



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-642

**Savadogo
(Appellant)**

v.

**Registrar
of the International Tribunal
for the Law of the Sea
(Respondent)**

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Rosalyn Chapman Judge Richard Lussick
Case No.:	2015-851
Date:	24 March 2016
Registrar:	Weicheng Lin

Counsel for Mr. Savadogo:	Neil Macaulay/Alex Haines
Counsel for Registrar:	Philippe Gautier

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Louis Savadogo against the decision taken by the Registrar of the International Tribunal for the Law of the Sea (Registrar and ITLOS, respectively) on 27 May 2015 in light of the recommendation of the Joint Appeals Board of ITLOS (JAB). Mr. Savadogo appealed on 25 August 2015, and the Registrar answered on 2 November 2015.

Facts and Procedure

2. Mr. Savadogo joined ITLOS as a Legal Officer at the P-4 level in April 2001.

3. In October 2012, ITLOS circulated a vacancy announcement for a newly-created post of Senior Legal Officer/Head of Legal Office at the P-5 level. Mr. Savadogo submitted his application for that post in December 2012, along with 33 other applicants.

4. A list of five candidates, including Mr. Savadogo, was subsequently drawn up and was approved by the Judges of ITLOS in March 2013.

5. On 28 March 2013, the five short-listed candidates sat a written test. The tests were assessed by the Registrar, the Deputy Registrar of ITLOS and two external experts. Each short-listed candidate was also convoked for one interview with a panel consisting of the President of ITLOS and the Registrar.

6. In a letter dated 15 July 2013, the Registrar advised Mr. Savadogo of the decision not to offer him the P-5 post.

7. In a letter dated 8 August 2013 addressed to the Registrar, Mr. Savadogo requested review of the Registrar's 15 July 2013 decision, in accordance with paragraph one of Annex V to the Staff Regulations of ITLOS entitled "Proceedings before the Conciliation Committee".¹ In his review request, Mr. Savadogo stated the reasons for his request and referred to "a series of hostile actions" preceding the contested decision.

¹ Paragraph one of Annex V to the ITLOS Staff Regulations reads: "A staff member of the Registry who wishes to lodge a complaint ... shall first address a letter to the Registrar requesting a review of the administrative decision or disciplinary action complained of. The letter must be sent within 30 days of the date on which the staff member received notification or became aware of the decision or action."

8. In a letter dated 11 September 2013, the Registrar advised Mr. Savadogo of the outcome of the decision review that he could not accept Mr. Savadogo's request for reconsideration of the Registrar's 15 July 2013 decision.

9. On 10 October 2013, Mr. Savadogo lodged a complaint with ITLOS' Conciliation Committee against the Registrar's 11 September 2013 decision to reject his review request.

10. In its report dated 15 July 2014, ITLOS' Conciliation Committee declared that its conciliation efforts had failed.

11. On 12 September 2014, Mr. Savadogo filed an appeal with the JAB of the Registrar's decision affirming his earlier decision not to promote Mr. Savadogo to the P-5 level.

12. In a report dated 11 May 2015, the JAB unanimously held that Mr. Savadogo's appeal was receivable in so far as it related to the decision of 15 July 2013 not to select him for the P-5 post. It concluded that Mr. Savadogo's due process rights had been violated during the selection process for the P-5 post and unanimously recommended awarding him USD 3,000 in compensation for the due process violation. Specifically, the JAB found that the ITLOS Administration had deviated from the requirements of Administrative Instruction ITLOS/AI/06/11 of 13 September 2006 (Procedure for the selection of candidates for vacant posts), in that only one interview, instead of two, had been held with Mr. Savadogo and all other short-listed candidates. The JAB also reviewed the other issues raised by Mr. Savadogo in connection with the P-5 selection process, including the Registrar's participation in the selection process, the establishment of the short list, the conduct of the written tests and interviews, expectancy of promotion and bias and discrimination, but found them to be without merit.

13. In a letter dated 27 May 2015, the Registrar advised Mr. Savadogo of his decision to accept the recommendation of the JAB.

14. On 24 November 2015, after he had appealed and the Registrar had answered, Mr. Savadogo filed a motion for leave to submit four additional documents. On 9 December 2015, the Registrar filed comments, requesting that the Appeals Tribunal dismiss Mr. Savadogo's motion.

Submissions

Mr. Savadogo's Motion and Appeal

15. In his motion for leave to submit four additional documents, Mr. Savadogo maintains that there are exceptional circumstances for those documents to be submitted and certain facts could not be established without them. The four additional documents are: (i) The 15 July 2014 report of ITLOS' Conciliation Committee. As in the case of *Rangel*,² where the Appeals Tribunal had been provided with, and had reviewed, the reports of the Conciliation Committee of the International Court of Justice (ICJ), ITLOS' Conciliation Committee report of 15 July 2014 should be admitted for the purpose of assisting the Appeals Tribunal in its consideration of the merits of his case. (ii) The Registrar's reply dated 11 November 2013 in response to Mr. Savadogo's 10 October 2013 complaint before ITLOS' Conciliation Committee. In Mr. Savadogo's opinion, this document should be admitted for the same reason as in (i). (iii) A medical certificate dated 16 November 2015 provided by Mr. Savadogo's doctor in Hamburg. The certificate was not in existence at the time of Mr. Savadogo's appeal to the Appeals Tribunal, and it paints an accurate picture of the continuing impact his treatment by the ITLOS Administration has on his health. In his view, "[t]he evidential value of the medical certificate goes to damages". (iv) The job description for his P-4 Legal Officer post as approved by the Registrar on 19 December 2011. Mr. Savadogo had submitted to the JAB only the last two pages, but not the complete text, of the eight-page job description.

16. In his appeal, Mr. Savadogo states that the JAB erred by affirming the contested decision not to select him for the P-5 position despite its finding that Mr. Savadogo's due process right to two interviews had been violated. The failure to conduct the selection process in accordance with the recruitment procedure should have resulted in the quashing of the contested decision and the restoration of Mr. Savadogo in the P-5 position.

17. The JAB further erred in law and fact by finding that no compelling reasons existed for the Registrar to withdraw from the selection process and that Mr. Savadogo had failed to prove the Registrar's bias against him. The history between Mr. Savadogo and the Registrar was such that his application for the P-5 position could not have been fairly considered in line with the basic rules of fair competition, because the Registrar could

² *Rangel v. Registrar of the International Court of Justice*, Judgment No. 2015-UNAT-535.

not have acted impartially. In the present case, Mr. Savadogo has suffered such obvious prejudice that the facts speak for themselves.

18. Contrary to the JAB's erroneous finding, Mr. Savadogo has been subjected to a *de facto* demotion because, by taking away the coordination function from his job description just before the issuance of the P-5 vacancy announcement, the ITLOS Administration put an end to the coordination function that he had performed for more than a decade. That was tantamount to a demotion.

19. Mr. Savadogo maintains that the JAB erred in refusing to review the Registrar's discretion, including the failure to assess and grade the written tests in anonymity, the distortion of the selection criteria and the weight given to the components of the selection process.

20. Mr. Savadogo requests that the Appeals Tribunal order rescission of the contested decision of 15 July 2013, his appointment to the P-5 post with effect from 1 August 2013 or compensation equivalent to his loss of future earnings, back wages from 1 August 2013 to the date of his appointment, Euro 100,000 for breach of contract and damages for moral injury and material harm and reasonable legal costs.

The ITLOS Registrar's Comments and Answer

21. In his comments on Mr. Savadogo's motion to submit additional documents, the Registrar stresses that none of the four proffered documents should be admitted for the following reasons. (i) and (ii) are documents prepared for conciliation and are therefore absolutely privileged and confidential, and they should never have been disclosed to the Appeals Tribunal under Article 15 of its Rules of Procedure (Rules). Mr. Savadogo misunderstands the role of ITLOS' Conciliation Committee, in contrast to the ICJ's Conciliation Committee. The former is an informal process of amicable dispute settlement that an ITLOS staff member is required to go through before he or she can resort to the JAB as the neutral first instance process, whereas the latter functions as the neutral first instance process for ICJ staff members. Documents (iii) and (iv), as well as (i) and (ii) for this matter, were available to, or could have been easily prepared by, Mr. Savadogo at the time of the filing of his appeal with the JAB. He did not make efforts to submit those documents to the JAB, nor did the JAB request their submission. Moreover,

Mr. Savadogo did not provide any reason as to why he had not submitted the complete P-4 job description to the JAB.

22. On merits, the Registrar submits that the allegations that Mr. Savadogo now makes before the Appeals Tribunal were already made before the JAB and, when relevant, were already considered and rejected by the JAB. The appeal should only be receivable to the extent that it is supported by arguments explaining his position that the JAB erred in law and fact.

23. The Registrar maintains that the violation noted by the JAB did not lead to any inequality among the candidates. There is no justification for inferring from the limited procedural violation that the selection process as a whole was unfair. As both Mr. Savadogo and the selected candidate performed well during the interview and both of them had the required qualifications, it is improbable that two separate interviews would have affected the final result of the selection process. The JAB was thus justified in recommending the payment of compensation for the procedural violation.

24. The JAB did not err in finding that there were no compelling reasons requiring the Registrar to withdraw from the selection process, that Mr. Savadogo had failed to establish proof of allegations of bias and discrimination, that the administrative decision under review did not demote him, and that there was no legal basis for the view that the highly graded performance evaluations or a long service would create legitimate expectation of, or an acquired right to, promotion.

25. The JAB correctly concluded that it had no reason to doubt that criteria other than the written tests had been taken into account, that an appropriate degree of anonymity of the written test had been safeguarded, and that the weight to be given to each criterion fell within the discretion of the ITLOS Administration.

26. The Registrar requests that the appeal including the relief should be dismissed in its entirety. He states that he stands ready to pay Mr. Savadogo the sum of USD 3,000³ as recommended by the JAB in respect of the procedural breach.

³ In his answer, the Registrar states he stands ready to pay Mr. Savadogo the sum of EURO 3,000. This is an error. The JAB recommended on 11 May 2015, and the Registrar agreed on 27 May 2015, that Mr. Savadogo be paid USD 3,000, and not Euro 3,000.

Considerations*Preliminary matters - request for oral hearing and request for production of documents**(i) Request for oral hearing*

27. Mr. Savadogo requests that the Appeals Tribunal hold an oral hearing, at which he can substantiate his claims of the Registrar's bias and discrimination against him. The Appeals Tribunal denies the request pursuant to Article 8(3) of the Statute of the Appeals Tribunal (Statute).

28. We find that Mr. Savadogo's complaint of bias and discrimination is not receivable as it consists of a series of past issues in respect of which he should have sought redress at the appropriate time. Furthermore, these allegations were not the subject of his request for review of 8 August 2013. We also stress that it neither was the task of the JAB nor is that of the Appeals Tribunal to conduct a fresh investigation into Mr. Savadogo's complaint.⁴

(ii) Motion for submission of additional documentation

29. Mr. Savadogo filed a motion for submission of additional documentation in the form of (i) the report of ITLOS' Conciliation Committee; (ii) the reply of the Registrar before that Committee; (iii) a medical report; and (iv) the job description for the P-4 post of Legal Officer.

30. On the submission by a party of additional documentary evidence, including written testimony, Article 10(1) of our Rules provides:

A party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a party. On its own volition, the Tribunal may order the production of evidence if it is in the interest of justice and the efficient and expeditious resolution of the case, provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal.

⁴ *Mashhour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483, para. 45, quoting *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

31. The Appeals Tribunal denies Mr. Savadogo's request, finding no need for further evidence pursuant to Article 10(1) of our Rules. Secondly, the medical report and the job description for the P-4 post of Legal Officer were documents which Mr. Savadogo could have had prepared or were known to him during his appeal before the JAB and which he should have presented to the JAB. Thirdly, both the report of ITLOS' Conciliation Committee and the reply of the Registrar filed during the conciliation proceedings are "privileged and confidential" documents and should therefore be excluded from proceedings before the Appeals Tribunal pursuant to Article 15 of our Rules.

32. Article 15 of the Rules states:

Exclusion of all documents and statements made during mediation

1. Except in cases concerning enforcement of a settlement agreement, all documents prepared for and oral statements made during any informal conflict resolution process or mediation is absolutely privileged and confidential and shall never be disclosed to the Appeals Tribunal. No mention shall be made of any mediation efforts in documents or written pleadings submitted to the Appeals Tribunal or in any oral arguments made before the Appeals Tribunal.

2. Subject to the provisions of paragraph 1 above, if a document relating to the mediation process is submitted to the Appeals Tribunal, the Registrar shall return that document to the submitting party. If such information is part of the brief or any other written pleadings submitted to the Appeals Tribunal by a party, all pleadings shall be returned to that party for resubmission to the Appeals Tribunal in compliance with paragraph 1 above.

33. Furthermore, the Appeals Tribunal does not find any exceptional circumstances to grant the request. Accordingly, the Appeals Tribunal will not consider these documents annexed to Mr. Savadogo's motion. The Registrar of this Tribunal is ordered to return them to Mr. Savadogo.

Merits of Mr. Savadogo's appeal

34. Under Article 2(10) of our Statute, 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 the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service.

35. The Appeals Tribunal is competent to hear and pass judgment on an application filed by a staff member of ITLOS pursuant to the 2010 Agreement between the United Nations and ITLOS extending the competence of the Appeals Tribunal to ITLOS.

36. By the structure of the internal justice system under the Staff Regulations of ITLOS, employees go through two internal phases, i.e., the Conciliation Committee and the JAB, before appealing to the Appeals Tribunal.⁵

37. Our Statute and Rules are applicable, in the exercise of the Appeals Tribunal's jurisdiction, to appeals from an ITLOS staff member directed against a decision taken by an executive authority of ITLOS.⁶

38. This appeal is directed against a decision of the Registrar dated 27 May 2015, accepting the recommendation of the JAB in its report of 11 May 2015. The JAB report concerned Mr. Savadogo's appeal against the Registrar's decision of 15 July 2013 informing him that he had not been selected for the P-5 post of Senior Legal Officer/Head of Legal Office.

39. This Tribunal recalls that under the Staff Regulations of ITLOS, the jurisdiction of the JAB can only be invoked if a contested decision has been previously submitted for administrative review followed by proceedings before the ITLOS Conciliation Committee.⁷ An attempt at reconciliation by the ITLOS Conciliation Committee in the present case failed and Mr. Savadogo appealed to the JAB.

40. In reviewing administrative decisions regarding appointments and promotions, the factors to be considered are: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; (2) whether the staff member was given fair and adequate consideration,⁸ and (3) whether the applicable Regulations and Rules were applied in a fair,

⁵ *Nagayoshi v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2015-UNAT-498, para. 34.

⁶ *Ortiz v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2012-UNAT-231.

⁷ *Nagayoshi v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2015-UNAT-498, para. 34.

⁸ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 23.

transparent and non-discriminatory manner. The Tribunal's role is not to substitute its decision for that of the Administration.⁹

41. We are satisfied that the JAB was guided by these principles when it reviewed the selection process.

Selection process

42. The selection of candidates for vacant posts at ITLOS is governed by ITLOS' Staff Regulations 4.2, 4.3 and 4.4 and ITLOS/AI/06/11. We note that the JAB was guided by these Regulations and Rules and the Administrative Instruction.

43. The selection process consists of a written test and two interviews as provided for under section V of ITLOS/AI/06/11.

(i) The written test

44. Paragraph 12, Section V, of ITLOS/AI/06/11 provides:

Before the interview, the candidates take written tests which are prepared and evaluated by the supervisor(s), the Registrar and the Deputy Registrar. Where appropriate, the Registrar, in consultation with the President, may request an independent external expert to prepare and/or evaluate the tests. The names of these external experts shall not be communicated to candidates. Nor shall the names of the candidates be communicated to the external experts.

45. The JAB held that the anonymous written tests had been conducted in accordance with the requirement set out in paragraph 12 of the Administrative Instruction. It did not find any fault in the Registrar's and the Deputy Registrar's involvement in the evaluation of the written tests, which had also been submitted for evaluation to two independent external experts.

46. Mr. Savadogo, however, complains that his right to an objective procedure was violated in several respects. He submits that the Registrar should have withdrawn from the selection process as ITLOS/AI/06/11 assigns a number of tasks to the Registrar,

⁹ See *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 30, quoting *Schook v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-216 and cites therein.

including the evaluation of written tests, the participation in interviews and the recommendation of the candidate to be recruited. As a result, the Registrar is able to control to a large extent how successful a candidate is in the process and if he does not want to recommend a candidate for personal and unfair reasons, it is within his power to do so.

47. Mr. Savadogo submits further that the JAB erred in law and fact by finding that no compelling reasons existed for the Registrar to withdraw from the selection process and that Mr. Savadogo had failed to prove the Registrar's bias against him.

48. It is appropriate to restate this general rule of law that:¹⁰

a person called upon to take a decision affecting the rights or duties of other persons subject to his jurisdiction must withdraw in cases in which his impartiality may be open to question on reasonable grounds. It is immaterial that, subjectively, he may consider himself able to take an unprejudiced decision; nor is it enough for the person affected by the decision to suspect its author of prejudice.

49. Mr. Savadogo submits that the history between himself and the Registrar was such that his application for the P-5 position could not have been fairly considered in line with the basic rules of fair competition, because the Registrar could not have acted impartially. Mr. Savadogo alleges that he had been subjected to bias and discrimination by the Registrar, that his opportunities to discharge certain professional functions such as participating in official missions, consultations and committees and boards had been restricted, that some of his performance evaluation reports had been downgraded by the Registrar, that his request for the reclassification of his post had been rejected, and that he had been deprived of certain functions which he had initially held, which constituted a *de facto* demotion.

50. The JAB, in addressing Mr. Savadogo's concerns in respect of the Registrar's function and role in the selection process, came to the conclusion that the Registrar could not easily withdraw from functions assigned to him under ITLOS/AI/06/11 and that:

The JAB is aware that [...] under exceptional circumstances compelling reasons might exist which would make it improper for the Registrar to exercise his function. It could not establish, however, that in the case under review such compelling reasons existed.

¹⁰ International Labour Organization Administrative Tribunal Judgment No. 179, *In re: Varnet* (1971), Consideration 1. The Appeals Tribunal found this holding persuasive in *Finniss v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-397, para. 22.

51. We also note that all of these allegations of bias or what Mr. Savadogo termed as “evidence of bias and discrimination” were a series of issues in respect of which administrative review should have been sought by Mr. Savadogo at the appropriate time. They were also not the subject of Mr. Savadogo’s request for review of 8 August 2013. Accordingly, the JAB rightly held they were not receivable.

52. However, it is reasonable to expect the selection process to be a fair one during which there is no room for extraneous considerations such as bias, prejudice and discrimination. Thus, for the purpose of determining if the impugned administrative decisions were improperly motivated, it was within the competence of the JAB to examine allegations of bias and discrimination in so far as they may have relevance to the assessment of the selection process.

53. We find that the JAB did consider these allegations and concluded that it could not find the Registrar had acted with hostility or bias towards Mr. Savadogo. For instance, the JAB reviewed the exchange of notes and memoranda between Mr. Savadogo and the Registrar over several years. The JAB noted that while the correspondence demonstrated numerous differences of opinion between them, it did not show hostility from either side. With regards to the distribution of work, the JAB correctly held the Registrar had discretion as to the organization and distribution among staff members in a non-discriminatory manner. The JAB, moreover, held that, while it appeared that some tasks had been preferably assigned to Mr. Savadogo’s colleague, it also appeared that Mr. Savadogo had been assigned with other tasks particularly relating to legal research.

54. We affirm the JAB finding. The evidence Mr. Savadogo put forward does not support any appearance or inference of bias or discrimination. Consequently, he has failed to discharge the burden of proof in support of his allegation that the Registrar’s decision was influenced by bias or discrimination.

55. In *Rolland*,¹¹ the Appeals Tribunal held that:

The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent,

¹¹ *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, paras. 20-21.

proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion.

All candidates before an interview panel have the right to full and fair consideration. A candidate challenging the denial of promotion must prove through clear and convincing evidence that procedure was violated, the members of the panel exhibited bias, irrelevant material was considered or relevant material ignored. There may be other grounds as well. It would depend on the facts of each individual case.

56. It is obvious that Mr. Savadogo was not satisfied with the findings by the JAB, but he merely repeated on appeal his arguments that did not succeed at the JAB. The Appeals Tribunal stressed in *Ilic* that:¹²

When the Appeals Tribunal hears an appeal, it does not simply re-try the case. The function of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.

In *Al-Moued*, the Appeals Tribunal reiterated further:¹³

It is apparent that [the Appellant] is not aware of his onus as an appellant. He is not correct in thinking that a person bringing an appeal does not have any onus of establishing that the Tribunal below erred in its decision and that an appeal is an opportunity to present the same arguments for decision by a higher Tribunal. That is a totally misconceived notion of the nature of an appeal.

[T]he consistent jurisprudence of the Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case: "A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.

Accordingly, we reject Mr. Savadogo's complaints.

¹² *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

¹³ *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-458, paras. 18 and 23, quoting *Dannan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-340, para. 14 (and cites therein).

(ii) The interview

57. Two interviews of shortlisted candidates are provided for under Section V of ITLOS/AI/06/11. Paragraph 13 states:

The first interview is conducted by a panel consisting of the Registrar, the Deputy Registrar and the supervisor. Expertise and experience, proficiency in the official languages of the Tribunal, and inter-personal communication skills are major points for consideration during interviews. The candidates are then interviewed by the President in the presence of the Registrar. Thereafter they meet with the Chief of Administration to discuss administrative questions.

58. In the present case, however, only one interview was conducted for each short-listed candidate by a panel that consisted of the ITLOS President and the Registrar. The JAB held that the interviews of the candidates had not been conducted in compliance with ITLOS/AI/06/11, and “there [were] no compelling reasons known to the JAB which would justify this deviation from the required procedure”.¹⁴

59. The JAB, therefore, concluded that:¹⁵

With respect to the formal legality of the contested administrative decision, the JAB concludes that the procedural requirements set out in the Administrative Instruction ITLOS/AI/06/11 were not fully complied with insofar as [Mr. Savadogo] was given the opportunity to present himself in only one interview instead of two as required by the said instruction. This constitutes a violation of [Mr. Savadogo’s] due process rights.

60. The JAB accordingly awarded Mr. Savadogo an amount of USD 3,000 to compensate him for the violation of his procedural rights under the Administrative Instruction.

61. Mr. Savadogo submits that this finding by the JAB “lends weight to [his] allegation that the selection process as a whole was unfair, breached the rule against bias, was tainted with illegality, and violated the objective recruitment procedure”. He argues that such violation of the process should result in the quashing of the contested decision and his placement on the P-5 position, instead of an award of compensation.

¹⁴ ITLOS JAB report of 11 May 2015, para. 91.

¹⁵ *Ibid.*, para. 93.

62. The Registrar responds that the violation noted by the JAB did not lead to any inequality among the candidates as all of them had been treated in the same manner and had only one interview, and that there is no justification for inferring from the limited procedural violation that the selection process as a whole was unfair. In his view, the JAB was justified in recommending the payment of compensation for the procedural violation.

63. We note that, although the JAB considered the breach of the interview procedure to be a violation of a fundamental nature, it held that:¹⁶

On the other hand, mitigating factors have to be taken into account. First, at least one interview was held giving [Mr. Savadogo] the opportunity to present himself beyond the written test. Second and more important, all candidates participating in the selection procedure were subjected equally to the same flaw in the procedures, i.e. each of them had one interview only, and the composition of the interview panel was the same in all cases. Insofar, compared to his competitors, [Mr. Savadogo] did not suffer any specific disadvantage. Third, the interviews are only one element of the selection process and all other elements seem to have been conducted in full conformity with the legal requirements.

In light of these considerations, the JAB considers that a rescission of the contested administrative decision is not warranted in this case. However, the JAB considers that an amount of USD 3,000 to be paid to [Mr. Savadogo] would be adequate to compensate the damage in the form of neglect and emotional stress (see *Benfield-Laporte v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-505, para. 41).

64. We affirm these findings. Given the limited nature of the procedural violation, and the fact that it did not lead to any discrimination among the candidates, a decision to nullify the selection exercise would be disproportionate.

65. The JAB was, thus, justified in recommending the payment of compensation for the procedural violation instead of a rescission of the selection decision.

66. From the foregoing, we will not interfere with the Registrar's decision to adopt the recommendation of the JAB to compensate Mr. Savadogo in the amount of USD 3,000.

¹⁶ *Ibid.*, paras. 109-110.

Judgment

67. The appeal is dismissed. The Registrar's decision to adopt the recommendation of the JAB to compensate Mr. Savadogo in the amount of USD 3,000 is affirmed.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Lussick

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar