

# 2023-UNAT-1375, Mihai-Tudor Stefan

## UNAT Held or UNDT Pronouncements

The UNAT first concluded that the UNDT erred by failing to specify whether the alleged misconduct of sexual exploitation had been established to the required evidentiary standard of clear and convincing evidence. Second, the UNAT held that the UNDT had erred in concluding that the victim was a vulnerable person, that Mr. Stefan was aware of her vulnerability, and that he sexually exploited her vulnerability. The UNAT held that the UNDT erred when it made this finding without any independent or medical evidence, and that the UNDT had relied on its own Internet research regarding various illnesses and the effect of certain drugs, without providing notice to the parties to respond to this research.

The UNAT held that there was no clear and convincing evidence that the victim suffered from a condition, power imbalance, or chronic intoxication or drug use that made her vulnerable. The UNAT observed that the relationship between Mr. Stefan and the victim was volatile and unhealthy, and that the victim was at times the aggressor and unstable. The UNAT held that there was insufficient evidence to conclude that Mr. Stefan had any authority over the victim or was in a position to exploit their relationship.

On the second count of misconduct, the UNAT found that the UNDT correctly concluded that Mr. Stefan had engaged in misrepresentation to the Organization when he requested emergency family leave, when the evidence showed that he had pre-planned this additional leave time and there was no family emergency.

In sum, the UNAT reversed the UNDT Judgment and rescinded the contested decision, which included both counts of misconduct. Because the UNAT found sufficient evidence regarding the misrepresentation concerning emergency family leave, the UNAT held that the Administration was free to take another administrative decision on that count. Further, the UNAT held that given its findings that both individuals were complicit in a volatile relationship, the UNAT set *in-lieu* compensation of one year's salary for Mr. Stefan, and also ordered the Administration to delete Mr. Stefan's name from the ClearCheck database.

## Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2022/083, the Dispute Tribunal dismissed Mr. Stefan's application contesting the Administration's decision to separate him from service as a disciplinary measure for sexual exploitation and misrepresentation with regard to family emergency leave.

Mr. Stefan appealed.

## Legal Principle(s)

UNAT jurisprudence related to demonstrating sexual exploitation and abuse applies to conduct between United Nations staff members and is not limited to situations involving United Nations staff members and non-United Nations staff members.

Where the UNDT obtains its own evidence with no notice to the parties and provides no opportunity to the parties to respond to it, this is a procedural fairness violation.

For the Administration to establish that a staff member engaged in sexual exploitation and abuse, it must show on clear and convincing evidence that the staff member (i) abused a position of vulnerability for sexual purposes;

(ii) abused a position of differential power for sexual purposes; (iii) abused trust for sexual purposes; (iv) exchanged money, employment, goods or services for sex; or (v) engaged in some form of humiliating, degrading or exploitative behaviour.

Generally, a vulnerable person can be someone who is unable to protect themselves from harm or exploitation, and/or may be unable to give consent or sufficiently understand decisions or exercise their legal rights due to: (a) a developmental, physical, medical or psychological condition; (b) an unequal relationship with a person in a position of trust, authority or support; (c) chronic intoxication or drug use that results in incapacity or patterns of behavior that may pose a danger to themselves, or (d) circumstances such as gender, orientation, ethnicity, economic or social status that put them in a state of dependency or risk.

Outcome

Appeal granted in part

Outcome Extra Text

The contested decision is rescinded, *in-lieu* compensation of one year's salary is granted, and the Administration is ordered to delete the staff member's name from the ClearCheck database.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mihai-Tudor Stefan

Entity

UNMISS

Case Number(s)

2022-1743

Tribunal

UNAT

Registry

New York

Date of Judgement

4 Aug 2023

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Burden of proof

Disciplinary

Disciplinary matters / misconduct

Dismissal/separation

Evidence

Medical evidence

Sexual exploitation and abuse

Fraud, misrepresentation and false certification

Applicable Law

## Secretary-General's bulletins

- ST/SGB/2003/13

## Staff Rules

- Rule 1.2(e)
- Rule 6.2

## Related Judgments and Orders

2011-UNAT-164

2022-UNAT-1259

2021-UNAT-1121