



**Before:** Judge Margaret Tibulya

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ANTOINE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicants:**

Sètondji Roland Adjovi, *Etudes Vihodé*

Charles A. Adeogun-Phillips, Charles Anthony LLP

**Counsel for the Respondent:**

Jacob B. van de Velden, AAS/ALD/OHR, UN Secretariat

Romy Batrouni, AAS/ALD/OHR, UN Secretariat

## **Introduction and procedural background**

1. On 13 August 2021, the Applicant, an Administration Officer at the FS-6 level, of the Office of the Deputy Chief Mission Support, in the United Nations Truce Supervision Organization (“UNTSO”) in Jerusalem, Israel, filed an application contesting the 9 June 2021 decision by the Acting Head of Mission, UNTSO, to extend his placement on administrative leave with pay (“ALWP”) for another three months or until the completion of an investigation and any disciplinary process, whichever is earlier (“the contested decision”).
2. The Respondent filed a reply on 17 September 2021.
3. The Tribunal held a case management discussion on 15 October 2021 during which the parties agreed, *inter alia*, that the case could be decided on the basis of their written submissions and that no closing submissions were necessary.
4. On 22 October 2021, the Applicant filed a rejoinder to the reply.
5. The Respondent filed observations on the rejoinder on 26 October 2021.

## **Summary of the relevant facts**

6. On 24 June 2020, the Investigations Division, Office of Internal Oversight Services (“ID/OIOS”) received a report of possible unsatisfactory conduct implicating staff members at UNTSO in Jerusalem. Evidence submitted in support of the report included a video clip (“the clip”). On 25 June 2020, Mr. Ben Swanson, the Director, IO/OIOS sent an e-mail to UNTSO’s Acting Head of Mission informing him of the report and the clip.<sup>1</sup> The clip showed two male individuals and a female individual driving through a busy street in a clearly-marked United Nations vehicle. The male individual seen in the back seat and the female were allegedly engaging in an act of a sexual nature as the vehicle was driven along a heavily trafficked street.

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<sup>1</sup> Reply, annex 1.

The UNTSO staff members implicated in the report are the Applicant and another UNTSO staff member.

7. On 2 July 2020, the Applicant received notification of the Under Secretary-General of the Department for Management Strategy, Policy and Compliance's ("USG/DMSPC") decision placing him on Administrative Leave Without Pay ("ALWOP").<sup>2</sup>

8. On 14 July 2020, the Applicant filed a management evaluation request challenging two decisions: (i) the 2 July 2020 ALWOP decision and (ii) the seizure of his personal cell phone by OIOS during a 30 June 2020 interview.<sup>3</sup> On the same date, he also filed an application for suspension of action ("SOA").

9. On 22 July 2020, the UNDT issued Order No. 139 (NBI/2020) rejecting the SOA application.

10. On 30 August 2020, the Applicant filed an application on the merits contesting the same two decisions (para. 8 above), which was assigned Case No. UNDT/NBI/2020/070. On the same day, the Applicant filed a motion for interim measures to suspend the contested decisions.

11. On 9 September 2020, the UNDT issued Order No. 172 (NBI/2020) partially granting the Applicant's motion for interim measures and suspended the decision to place the Applicant on ALWOP.

12. On 11 September 2020, the Applicant was placed on ALWP for an initial period of three months by the Acting Head of Mission, UNTSO.<sup>4</sup>

13. By letters dated 8 December 2020 and 9 March 2021, the Acting Head of Mission informed the Applicant that his placement on ALWP was being extended.<sup>5</sup>

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<sup>2</sup> Reply, annex 5 and application, annex 2.

<sup>3</sup> Application, annex 11.

<sup>4</sup> Application, annex 12 and reply, annex 16.

<sup>5</sup> Application, annexes 15 and 16 and reply, annex 18.

