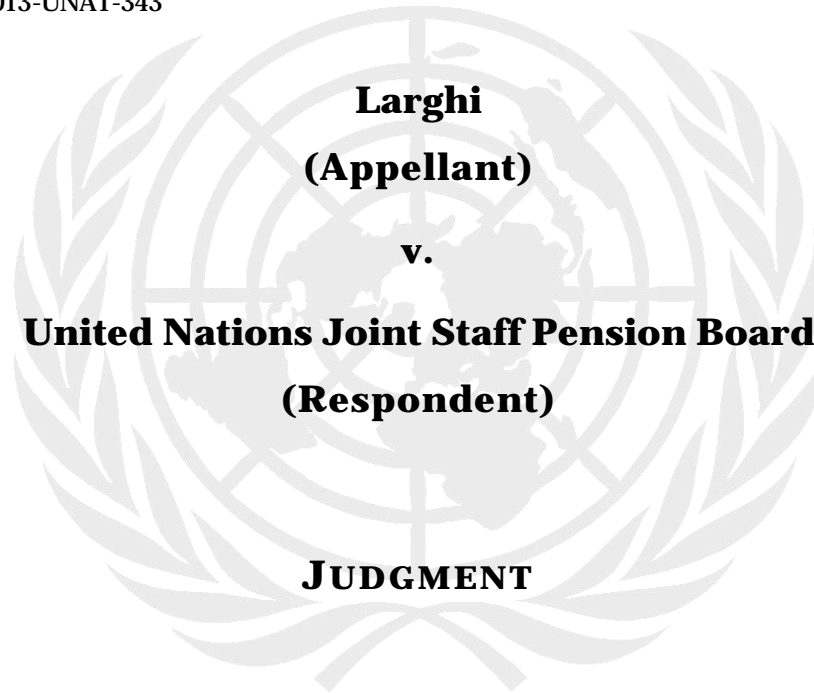




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2013-UNAT-343



**Larghi  
(Appellant)**

**v.**

**United Nations Joint Staff Pension Board  
(Respondent)**

**JUDGMENT**

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Before:	Judge Mary Faherty, Presiding Judge Inés Weinberg de Roca Judge Richard Lussick
Case No.:	2012-380
Date:	21 June 2013
Registrar:	Weicheng Lin

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Counsel for Appellant:	George G. Irving
Counsel for Respondent:	Bernard Cochemé

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Oscar P. Larghi against a decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively) dated 23 July 2012. Mr. Larghi appealed on 27 September 2012, and the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) answered on 30 November 2012. On 10 June 2013, the Appeals Tribunal issued Order No. 136 (2013), ordering the UNJSPF to provide certain information for its deliberations in this case and in the related Case No. 2012-381, *Pio*, and, on 12 June 2013, the UNJSPF submitted its response to the Order. On 14 June 2013, Mr. Pio filed a Motion to Strike or Reply to said submission.

### **Facts and Procedure**

2. Mr. Larghi, an Argentine national, is a retired Pan American Health Organization/World Health Organization staff member, who participated in the UNJSPF from 1966 to 1985. He took early retirement at age 55 and, initially, received his monthly pension benefit in US dollars. He opted to switch to a “local track” pension some years later.

3. In 2009, Mr. Larghi began communicating with the UNJSPF over the Argentinian consumer price index (CPI) data and, on 19 and 28 October 2011, he formally requested that the UNJSPF “discontinue” the “local track”, in application of paragraph 26(c) of the Pension Adjustment System (PAS). On 4 November 2011, the Chief Executive Officer (CEO) of the Fund responded that he was “fully aware of the concerns being expressed with respect to the movement of the CPI as published by the government of Argentina” and that the UNJSPF awaited the outcome of an International Monetary Fund (IMF) study on the quality of Argentina’s CPI data. He recalled that paragraph 26 of the PAS permitted him to discontinue the “local track” when it would lead to “aberrant results”. However, the CEO asserted “the Fund must use the officially published CPI, as provided by the government of Argentina”, noting “had there been no CPI figures published for Argentina over the last several years, the Fund might have been in a position to consider this more favorably under paragraph 26(c) of the PAS”.

4. Mr. Larghi, who had not disputed the existence of the data, but considered the outcome of its application to be “unjust and aberrant”, justifying suspension under paragraph 26(c), appealed the CEO’s decision on 16 November 2011. At its 194<sup>th</sup> meeting

on 9 July 2012, the Standing Committee rejected his claim, noting that “under paragraph 14 of the [PAS], the Fund is required to use the official CPI rates for each country as published in the United Nations Monthly Bulletin of Statistics”. Argentina having produced such rates, and the Bulletin having published them, the Standing Committee concluded “[t]herefore, there is no basis to suspend the application of the local currency track in accordance with paragraph 26 of the PAS”. This decision was communicated to Mr. Larghi by letter dated 23 July 2012.

### **Submissions**

#### **Mr. Larghi’s Appeal**

5. Mr. Larghi submits that the Fund erred in law when it declined his request to invoke paragraph 26 of the PAS, which was applicable given that the use of official CPI data produced aberrant results.

6. He contends that, since 2007, the local CPI indices issued by the Argentine Government have not accurately reflected actual cost of living increases. Accordingly, he claims that the use of official CPI data should have been suspended pursuant to paragraph 26(b)(iii) of the PAS.

7. Furthermore, Mr. Larghi asserts that the Fund abused its authority and violated his rights of due process as he was neither present at the Standing Committee meetings nor informed about the documentation it reviewed.

8. Mr. Larghi requests rescission of the contested decision.

#### **The Fund’s Answer**

9. The UNJSPF submits that the provisions of the PAS were correctly applied and that the establishment of an adjustable minimum guarantee adequately addressed the situation.

10. It further submits that, as official CPI figures had been published by the Government of Argentina, paragraph 26 of the PAS could not be invoked.

11. The Fund contends that it adhered to all relevant rules and regulations in its decision process, such that Mr. Larghi’s due process rights were fully respected.

12. The Fund requests the Tribunal to dismiss the appeal in its entirety.

**Considerations**

*The jurisdiction of the Appeals Tribunal*

13. Article 2(9) of the Statute of the Appeals Tribunal reads:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund, submitted by:

(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;

(b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization. In such cases, remands, if any, shall be to the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board.

14. Article 48, UNJSPF Regulations states:

(a) Applications alleging non-observance of these Regulations arising out of decisions of the Board may be submitted directly to the United Nations Appeals Tribunal by:

(i) Any staff member of a member organization which has accepted the jurisdiction of the Tribunal in Joint Staff Pension Fund cases who is eligible under article 21 of these Regulations as a participant in the Fund, even after his or her employment has ceased, and any person who has succeeded to such staff member's rights upon his or her death;

(ii) Any other person who can show that he or she is entitled to rights under these Regulations by virtue of the participation in the Fund of a staff member of such member organization.

(b) In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by a decision of the Tribunal.

(c) The decision of the Tribunal shall be final and without appeal.

(d) The time-limits prescribed in article 7 of the Statute of the Tribunal are reckoned from the date of the communication of the contested decision of the Board.

15. Mr. Larghi's appeal falls within the scope of Article 2(9) of the Appeals Tribunal Statute and Article 48(a) of the UNJSPF Regulations.

*The background to the appeal*

16. It is necessary to set out, to some degree, Mr. Larghi's pension history and certain statutory developments regarding the UNJSPF, which occurred between 1985 and the date of this appeal.

17. Mr. Larghi was a participant in the Fund from 1966 to 1985. Upon his separation from service in 1985, he opted to receive his monthly pension benefit in US dollars and, thus, did not then opt to be paid in accordance with the "local track" system which had been put in place some years previously.

18. In 1996, by Resolution 51/217, the General Assembly approved a recommendation of the UNJSPB for the adoption of a special measure with retroactive effect from 1 January 1996 for determining "local track" pension amounts for beneficiaries residing in countries where a new currency unit had been introduced that significantly strengthened the relationship of the local currency to the US dollar. This was duly codified as paragraph 38 of the PAS, which provides:

(a) For countries where a new currency unit was introduced on or after 1 January 1990 which represented, at the time of its introduction, an increase in the value of the local currency, in relation to the United States dollar, of at least 100 per cent, the local currency base amount under paragraph 5(b)(iii) above shall be determined in the following manner:

(i) For beneficiaries separating before or during the month of introduction of the new currency unit: by applying to the dollar base amount, as adjusted under section H above to the date of introduction of the new local currency unit, the United Nations operational exchange rate in effect as of such date;

(ii) For beneficiaries separating after the end of the month of introduction of the new currency unit: by applying to the dollar base amount the average of the United Nations operational exchange rates for the new local currency unit over the period from the effective month of introduction of the new currency unit to the month of separation, up to a maximum of 36 months.

(b) This special measure shall apply to all beneficiaries who have provided, or will provide in future, proof of residence in a country which meets the criteria in (a) above.

(c) (i) The local currency base amount determined in accordance with (a)(i) above shall be adjusted by the consumer price index movement, in accordance with section H above, as from the date of introduction of the new currency unit;

(ii) The local currency base amount determined in accordance with (a)(ii) above shall be adjusted by the consumer price index movement, in accordance with section H above.

(d) The local currency amount calculated under this special measure will be paid only with effect from the first day of the quarter following submission of proof of residence, or in cases where proof of residence had been submitted earlier, as from the first day of the quarter following the date of introduction of the new local currency unit, with retroactive effect only as from 1 January 1996.

(e) Should the new local currency unit depreciate against the United States dollar by 50 per cent or more from its value on the date of introduction, beneficiaries covered by the special measure may exercise an option, within two years as from the date of implementation of the special measure, 1 January 1997, to withdraw their proof of residence and to have their pension benefits paid thereafter solely on the United States dollar track. Such reversion to the dollar track alone would be effective as from the first quarter following receipt by the Fund secretariat of the beneficiary's withdrawal of proof of residence.

19. Argentina was identified as a country to which paragraph 38 was applicable, after the introduction of its new currency unit, the Peso, in January 1992.

20. At some point, post the adoption of Resolution 51/217, Mr. Larghi sought application of the "special measure" and, thus, his benefits were recalculated accordingly under the "local track" feature of the PAS. Under the PAS, the "local track" would be adjusted pursuant to movements in the CPI in Argentina.

21. Difficulties in the adjustment of pensions paid under the "local track" were identified by the UNJSPB in its 2004 Report to the General Assembly, and necessitated an amendment to paragraph 23 of the PAS, to ensure that in addition to the existing cap provisions of 120 per cent and 110 per cent (120 per cent being the applicable cap in Mr. Larghi's case), the pensions of UNJSPF beneficiaries who had opted for the "local track" system would be guaranteed not to fall below an 80 per cent minimum. Thus, paragraph 23 of the PAS (with the minimum threshold amendment highlighted) provides:

Where a beneficiary resides in a country other than the United States, the determination of the amount of the periodic benefit payable in a given month is made as follows:

The dollar amount as initially determined under subparagraph 5(a) above and then adjusted under section H above, is converted to the local currency equivalent by using the exchange rate in effect for the month preceding the calendar quarter of that payment. The resultant amount is compared to the local currency amount as initially determined under subparagraph 5(b) above and then adjusted under section H above. Except as provided in paragraph 25 below, the beneficiary is entitled, until the next quarter, to the greater of the local currency amount or the local currency equivalent of the dollar amount, subject to a maximum of: (a) 120 per cent of the local currency amount with respect to benefits payable on account of separations or deaths in service before 1 July 1995 and other benefits derived therefrom; (b) 110 per cent of the local currency amount with respect to benefits payable on account of separations or deaths in service on or after 1 July 1995 and other benefits derived therefrom. *The limitations described in (a) and (b) above shall not result in a benefit being smaller than either the United States dollar base amount determined in accordance with the Regulations of the Fund or 80 per cent of the adjusted United States dollar-track amount.* (Emphasis added)

22. The Appellant explains that, some time around 2002, Argentina experienced serious financial problems and abruptly devalued its currency which, in turn, affected the price of commodities and the purchasing power of local currency. Mr. Larghi wrote to the Fund, on 10 January 2009, seeking the application of paragraph 26(i) of the PAS. On 16 January 2010, the Fund responded to the effect that, with regard to the applicable CPI for Argentina, the Fund had met with the United Nations Statistics Office, which had confirmed that the CPI data for Argentina was that officially submitted by Argentina.

23. Mr. Larghi next communicated with the Fund on 28 October 2011, in the following terms:

As you know, the CPI for Argentina has been handled by the Government in such a way that pensioners residing here, both in the dollar and the double tracks, are losing a high percentage of the purchasing power of [their] pensions, which has been reduced more than 100% since 2007. This fact contradicts [paragraph] 1 of the UNJSPF [PAS].

I am sure that you as me consider this an unjust and aberrant situation. Consequently, I respectfully request that, in accordance with section (C) of [paragraph] 26 of the PAS, my local currency base amount is discontinued. You will probably notice that with this change I will recuperate as much as one fifth of the purchasing power already lost.

24. On 4 November 2011, the CEO of the Fund responded that he was “fully aware of the concerns being expressed with respect to the movement of the CPI as published by the Government of Argentina” and that the UNJSPF awaited the outcome of the IMF study on the quality of Argentina’s CPI data. He recalled that paragraph 26(a) of the PAS permitted him to discontinue the “local track” in countries where “the local currency track would lead to aberrant results”. He went on to state,

Paragraph 26(b) then provides specific examples of circumstances that could be the cause of such ‘aberrant results’. As noted on previous occasions, had there been no CPI figures published for Argentina over the last several years, the Fund might have been in a position to consider this more favourably under paragraph 26(c) of the PAS. I would recall however that the government of Argentina has published official CPI figures every year since 2002.

25. Mr. Larghi appealed the CEO’s decision on 16 November 2011. On 9 July 2012, the Standing Committee rejected Mr. Larghi’s appeal, noting that “under paragraph 14 of the [PAS], the Fund is required to use the official CPI rates for each country as published in the United Nations Monthly Bulletin of Statistics”. Argentina having produced such rates, and the Bulletin having published them, the Standing Committee concluded, “[t]herefore, there is no basis to suspend the application of the local currency track in accordance with paragraph 26 of the PAS”. This decision was communicated to the Appellant by letter dated 23 July 2012.

26. The thrust of Mr. Larghi’s submissions to this Tribunal is that the CEO of the UNJSPF, in communicating the decision of the Standing Committee “did not correctly address the Appellant’s arguments or refer to the correct provisions of [paragraph] 26 of the PAS applicable to the issue of an inconsistent local CPI index”. He further submits that there was no reasoned explanation put forward why the provisions formulated (paragraph 26) to address the problem of inconsistency and prevent harm to the pension beneficiary were rejected by the Standing Committee. It is also submitted that the reference in the decision letter to paragraph 14 of the PAS is misplaced and that the Standing Committee’s interpretation of paragraph 14 would render paragraph 26(b)(iii) superfluous.

27. The Respondent urges this Tribunal to dismiss the appeal and submits that the Standing Committee acted correctly, and in accordance with the UNJSPF Regulations, Administrative Rules and the PAS in denying Mr. Larghi’s request to suspend the application



of the “local track” in his case. The Respondent asserts that as official CPI data is being published by the Government of Argentina and as the Fund cannot challenge the official figures provided, there is no basis for the application of paragraph 26 of the PAS. Furthermore, the Respondent informs this Tribunal that, until March 2002, the Appellant benefited from the fact that the Argentinian local currency track amount was higher than the US dollar amount; that from 1 April 2002 to 31 March 2005 he was paid at the minimum guaranteed amount provided for in the then extant regulations and that since 1 April 2005 he has benefited from the 80 per cent minimum guaranteed by paragraph 23 of the PAS.

28. From our analysis of both parties’ documentation and submissions, we are satisfied that the issue for judicial review in this appeal is whether the Standing Committee exercised the jurisdiction/discretion with which it is vested pursuant to paragraph 26 of the PAS, either properly or at all.

29. Paragraph 26 provides as follows:

(a) For countries where the application of the local-currency track would lead to aberrant results, with wide fluctuations depending on the precise commencement date of the underlying benefit entitlement, establishment of a local currency base amount in accordance with section C may be discontinued by the Chief Executive Officer of the Pension Fund. In such cases, the Chief Executive Officer shall duly inform the Board or the Standing Committee of this action, as soon as feasible.

(b) Aberrant results in (a) above may be due, inter alia, to:

- (i) Very high inflation rate and an exchange rate which either remained fixed or whose fluctuation was very limited in relation to the level of the inflation rate;
- (ii) The 36-month average of exchange rates covered different currency units or included a currency unit that was no longer applicable;
- (iii) Substantial depreciation of the local currency, combined with non-existent, inconsistent or outdated information on the movement of the country's consumer price index.

