

UNDT/2009/042, Ishak

UNAT Held or UNDT Pronouncements

Putting into force a new methodical approach to establish a list of recommended staff for a P5 promotion had not been submitted to the mixed staff-administration consultative body of HCR as long as this approach did not modify the existing regulations when it comes to the criteria of promotion. 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. 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 moral damage of the illegal decision that was made and fixes the amount to be paid at CHF8000. According to the Tribunal's Statutes, the judge cannot address/impose injunctions on the administration. The annulment of a non-promotion due to the vice of procedure does not imply that the staff could have been promoted. The request that was before the judge to order the administration to grant the staff a promotion can but be rejected. Contested decision rescinded.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 promote him to P-5. The Commission in charge of the recommendations for promotions to the High Commissioner applied a system of quotas for men/women and not the regulations in force.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Ishak

Entity

UNHCR

Case Number(s)

UNDT/GVA/2009/024

Tribunal

UNDT

Registry

Geneva

Date of Judgement

15 Oct 2009

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Applicable Law

Staff Rules

UN Charter

UNDT Statute