





Translated from French

inadmissibility *ratione materiae* as the decisions in question were not "administrative decisions". The Secretary-General accepted the JAB recommendation in a letter dated 24 June 2009.

13. The applicant's recourse was considered during the 2008 recourse session, which took place from 22 to 25 June 2009. At the outcome of the session, the results of which were published in IOM



paragraph 2, of the rules of procedure that his application be heard in New York and (ii) a request for leave to file allegations of misconduct against the Geneva Registrar.

25. By Order dated 12 February 2010 the President of the Tribunal, having concluded that the applicant was actually seeking to appeal the judgments in his two previous cases before the Tribunal and that no conflict of interest was involved, rejected the applicant's request for recusal of the judge in charge of the present case.

26. On the same date, the Geneva Registry transmitted all of the applicant's

33. On 3 May 2010 the applicant informed the Tribunal that he was unable to attend the hearing in person as he had recently been transferred to Nicosia, Cyprus. He asked for the hearing to be postponed until the week beginning 17 May 2010.

34. An oral hearing was held on 4 May 2010. The respondent's counsel appeared in person and the applicant participated by telephone.

#### Parties' contentions

35. The applicant's contentions are:

- a. The Director of DHRM and the Deputy High Commissioner deliberately tried to prevent the applicant being recommended during the 2008 promotions session. Their actions were part of a campaign of reprisal and harassment against him because of his staff representation and whistle-blowing activities;
- b. The Director of DHRM failed in his duty to update the criteria for the conduct of the promotions session and failed to provide guidance to the Appointment, Postings and Promotions Board;
- c. The interference by the Director of DHRM in his career amounted to breach of the duty of care, the duty to act in good faith and the duty to respect the dignity of staff members which are enshrined in the Staff Rules;
- d. The attempts at retaliation against him, including the repeated denial of his right to fair consideration for promotion to the P-5 level, must be deemed infringements of his terms of appointment;
- e. The impugned decisions have directly affected his rights in both the short and the long terms. They constituted a denial of his fundamental right to have the appraisal of his performance reflected in his fact sheet. The omission of favourable information was detrimental to the review of his case during the 2008 promotions session and resulted in severe moral injury. Although he was promoted during the recourse session for 2008, the impact

of the initial negative decision on his health has not been addressed and the Director of DHRM failed to take the appropriate administrative measures in that regard. His fact sheet still does not reflect the favourable assessment contained in the High Commissioner's letter acknowledging his contribution as Chairperson of the Staff Council.

36. The respondent's contentions are:

- a. There is a discrepancy





in connection with proceedings are carried out under the control and sole responsibility of the judge. In this connection, t



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Case No. UNDT/GVA/2009/66

Judgment No. UNDT/2010/085