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Applicant's right to due process had been fully respected. It took the view, however, that given the circumstances, the sanction imposed on the Applicant was disproportionate. Consequently, it recommended that the decision to summarily dismiss him be rescinded and that the measure of se

20. On 25 October 2010, the Tribunal invited the complainant to attend the hearing, which invitation she declined by email of 2 November 2010.

21. On 31 October and 2 November 2010 respectively, the Applicant and the Respondent indicated to the Tribunal that they wished to call witnesses at the hearing. On 3 November 2010 the Judge requested the parties, by separate letters, to submit, in writing, the witness statements they wished to present, not later than 10 November 2010.

22. By email of 3 November 2010, the Applicant requested that interpretation into Arabic be made available at the hearing. The Judge rejected that request, and the Applicant was so informed on 4 November 2010.

23. On 8 November 2010, the Applicant placed on record a document drawn up by the Coordinator of the UNOG Staff Co-ordinating Council Working Group on Harassment in the Workplace, which repeated, in substance, an "investigation report" previously submitted to the JDC. On 9 November 2010, he placed on record the witness statement of a former UNOG staff member, a colleague of the Applicant, which referred to his "known difficulty in writing simple texts in French".

24. By letter of 9 November 2010, at the Applicant's request, the Judge ordered the Respondent to provide the Tribunal with a copy of the transcripts and sound or audiovisual recordings of the hearing of 6 July 2007 before the JDC. The following day, in reply to that demand, the Respondent stated that the items sought were no longer available, and forwarded to the Tribunal all the written submissions and documentary evidence he had submitted to the JDC. At the same time, the Respondent informed the Tribunal that he did not wish to submit any written witness statements.

25. On 15 November 2010, one of the Counsel for the Applicant informed the Tribunal that his power of attorney had been revoked and that the Applicant would thenceforth be represented by his other Counsel.

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attributable to the Applicant himself. Besides that, such delays would not give rise to an entitlement to damages, as he could not prove that he had suffered any harm. Lastly, there is no basis for the contention that the

that any exceptional circumstances existed that would justify an award of USD500,000 in compensation, or the award of costs.

Judgment

29. Before ruling on whether the arguments put forward by the Applicant have merit, the Tribunal must, ex proprio motu, first examine the admissibility of his claim for rescission of the decision of 8 August 2005 to suspend him with pay during the investigation and the disciplinary proceedings.

30. According to staff rules 110.2(a) and 110.3(b) in force at the time the events took place, a measure of suspension during t

she declined. The Tribunal can only note that it has no means of compelling her to do so, as she is a person from outside the Organization. The Tribunal also

Yapa). In the present case, the disciplinary proceedings began on 12 October 2005, when the Officer-in-Charge, DOD, OHRM, notified the Applicant that his conduct, if established, would contravene staff regulation 1.2 and staff rule

examine the complainant and of the opportunity to call the witnesses who had been heard as part of the preliminary investigation.

40. Staff rule 110.7(b), in force at the time, provides:

> Proceedings before a Joint Disciplinary Committee shall normally be limited to the original written presentation of the case, together with brief statements and rebuttals, which may be made orally or in writing, but without delay. If the Committee considers that it requires the testimony of the staff member concerned or of other witnesses, it may, at its sole discretion, obtain such testimony by written deposition, by personal appearance before the Committee, before one of its members or before another staff member acting as a special master, or by telephone or other means of communication.

41. Administrative instruction ST/AI/371 supplements that provision, when it states:

> 17. The proceedings of the Joint Disciplinary Committee and its rules of procedure shall be consistent with due process, the fundamental requirements of which are that the staff member concerned has the right to know the allegations against him or her; the right to see or hear the evidence against him or her; the right to rebut the allegations and the right to present countervailing evidence and any mitigating factors. If the Committee decides to hear oral testimony, both parties and counsel should be invited to be present, and no witnesses should be present during the testimony of other witnesses …

42. The Tribunal finds, first, that the Applicant was given the opportunity to ascertain what evidence had been produced against him as he had the complete file from 12 October 2005, including the preliminary investigation report and all the witness statements and evidence collected in the course of the investigation.

43. The Tribunal's second finding is that, like article 17 of administrative instruction ST/AI/371, staff rule 110.7(b) does not oblige the JDC to take witness testimony. It states that it is for the JDC to decide whether it is necessary to obtain testimony in the light of the circumstances. The JDC therefore had to decide whether the hearing of additional witnesses was necessary in this case, having regard to the evidence in its possession. Though the Applicant stated in his application to the Tribunal that the hearing of additional witnesses was necessary in order to guarantee his right to due process, he did not specify in what respect

the conclusions in the JDC report, or, consequently, the lawfulness of the Secretary-General's decision, were undermined by the fact that he had been unable to examine certain witnesses before the JDC.

44. Where the complainant is concerned, the Tribunal wo

derived from that fact, the Applicant did not specify in what way the failure to produce the recording prejudiced his rights or amounted to a procedural defect.

49. It is clear from the foregoing that the Applicant h

55. The Tribunal must note, at this stage of its examination of the facts, that on

> through her clothes. She did not react very strongly, but I noticed, all the same, that she was not pleased.

The Applicant then explained that he had apologised by kneeling down in front of her, and then by calling her on her mobile phone.

58. Following his interview by the police, the Applicant went of his own accord to the Security and Safety Section on 10 August 2005, to amend the original statement he had given to that Section. He stated that, during the morning of 4 August 2005, he had spent a certain amount of time with the complainant. While he was accompanying her to a part of the buildings, he had invited her to see him outside for a drink, and, in response to a comment by the complainant, he had paid her a compliment and then put his hand on her thigh without her showing any reaction. A little later, he had put his hand under her clothing and touched her right buttock, at which point he noticed that she was "upset"; he had apologised to her for what he had done. A short while later, when they were both in a lift, he had got down on his knees in front of her and put his hands on her hips to apologise. Once again, he saw that she was "upset". After they separated, the Applicant had tried to see her again to say he was sorry, and had seen her but could not approach her. In the course of the afternoon, he had contacted the complainant by telephone in order to apologise, and after a brief conversation she had hung up.

59. The written record of the Applicant's second interview also states:

> "In answer to your question whether I have ever committed similar harassment to what is described in this file, in the past … my answer is no … This is the first time I have been involved in this sort of problem, of harassment".

60. It is clear from the most recent statements by the Applicant, set forth above, that he has admitted having committed most of the acts described by the complainant.

61. At the hearing of 16 November 2010, the Applicant denied having committed any of the acts alleged, and said that he signed the statements in which he admitted the said acts because he had failed to understand the contents of those

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the "sentence of condemnation" finding him guilty. Added to that, there is no reason why the Secretary-General or the Tribunal should not take account, in establishing the facts, of statements taken from the Applicant by the Geneva police, which form part of the record in the case.

71. The foregoing analysis of whether the acts took place shows that the

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effect that administrative instruction ST/AI/379, which deals with sexual harassment within the Organization, does not apply, is in any event irrelevant. The only question the Tribunal has to answer is the following: do the acts of a sexual nature committed by the Applicant on the person of the complainant, and acknowledged above as having been established, constitute misconduct?

80. The Tribunal considers that, on the one hand, in committing such acts on a person against their will, the Applicant fell short of the standards of conduct expected of an international official, and that, on the other, given that the complainant came from outside the Organization, his behaviour was such as to bring discredit on the Organization. Misconduct is therefore established.

Proportionality of the sanction

81. At the time the events took place, staff regulation 10.2 read as follows:

> "The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory.
>
> The Secretary-General may summarily dismiss a member of the staff for serious misconduct".

82. Staff rule 110.3 then in force provided:

"(a) Disciplinary measures may take one or more of the following forms:

(i) Written censure by the Secretary-General;
(ii) Loss of one or more steps in grade;
(iii) Deferment, for a specified period, of eligibility for within-grade increment;
(iv) Suspension without pay;
(v) Fine;
(vi) Demotion;
(vii) Separation from service, with or without notice or compensation in lieu thereof, notwithstanding rule 109.3;
(viii) Summary dismissal".

83. Although the Tribunal invited him, at the hearing of 16 November 2010, to comment on the severity of the sanction imposed on him, the Applicant declined to offer any argument on this point, explaining that he denied the facts themselves of which he was accused. However, since, in his Application, he challenged the

severity of that sanction, the Tribunal considers it necessary to examine whether the measure of summary dismissal was manifestly disproportionate.

84. The Tribunal recalls that in disciplinary matters, it has only limited powers to review the severity of the sanction imposed by the Secretary-General. The scope of this control has been determined by the Appeals Tribunal, which recalled that disciplinary matters are within the discretionary powers of the competent authority, and that the judge can only interfere with such power where there is shown to have been illegality, irrationality or procedural impropriety (see Judgments 2010-UNAT-022,

given to such a factor is entirely a matter for the Secretary-General's discretion and does not in any way show that the contested decision was arbitrary.

89. Lastly, on the Applicant's contention that the purpose of the sanction was to respond to criticisms appearing in the media at that time of cases of sexual harassment within the Organization, there is nothing in the record to show that the Secretary-General took a more severe decision with a view to responding to such criticism.

90. The Applicant has therefore not established that