch (“DESIB”), and from April to December 2014, on another temporary assignment with TESPRDD, DESIB.

5. From 6 January to March 2015, the Applicant was on a new temporary assignment with TESPRDD, DESIB, Human Rights and Economic and Social Issues Section.

6. From 15 April 2015 to 31 July 2015, namely during the 2015-2016 performance cycle, the Applicant worked under the supervision of the Chief, Millennium Development Goals Section (“MDGS”), DESIB, who was the Applicant’s First Reporting Officer (“FRO”), and of the Chief, DESIB, who was the Applicant’s Second Reporting Officer (“SRO”), on a three and half months’ temporary assignment at the P-4 level.

7. From August 2015 to 31 October 2015, the Applicant went on another P-4 level three-month assignment with the Methodology, Education and Training Section, TESP RDD, DESIB, under the supervision of a Human Rights Officer.

8. The Applicant was on official mission in Guinea from November to 1 December 2015.

9. On 29 May 2015, the Applicant wrote an email to the Chief, Human Resources Management Service, United Nations Office at Geneva (“UNOG”), for the attention of the Central Review Body, to highlight alleged irregularities with the recruitment under vacancy announcement number 15-HRI-OHCHR-40485-R-Geneva (R) (“Vacancy 40485”), which she was encumbering on a temporary basis and to which she had applied. She received no response. The Applicant also reported the matter to the then Acting Chief of Office, Executive Office of the High Commissioner for Human Rights, by email of 29 July 2015.

10. On 1 September 2015, the Applicant requested management evaluation with respect to the above-mentioned recruitment exercise. She also filed with the Tribunal an application for suspension of action in that respect. The vacancy announcement in question was withdrawn the next day.

11. The Applicant claims that, from that point, she was subjected to an increasingly hostile working environment in DESIB and, eventually, refused an extension of her temporary appointment in that section.

12. On 20 July 2016, the Applicant filed a complaint of harassment and abuse of authority under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) against her FRO and her SRO (see para. 6 above). It is worth noting that said FRO and SRO only supervised the Applicant for a period of three months and a half although their names are in the performance evaluation record for the whole 2015-2016 evaluation cycle. According to the Respondent, the designation of the FRO in question for the entire performance cycle, despite having only effectively supervised her for a limited time, was the result of extensive discussions with the Applicant, who objected to have a Human Rights Officer at the P-4 level as her first reporting officer.

13. The Applicant alleged in her complaint that following her request for management evaluation in connection with what she alleged to be an irregular recruitment in relation to the vacancy 40485, her FRO and SRO retaliated against her by:

- a. Requiring retroactive changes to her work plan and her FRO, failing to conduct a mid-point review and refusing her requests to clarify her terms of reference;
- b. Cancelling a temporary post against which the Applicant had been selected as soon as her name was associated with the post; and
- c. Creating and encouraging a hostile working environment, notably by permitting the Applicant's exclusion from meetings concerning topics included in her terms of reference and making *ad hominem* and gender-based personal attacks.

14. On 28 August 2016, the Applicant was informed that a fact-finding panel would be appointed to review her complaint. The Panel was appointed on 2 September 2016 by the High Commissioner for Human Rights ("High Commissioner"), and consisted of the Chief, Monitoring Evaluation, Risk Management and Statistical Verification Division, Division of Conference Management, UNOG ("Chief ME"), and the Chief, Governance and

Administration, Information and Communication Technology Services, UNOG (“Chief GA”).

15. The Panel contacted the Applicant on 6 September 2016. On the same day, the Applicant objected to the composition of the Panel to the Chief, Programme Support and Management Services (“PSMS”), OHCHR, on the ground that one of its members, namely the Chief ME reported to the Director, Division of Conference Management, UNOG, who was the spouse of the former Chief, Human Resources, OHCHR, and who had specifically been referred to in her complaint.

16. The Applicant was informed on the same date that the Panel would be maintained as the Director, Division of Conference Management, UNOG, would not be involved in the investigation nor have access to the complaint. The Applicant was also informed that the former Chief, Human Resources, OHCHR, who was not the subject of the investigation, had retired from the Organization on 31 August 2016 and that, therefore, it was determined that there could be no actual or perceived conflict of interest.

17. The Panel interviewed nine persons, including the subjects of the allegations and the Applicant, who was interviewed twice.

18. After the Panel interviewed the Applicant for the first time on 13 September 2016, she reiterated her concern that the spouse of the former Chief, Human Resources, OHCHR, was the second reporting officer of one of the Panel members. That member informed the Applicant on 19 September 2016 that the Panel would be maintained.

19. The Panel submitted its report to the High Commissioner on 6 December 2016 (“investigation report”).

20. The Applicant, her FRO and her SRO were informed on 5 January 2017, by memorandum dated 30 December 2016, of the High Commissioner’s decision to close the Applicant’s complaint with only managerial actions aimed at remaining the Applicant’s FRO and SRO of their duty to ensure the proper and timely

application of the performance management framework envisioned in ST/AI/2010/5.

The press release

21. In 2015 and 2016, the Applicant made requests for protection from retaliation to the Ethics Office under ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations). She alleged retaliation by the Chief, Human Rights Council Branch, OHCHR, her FRO, her SRO, and the former Chief, Human Resources, OHCHR following reports of misconduct she made between March 2013 and July 2016.

22. By memorandum dated 7 October 2016, the Ethics Office determined that the Applicant had engaged in some protected activities but that there was no *prima facie* case that the protected activities were a contributing factor in causing the alleged retaliatory acts. However, the Director, Ethics Office, agreed on 13 October 2016, to reopen the Applicant's request for protection.

23. On 19 January 2017, a journalist emailed the Applicant claiming to have Ethics Office documents regarding her submission to the Ethics Office about i) a disclosure, dating to 2013, that OHCHR had allegedly provided to the Chinese delegation names of human rights defenders planning to travel to attend the Human Rights Council, and ii) allegations that a senior manager had accepted favours with financial value from the Moroccan ambassador, as well as disclosure of alleged corrupt recruitment exercises, including the one referred to in para. 9 above.

24. The Applicant immediately informed the Ethics Office as well as the Communications Department of OHCHR and requested an investigation by the Office of Internal Oversight Services ("OIOS"). The Applicant expressly raised her concerns with the Ethics Office that her name may appear in the press and asked whether she could be authorised to speak to the press.

25. On 1 February 2017, the "Inner City Press and Blog" published the above-mentioned 7 October 2016 confidential memorandum from the Ethics Office referencing allegations raised by the Applicant to the Ethics Office and OIOS concerning the provision of names of Chinese Human Rights defenders by OHCHR

to the Chinese government. The article also mentioned that the Applicant had suffered from retaliation at OHCHR. A similar article was also published on the same day on the website of the Government Accountability Project (“GAP”).

26. On 2 February 2017, OHCHR published a press release concerning the practice of providing names of human rights defenders to the Chinese delegation.

27. On 20 February 2017, the Applicant formally requested correction of the press release, *inter alia*, in light of the alleged impact on her professional situation and chances of promotion.

Procedural background

28. On 4 March 2017, the Applicant requested management evaluation of the decision to close her harassment complaint and to issue the press release.

29. On 14 March 2017, the High Commissioner informed the Applicant that he would not retract or correct the press release.

30. The Under-Secretary-General for Management responded to the Applicant’s request for management evaluation by letter of 11 May 2017, upholding the decision to close the Applicant’s complaint with managerial action, and finding that her request with respect to the press release was not receivable *ratione materiae*.

31. On 17 July 2017, the Applicant, who was then represented by Thad M. Guyer, filed the application referred to in para. 1 above.

32. The Respondent submitted his reply on 15 September 2017, after having been granted an extension of time by the Tribunal. The reply contained three annexes submitted *ex parte*, namely the investigation report and the letters sent to the FRO and SRO by the High Commissioner following the investigation. These annexes were subsequently released to the Applicant on an under seal basis, together with the witness statements annexed to this report (cf. Order No. 43 (GVA/2019) of 20 May 2019).

33. On 13 April 2019, the Applicant provided particulars of the allegations she made in her complaint, together with a revised list of annexes as directed by Order No. 22 (GVA/2019) of 5 April 2019.

34. On 15 April 2019, the Respondent filed a list of annexes to the investigation report, asking the Tribunal to identify which ones the Respondent was obliged to provide to comply with Order No. 22 (GVA/2019), where the Tribunal had directed him to file the annexes to the investigation report, on an *ex parte* basis. The Respondent also objected and raised concerns to the full investigation report being shared with the Applicant, even in a redacted form.

35. By email of 16 April 2019, the Applicant informed the Geneva Registry of the Tribunal that her Counsel had withdrawn from the case, at her request, and that she would be self-represented from then on.

36. On 29 April 2019, the Applicant responded to the Respondent's submissions of 15 April 2019 and submitted additional evidence.

37. The Tribunal held a case management discussion ("CMD") on 16 May 2019 to prepare for the hearing on the merits.

38. On 24 May 2019, the Respondent submitted additional documents concerning the appointment of the Panel and the drafting of the press release and made submissions on the issues identified by the Tribunal at the CMD.

39. A hearing on the merits was held before Judge Downing on 11 and 12 June 2019, where evidence from the following witnesses was heard:

- a. The Chief ME as a member of the investigation Panel;
- b. The Chief GA, as member of the investigation Panel; and
- c. The Applicant.

40. Additionally, the evidence provided by the Applicant's civil partner in Case No. UNDT/GVA/2018/099 was included in the record of the present case, pursuant to Order No. 43 (GVA/2019).

41. The Tribunal was scheduled to hear the Applicant's treating physician in Case No. UNDT/GVA/2019/099 and to include his testimony in the present case. A summons had been issued in this respect on 28 May 2019 at his request, transmitted through Counsel for the Applicant. However, the Applicant's treating physician refused to appear on the ground that he did not receive a summons directly from the Tribunal by registered mail and with sufficient notice. Consequently, he was not heard.

42. On 13 June 2019, the Applicant submitted additional medical evidence and a witness statement, which were already available in Case No. UNDT/GVA/2018/099.

43. On 21 June 2019, the Respondent also submitted additional evidence related to the drafting of the press release as directed by the Tribunal during the hearing.

44. On 10 July 2019, in Decision 73/408C, the General Assembly appointed four new half-time judges. In accordance with General Assembly Resolution 73/276 of 7 January 2019 (Administration of justice at the United Nations), the mandate of the *ad litem* judges of the Dispute Tribunal, including that of Judge Downing, the Judge initially assigned to the case, came to an end effective 10 July 2019.

45. The case was reassigned to the undersigned Judge on 12 July 2019.

46. By Order No. 55 (GVA/2019) of 17 July 2019, the undersigned Judge informed the parties that she was inclined to undertake a review of the documents and written submissions filed by the parties and to listen to the audio recordings of the hearing, before deciding as to whether she was in a position to decide on the matter as it currently stands. She invited the parties to raise any objection they may have to her listening to the audio-recordings of the hearing by 2 August 2019.

47. On 29 July 2019, the Respondent indicated that he had no objection to the undersigned Judge listening the audio-recordings.

48. By motion of 30 July 2019, the Applicant *inter alia* objected to the reassignment of the case to the undersigned Judge. She nevertheless informed the Tribunal that if the case was eventually to remain with the undersigned Judge, she would have no objection to her listening to the audio recordings of the hearing.

49. On 5 August 2019, the Appeals Tribunal informed the Dispute Tribunal that the Applicant had appealed *inter alia* Order No. 55 (GVA/2019). Pursuant to art. 7.5 of the Appeals Tribunal's Statute, proceedings in the present case were suspended pending adjudication of the Applicant's appeal.

50. In December 2019, the Appeals Tribunal published its Judgment *Reilly* 2019-UNAT-975 dismissing the Applicant's appeal and affirming Order No. 55 (GVA/2019). Proceedings related to the present case thus resumed.

51. By Order No. 82 (GVA/2020) of 27 July 2020, the Tribunal ordered the parties *inter alia* to file closing submissions by 27 August 2020 on specific points in the present case.

52. On 29 July 2020, the Applicant appealed Judgment *Reilly* UNDT/2020/097, issued on 24 June 2020 in relation to Case No. UNDT/GVA/2018/099, requesting *inter alia* that her matters be remanded to the UNDT for consideration by a Judge other than the undersigned.

53. On 9 August 2020, the Applicant filed a "Motion to submit further evidence, for access to all evidence on record, for disclosure of evidence by the Respondent, and for extension of time limit for closing submissions".

54. By Order No. 88 (GVA/2020) of 19 August 2020, the Tribunal suspended proceedings in the present case pending the outcome of the Applicant's appeal against Judgment *Reilly* UNDT/2020/097.

55. In May 2021, the Appeals Tribunal published its Judgment *Reilly* 2021-UNAT-1079 dismissing the Applicant's appeal and affirming Judgment *Reilly* UNDT/2020/097.