14. On 9 June 2021, the Applicant received the contested decision.

### **Parties' submissions**

#### ***Applicant***

15. The Applicant's case is summarized below:

*a. The delay in the process and failure to charge him is abusive and violates due process rights.*

i. He has not been charged for more than a year since the Respondent originally made these claims against him. This means that the process of issuing a charge letter, allowing the Applicant to respond to the charges and then the Administration issuing any sanction will likely take almost another year from now based on historical analysis of numerous cases. This means that without intervention, the Applicant will be on administrative leave for a total of almost two years before he even receives a challengeable administrative decision. This is excessive, abusive, and far exceeds the 12-month period from investigation to sanction in *Gisage* 2019-UNAT-973.

ii. His placement on administrative leave with no administrative decision has seriously damaged his reputation, self-worth and mental health, as well as his skill levels and future prospects. The Respondent needs to either charge him so he can fully contest any charges in his defence or close the case.

iii. Leaving him to "rot" on ALWP for such an extended period without even being charged is also disproportionate, abusive, punitive and makes an absolute mockery of the Respondent's continued reliance on staff rule 10.4(d) that placement on ALWP is not a

disciplinary action. The Respondent's actions are punitive and in fact "a disguised disciplinary action". Former staff rule 10.4(b) stated that ALWP, so far as practicable, "should not exceed three months". The removal of this phrase in the current staff rule 10.4(b) should not embolden the Respondent to simply sit on their hands and abusively take advantage of the Applicant.

iv. Were the Respondent to be allowed to continue to adopt this strategy and the continued positions of the Management Evaluation Unit endorsed, the result would be that the investigation and disciplinary process need never be completed and thus bar the staff member from ever being able to challenge being on ALWP and for the unreasonable, abusive and unfair delays.

v. Not only does this deny the Applicant the right to an effective remedy that is implicit in established human rights norms and enshrined in UNAT jurisprudence, it violates the terms and conditions contained within his employment contract. By failing to conduct an investigation in a timely manner, the Administration breached an implicit duty of care. The unreasonable delay in undertaking the disciplinary process constitutes such a breach of a duty of care. Consequently, the terms and conditions of his appointment have been violated.

vi. The Applicant was on certified sick leave ("CSL") since August 2020 and had advised that due to his illness, any contact should be through his Counsel, who had been given sworn Power of Attorney to be contacted for all matters as of 15 August 2020. No-one contacted the Applicant's Counsel as instructed nor his medical professionals who had provided medical certificates justifying his CSL.

*b. The reasons provided in placing him on ALWP are not explained to any required standard.*

i. The justification provided in the 11 September 2020, 8 December 2020 and 9 March 2021 memoranda placing him on ALWP all refer to the original justification without providing any further explanation. The decision maker only used the wording of Section 11.3 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) without providing the detailed facts or any explanation which would match the legal provision.

ii. The decision to place and keep him on ALWP for such an extended period without even being charged after rushing to place him on ALWOP within one day of the investigation commencing, issuing factually false, defamatory and misleading press releases that he was guilty of misconduct without due process and that the disciplinary process would be completed quickly is abusive and unlawful.

iii. The failure to complete the process in a reasonable timeframe despite promising the press that it was almost completed a year ago has had seriously detrimental impacts on his health, career prospects and professional development. The most recent abuse of leaking the status of the investigation report by an unnamed and unauthorized “UN peacekeeping department spokesperson” appears to be the “next perverse chapter of the due process violations to which the Applicant has been subjected.”

*Applicant’s submissions in respect to Annex 18 of the application*

16. In response to the Respondent’s request at paragraph 30 of the reply to rule Annex 18 inadmissible, the Applicant submits:

- a. Annex 18 was a publicly released commentary and analysis of the case and the Applicant's Counsel is not its author.
- b. The fact that Annex 18 is dated 11 October 2020 is irrelevant; it does not make the analysis of the evidence and the actions taken by the Respondent at the time of the decisions less credible.
- c. The Applicant has submitted other publicly available commentary on the case with his applications. The Inner City Press was extensively relied upon by the Respondent during the investigation and in the allegations made against the Applicant. These articles and videos also contain disparaging remarks about the United Nations, the Secretary-General and the Applicant that are not relevant to admissibility.
- d. The Applicant is entitled to submit whatever information he deems relevant to his case.

17. The Applicant prays the Tribunal to award him the following cumulative remedies:

- a. Rescission of the ALWP decision in order for him to be immediately restored to active duty.
- b. Compensation for the damage to his reputation and career prospects in being forced to stay out of the office for such an extended period of time.
- c. Retraction of the 2 and 3 July 2020 press statements by issuance of a statement which corrects them and respects the presumption of innocence.
- d. Accountability enforced for the misconduct/unsatisfactory conduct by the Spokesman for the Secretary-General, the UNTSO Senior Advisor and a member of the Strategic Communications Section in the United Nations Department of Peace Operations for abuse of authority under ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and

abuse of authority) and violations of staff regulations 1.2(a)-(b) and staff rule 1.2(f) for knowingly issuing the false and defamatory press statements.

e. Accountability enforced for the misconduct/unsatisfactory conduct by then Director, ID/OIOS, the Chief ID/OIOS Vienna, Chief of Section, ID/OIOS Vienna and the USG/DMSPC for abuse of authority under ST/SGB/2019/8, violating the Applicant's rights under ST/AI/2017/1 and violations of staff regulations 1.2(a)-(b) and staff rule 1.2(f) so the Organization could be seen to be taking action in response to negative press coverage.

***Respondent***

18. The Respondent's case is summarized as follows:

a. *The contested decision was lawful and rational.*

i. As head of entity, the Acting Head of Mission had delegated authority to make the contested decision and lawfully exercised his discretion by determining that the criteria for placement of the Applicant on ALWP under sections 11.3(a) and (c) of ST/AI/2017/1 were met.

ii. In determining the Applicant's ability to continue to perform his functions at the Organization, pursuant to section 11.3(a) of ST/AI/2017/1, the Acting Head of Mission reasonably concluded that given the seriousness of the matter, the Applicant was unable to effectively perform his functions as an Administrative Officer in a position of command at UNTSO operating in a delicate setting of a conflict-affected area. Further, the Acting Head of Mission reasonably found that the Applicant's continued presence in UNTSO could otherwise prejudice the interests or reputation of the Organization, pursuant to section 11.3 (c) of ST/AI/2017/1.



iii. It is not in dispute that the Applicant's conduct posed a significant harm to the reputation and credibility of the United Nations and UNTSO. It was thus reasonable for the Acting Head of Mission to conclude that having the Applicant regain his functions at UNTSO could potentially further damage the Organization's reputation.

iv. The contested decision complied with staff rule 10.4(b). In the contested decision, the Acting Head of Mission explained the reason for the extension of the Applicant's placement on ALWP by referring to sections 11.3(a) and (c) of ST/AI/2017/1 and to the former letters addressed to the Applicant in relation to his ALWP, including the letter informing him of his initial placement on ALWP dated 11 September 2020, which had explicitly referred to Order No. 172 (NBI/2020). The language used in the contested decision is clear and unambiguous, and the reasoning set forth precise and intelligible. The Applicant was properly informed of the facts underpinning the decision to place him on ALWP, and the decision to extend.

v. The Applicant did not challenge the initial decision to place him on ALWP dated 11 September 2020. He cannot therefore via the back door in the present case challenge the basis for his initial placement on ALWP.

*b. There was no delay in the process.*

i. OIOS initiated its investigation in June 2020, and by memorandum dated 19 May 2021, referred the Applicant's case to the Office of Human Resources ("OHR") for appropriate action. The referral was based on an investigation report, dated 19 May 2021, prepared by OIOS together with supporting documentation. On 16 August 2021, the Applicant was asked to respond to a memorandum dated 12 August 2021, setting out formal allegations of misconduct

against him. The Allegations Memorandum was issued less than three months after OHR's receipt of the OIOS investigation report and despite the Applicant's failure to cooperate with the OIOS investigation. The Applicant only provided his comments nearly two months later, on 12 October 2021, after requesting an extension of one month. The Applicant cannot therefore blame the purported delay on the Respondent.

