*Registry's translation,
the French text alone
being authoritative.*

111th Session **Judgment No. 3032**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Miss Z. A.-K.-A. and Mrs B. B.-W. against the International Labour Organization (ILO) on 21 August 2009 and corrected on 13 October 2009, and the Organization's replies of 18 January 2010;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which none of the parties has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. At the material time the complainants had been employed at the International Labour Office, the ILO's secretariat, as translators at grade P.3 since August 1985 and January 1984 respectively. They pursued similar careers in the French Unit of the Official Documentation Branch (OFFDOC). Miss Ait-Kaci-Ali retired on 30 June 2009.

On 7 February 2008 the Office published a vacancy notice for a post of French-language senior translator/reviser at grade P.4 in the complainants' Unit, for which they both applied. As their names appeared on the shortlist, they each attended a technical evaluation

interview on 8 April and then took part in a written examination on 15 April, the purpose of which was to assess their linguistic skills. The examination consisted of the translation of a text published in 2007 in the ILO's *International Labour Review*.

By individual e-mails dated 9 July 2008 the Acting Coordinator of the Resourcing Unit informed the complainants that their candidatures had been unsuccessful. On 11 and 18 July they each requested an interview with the responsible chief i.e. the Chief of the Branch in which the post had been advertised in order to obtain feedback on their technical evaluation. The responsible chief received them individually in the presence of the Legal Adviser of the International Labour Office Staff Union on 25 July and 7 August. They subsequently requested a written response from him concerning the points raised during the interview. In two e-mails dated 15 August he presented them with an account of their evaluation, listing the positive and negative points.

Having found the feedback inconsistent, the complainants submitted grievances to the Joint Advisory Appeals Board on 6 September and 21 October 2008, requesting it principally to recommend the annulment of both the competition process and the resulting appointments. In its report dated 26 March 2009 the Board recommended that the grievances be dismissed on the grounds that it had found no procedural flaw or evidence of unfair treatment in the competition process. By two letters dated 26 May 2009 the Executive Director of the Management and Administration Sector informed the complainants that the Director-General had dismissed their grievances. Those are the impugned decisions.

B. The complainants consider that the Board committed an error of law by misconstruing the scope of its competence and undertaking only a limited review of the disputed appointment decisions. The Board was required, in their view, to carry out a detailed examination of the responsible chief's assessment of their merits, and it violated their right to an effective internal appeal. They contend that the adversarial principle was not respected because the Board considered the competition file *in camera* and failed "to allow a debate on the question of confidentiality and disclosure of the items in [the] file",

which is contrary, in their opinion, to the Tribunal's ruling in Judgment 1355.

They further assert that Article 4.2(g) of the Staff Regulations "establishes an order entitling some candidates […] to be given priority over other candidates", provided that they possess the minimum qualifications required for the advertised post. They consider that, pursuant to this paragraph, their applications as internal candidates should have been given priority. They refer in this connection to several judgments of the Tribunal.

The complainants stress that the linguistic requirements of the vacancy notice for the post of senior translator/reviser are less strict than those set forth in paragraph 2 of Annex I to the Staff Regulations. They argue that this error of law incidentally violates Article 4.2(a) of the Staff Regulations since it undermines the objective of recruiting staff of the highest standards of competence. They also claim to have been adversely affected by two further violations of the aforementioned article, because the competition panel set up to conduct a technical evaluation did not verify that the candidates whose names appeared on the shortlist possessed the linguistic skills required for the post in question and because the Organization stated that it had practised discrimination based on nationality in drawing up the shortlist. Moreover, although the vacancy notice and various items of correspondence mentioned only a single vacancy, it turned out that there were actually two posts to be filled. This alteration of the legal framework of a competition that is already under way is, in their opinion, unlawful.

The complainants point out that paragraph 11 of Annex I to the Staff Regulations and the Collective Agreement on a Procedure for Recruitment and Selection concluded between the International Labour Office and the Office's Staff Union provide for two successive stages in the recruitment process: the assessment conducted by the Assessment Centre, followed by the technical evaluation conducted by the responsible chief. Candidates who have not been successful in the first stage are not, in their view, admissible to the second stage. They assert that in this case the Organization changed the order of the stages

of recruitment. They submit that the distribution of responsibilities between the Assessment Centre and the responsible chief was not respected and that the latter unlawfully delegated his responsibilities given that the technical evaluation was conducted by a competition panel. Moreover, in their opinion, the responsible chief lacked the linguistic skills required for their assessment.

They further allege that "specific, serious and concurring" factors reveal the existence of prejudice against them or a preference for the ultimately successful candidatures and constitute misuse of authority. They emphasise that they have been deprived of a serious opportunity to be appointed to the vacant post and indeed of the last such opportunity in their career, which is drawing to a close, since such posts are very rarely advertised.

They seek the quashing of the decisions of 26 May 2009 and the annulment of the entire competition process and the subsequent decisions. They claim 15,000 Swiss francs in moral damages, 15,000 francs in material damages and 7,000 francs in costs. Lastly, they ask the Tribunal to rule that, if these sums were to be subject to income tax, they would be entitled to obtain reimbursement from the ILO of the corresponding taxes.

C. In its reply the Organization requests the joinder of the two complaints. It points out that in the present case, in accordance with paragraph 17 of Annex I to the Staff Regulations, the Joint Advisory Appeals Board could only give an opinion as to whether any procedural flaws or unfair treatment had occurred during the competition process. The complainants' right to an effective internal appeal was therefore respected. It also maintains that the complainants were given the opportunity to present their arguments throughout the internal appeal procedure and that the *in camera* examination of the documents pertaining to the competition process was valid, since the principle of confidentiality of the Board's proceedings is enshrined in paragraph 20 of Annex IV to the Staff Regulations and has been recognised as lawful by the Tribunal.

The defendant points out that Article 4.2(g) of the Staff Regulations gives priority to internal candidates only where their competencies are equal to those of the other candidates. It holds that the complainants' interpretation is erroneous and contrary to the principles laid down by the Tribunal in its case law. It also considers that the alleged difference noted by the complainants between the linguistic requirements in the vacancy notice and those contained in the Staff Regulations does not adversely affect them and does not constitute an error of law. Moreover, with regard to the allegation that the technical competition panel failed to check whether their linguistic skills corresponded to those required for the post, it notes that the panel enjoys discretionary authority in assessing candidates and can base its decision solely on the information contained in their job application. It adds that the statement to the effect that nationality-based discrimination was applied in drawing up the shortlist was taken out of context, because its sole purpose was to illustrate how Article 4.2(g) of the Staff Regulations is applied during a typical recruitment process, a process that was not actually applicable in the present case because the vacancy to be filled was a language post. Lastly, it explains that the OFFDOC Branch intended to fill two identical posts and the fact that this was not mentioned in the vacancy notice is an administrative error which could not have adversely affected the complainants.

The Organization considers that the complainants have no grounds to object to the fact that the technical evaluation occurred prior to the evaluation by the Assessment Centre. In its view, the chronological order established by paragraph 11 of Annex I to the Staff Regulations is not obligatory but logical. It denies that there was any confusion of competence between the bodies responsible for recruitment and states that the responsible chief did not delegate his responsibilities but set up a competition panel composed of himself and persons with a perfect command of the languages required for the post in order to guarantee a rigorous technical evaluation of the candidates.

With regard to the plea of misuse of authority, the Organization argues that the various measures criticised by the complainants were actually intended, on the one hand, to guarantee the objectivity of the

procedure and equality among the candidates and, on the other, to avoid conflicts of interests.

At the Tribunal's request, the defendant invited the candidates who were appointed on the basis of the competition to submit any comments they wished to make, and it annexes to its brief a letter in which one of the two candidates indicated that she had no comment to make.

CONSIDERATIONS

1. At the material time the complainants were translators at grade P.3 in the French Unit of the International Labour Office OFFDOC Branch. They applied for a post of French-language senior translator/reviser at grade P.4 that had been advertised on 7 February 2008.

2. They attended a technical evaluation interview on 8 April 2008 and then took part in a written examination on 15 April 2008.

3. In May 2008 the Staff Union and the Director-General were informed of the recommendation to appoint one external candidate and one internal candidate. On 9 July 2008 the complainants were informed that their respective candidatures had been unsuccessful.

4. After having an interview, at their request, with the responsible chief, the complainants asked the latter for a written response to the points raised during the interview. On 15 August he sent them an e-mail in which he merely commented on the results of their technical evaluation.

5. On 6 September and 21 October 2008 the complainants each filed a grievance with the Joint Advisory Appeals Board requesting it, principally, to recommend to the Director-General that he annul the competition process and the resulting appointments.

In a report dated 26 March 2009 concerning both grievances, the Board recommended that the Director-General dismiss the grievances.

The complainants impugn before the Tribunal the decisions of 26 May 2009 by which they were informed that the Director-General had accepted that recommendation.

6. The defendant requests the joinder of the two complaints.

Counsel for the complainants states that the submissions filed on their behalf differ substantially only in terms of the facts and pleas concerning the misuse of authority.

The Tribunal considers that the request for joinder is well founded inasmuch as the two complaints are based on similar facts pertaining to the same competition, raise identical issues of fact and law and contain identical claims.

7. In particular, the complainants ask the Tribunal to set aside the impugned decisions, to annul the entire competition process and the resulting decisions, to order the payment of compensation for moral and material injury and to award them costs.

They submit a number of pleas in support of their respective complaints, some concerning the internal appeal procedure and others concerning the competition process and the resulting decisions.

8. At the Tribunal's request, the defendant transmitted the two complaints, for comment, to the two persons appointed following the competition process. One of them replied on 3 December 2009 that she had no comment to make.

9. The defendant submits that the two complaints should be dismissed in their entirety as unfounded.

Internal appeal procedure

10. The complainants allege that the impugned decisions are tainted by an error of law inasmuch as the Joint Advisory Appeals

Board, whose recommendation was adopted by the Director-General, misconstrued the scope of its competence by undertaking only a limited review of the disputed appointment decisions. The Board thus allegedly deprived them of their right to an effective internal appeal, whereas according to the Tribunal's case law "the right to an internal appeal is a safeguard which international civil servants enjoy in addition to their right of appeal to a judicial authority" (see Judgment 2781, under 15).

They contend that the shortcomings of the internal appeal body, reflected in its refusal to exercise its competence to the full, are also an impediment to the exercise of the right of appeal to a judicial authority. They consider that, by "limiting its examination to an assessment of the facts presented by the administrative authority, [the appeal body] renders the Tribunal's task more difficult and especially [their own] efforts to establish the facts of the case and the errors of assessment".

While the Joint Advisory Appeals Board made the mistake of indicating in its report that "it [had been] guided by the [Tribunal's] case law, according to which 'an appointment by an [international] organisation is a discretionary decision [and is] subject to only limited review'", although the scope of the review conducted by an internal appeal body is broader, it may be inferred from the Board's report that it did take all relevant steps to ascertain whether the competition process was tainted by a procedural flaw or unfair treatment, as required by the combined provisions of paragraphs 13, 14 and 17 of Annex I to the Staff Regulations concerning the "Recruitment procedure".

The provisions in question read as follows:

> "13. Internal candidates may request in writing an interview with the [responsible] chief […] in order to obtain feedback on the technical evaluation within ten working days from receipt of the notification by the Human Resources Development Department of the Director-General's decision. A meeting will be organized by the responsible chief, as far as possible within ten working days of receipt of the request. The candidate may be accompanied by a representative of the Staff Union or other ILO official (who was not involved in the selection process) or by a former ILO official.

> 14. When a candidate is dissatisfied with the result of the interview, he or she may request a written response. The responsible chief concerned will provide the written response, as far as possible, within ten working days from the receipt of the request.
>
> […]
>
> 17. An official who has requested feedback from the responsible chief in accordance with paragraph 13 above and who is not satisfied with the written response provided by the responsible chief under paragraph 14 above, may submit a grievance to the Joint Advisory Appeals Board within one month from the receipt of the written response on grounds that the decision was based on a procedural flaw or unfair treatment."

The Tribunal considers that the Board must perforce have examined, however cursorily, the respective merits of the candidates in order to rule out the possibility of unfair treatment. At any rate, this is what enabled it to affirm that "the candidates did not possess equal abilities".

It follows that the Board committed no error of law in this regard, since the submissions show that it gave an opinion in accordance with the competence conferred on it by the relevant provisions cited above, it being understood that such competence is not the same as that of a competition panel. The complainants were therefore in no way deprived of their right to an effective internal appeal.

The plea therefore fails.

11. The complainants contend that the impugned decisions are tainted by a procedural flaw because the adversarial principle was not respected. They affirm that the Joint Advisory Appeals Board undertook an *in camera* examination of the competition file, that none of the items in the file was brought to their attention and that the Board failed to account for this omission. If the Board felt that the contents of the file were so confidential that they could not be disclosed in the context of the appeal procedure, which is itself confidential, it should, in their view, have stated the reasons for that position.

The Tribunal finds that the Board did indeed examine the competition file *in camera* before making its recommendation and that the contents of the file were not disclosed to the complainants. That does not, however, constitute an omission that could taint the

procedure with a flaw warranting the quashing of the impugned decisions. According to the Tribunal's case law, as reflected, inter alia, in Judgments 556, under 4(b), and 2142 under 16 and 17, a candidate is not entitled to consult any record there may be of a discussion by the selection board or to know the identity of all the candidates who were eliminated.

It follows that the Joint Advisory Appeals Board could not disclose the contents of the competition file to the complainants without breaching the requirement of confidentiality flowing from the case law cited above.

In the Tribunal's opinion, the precedent established in Judgment 1355, cited by the complainants, is irrelevant because, on the one hand, that case dealt with the records of an appointment and promotion committee and not with the minutes of a selection board's discussion and, on the other hand, those records were appended to the defendant's submissions to the internal appeal body.

As the Tribunal finds no breach of the adversarial principle in the present case, this plea also fails.

12. The complainants further contend that the Joint Advisory Appeals Board, whose recommendation served as the basis for the impugned decisions, committed an error of law in applying Article 4.2(g) of the Staff Regulations, which reads as follows:

> "In filling any vacancy account shall be taken, in the following order, of –
>
> (1) applications from former officials whose appointments were terminated in accordance with the provisions of article 11.5 (Termination on reduction of staff);
>
> (2) applications for transfer;
>
> (3) claims to promotion;
>
> (4) if the Director-General and the Staff Union agree, applications from former officials other than those who have been discharged or summarily dismissed;
>
> (5) on a reciprocal basis, applications from officials of the United Nations, specialized agencies, or the Registry of the International Court of Justice."

13. In its report of 26 March 2009 the Board stated:

> "With regard to the application of Article 4.2(g)(3) of the Staff Regulations, it is worth noting that the Office's obligation to consider internal candidates first means that an internal candidate must be given priority where competencies are equal, but this obligation does not exist in the case of unequal competencies."

The complainants consider that the Board committed an error of law by holding that the order of priority established in Article 4.2(g) "is applicable only where competencies are equal".

14. The Tribunal recalls that it has already ruled, for instance in Judgment 2833, under 6, on the interpretation of Article 4.2(g). On that occasion it stated that the provisions of that paragraph must be read in conjunction with those of Article 4.2(a)(i) of the Staff Regulations, which reads in part:

> "The paramount consideration in the filling of any vacancy shall be the necessity to obtain a staff of the highest standards of competence, efficiency and integrity. Due regard shall be paid to the importance of maintaining a staff selected on a wide geographical basis, recognizing also the need to take into account considerations of gender and age."

The Tribunal concluded from its analysis of the provisions cited above that the aim that competent bodies must seek to achieve in filling any vacancy is the optimum functioning of the Organization and that, if the priorities established in Article 4.2(g) of the Staff Regulations jeopardise the achievement of this primary aim, they cannot be taken into account.

In the light of the foregoing, there can be no doubt that the priority claimed by the complainants, namely that which should be accorded to internal candidates, can be taken into account only where competencies are equal. Hence, when the Board stated in its report that the priority to be given to such candidates does not exist in the case of unequal competencies, it did not commit an error of law.

The case law invoked by the complainants, which is applicable primarily in cases of reduction of staff or abolition of posts, is irrelevant in the instant case.

This plea therefore fails.

The competition process and the resulting decisions

15. The complainants claim that the vacancy notice failed to comply with the provisions of paragraph 2 of Annex I to the Staff Regulations and that the decisions resulting from the competition process carried out on the basis of the vacancy notice are therefore unlawful.

Paragraph 2 referred to above reads as follows:

> "Officials in the Professional category who undertake duties as translator or such other duties as may be designated as similar by the Director-General shall be required to have a thorough knowledge of two working languages as well as the main language into which they translate."

The required qualifications in the vacancy notice include:

> "Languages
>
> Excellent command of one working language and a good knowledge of two or more other languages."

The complainants therefore consider that the administrative authority set less strict competence requirements than those set forth in the Staff Regulations.

The defendant replies that "[t]he linguistic requirements listed in the vacancy notice must be placed in the specific context of the competition in question", the purpose of which was to fill a post of French-language senior translator/reviser: the "[e]xcellent command of one working language" referred to the language into which the incumbent would be required to translate, i.e. French, and the requirement of a "good knowledge of two or more other languages" referred to the fact that the appointed candidate would be required to revise translations or to translate from two or more source languages.

The Tribunal considers that the defendant's explanations are acceptable and that the wording of the vacancy notice could not in any case prevent the competition panel from selecting only candidates possessing the best linguistic skills.

