

**F. (Nos. 2 and 3)**

**v.**

**IFAD**

(Application for interpretation filed by IFAD)

**131st Session**

**Judgment No. 4388**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgments 4341 and 4342 filed by the International Fund for Agricultural Development (IFAD) on 11 January 2021 and an email sent by Mr C. F. on 13 January 2021;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

**CONSIDERATIONS**

1. On 7 December 2020, the Tribunal delivered in public judgments in two related cases, namely Judgments 4341 and 4342. Each judgment concerned a separate application by Mr F. for a position within IFAD, the organisation then employing him. In both instances Mr F. was unsuccessful in his application for the position and, ultimately, lodged an internal appeal against, effectively, the decision not to appoint him. This resulted in him filing two complaints with the Tribunal which led to Judgments 4341 and 4342.

2. In his two complaints, the complainant established a fundamental defect in the consideration of both of his appeals. In substance, the Joint Appeals Board refused to consider the merits of his appeals because the complainant had participated in the recruitment

process willingly and without objection though it added other reasons for rejecting his appeals which are referred to in Judgments 4341 and 4342.

3. In the result, the impugned decision of the President in each complaint was set aside and an order made that “[t]he matter [be] remitted to IFAD for the purpose identified in consideration [7 or 10, respectively] above”. The relevant part of the consideration referred to in the order said: “the matter [is] remitted to IFAD for the purpose of permitting a differently constituted Joint Appeals Board to consider the complainant’s appeal afresh”.

4. The present judgment deals with an application for interpretation by IFAD of the two judgments referred to above. In the usual course an application for interpretation concerns only the meaning and thus effect of the decision (and the orders contained therein) unless there has been an incorporation of a consideration into that decision (see Judgment 3822, considerations 4 and 5). In this case there has been such an incorporation.

5. The complainant has elected to make no reply in the present proceedings except to comment that “it is self-evident that this case should remain under the jurisdiction of the Tribunal until it has been finally resolved, which means that the rules and procedures applicable at the time it was filed would continue to apply”. The Tribunal notes that a new legal framework has been introduced by IFAD for the hearing and determination of internal appeals. The gravamen of IFAD’s submissions contains two elements summarised in the final paragraph of its application for interpretation. The first element is that “[n]o new pleadings or claims should be raised before the newly composed JAB, but that only a review of the previously submitted pleadings and evidence is to take place”. The second element is that “[i]n case there is an appeal of the decision of this newly composed JAB, that the Tribunal with competence to review such an appeal and to whom the appeal should be addressed is the UNAT [United Nations Appeals Tribunal], in accordance with IFAD’s current rules and procedures”.

6. As to the first element, it is clear from the language used in the incorporated consideration that the order was intended to enable a differently constituted Joint Appeals Board to consider each of the complainant’s original appeals afresh. There is no ambiguity or obscurity

about this language (see Judgment 3984, consideration 10). The Tribunal notes that in Judgment 4324, consideration 5, it was said: “When an organisation is required to take a new decision after a case has been referred back to it by a judgment of the Tribunal, if the applicable provisions have been amended in the meantime, the organisation must take that decision in compliance with the procedure now in force (see, for example, Judgment 3896, consideration 4).” The Appeals Board’s overarching obligation is to afford the official concerned a real and genuine internal appeal in substance and in form in each matter. It is not for this Tribunal to dictate, as requested by the organisation in the first element referred to in consideration 5 above, in the circumstances of this case, how that can be achieved beyond what was said in Judgments 4341 and 4342.

7. The second element is founded on IFAD’s withdrawal from the jurisdiction of this Tribunal and submission to the jurisdiction of the UNAT. The issue raised is hypothetical and is unrelated to the pleas concerning the complainant’s initial complaints leading to Judgments 4341 and 4342, and the Tribunal’s decisions in those judgments contained no determination on this issue. No question of interpretation arises in respect of this matter.

8. The application for interpretation should be dismissed.

#### DECISION

For the above reasons,

The application for interpretation is dismissed.

In witness of this judgment, adopted on 22 March 2021, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 14 April 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