

UNDT/2010/179, Vangelova

UNAT Held or UNDT Pronouncements

The UNDT Statute, which is superior in the hierarchy of norms to the Staff Rules, states that an applicant should file an application within 90 days following the expiry of the 45-day period for the management evaluation if the Administration has not replied to his/her request. If the Administration replies after the 45-day period but before the expiry of the 90-day period, a new 90-day period to contest a decision before the Tribunal starts to run. 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 present case, the applicant did not have a chance of promotion since she had neither been recommended in 2008 nor in 2007.

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

Full judgment

[Full judgment](#)

Applicants/Appellants

Vangelova

Entity

UNHCR

Case Number(s)

UNDT/GVA/2010/075

Tribunal

UNDT

Registry

Geneva

Date of Judgement

14 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 8.2

Laws of other entities (rules, regulations etc.)

Other UN issuances (guidelines, policies etc.)

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

Staff Rules

- Rule 11.4

UNDT Statute

- Article 10.5(a)
- Article 8.1

Related Judgments and Orders

2010-UNAT-044

2010-UNAT-052