

2023-UNAT-1337, Louis Savadogo

UNAT Held or UNDT Pronouncements

The UNAT affirmed the decision of the ITLOS JAB, holding that the ITLOS was not obliged to conclude the recruitment exercise once it had begun, and that it had the authority to cancel the process. The UNAT was concerned by the change to the recruitment procedure during the course of the contested recruitment, but could not discern how this affected Mr. Savadogo's candidacy. The UNAT agreed with the ITLOS JAB that Mr. Savadogo's allegations of bias against the Registrar in the recruitment were countered by the fact that the President of ITLOS made the significant decisions in the recruitment, and that evaluation of the written tests had been outsourced to external reviewers. The UNAT also rejected Mr. Savadogo's claim that because he was the only one who met one of the criteria in the vacancy announcement (the educational qualifications) that he should have been appointed. The UNAT held that being the only candidate who meets one of many criteria does not mean that appointment to the post should follow indiscriminately. With regard to Mr. Savadogo's application for execution, the UNAT concluded that it could not order execution of Judgment No. 2022-UNAT-1189 when there was no date specified in that judgment. The UNAT further acknowledged that the ITLOS JAB had grounds to await the UNAT's decision regarding the JAB's jurisdiction. By this Judgment, the UNAT confirmed that the amendments to the ITLOS Staff Regulations now satisfied the requirements for a neutral first instance process under Article 2(10) of the UNAT Statute. As there is no longer any jurisdictional uncertainty, the UNAT directed the ITLOS JAB to comply with Judgment No. 2022-UNAT-1189 within three calendar months of receipt of this Judgment.

Decision Contested or Judgment/Order Appealed

This judgment addresses two appeals filed by ITLOS staff member, Mr. Savadogo. Mr. Savadogo appeals the ITLOS Joint Appeals Board (JAB) decision ITLOS/JAB/2021/8, in which the JAB dismissed his application challenging the cancellation of a recruitment exercise for the post of Head of Legal Office/Senior

Legal Officer at grade P-5. Mr. Savadogo claimed that the ITLOS Administration had failed to follow the shortlisting procedure in Administrative Instruction ITLOS/AI/2017/05, which stated that candidates should be shortlisted in a provisional order of priority. Instead, the Administration had listed candidates in alphabetical order. Mr. Savadogo further protested an amendment to ITLOS/AI/2017/05 which was done during the recruitment exercise. Mr. Savadogo argued that there was no evidence that no suitable candidate had emerged from the selection process so as to justify the cancellation of the recruitment exercise. The second case encompassed by this Judgment is Mr. Savadogo's application for execution of Judgment No. 2022-UNAT-1189. In the latter Judgment, the UNAT had remanded to the ITLOS JAB the appeal of Mr. Savadogo of the subsequent recruitment exercise for the Head of Legal Office/Senior Legal Officer post, because the original ITLOS JAB decision had not conformed to the requirements of Article 2(10) of the UNAT statute. The ITLOS JAB had not yet reconsidered his appeal, and thus Mr. Savadogo filed an application for execution.

Legal Principle(s)

A recruitment process that began under one specified process should continue under that process. It is open to the Administration, on good objective grounds, to conclude that no candidate has made the grade for an appointment. In these circumstances, it is open to the Administration to appoint no one, to cancel that process and to subsequently recommence it ab initio in the hope of attracting better candidates than those who had previously applied. Having begun the recruitment process, the Administration is not bound to conclude it. Strictly speaking, the UNAT may not order execution of a UNAT judgment if it did not specify a date ("a certain period") for execution of that judgment.

Outcome

Appeal dismissed on merits; Revision, correction, interpretation or execution

Outcome Extra Text

Mr. Savadogo's appeal of Decision ITLOS/JAB/2021/8 is dismissed and the decision is affirmed. Mr. Savadogo's application for execution of Judgment No. 2022-UNAT-1189

is dismissed, but the UNAT directs the parties and the ITLOS JAB to comply with Judgment No. 2022-UNAT-1189 within three calendar months of receipt of this Judgment.

Full judgment

[Full judgment](#)

Applicants/Appellants

Louis Savadogo

Entity

ITLOS

Case Number(s)

2022-1664

Tribunal

UNAT

Registry

New York

Date of Judgement

2 May 2023

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Execution of Judgment

Full and fair consideration

Written test

Judgment-related matters

Staff selection (non-selection/non-promotion)

Applicable Law

Laws of other entities (rules, regulations etc.)

- ITLOS Administrative Instructions

UNAT Statute

- Article 11.4
- Article 2.1

Related Judgments and Orders

2022-UNAT-1217

2022-UNAT-1250