This plea also fails.

16. The complainants further contend that the defendant breached Article 4.2(a) of the Staff Regulations.

(a) They first assert that the failure to comply with the requirements set forth in paragraph 2 of Annex I to the Staff Regulations resulting from the fact that the qualification requirements in the vacancy notice fell short of the norm necessarily undermined the stated objective in aforementioned paragraph (a) of obtaining for the Organization a staff of the highest standards of competence. They do not see how a senior translator/reviser could seriously "[r]evise French translations, produced by members of the Unit or external collaborators, of reports and documents written in other languages" and "[a]ssist, advise and train French translators and assess their work", as stated in the vacancy notice, "if his or her linguistic skills are inferior to those of the other translators who are members of the Unit".

For the reasons set forth under 15 above, however, the Tribunal cannot but dismiss the complainants' assertions.

(b) The complainants then assert that the candidates appearing on the shortlist were never able to demonstrate that they had a command of two languages in addition to French.

The Tribunal cannot accept this criticism since the complainants provide no evidence of any error committed by the competition panel in assessing the candidates' qualifications and knowledge.

(c) Lastly, the complainants point out that the Organization stated, in the context of the internal appeal procedure, that it had resorted to the standard practice of exercising discrimination based on nationality in drawing up the shortlist, although Article 4.2(a)(ii) of the Staff Regulations prohibits such discrimination.

The defendant indicates, without it being refuted, that the statement referred to by the complainants was taken out of context and that, in accordance with a principle applied throughout the United Nations system, language posts are not subject to the principle of geographical distribution.

The Tribunal concludes from the foregoing that this aspect of the plea has no factual basis.

17. The complainants take the defendant to task for having unlawfully doubled the number of posts to be filled. According to them, any *ex post facto* change in the legal framework for the competition established by the vacancy notice breaches the principle of transparency of administrative procedures.

The defendant does not dispute the fact that the vacancy notice mentioned only one post to be filled, but it attributes this to an administrative error committed in good faith, as confirmed by the Joint Advisory Appeals Board, since the OFFDOC Branch had intended to fill two identical senior translator/reviser posts at grade P.4.

The Board deplored the fact "that owing to an administrative error, the vacancy notice announced only one post to be filled whereas there were actually two posts". It noted, however, that "[t]he *in camera* consideration […] of the competition file revealed that the intention had been to fill two posts well before (January 2008), i.e. before the vacancy notice was published (February 2008) and that it had obviously been a *bona fide* error".

18. According to the Tribunal's case law, when a vacancy is to be filled, staff members must be given sufficient information to enable them to exercise their rights without facing any unnecessary

hindrance. A competition aimed at filling a vacant post must be held under satisfactory conditions of objectivity and transparency, which guarantee that the candidates will receive equal treatment (see, for example, Judgment 2210, under 5, and the case law cited therein).

In this case, the question is whether the failure to state explicitly in the vacancy notice that there were two senior translator/reviser posts to be filled might have dissuaded some people from submitting applications or prevented the competition from being conducted under satisfactory conditions of objectivity and transparency which guaranteed that the candidates received equal treatment.

The Tribunal, like the defendant, considers that, given that the qualifications and experience required were exactly the same for the two posts, it cannot reasonably be argued that some people would have applied if they had known that there were two posts instead of just one to be filled. Furthermore, the complainants, who entered the competition anyway, were not adversely affected by that circumstance.

It follows that, since the error committed in the vacancy notice did not taint the competition with any procedural flaw, the plea must be rejected.

19. The complainants also contend that the failure to respect the successive stages of the competition process, with the evaluation by the Assessment Centre taking place after the technical evaluation, breached paragraph 11 of Annex I to the Staff Regulations.

20. Paragraph 11 of Annex I reads as follows:

> "The responsible chief will undertake and ensure rigorous technical evaluation of all candidates who have successfully completed the Assessment Centre's process, and will prepare a report."

The following are excerpts from the Collective Agreement on a Procedure for Recruitment and Selection concluded between the International Labour Office and the Office's Staff Union:

"***Article 1***

Definitions

[…]

1.1 The expression 'assessment centre' means an independent body of assessors, reaching decisions by consensus on the competence of individuals to work at particular levels in the Organization.

[…]

1.6 The expression 'technical evaluation' means an appraisal of technical skills and professional expertise and experience of successfully assessed candidates to a given vacancy.

[…]

Article 4

Competition process

4.1 The selection process is composed of two phases, the assessment centre and the technical evaluation.

[…]

4.3 External candidates short-listed by the responsible Chief in agreement with HRD will be invited to participate in the Assessment Centre.

Article 5

Technical Evaluation

5.1 All candidates who have been successfully assessed shall be technically evaluated. […]"

The Tribunal notes from the above provisions that, as maintained by the complainants, there is a chronological order in the competition process and that candidates must successfully complete the first stage, that is the Assessment Centre, before they can participate in the second, namely the technical evaluation.

The defendant does not dispute the fact that in this case the assessment undertaken by the Assessment Centre took place after the technical evaluation in the case of the external candidates concerned. It argues that "the order in which the different stages of the competition […] were held could not have harmed the complainant[s]", since they were exempted, as internal candidates, from undergoing the Assessment Centre stage.

According to the Tribunal's case law, however, anyone who applies for a post to be filled by some process of selection is entitled to

have his application considered in good faith and in keeping with the basic rules of fair and open competition. That is a right that every applicant must enjoy, whatever his hopes of success may be (see, for example, Judgment 2163, under 1, and the case law cited therein).

21. The Tribunal considers that in the present case the complainants are right in challenging the lawfulness of the competition process even though, as noted by the defendant, they were exempted, as internal candidates, from undergoing the Assessment Centre stage. Indeed, what matters is that all candidates should be treated equally. If internal candidates are exempted from undergoing an assessment by the Assessment Centre, it is because they are presumed to be eligible to apply for a post at a specific grade within the Organization. The situation is different in the case of external candidates, whose eligibility for appointment to a post at a given grade in the Organization must be assessed prior to the technical evaluation, which is mandatory for all candidates who may be appointed.

22. The Tribunal recalls that when an international organisation wants to fill a post by competition, it must comply with the material rules and the general precepts of the case law (see, for example, Judgment 2163 mentioned above, under 3).

It is indisputable in this case that the defendant, by failing to respect the order established for the evaluation by the Assessment Centre and the technical evaluation, breached its own rules governing the conduct of the competition process. Moreover, the possibility that this reversal of the order had an impact on the results of the competition cannot be ruled out.

It follows that the competition process was flawed and must therefore be annulled, without there being any need to rule on the other pleas concerning breach of the provisions of Annex I to the Staff Regulations.

23. The complainants assert that the chief responsible for the OFFDOC Branch lacked the linguistic skills required to assess the candidates' competence. However, the Tribunal, which may conduct

only a limited review of such matters, considers that their allegation has not been proved.

24. With regard to the complainants' allegation of misuse of authority, the Tribunal recalls that such a flaw may not be presumed and the burden of proof is on the party that pleads it (see Judgments 1775, under 7, and 2116, under 4(a)).

The Tribunal notes in the present case that the complainants' assertions concerning, inter alia, the opening of the competition to external candidates and the fact that the Chief of the French Unit took part in the selection process although she was the direct supervisor of the work of the internal candidates, as well as their allegations concerning the written examination and the assessment are not supported by the slightest evidence and cannot, therefore, warrant the annulment of the competition on the ground of misuse of authority, since there is nothing whatsoever to indicate that the Organization was not acting with the sole aim of preserving its interests when it appointed the successful candidates.

This plea therefore fails.

25. However, as the competition process must be annulled on the grounds set forth under 22 above, the competition will be resumed from the point at which the procedure was flawed.

The decisions resulting from the competition as well as those of 26 May 2009 must therefore be set aside, on the understanding that the defendant must shield the selected candidates from any injury that may flow from the quashing of an appointment they had accepted in good faith (see Judgments 1477, under 11, and 2336, under 4).

26. The complainants request compensation for the material and moral injury they allegedly suffered.

The Tribunal considers that they did not suffer any material injury from the fact that they were unsuccessful in the competition. However, the procedural irregularity noted above caused them a moral injury that

must be redressed by awarding each of them compensation of 5,000 Swiss francs.

27. With regard to the request for reimbursement of any income tax payable on the compensation awarded, the Tribunal cannot grant this claim because it is not based on an established fact.

28. The complainants are entitled to costs in the amount of 5,000 francs each.

DECISION

For the above reasons,

1. The decisions of 26 May 2009 as well as the decisions resulting from the competition are set aside.
2. The competition process shall be resumed as indicated under 25, above.
3. The ILO shall pay each complainant 5,000 Swiss francs in compensation for the moral injury caused to her.
4. It shall also pay each of them 5,000 francs in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 12 May 2011, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet