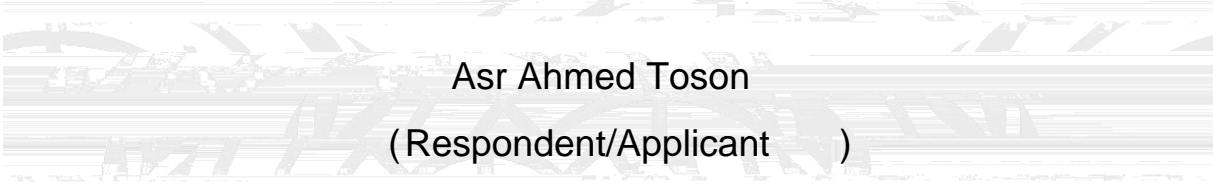

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1319



Asr Ahmed Toson
(Respondent/Applicant)

v.

Secretary -General of the United Nations
(Appellant/ Respondent)

Counsel for Mr. Toson: Non-represented

Counsel for Secretary-General: Amanda Stoltz

JUDGE MARTHA HALFELD , PRESIDING .

1. The Secretary-General appeals against Judgment No. UNDT/2022/021 by which the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) granted Mr. Asr Ahmed Toson's application in part , finding that Mr. Toson's claim challenging the refusal to provide him with the investigation report (closure report) regarding his complaint against the Regional Director (RD), Arab States Regional Office (ASRO) was receivable and well founded and that Mr. Toson had the right to receive the report from the Administration.
2. For the reasons set out below the appeal is granted, and the UNDT Judgment is reversed.

Facts and Procedure

- 3.

Having concluded its investigation, the matter is now considered closed at the level of OAI. Please note that the closing of the case does not preclude OAI from reconsidering this case at any time in the future, including by re-opening the case and initiating further investigation if further details and/or information are subsequently disclosed.

I would also like to thank you for the cooperation you afforded OAI during the investigation.

6. On 25 June 2021, Mr. Toson asked OAI for a copy of the investigation report and its exhibits. He cited the OAI letter to him which stated that “[t]he closing of the case does not preclude OAI from reconsidering this case at any time in the future, including by re-opening the case and initiating further investigation if further details and/or information are subsequently disclosed”. Mr. Toson stated that in order to be able to assess, and possibly efficiently report, what could be considered as “further details and/or information subsequently disclosed”, he needed to know the scope and evidence considered in the investigation.
7. On the same day, OAI replied refusing the request and stated “Pursuant to our internal framework, closure reports are internal, confidential documents. As the matter has now been closed by OAI, any further enquiries should be directed to the Legal Unit.”
8. On 3 September 2021, Mr. Toson filed an application with the UNDT challenging i) the decision to close the investigation into his complaint of 7 June 2019, and ii) the decision to deny him access to the investigation report and its attendant annexes.
9. On 4 March 2022, the UNDT issued Judgment No. UNDT/2022/021, granting the application in part. As to the first claim, the UNDT found the application not receivable *ratione materiae* because it concerned a conclusion by OAI and not by the Administration, which had not yet closed the case definitively, and as such the challenged decision was still preparatory and not final. As to the second claim, the UNDT found it receivable and well founded and held that Mr. Toson had the right to receive the report from the Administration.
10. On 3 May 2022, the Secretary-General filed an appeal. Mr. Toson did not file an answer.

Submissions

The Secretary-General's Appeal

11. The Secretary-General contends that the UNDT erred in law by applying the incorrect legal framework and exceeded its jurisdiction in finding that the Administration was obliged to provide Mr. Toson with additional information regarding the investigation. The UNDT found that under Section 5.18 of the “then applicable” Secretary-General’s Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) , Mr. Toson had the right to receive “the summary report”. However, since UNFPA is one of the separately administered funds and programmes of the United Nations, administrative issuances of the United Nations Secretariat are not applicable to UNFPA unless otherwise.

13. In addition to the UNDT's finding being an error of law, its finding is also unclear. While the UNDT granted Mr. Toson's application with respect to the contested disclosure decision, Mr. Toson had requested disclosure of the entire "investigation report and its exhibits". The

18. This interpretation derives from Secretary-General's Bulletin ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances), which at Section 2.3 provides that "[a]dministrative issuances shall not apply to the separately administered funds, organs and programmes of the United Nations, unless otherwise stated therein, or unless the

22. Once established that an affected individual has the right to appeal the outcome of an c 0

not rise to the threshold of harassment and abuse of authority, as defined in sections 3.1, 3.2, 3.4 and 3.5 of UNFPA's Policy on the Prohibition of Harassment, Sexual Harassment, Abuse of Authority and Discrimination" .

28. Most importantly and without prejudice to the outcome of the present case, the Appeals Tribunal is of the view that the right to appeal pursuant to Section 18 of the UNFPA disciplinary framework cannot be effectively exercised in cases where the information provided to the complainant is purely generic in nature to the extent that it could be given to a number of individual complaints, particularly when such complaints are found to be unsubstantiated. This bad practice of generic communication, while based on the current applicable legal framework, does not enforce the principles of transparency and accountability, as established by the Organization,⁷ nor does it promote access to justice in the internal justice system.

29. Further, it appears that there is an inconsistency in the current framework concerning the scope of the information to be provided upon closure of the investigation. Section 125.1 of the UNFPA Disciplinary Framework provides that in order for a case to be closed, the information obtained during an investigation cannot give rise to a reasonable conclusion that misconduct occurred. However, Section 5.3.7 of the UNFPA Harassment Policy restricts the information to be provided to the alleged victim to the status and outcome of the investigation. The Administration may wish to consider making the necessary changes de lege ferenda in order to render the system more effective.

⁷ Utkina v. Secretary -General of the United Nations , Judgment No. 2015-UNAT-524, para. 18.

Judgment

30. The Secretary-General's appeal is granted, and Judgment No. UNDT/2022/021 is reversed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Halfeld , Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Raikos

Judgment published and entered in the Register on this 1st day of April 2023 in New York, United States.

(Signed)

Juliet Johnson , Registrar