(c) For countries where up-to-date CPI data is not available, after examining possible alternative sources of cost-of-living data and taking into account the particular circumstances of the beneficiaries residing in those countries, the application of the local currency track may be suspended; such suspensions shall apply only prospectively, with due notice given to the beneficiaries concerned.

30. Before addressing the specific arguments made by both sides, it is worth reiterating the purpose for which the PAS was devised, which is encompassed in paragraphs 1 to 3 as follows:

1 Pension adjustment is intended to ensure that, subject to paragraph 23 below, a periodic benefit payable by [UNJSPF] never falls below the ‘real’ value of its United States dollar amount and to preserve its purchasing power as initially established in the currency of the recipient’s country of residence.

2 The ‘real’ value of a United States dollar amount is the base amount as determined under the Regulations of the Fund, adjusted over time for movements of the United States consumer price index (CPI), while the purchasing power of a recipient’s benefits, once established in local currency, is preserved by adjusting it for movements of the consumer price index in the recipient’s country of residence.

3 The operation of PAS involves keeping a record of two amounts for a beneficiary:

- (a) one in United States dollars, which is adjusted periodically to reflect changes in the United States CPI;
- (b) the other, if applicable, in local currency, which is adjusted periodically to reflect changes in the CPI in the beneficiary’s country of residence.

31. In *Merani*, the former Administrative Tribunal described the purpose of the PAS in the following terms:

... The first objective is protecting pensions against *inflation*. The CPI adjustments to the United States dollar base and to the local currency amount accomplish this objective. The second is taking into account the *cost-of-living differential* [(COLD)] for those residing outside of the United States. The COLD factor accomplishes this goal. The third is *converting* the United States dollar *pension* amount *into local currency*, when the retiree chooses to be paid in local currency. The currency conversion accomplishes this third aim.<sup>1</sup>

32. We are entirely satisfied that, viewed against the objectives set out in paragraphs 1 to 3 of the PAS, the primary effect of paragraph 26, if invoked by the UNJSPF, is to either discontinue or suspend, as the case may be, the “local track” currency for a particular country, once the UNJSPF is satisfied that the conditions set out in paragraph 26(a) or 26(c) are met. Furthermore, we note that while paragraph 26(b) defines what may constitute

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<sup>1</sup> Former Administrative Tribunal Judgement No. 942, *Merani* (1999), para. XI. Original emphasis.

“aberrant results”, this is not an exhaustive list, as evident from the term “inter alia” in paragraph 26(b). Ultimately the existence or otherwise of “aberrant results” is a matter of fact to be determined by the CEO of the Pension Fund. The act of discontinuance or suspension, under paragraph 26(a) or (b) respectively, will necessarily involve the local, official CPI figures, since, pursuant to paragraph 14 of the PAS, CPI changes are measured “for the United States and for a particular country of residence” by using “the official CPI for the country as a whole issued by the national Government and published in the United Nations Monthly Bulletin of Statistics”.<sup>2</sup>

33. In such circumstances, there is no merit in the proposition put forward by the Respondent that the existence of official CPI data for Argentina *of itself* rendered the Standing Committee impotent, as far as a consideration of Mr. Larghi’s request, pursuant to paragraph 26, for a discontinuance of Argentina’s CPI is concerned. The very purpose of paragraph 26 is to address the issue of whether the application of official CPI data results in “aberrant results” or the situation where no up-to-date CPI data is available. Clearly these matters can be raised by the UNJSPF of its own volition and/or where a concerned beneficiary applies for the application of paragraph 26(a) or 26(c). We note that the letter conveying the Standing Committee’s decision to Mr. Larghi makes reference to there being “no basis to *suspend* the application of the local currency track in accordance with paragraph 26” in the Appellant’s case (emphasis added). Mr. Larghi went to the Fund making the case that grounds existed for the Fund to invoke the powers vested in it under paragraph 26. It is clear from his 28 October 2011 letter that he was requesting that the UNJSPF *discontinue* the Argentinian CPI pursuant to paragraph 26(a), notwithstanding the reference to “section C” in the letter. Whether Mr. Larghi would succeed in his appeal of the Pension Fund CEO’s decision is dependent, in the first instance, on his being given the

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<sup>2</sup> Paragraph 14 of the PAS reads, in full:

For measuring changes in the CPI for the United States and for a particular country of residence, the index used is the official CPI for the country as a whole issued by the national Government and published in the United Nations Monthly Bulletin of Statistics. Where no such index is published in the United Nations Monthly Bulletin of Statistics for a particular country or area, another regularly published index specified by the Statistics Division of Department of Economic and Social Affairs of the United Nations may be utilized. Once an index has been utilized to give effect to an adjustment, any subsequent amendment or correction of that index will not give rise to retroactive correction of the adjustment.

opportunity to make his case to the Standing Committee and thereafter dependent on his persuading the Standing Committee of the merits of the case he is presenting.

34. Furthermore, we do not regard as persuasive the Respondent's arguments that Mr. Larghi's complaint has been addressed by virtue of the historical benefits that have accrued to the Appellant or of his being able to benefit from the protections contained in paragraph 23 of the PAS; those arguments are not germane to the specific issue he raises in his application to the Fund and on appeal to the Standing Committee.

35. The decision of 9 July 2012, communicated to Mr. Larghi on 23 July 2012, was in effect a failure by the Standing Committee to exercise its jurisdiction to consider his appeal of the CEO's decision. In declining to render a decision based on Mr. Larghi's submissions, in the erroneous belief that the very existence of official CPI figures for Argentina precluded them from so doing, the Standing Committee erred in law and fact with regard to the powers vested in the Pension Fund under paragraph 26 of the PAS. Accordingly, the decision of 9 July 2012 is set aside. We hereby remand Mr. Larghi's case to the Standing Committee for its consideration forthwith of his application for discontinuance of the "local track" pension payment in his case and a reversion to a payment in US dollars.

*The claimed due process violations*

36. Mr. Larghi submits that the process by which the Standing Committee reviewed his appeal fell short of the standards required "to respect general notions of procedural due process". He states that he was neither present at the review by the Standing Committee, nor apprised of how the case was presented to that body. Neither was he informed what specific documentation was put forward. He claims that his views were presented to the Standing Committee at the very discretion of the person against whom he was appealing. He submits "[o]n information and belief, the review was perfunctory".

37. The Respondent contends that no due process violations occurred; that all the documentation that Mr. Larghi submitted in respect of his appeal was furnished to the Standing Committee; and that there was no need for Mr. Larghi's personal attendance, as "the UNJSPF regulations do not need a final instance to hear evidence or make findings of fact". The Respondent further submits that the composition of the Standing Committee ensures that there is fair representation of all views and that the Federation of Associations of Former

International Civil Servants (FAFICS), as the representative of retirees, attends the meetings of the Standing Committee and is allowed to present views, which was done in this case.

38. In the present case, we are not persuaded that Mr. Larghi's due process rights were violated by reason of his not being present before the Standing Committee. There is no suggestion from the correspondence furnished to this Tribunal that he sought to be heard in person. We are satisfied from the contents of the 23 July 2012 letter that all the documentation furnished by him in support of his appeal was submitted to the Standing Committee. While Mr. Larghi has raised the concern that his appeal is submitted to the Standing Committee by the very person whose decision he is appealing, we are satisfied that this concern is alleviated both by the fact that Mr. Larghi's case is presented in written form to the Standing Committee and by the composition of that body, which includes representatives of FAFICS.

39. As we have already set out, the shortcomings evident in the present case concern the Standing Committee's erroneous interpretation of the PAS provisions, a situation which has now been remedied by our decision to remand Mr. Larghi's appeal from the Pension Fund CEO's decision back to the Standing Committee.

40. In *Ansa-Emmim*, we stated that "all proceedings which culminate in appealable decisions must be conducted in a reviewable manner, by observing the principles of natural justice. The affected party must get a proper hearing, and the order detailing a decision must contain sound reasons which can be judicially scrutinized upon appeal."<sup>3</sup> This is the standard we have set for appeals before the Standing Committee.

### **Judgment**

41. The decision of the Standing Committee is set aside and Mr. Larghi's case is remanded back to the Standing Committee for its consideration forthwith of his application for discontinuance of the "local track" pension payment in his case and a reversion to a payment in US dollars.

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<sup>3</sup> *Ansa-Emmim v. UNJSPB*, Judgment No. 2011-UNAT-155, para. 31.

Original and Authoritative Version: English

Done in New York, United States.

*(Signed)*

Judge Faherty, Presiding  
28 June 2013

*(Signed)*

Judge Weinberg de Roca  
21 June 2013

*(Signed)*

Judge Lussick  
28 June 2013

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar