

# **UNDT/2010/178, Tsoneva**

## **UNAT Held or UNDT Pronouncements**

The Deputy High Commissioner, who has received a delegation from the High Commissioner, is legally competent to carry out the management evaluation of a decision taken by the latter. The legality of a decision must be assessed as at the date when it was taken, and not in light of subsequent circumstances. As regards promotions, considering the discretionary nature of these decisions, the Tribunal's role is only to review the legality of the procedure followed and to examine whether there have been any errors of facts in the assessment of the staff member's career. Under the principle that similar acts require similar rules, the decision that modifies the original provision governing the promotion procedure in UNHCR must be taken through the same procedure followed to adopt the original provision. The APPB rules of procedure state that the APPB is established to advise the High Commissioner on appointments, postings and promotions of staff. Hence, the High Commissioner cannot legally promote a staff member whose situation has not been considered by the APPB. This irregularity must lead to the rescission of the decision to deny the applicant a promotion. Pursuant to article 10.5(a) of the Tribunal's Statute, the Judge set the sum of CHF8,000 as the amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision. This sum compensates the material damage suffered by the applicant but not the moral damage. The Judge will only grant compensation for moral damage if he considers that the applicant would have had a chance of promotion had no irregularity been committed. In the case at hand, the Judge grants CHF4,000 for moral damage to the applicant.

## **Decision Contested or Judgment/Order Appealed**

The applicant, a UNHCR staff member, contests the decision of the High Commissioner not to promote her to the P-4 level in the 2008 annual promotion session.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

The contested decision is rescinded. As an alternative to the rescission, the respondent may elect to pay CHF8,000 to the applicant. Additionally, the applicant is awarded CHF4,000 for moral damage.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Tsoneva

## Entity

UNHCR

## Case Number(s)

UNDT/GVA/2009/084

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

13 Oct 2010

## Duty Judge

Judge Cousin

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Loss of chance

Non-pecuniary (moral) damages

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Staff selection (non-selection/non-promotion)

## Applicable Law

Former Staff Regulations

- Regulation 4.2
- Regulation 8.2

Other UN issuances (guidelines, policies etc.)

- UNHCR Appointments, Postings, Promotion Board (APPB) Procedural Guidelines

UN Charter

- Article 101.3

## UNDT Statute

- Article 10.5(a)
- Article 8.1

## Related Judgments and Orders

2010-UNAT-044

2010-UNAT-052