

Order No. 2005-2

(Mr. "F", Applicant v. International Monetary Fund, Respondent)
Interpretation of Judgment No. 2005-1

The Administrative Tribunal of the International Monetary Fund,

- Having received a request from Respondent for an interpretation of Mr. "F", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-1 (March 18, 2005), and
- Having considered Respondent's request and Applicant's response,

unanimously adopts the following decision:

Introduction

1. In Mr. "F", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-1 (March 18, 2005), Applicant contested the decision to abolish his position, resulting in his separation from service. Applicant alleged that the decision was motivated by religious discrimination. In addition, Mr. "F" contended that during his employment he was subjected to a hostile work environment based on his religious affiliation. He maintained that the abolition of his position, which was part of a restructuring of his department, was not justified by institutional needs but rather was a pretext for removing him from his work unit. He also claimed that he was not given adequate notice of the abolition of his position nor good faith assistance in finding alternative employment.

2. The Administrative Tribunal upheld the decision to abolish Mr. "F"'s position as a reasonable exercise of the Fund's managerial discretion and found that the decision was not motivated by religious discrimination. At the same time, the Tribunal awarded Applicant compensation in the sum of \$100,000 for the Fund's failures a) to take effective measures in response to religious intolerance and workplace harassment of which Mr. "F" was an object, and b) to give Mr. "F" reasonable notice of the abolition of his position. (Mr. "F", Decision, para. 2.) It is the latter conclusion, i.e. that Applicant had not been given reasonable notice of the abolition decision that gives rise to the present action.

3. On August 10, 2005, Respondent filed a Request for Interpretation of Judgment, pursuant to Article XVII¹ of the Statute and Rule XX² of the Rules of Procedure, seeking clarification from the Tribunal of para. 106 of the Judgment, in which the Tribunal held:

“While the Fund’s interpretation of the Section 13.02 of GAO No. 16 is not unreasonable, the Tribunal’s view is that the fair and transparent procedures that govern or should govern the operations of the Fund require that a staff member whose position is abolished be given reasonable notice of that prospect. The staff member should be in a position when such a decision first is conveyed to him to set out any reasons that he or she may have to contest the propriety or equity of the abolition decision. [footnote omitted] The summary notice given to Mr. “F” in this case was hardly adequate for that purpose. Thus, on this ground, the Tribunal concludes that the Fund did not follow fair and reasonable procedures.”

In accordance with Rule XX, para. 3, Applicant was afforded thirty days in which to present his views on the Request. Applicant’s Comments were filed on September 8, 2005.

Interpretation of Judgments

4. Article XVII provides:

¹ Article XVII provides:

“The Tribunal may interpret or correct any judgment whose terms appear obscure or incomplete, or which contains a typographical or arithmetical error.”

² Rule XX provides:

“Interpretation of Judgments

1. In accordance with Article XVII of the Statute, after a judgment has been rendered, a party may apply to the Tribunal requesting an interpretation of the operative provisions of the judgment.

2. The application shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete.

3. The Tribunal shall, after giving the other party or parties a reasonable opportunity to present its or their views on the matter, decide whether to admit the application for interpretation. If the application is admitted, the Tribunal shall issue its interpretation, which shall thereupon become part of the original judgment.”

“The Tribunal may interpret or correct any judgment whose terms appear obscure or incomplete, or which contains a typographical or arithmetical error.”

5. The associated Commentary on the Statute states:

“Article XVII authorizes the tribunal, once a judgment has been rendered, to correct typographical or arithmetical errors and to interpret its own judgment, under certain circumstances. Judgments could be corrected by the tribunal on its own initiative or upon application by one of the parties.

The tribunal would be empowered to interpret its own judgment upon the request of a party if the terms were unclear or incomplete in some respect, as demonstrated by the party requesting the interpretation. Similar authority is conferred upon other tribunals, including the Court of Justice of the European Communities.[footnote omitted] The ability of the tribunal to interpret its own judgments where the parties are unable to discern the intended meaning would help to ensure that judgments are given effect in accordance with the tribunal's findings and conclusions.”

(Report of the Executive Board, p. 40.)

6. The statutory authority of the IMFAT to render an interpretation of judgment is one of two narrowly drawn exceptions³ to the rule of finality of judgments as set forth in Article XIII, Section 2 of the Tribunal’s Statute:

“Judgments shall be final, subject to Article XVI and Article XVII, and without appeal.”

Article XIII, Section 2 “...codifies and applies to the judgments of the IMF Administrative Tribunal a cardinal principle of judicial review, the doctrine of *res judicata*.” Mr. “R” (No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2004-1 (December 10, 2004), para. 25. Accordingly, the provision confirms the essential authority of the IMFAT to render judgments that are final and binding on the parties.

³ The other exception is revision of judgment, as provided by Article XVI:

“A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal, and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.”

7. Twice when presented with requests for interpretation of judgment, the IMFAT has rejected the requests, either in whole or in part, insofar as the requests infringed upon the fundamental principle of finality of judgments. *See* Interpretation of Judgment No. 1997-1 (Ms. “C”, Applicant v. International Monetary Fund, Respondent), IMFAT Order No. 1997-1 (December 22, 1997) and Interpretation of Judgment No. 1998-1 (Ms. “Y”, Applicant v. International Monetary Fund, Respondent), IMFAT Order No. 1999-1 (February 26, 1999).

8. In Order No. 1999-1, the Tribunal rejected in its entirety the Fund’s request that it interpret the term “jurisdiction” as used in the second paragraph of its Decision in Ms. “Y” to mean only jurisdiction *ratione materiae*. The request for interpretation of judgment was held to be inadmissible because the term “jurisdiction” standing alone was “neither obscure nor incomplete,” as required for interpretation under Article XVII. Further, the request was rejected because “... adoption of the requested interpretation would constitute an amendment of the Judgment, which is not a matter in respect of which the applicable provisions of the Statute and the Rules of Procedure enable the Tribunal to decide by way of an interpretation, because the Judgment is final and without appeal.” (Order No. 1999-1.)

9. In the request for interpretation that resulted in Order No. 1997-1, Respondent a) challenged the legality of the Judgment, in which the Tribunal had found, in part, against the Fund on the basis of procedural irregularity while upholding the contested decision, and b) sought clarification of terms relating to the fee award in Ms. “C”. While entertaining the latter component of the request, the Tribunal rejected the former because the “...legality of the Judgment is not a matter in respect of which the applicable provisions of the Statute and the Rules of Procedure enable the Tribunal to issue an interpretation, because the judgment is final and without appeal.” (Order No. 1997-1.)

10. It is against this jurisprudential background that the instant request for interpretation of the Judgment in Mr. “F” arises.

Admissibility

11. Rule XX, para. 2 makes clear that an application for interpretation of judgment “...shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete.”

12. The Fund acknowledges that “[t]he operative provisions of the Judgment are clear with respect to their application in the case at hand,” i.e. there is no question as to how the Judgment should be executed in the case of Mr. “F”. Nonetheless, it contends that the Request for Interpretation is admissible because “[w]ith respect to future cases...the impact of this aspect of the Judgment on the Fund’s practices is unclear.” Thus, the Fund maintains that interpretation of the Judgment by the Tribunal is appropriate so that management can “... formulate corrective action that is consistent with the Tribunal’s views,” asserting that such clarification will assist the Fund in complying with the Tribunal’s ruling in subsequent cases of abolition of position, thereby avoiding possible future litigation.

13. Applicant counters that Respondent has not met the threshold requirement for requesting an interpretation of judgment, i.e. it has not identified any operative provisions of the Judgment that are “obscure or incomplete” (Article XVII; Rule XX). In Applicant’s view, the request is for an “advisory opinion,” applicable only to future cases. Applicant questions whether the Administrative Tribunal is the appropriate body to advise on the Fund’s human resources policies, except in concrete cases.

14. In the view of the Tribunal, the Fund does not specify in what respect the operative provisions of the Judgment are “obscure or incomplete.” In reaching its Judgment, the Tribunal had only to decide if the Application presented by Mr. “F” was well-founded. As far as that Application is concerned, the operative provisions of the Judgment are clear, as is admitted by the Fund. What the Fund is asking for now is to know the Tribunal’s position on two issues:

“(i) the nature and purpose of the requirement of advance notice of a decision to abolish a position; and

(ii) how long a period of notice would be considered ‘reasonable.’”

15. The issues have been further elaborated in the concluding part of the Fund’s request:

“a. In terms of allowing the affected staff member to contest ‘the propriety and equity’ of the decision during this period before the decision takes effect, what are the relevant arguments that may be raised, and what are the obligations of the Fund in response? For example, if the staff member were to raise issues going to organizational development and planning, *i.e.*, the business justification for the impending abolition decision, is the Fund obliged to take these arguments into account as part of the considerations in the decision-making process? Or does the staff member’s right to be heard extend only to alleged improprieties or inequities related to the Fund’s assessment of his performance, skills, conduct and the like?

b. Would a minimum of 30 calendar days’ advance notice of the effective date of the abolition of a position be considered reasonable by the Tribunal? Could this period be deducted from the 60-120 day notice period currently provided at the end of the redundancy process, such that the total amount of notice remains the same?”

16. The Tribunal is not an advisory body. Its powers do not go beyond the resolution of the cases brought before it by applicants. In the words of the Commentary on the Statute:

“... the Tribunal would not be authorized to resolve hypothetical questions or to issue advisory opinions.”

(IMFAT Statute, Article II, Section 1(a), Report of the Executive Board, p. 13.)

17. In the view of the Tribunal, the Fund is seeking advice rather than interpretation. It seeks advice as to how it should apply a holding in the case of Mr. “F” that in itself is not obscure or incomplete. The rendering of such advice is not within the powers of the Tribunal.

18. Accordingly, the Tribunal concludes that the request for interpretation of the Judgment is denied.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

Stephen M. Schwebel, President

Celia Goldman, Registrar

Washington, D.C.
December 6, 2005