UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/049
Judgment No.: UNDT/2021/138
Date: 23 November 2021
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

ABALOS ET AL.

v.

SECRETARY-GENERAL
OF THE WORLD METEOROLOGICAL
ORGANIZATION

JUDGMENT

Counsel for Applicants:
Christopher Bollen
Mathis Kern

Counsel for Respondent:
Daniel Trup, WMO

Introduction

1. The Applicants, staff members of the World Meteorological Organization ("WMO"), contest the WMO Secretary-General's decision of 19 July 2019 to maintain the original decision of WMO to implement a post-adjustment multiplier determined by the International Civil Service Commission ("ICSC") based on its 2016 cost-of-living survey, resulting in a pay cut for its staff in Geneva.

2. The Respondent contends that the Applicants' case should be rejected in its entirety, because in some previous judgments from 2021, including *Abd Al Shakour* et al. and *Aksioutine* et al. 2021-UNAT-1107 ("*Al Shakour*"), the Appeals Tribunal has dispositively determined the matter of the present case, albeit concerning the United Nations Secretariat and not WMO.

3. For the reasons stated below, the Tribunal rejects the application with reference to the Appeals Tribunal's findings in *Al Shakour* and the doctrine of *stare decisis* whereby the Dispute Tribunal is bound by the jurisprudence of the Appeals Tribunal.

Consideration

Procedural history

4. The present case was initially filed at the Dispute Tribunal's Registry in Geneva, but was subsequently transferred to the New York Registry to avoid any perception of conflict of interest as the judge in Geneva receive the same post-adjustment remuneration as the United Nations staff members.

5. In Order No. 16 (NY/2021) dated 2 March 2021, in response to a request from the Respondent, the Tribunal instructed the parties that the present proceedings would be suspended until the Appeals Tribunal had issued its judgment with full written reasons in the relevant cases. In addition to *Al Shakour*, these cases were: *Andres* et

al. and *Correia Reis* et al., 2021-UNAT-1108; *Bozic* et al. and *Alsaqqaf* et al. 2021-UNAT-1109; *Andreeva* et al. and *Bettighofer* et al. 2021-UNAT-1110; and *Angelova* et al. and *Avognon* et al., 2021-UNAT-1111. For the sake of ease, reference in the present case is only made to the Appeals Tribunal's judgment in *Al Shakour*.

6. Upon the issuance of the judgment with full written reasons in *Al Shakour*, in Order No. 66 (NY/2021) dated 16 July 2021, the Tribunal ordered the parties to file their final submissions on whether *Al Shakour* was dispositive of the present case. The parties were further instructed that the Tribunal would thereafter adjudicate on the matters and deliver Judgment based on the documents on record, unless otherwise ordered.

7. After thoroughly perusing the parties' submissions in response to Order No. 66 (NY/2021), the Tribunal found in Order No. 76 (NY/2021) dated 17 August 2021, that further submissions and documentation were needed regarding the governance structure of WMO and the relevant legal framework. The Respondent was therefore ordered to file such submissions and documentation after which the Applicants were to submit their response thereto. The parties did so on 1 and 13 September 2021.

8. Having now closely read the additional submissions and documentation, the Tribunal is now satisfied that the case is fully informed and ready for adjudication.

The Appeals Tribunal's relevant findings in Al Shakour

9. The basic issue of the present case and the Appeals Tribunal's judgment in *Al Shakour* is the same, namely whether it was lawful to implement ICSC's determination regarding post-adjustment payment for staff in Geneva. The difference is that whereas *Al Shakour* related to the staff of the United Nations, the present case concerns how ICSC's determination should affect WMO staff.

10. In *Al Shakour*, the Appeals Tribunal held that "the ICSC is a technical subsidiary organ of the General Assembly, whose decisions [footnote omitted] to and approval by the General Assembly are binding upon the [United Nations] Secretary-

General". In addition, the Appeals Tribunal held that "where the General Assembly takes regulatory decisions, which leave no scope for the [United Nations] Secretary-General to exercise discretion, the [United Nations] Secretary-General's decision to execute such regulatory decisions, depending on the circumstances, do not constitute administrative decisions subject to judicial review". See para. 51.

11. Accordingly, the Appeals Tribunal concluded that the "judicial review is limited to the question of possible normative conflict between acts of the General Assembly or their implementation, and their execution by the [United Nations] Secretary-General". It found that "there is no dispute that the [United Nations] Secretary-General acted in accordance with the ICSC decision, [footnote omitted] which, in turn, was subsequently endorsed and adopted by the General Assembly" and that "[t]his alone could be sufficient grounds for dismissing the appeal". See para. 52.

12. The Appeals Tribunal further explained that "the General Assembly, as sovereign legislator, by means of some of its relevant resolutions, has issued a clear command in order for the ICSC decisions to be implemented … Therefore, by means of General Assembly resolution 74/255 [(United Nations common system)] … the General Assembly, even though well aware of the arguments put forward against it, approved of the methodology for calculating the post adjustment, as well as its financial impact on staff remuneration in Geneva. This alone would be sufficient grounds for dismissing the appeal in light of the restricted scope of competence of the United Nations Tribunals to review legislative texts originating from the General Assembly". Referring to *Ovcharenko* 2015-UNAT-530, the Appeals Tribunal then affirmed that "[d]ecisions of the General Assembly are binding on the [United Nations] Secretary-General and therefore, the administrative decision under challenge must be considered lawful, having been taken by the Secretary-General in accordance with the content of higher norms". See paras. 59-60.

The scope of the present case

13. Whereas the Administration is bestowed with a certain margin of appreciation, this discretion is generally not unfettered. As the Appeals Tribunal stated in its seminal judgment in *Sanwidi* 2010-UNAT-084, at para. 40, "when judging the validity of the exercise of discretionary authority, … the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate". This means that the Tribunal "can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse".

14. The Appeals Tribunal, however, also underlined that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him" or otherwise "substitute its own decision for that of the Secretary-General" (see *Sanwidi*, para. 40). In this regard, "the Dispute Tribunal is not conducting a 'merit-based review, but a judicial review' explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision" (see *Sanwidi*, para. 42).

15. Among the circumstances to consider when assessing the Administration's exercise of its discretion, the Appeals Tribunal stated "[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion" (see *Sanwidi*, para. 38).

16. In addition, the Appeals Tribunal has consistently held that "the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review". When defining the issues of a case, the Appeals Tribunal further held that "the

Dispute Tribunal may consider the application as a whole". See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

17. Accordingly, in the present case, the Tribunal defines the basic issue of the case as whether the WMO Secretary-General acted within his scope of discretion in deciding, in accordance with *Al Shakour*, to implement the post-adjustment multiplier determined by the ICSC based on its 2016 cost-of-living survey as approved by the General Assembly.

18. This primarily requires the Tribunal to review how WMO's internal legal framework defines the post-adjustment standard applicable to the Organization. If the conclusion is that the standard set out in *Al Shakour*, which concerns staff of the United Nations, indeed also applies to WMO staff, then the Tribunal notes that the Appeals Tribunal has affirmed the application of the principle of *stare decisis*. This means that the Dispute Tribunal as the first instance court in a two-tier judicial system shall "recognize, respect and abide by the Appeals Tribunal's jurisprudence" (see para. 24 of *Igbinedion* 2014-UNAT-410 as also affirmed in, for instance, *Hepworth* 2015-UNAT-503 and *Gehr* 2016-UNAT-613).

The governance structure of WMO

19. The Respondent, in essence, explained (in his 1 September 2021 submission in response to Order No. 76 (NY/2021)) that the governance structure of the WMO is the following:

a. Congress is "the supreme body" of the WMO. Congress is "empowered to determine, among other responsibilities, general policy for the Organization, regulations prescribing the procedures of the various bodies of the Organization, in particular the General, Technical, Financial and Staff Regulations, and take any other appropriate action on matters affecting the Organization" (references to footnotes omitted);

b. The Executive Council is second to Congress in the internal hierarchy of WMO. It is "the executive body of the Organization" and is led by a "President". The Executive Council is "responsible to Congress for activities including the budgetary resources of the Organization, implementation of decisions taken by Members, making recommendations on any matter affecting the activities of the Organization and performing any other function as may be conferred on it by Congress or by its members collectively" (references to footnotes omitted);

c. The WMO Secretary-General is appointed by Congress and "is responsible to the President of WMO for the technical and administrative work of the Secretariat". S/he consequently reports to Congress and the Executive Council. The WMO Secretary-General "remains obligated to carry out his/her duties pursuant to the Convention [of WMO], Regulations of the Organization as well as direction given by Congress, the Executive Council and President of the Organization" (references to footnotes omitted).

20. The Applicants have not objected to the Respondent's description of the WMO's governance structure. With reference to the WMO Convention and the WMO General Regulations, as appended by the Respondent to his 1 September 2021 submission, the Tribunal also endorses it.

The relevant internal legal framework of WMO

21. According to art. 8(d) of the WMO Convention, Congress shall "determine … [the] Staff Regulations", which according to the applicable Staff Regulations and Rules of WMO of 2007 (and restated in the current 2020 version) "represent the broad principles of personnel policy for the staffing and administration of the [WMO] Secretariat". Under regulation 153 (1) of the WMO General Regulations, the WMO Secretary-General "shall … direct the work of the [WMO] Secretariat", and pursuant to the WMO Staff Regulations and Rules of 2007 (and reiterated the current version of 2020), the "Staff Rules of WMO, which govern the conditions of service of the

Organization, are established and enforced by the Secretary-General in accordance with the Staff Regulations".

22. Regarding post-adjustment, WMO staff regulation 3.3 provides that "[t]he basic salary rates for Professional category staff shall be adjusted by application of the appropriate United Nations post adjustments". WMO staff rule 133.1(c) further specifies that "[t]he post adjustment index for each duty station and the corresponding multiplier shall be determined at regular intervals by the International Civil Service Commission".

23. The principal issue to be examined is therefore whether the WMO Secretary-General's application of WMO staff rule 133.1(c) was appropriate in light of WMO staff regulation 3.3. This requires an examination of the meaning of the references "United Nations post adjustments" and "appropriate" in WMO staff regulation 3.3. In this regard, it logically makes sense to examine the meaning of "United Nations post adjustment" before "appropriate", because the latter is an adjective that qualifies the meaning of the former.

The principles of word/text interpretation applied by the Dispute and Appeals Tribunals

24. The Appeals Tribunal has consistently held that when interpreting a legal provision, the point of departure is the "literal terms of the norm", which means that "[w]hen the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation" (see *Scott* 2012-UNAT-225, para. 28, as affirmed in, for instance, *De Aguirre* 2016-UNAT-705, *Timothy* 2018-UNAT-847 and *Ozturk* 2018-UNAT-892, as well as also stated in *Sidell* 2013-UNAT-348 (para. 23), *Scheepers* et al. 2015-UNAT-556 (para. 31), *Al-Mussader* 2017-UNAT-771 (para. 28), *Faye* 2017-UNAT-801 (para. 23), *Rockcliffe* 2017-UNAT-807 (para. 28), *Mohamed* 2020-UNAT-985 (para. 31)). This principle of interpretation is occasionally also referred as the plain meaning rule.

25. If the meaning of a word or text in a provision is, however, unclear or ambiguous, "it is necessary to interpret the law teleologically, beyond its literal meaning". By this, the word or text "must be read in context" to understand what its purported meaning is (see para. 43 of *Collins* 2020-UNAT-1021). This is also known as a teleological interpretation.

The meaning of "United Nations post adjustment" as per WMO staff regulation 3.3

26. The basic question when interpretating the meaning of "United Nations post adjustment" in WMO staff regulation 3.3 is what is meant by the reference "United Nations".

27. The Applicants make no specific submissions thereon, but in various instances stresses that as specialized United Nations agency, WMO is sovereign and therefore also independent from the United Nations. Furthermore, they generally challenge the Respondent's reliance on WMO's internal legal framework. Instead, they contend that WMO is not bound to mechanically implement ICSC determinations due to its adherence to the ICSC Statutes. Instead, WMO only adhered to follow the ICSC insofar as it acted within its mandate and terms of reference as per its own Statutes, and as long as its calculations were not flawed. WMO has not undertaken to follow "flawed determinations by the ICSC, such as the Pay Cut Decisions in the present case".

28. The Respondent, in essence, contends that under WMO's internal legal framework, the WMO Secretary-General was bound to follow *Al Shakour*.

29. The Tribunal observes that the Charter of the United Nations is the founding document of the Organization, and it also establishes its organs, including the General Assembly and the United Nations Secretariat, which is led by the United Nations Secretary-General (see Chapters I, II, IV and XV).

30. The Tribunal further notes that neither party has—rightly so—disputed the Appeals Tribunal's findings in *Al Shakour* that the United Nations Secretary-General

was bound by the General Assembly's endorsement and adoption of the ICSC's determination regarding post-adjustment for United Nations staff in Geneva. In doing so, the Tribunal further notes that, as relevant to the present case and following *Al Shakour*, the General Assembly provided no alternatives for the United Nations Secretary-General on how to compute the relevant post-adjustment payment than by following the ICSC's determination.

