



**JUDGE MARK P. PAINTER**, Presiding.

**Synopsis**

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12. On 28 April 2010, the UNDT issued Judgment No. UNDT/2010/071 (Judgment on Remedies). Judge Shaw awarded Hastings the sum of USD 5,000 for moral damages, as she found that Hastings “must have suffered some distress at the unlawful decision”. Judge Shaw also found that Hastings had suffered material loss as a result of the decision not to grant her an exception, and that she had a ten per cent chance of being successful in her application for the D-2 post of the Executive Secretary of the ACABQ—if the process Judge Shaw described in her Judgment on Merits had been followed, Hastings would have stood a “good although not certain chance of being granted an exception to apply for the post she wanted”, the other eligible candidates at the D-1 level would not have been necessarily prejudiced by Hastings’s candidacy, and Hastings would presumably have passed the written test and would certainly have been interviewed again. Judge Shaw ordered the Secretary-General to pay Hastings “ten percent of the difference between the salary she actually carries and that she would have received in the D-2 position on a continuous basis”. The payments were to be made from the date on which the successful candidate to the D-2 position started and were to continue until the date of Hastings’s retirement. Judge Shaw further ordered the Secretary-General to pay Hastings “10 percent of any additional allowances and benefits she would have received at the D-2 level including adjustment of her pension contributions and consequent retirement benefits”.

13. On 14 June 2010, the Secretary-General filed an appeal from both the Judgment on Merits and the Judgment on Remedies. On 2 August 2010, Hastings filed an answer.

### Considerations

14. Hastings maintains that since the Secretary-General did not appeal the Judgment on Merits, the findings in that judgment are *res judicata*. This court disposed of that argument in *Kasyanov*.<sup>1</sup> The case is not time-barred.

15. Judge Shaw held that Staff Rule 112.2(b) (“Exceptions to the Staff Rules may be made by the Secretary-General”) applies to Hastings. The Secretary-General is required to pay Hastings the difference between the salary she actually carries and that she would have received in the D-2 position on a continuous basis. The payments were to be made from the date on which the successful candidate to the D-2 position started and were to continue until the date of Hastings’s retirement. Judge Shaw further ordered the Secretary-General to pay Hastings 10 percent of any additional allowances and benefits she would have received at the D-2 level including adjustment of her pension contributions and consequent retirement benefits.

**THE UNITED NATIONS A**

**Judgment**

20. We affirm the decision of the UNDT concerning the possibility of an exception to