ii. There is no time limit to complete an investigation. Rather UNAT has held that much will depend on the circumstances, including any practical challenges at the duty station, the nature of the allegations, the complexity of the investigation and the need to follow due process.

iii. The length of OIOS's investigation was reasonable, given that a report of unsatisfactory conduct by United Nations personnel in a sensitive peacekeeping mission is serious and requires thorough investigation. OIOS interviewed multiple witnesses and subjects. OIOS conducted a first subject interview with the Applicant on 30 June 2020, and in March 2021, requested that he sit for a follow-up interview to provide additional information. The Applicant was not cooperative. Despite repeated requests from investigators in March 2021, the Applicant refused to participate in a second subject interview. The Applicant also refused to provide information about a material witness in this matter.

iv. The Applicant's unqualified reference to *Gisage* as regards ALWOP is incorrect. ALWP can be longer than ALWOP as it entails much less severe consequences.

v. The Applicant incorrectly asserts that he was on CSL since August 2020. At the time he was contacted by OIOS for a second

subject interview in March 2021, the Applicant was no longer on CSL. OIOS consulted UNTSO Medical Services as to whether he was considered fit to participate in interviews. UNTSO Medical Services responded that the Applicant's CSL had ended in February 2021, and that his subsequent request to extend the CSL until 31 March 2021 was not approved by Medical Services. UNTSO Medical Services advised OIOS that the Applicant was medically able to take part in an interview under certain conditions.

*c. The Applicant is not entitled to any remedy.*

i. The contested decision was lawful, and as such, the Applicant's request for rescission of the contested decision should be rejected.

ii. The Applicant is not entitled to monetary or other compensation as he has not provided any evidence of harm as required by in art. 10.5(b) of the Dispute Tribunal's Statute, as amended by General Assembly resolution 69/203.

iii. There is no legal basis for the Applicant's requests for: (a) retraction of the press statements; and (b) accountability of United Nations officials with respect to the press statements, given that they have no nexus to the impugned decision. Furthermore, such requested remedies fall outside of the purview of the Dispute Tribunal's power, as set forth in art. 10.5 of the Dispute Tribunal's Statute.

iv. To the extent the Applicant requests that the Dispute Tribunal direct the Respondent to either charge him so he can fully contest any charges in his defence or close the case, the Respondent notes that such request is moot, given that the disciplinary process has been initiated.

19. The Respondent submits that the Applicant's attempt to cloak his failure to provide contact information for F01, a material witness who could corroborate his story for whom only he had the necessary contact information, is without merit. There were various ways to protect F01's confidentiality. OIOS could have interviewed her on an anonymous basis. Alternatively, F01 could have filed a statement redacting her name, and F01 could have provided her testimony before this Tribunal *in camera*.

*Respondent's request that Annex 18 to the application be ruled inadmissible.*

20. The Respondent requests that the Tribunal rules Annex 18 to the application inadmissible on the grounds that it is dated 11 October 2020 and is therefore not relevant to the contested decision which was issued on 9 June 2021, i.e., eight months later. The Respondent further submits that Annex 18 contains derogatory and insulting statements to the Counsel for the Respondent and to the USG/DMSPC and that by submitting Annex 18 in support of the application, Counsel for the Applicant violated art. 4.4 of the Code of Conduct for legal representatives and litigants in person requiring them to maintain the highest standards of professionalism and upholding basic ethical standards.

21. In view of the foregoing, the Respondent requests that the Tribunal dismiss the application in its entirety and reject all reliefs sought by the Applicant.

## **Considerations**

*Annex 18 to the application*

22. Articles 18.1 and 18.5 of the UNDT Rules of Procedure stipulate:

1. The Dispute Tribunal shall determine the admissibility of any evidence.

...

5. The Dispute Tribunal may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. The Dispute Tribunal may also limit oral testimony as it deems appropriate.

Annex 18 to the application is inadmissible. According to the Applicant, the annexure comprises of a publicly released commentary and analysis of the case. Such commentary has no value, evidential or otherwise, being that whoever compiled it was not subject to the Tribunal's jurisdiction. That being the case, the veracity of the comments was not and cannot be tested. The commentary neither amounts to evidence nor to parties' submissions. The fact that the comments were made on 11 October 2020, way before this matter arose only compounds the problem.

*Legal framework*

23. Staff rule 10.4:

(a) A staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time after an allegation of misconduct and pending the completion of a disciplinary process. Administrative leave may continue until the completion of the disciplinary process.

(b) A staff member placed on administrative leave pursuant to paragraph (a) above shall

be given a written statement of the reason(s) for such leave and its probable duration.

[...]

(d) Placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure. [...]

24. Section 11.3 of ST/AI/2017/1:

The decision to place a staff member on administrative leave with pay may be made by the authorized official at any time following a report of suspected unsatisfactory conduct and following the authorized official's determination that at least one of the following circumstances is met:

(a) The staff member is unable to continue effectively performing the staff member's functions, given the nature of those functions;

(c) The continued presence of the staff member on the Organization's premises or at the duty station could constitute a security or financial risk to the Organization and/or its personnel, or could otherwise prejudice the interests or reputation of the Organization;

25. The Tribunal is called to examine the following issues:

a. Whether the delays in the process and the failure to charge the Applicant render the Respondent's 9 June 2021 decision to extend the Applicant on ALWP for yet another three months abusive, a violation of due process rights and an abuse of discretion.

b. Whether the reasons provided in placing the Applicant on ALWP meet the statutory standard.

26. While both parties agree that the decision-maker has the discretionary authority to place a staff member on administrative leave, the Applicant asserts that the use of such discretion rising to the level of abuse (which he maintains has occurred in this case) is not unfettered and cannot be accepted. Citing *Gisage*, he specifically points to the fact that he has been kept on administrative leave for more than a year without being charged which he argues is abusive and unlawful being that the period taken far exceeds the legally acceptable 12-month period from investigation to sanction. Unlike in the present case which involves a decision to extend ALWP, in *Gisage* the staff member had been placed on ALWOP and UNAT observed that a "decision to extend ALWOP is a drastic administrative measure and normally should be of short duration".

27. In determining this and all the issues presented by this application the Tribunal will be guided by the following principles:

a. In conducting judicial review of decisions to place an applicant on ALWP, the Dispute Tribunal reviews whether the decision was lawful and rational, considering the criteria stipulated in the Staff Rules and

ST/AI/2017/1 and the information before the head of entity at the time of the decision.

b. It is not for the Dispute Tribunal to substitute its own view for that of the head of the entity, but to evaluate whether that decision was irrational or arbitrary.<sup>6</sup>

c. The period of time for placement of staff on administrative leave should be reasonable and proportionate<sup>7</sup>, but the Tribunal may not set arbitrary time limits for the Organization to complete an investigation and any subsequent disciplinary process.<sup>8</sup>

28. It is recalled that the Applicant was initially placed on ALWP on 11 September 2020. ALWP was thereafter extended on three occasions (on 8 December 2020, on 9 March 2021 and on 9 June 2021) on the basis that the circumstances which warranted the Applicant's initial placement on ALWP still exist.

29. Based on the uncontroverted evidence that the Applicant refused to:

a. inform the investigators early in the process whether he was the passenger seated in the rear near-side passenger seat captured in the clip;

b. provide relevant contact information which only he had, about a material witness (F01) to the investigation; and

c. participate in a follow-up interview to provide additional information,

which conduct, in the Tribunals view, amounted to refusal to cooperate with the investigation, the Tribunal determines that the impugned decision is fully consonant with appellate jurisdiction guidance that the length of time an investigation may take will depend on the circumstances including any practical challenges at the duty

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<sup>6</sup> *Gisage*, paras. 37 - 40.

<sup>7</sup> Paragraph 16 of the ILOAT judgment of *K v ILO*, Judgment No. 4039, referring to para. 7 of *R.D.A.G. v PAHO*, Judgment No. 3295.

<sup>8</sup> *Gisage*, para. 40.

station, the nature of the allegations, the complexity of the investigation and the need to follow due process<sup>9</sup> and was therefore not abusive, did not violate due process rights and did not amount to abuse of discretion.

30. There is uncontroverted evidence that during his interview with OIOS on 30 June 2020, the Applicant informed the investigators that he could not say whether it was him in the clip but could see why others might say it was him, and that he would need time to carefully review the clip to be able to say whether it was him.<sup>10</sup> The Applicant later admitted that he was the passenger seated in the rear near-side passenger seat captured in the clip.<sup>11</sup>

31. Other evidence is that OIOS conducted a first subject interview with the Applicant on 30 June 2020, and, in March 2021, requested that he sit for a follow-up interview to provide additional information but the Applicant refused to participate in a second subject interview.<sup>12</sup>

32. The Applicant explained that he had been on CSL since August 2020<sup>13</sup> and he was constantly under the medical care of his doctors. Further, that he had already advised that due to his illness, any contact should be through his Counsel to whom he had granted Powers of Attorney to be contacted for all matters as of 15 August 2020<sup>14</sup>, but that his Attorney and medical professionals were never contacted by the investigators.

33. The Tribunal is in full agreement with the Respondent that the duty to cooperate with the investigation cannot be delegated. Staff members have a personal obligation to cooperate with any authorized investigation or audit. Section 6.9 of ST/AI/2017/1 does not provide staff members with the possibility of being legally

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<sup>9</sup> Ibid.

<sup>10</sup> Reply, annex R/3, OIOS Memorandum to USG/DMSPC dated 30 June 2020, para. 12.

<sup>11</sup> Reply, para. 5 and annex R/12, Written statement of the Applicant dated 12 July 2020.

<sup>12</sup> Reply annex R/24, E-mail exchange showing the Applicant's refusal to participate in a second subject interview.

<sup>13</sup> Applicant's rejoinder in compliance with para. 4 of Order No. 223 (NBI/2021), para. 8.

<sup>14</sup> Application, annex 21.



represented during the investigation process.<sup>15</sup>

34. In any case, there is sufficient basis for a finding that the Applicant was not on CSL in March 2021 when he was contacted by OIOS for a second subject interview. The Respondent maintains that the Applicant was on CSL between 9 September 2020 and 30 November 2020, between 1 December 2020 and 29 January 2021, and between 1 February 2021 and 26 February 2021. Further that the OIOS consulted UNTSO Medical Services to ascertain whether the Applicant was considered fit to participate in interviews and UNTSO Medical Services responded that his CSL had ended in February 2021, and that his subsequent request to extend the CSL until 31 March 2021 was not approved by Medical Services. UNTSO Medical Services advised OIOS that the Applicant was medically able to take part in an interview under certain conditions.

35. The Tribunal finds the above facts credible since the Applicant does not deny them. Those facts fully support the assertion that the Applicant refused to participate in the follow-up interview.

36. The Respondent again asserts that while the Applicant is the only one with the relevant contact information about a material witness (F01), he refused to provide the information to the investigators yet witness F01 is the only one who could have corroborated the Applicant's account of events which constitutes a denial of the allegations which were laid against him.<sup>16</sup>

37. The Applicant denies that he refused to provide the Respondent with the contact details of witness F01. He explains that due to confidentiality concerns, he instead forwarded the Respondent's contact details to the witness (F01) and her lawyer and left them to initiate the contact<sup>17</sup>. This explanation is an outright admission of the Respondent's assertion that instead of acting in the required manner

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<sup>15</sup> *Powell* 2013-UNAT-295, para. 23.

<sup>16</sup> Reply, para. 23 and annex R/25, E-mail exchange showing the Applicant's refusal to provide information on a material witness dated July 2020.

<sup>17</sup> Applicant's rejoinder in compliance with para. 4 of Order No. 223 (NBI/2021), para. 10.

he made a counter offer. This does not amount to cooperation at all. There is moreover no evidence (e.g. an email and maybe a response from FO1's lawyer), that he indeed forwarded the Respondent's contact details to the witness (F01) and her lawyer. Based on this, the Tribunal finds that the Applicant indeed refused to cooperate with the investigation.

38. All factors considered, the Tribunal finds that the contested decision, having been made under staff rule 10.4 and section 11.3 of ST/AI/2017/1 by the authorized official was lawful and rational. And, based on the Applicant's refusal to cooperate with the investigation as explained above, the Tribunal finds that the delays in the process and the failure to charge the Applicant to which the Applicant contributed in no small measure, and that the resultant Respondent's 9 June 2021 decision to extend the Applicant on ALWP for yet another three months was not abusive, did not violate his due process rights and did not amount to abuse of discretion in the particular circumstances of this case.

*Whether the reasons provided in placing the Applicant on ALWP are not explained to any required standard.*

39. The Applicant maintains that in the letter which communicated the impugned decision, the decision-maker did not give reasons for the impugned decision but that there was mere reference or wording drawn from the existing and relevant legal provisions (section 11.3 of ST/AI/2017/1) which is never sufficient to justify a decision. He asserts that it is essential for a fully motivated decision to quote the law and show how the facts match that law.<sup>18</sup>

40. Staff rule 10.4 (b) provides that a staff member placed on administrative leave shall be given a written statement of the reason(s) for such leave and its probable duration. The Tribunal notes that in the letter which communicated the impugned 9 June 2021 decision<sup>19</sup>, the decision-maker made reference to the original justification

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<sup>18</sup> See paras. 28 - 29 of *Applicant*, Order No. 062 (NBI/2020).

<sup>19</sup> Application, annex 17.

provided in para. 2 of the 11 September 2020 memorandum<sup>20</sup> in the following terms;

In consultation with the Regional Conduct and Discipline Section (RCDS), I have determined that the factors forming the basis for the initial placement on ALWP continue to exist.

And, when the Applicant was initially placed on ALWP<sup>21</sup>, the decision-maker made reference to the 1 July 2020 ALWOP decision. In the first paragraph of the letter which had communicated the ALWOP decision<sup>22</sup>, the Applicant was informed that,

the ID/OIOS was investigating allegations that on the 21 May 2020, the Applicant publicly engaged in acts of a sexual nature in a clearly marked UN vehicle in a heavily – trafficked area in Tel-Aviv.

41. In all ALWP extensions including the impugned extension, the Applicant was informed that considering the seriousness and nature of the allegations against him (i.e. that he publicly engaged in acts of a sexual nature in a clearly marked UN vehicle in a heavily – trafficked area in Tel-Aviv) (emphasis added), the decision-maker viewed him as unable to continue to effectively perform his functions, and that his continued presence in UNTSO “could otherwise prejudice the interests or reputation of the organization”.

42. The Tribunal finds that the contested decision complied with staff rule 10.4(b) since the decision-maker drew the Applicant’s attention to earlier letters addressed to him in relation to his ALWP, including the letter informing him of his initial placement on ALWP dated 11 September 2020 which had explicitly referred to Order No. 172 (NBI/2020) and to the letter which communicated the ALWOP which detailed the factual basis for the decisions. The Applicant was therefore properly informed of the facts underpinning the decision to place him on ALWP, and the decision to extend the ALWP.

43. Since the two substantive issues have been found in the negative, there is no basis for granting any remedies to the Applicant. The prayer for the remedies is

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<sup>20</sup> Application, annex 12.

<sup>21</sup> Application, annex 12 and reply, annex R/16.

<sup>22</sup> Application, annex 1.

therefore rejected.

**Decision**

44. The application is dismissed in its entirety for lack of merit.

*(Signed)*

Judge Margaret Tibulya

Dated this 30<sup>th</sup> day of November 2021

Entered in the Register on this 30<sup>th</sup> day of November 2021

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi