

1. Ms. Lilian Ular (Ms. Ular), a former staff member with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) contested what she described as: (i) harassment, unfair treatment, and abuse of authority; (ii) her non-selection for a position that she had applied for at MONUSCO; and (iii) the Administration's mishandling of a complaint of sexual harassment made m iis.1 (it(n)8.8 ((f)-5.3 (t4-7 (i)--3.DT((f)-5.3J s7 (udn)8.8 ((f)-11.m)1]T

As such, it ordered the Administration to provide Ms. Ular with a clear explanation for the decision not to pursue her complaint within one month. However, it denied her any other remedy as it found that she had not provided the evidence required to support her claims.¹³

21. On 28 February 2021, Ms. Ular filed an appeal against the first UNDT Jy5 (u)4T s (ed)3o47so0734 (d)0rH

[H]arm must be established by convincing medical evidence. Secondly there must be a legal breach committed by the [A]dministration and thirdly there must be a link between the damage caused and the breach committed by the [A]dministration.

25. The UNDT concluded that there was insufficient evidence to conclude that any distress caused to Ms. Ular resulted from the mishandling of her sexual harassment complaint. The medical reports provided by her did not mention either the events that were the subject of her complaint or its mishandling but rather indicated a history of illness:¹⁷

c0w(e)-100 The first report to 230 November 2013 of the Centre Hospitalier prepared only after [Ms. 6.2 (h)-2.2 (a)6.7D 1.810

an oral hearing, she submits that it was not open to the Dispute Tribunal to question the sufficiency or the content of these reports.

30. Ms. Ular contends that the UNDT failed to exercise the jurisdiction vested in it by limiting itself to considering the moral harm caused to her as a result of the delay in notifying her of the outcome of her sexual harassment complaint when the entire handling of her complaint was found procedurally and substantively flawed. Ms. Ular also refers the Appeals Tribunal to what she describes as “gross abuse of authority” by the Administration.²⁰

31. In addition, Ms. Ular submits that the UNDT erred in law by elevating the evidentiary standard required for an award of moral damages. Relying on Appeals Tribunal jurisprudence, she argues that the evidence supporting a claim for compensation for moral harm does not need to be of a medical nature and that evidence to prove moral injury may take the form of a medical report that “can be directly be linked *or reasonably attributed* to a breach of (...) her substantive or procedural rights”.²¹ In the present case, she submits that she met that standard and should not have been expected to dictate to the doctors the content of their reports.

32. Ms. Ular also contends that the UNDT erred in law by adopting the Secretary-General’s submissions without reservation regarding her alleged history of illness predating her complaint. Ms. Ular observes that the Secretary-General’s allegations in this regard were not supported by any evidence and that the UNDT erred in law in finding that she had not met the legal threshold for an award of moral damages.

33. Several errors of fact on the part of the UNDT are alleged in its analysis of the medical reports submitted. Ms. Ular submits that it was a “gross misrepresentation” of the medical reports to conclude that they showed a history of ill health when they established a causal link and made several references to the incidents that led to her complaints. However, even if the Appeals Tribunal were to conclude that the medical reports did not specifically mention her complaints, Ms. Ular argues that she still meets the evidentiary standard required for an award of moral damages.

²⁰ With regard to the “gross abuse of authority”, Ms. Ular reiterates the same allegations of harassment, unfair treatment and abuse of authority that were dismissed by the Appeals Tribunal in the UNAT Judgment.

²¹ *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 36 (emphasis added).

34. Ms. Ular also observes that the UNDT wrongly concluded that there was no ongoing delay on the dates when the medical reports were issued. On the contrary, she contends that the “fact that OIOS reacted to [her] [a]pplication by e-mailing her, 10 days post-filing, on the status of her complaint does not eliminate the [two]-year delay in handling the sexual harassment complaint and the consequences of said delay on [her] mental and physical well-being”. Finally, Ms. Ular contends that the Dispute Tribunal erred in fact in concluding that she did not raise the question of abuse of power in her application.²²

35. The Secretary-General opposes the appeal and seeks that the Appeals Tribunal uphold the impugned Judgment and dismiss the appeal, noting that it is not open to Ms. Ular to raise her allegations of harassment, unfair treatment, abuse of authority or non-selection anew before the Appeals Tribunal. The UNDT was required to, and correctly considered, whether there was evidence of moral harm caused by the delay in notifying her of the outcome of her complaint, with

42. This Tribunal has refused oral hearings where the factual and legal issues arising from the appeal have already been clearly defined by the parties and an oral hearing would not “assist in the expeditious and fair disposal of the case”.²⁷ An appeal is not a rehearing of the matter but an opportunity for the parties to address narrow issues, including errors of law, fact, and jurisdiction. The factual and legal issues in this appeal have been clearly defined by the parties and we are not persuaded that an oral hearing would assist in the expeditious and fair disposal of the cas (ppe)-6. 9(i)2.2 (o)r17.

enough to simply demonstrate the existence of an illegality in order to obtain compensation.²⁹ The claimant bears an additional burden to adduce sufficient evidence to prove that the illegality caused moral injury or harm that should be compensated. Further, while the facts may in some circumstances speak for themselves and be sufficient to allow a finding of harm, this is not always the case.³⁰

46. In issue in this appeal is whether the UNDT erred in dismissing Ms. Ular's claim for moral damages on the basis that no harm was proved to be attributable to the illegality found to exist. Ms. Ular contends that, in the submission of her medical reports to the UNDT, the required standard had been met, as she had provided the evidence required to justify an award of damages in these circumstances. She further argues that she should not have been expected to dictate the content of such reports to the doctors.

47. However, the medical report dated 17 December 2019 submitted by Ms. Ular recorded that she had complained of lack of sleep and headaches "for several years". Such symptoms were consistent with a diagnosis on 20 January 2020 of a medical condition, the onset of which typically occurs in a person's late teens or early twenties. As of January 2020, Ms. Ular was 55 years old. It followed that, based on the evidence before the UNDT, no nexus was proved between the illegality committed against Ms. Ular and any harm suffered by her as a result.

48. Compensation must be determined following a principled approach and on a case-by-case basis.³¹ In *Applicant*,³² this Tribunal found that to sustain a claim for moral damages, there must be supporting evidence beyond simply the staff member's own testimony. In *Coleman*,³³ it was emphasized that the evidence produced must be related to the harm suffered, failing which an entitlement to moral damages does not arise. In that case, the evidence produced could not "be directly linked, or reasonably attributed, to a breach of [the staff member] substantive or

²⁹ *Marius Mihail Russo-Got v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1095, para. 39; *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 60.

³⁰ *Kallon Judgment, op. cit.*, para. 63.

³¹ *Belkhabbaz v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-873, para. 90.

³² *Applicant v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1001/Corr. 1, para. 43.

³³ *Sarah Coleman v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1228, paras. 39 and 42-43.

procedural rights” as a result of which a finding was unable to be made that “the stress, harm or anxiety [was] such as to merit a compensatory award”.³⁴

49. We are satisfied that the UNDT did not commit an error of law or fact in refusing to award Ms. Ular compensation for harm in the form of moral damages, in that she failed to advance evidence to prove an entitlement to compensation for any such harm suffered.

50. As to the costs of the appeal, which Ms. Ular sought be paid on a fu2 (c)2.()-0.6 32.7 ()-0.6 ()-02. (g) (i)4./

52. Ms. Ular's appeal is dismissed, and Judgment No. UNDT/2023/001 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Gao

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 9th day of April 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar