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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/078

Judgment No.: UNDT/2022/021

Date: 4 March 2022

Original: English

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Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TOSON

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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JUDGMENT

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Counsel for Applicant:  
Self-represented

Counsel for Respondent:  
Yun Hwa Ko, UNFPA

## Introduction

1. The Applicant challenges into his 7 June 2019 complaint against the Regional Director ( RD ), Arab States Regional Office ASRO , investigation report.

## Procedural History and Submissions

2. The Applicant is a staff member of the United Nations Population Fund Representative to Libya within the ASRO, holding a fixed term appointment at the P-5 level.

3. On 3 September 2021, the Applicant filed an application before the United to close the investigation into his 7 June 2019 complaint against the RD/ASRO; the complaint pertained to sexual exploitation and abuse, sexual and workplace harassment, abuse of authority, favouritism and fraudulent travel requests by the RD.

4. The Applicant further complains about him with the investigation report.

5. The Respondent filed his reply on

The evidence was considered by OAIIS to be insufficient to substantiate the above reference allegations against [the RD] and OAIIS found that the actions described in [your] complaint did 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 Policy on the prohibition of Harassment, sexual harassment, abuse of authority and discrimination. Having concluded its investigation, the matter is now considered closed at the level of OAIIS.

7. On 25 June 2021, the Applicant asked OAIIS for a copy of the investigation report and its exhibits. He cited the OAIIS letter to him which stated that,

The closing of the case does not preclude OAIIS 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.

8.

## Considerations

12. The Applicant challenges

into his complaint of 7 June 2019, and the decision to deny him access to the investigation report and its attendant annexes.

13. As to the first, the claim is inadmissible because it is a conclusion by OAIS and not by the Administration, who has not yet closed the case definitively. As such, the challenged decision is still preparatory and not final.

14. The first claim is therefore not receivable *ratione materiae*

15. As to the second claim, it is instead receivable and well-founded. Indeed, then applicable ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) at para. 5.18 provides the right for the complainant and the investigated person to receive the summary report. The same right is acknowledged by UNAT in its case law, where such right is granted to the complainant and not only to the accused staff member.

16. In Ivanov2015-UNAT-572, the Appeals Tribunal stated as follows:

24. Under Section 5.18(a) of ST/SGB/2008/5, if the report of an investigation panel concludes that no prohibited conduct took place, the responsible official will close the case. The responsible official must also inform the alleged offender and the aggrieved individual of the outcome of the case by providing them with a summary of the findings and the conclusions of the investigation.

Investigation Panel was provided to Mr. Ivanov. He disagreed with these findings and sought to have them reviewed. This request was denied.

26. Mr. Ivanov, though entitled to receive a summary of the findings of the investigation report, is not entitled to receive a copy of the full investigation report as he is requesting. His case is closed and he therefore will have to present convincing arguments to show that there were exceptional circumstances which might otherwise have entitled him to the full investigation report. He did not present any argument of exceptional circumstances.

17. In *Masykano* UNDT/2015/088, (

