



6. On 26 October 2017, the shortlisted candidates were invited to sit a written test and take part in an interview on 23 November 2017. But the written test and the interviews were rescheduled to 17 January 2018, due to the inability of Mr. Savadogo to participate on 23 November.

7. A dispute ensued between Mr. Savadogo and the ITLOS Administration, with the former demanding the re-establishment of the shortlist in order of priority, and not in an alphabetic order.

12. On 25 May 2020, the JAB issued its report. Under the section “Conclusions and Recommendations”, the JAB concluded that the Registrar’s decision to terminate the recruitment process and readvertise the P-5 post was lawful and that there was no violation of due process.

13. In a letter dated 3 June 2020, the Registrar advised Mr. Savadogo that she had “decided to accept the recommendation of the JAB” pursuant to paragraph 11 of Annex VI of ITLOS’ Staff Regulations.

14. Mr. Savadogo appealed the Registrar’s decision in light of the JAB’s recommendation to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) on 31 August 2020. On 29 October 2020, the Registrar of ITLOS filed an answer to the appeal.

Submissions

Mr. Savadogo’s Appeal

15. Mr. Savadogo questions the “suitability and competence” of the JAB to issue recommendations, rather than the first instance decisions to the Registrar, who cannot be considered as a neutral party, in the present case, especially in view of the UNAT recent decision in *Dispert & Hoe*.² ITLOS’ internal justice system is entirely comparable to that of the International Maritime Organization. Consequently, the same reasoning in *Dispert & Hoe* should apply to the present case. In the interest of procedural economy, Mr. Savadogo (th-75.1t(f)1d9 ()1

17. Mr. Savadogo requests that the Appeals Tribunal find that as a result of the decision to terminate the recruitment process and readvertise the P-5 post, ITLOS failed to give his candidacy a full and fair consideration and viola

Considerations

Preliminary matter – competence of UNAT

22. There appears to be a contradiction in Mr. Savadogo's arguments. While he claims that the Appeals Tribunal does not have jurisdiction over the present case, due to the absence of requirements linked to the ITLOS' internal justice system, he also requests this Appeals Tribunal to determine the case on the merits. In her answer to the appeal, the Registrar of ITLOS supports Mr. Savadogo's request to not remand the case to the JAB and to examine the merits of the claim.

23. The fundamental and preliminary question, however, is whether the structure and functioning of the ITLOS internal justice system meet the necessary requirements referred to by Article 2(10) of the UNAT Statute, which provides as follows:⁴

... The Appeals Tribunal shall be competent to hear and pass judgment on an application filed against a specialized agency brought into relationship with the United Nations in accordance with Article 17(1) of the Charter of the United Nations.

24. In turn, the UN-ITLOS Agreement establishes in its Preamble the extension of the competence of this Tribunal to ITLOS with respect to applications alleging non-compliance with the terms of appointment or contracts of employment of staff members of the Registry of ITLOS, provided that ITLOS utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law.

25. This last statement, however, is not compatible with the provision stipulated in Article 2(5) of the UN-ITLOS Agreement, which states that the decision of the “neutral first instance” is taken by the Registrar of ITLOS on the recommendation of the JAB. The provision reads as below:⁵

For the purposes of determining the receivability of an application pursuant to Article 7 of the Statute of the Appeals Tribunal [(A55f)TJ 0.0038 (a)-6.1 (t)-8.40s-12.5 (v-9.6 (L)-2.8 (O)-152.5 (v

THE UNITED NATIONS APPEALS TRIBU

Regulation 11.2

- (a) There is hereby established a Joint Appeals Board (the "Board").
- (b) The function of the Board is to consider applications against
 - (i) an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative is cesfUfLr3is(i)-6.283 (a)-1(JTJ 0.02o)Tj 0.004 r1Tc 7rc1.1 (ct)JTJ 0 Tc 0 Tw-11.699

[(ii)] A member shall hold office until replaced. Though replaced, a member shall continue to fully participate in any case he or she had been involved during his tenure, provided that he or she remains a staff member of the Registry

(j) The Registrar, in consultation with the Staff Committee, shall designate a Secretary of the Board, who shall be a staff member of the Registry.ete hh

THE UNITED NATIONS APPEALS TRIBUNAL

JudgmentP

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Judgment No. 2021-UNAT-1123

Judgment

31. To ensure compliance with the jurisdictional requirements of the UN- ITLOS Agreement and Article 2(10) of our Statute, we remand the matter to the JAB. The Appellant's appeal to the JAB should be reconsidered and decided by a neutral first instance process that produces a written decision and record that includes a statement of the relevant facts and law, with written reasons for the decision.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Halfeld, Presiding
Juiz de Fora, Brazil

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 13th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar