

UNDT/2009/038, Andrysek

UNAT Held or UNDT Pronouncements

The representative, proposed by the staff to sit on a mixed staff-administration consultative body and appointed by the High Commissioner, may legally sit on the said body even though the staff association which proposed him has withdrawn its confidence. The fact that this staff representative is, after his designation, appointed to an inspection function is not in itself sufficient to create a situation of conflict of interest preventing him from sitting. It is for the Administration to establish a list of promotions based on regulations put in place in order to reconcile the two imperatives for advancement based on merit and that of gender balance and, if necessary, by introducing quotas. Failing to have such regulations in place, the Administration must apply the regulation in force. The High Commissioner cannot legally grant promotions to staff whose situation has not been examined by the Joint Commission who has been mandated to do so. Paragraph 5 of Article 10 of the UNDT's Statutes imposes on the judge, in certain cases to set compensation that the Respondent can choose to pay in lieu of the annulment of the contested administrative decision. The judge takes into account the material damage of the illegal decision that was made and fixes the amount to be paid at CHF 9000. The staff whose refusal of promotion has been rescinded by the Judge can only receive compensation for moral damage if he had a serious chance to be promoted if the Administration had followed due process, which is not the case at hand. The contested decision was rescinded. The judge fixed an amount of compensation corresponding to paragraph 5 of article 10 of the UNDT's Statutes. All other claims were rejected.

Decision Contested or Judgment/Order Appealed

The Applicant contests HCR High Commissioner's refusal to grant him a promotion to the D1 level. The Commission in charge of the recommendations for promotions to the High Commissioner (HC) applied a system of quotas for men/women and not the regulations in force. HC has decided to grant promotions to staff without their case

having been examined by the said Commission.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Andrysek

Entity

UNHCR

Case Number(s)

UNDT/GVA/2009/022

Tribunal

UNDT

Registry

Geneva

Date of Judgement

15 Oct 2009

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Staff selection (non-selection/non-promotion)

Applicable Law

Staff Regulations

- Regulation 8.2

UNAT Statute

- Article 10.5