

Order No. 2007-1

Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent
Assessment of compensable legal costs pursuant to Judgment No. 2006-6

The Administrative Tribunal of the International Monetary Fund,

- having decided in Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 (November 29, 2006), Decision, para. 4:

“4. ... Since the Tribunal has concluded that the Application before this Tribunal is well-founded, it orders that the reasonable costs incurred by the Applicants be borne by the Fund, pursuant to Article XIV, Section 4 of the Tribunal’s Statute. The Tribunal invites the Applicants to submit a statement of the legal costs incurred in pursuing their remedies in the Fund and before this Tribunal.”

- having considered Applicants’ statement of costs and the Fund’s response,

unanimously adopts the following decision:

First: In Judgment No. 2006-6, Applicant Ms. “M” and her mother Applicant Dr. “M” contested decisions of the Fund denying requests to give effect under Section 11.3 of the Staff Retirement Plan (“SRP” or “Plan”) to a series of child support orders by deducting the support payments for Ms. “M” from the SRP pension benefits of Mr. “N”, a retired participant in the Plan. Under the applicable Plan provision, “[i]n the event that a participant or retired participant fails to submit a timely written direction in compliance with the court order to the Secretary of the Administration Committee, . . . a spouse or former spouse or a child or children, or parents or guardians acting on their behalf . . .” may make a request to the Administration Committee that such court order be given effect. (SRP Section 11.3(b).) (Emphasis supplied.)

In this case, in which Dr. “M” had never been a spouse of Mr. “N”, it is clear that she acted, pursuant to Section 11.3(b), solely as a parent on behalf of her child Ms. “M”. As the Tribunal noted in its Judgment, with respect to the requests to the Fund and its SRP Administration Committee to give effect to the child support orders, “[i]t is clear and undisputed that Dr. “M” conducted on behalf of Ms. “M” (who was a minor child until January 9, 2002) all

communications with Respondent associated with Applicants' three requests." Ms. "M" and Dr. "M", note 68.

Moreover, in respect of the proceedings before this Tribunal, "... Applicant Ms. "M"... designated Applicant Dr. "M" as her representative and counsel, pursuant to Rule VII, para. 1 of the Administrative Tribunal's Rules of Procedure." Ms. "M" and Dr. "M", note 1. Dr. "M", an attorney, provided legal services on behalf of Ms. "M", who was the beneficiary of the Tribunal's Judgment, holding that court-ordered child support payments to her be given effect through the Fund's Staff Retirement Plan.

It is not contended that Ms. "M" ever paid, or was obligated to pay, for the efforts her mother took on her behalf in pressing her claims with the Fund and before this Tribunal. The question accordingly arises whether, pursuant to Article XIV, Section 4 of the Statute, Applicants may be awarded, as compensable legal costs, the value of the legal work performed by Dr. "M" on behalf of Ms. "M", which she submits in the amount of 49.5 hours at the rate of € 300.00.

Second: Article XIV, Section 4 of the Tribunal's Statute provides:

"If the Tribunal concludes that an application is well-founded in whole or in part, it may order that the reasonable costs incurred by the applicant in the case, including the cost of applicant's counsel, be totally or partially borne by the Fund, taking into account the nature and complexity of the case, the nature and quality of the work performed, and the amount of the fees in relation to prevailing rates."

This Tribunal has recognized that the overriding purpose of the statutory provision at issue is to "provide for cost-shifting in favor of prevailing applicants, thereby increasing access to the Tribunal for aggrieved staff members." Mr. "V", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1999-2 (August 13, 1999), para. 138.

The Fund accepts payment of the costs incurred by Applicants in copying, mail/courier charges, translation, and notarization, totaling €1,031.85. The Fund opposes payment for 49.5 attorney's hours on the ground that Dr. "M" herself acted as attorney *pro se*, and for her daughter, and that "[s]uch costs are not 'costs incurred' within the plain meaning of Article XIV, Section 4 of the Statute." Ms. "M" does not claim to have paid Dr. "M" for her legal services. The Fund observes that the ordinary meaning of the term "the reasonable costs incurred by the applicant in the case" is the cost that the applicant has paid or has undertaken to pay in pursuing his or her remedies. Neither Ms. "M" nor Dr. "M" has incurred the cost of counsel fees by making payment of legal fees to counsel or undertaking to pay them.¹

¹ Respondent cites Ms. "C", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 1997-1) IMFAT Order No. 1997-1 (December 22, 1997), in which the Tribunal held that "[t]he term 'costs', which appears in para. 'Third' of the Decision in Judgment No. 1997-1, denotes the costs that Applicant was or is obligated to pay for her legal representation." However, the circumstances of the instant case are distinguishable, as that Judgment expressly concerned a situation of a hired counsel.

The Tribunal, nevertheless, concludes that Applicants “incurred” a cost in the expenditure of Dr. “M”’s time and skill as an attorney over a period of years, time which she otherwise could have devoted to other remunerative work. *Cf. Mr. “R” (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2004-1 (December 10, 2004) (rescinding the Fund’s decision to deny payment of security costs indirectly incurred by overseas Office Director and awarding as relief “the most reasonable approximation that the record affords” of those costs).²

Third: Therefore, in accordance with the requirements of Article XIV, Section 4 of the Statute, taking into account the nature and complexity of the case, the nature and the quality of the work performed, and the amount of the fees in relation to prevailing rates, the Administrative Tribunal hereby assesses the reasonable costs of Applicants’ legal representation in the amount of €14,850.00, i.e. the total amount submitted.

Fourth: Applicants also request payment of their expenses in the amount of €1,031.85, to which the Fund has no objection.

Fifth: Accordingly, the Fund shall pay the Applicants in total €15,881.85 in compensable legal costs.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

Stephen M. Schwebel, President

Celia Goldman, Registrar

Washington, D.C.
January 24, 2007

² The Tribunal observed in *Mr. “R” (No.2)*:

“The Fund ‘avoided’ those costs, but Mr. “R” could not avoid them. The Tribunal sees no cogent consideration, in light of the Fund’s policy of meeting security costs, why Respondent should be absolved of those costs in the case of Mr. “R” simply because they were indirectly rather than directly incurred. On the contrary, equal treatment of staff in their fundamental right to enjoy physical security should govern.” (Para. 52.)