56. By Order No. 109 (GVA/2021) of 14 June 2021, the Tribunal addressed *inter alia* the Applicant's motion of 9 August 2020. It found that the case was fully informed and decided to close the pleadings in the present case and to adjudicate the matter on the papers before it.

Parties' submissions

57. The Applicant's principal contentions are:

Complaint of harassment and abuse of authority

a. One of the Panel members that investigated her complaint under ST/SGB/2008/5, namely the Chief ME, had a conflict of interest as he was a staff member of the Division of Conference Management, which was headed by the spouse of the former Chief, Human Resources, OHCHR. The Chief ME would have an incentive to please his supervisor, the Director, Division of Conference Management, whose husband was involved in the facts under investigation. Furthermore, the former Chief, Human Resources, OHCHR, had contacted the Applicant's former supervisors from previous reporting cycles to encourage complaints about her teamwork, apparently to justify her FRO and SRO's efforts to give her a low grade in this area. The former Chief, Human Resources, OHCHR, was a key witness in the context of her complaint and yet he was not interviewed by the Panel, in contravention of ST/SGB/2008/5. Therefore, the Panel's conclusions cannot be relied upon;

b. The former Chief, Human Resources, OHCHR, appointed the Panel members although he was himself involved in the case, creating a situation of conflict of interest;

c. The letter of appointment of the Panel inaccurately reflects the Applicant's complaint and unduly focused on allegations of "verbal abuses", putting a threshold higher than the allegations made by the Applicant, which rather related to "ad hominem and heavily gender-based personal attacks". This was done at the expense of the substance of the Applicant's complaint, which focussed on recruitment processes, exclusion from meetings and performance management;

d. The Panel failed to take into consideration a significant number of allegations that the Applicant made in her complaint, including:

- i. The cancellation, by her SRO, of a temporary post against which she had been selected as soon as her name was associated with the post. Despite the fact that one Panel member found that it was an element to investigate, the key witnesses were not interviewed on that issue;
- ii. The reliance of her FRO on informal negative feedback from the Human Rights Council Branch in a recruitment process;
- iii. Her deprivation of functions, by her FRO, to reassign them to a colleague and allow this colleague to apply for the post the Applicant was encumbering;
- iv. Her FRO's failure to address her complaint of being excluded from meetings;
- v. The retroactive change of her reporting lines through the addition of a P-4 staff member as her first reporting officer;
- vi. The absence of a mid-term review for her 2015-2016 performance evaluation;
- vii. The request by her FRO to retroactively change the goals in her workplan;
- viii. The request by her FRO to reduce her employment period in *Inspira* to exclude periods of vacations and sick leave;
- ix. The failure by her SRO to ensure compliance with the rules on performance management;
- x. The pattern of illegitimate bias in favour of a colleague, by her FRO and SRO, resulting in a hostile working environment for the Applicant;
- xi. The bias against the Applicant from her FRO and SRO;

xii. The inappropriate request from the former Chief, Human Resources, OHCHR, to the Applicant's former supervisors in DESIB about the Applicant's performance on teamwork, prior to her current supervisors completing her performance appraisal; and

xiii. The Applicant's specific allegations of *ad hominem attacks*, on which the Applicant alleges that although they were not an integral element of her complaint, she was requested to provide specific examples, which she did, but the Panel failed to investigate them.

e. The Panel failed to interview two key external witnesses, namely a former OHCHR staff member under her FRO's supervision—who, according to the FRO, had overheard the Applicant saying that she had found him ill prepared for a meeting while in fact the Applicant was not present—and an unnamed staff member from another United Nations agency who her FRO alleges to have stated that the Applicant was a very tough negotiator, but that he would hire her. The Applicant claims that these statements were the basis for the FRO's negative appraisal of her performance;

f. The main subject of the Applicant's complaint was her performance evaluation process, yet, the Panel failed to ask her a single question in this respect;

g. The Panel failed to properly test the evidence, including by assessing inconsistencies, motivations and credibility, and to consider the documentary record;

h. The Panel exceeded its role in finding that the facts did not amount to harassment or abuse of authority. These findings had to be made by the High Commissioner; and

i. The managerial action taken, while closing the case, is not an adequate remedy in her case. Furthermore, no remedial action was taken to rectify her performance appraisal following the finding of irregularities.

Press release

j. The press release paints the Applicant as repeatedly making false allegations against various managers. It also falsely states that the Applicant has never faced reprisals, whilst OHCHR knew that the Applicant's application for protection against retaliation had been reopened by the Ethics Office;

k. This statement constitutes defamation, discloses confidential information about past and ongoing investigations initiated by the Applicant and constitutes an attempt to influence ongoing reviews by the Ethics Office;

l. It violates staff regulation 1.2(f) and (g), para. 36 of the Standards of Conduct for the International Civil Service. It also violates the Organization's duty of confidentiality with respect to the Applicant's complaint of harassment, request for protection and report of outside activity and conflict of interest to OIOS under secs. 3 and 5.2 of ST/SGB/2008/5 and sec. 10.1 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process);

58. The Respondent's principal contentions are:

Complaint of harassment and abuse of authority

a. There was no actual or perceived conflict of interest on the part of the Chief ME. The fact that his SRO was the Director, Division of Conference Management, spouse of the former Chief, Human Resources, OHCHR, was immaterial. Neither the former Chief, Human Resources, OHCHR, nor his spouse were the subjects of the complaint. The former Chief, Human Resources, OHCHR, was not interviewed by the Panel as he was not a subject of the complaint and he had retired by the time the investigation concluded. He worked in a different office from the Applicant and was in no way connected to her allegations;

b. Furthermore, the former Chief, Human Resources, OHCHR, was neither involved in the selection of the Panel members nor in the preparation of their terms of reference;

- c. All the Applicant's allegations were investigated;
- d. Only one of the Applicant's allegations, namely the one related to the process for her performance appraisal, was found to be partially corroborated. Her other allegations were found to be unsubstantiated;
- e. The Panel did not exceed its authority in characterising the facts as this determination is not binding; and
- f. Upon receipt of the investigation report, the High Commissioner determined that there were no grounds to refer the matter for the institution of disciplinary procedures. The decision to close the matter and to remind the Applicant's supervisors to adhere to the performance evaluation procedures was in line with the rules, as well as proper and proportionate;

Press release

- g. The application is not receivable insofar as it challenges the issuance of the press release. The issuance of a press release does not constitute an administrative decision reviewable under the Tribunal's Statute; and
- h. In addition, the contested press release did not violate the Applicant's right to privacy nor contained defamatory statements. The press release was published to respond to allegations against OHCHR in the press, which were considered damaging to the Organization and raised serious security concerns that required clarifications. The press release did not mention any names nor contained any false information.

Consideration

Scope of Judicial Review

59. The scope of judicial review in the UN internal justice system is grounded *inter alia* in art. 2.1 of the UNDT's Statute, which confers the Tribunal with jurisdiction to hear and pass judgment on applications challenging an administrative decision allegedly not in compliance with an applicant's terms of appointment or contract of employment.

60. In the case at hand, and as set forth in its Order No. 109 (GVA/2021), the Tribunal is seized of an application where the Applicant contests:

- a. The way in which her 20 July 2016 complaint against her FRO and SRO was investigated; and
- b. The 2 February 2017 press release that the Applicant claims “[violated her] privacy rights and [defamed her] character”.

Receivability

61. As receivability is a *condition sine qua non* for judicial review, the Tribunal will first address the Respondent’s challenge to the receivability *ratione materiae* of the application with respect to the press release. For the reasons below, the Respondent’s challenge fails, and the Tribunal finds the application receivable *ratione materiae* in this respect.

62. The Respondent’s arguments are twofold: he submits, first, that the press release does not constitute an administrative decision and, second, that it does not violate the Applicant’s “privacy rights” nor does it contain any “defamatory statements”.

63. It is well-settled case law that the Tribunal can only review administrative decisions, *i.e.*, unilateral decisions “taken by the Administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order” (see *Hamad* 2012-UNAT-269).

64. Accordingly, UNAT has held that “to be reviewable, the administrative decision must have direct legal consequences on an individual’s terms of appointment”, which means that there must be a close link between the impugned decision and the staff member’s employment rights.

65. To identify an administrative decision, the Tribunal looks at the overall context in which said decision was taken namely, the nature of the act, the legal framework under which the decision was made, and the consequences of the decision (see in this regard *Nguyen-Kropp & Postica*, 2015-UNAT-509).

66. According to the evidence on file, the decision to issue the press release was taken by OHCHR/UNHCR after the Inner City Press and GAP, on 1 February 2017, published a confidential memorandum from the UN Ethics Office. This memorandum contained, *inter alia*, not only information related to the alleged disclosure of Chinese activists' names to the Chinese Representative in Geneva but, also, the alleged retaliatory actions of the Organization against the Applicant, who denounced such disclosure characterizing it as a practice.

67. The evidence shows that the press release was issued within 24 hours of the above-mentioned publications, following several internal discussions that took place, within OHCHR/UNHCR's team on how to react to the public disclosure of internal matters and its impact in the image and interests of the Organization.

68. Regardless of the source of the information published by the Inner City Press and GAP, the Tribunal's view is that, as matter of principle, the decision to issue a press release in response to publications falls within the discretion of the Organization and is a managerial prerogative.

69. On the one hand, a press release embodies the communication strategy adopted by the Organization to deal *inter alia* with reports/publications on internal affairs that should have been preferably dealt with under the Organization's internal mechanisms.

70. On the other hand, discussions in the public arena about issues of political sensitivity are also part of the overall public scrutiny to which all organizations are subject to and need to be perceived in the context of transparency and accountability.

71. Nonetheless, organizations who are subject to a high level of public scrutiny, which is the case of the UN, also have a right to respond to public allegations and to defend their interests, their image and, ultimately, their work within the boundaries set by its internal law.

72. Judicial review of the exercise of administrative discretion in relation to the issuance of a press release implies the necessity to encompass the applicable legal

framework, and to evaluate whether this discretionary power was exercised in a blatantly abusive or irrational way.

73. In the current case, the Tribunal needs to assess if the content of the press release impacted the Applicant's rights and her terms of employment, which include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance (see *Wasserstrom* 2014-UNAT-457).

74. After having carefully examined the content of the press release, the Tribunal is of the view that the only part that may have "negatively" impacted the Applicant's reputation, and is therefore subject to judicial scrutiny, is its last paragraph, which reads as follows:

GAP and the Inner City Press also refer to a staff member at the UN Human Rights Office in relation to this case, who they assert is a whistle-blower and who they allege suffered reprisals at the hands of the Office. In fact, the staff member has never faced reprisals. The staff member has had her contracts renewed and remains employed by the organization on full pay. She has made allegations against various managers. These have been taken seriously, leading to two separate independent investigations that have been carried out to determine whether or not there is any substance to her allegations. In both instances, the claims made by the staff member were found to be unsubstantiated.

75. As a consequence, a distinction needs to be made between the last paragraph of the press release, which concerns directly the Applicant, and the rest, which more generally concerns the issue of the provision of names of Chinese human rights activists to the Chinese government.

76. In fact, the Tribunal is of the view that the latter aspect of the press release falls outside the scope of its judicial review due to the general nature of its content and to the fact that it embodies a managerial strategy to respond to what the Organization has perceived as being "damaging" for its own image.

77. Moreover, whether OHCHR misrepresented or not its practice in respect of the divulgation of names of human rights defenders is not deemed relevant to this case as it does not affect the Applicant's terms of appointment.

78. According to the evidence on file it is neither possible to establish a causal link nor to assess the impact of that part of the press release in the employment status of the Applicant, which is a condition *sine qua non* of judicial review of any administrative decision.

79. Besides, even though the Applicant claims to be a whistle-blower, this qualification was not confirmed by the Ethics Office at the time the press release was issued.

80. Consequently, the Tribunal will only assess the impact of the last paragraph of the press release in the Applicant's employment status, namely if it breached confidentiality of the investigations related to the Applicant's complaints and whether it was defamatory towards her.

Impact of the press release in the Applicant's terms of employment

Defamation and right to privacy

81. The Tribunal concurs with the Applicant in relation to the Organization's duty of care towards its employees, as a general principle applicable to international organizations and recognised by the jurisprudence.

82. Indeed, in the UN legal system, there is well established case law that imposes on the Organization's structure a duty of care, respect and preservation of staff members' reputation and character.

83. Concomitantly, staff regulations 1.2 a) and 1.2 f) can be interpreted as an emanation of this general legal principle and are applicable to the case at hand.

84. General principles of protection of privacy rights and a staff member's reputation are part of the internal normative setting and need to be taken into account. However, this protective framework does not exempt applicants from meeting their burden of proof in the context of judicial proceedings in respect to the Organization's alleged wrongdoing.

