

the Tribunal notes that inasmuch as the point “sub judice” is the decision of the Secretary-General to entrust the new report to the same official that had drafted the previous one that was annulled, it cannot consider such a plea.

XI. All other pleas, including the preliminary pleas, are rejected.

(Signatures)

Herbert REIS

*Vice-President, presiding*

Luis M. de POSADAS MONTERO

*Member*

Geneva, 16 May 1986

Ahmed OSMAN

*Member*

R. Maria VICIEN-MILBURN

*Executive Secretary*

## Judgement No. 364

(Original: English)

**Case No. 349:**  
**Marazzi**

**Against: The Secretary-General  
of the United Nations**

*Request by a former staff member of UNCTAD for the rescission of the decision not to include her name in the Promotion Register and not to implement her promotion after her name was included in the Register; request for compensation.—Request for preliminary measures: production of the personal status file.*

*Recommendation of the Joint Appeals Board to carry out a review of the Applicant's situation after obtaining an opinion of the Legal Counsel on the legal provisions governing the implementation of promotions of staff members whose names have been included in the Promotion Registers.*

*Request for preliminary measures rejected.*

*Applicant's complaint about ill-treatment at the time of her recruitment in 1973.—Ruling that the complaint is time-barred.—Applicant's pleas against the decision not to include her name in the Promotion Register and not to implement her promotion after it was included in the Register.—Consideration of the circumstances of the case.—Memorandum addressed by the Assistant Secretary-General for Personnel Services to the Appointment and Promotion Board after the finding of the Panel to Investigate Allegations of Disciplinary Treatment that the Applicant had been discriminated against on the ground of her sex.—Tribunal's finding that the memorandum, which attempted to influence the Board, was an interference with the integrity of the Board and prejudiced the Applicant's right to an objective and autonomous consideration of the question of her promotion.—Question of the legality of the failure to promote the Applicant after her name was included in the Promotion Register.—The Tribunal holds that the inclusion of a staff member's name in the Register does not give rise to any entitlement for promotion.—Legitimate nature of taking into consideration the views of a department, but not of the practice by which a department may ask that preference be given to all individuals for whom it recommended promotion in preference to all those whom the Appointment and Promotion Board included in the Register on its own initiative.—Finding that the facts of the case suggest the existence of prejudice against the Applicant.—The Tribunal notes that subsequently the Applicant was promoted and shortly thereafter resigned.*

*Award of compensation of two months' net base salary at the rate applicable at the time of separation.—All other pleas rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Herbert Reis, Vice-President, presiding; Mr. Roger Pinto;  
Mr. Ahmed Osman;

Whereas on 8 April 1985, Leonarda Marazzi, a former staff member of the United Nations Conference on Trade and Development, hereinafter referred to as UNCTAD, filed an application in which she requested the Tribunal:

“(a) Preliminary or provisional measures: I am requesting the Tribunal to order from the Administration the production of my personal status file before proceeding to consider the merits of the present case;

“(b) The decisions which I contest and whose rescission I am kindly requesting under Article 9, paragraph 1, of the Statute are:

“(i) the decision by the Appointment and Promotion Board not to include my name in the 1982 Senior Officer (P-5) Promotion Register;

“(ii) the decision by UNCTAD not to implement my promotion from the 1983 Senior Officer (P-5) Promotion Register;

“(iii) the decision by UNCTAD not to implement my promotion from the 1984 Senior Officer (P-5) Promotion Register;

“(iv) the decision by the Secretary-General not to review my situation in the light of my appeal to the Joint Appeals Board, as recommended by the Board;

“(c) The obligations which I am invoking are contained in:

“(i) the Charter of the United Nations which is [sic] its Preamble, second paragraph ‘reaffirms faith . . . in the equal rights of men and women’;

“(ii) General Assembly Resolutions:

“—31/26, 6, which ‘requests the Secretary-General to ensure, through all appropriate measures, equal opportunity for the promotion of women in the Secretariat, without any discrimination based on sex’; and 7, which ‘requests the Secretary-General to appoint as soon as possible a panel to investigate allegations of discriminatory treatment and to recommend appropriate action’;

“—32/17, B, 6, which ‘recommends that the Secretary-General should draw the attention of the appointment and promotion bodies to the special need to appoint, in the context of equitable geographical distribution, and promote qualified women, particularly at the more senior levels’;

“—33/143.2, which ‘requests the Secretary-General of the United Nations and the executive heads of the other organizations within the United Nations system to issue, in accordance with the principle of equitable geographical distribution, policy statements and directives necessary to foster equal employment and career development opportunities for women’;

“—35/210, V, 3, which ‘calls upon the Secretary-General and the executive heads of the other organizations of the United Nations system to end all forms of discrimination based upon sex in recruitment, conditions of employment, assignment, training and promotion’; and V, 4, (d), which ‘requests the Secretary-General and the executive heads of the other organizations of the United Nations system to examine additional measures that will advance the attainment of the policy

directives concerning the appointment, promotion and assignment of women in the secretariats . . .’;

“(iii) Administrative instructions:

“—ST/AI/246/Add.1 of 19 June 1978 on the ‘Establishment of panels to investigate allegations of discriminatory treatment at duty stations away from Headquarters’, paragraph 8, which reads: ‘. . . Action on the Panel’s recommendations *shall be taken* on consultation with the Head of the Office.’ (my emphasis);

“—ST/A[sic]/308/Add. 1 of 23 November 1983, on the ‘Establishment of panels on discrimination and other grievances’, paragraph 18, which reads: ‘The Assistant Secretary-General for Personnel Services *shall act upon the recommendations of the panel* and shall inform it, by quarterly reports, of the action taken on those recommendations’; . . . (my emphasis);

“(d) The amount of compensation claimed by me in the event that the Secretary-General decides, in the interest of the United Nations, to pay compensation for the injury sustained in accordance with the option given to him under Article 9, paragraph 1, of the Statute:

“(i) for damage to career caused by discrimination \$ [United States dollars] 100,000;

“(ii) for damages to career caused by belated correction of incomplete information maintained by administration \$50,000;

“(iii) for damages to career caused by negligence by administration in maintaining proper records \$50,000;

“(iv) for damages to career caused by administrative irregularities and failure to follow established procedures \$50,000;

“(v) for failure to fulfil legitimate expectancy of implementation of promotion \$30,000;

“(vi) unless my promotion to P-5 is implemented retroactively, full compensation for the loss of income suffered since 1 April 1982, such compensation to amount to the difference between the salary and allowances which I have been earning and the salary and allowances which I could have been expected to earn if promoted, with an additional allowance for the fact that promotion from P-4 to P-5 causes the right to diplomatic status, with all the associated financial and other advantages;

“(vii) unless my promotion to P-5 is implemented at once, full compensation for the same difference in salary and allowances with an additional allowance for diplomatic status mentioned under vi) above, until promotion to P-5 is implemented;

“(viii) unless my promotion to P-5 is implemented retroactively to 1 April 1982, full compensation for the losses sustained in pension rights to date;

“(ix) unless my promotion to P-5 is implemented at once, full compensation for future losses of pension rights;

“(x) for prejudice caused by procedural delays in consideration of appeals, three months salary;

“(xi) for unjust treatment and suffering endured \$10,000;

“(xii) for moral damages \$1;

“(e) Any other relief requested: none.”

Whereas the Respondent filed his answer on October 1985;

Whereas the Applicant filed written observations on 5 December 1985;

Whereas on 4 February 1986 the Respondent requested the Tribunal for permission to submit additional written statements pursuant to Article 10 of the Rules of the Tribunal, which it granted on 5 May 1986;

Whereas on 23 April 1986 the Applicant requested the Tribunal for permission to submit additional statements pursuant to Article 10 of the Rules of the Tribunal, which it granted on 5 May 1986;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 22 July 1973 as a Liaison Officer at the Office of the Secretary-General of UNCTAD. She was initially offered fixed-term appointments of six and one months respectively at the P-3 Step VII level. The Chief, Personnel Section, UNCTAD recommended that the Applicant's appointment be extended for a further period of two years, at the same grade and level. However, the Chief, Recruitment Service, OPS [Office of Personnel Services] at Headquarters objected to the level—P-3 Step VII. After negotiations between UNCTAD and OPS at Headquarters, the Chief, Recruitment Service, OPS "reluctantly agreed" to recruit the Applicant at the P-3 Step V level. On 22 February 1974 she was offered a fixed-term appointment of two years at the P-3 Step V level, which she accepted. On 1 February 1975 she was reassigned to the Department of Conference Affairs and External Relations, UNCTAD as an External Relations Officer. On 7 April 1975 she was transferred to the Commodities Division. The Applicant's appointment was subsequently extended for a further fixed-term of two years until 21 February 1978. It was retroactively converted to a probationary appointment on 1 October 1977 and to a permanent appointment on 1 September 1978.

On 29 May 1980, having accumulated seven years of seniority at the P-3 level and not having been recommended for promotion to the P-4 level by her Department, the Applicant instituted a recourse procedure before the Appointment and Promotion Committee, APC, in which she requested the APC to review her case and include her name in the 1980 P-4, First Officer Promotion Register. She was successful in this regard. On 19 August 1980, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had approved the addition of her name to the 1980 register of staff members eligible for promotion to the First Officer, P-4 level. The Applicant's promotion was subsequently implemented on 27 January 1981, effective 1 April 1980.

On 28 July 1981 the Applicant addressed a memorandum to the Panel to Investigate Allegations of Discriminatory Treatment at Geneva. She asserted that despite her satisfactory services, qualifications and relevant experience—and a successful career prior to joining the United Nations—it appeared that her "low grading upon appointment" and her "belated promotion to P-4" had resulted in her "career lagging some 10 years behind normal expectations". She requested the Panel to recommend that she be considered for two P-5 vacancies in the Commodities Division, and, in order to redress her slow career progress, that she be considered for an accelerated promotion to the P-5 Senior Officer level, based upon satisfactory performance, and disregarding her seniority within the grade at the P-4 level.

On 21 May 1982 the Applicant instituted a recourse procedure before the Appointment and Promotion Board, APB, in which she requested that her name be included in the 1982 Senior Officer (P-5) Promotion Register and that the

normal requirements of seniority within grade at the P-4 level be waived in her case. In support of her recourse she described *inter alia* her qualifications, the level of her work, and the Report of the Coordinator of the Panel to Investigate Allegations of Discriminatory Treatment at Geneva of the same date.

On 21 May 1982 the Coordinator of the Panel to Investigate Allegations of Discriminatory Treatment at Geneva transmitted to the Assistant Secretary-General for Personnel Services a report containing the Panel's findings, conclusions and recommendations in the Applicant's case. The Panel endorsed the findings of one of its members that "the criteria for promotion as set by the Division had been clearly met by [the Applicant] and that she had been treated less favourably than other staff members in the same situation because of her sex". The Panel recommended that the Applicant "should be considered for accelerated promotion under the recourse submitted by her in the 1982 APB". In addition, the Coordinator of the Panel stated: "You may wish to support the conclusion of the Panel and its recommendation and to bring them to the attention of the APB at Headquarters".

On 28 July 1982 the Assistant Secretary-General for Personnel Services informed the Coordinator of the Panel to Investigate Allegations of Discriminatory Treatment at Geneva that she had taken note of the Panel's findings and the recommendation that the Applicant be promoted on an accelerated basis. In addition she stated: "Although I cannot anticipate the approach the Appointment and Promotion Board may take to Mrs. Marazzi's letter of recourse, I will instruct the *ex officio* member of the Appointment and Promotion Board to ensure that Mrs. Marazzi's case receives careful consideration."

On 7 September 1982, while the recourse procedure instituted on 21 May 1982 was taking its course, the Assistant Secretary-General for Personnel Services addressed a memorandum to the Chairperson of the APB in which she stated that the Office of Personnel Services could not support the recommendations of the Panel to Investigate Allegations of Discriminatory Treatment at Geneva concerning the Applicant, on the ground that the "minimum period [of service] for accelerated promotion [had] been established at three years, . . . even in the case of *ad hoc* promotions". In addition, she stated that firstly, it was "by no means unusual for a staff member to remain for seven years at the P-3 level and that the information provided in the Panel's report [was] not such as to lead to any clear conclusion that in the case of Mrs. Marazzi this would have been due to discrimination". Secondly, she considered that "the existence of an independent promotion machinery, which conducts once a year a promotion review . . . [was] in itself a safeguard against discrimination in promotion". Lastly, she noted that the "essential consideration" in the granting of an accelerated promotion should be that the staff member have "unusual potential and exceptionally outstanding records of performance". According to the Assistant Secretary-General for Personnel Services, the Applicant's performance as evaluated in her last report did not appear to be of "such an exceptionally outstanding nature" that would warrant an accelerated promotion.

On 16 September 1982 the Chairman of the APB informed the Applicant that her recourse had been unsuccessful.

On 1 October 1982 the Applicant requested the Secretary-General to review the administrative decision taken by the APB. She added that if the Secretary-General did not wish to interfere with the actions of the APB, she sought his agreement for direct submission of her appeal to the Administrative Tribunal. On 11 November 1982 she reiterated her request, and on 30 November 1982,

not having received a reply from the Secretary-General, she lodged an appeal with the Joint Appeals Board.

The Joint Appeals Board adopted its report on 5 November 1984. Its conclusions and recommendations read as follows:

*"C. Conclusions and Recommendations*

"33. The Board concluded, from the foregoing statements, that the different views expressed by the senior officials of UNCTAD, on the one hand, and of the United Nations Personnel Service on the other, concerning the implementation of promotions, cannot be harmonized.

"34. The Board itself endorses the opinion of the Assistant Secretary-General for Personnel Services regarding 'the necessity to implement without delay the promotions from registers' and holds that equal treatment should be given to the implementation of promotions of staff members included in the promotion registers, regardless of whether or not they were recommended by the heads of their departments.

"35. The Board therefore recommends to the Secretary-General that he should obtain from the Legal Counsel (Under-Secretary-General for Legal Affairs) an advisory opinion on the legal provisions governing the implementation of promotions of staff members whose names have been included in the Promotion Registers.

"36. The Board also recommends that the Secretary-General should, as speedily as possible, conduct a review of the Appellant's situation, in the light of the facts elicited in this appeal, as soon as the Legal Counsel's advisory opinion has been obtained. It recommends further that copies of all relevant papers concerning this appeal, including the present report, and any papers resulting from the Secretary-General's action in response to these recommendations, should be transmitted for information to the Chairman of the Appointment and Promotion Board at Headquarters."

On 8 April 1985 the Applicant filed the Application referred to above.

Whereas the Applicant's principal contentions are:

1. The Applicant was unfairly graded at a low level when she was recruited by OPS, which did not properly take into account her prior experience and academic qualifications. Subsequently, the UNCTAD administration was negligent in maintaining a proper record of the Applicant's qualifications and performance. This had an adverse effect on her career.

2. The Applicant was belatedly promoted to the P-4 level after serving seven years at the P-3 level, and in spite of a very satisfactory performance.

3. The APB did not follow proper procedures in the examination of the Applicant's recourse in 1982. The Assistant Secretary-General for Personnel Services improperly exercised her discretionary authority in her communication to the APB. She did not respect the terms of reference of the Panel to Investigate Allegations of Discriminatory Treatment in Geneva. She did not respect the rules and regulations on performance evaluation because she substituted her evaluation for that of the Applicant's supervisor.

4. UNCTAD did not follow the recommendations of the APB and did not implement the Applicant's promotion in 1983 and 1984. This is further evidence that the Applicant has been discriminated against by UNCTAD on account of her sex.

5. The Secretary-General has failed to implement General Assembly Resolutions 35/210,V, 33/143,III,2, 32/17, and 31/26,6.

Whereas the Respondent's principal contentions are:

1. Promotion of staff is at the discretion of the Secretary-General and staff have no right to promotion, let alone promotion at a particular time.

2. The granting of preference, in the implementation of promotion recommendations, to staff recommended by Departments does not violate the Staff Regulations and Rules. The scarcity of available posts may sometimes necessitate a choice among staff on a particular promotion register. Granting preference to Departmental recommendees is not an abusive manner of making such a choice.

3. The decisions of the General Assembly regarding the promotion of women do not give individual female staff members a right to preferential treatment.

The Tribunal, having deliberated from 28 April to 16 May 1986, now pronounces the following judgement:

I. The Tribunal considers that all the documents necessary to render a judgement are before it, and, accordingly, it need not consider the pleas for preliminary measures.

II. The first among the several issues raised by the Applicant concerns the ill-treatment she asserts she received when, upon her entry into United Nations service in July 1973, she was appointed at the P-3 Step V level. The Tribunal observes that this issue is time-barred. Had she wished to do so shortly after being appointed in 1973, the Applicant could have contested the level at which this appointment was made by requesting a formal review of the classification. Not having done so, this matter does not come timely before the Tribunal.

III. The principal pleas in this case concern the decision taken by the Appointment and Promotion Board not to include the Applicant's name on the Senior Officer (P-5) Promotion Register in 1982, and the failure of UNCTAD to implement her promotion after her name was included on the 1983 and 1984, Senior Officer (P-5) Promotion Registers by the Appointment and Promotion Boards in those years.

IV. As noted in the introduction to this judgement, in 1981, the Applicant instituted a discrimination proceeding in Geneva which resulted in delivery to the Assistant Secretary-General for Personnel Services of a report, dated 21 May 1982 in favour of the Applicant by a Panel to Investigate Allegations of Discriminatory Treatment. The Panel recommended that she be given accelerated promotion to overcome earlier discrimination based on sex, and asked that its recommendation should be notified to and supported by the Appointment and Promotion Board. The Assistant Secretary-General gave a written assurance to the Panel that she would take the necessary action to ensure that the Applicant's case "receives careful consideration" by the Board. In fact, the Assistant Secretary-General wrote to the Board giving certain information concerning the practice regarding minimum periods of service for regular and accelerated promotions in the Professional category. But she did more; she included in her memorandum of 7 September 1982 her own personal evaluation of the Applicant's performance and, thereby substituting her judgement for that of the Applicant's supervisor, stated that the "performance as evaluated in her last report does not appear to be of such an exceptionally outstanding nature so as to warrant, even if she met the seniority requirement, an accelerated promotion." This attempt to influence the Appointment and Promotion Board was an interference with the integrity of the Board and prejudicial to the Applicant. Now, it should be emphasized that the Applicant had no entitlement

to promotion in 1982 but she was entitled to have the question of her promotion considered on an objective and autonomous basis by the Appointment and Promotion Board. This right was prejudiced by the content of the aforementioned memorandum addressed to the Board.

V. The second substantial matter raised by the pleas in this case concerns the fact that UNCTAD did not implement the Applicant's promotion after her name was included in the Promotion Register by the Appointment and Promotion Board in each of two successive years, 1983 and 1984. The Tribunal must therefore address the question whether, in the circumstances of this case, the non-action of UNCTAD to promote the Applicant violated her rights.

VI. The Tribunal recalls that the simple fact that the name of a staff member is included in a Promotion Register does not give rise to any entitlement to promotion. Not infrequently, more names may be included in a particular Promotion Register than there exist vacant posts to which the individuals may be appointed; the Respondent correctly points out that each Promotion Register states, on its face, that "Promotion from the register will be authorized by the Assistant Secretary-General for Personnel Services in the context of staff table resources and departmental wishes." The Tribunal does not question this statement to the extent that "departmental wishes" relate to matters on which, in the individual case, the department concerned may have substantive views. However, the Tribunal cannot support the practice by which a department may grossly and without regard to the specific staff member ask that preference be given to promotion of all individuals for whom it has recommended promotion in preference to all those whom the Appointment and Promotion Board has, on its own initiative, decided to include in the Promotion Register. The Tribunal holds that such action violates the objectives of the Appointment and Promotion Board process.

VII. Moreover, the history of this case is suggestive of the existence of prejudice against the Applicant. First, in 1982 the Discrimination Panel found in her favour and recommended accelerated promotion. Second, as has been seen, the autonomy of the 1982 Appointment and Promotion Board was adversely affected as regards the Applicant by reason of the contents of the memorandum from the Assistant Secretary-General for Personnel Services. Third, the records before the Tribunal reveal that except for the Applicant, all other staff members included in the P-5 Senior Officer Promotion Register in 1982 and 1983 had been promoted by UNCTAD by August 1984. Taken together, these facts cannot but suggest the existence of prejudice.

VIII. At the same time, the Tribunal is obliged to note that, as the Applicant has herself shown in the Written Observations and documents annexed thereto, UNCTAD eventually promoted her to P-5 effective 1 March 1985. Notwithstanding this promotion, the Applicant offered her resignation as of 1 December 1985, which was accepted by the Administration.

IX. In view of the foregoing reasons, the Tribunal decides that the Applicant is entitled to an appropriate award of compensation for the actions of the Administration incompatible with her rights. Accordingly, the Tribunal orders the Respondent to pay the Applicant two months net base salary at the rate accruing to her at the time of her resignation in December 1985.

X. All of the Applicant's other pleas are rejected.

*(Signatures)*

Herbert REIS  
*Vice-President, presiding*

Ahmed OSMAN  
*Member*



Roger PINTO  
Member

Geneva, 16 May 1986

R. Maria VICIEN-MILBURN  
Executive Secretary

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## Judgement No. 365

(Original: French)

Case No. 339:  
Gbikpi

Against: The Secretary-General  
of the United Nations

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*Request for the correction and revision of Judgement No. 359.*

*Consideration of the receivability of the request.—Finding that no clerical or arithmetical errors or mistakes are alleged.—Allegations that errors of law were made by the Tribunal, even if established, would not give rise to the revision procedure under article 12 of the Tribunal's statute.—Finding that the Applicant does not invoke any new facts having a decisive effect on the judgement and which were unknown to the Tribunal and to the Applicant when the judgement was rendered.—Application held irreceivable.*

*Application rejected.*

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THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Herbert Reis, Vice-President, presiding; Mr. Luis de Posadas Montero; Mr. Roger Pinto;

Whereas, by a letter dated 18 November 1985, the Applicant filed, under article 12 of the Statute of the Tribunal, an application for the correction and revision of Judgement No. 359 rendered in his case on 8 November 1985;

Whereas the Respondent filed his answer on 13 February 1986;

Whereas the Applicant filed written observations on 26 March 1986;

Whereas on 8 April 1986, 23 April 1986 and 15 May 1986 the Applicant filed additional documents;

Whereas at the request of the Tribunal, the Respondent submitted additional information on 12 May 1986;

Whereas the facts in the case have been set forth in Judgement No. 359;

Whereas the Applicant requests the Tribunal, in accordance with the last sentence of article 12 of its Statute, to correct three errors and to rectify two omissions in Judgement No. 359 dated 8 November 1985;

Whereas the Respondent contends that:

1. The request for revision of Judgement No. 359 filed by the Applicant does not comply with the requirements laid down in the first sentence of article 12 of the Statute of the Tribunal. It does not put forward any new fact that was unknown to the Tribunal when the judgement was rendered.