

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

114th Session

Judgment No. 3152

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgments 2867 and 3003 filed by Mrs A.T. S. G. on 11 November 2011, the reply of the International Fund for Agricultural Development (IFAD) of 20 December 2011, the complainant's rejoinder of 19 March 2012 and IFAD's surrejoinder of 27 April 2012;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

CONSIDERATIONS

1. By Judgment 2867, delivered on 3 February 2010, the Tribunal ruled on the complainant's first complaint, which was directed against the decision of the President of IFAD, dated 4 April 2008, dismissing her internal appeal against the decision not to renew her contract because her post was being abolished. The Tribunal's jurisdiction to deal with this case was strongly contested by IFAD on the ground that the official concerned had been assigned to the Global Mechanism established within the framework of the United Nations Convention to Combat Desertification in Those Countries

Experiencing Serious Drought and/or Desertification, Particularly in Africa. According to IFAD, the Global Mechanism, although housed by the Fund, had its own separate legal identity. Having nevertheless confirmed its jurisdiction for the reasons set out in the judgment, the Tribunal set aside the impugned decision on the basis that the abolition of the post in question was tainted with illegality. It also ordered IFAD to pay the complainant material damages equivalent to the salary and allowances she would have received if her contract had been extended for two years as from 16 March 2006, less any remuneration she had received during that period, as well as moral damages in the amount of 10,000 euros and costs in the amount of 5,000 euros.

2. By a resolution adopted on 22 April 2010 the Executive Board of IFAD decided to challenge that judgment by availing itself of the option offered to international organisations by the provisions of Article XII of the Statute of the Tribunal, which provides for the submission of an application to the International Court of Justice for an advisory opinion as to the validity of a decision of the Tribunal. According to the Fund, there were several points on which the judgment could be impugned, either because it ruled on matters outside the Tribunal's jurisdiction, or because it was tainted with fundamental faults in the procedure followed.

3. On 4 May 2010, relying on the fact that the case had thus been referred to the Court and that the above-mentioned Article XII conferred binding force on the latter's advisory opinion, the Fund submitted to the Tribunal an application "for the suspension of the execution of Judgment 2867", by which it sought to be exempted from paying the sums awarded against it pending delivery of the said opinion. Consequently, at that stage, the Fund merely asked the complainant to indicate the amount of remuneration she had received during the period specified in the judgment in question and opened an escrow account at a bank where it deposited 450,000 United States dollars, a sum corresponding approximately to the maximum amount of the awards made by the Tribunal.

4. In Judgment 3003, delivered on 6 July 2011, the Tribunal held that, for the reasons set out in detail in the considerations of the judgment, an application by an international organisation for a stay of execution of one of its judgments in respect of which the procedure set forth in Article XII of its Statute had been initiated could not be allowed. It therefore dismissed the application submitted to it and ordered IFAD to pay the defendant costs in the amount of 4,000 euros.

5. Notwithstanding that ruling, the Fund did not pay the complainant the sums awarded in Judgment 2867, and it even refrained initially from paying the additional award made in Judgment 3003. Indeed, as a precondition for payment of any of these sums, it asked her to provide a bank guarantee to protect it against the risk of her being unable to reimburse them if Judgment 2867 were to be declared invalid. As the complainant refused to accede to this demand, the Fund declined to pay the sums in question and the only other action that it took in response to Judgment 3003 was to make a minor amendment to the above-mentioned escrow agreement.

6. These circumstances led the complainant to file an application for execution of both judgments with the Tribunal on 11 November 2011.

7. In its advisory opinion, rendered on 1 February 2012, the International Court of Justice unanimously found on each point that the Tribunal was indeed competent to hear the complaint filed against IFAD by the complainant and that the decision given in Judgment 2867 was valid.

8. It was not until 9 February 2012, after the Court had issued that opinion – which renders moot the “motion to adjourn” consideration of the application for execution of Judgment 2867 submitted by IFAD in its reply – that the Fund paid the complainant the various sums awarded in Judgments 2867 and 3003. Nevertheless, no interest was added to the amounts corresponding to moral damages and costs to compensate for the delay in their settlement.

9. In light of the payments thus made in the course of these proceedings, in her rejoinder the complainant has confined her claims to asking that IFAD be ordered to pay her, on pain of a penalty for further delays, the interest that has accrued on the latter amounts and damages for the repeated failure to comply with the two above-mentioned judgments, as well as costs.

10. The Tribunal will immediately dismiss the Fund's arguments that the fact that it has now paid the sums awarded against it in Judgments 2867 and 3003 renders moot the complainant's application for execution and that in such an application she cannot claim monetary awards in addition to those already made in the said judgments. Indeed, these arguments unfairly ignore the injury caused by the very fact that payment of the sums in question was delayed, which in itself obviously calls for redress and which the Tribunal could not, by definition, take into account when delivering those judgments.

11. As the Tribunal already recalled in Judgment 3003, according to the provisions of Article VI of its Statute, its judgments are "final and without appeal", and they are therefore "immediately operative", as its earliest case law established (see, in particular, Judgment 82, under 6). The Tribunal subsequently noted that the principle that its judgments are immediately operative is also a corollary of their *res judicata* authority (see Judgments 553, under 1, and 1328, under 12). For this reason, international organisations which have recognised the Tribunal's jurisdiction are bound to take whatever action a judgment may require (see the aforementioned Judgments 553 and 1328, or Judgment 1338, under 11). Lastly, there is no provision in the Statute or the Rules of the Tribunal stipulating that, notwithstanding these principles, the submission of an application for an advisory opinion to the International Court of Justice under the above-mentioned Article XII has the effect of staying the execution of the impugned judgment pending the rendering of that opinion.

12. These various considerations show that IFAD was bound to execute Judgment 2867 as soon as it was delivered, by effecting the full and timely payment of the awards against it. In failing to honour this obligation, it therefore acted unlawfully, regardless of the fact that it filed an “application for the suspension of the execution of Judgment 2867” shortly afterwards.

13. Given that the legal issue raised by the filing of such an application in the particular context of the implementation of the Article XII procedure was a novel one, the Fund might legitimately have entertained hopes that the Tribunal would decide that it had the authority to order the suspension that it requested, and to that extent its failure to execute the judgment while this application was being examined, though unlawful, would be excusable.

14. However, IFAD’s unlawful conduct became extremely serious when, notwithstanding the dismissal of its application by the Tribunal in Judgment 3003, the Fund still refused to pay the various sums due to the complainant until the Court had delivered its advisory opinion, thus flouting the *res judicata* authority of both Judgment 2867 and Judgment 3003 itself. This attitude is all the more shocking for the fact that the Tribunal had taken care to state expressly in Judgment 3003, in consideration 49, that “[t]he Fund must [...] proceed without delay to execute Judgment 2867” and, in consideration 51, that “the rejection of IFAD’s application implie[d] that the awards decided in Judgment 2867 must be paid immediately”, thus defining the Fund’s obligations with the utmost clarity. By acting in disregard of *res judicata*, IFAD not only ignored its duty, flowing from its recognition of the Tribunal’s jurisdiction, to comply with the judgments delivered by it, but also behaved towards the complainant with a bad faith ill-befitting an international organisation.

15. Plainly none of the arguments put forward by the Fund to refute this finding can be accepted.

16. In this respect, the Fund first contends that it should not be punished for trying to make the best use of the legal remedies open to it by asking the International Court of Justice to determine the validity of Judgment 2867 in accordance with the procedure provided to that end, and by filing an application with the Tribunal in order to request a stay of execution of that judgment. IFAD adds that these exceptional steps were justified by what it sees as the vital issue, namely that the Tribunal should not be deemed competent to hear disputes regarding the situation of staff of the Global Mechanism, which the Fund merely houses. However, the referral of the case to the International Court of Justice for an advisory opinion – a step which IFAD was certainly entitled to undertake – did not in itself have any suspensory effect on the execution of Judgment 2867. Similarly, the payment of the awards decided in that judgment could not in itself have had any impact on the outcome of the request for an opinion submitted to the Court, or indeed on the outcome of any other disputes concerning staff of the Global Mechanism. Moreover, it is plain from Judgment 3003 that IFAD's application "for the suspension of the execution of Judgment 2867", which it thought it was entitled to submit to the Tribunal, could not be allowed. It was therefore perfectly clear, at least as from the delivery of the second judgment, that the procedures initiated by the Fund could under no circumstances exempt it from its obligation to pay the awards made against it.

17. IFAD also points to the fact that, since the delivery of the judgments in question, the principle of housing the Global Mechanism has been called into question on account of a revision of the legal texts adopted within the framework of the above-mentioned United Nations Convention. By decision 6/COP.10 of 21 October 2011, the Conference of the Parties provided that accountability for the Global Mechanism's acts and its legal representation would be transferred from the Fund to the Convention secretariat. The arrangements for housing the Global Mechanism and IFAD's role in managing its staff have also been altered and the Memorandum of Understanding between the Conference of the Parties and the Fund of 26 November 1999 was amended to this effect on 2 April 2012. But these legal

developments, which took place after the facts which gave rise to the dispute submitted to the Tribunal, could not have any bearing whatsoever on IFAD's duty to execute Judgments 2867 and 3003 as soon as they were delivered.

18. Lastly, IFAD submits that it demonstrated good faith towards the complainant by placing a sum corresponding to the awards which it might ultimately have to pay her in an escrow account and then by informing her, after the delivery of Judgment 3003, that it would be prepared to release the sums awarded provided that she first supplied a bank guarantee. However, the depositing of the sum in question in an escrow account – a step which was decided by the Fund without the complainant's consent – was in no way equivalent to actual payment of that sum. Furthermore, according to the very wording of Judgment 3003, it was incumbent upon the Fund to pay the awards against it "immediately", and no provision of that judgment or of any other text authorised it to make this payment subject to any condition, such as the provision of a bank guarantee. The Tribunal also observes that, as it had already indicated in Judgment 3003, under 19, there was no reason to doubt that the complainant would reimburse the sum in question in good faith, or to consider that her financial situation would be such as to pose a particular risk for her ability to effect such reimbursement, if she subsequently became obliged to do so.

19. With regard to redress for the injury which the Fund has caused the complainant, the Tribunal first notes that she suffered objective injury on account of the late payment, without interest, of the moral damages and costs awarded in the two above-mentioned judgments. It would be logical to redress this injury by awarding interest for late payment on the sums in question, that is to say 15,000 euros in total under Judgment 2867 and 4,000 euros under Judgment 3003, at a rate of 8 per cent per annum.

20. As the Tribunal has often had occasion to state, international organisations have a period of 30 days, as from the notification of a

judgment, to pay a sum awarded to a complainant where the amount of the award is specified by the Tribunal in its decision (see, for example, Judgments 1338, under 11, 1812, under 4, or 2692, under 6). As the latter condition was met with respect to the sums in question here, interest must run as from the day after the expiry of that period, i.e. 7 March 2010 for Judgment 2867 and 7 August 2011 for Judgment 3003, until the date of their payment, i.e. 9 February 2012.

21. Quite apart from the redress, in the form of interest, for the delay in paying the awards, the Tribunal also considers that the complainant is entitled to compensation for the moral injury caused by the protracted failure to execute the above-mentioned judgments. Although the Fund disputes the existence of such injury, it plainly results from the frustration, sense of injustice and anxiety which the complainant was bound to feel when confronted with an organisation which, disregarding the authority of the Tribunal's judgments as well as her own rights, took it upon itself to refuse payment of the sizeable monetary awards made in her favour.

22. The Tribunal notes that this injury was further aggravated by IFAD's general attitude towards the complainant from the very beginning of the dispute. Indeed, it is clear from the evidence in the file, especially the numerous exchanges of correspondence between the General Counsel of IFAD and the complainant's counsel, that at every stage of the procedure the Fund constantly raised futile or unwarranted objections, procrastinated and even acted with deliberate malevolence. Examples of such behaviour are its refusal to accept as sufficiently probative the documents produced by the complainant to certify the amount of remuneration she had received after leaving the organisation, and the subsequent lack of any reply to her counsel's questions as to the nature of the additional documents which IFAD might require, whereas the Tribunal found in consideration 49 of Judgment 3003 that, in fact, there was no reason seriously to dispute the information supplied by the complainant. Further evidence of such behaviour is the extreme slowness with which the Fund agreed to provide the complainant with a precise calculation of the amount of

the material damages owed to her, given that her counsel asked for this information on 13 April 2010, but did not receive it, after numerous reminders, until 19 December 2011, i.e. more than 20 months later. Yet more evidence is the Fund's determination, expressed at one point with patent bad faith, to calculate the interest on that amount, for which provision is made in Judgment 2867, by considering the date of the payment of the principal to be that on which the sum in question was deposited in an escrow account, rather than that of its actual payment to the complainant.

23. The Tribunal cannot fail to observe that, in its advisory opinion of 1 February 2012, the International Court of Justice saw fit to state that the process initiated by the Fund had not been "without its difficulties". In that connection, it drew attention to the fact that "the filing of 'all documents likely to throw light upon the question' in terms of Article 65, paragraph 2, of the Court's Statute was not completed until July 2011 and following three requests from the Court – that is, fully 15 months after the submission of the request for the advisory opinion"; that IFAD had failed "to inform Ms. [S.G.] in a timely way of the procedural requests it was making to the Court"; and that initially IFAD had failed "to transmit to the Court certain communications from Ms. [S.G.]". Despite IFAD's submissions on this matter in its surrejoinder, the Court's findings clearly highlight IFAD's dereliction of its duty of care and disregard for the complainant's rights, and in this they coincide completely with the Tribunal's assessment of IFAD's general behaviour in this case.

24. In the circumstances of the case and having regard to the particularly serious nature of the moral injury suffered by the complainant, the Tribunal considers that there are grounds for ordering the Fund to pay her the damages in the amount of 50,000 euros which she requests.

25. The complainant, who had to engage legal counsel in her endeavours to secure the execution of the above-mentioned judgments without further recourse to the Tribunal, and subsequently in order to

defend her interests in the present proceedings, is entitled to the sum of 3,000 euros that she claims for costs.

26. The Tribunal, which has the power to take such measures as may be necessary to ensure that its judgments are executed, may, if it considers it appropriate, order the payment of a penalty for default (see, for example, Judgments 1620, under 10, or 2806, under 11). In the present case, the patent lack of goodwill demonstrated by IFAD to date with regard to honouring its obligation to pay the awards made against it justifies the imposition of a penalty, as requested by the complainant, of 25,000 euros for each month's delay in the settlement of the awards made in this judgment.

DECISION

For the above reasons,

1. IFAD shall pay the complainant interest at an annual rate of 8 per cent on the moral damages and costs awarded in Judgment 2867, that is to say on a total amount of 15,000 euros, for the period from 7 March 2010 to 9 February 2012.
2. The Fund shall pay the complainant interest at an annual rate of 8 per cent on the costs awarded in Judgment 3003, that is to say on a sum of 4,000 euros, for the period from 7 August 2011 to 9 February 2012.
3. It shall pay the complainant moral damages in the amount of 50,000 euros.
4. It shall also pay her costs in the amount of 3,000 euros.
5. If the Fund does not settle the full amount of the awards referred to in paragraphs 1 to 4 above within 30 days of the delivery of this judgment, it shall pay the complainant a penalty of 25,000 euros for each month's delay.

In witness of this judgment, adopted on 9 November 2012, Mr Seydou Ba, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Seydou Ba
Dolores M. Hansen
Patrick Frydman
Catherine Comtet