

Case No. UNDT/GVA/2015/135

Judgment No. UNDT/2016/042

6. The arbitration was filed on 20 March 2015. The proceedings were suspended in June 2015 to allow mediation efforts to

d. The 's' and not a 9 that is as described against the cause
!e is based on :ang;o;/ !a.e no me'st/ as !e is eO%uded f'om fu't!e'
%onsde'at\$on 5e%ause !e d\$d not su5m\$t !s ans 8e' to t!e test.

Consideration

14. :efo'e add'ess\$ng t!e me'sts of t!e %ase/ t!e T'\$5una# 8\$## 'u#e on a num5e'
of mot\$ons su5m\$tted 59 t!e A""#%ant.

15. T!e A""#%ant 'e<uests t!at t!s %ase s!ou#d 'ema\$n 8\$t! t!e Judge to 8 !om
st !ad 5een \$n\$t\$a##9 ass\$gned/ and 8!o !as %ondu%t of a num5e' of ot!e'
a""#%at\$ons !e !as f\$ed. T!e T'\$5una# 'e-e%ts t!s mot\$on/ st'ess\$ng t!at t!e
ass\$gnment of %ases to =udges \$s an \$nte'na# o'gan\$Ea\$ona# matte' and t!e "a't\$es
!a.e no ent\$te'ment to a""ea' 5efo'e a "a't\$%u#a' =udge. 3 o'eo.e'/ t!e fa%t t!at
d\$ffe'ent =udges ma9 'e.e8 .a'sous a""#%at\$ons #odged 59 t!e same a""#%ant
does not affe%t t!e T'\$5una#Bs a5\$#t9 to %onsde'/ \$n ea% ! %ase/ a## t!e fa%tua# and
#ega# \$ssues t!at m\$g!t 5e 'e#e.ant to a dete'm\$nat\$on of t!e \$ssues \$n t!at
"a't\$%u#a' %ase.

16. T!e mot\$ons t!at a !ea'ng 5e !e#d 8\$t! a "a't\$%u#a' 8\$tness to 5e %a##ed and
fo' #ea.e to f\$#e add\$st\$ona# 8 '\$tten %omments a'e 'e-e%ted. T!e unso#%\$sted f\$#\$ng of
13 A""#\$ 2016 8\$## not 5e ta;en \$nto %onsde'at\$on. T!e T'\$5una# \$s of t!e .e8
t!at/ g\$.en t!e \$ssues at sta;e and t!e e.\$den%e on

In the interest of 'ea!\$ng f\$na#t9 \$n d\$s"os\$ng of t!\$s "a't\$%u#a' Some of
%ontent\$on. - o8e.e'/' and \$nsofa' as !e m\$g!t 5e deemed to 5e \$n%#ud\$ng a
%!a##enge to t!e \$nte'med\$a'9 o' "'e"a'ato'9 'e<u\$'ement t!at t!e 8 '\$tten test
ans8e's 5e t9"ed/ t!e a""#\$%at\$on 8ou#d not 5e 'e%e\$.a5#e \$n an9 e.ent (see
2011)UNAT)152*/ \$n a%o'dan%e 8\$t! a't. 2.1(a* of t!e T'\$5una#Bs ,tatute and t!e
'e#ated =u'\$s"'uden%e on 8!at %onst\$utes an a""ea#a5#e admn\$st'at\$.e de%\$\$son
(2010)UNAT)030/ 2010)UNAT)013/ 2013)
UNAT)304/ endo's\$ng t!e defn\$st\$on ado"ted \$n t!e fo'me' Un\$ted Nat\$ons
Admn\$st'at\$.e T'\$5una# Judgment No. 115@/ (2003**/ name#9

>a? un\$#ate'a# de%\$\$son ta;en 59 t!e admn\$st'at\$on \$n a "'e%\$\$se
\$nd\$. \$dua# %ase (\$nd\$. \$dua# admn\$st'at\$.e a%t*/ 8!\$%! "'odues
d\$'e#t #ega# %onse<uen%es to t!e #ega# o'de'.

1 . A## s!o't#ssted %and\$dates 8e'e 'e<usted to ta;e a 8 '\$tten test t!at \$n.o#.ed
t9"\$ng t!e ans8e's to t8o <uest\$ons des\$gned to assess s;\$\$s \$n &uss\$an 'e.\$\$son.
T!e A""#\$%ant d\$d not su5m\$t !\$s ans8e's 5e%ause !e %ons\$de'ed t!at t!e
Admn\$st'at\$on 8as not ent\$ted to \$m"ose on !\$m a

not 'efe''ed to an9 'u#e "'es%'\$5\$ng t!at t!e met!odo#og9 used fo' a test must ne%essa'\$#9 'e"#\$\$ate t!e \$nte'na# 8o';f#o8s.

21. T!e T'\$5una# !as 'u#ed "'e.\$ous#9 t!at %and\$dates \$n a se#e%t\$on "'o%ess must %om"#9 8\$t! t!e \$nst'u%t\$ons g\$.en fo' a 8'\$tten test/ and ta;e "e'sona# 'es"ons\$5\$#t9 fo' ma;\$ng t!e ne%essa'9 a'angements to meet t!e 'e<u'\$ement\$ fo' su%! %om"#\$an%e. Ga\$#u'e to do so ma9 "'o'e'#9 #ead to t!e\$' e0%us\$on f'om t!e 'e'u\$tmnt "'o%ess (UNDT/2013/030*. T!e on#9 a"'#\$%a5#e 'e<u'\$ement \$s t!at t!e met!odo#og9 of t!e tests 5e fa\$' and 'easona5#e and not des\$gned de#5e'ate#9 to %onfe' an ad.antage on a "'efe''ed %and\$date o'/ a#e'nat\$.e#9/ to d\$sad.antage a "a't\$u#a' %and\$date/ 8!o ma9 t!en %!a##enge t!e de%\$\$son 59 f#\$ng a %a\$m a##eg\$ng t!at t!e'e !as 5een a mate'\$a# '\$'egu#a'\$t9 \$n t!e se#e%t\$on "'o%ess. A"'#9\$ng t!at "'\$n%"#e to t!\$s %ase/ t!e T'\$5una# f\$nds t!at t!e Adm\$n\$st'at\$onBs de%\$\$son 'e<u'\$ng 'e#at\$.e#9 sen\$o' s"e%\$a#\$sts \$n t!e &uss\$an #anguage to 5e a5#e to t9"e \$n &uss\$an \$s 8\$t!\$n t!e d\$\$%'et\$on a##o8ed to t!e Adm\$n\$st'at\$on and/

Judgment

25. The Judgment of the Tribunal at the end of the proceedings is hereby confirmed.

26. The award is hereby confirmed.

(*)

Judge Goocham 3 ee'an

Dated this 26th day of April 2016

Entered in the Registry on this 26th day of April 2016

(*)

EnH 3. Va'gas 3 ./ &egst'a' / Gene.a