

*Translated from French*

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UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES

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Case No. 2010-048

**Ms. Tsoneva**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

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Before: Judge Jean Courtial, Presiding  
Judge Inés Weinberg de Roca  
Judge Sophia Adinyira

Judgment No.: 2010-UNAT-045

Date: 1 July 2010

Registrar: Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Respondent: Phyllis Hwang

**Judge Jean Courtial**, Presiding

### **Synopsis**

1. Ms. Tsoneva is appealing a judgment in which the United Nations Dispute Tribunal rejected her application seeking rescission of the decision of 29 February 2008, by which the High Commissioner for Refugees refused to promote her to the P-4 level during the 2007 promotion session, and to compensate her for the moral and material harm caused by the decision to deny her a promotion. This court finds that the Dispute Tribunal did not err on a question of law in deciding that Ms. Tsoneva — who invoked errors committed by the administration in the review of her professional career in support of her application to have the refusal to promote her rescinded — had to establish that, without these errors, she would have had a real chance of being promoted. It further considers that Ms. Tsoneva has failed to establish that the Dispute Tribunal erred on a question of fact, in deciding that she had failed to establish that the few material errors in her fact-sheet deprived her of the chance to be promoted, and that this error resulted in a manifestly unreasonable decision. Ms. Tsoneva's appeal is denied; the contested judgment of the Dispute Tribunal is upheld.

### **Facts and procedure**

2. Ms. Tsoneva, a staff member at the Office of the United Nations High Commissioner for Refugees (UNHCR), was an unsuccessful candidate for promotion to the P-4 level during the 2007 promotion session. Ms. Tsoneva complained that the file submitted to the Appointments, Postings and Promotions Board contained inaccurate and incomplete information. Even though Ms. Tsoneva later provided the Board with supplementary information in support of an appeal of the Board's decision, the Board upheld its original recommendation that she should not be promoted. UNHCR decided not to promote her.

3. On 25 July 2008, Ms. Tsoneva submitted an application to the Joint Appeals Board, which was transferred to the Dispute Tribunal when the new internal justice system came into operation on 1 July 2009.

4. That application was rejected by the United Nations Dispute Tribunal in its Judgment No. 2009/048 of 16 October 2009, in which the Dispute Tribunal ruled that the applicant had not shown that the decision not to promote her had been tainted with a procedural flaw. It found that while the Appointments, Postings and Promotions Board had committed an error by rejecting the recourse submitted by Ms. Tsoneva on 25 March 2008 even though the fact sheet compiled by the Administration contained errors, the applicant had not shown that if the inaccurate information had not been included in the review of her professional career, she would have had a real chance of being promoted. Ms. Tsoneva's argument that the decision not to promote her in 2007 should be rescinded and that she should be awarded compensation for the resulting harm were rejected by the Dispute Tribunal.

**Submissions****Appellant**

5. Ms. Tsoneva contends that her rights were not respected during the 2007 promotions session and that her application for promotion was not fully and fairly considered. She notes in particular that the administration failed to provide the Appointments, Postings and Promotions Board with a complete fact sheet on her career in a timely manner. She states that miscalculations occurred, that the points system used for evaluations had not been approved by the Joint Advisory Committee, that the system was applied with errors that prevented an objective and impartial evaluation of relevant factors and that there was no procedure for taking into account non-weighted criteria related to efficiency and competence.

6. Basically, Ms. Tsoneva contends that the Appointments, Postings and Promotions Board did not consider all the relevant information, including the fact that she had been holding two posts, one at the P-3 level and one at the P-4 level. She also notes that her candidacy was considered together with those of a group of women candidates who were performing functions at their own P-3 level, in violation of paragraphs 150-152 of the Procedural Guidelines of the Appointments, Postings and Promotions Board. She also calls into question the objectivity and transparency of the promotion system and maintains that it does not meet the requirements of article IV, regulation 4.2, of the Staff Regulations. Ultimately, the appellant contends that the Dispute Tribunal made an error ruling that she had to establish that she would have been promoted if the Appointments, Postings and Promotions Board had been aware of all the facts of her career.

7. Ms. Tsoneva requests a review of the decisions concerning the decision not to promote her, compensation for the harm caused by irregularities in the promotion process, a special post allowance under staff rule 103.11 (b) for the period 1 September 2007 to 1 December 2007, and payment of P-4 level salary and benefits as if she had been promoted, including the corresponding pension increase.

**Respondent**

8. The respondent notes that Ms. Tsoneva's claim of errors on the part of the Dispute Tribunal is not founded on any of the grounds provided for in article 2, paragraph 1, of the Statute of the United Nations Appeals Tribunal. She does not specify the legal basis for her appeal. She merely repeats the arguments used in her request for administrative review of 8 April 2008. The respondent notes that in none of her arguments does Ms. Tsoneva claim or demonstrate that the Dispute Tribunal erred in a manner that invalidates its judgment.

9. The respondent requests the Appeals Tribunal to reject the appeal.

**Considerations**

10. Article 2, paragraph 1, of the Statute of this Tribunal provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has: (a) Exceeded its jurisdiction or competence; (b) Failed to exercise jurisdiction vested in it; (c) Erred on a question of law; (d) Committed an error in procedure, such as to

affect the decision of the case; or (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

Article 8, paragraph 2, of the Rules of Procedure provides that: “The appeal form shall be accompanied by: (a) A brief that explains the legal basis of any of the five grounds for appeal set out in article 2.1 of the statute of the Appeals Tribunal that is relied upon (...).”

11. It follows from the above provisions that a party appealing a judgment of the United Nations Dispute Tribunal is unlikely to succeed in having the judgment reversed, modified or the case remanded to the Dispute Tribunal unless the appeal challenges the impugned judgment on one or more of the grounds referred to in Article 2, paragraph 1 (a) to (e), of the Statute of this Tribunal.

12. The appeal cannot but be dismissed in the light of the above, and of the fact that the appellant has simply reproduced the arguments submitted first to the Joint Appeals Board and then to the Dispute Tribunal, without explaining in what respect the Dispute Tribunal, by rejecting those arguments as being unfounded, exceeded or failed to exercise its jurisdiction, erred on a question of law, committed an error in procedure or erred on a question of fact, resulting in a manifestly unreasonable decision.

13. This court did, however, examine the argument made by Ms. Tsoneva condemning the Dispute Tribunal for having made an error in ruling that she had to establish that she would have been promoted if the Appointments, Postings and Promotions Board had been aware of all the facts of her career.

14. The Dispute Tribunal indicated that:

It is apparent from the case file and in particular from a comparison of the fact-sheet used by the Board to study the applicant’s situation and the fact-sheet of 23 October 2008 as corrected by the Administration following the applicant’s recourse that: first, the period from July 1995 to September 2000, when the applicant was serving in Haiti and Rwanda, was classified by UNHCR as United Nations experience, whereas it had not been so classified before; second, for the period from October 2001 to January 2003, her performance rating was reflected in the fact-sheet, whereas it had not been so reflected before; and, third, for the period subsequent to May 2007, the fact-sheet shows a “superior” rating, which it had not shown before for that period, and reflects the applicant’s comments, including the statement that, beginning in May 2007, she was implementing tasks at the P-4/Senior Contracts Officer level.

However, the Dispute Tribunal also subsequently observed that:

While the applicant maintains that no account was taken of the fact that she occupied a post at the P-4 level for several months, she does not substantiate her claim, whereas the Administration contests it in precise terms. The fact that the rating of her performance as “superior” was not taken into account for the period up to 1 October 2007 does not in any case affect the Board’s calculation of the number of points, which would have been the same even if it had been taken into account.

15. In view of the Dispute Tribunal’s observations, which the appellant did not specifically contest, its task was to assess whether the errors made in the review of

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the appellant's professional career could have been the sole cause of the Administration's refusal to promote her.

16. This court takes the view that the Dispute Tribunal did not err on a question of law in deciding that Ms. Tsoneva — who invoked these errors in support of her application to have the refusal to promote her rescinded — had to establish that, without the errors committed in the review of her professional career, she would have had a real chance of being promoted. It further considers that Ms. Tsoneva has failed to establish that the Dispute Tribunal erred on a question of fact, resulting in a manifestly unreasonable decision, in deciding that she had failed to establish that the few material errors in her fact-sheet deprived her of the chance to be promoted.

17. In the light of the foregoing, all the requests made by Ms. Tsoneva must be rejected and the judgement of the Dispute Tribunal must be upheld.

**Judgment**

18. Ms. Tsoneva's appeal is rejected in its entirety. United Nations Dispute Tribunal Judgement No. 2009/048 of 16 October 2009 is upheld.

Dated this 1<sup>st</sup> day of July 2010 in New York, United States.

Original: French

*(Signed)* Judge Courtial, Presiding Judge

*(Signed)* Judge Weinberg de Roca

*(Signed)* Judge Adinyira

Entered in the Register on this 16<sup>th</sup> day of August 2010 in New York, United States.

*(Signed)* Weicheng Lin, Registrar

United Nations Appeals Tribunal

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