UNITED NATIONS DISPUTE TRIBUNAL	Case No.:	UNDT/NBI/2021/078
	Judgment No.:	UNDT/2022/021
	Date:	4 March 2022
	Original:	English

Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TOSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

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 OAIS to be insufficient to substantiate the above reference allegations against [the RD] and OAIS 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 OAIS.

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

> The closing of the case does not preclude OAIS 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.

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