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

NINETY-SECOND SESSION

Judgment No. 2102

The Administrative Tribunal,

Considering the complaint filed by Mr A. J. against the International Fund for Agricultural Development (IFAD) on 8 December 2000 and corrected on 20 December 2000, IFAD's reply of 17 April 2001, the complainant's rejoinder of 30 July, the Fund's surrejoinder of 19 October, the complainant's further brief of 25 October and IFAD's observations thereon of 1 November 2001;

Considering Articles II, paragraphs 5 and 7, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, an Iranian national born in 1957, joined IFAD at its headquarters in Rome on 8 December 1986 as an assistant project controller at grade P.3 in the Africa Division, on a fixed-term appointment for two years. In 1988 his appointment was extended for five more years and in 1993 he was given an indefinite appointment. At the material time he was a project controller at grade P.5.

In June 1997 he asked for special leave without pay, but IFAD refused in a memorandum of 30 October 1997. By a memorandum of 6 November the complainant submitted his resignation, which IFAD accepted on the same day. Although his resignation was due to take effect on 5 February 1998, he actually left IFAD on 31 December 1997 in order to use up accrued leave. On 17 June 1998 the President informed IFAD member States that the complainant left the Fund on 1 January 1998. Before leaving he had started up a company under the name "Financial Services Associates (FSA) International Limited", which was registered in London.

In the course of 1997 an external audit of IFAD, carried out by a firm of auditors, brought to light some irregularities in procurement procedures. A number of projects in the complainant's charge were involved. IFAD held an internal investigation which, it says, revealed that three external consultants hired by the complainant made over to him sums of money which were then transferred to personal bank accounts under his and his wife's names in Jersey and Guernsey (United Kingdom).

Having learned that the Fund had suspended settlement of his terminal entitlements, the complainant sought an explanation by a letter of 3 August 1998. The Director of the Personnel Division replied in a letter of 12 August that IFAD was looking into some "potential irregularities" within his former areas of responsibility and "possible monies owing". It was therefore reconsidering the grounds for his separation and was as yet unable to proceed with any separation settlements.

On 14 September the Fund brought criminal proceedings against him in the Italian courts and on 19 November 1998 a warrant was issued for his arrest on charges of extortion by a public official. The complainant having left the country, the Public Prosecutor issued extradition warrants, first to the United Kingdom then to the Netherlands. On 15 March 1999 he was arrested in the Netherlands and remained in custody until 10 March 2000, when he was extradited to Italy and again placed in custody until 27 April 2000.

On 10 October 1998 the complainant had written to the President of IFAD requesting a review of the decision of 12 August. He claimed payment of his termination entitlements, and damages. In his reply of 19 October the

President said that he should contact IFAD's legal counsel. Inferring an implied rejection of his claims, the complainant went to the Joint Appeals Board on 24 November 1998.

On 12 May 1999 the complainant wrote to the President requesting a review of the decision to bring criminal proceedings against him. He asked IFAD to withdraw that complaint and grant him assistance in recovering his freedom and obtaining annulment of the criminal charges. The President replied in a letter of 4 June that the matter was now in the hands of the Italian authorities and they would decide on the future course of the proceedings. Moreover, the case was a criminal one and as such not subject to administrative appeal. On 14 July 1999 the complainant lodged an appeal with the Joint Appeals Board.

By letters of 1 September 2000 the presiding officer of the Board sought information from the parties about the criminal proceedings.

On 29 September 2000 the Fund went to the High Court of Justice in England claiming restitution of monies which it said the complainant had received unlawfully while he was working for the Fund, or else damages.

On 8 December 2000 the complainant lodged two complaints with the Tribunal. This one is "against the decision of the President [of IFAD] to do everything within his authority and influence to have the complainant imprisoned".

B. On receivability the complainant observes that, according to the case law, the rule that internal remedies must be exhausted pursuant to Article VII, paragraph 1, of the Tribunal's Statute may be waived in some instances. In his submission, the facts show clearly that the appeal procedure was unlikely to end within a reasonable time and that IFAD failed to discharge promptly its obligations under that procedure, in breach of the case law. Consequently, there are no real grounds for objecting to the receivability of his complaint, which is fully in keeping with the requirements set in the Tribunal's Statute as interpreted in the case law.

The complainant has several pleas on the merits. The first is breach of due process: the impugned decision is unlawful because he was denied his right to a hearing. The President "secretly" brought criminal proceedings against him for offences he allegedly committed in, or at any rate in connection with, the performance of his duties at IFAD, without first informing him of the charges against him and giving him an opportunity to answer them, as it is bound to do in any disciplinary procedure. As a result, he was imprisoned. As well as affecting his status, the impugned decision has caused him injury and, what is worse, impaired his freedom, which is his most prized possession.