31. Accordingly, as relevant to the present case, a textual interpretation of WMO staff regulation 3.3 leads to the Tribunal to conclude that the reference to "*United Nations* post adjustment" (emphasis added) unmistakably equals the organization established as "the United Nations" as spelled out in its Charter. As relevant to the present case, the decision of the General Assembly to follow ICSC's determination thereon, as determined by the Appeals Tribunal in *Al Shakour*, was therefore the relevant standard to be applied for the WMO Secretary-General in accordance with WMO staff regulation 3.3. This was, furthermore, also in line with the stipulations of WMO staff rule 133.1(c).

32. Consequently, in application of WMO staff rule 133.1(c), the WMO Secretary-General therefore acted within his discretion when he decided to apply ICSC's determination regarding the post-adjustment for United Nations staff in Geneva to WMO. Essentially, pursuant to WMO staff regulation 3.3 read together with *Al Shakour*, the WMO Secretary-General had no other choice.

The meaning of "appropriate" as per WMO staff regulation 3.3

33. The Applicants submit that a "textual analysis of Article 3 of the WMO Staff Regulations leads to the conclusion that it provides [WMO Secretary-General] with the prerogative to depart from [the United Nations] system in order to meet the Organization's specificities—and that, conversely, it does not bind him mechanically to apply [the United Nations] or [ICSC's] decisions to its staff members".

34. The Applicants contend that it follows from WMO staff regulation 3.1's "wording that salaries shall be determined by [the WMO Secretary-General] 'in

accordance' with [the United Nations'] grades and scales". This indicates that the United Nations system must "be considered as a point of reference for [the WMO Secretary-General's] determination, but that it is not directly binding upon him". In addition, WMO staff regulation 3.2 "confirms [the WMO Secretary-General's] discretion in this matter by providing him with the power to exempt staff members from the common system on a case-by-case basis". WMO staff regulation 3.3 then "leaves open for [the WMO Secretary-General's] discretion the consideration of what is the 'appropriate' [United Nations] post adjustment for the WMO's own purposes".

35. The Applicants further argue that his "reading of the [WMO] Staff Regulations is consistent with the plain wording of [the Agreement between United Nations and WMO], under which WMO undertook to align itself with [the United Nations] only 'as far as practicable'". Also, this is "not contradicted … by the fact that [the WMO Secretary-General] implemented in 1995 a change in staff benefits to reflect the situation in [the United Nations], as such action was well within his above-outlined discretion".

36. This Tribunal observes that pursuant to the Merriam-Webster online dictionary, the word "appropriate" essentially means "right or suited for some purpose or situation". The question is then whether, as argued by the Applicants, the word attributed a discretion to the WMO Secretary-General in the present case, when it is stated that "[t]he basic salary rates for Professional category staff shall be adjusted by application of the *appropriate* United Nations post adjustments" (emphasis added) in WMO staff regulation 3.3.

37. The Tribunal does not find so. The Applicants' argument would only make sense if the WMO Secretary-General had a choice between different alternative United Nations post-adjustment standards in which case s/he could decide which one would be best suited, or "appropriate", one for WMO. This is, however, not the case, as already explained in the above.

38. Accordingly, based on the language of WMO staff regulation 3.3, the word "appropriate" means that the WMO Secretary-General was limited to this single standard for post-adjustment applied by the United Nations, which was the one the General Assembly adopted in accordance with the ICSC's determination in accordance with *Al Shakour*.

39. The Applicants' references to WMO staff regulations 3.1 and 3.2 do not change this finding. WMO staff regulation 3.1 concerns the basic salaries of the WMO staff members—and not the additional payment for post-adjustment—and solely provides that these salaries shall be "determined" by the WMO Secretary-General "in accordance with the grades and corresponding gross and net salary scales applicable to United Nations personnel". WMO staff regulation 3.2 is about "assessment"—a general deduction from the salaries with no impact on the post-adjustment remuneration. Such an assessment for WMO staff is simply determined in WMO staff regulation 3.2 to "be subject to an assessment as determined by the United Nations". Neither provision therefore even as much as implies that the WMO Secretary-General should possess a discretion to depart from the standard "United Nations post adjustment" in accordance with WMO staff regulation 3.3, as promulgated by Congress.

40. Similarly, the Agreement between the United Nations and WMO makes no difference to the Tribunal's findings above. In art. IX(1) of this Agreement, it is merely stipulated that the United Nations and WMO "agree to develop as far as practicable common personnel standards, methods and arrangements designed to avoid serious discrepancies in terms and conditions of employment, to avoid competition in recruitment of personnel, and to facilitate any mutually desirable interchange of personnel in order to obtain the maximum benefit from their services".

41. This does in no possible manner affect the conclusion that in accordance with WMO staff regulation 3.3, the WMO Secretary-General was bound to follow the General Assembly's decision as per *Al Shakour*. If anything, art. IX(1) rather affirms

WMO's general commitment to apply the United Nations standards as also done by Congress in WMO staff regulation 3.3.

Does Al Shakour *not apply to the present case for other reasons?*

42. The Applicants submit that the contested administrative decisions are unlawful because WMO is a "specialised [United Nations] agency which is sovereign and thus independent from the [United Nations]", and "contrary to the [United Nations], decisions taken by [General Assembly] are not binding on WMO". *Al-Shakour* relates to "the implementation decision of the United Nations Secretariat whereas the present case relates to the implementation decision of WMO".

43. The Applicants explain that WMO has its "own governing body, legal framework including rules and procedures, membership, and funding mechanisms". WMO's "governing body" neither endorsed the ICSC's decisions nor did it approve the Administration's "implementation decision". Rather, the WMO Secretary-General took the contested administrative decisions on "his own authority". Also, General Assembly resolutions "cannot legitimize errors of the ICSC in its previous *de facto* decisions" and "cannot be considered as authentic interpretations that apply to the WMO: only the WMO governing body could make such interpretations or take such decisions".

44. The Applicants further contend that in the Dispute Tribunal's judgment in *Al-Shakour* UNDT/2020/106, it "stated that the binding character of the ICSC's Pay Cut Decisions could not be transposed *mutatis mutandis* to the specialized agencies and/or the other international organizations which are part of the Common System, as these bodies are not subject to the [the General Assembly's] direct authority". The Dispute Tribunal thereby "distinguished" its judgement from the Administrative Tribunal of the International Labour Organization's ("ILOAT") judgments. This finding was not reversed by the Appeals Tribunal in its decision on appeal. Unlike the United Nations Secretary-General, the WMO Secretary-General was therefore also not bound by the General Assembly's decision.

45. The Applicants submit that in view of the WMO Secretary-General's "own doubts relating [to] the legality and correctness of the ICSC Pay-Cut Decisions prior to implementing them, he should have independently assessed whether the ICSC's Pay-Cut Decisions were legally sound". This means that the WMO Secretary-General should have reviewed whether "the ICSC had the authority to decide on the post adjustment multiplier, change the methodology, introduce a reduced gap closure measure and whether its decisions were free from errors or omissions of relevant facts". In this regard, in the contested decision, the WMO Secretary-General "explicitly questioned the legality of the ICSC's Pay Cut Decisions. Indeed, he stated (emphases added): 'I … refer to the previous letters [questioning the legality of the ICSC's decisions] … which I continue to maintain'". The WMO Secretary-General rather endorsed the ILOAT judgments "in which said Tribunal had found these decisions to be illegal: 'Conscious of the recent judgments of the ILOAT on the same topic at its 128th session, which I recognize as persuasive authority […]'". Also, the WMO Secretary-General stated that "I shall not object to an appeal that may be submitted to [the Appeals Tribunal] pursuant to Staff Regulation 11.2". Different from *Al-Shakour*, the WMO Secretary-General therefore "implemented a decision, the legality of which he himself questioned" and "explicitly renounced his right to object to an appeal to the [Appeals Tribunal]". Also, when the WMO Secretary-General made that statement, "the relevant WMO rules provided that his decision would be directly appealed to [the Appeals Tribunal]; the rules were changed subsequently so that the case is now being heard by the [Dispute Tribunal] as first instance".

46. The Applicants also challenge that WMO is "tellingly unable to identify a decision evidencing that the WMO's governing bodies ratified or approved the ICSC's Pay Cut Decisions". The Respondent's "entire position is entirely predicated upon a different argument, i.e., that WMO's internal legal framework, through the United Nations Agreement, the Staff Regulations and the Staff Rules, generally binds [the WMO Secretary-General] to implement the decisions of the ICSC". The "fact that WMO's governing bodies have not approved the Pay Cut, nor the introduction of

a new methodology for calculation the [post-adjustment] nor the ISCS's pay-cut decisions which were taken *ultra vires* is in and of itself sufficient to distinguish the present case from" *Al-Shakour*. The Appeals Tribunal's findings in *Al-Shakour* "specifically rested on [the General Assembly's] explicit endorsement of the Pay Cut", and "the Respondent's attempt to create an equivalency between WMO's internal framework on salary scales and post adjustment and the [General Assembly's] explicit endorsement of the Pay Cut is misguided".

47. The Applicants additionally contend that when art. IX of the Agreement between the United Nations and WMO states that the United Nations and the WMO "agree to develop as far as practicable common personnel standards […] to avoid serious discrepancies" and "agree to cooperate to the fullest extent possible", then this "indicates that they undertook to work together to align their personnel standards only as far as practicable to them". This does not indicate that "WMO, which concluded the Agreement in its capacity as a sovereign entity, undertook to delegate its power to determine the terms and conditions of its staff members to [the United Nations] or to the ICSC or to mechanically adopt the latter's decisions as directly binding upon it".

48. A number of specific examples of alleged deviations between the United Nations and WMO in terms of "compensation schemes" show that the WMO Secretary-General was not obliged to apply ICSC's determination on post-adjustment remuneration for United Nations staff in Geneva.

49. The Applicants "raise issues that were not raised and were not reviewed" by the Dispute and Appeals Tribunals in *Al-Shakour* as they "have not only contested the legality of the ICSC Pay Cut decisions on the basis of the ICSC's lack of competence, but they also challenged these decisions on other grounds, notably their underlying methodology, substantive correctness and proportionality". The Applicants have submitted "arguments which are specific to the WMO's implementation of the ICSC Pay Cut Decisions by its Secretary-General" and that "were not considered" in *Al-Shakour*. Also, the "principle of equal pay for equal work can only be maintained if

the independent agencies are treated equally, that is, if the ILOAT's judgments are applied to the independent agencies in the same manner". Whereas the Dispute Tribunal is "not bound by ILOAT judgments—[it should] ensure that the outcome of this case is aligned with that of the ILOAT's judgments regarding other Geneva-based specialized agencies in order to give effect to the principle of equal pay for equal work".

50. The Tribunal observes that the decision for WMO to follow "the appropriate United Nations post adjustment", and therefore also *Al Shakour*, was basically made by Congress when adopting WMO staff regulation 3.3. Thereafter, WMO was unconditionally bound to follow the applicable standard for the United Nations staff, and the WMO's internal legal framework provided no discretion to the WMO Secretary-General when executing or administrating this provision for the WMO staff in Geneva. *Al Shakour* therefore also applies to the present case, because the Appeals Tribunal decided therein that for the United Nations staff in Geneva, the post-adjustment payment was to be based on ICSC's determination as endorsed by the General Assembly.

51. Since Congress adopted WMO staff regulation 3.3, WMO's "independence" or "sovereignty" from the United Nations was not affected by following the findings of the Appeals Tribunal in *Al Shakour*—only Congress, and no one else, made the decision to follow the United Nations standard for post-adjustment and did so without any further reservations.

52. The WMO Secretary-General's possible personal opinions and assurances in this regard are therefore irrelevant, because in accordance with the internal hierarchy of WMO, s/he must follow the directions given to her/him by Congress in the WMO Staff Regulations.

53. Furthermore, WMO is under the jurisdiction of the Dispute Tribunal and not ILOAT, and ILOAT judgments are only of persuasive authority to the Dispute Tribunal, whereas it is bound by those of the Appeals Tribunal under the doctrine of

stare decisis. Similarly, other judgments of the Dispute Tribunal, like the first instance judgment in *Al Shakour* are not binding, but simply persuasive, for this Tribunal. Accordingly, it falls outside the scope of the present case to reargue the Appeals Tribunal's findings in *Al-Shakour*, which the Tribunal must therefore follow.

54. The Tribunal further notes that even if deviations exist between how the United Nations Secretariat and WMO administer certain "compensation schemes", this does not affect the remuneration for post-adjustment in accordance with WMO staff regulation 3.3. Congress made that clear when adopting this provision and unreservedly refer to the "appropriate United Nations post adjustment".

55. Also, under WMO staff regulation 3.3, Congress did not contemplate that Congress or the Executive Council needed to endorse or otherwise approve any of the contested administrative decisions for them to be lawful. Had the Executive Council done so, it would have overstepped its authority within the internal hierarchy of WMO, since it was Congress that adopted WMO staff regulation 3.3. If Congress disagreed with the General Assembly's decision to endorse ICSC's determination on post-adjustment, the simple solution would be to amend WMO staff regulation 3.3, but it has not done so.

Conclusion

56. In light of the foregoing, the application is rejected.

(Signed)

Judge Joelle Adda

Dated this 23rd day of November 2021

Entered in the Register on this 23rd day of November 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York