

UNDT/2024/100, ATR

UNAT Held or UNDT Pronouncements

The Rules of Procedure of the Appeals Tribunal (which were also approved by the General Assembly), expressly provide that “published judgements will normally include the names of the parties.” Even if names were within the ambit of “personal data”, it appears clear that this Tribunal must balance the need for accountability with the need to protect personal data according to the circumstances of each case. In so doing, it is the general practice of this judge to avoid using names, other than the parties, to protect the anonymity of innocent persons somehow involved in the case. As a victim of sexual harassment, the Applicant would normally be anonymized.

In this case, the Tribunal finds that the circumstances warrant publication of [Manager/Harasser]’s name to further the purposes of transparent justice and accountability of public servants, particularly a UN manager at the D1 level. The Tribunal notes that he was found to have committed sexual harassment after being afforded due process via the disciplinary process.

The mootness doctrine includes a “continuing controversy” corollary whereby “if essentially the same controversy is likely to be presented again, judicial economy ... may be better served by deciding the case presently before the court, provided that the parties remain sufficiently adverse to preserve the functional competence of the court.” The continuing controversy corollary to the mootness doctrine applies in this case.

Regarding implementation, a clear reading of this Section 8.3 of ST/SGB/2019/8 is that ongoing investigations will continue to be handled under the ST/SGB/2008/5 Bulletin, but everything else involving the complaint will be governed by the new SGB.

The right of a victim of sexual harassment to be informed of both the outcome of the investigation and the action taken is an exception to the general requirement that such information is confidential.

Decision Contested or Judgment/Order Appealed

The Applicant claims that she is entitled to:

- (i) confirmation of the specific measure imposed on a staff member substantiated for sexual harassment in which she was the Aggrieved Party;
- (ii) confirmation that he was included in the ClearCheck database; and
- (iii) moral damages for the impact on her health incurred due to the established sexual harassment suffered."

Legal Principle(s)

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

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

The question before the Tribunal, therefore, is whether informing the victim that the Organization has "decided to impose an appropriate disciplinary measure" complies with the requirement to disclose "the outcome of the investigation and of the action taken." (pursuant to ST/SGB/2019/8). The Tribunal determines that it does not.

By expressly granting victims the right to contest improper handling of sexual harassment complaints, the SGBs clearly acknowledge that victims have a vested right in their reports of sexual harassment being handled according to the procedures prescribed in ST/SGB/2008/5 and ST/SGB/2019/8.

Registration in ClearCheck is obviously a policy of general and not individual application. It is designed to protect the Organization from hiring sexual harassers and thus exposing its employees to such predators. Not knowing whether Mr. Sophocleous has been registered may have some unsatisfactory practical and

personal consequences to the Applicant, but it produces no direct legal consequences to her. As such, the implied decision to deny her that information is not an appealable administrative decision.

Neither ST/SGB/2008/5 nor ST/SGB/2019/8 make any mention of compensation for harm caused by harassment. No right to compensation for sexual harassment currently exists in the applicable legal framework.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal decided to:

- a) Grant the application on the issue of the Applicant's right to be informed as to the discipline imposed by the Organization on Mr. Sophocleous for sexually harassing her; and
- b) Deny the remaining claims of the Application.

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

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

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

Full judgment

[Full judgment](#)

Applicants/Appellants

ATR

Entity

UNHCR

Case Number(s)

UNDT/NBI/2023/077

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

27 Nov 2024

Duty Judge

Judge Wallace

Language of Judgment

English

Appeal Status

Appealed

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Applicable Law

Administrative Instructions

- ST/AI/2017/1
- ST/AI/379

GA Resolutions

- A/RES/61/261
- A/RES/63/253

Secretary-General's bulletins

- ST/SGB/2008/5

UN Administrative Tribunal Statute

UN Charter

- Article 8

UNDT Statute

- Article 11.6

Related Judgments and Orders

UNDT/2024/080

UNDT/2013/032

UNDT/2012/200

UNDT/2011/211

2017-UNAT-742

2024-UNAT-1464

2014-UNAT-460

2013-UNAT-313

2013-UNAT-304