

REGISTRY'S SUMMARY¹: ***“SS” (No. 2), Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)***,
IMFAT Judgment No. 2025-1 (January 21, 2025)

SUMMARY DISMISSAL—RES JUDICATA—EXHAUSTION OF ADMINISTRATIVE REMEDIES—MOOTNESS OF CLAIM—
GRIEVANCE COMMITTEE PROCESS

“SS” (No. 2) was Applicant’s second Application before the Tribunal. In the first application, the parties stipulated that Applicant had a hearing impairment constituting a disability within the meaning of the Fund’s policy prohibiting disability discrimination and providing for the reasonable accommodation of disabilities within the workplace. Applicant alleged in the first application that the Fund had (a) failed to provide reasonable accommodations for his disability, (b) discriminated against him based on his disability, (c) retaliated against him, (d) subjected him to a pattern of unfair treatment (which the Tribunal addressed within the framework of the Fund’s harassment and hostile work environment policies), (e) breached the terms of a partial mediation agreement, and (f) subjected Applicant to procedural unfairness in the administrative review and Grievance Committee proceedings. Applicant’s claims in the first application arose during the time period covering October 2, 2017 to October 29, 2018 (the “First Period”). In a Judgment dated December 27, 2021,² the Tribunal denied the first application on the merits.

In “SS” (No. 2), Applicant again argued that the Fund had subjected him to disability discrimination, retaliation, and harassment and a hostile work environment, but stated that the facts related to these claims arose during the period covering October 30, 2018 until the end of November 2019 (the “Second Period”). Further, Applicant asserted that his managers had abused their discretion regarding publication of a book chapter Applicant was responsible for drafting and that the Fund had subjected him to unfair treatment concerning the “internal redress process.”

The Fund responded to the Application with a Motion for Summary Dismissal, arguing principally that Applicant’s disability discrimination, retaliation, and harassment and hostile work environment claims should be dismissed as *res judicata*, and that one of Applicant’s examples of purported retaliation and harassment and hostile work environment (a planned but rescinded transfer to another Division) was moot. The Fund did not explicitly address Applicant’s abuse of discretion and internal redress process unfair treatment claims but stated that “[t]he remainder of the case should be dismissed for failure to exhaust administrative remedies.” Further, the Fund interpreted a request for documents made by Applicant concerning a mobility support program exercise as a veiled attempt to challenge a 2019 reassignment to another Department.

¹ This summary is provided by the Registry to assist in understanding the Tribunal’s Judgment. It does not form part of the Judgment. The full Judgment of the Tribunal is the only authoritative text. The Tribunal’s Judgments are available at: www.imf.org/tribunal.

² *Mr. “SS”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2021-3 (December 27, 2021).

Regarding the Fund's argument that Applicant's disability discrimination, retaliation, and harassment and hostile work environment claims should be dismissed as *res judicata*, the Tribunal first observed that in assessing a claim of *res judicata* as a defense to an application, it will consider the following factors: (a) the claims raised by the applicant in the earlier case; (b) the purpose of the earlier litigation; (c) the legal arguments put forward by the parties and considered by the Tribunal in the earlier case; and (d) the Tribunal's decision and its rationale in the earlier judgment. The Tribunal then noted the following: Applicant was raising the same general categories of claims as he did in his first application; the purpose of the previous litigation was essentially the same as the purpose of the present litigation (namely, to determine whether Applicant's discrimination, retaliation, and harassment and hostile work environment claims had merit and warranted the payment of compensation); most of the legal arguments on the merits appeared to be the same as in the previous case; and the Tribunal in the first case dismissed the application in its entirety. However, the Tribunal observed that while Applicant was raising the same *general categories of claims* that he had raised in the first application, he was mostly presenting in the current Application different *factual claims* for a different time period and in some instances identified relevant documents and rules against which his new factual claims should be assessed, which were not considered by the Tribunal in the first application. Consequently, the new factual claims arising in the new time period were not barred by *res judicata*.

With respect to the Fund's argument that the decision to reassign Applicant to another Division should be summarily dismissed as moot, the Tribunal rejected this argument on the basis that while the reassignment decision was rescinded it could have some present legal effect on Applicant's position. The Tribunal observed in this regard that there remained a dispute on this issue between the parties because Applicant sought monetary damages to address the claimed "damaging effects" of the alleged incidents of retaliation and harassment and hostile work environment (the causes of action under which the rescinded reassignment decision fell).

As to Applicant's claim that his managers abused their discretion regarding publication of a book chapter, the Tribunal concluded that this claim was not properly before the Tribunal because it had not been explicitly addressed on administrative review and had not been considered by the Grievance Committee. The Tribunal further concluded, however, that it would consider Applicant's complaints regarding the book chapter under the rubrics of retaliation and harassment and hostile work environment. This was consistent with how Applicant's complaints regarding the book chapter had been handled in the administrative review and grievance processes.

Concerning Applicant's contention that he had been subjected to unfair treatment in the "internal redress process," the Tribunal first observed that of Applicant's six claims of purported unfair treatment, two were administrative acts for which Applicant had not sought to exhaust administrative remedies; therefore, these two claims were inadmissible. As to the other four claims of unfair treatment, the Tribunal observed that while it does not function as an appellate body to the Grievance Committee, it is competent to review the integrity of the Grievance Committee

process. A principal concern of the Tribunal in making this assessment is whether information was purposefully withheld from an applicant, such that the Grievance Committee process “materially impaired the record in an applicant’s case.” The Tribunal therefore concluded that any claims raised by Applicant regarding the Grievance Committee process would be reviewed by the Tribunal only to the extent Applicant was asserting that such process materially impaired the record in his case.

Lastly, the Tribunal addressed the Fund’s argument that a request for documents made by Applicant involving a mobility support program exercise (which resulted in Applicant’s reassignment to a different Department) was a veiled attempt to litigate a matter that was not challenged within the statutory time limits and through the required channels. The Tribunal rejected Applicant’s assertion that he was not seeking to challenge the reassignment decision but instead was only raising an issue of failure of fair process. On the particular facts of this case, the Tribunal did not see how his claim of “a failure of fair process” involving an administrative act – the reassignment decision – would not involve a challenge of the administrative act itself. Having recalled Applicant’s prior attempts to challenge the reassignment decision, the Tribunal agreed with the Grievance Committee, upon review of the record, that Applicant had failed to seek administrative review of the decision and, in any event, had failed to file a timely grievance. Applicant’s challenge of the process pertaining to the 2019 mobility exercise was therefore clearly inadmissible.

Accordingly, the Motion for Summary Dismissal in “SS” (*No. 2*) was denied, except for (a) Applicant’s claim that his managers abused their discretion regarding publication of a book chapter, (b) two of Applicant’s six claims of unfair treatment in the “internal redress process,” and (c) Applicant’s challenge of the process regarding the 2019 mobility exercise, which were held to be clearly inadmissible.