85. As a consequence, the Tribunal recalls that the Applicant bears the burden of alleging and demonstrating that:

- a. The Organization acted in a way as to convey or disseminate information or data that relates to the “core of her privacy rights” and/or:
- b. The Organization contributed in any way to provide to external stakeholders “privileged information” related to the Applicant’s employment status; and
- c. The dissemination of said information to external public or entities had a negative impact in the Applicant’s employment status.

86. Sec. 1 of ST/SGB/2007/6 (Information sensitivity, classification and handling) provides the main guidelines that bound confidentiality and protection of sensitive information in the United Nations. It reads as follows in its relevant part:

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.

1.2 Information deemed sensitive shall include the following:

(a) Documents created by the United Nations, received from or sent to third parties, under an expectation of confidentiality;

(b) Documents whose disclosure is likely to endanger the safety or security of any individual, violate his or her rights or invade his or her privacy;

...

d) Documents covered by legal privilege or related to internal investigations;

87. All communications emanating from the United Nations have to follow the above guidelines, which are meant not only to protect the operational needs of the Organization but also the reputation of its personnel.

88. The Tribunal also recalls the importance of taking into consideration OHCHR/PSMS/01/6 (OHCHR Standard Operating Procedures on Access to

classified records and Declassification), which contains the internal guidelines that bound OHCHR's work and includes protection of *inter alia* whistle-blowers within its sec. 2.2.3.

89. Furthermore, sec. 5.2 of ST/SGB/2008/5 states that “[a]ll reports and allegations of prohibited conduct should be handled with sensitivity in order to protect the privacy rights of the individuals concerned and ensure confidentiality to the maximum extent possible.”

90. Accordingly, it is undoubtful that the internal legal setting establishes a close relationship between confidentiality and privacy rights. To assess this co-relation the Tribunal must look at the accuracy of the content of the press release and the overall circumstances in which it was issued.

91. The Tribunal notes that in and of itself, the press release was issued as a response to the GAP and the Inner City Press articles. It neither mentions the Applicant's name nor her specific functions, professional level or category nor did it provide any details in relation to her employment status except for the mention that she “remains employed by the organization on full pay [status]”.

92. The Applicant argues that her case is similar to *Goodwin* 2014-UNAT-467 and she should be entitled to the same level of protection as per the UNAT's case law.

93. However, the Tribunal finds that the Applicant's case is distinguishable from the one in *Goodwin*. In the latter case, the staff member saw his name disclosed into public domain and associated to an audit related to fraud, corruption and mismanagement. The Appeals Tribunal concurred with the UNDT's reasoning, as follows:

32. Addressing the issue of unauthorized dissemination of information, the UNDT referred to the external and internal coverage of the various news reports and opined that:

... The Tribunal is of the considered view that once words like “fraud”, “mismanagement”, “abuse”, “waste” and “serious wrongdoing” were employed by prominent people such as Ambassador Bolton, Mr. Annan and

Mr. Malloch Brown after the names of the Applicant and the other seven staff members had been released by the Associated Press, a perception was created, within and outside of the United Nations, that these staff members had been placed on SLWFP due to wrongdoing. Unfortunately, since the PTF investigation report was not concluded until April 2006, the Applicant ended up being tried, wittingly or unwittingly, in the court of public opinion based on the initial findings of a preliminary audit investigation. (footnote omitted)

94. The above citation from *Goodwin* shows the factual and legal differences between the two cases. In the Applicant's case, she was never associated to an audit or investigation for misconduct, nor was she mentioned in a detrimental way. Indeed, her name was never disclosed by the Organization nor, as it has already been pointed out, has the Organization disclosed any of her particulars and or professional career. Consequently, *Goodwin* cannot be considered as a precedent for the Applicant's case.

95. Moreover, the Tribunal also notes a relevant aspect in this case: whereas in *Goodwin* the applicant appeared to have felt very uncomfortable with the public disclosure of his "internal issues" with the Organization, in the Applicant's case, she requested permission to "speak to the press" on 19 January 2019, namely even before the issuance of the press release.

96. While there is not enough evidence to determine what the Applicant would have said to the press if authorized to do so, the mere fact that the Applicant had the "willingness" to speak to the media, leads the Tribunal to reasonably infer that she had no issues with a "public exposure" of her case.

97. In addition, the Tribunal underlines that the evidence on file does not show that the Applicant suffered any reputational harm exclusively emerging from the press release.

98. In fact, if any harm was suffered, it was originated by the early articles published by GAP (annex 11 to the Respondent's reply) and the Inner City Press (annex 13 to the Respondent's reply). Indeed, they contain more details than the press release itself: they mention the Applicant's name, her functional title of

Human Rights Officer and even the contents of her complaints of harassment and retaliation and the determination of the Ethics Office.

99. However, the Tribunal will look further in detail at the part of the press release that the Applicant claims to have breached confidentiality and caused her reputational harm, namely the one reading:

She has made allegations against various managers. These have been taken seriously, leading to two separate independent investigations that have been carried out to determine whether or not there is any substance to her allegations. In both instances, the claims made by the staff member were found to be unsubstantiated.

100. The Applicant claims that this statement constitutes defamation, discloses confidential information about past and ongoing investigations that she initiated and constitutes an attempt to influence ongoing reviews by the Ethics Office at a time when OHCHR knew that the Ethics Office had reopened her case.

101. A distinction needs to be drawn between the investigation made on the Applicant's harassment and abuse of authority complaint and the Ethics Office conclusions in relation to her retaliation's complaint.

102. In relation to the Ethics Office conclusions, the statement made in the press release was accurate because at the time it was issued (February 2017), the Ethics Office had neither confirmed the veracity of the Applicant's allegations nor had it recognised her as a whistle-blower.

103. In fact, in para. 24 of its 7 October 2016 Memorandum the Ethics Office informed the Applicant that it was "unable to conclude that the information or evidence [the Applicant] submitted [supported] a reasonable belief that confirming the attendance to a session of the Human Rights Council of named individuals to the Permanent Mission of State X constituted misconduct."

104. In addition, there is no evidence that OHCHR had access to the details of said Memorandum but only to a redacted version of it, made available by the Inner City Press through a link included in its article of 1 February 2017.

105. Even taken into account that, subsequently to its 7 October 2016 Memorandum, the Ethics Office reopened the Applicant's case, there is an objective element that remains unchanged, i.e., that by the time the press release was issued the Applicant was not recognised as a whistle-blower by the Organization and, as a consequence, the statement contained in this respect in the press release was accurate.

106. Moreover, since the Applicant did not have "whistle-blower status" at the time the press release was issued, she cannot, legally speaking, claim to benefit from that protective status and corresponding norms.

107. The Tribunal is of the view that, the mere fact that a staff member claims to be a whistle-blower does not immediately place him or her under the protection of the applicable policy; there is a specific internal process that needs to be followed and only a finding of the Ethics Office in this regard can grant a staff member such a status.

The alleged breach of confidentiality

108. The Tribunal will now turn to its analysis of the accuracy of the information contained in the press release and to the alleged breach of confidentiality that it entailed about the investigation made on the Applicant's harassment complaint.

109. The evidence shows that the investigation Panel submitted its investigation report to the High Commissioner on 6 December 2016, finding that (emphasis in the original):

a. The accusation of [the Applicant] suffering verbal abuses and gender based remarks, was **not corroborated by the examples provided by [the Applicant], or by the witness statements;**

b. The accusation of [the Applicant] having been excluded from accountability meetings to **not be corroborated by the examples provided by [the Applicant] or by witness statements.** The Panel found that there were in fact less formal meetings held over time due to the dissuasive collaboration style of [the Applicant];

c. The accusation of adverse actions related to selection matters to **not be corroborated by subject or witness statements**; and

d. The accusation of adverse actions related to performance evaluation procedures to be **corroborated by subject and witness statements**.

110. The Applicant, her FRO and her SRO were informed on 5 January 2017, by memorandum dated 30 December 2016, that the High Commissioner had decided to close the Applicant's complaint of harassment. The Applicant was also informed:

a. Of the outcome of the investigation and provided with a summary of the findings of the report; and

b. Of the "managerial actions aimed at reminding the implicated managers to ensure the proper and timely application of the performance management framework envisioned in ST/AI/2010/5" (Performance Management and Development System).

111. The memorandum reminded the Applicant's FRO and SRO of their duty to ensure the proper and timely application of the performance management framework envisioned in ST/AI/2010/5.

112. The above sequence of events clearly shows that, by the time the press release was issued (2 February 2017) the investigation findings were no longer confidential as the investigation report had been finalized on 16 December 2016 and the findings had been disclosed to the Applicant, her FRO and SRO on 5 January 2017.

113. The Tribunal agrees with the Respondent in relation to the accuracy of the press release but only insofar as the Applicant's allegations under ST/SGB/2008/5, involving harassment and abuse of authority, were found to be unsubstantiated.

114. However, the Tribunal finds that the matter related to the performance management and development system were found to be substantiated and, more importantly, the Applicant's supervisors were reminded to follow the proper procedures, namely "proper and timely application of the performance management

framework envisioned in ST/AI/2010/5.” Only in this regard there is, indeed, a lack of accuracy in the content of the press release.

115. The Applicant recalls that ST/AI/292 (Filing of adverse material in personnel records) imposes a prohibition to file adverse material into a staff member’s personal files; she submits that, consequently, this prohibition also applies to the issuance of a press release from which negative inferences on a staff member’s reputation can be made.

116. ST/AI/292 indeed regulates the inclusion of any adverse material in a staff member’s personal file. There is, however, no evidence on record demonstrating that OHCHR included the press release or any other adverse material in the Applicant’s personal file. Consequently, the Tribunal finds no support for the application of said administrative instruction to the Applicant’s case.

The impact of the press release on the Applicant’s rights

117. The Tribunal is of the view that once the investigation report was finalized and its findings were disclosed both to the Applicant and her supervisors, supporting the conclusion that there was no ground to initiate disciplinary proceedings against the subjects of the investigation, the duty of confidentiality ceases to exist.

118. In fact, confidentiality, in this context, aims to protect the subjects involved and to ensure the integrity of the investigation procedure. Once this procedure comes to an end, confidentiality does not persist.

119. The Tribunal recalls its view (see para. 98 above) that if any harm was done to the Applicant’s reputation (both inside and outside the Organization) it was caused by the articles of GAP and the Inner City Press.

120. Moreover, it is also clear that, at least from 2018, the Applicant has been very active in social media and appears not to be disheartened by the fact that her name, functions and complaints became publicly known.

121. The Tribunal is of the view that, bearing in mind the overall circumstances of the case, the Applicant also shares some degree of responsibility in the publicity that surrounded her complaints and her name.

122. Although there is an inconsistency in the press release, it does not appear to be of sufficient gravity as it needs to be understood as a response from the Organization to minimize the damage made to its image and operations, caused by the disclosure of its internal affairs which were being dealt with through its own internal procedures.

123. The Tribunal will now turn into the analysis of the Applicant's arguments on the alleged failures of the investigation report.

The investigation report

124. The Applicant contests the way in which her complaints for harassment and abuse of authority, made under ST/SGB/2008/5, were handled by the Panel and requests the remand of the case for a *de novo* investigation of those complaints.

125. While exercising judicial review over internal investigations, the Tribunal is bound to address whether the staff member was granted due process rights, whether the investigators have acted in an independent and impartial manner by taking into account all the circumstances of the case, whether all relevant factors were taken into consideration or if any irrelevant matters were addressed.

126. In *Nwuke* 2010-UNAT-099 the Appeals Tribunal confirmed that the UNDT “can also determine the legality of the conduct of the investigation.” Recently, in *Belkhabbaz* 2018-UNAT-873 (see paras. 62, 65 and 66), the Appeals Tribunal defined the scope of judicial review in these proceedings in the following terms:

62. An appeal and a review are both ways of reconsidering a decision where the affected party is dissatisfied with the result. [...] A review ... is not concerned primarily with the merits of the decision but whether it was arrived at in an acceptable fashion. The enquiry here is whether the decision was lawful, reasonable and procedurally fair. All review grounds fall into one of the three categories: i) legality; ii) reasonableness; or iii) procedural fairness or due process.

...

65. The grounds of review falling under the rubric of legality include: i) lack of or exceeding authority; ii) improper delegation of authority; iii) unlawful dictation or referral; iv) discretion distorting or jurisdictional errors of law or fact; v) ulterior motive; vi) *mala fides*; vii) failure to take account of relevant considerations; viii) reliance on irrelevant considerations; xi) unlawful fettering of discretion; and x) arbitrary and capricious decision-making.

66. Review on the grounds of reasonableness examines the substantive rationality of a decision and occasionally may involve consideration of the merits of the decision and can thus look like an appeal. However, a review on grounds of reasonableness, unlike an appeal, does not ask whether the decision is right or wrong. It asks whether the decision is one which a reasonable person might have reached.”

127. The Tribunal will restrict the scope of its judicial review of the investigation to the issues defined in para. 23 of its Order No. 82 (2020/GVA) on the basis of the Applicant’s submission, namely:

- i. The alleged conflict of interest of one of the Panel members;
- ii. The alleged lack of her consideration for and manipulation of the recruitment process for Vacancy 40485;
- iii. Identification of the documents allegedly presented by witnesses that were not attached to the investigation report and their relevance for the investigation; and
- iv. The alleged failure to ask relevant questions to witnesses.

Alleged conflict of interest of a Panel member

128. The Applicant claims that one of the Panel members, namely the Chief ME, had a conflict of interest as the Chief of the Division where he worked, namely the Director, Division of Conference Management, UNOG, was the spouse of the former Chief, Human Resources, OHCHR.

129. The Applicant claims that the former Chief, Human Resources, OHCHR, was involved in this case and, to some extent, subject of the investigation. She also

claims that he had to be interviewed as a witness, given his involvement in the alleged reprehensible acts and his interactions with the Applicant who had raised some of the issues she faced with him.

130. The former Chief, Human Resources, OHCHR, is mentioned on a number of occasions in the Applicant's complaint and supporting documents in respect of his involvement in a recruitment process where he would have asked references as to whether the Applicant was a good team member.

131. The Tribunal also points out to the fact that, according to a testimony before the Panel (cf. paragraph 64 of the investigation report) there was a meeting between the former Chief, Human Resources, OHCHR, the Chief, Human Rights Council Branch, OHCHR (on the phone) and the Chief, PSMS, OHCHR in which the matter discussed was "how problematic the Applicant was."

132. The Tribunal notes that indeed the Panel did not call the former Chief, Human Resources, OHCHR, as a witness despite him being repeatedly mentioned by the Applicant as being involved in her case.

133. Given the nature of the Applicant's complaint and the functions at the time of the former Chief, Human Resources, OHCHR, the Tribunal has no doubt that the Panel should have interviewed him to clarify all the points raised by the Applicant.

134. Moreover, while the Applicant specifically requested the Panel to interview the former Chief, Human Resources, OHCHR (see paragraph 84 of the Applicant's interview), the investigation report states in para. 8 that the former Chief, Human Resources, OHCHR "is not a subject of the complaint nor has he been named as a witness therein".

135. Additionally, the Chief ME explained during his testimony at the hearing that the former Chief, Human Resources, OHCHR, was not interviewed as his testimony was not deemed necessary. He stated that other witnesses could confirm the Applicant's allegations about the former Chief, Human Resources, OHCHR, seeking feedback about the Applicant's work for a recruitment exercise and that,

thus, the Applicant's allegations were corroborated and there was no need to interview the former Chief, Human Resources, OHCHR.

136. The Tribunal recalls that, as per the internal jurisprudence, the investigators have some margin of discretion in relation to the choice of the relevant witnesses. However, this does not mean they can simply find "irrelevant" the testimony of a witness that a complainant deems essential because of the witness' involvement in the matter and supervisory oversight at the time of the events.

137. In order to establish if the evidence was necessary or not, the Panel would have had to clarify in its report that interviewing the former Chief, Human Resources, OHCHR would neither have led to different findings of facts nor changed the outcome of the investigation. However, this assessment was not done.

138. The former Chief, Human Resources, OHCHR, had hierarchical responsibilities over the team where the Applicant was working when she made the complaint against her FRO and SRO. Therefore, his testimony would have been extremely relevant to clarify certain aspects of the Applicant's complaint, and determinant to assess whether, at least, parts of the Applicant's complaints were true, misleading or false. By not interviewing the former Chief, Human Resources, OHCHR, the Panel failed to take relevant elements into consideration and, consequently, fell short of performing its role independently and impartially.

139. In this regard, the Tribunal recalls the importance of section 5.16 of ST/SGB/2008/5 in which it is stated that the "fact-finding panel shall interview the aggrieved individual, the alleged offender and any other individuals who may have relevant information about the conduct alleged".

140. In view of the above, the Tribunal finds that there was a breach of the Applicants due process rights during the investigation of her complaint.

141. The Tribunal will now turn to the analysis of the objection raised by the Applicant in relation to the Panel composition.

142. The Tribunal recalls that the Applicant raised this matter not only before the Panel members but also with the Administration. In this regard, the Tribunal recalls

that, in an email sent to the Applicant on 6 September 2016, the Chief, PSMS, OHCHR, addressed the alleged conflict of interest by stating that the envisaged panel member worked “in a Section of the Central Planning and Coordination Service of [the Division of Conference Management, UNOG]” and did not report nor work under the supervision of the spouse of the former Chief, Human Resources, OHCHR (whom the Applicant requested be interviewed).

143. In relation to the alleged conflict of interest, the Tribunal recalls that it is a general principle of law that a person called upon to take a decision affecting the rights or duties of other persons subject to his/her jurisdiction must withdraw in cases in which his/her impartiality may be open to question on reasonable grounds (*Messinger* UNDT-2010-116).

144. However, in this case, there is not enough evidence to allow the Tribunal to conclude that the Chief ME was in any way conflicted. The mere allegation of a conflict of interest does not immediately lead to said conclusion as it needs to be supported by facts and evidence.

145. The evidence shows that the High Commissioner formally appointed the Panel members by memorandum dated 2 September 2016. However, the Applicant claims that the former Chief, Human Resources, OHCHR, was involved in the selection of the Panel members.

146. The evidence contradicts the Applicant’s assertion as emails produced by the Respondent demonstrate that the Panel members were chosen by the Human Resources Legal Unit, UNOG, and that the former Chief, Human Resources, OHCHR, was in no way involved in the draft of the Terms of Reference (TOR) of the Panel.

147. In addition, available evidence also shows that the former Chief, Human Resources, OHCHR, retired before the investigation started and, finally, it has been demonstrated that the Chief ME was not within the reporting lines of the spouse of the former Chief, Human Resources, OHCHR.

148. Consequently, the Tribunal finds the allegation of conflict of interest against one of the Panel members is not supported by the available evidence.

The alleged lack of the Applicant's consideration for and manipulation of the recruitment process for Vacancy 40485

149. In her complaint dated 20 July 2016 against her FRO and SRO, the Applicant points that they failed to follow the proper recruitment procedure in relation to Vacancy 40485.

150. The Applicant alleges that the Panel failed to address this issue in its investigation report.

151. In fact, the Applicant argues that at the time VA 40485 was published, another staff member was already performing some of the functions of the advertised post to ensure her "eligibility for those functions".

152. After a careful analysis of the investigation report, the Tribunal points out to the fact that the Panel did, in fact, considered this matter under the topic of "adverse actions related to performance matters", and interviewed not only the Applicant but also the two subjects of the complaint who were involved in that recruitment process.

153. The Tribunal notes that paragraph 38 of the investigation report provides a summary of the Applicant's SRO's testimony in which he explains that, following the Applicant's complaint, the recruitment process was cancelled. He also stated that the vacancy announcement was cancelled because "the post was moved to another duty station".

154. He also mentioned that, later on, the same position was advertised and the Applicant did not apply for it.

155. The Tribunal recalls that it is incumbent on applicants to allege and provide evidence of the flaws he or she have identified in a recruitment process given the presumption of regularity of official acts (see e.g., *Krioutchkov* 2021-UNAT-1103 at para. 29 and *Rolland* 2011-UNAT-122).

156. In the current case, the Applicant argues that another staff member was already performing the functions of the vacant post so that she could be eligible for it in detriment of other candidates.

157. However, in his interview before the Panel, the Applicant's SRO clarified that "there are no hard lines between what [are] the Rights Up Front tasks and the rest of the Portfolio".

158. During the Panel's investigation report another staff member and colleague of the Applicant even mentioned that "she was being bullied by the Applicant" because she (the Applicant) believed that she had applied for the VA 40485 and, as a consequence, was "trying to undermine her role and qualifications."

159. Moreover, the Tribunal recalls that the Panel found the Applicant's allegation not corroborated by the evidence (see para. 109 above).

160. Consequently, the Tribunal finds that the Applicant's allegations in relation to the alleged failures to investigate the "manipulation of the recruitment process for the 40485 post" are not supported by the evidence on file.

Lack of consideration of relevant documents

161. The Applicant takes issue with the fact that the Panel did not take relevant documents into consideration and failed to present them to witnesses.

162. It is incumbent on the Applicant to clearly allege and identify what those documents were and what their relevance to the case was. The Applicant, however, did not do so before the Tribunal.

163. The Tribunal recalls that it cannot decide on a case based solely on general arguments and without a clear identification of the documents allowing for a critical assessment of their relevance. Consequently, the burden of proof that impinges on the Applicant is not satisfied and the allegation cannot be entertained.

Failure to hear additional witnesses and ask them relevant questions

164. The Applicant takes issue with the fact that the Panel members failed to make relevant questions to witnesses who were not called to testify and also claims that

one witness could have testified about the “discontinuation of funding” for the post that the Applicant encumbered. Finally, she also alleges that the Chief, Human Rights Economic and Social Issues Section, OHCHR, had to be interviewed on that matter too.

165. The Tribunal recalls the scope of judicial review in the present case (see para. 60 above). Therefore, it will not address matters related to the funding of the Applicant’s post nor any other matters that fall outside the defined scope of review. Consequently, the Tribunal will not take the Applicant’s arguments in this regard into consideration for the adjudication of the case.

Remedies

166. The Tribunal will now look into the remedies requested by the Applicant. In respect of her complaint of harassment and abuse of authority, she asks for:

- a. The removal of false and prejudicial information from her 2015-2016 performance appraisal;
- b. The reversal of her “blacklisting” and to be given fair consideration for posts;
- c. Halting retaliation against her, including by renewing her appointment for a five-year period;
- d. A new investigation into her complaint of harassment; and
- e. Compensation for moral damages, including the impact on her health and career development, in the amount of USD15,000.

167. In respect of the press release, the Applicant requests:

- a. The deletion and formal retraction of the press release together with a statement that the information concerning her was false;
- b. Compensation for reputational harm in the amount of USD60,000; and
- c. Compensation for moral damages equivalent to six months’ salary.

168. It is established jurisprudence that under art. 10.5 (b) of its Statute, the Tribunal has authority to order compensation in favour of a staff member for violation of his/her legal rights. Compensation may be awarded for actual pecuniary or economic loss, non-pecuniary damage, procedural violations, stress and moral injury.

169. However, bearing in mind the scope of judicial review in the present case, set forth on the basis of the Applicant's submission, the Tribunal considers that her requests under para. 166 a, b. and c. above are moot and, therefore, will not be addressed.

Reputational harm

170. The Tribunal finds that the Applicant has not provided "clear and convincing evidence" that she has suffered any reputational harm as a consequence of the issuance of the press release or of the investigation of her complaint for harassment and abuse of authority under ST/SGB/2008/5. As a consequence, no remedy will be granted to her on these grounds.

171. In relation to the way in which her complaint was investigated, the Tribunal does not see the need to remand the case for a "de novo investigation" due to the time elapsed between the date the events took place and the date at which the investigation was initiated (more or less 5 years).

172. The Tribunal rather finds it sufficient to order, pursuant to art. 10.5(a) of its Statute, that the same Panel interviews the former Chief, Human Resources, OHCHR, and adds to the initial report a critical assessment of his testimony and elaborate, if necessary and adequate, new findings of fact.

Moral damages

173. The Tribunal is satisfied that the Applicant has provided corroborating evidence to her request for compensation for moral damages. Indeed, the Tribunal had the opportunity to listen to the testimony of her partner and to assess the medical certificates she has filed.

174. Moreover, there is also evidence available to the Tribunal, in this case and in Case No. UNDT/GVA/2018/099 (Reilly), showing she has been on certified sick leave for a significant period.

175. These elements demonstrate that the Applicant has suffered, at least between 2015 and 2017, from stress and anxiety due to the situation she faced in her work environment as a consequence of the way in which her complaint for harassment was handled and the inaccuracies in the press release.

176. Consequently, the Tribunals finds adequate to grant her USD3,000.

Conclusion

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

- a. The Application is partially granted, and the case is remanded back to the Panel for the sole purpose of interviewing the former Chief, Human Resources, OHCHR. The same fact-finding panel shall add to its report, if necessary, the new findings of the case following the interview (see para. 172 above);
- b. The Tribunal grants the Applicant compensation for moral damages in the amount of USD3,000 which shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States of America prime rate 60 days from the date this Judgment becomes executable.
- c. All the other claims and remedies are rejected.

Judge Teresa Bravo

(Signed)

Dated this 30th day of July 2021

Case No. UNDT/GVA/2017/052

Judgment No. UNDT/2021/093

Entered in the Register on this 30th day of July 2021

(Signed)

René M. Vargas M., Registrar, Geneva