Secondly, the impugned decision is also flawed by abuse of authority. In his view, the President of IFAD clearly used his prerogatives to attain some purpose other than those which the authority is supposed to serve or, to put it more broadly, one that is irrelevant to the organisation's interests at large. The President was, and still is, bent on his "undoing".

Thirdly, he accuses IFAD of failing in its duty to respect the dignity and good name of its employees and former employees, and of causing him undue and unnecessary injury. It spread rumours about the complainant - not just within the Fund but also outside, including among the member States - these were particularly devastating because at the Fund's insistence, the United Nations Food and Agriculture Organization (FAO) refused to honour a long-standing professional commitment it had made to the complainant.

Lastly, he pleads serious financial and moral injury: he was deprived of all sources of income during his fourteen months in prison, and the Fund has had no compunction about sullying his name.

He asks the Tribunal:

"to order the quashing of the impugned decision and award [him] all consequent redress, namely:

(a) to find and declare unlawful all IFAD's acts which were a cause or consequence of the decision;

(b) to order IFAD to pay [him] an amount ... in compensation for the income he was unable to receive while in prison, and the serious moral injury caused by his imprisonment and the resulting affront to his dignity and good name; [and]

to award [him] ... costs ..."

C. IFAD replies that what the complainant is really objecting to is the fact that the President brought criminal proceedings against him. He makes out, wrongly, that the case is a straightforward administrative and disciplinary one. In IFAD's submission the Tribunal is not competent to hear the case. Its competence, like that of all international administrative tribunals, is conferred and strictly defined by its Statute and is limited to administrative decisions taken by organisations which have recognised its jurisdiction. The Fund's decision is obviously outside the scope of the Tribunal's Statute, and the complainant's offences are criminal and so fall within the jurisdiction of the national courts.

In subsidiary pleas IFAD submits that the complaint is irreceivable because the complainant failed to exhaust his internal remedies, having "abandoned" his administrative appeal, which is still before the Joint Appeals Board. The Fund is not to blame for the delay in the internal procedure: it was due solely to the fact that there were criminal proceedings under way and, above all, that the complainant repeatedly lodged appeals in Italy, as he had in the Netherlands, when attempting to avoid extradition. The complainant's plea that the Tribunal sometimes waives the requirement for exhaustion of internal remedies is unsound because the arguments he adduces in support are immaterial. In this case the reasons for the delay were quite exceptional, and besides, the issue before the Tribunal is not a disciplinary one.

In further subsidiary pleas, on the merits, the Fund refutes each of the complainant's arguments.

First, it observes that the safeguards afforded by due process are more limited in criminal proceedings than in administrative and disciplinary cases. In penal proceedings higher dictates may warrant confidentiality: preservation of evidence, the safety of witnesses and the cessation of disturbances. In the interests of such confidentiality, an international organisation may, indeed must, refrain from disclosing to the staff member the existence or status of an investigation about him. This is a principle that the Tribunal expressly recognised in Judgment 1756 (*in re* Awoyemi). Besides, international civil service law lays no obligation on an administration to inform its staff of the opening of criminal proceedings. And given the exceptional circumstances of the case, IFAD had good reason - even a duty - not to invite the complainant to account for himself in connection with the criminal investigation. In any event, he was given the opportunity to be heard by the judge at the preliminary investigation stage.

Equally unfounded is his allegation that the Fund's decision to bring criminal charges showed abuse of authority. The mere fact that the complainant "expressly agreed" to be sentenced devoids the plea of all substance and confirms that there was nothing arbitrary about IFAD's criminal complaint.

Lastly, the defendant denies harming the complainant's dignity and spreading groundless rumours. It merely informed the FAO that he was under investigation and notified his departure from the Fund to member States. The facts show that, on the contrary, it was IFAD's interests that were harmed by the complainant's conduct.

It asks the Tribunal to defer ruling until the matter of the complainant's liability has been settled once and for all by the High Court of Justice in England, and to award costs against the complainant in an amount of 50,000 Swiss francs.

D. The complainant rejoins that the Tribunal alone is competent to rule on the case, and that it cannot be seriously argued that the impugned decision is not an administrative one. In his submission IFAD has opted to initiate various types of proceedings in which it stands to lose nothing, rather than to account for itself before the Tribunal, which has the competence to find against it. As to the Fund's request for a deferral, the Tribunal is competent to deal with all aspects of the case and he sees no basis in any rules or general principle of law on which it should be required to await a decision from the civil courts. He points out that his claim is to the quashing of the President's administrative decision not to give him a fair hearing before bringing criminal proceedings - a decision which has had disastrous consequences for him and his family.

As for the delay in the internal appeal procedure, the complainant submits that one cannot, in good faith, blame him for making use of available legal channels to secure prompt release from prison. By asking him for information to which only the Italian police and legal authorities normally have access, the Joint Appeals Board acted *ultra vires*.

He denies that his resignation was in any way related to the 1997 external audit: he resigned because IFAD refused his request for special leave without pay. Nor was his acceptance of the court sentence in Italy an admission of guilt. He agreed to it so he could "be released immediately rather than languishing for months or even years in prison". He did receive money from consultants but it was mere repayment of a loan in one case and in the others,

it was to "get jobs done that the [consultants] could not do" and to help them out by doing some of their purchasing for them.

He presses his pleas and puts forward arguments to show that the defendant's case is groundless. Amongst other things, IFAD has misconstrued Judgment 1756.

E. In its surrejoinder the Fund points out the complainant admits that some of the fees due to consultants were credited to his personal bank accounts unbeknown to his supervisors. He is therefore guilty of fraudulent handling of IFAD funds. Furthermore, since he was unable to account for the money, the only plausible explanation is that he used it for his own purposes.

The complainant tried to hide the fact that he agreed to be sentenced for extortion in exchange for a reduced term in prison. So one can legitimately surmise, says IFAD, that he would not have agreed to it had he been innocent. The reason why IFAD filed a civil suit in England to obtain restitution of monies was that civil action was precluded in Italy by the complainant's acceptance of the reduced sentence which put an end to the proceedings there. IFAD does not have immunity from the execution of judgments in England, so there is no substance to the complainant's argument that he fell foul of an international organisation, which is "untouchable". IFAD adds that, in a witness statement filed in the course of the High Court proceedings in England, the complainant's counsel was extremely optimistic about his client's chance of success before the Tribunal since, according to the Fund, he said an award by the latter "is bound" to be higher than an award to IFAD by the English courts. The Fund points out that the High Court handed down a judgment on 11 October 2001 rejecting its application for a summary judgment.

Lastly, IFAD notes that the Tribunal is being asked to rule on a question of principle which it has never had to address before: to establish an obligation to give *prior* notice of a criminal complaint would, in practice, put a stop to any effective legal action by international organisations in the future. Such a decision would be the more unacceptable as it would accord *de facto* impunity to dishonest international civil servants or former international civil servants who commit criminal offences. What is more it would put international organisations in a position where they would be in breach of the headquarters agreements signed with their host countries.

F. In a further brief the complainant explains that by dismissing the Fund's application for summary judgment, the High Court of Justice has disproved the allegation that he had no plausible arguments. He submits that IFAD has distorted his counsel's statement: the latter merely pointed out that the Tribunal had, on several occasions, awarded large sums of money to complainants where decisions taken in breach of their most fundamental rights had caused them serious injury.

G. In its observations the Fund contends that the complainant has misunderstood the High Court's judgment: all the latter did was to dismiss IFAD's application to have the case dealt with by a process which would be more expeditious and less costly for both parties.

CONSIDERATIONS

1. On 18 June 1997 the complainant, who at the time served the Fund as project controller for Central and West Africa, applied for special leave without pay. IFAD having refused it on 30 October 1997 he submitted his resignation on 6 November 1997. IFAD accepted it on the same day and the complainant left the Fund on 31 December 1997.

2. On 30 May 1997 he had set up, in association with his wife, a company which was registered in London under the name "Financial Services Associates (FSA) International Limited", and whose main purpose was to provide assistance to African countries. The complainant has admitted in the course of these proceedings that "he should have waited until he left the Fund before registering [his] company". He points out, however, that it was after he set up the company that he applied for special leave, and that he never used his job at IFAD or any of the latter's funds to further the company's interests. He says that he began consultancy work in the company in the first quarter of 1998.

3. In 1997 a firm of auditors brought in by IFAD found irregularities in procurement procedures, some of which were found in projects in the complainant's charge. The Fund accordingly opened an internal inquiry, which, it says, revealed that three external consultants recruited by the complainant had credited large sums of money to

accounts belonging to the complainant and his wife in Jersey and Guernsey.

4. On 3 August 1998 the complainant asked the Director of the Personnel Division to explain why the settlement of his repatriation allowance and pension entitlements had been suspended. He was told on 12 August that the Fund was investigating whether he was in any way responsible for the irregularities in his former area of work and whether he owed the Fund any money. On 31 August he asked IFAD to disclose all the charges and documentary evidence it had used or was using in its investigation, so that he might properly defend himself.

5. In September 1998 IFAD decided to file a criminal complaint with the Italian courts accusing the complainant of abuse of office and, in particular, of having threatened to put an end to the contracts that some external consultants had with IFAD unless they paid him, with the result that they credited large sums of money to bank accounts in his name in "tax havens". The Italian investigating judge found that there were serious facts and enough corroborative evidence to charge him with extortion, and issued a warrant for his arrest. The complainant having left Italy, the Public Prosecutor sent warrants for his extradition first to the British then to the Dutch authorities. Having been arrested and jailed in the Netherlands in March 1999, the complainant filed an appeal against extradition which the Netherlands Supreme Court dismissed on 4 January 2000. He was extradited to Italy on 10 March 2000. On 27 April 2000 he was released under a procedure known in Italy as "*pattegiamento*": he agreed to a suspended prison sentence on the charges brought in exchange for closure of the case with no criminal record. He says that he "accepted the procedure because it meant that he could be released immediately rather than languishing for months or even years in prison until the whole ridiculous affair was cleared up".

6. In a letter of 12 May 1999 the complainant requested a review of the President's decision to do everything "within [his] authority and influence to have [the complainant] imprisoned". He asked the President to withdraw the criminal complaint, give him all the assistance he needed to recover his liberty and to grant him compensation for all the injury he suffered. In support he argued that the decision to take him to criminal court was in breach of due process and the principle that an international organisation must avoid causing any unnecessary or undue injury to its staff, and had impaired his dignity and good name.

7. On 4 June 1999 the President rejected his request on the grounds that it did not concern the terms and conditions of his employment and was unfounded besides. The complainant therefore appealed to the Joint Appeals Board on 14 July 1999 reiterating his arguments and claiming payment of the costs he had incurred in obtaining legal assistance. After a number of procedural incidents concerning his legal representation, which have no bearing on this dispute, the complainant concluded that the Joint Appeals Board was unlikely to take a decision within a reasonable period of time, particularly as civil proceedings to recover amounts due were pending against him in the High Court of Justice in England. He therefore decided to come straight to the Tribunal and filed this complaint on 8 December 2000.

8. The complainant wants the Tribunal to set aside the President's implied rejection of his request for review of 12 May 1999, "to find and declare unlawful all IFAD's acts which were a cause or consequence" of the decision and to order IFAD to pay various sums in compensation for his loss of earnings and the moral injury caused by his imprisonment. He also claims costs.

9. In rebuttal IFAD argues that the Tribunal is not competent to hear the complaint, and his claims are irreceivable.

10. In support of the first argument, it submits that the dispute is not about the terms and conditions of the complainant's appointment or IFAD's rules and regulations, and that the charges against its former employee were a matter for the national courts alone. The argument is not without weight, particularly as the complainant ceased being a member of the Fund's staff as from the date on which his resignation took effect, which was prior to the proceedings in the Italian courts. The Tribunal observes, however, that the duty laid on international organisations to treat their staff with due consideration and not to impair their dignity may extend beyond the term of their appointment. In charging a staff member with misconduct in the performance of duty an organisation must observe due process, otherwise it may be held liable even after its contractual or statutory ties with the official have ceased, and the Tribunal will entertain such matters.

11. As to receivability, the evidence shows that the Joint Appeals Board had postponed hearing the complainant's case on the grounds that it needed further information which the parties had apparently not submitted. In the particular circumstances of this case the complainant had good grounds for believing that there would be no decision within a reasonable time. There was therefore nothing unlawful about his coming to the Tribunal without

waiting for the Joint Appeals Board to rule.

12. On the merits, the complainant's claims are bound to fail. Citing the case law, he points out that in the event of disciplinary procedure or dismissal international civil servants enjoy certain safeguards. However, subject to what is said in 10 above, those safeguards do not apply where criminal charges are brought against a former official for acts committed prior to the termination of his service. In this case the material rules are those of the applicable code of penal procedure and not the rules on disciplinary proceedings. The Fund did not initiate such proceedings and can no longer do so because the complainant has resigned. There is nothing in the evidence to support the complainant's assertion that the President used his prerogatives for purposes other than the general interest, and that he was guilty of abuse of authority because "the Italian legal authorities [were] particularly considerate towards him". The complainant's dignity and good name were undoubtedly affected by the criminal complaint against him and the judicial proceedings that ensued. But once the nature of the offences came to light, the Fund was bound to hand the matter over to the appropriate authorities and so may not be taken to task for causing its former employee undue and unnecessary injury. Furthermore, his objection that he is "no longer able to do as he wishes with his assets" because IFAD has sued him in the English civil courts affords no grounds for holding the Fund liable.

Consequently, the complaint must be dismissed.

13. In the circumstances of the case, the Tribunal sees no reason to allow the Fund's counterclaim to an award of costs against the complainant.

DECISION

For the above reasons,

The complaint and IFAD's counterclaims are dismissed.

In witness of this judgment, adopted on 6 November 2001, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr Jean-François Egli, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 30 January 2002.

(Signed)

Michel Gentot

Mella Carroll

Jean-François Egli

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 16 March 2006.