Organisation internationale du Travail International Labour Organization
Tribunal administratif *Administrative Tribunal*

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

(Application by IFAD)

111th Session **Judgment No. 3003**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application "for the suspension of the execution of Judgment 2867" filed by the International Fund for Agricultural Development (IFAD) on 4 May 2010 and corrected on 21 May, the reply of Mrs A. T. S. G. of 12 July, the Fund's rejoinder of 9 August and Mrs S. G.'s surrejoinder of 30 September 2010;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. Article XII, paragraph 1, of the Statute of the Tribunal, in the version applicable to the international organisations referred to in the Annex to the Statute which have accepted the jurisdiction of the Tribunal, provides that: "In any case in which the Executive Board of an international organization which has made the declaration specified in Article II, paragraph 5, of the Statute of the Tribunal challenges a decision of the Tribunal confirming its jurisdiction, or considers that a

decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Executive Board concerned, for an advisory opinion, to the International Court of Justice." Paragraph 2 of the same article states that: "The opinion given by the Court shall be binding." Article II, paragraph 7, of the Statute provides that: "Any dispute as to the competence of the Tribunal shall be decided by it, subject to the provisions of article XII." These provisions are to be read in conjunction with those of Article VI, paragraph 1, of the Statute, according to which the Tribunal's judgments shall be "final and without appeal".

2. By Judgment 2867, delivered on 3 February 2010, the Tribunal ruled on the complaint filed by Mrs S. G. against a decision dated 4 April 2008 by the President of IFAD, dismissing her internal appeal against the decision not to renew her contract because her post was being abolished. The Tribunal's jurisdiction to deal with this case was strongly contested by IFAD, on the ground that the official concerned was assigned to the Global Mechanism established within the framework of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. According to IFAD, the Global Mechanism, although housed by the Fund, has its own separate legal identity. Having nevertheless confirmed its jurisdiction for the reasons set out in the judgment, the Tribunal set aside the impugned decision on the basis that the abolition of the post in question was tainted with illegality. It also ordered IFAD to pay the complainant material damages equivalent to the salary and allowances she would have received if her contract had been extended for two years from 16 March 2006, less any remuneration she might have received during that period, as well as moral damages in the amount of 10,000 euros and costs in the amount of 5,000 euros.

3. By a resolution adopted on 22 April 2010 the Executive Board of IFAD, availing itself of the option specified in the aforementioned provisions of Article XII of the Statute of the Tribunal, decided to

challenge the validity of the Tribunal's judgment by way of an application to the International Court of Justice for an advisory opinion. According to that resolution, there were several points on which the judgment could be impugned, because it ruled on matters outside the Tribunal's jurisdiction or because there was a fundamental fault in the procedure which had been followed.

4. In the present application, filed on 4 May 2010, IFAD is requesting that the Tribunal stay the execution of the judgment in question pending the advisory opinion of the International Court of Justice.

5. It should be noted that, although it did not immediately execute this judgment as it would normally be bound to do, on 15 February 2010 the Fund nevertheless asked Mrs S. G. to provide it with all relevant information concerning her earnings, if any, for the two-year period starting from 16 March 2006, so that it could calculate the amount of material damages awarded by the Tribunal. By a letter dated 8 March 2010 the complainant sent the information she possessed to the General Counsel of the Fund, though the latter considered it to be incomplete.

6. It should also be pointed out that on 4 May 2010 IFAD opened an escrow account in a bank, in which was deposited a sum of 450,000 United States dollars, corresponding approximately, according to IFAD, to the maximum amount to which Mrs S. G. might be entitled pursuant to Judgment 2867. This precautionary measure, which was intended to safeguard her interests for the duration of the proceedings initiated before the International Court of Justice, would come to an end – if the Tribunal agreed to stay the execution of the judgment – on the day when the Court's advisory opinion was rendered. Under the terms of the escrow agreement concluded between the Fund and the bank, the sum deposited would then be "automatically released to Mrs S. G. in accordance with the written instructions of IFAD", provided she had supplied the required information concerning her earnings referred to above.

7. By an order of 29 April 2010, notified to IFAD on 10 May, the International Court of Justice decided on the arrangements and the timetable for examining the Fund's request for an advisory opinion. It should be noted that this order set the time limit for submitting the last written pleadings at 31 January 2011.

8. The defendant in the current proceedings is asking the Tribunal to reject the Fund's request for a stay of execution of Judgment 2867 and to order the Fund to pay her 10,000 euros in moral damages and 4,000 euros in legal costs. She has also submitted a number of subsidiary claims, in the event that the Fund's application is allowed, including a modification of the escrow arrangements made by the Fund, which in her opinion do not sufficiently protect her interests.

9. The Fund has requested an oral hearing, but in view of the very explicit nature of the pleadings and documents produced by the parties, the Tribunal considers that it is fully informed about the case and that it is unnecessary to accede to this request.

10. Article XII of the Statute of the Tribunal, cited above, which at present is the only provision specifically indicating that the International Court of Justice may be called upon to examine a judgment handed down by an international administrative tribunal, establishes a procedure which is highly original in several respects. Indeed, although it provides in paragraph 1 for the possibility of requesting the Court to render an "advisory opinion" on the validity of a judgment of the Tribunal, it adds in paragraph 2 that the opinion given shall be "binding", without however defining how consequences should be drawn from the opinion if it undermines the validity of the impugned judgment. In view of the scope thus attributed to the Court's opinion, it is hard to reconcile this procedure with the principle laid down in Article VI of the Statute whereby the Tribunal's judgments are final and without appeal. From this there undoubtedly arises a degree of ambiguity as to the nature and the legal effects of the mechanism prescribed. Moreover, whereas a request to the Court for an opinion could be regarded, in this context, as a form of appeal against a

judgment of the Tribunal, it appears – although the matter is wholly for the Court to decide – that the submission of such a request is not subject to any time limit. Lastly, by virtue of the wording of Article XII, the option of resorting to this procedure is confined to international organisations, to the exclusion of staff members of such organisations who are parties to proceedings before the Tribunal.

11. There has been only one previous occasion in the Tribunal's history on which the Article XII procedure was engaged. By a resolution of 18 November 1955, the Executive Board of the United Nations Educational, Scientific and Cultural Organization (UNESCO) submitted to the International Court of Justice the question of the validity of Judgments 17, 18, 19 and 21, delivered on 26 April and 29 October 1955, by which the Tribunal had rescinded decisions by the Director-General of UNESCO. These were decisions refusing to renew the appointments of staff members of United States nationality on the ground that they had declined to appear before a "Loyalty Board" set up by the United States Government in pursuit of its so-called "McCarthyism" policy. In its advisory opinion rendered on 23 October 1956, the Court confirmed the validity of the impugned judgments.

12. From the aforementioned provisions of Article VI of the Statute of the Tribunal, according to which its judgments are "final and without appeal", it follows that they are by nature "immediately operative", as the Tribunal stated in one of its earliest rulings (see Judgment 82, under 6). Furthermore, the Tribunal has since made it clear that the principle of this immediately operative character also stems from the authority of *res judicata* which its judgments possess (see Judgments 553, under 1, and 1328, under 12).

13. It should be noted that neither the Statute nor the Rules of the Tribunal contain any provision by which the submission of a request for an advisory opinion under Article XII would result, contrary to this principle, in a stay of execution of the contested judgment pending the Court's opinion. Nor is there any provision in these texts for the

Tribunal itself to be asked, in such a case, to order a stay of execution of the judgment in question. Moreover, in the case mentioned above, UNESCO did not ask for any such action to be taken. This, therefore, is the first occasion on which the Tribunal has been met with such an application from any organisation.

14. Even supposing that an application of this kind would be receivable in principle, which would require the Tribunal to define the conditions for granting a stay of execution of the judgment challenged before the Court, it is at least questionable whether such a measure should actually be prescribed in this instance.

15. In support of its application, IFAD contends that if Judgment 2867 were executed its request to the Court for an advisory opinion might be considered moot, since the payment of the awards decided in favour of Mrs S. G. would appear to put an end to the dispute. However, as the Tribunal pointed out in the above-cited Judgment 82, under 7, the execution of a judgment by an organisation cannot under any circumstances be considered as acceptance of the judgment, nor divest it of its right to submit the judgment to the International Court of Justice for an advisory opinion. Payment of the awards could not therefore, in this case, be regarded as putting an end to the dispute.

16. The additional argument raised in this connection by the Fund in its rejoinder, that it would be inappropriate for a factual situation to be altered, at the initiative of one of the parties, during the examination of a case before the Court, is of no avail here. Even admitting that the execution of the Tribunal's judgment could be regarded as such an alteration of a factual situation during the proceedings, notwithstanding that the judgment was already immediately operative before the Court was seised, such an alteration would not in any event have come about at the initiative of one of the parties. Indeed, precisely because of the immediately operative character of the judgment, there was obviously no need for Mrs S. G. to have further recourse to the Tribunal for its execution, and

it is clear that the only new element which has emerged in respect of this matter is the submission by IFAD itself of the present application for a stay of execution.

17. The Tribunal is also unpersuaded by the organisation's argument that the Tribunal's confirmation of its jurisdiction in Judgment 2867 creates a precedent affecting the Fund's ongoing relationship with the Global Mechanism and the other entities hosted by it. Although this question, which relates to the relevance and jurisprudential scope of the judgment at issue, may explain the Fund's action in seeking to challenge its validity by way of an advisory opinion of the Court, it has no actual bearing on the execution of the judgment. Indeed, it is difficult to understand how the payment of the awards due to Mrs S. G., which would merely be the consequence of the obligations which the judgment creates between the parties to this dispute, could in itself affect the outcome of any other disputes between the Fund and officials working for the above-mentioned entities.

18. The Fund's contentions become more substantial when it argues that it could be obliged to resort to complex and costly litigation in national courts in order to recover the amounts paid to Mrs S. G. if the validity of the Tribunal's judgment were to be called into question after it had been executed. There is no doubt that an organisation's risk of definitively losing sums ordered against it by a judgment in favour of a staff member is one of the determining criteria, if not the only one, which the Tribunal would have to take into account when ruling on an application for a stay of execution if the possibility of such an application were admitted.

19. However, it is questionable whether the existence of such a risk would in general be sufficient to justify suspending the effects of a judgment without having regard to the interests of the staff member concerned, bearing in mind that it is usually to the latter's advantage to receive immediately the sums which are due, even in cases such as this, where the awards made are accompanied, wholly or in part, by interest for late payment which would continue to accrue for the

duration of the stay of execution. Furthermore, the Fund's contentions presuppose that Mrs S. G. would not of her own volition reimburse the sums paid out under Judgment 2867 if she were eventually required to do so, yet there is no reason to doubt that in such a case she would honour her obligation, as she would be bound to do according to the principle of good faith. Nor is there any indication in the file that her financial situation would be such as to pose any particular objective risk for her ability to effect such reimbursement if necessary. Lastly, the argument adduced by the Fund that in the past it had experienced insurmountable difficulties in recovering sums owed to it by one of its staff members in another, very different, case obviously cannot be held against the complainant.

20. However, aside from these matters, a preliminary question arises as to whether an application to stay the execution of a judgment is actually admissible where an organisation is resorting to the option of seeking an advisory opinion from the Court under Article XII of the Statute of the Tribunal.

21. In this regard, the Tribunal will not accept the first three objections which might be raised to the possibility of making such an application, namely, that the Article XII procedure cannot be seen as an appeal against its judgments, that there is no provision in its Statute or its Rules whereby the submission of a request to the Court for an advisory opinion would suspend the effects of the impugned judgment and that there is likewise no provision for requesting the Tribunal to order a stay of execution of the judgment.

22. If the procedure provided for in Article XII could not be seen as an appeal against the Tribunal's decisions, a stay of execution of the contested judgment pending the Court's opinion would serve no purpose, since it presupposes that the judgment may be affected by the opinion. However, regardless of any ambiguity which, as mentioned earlier, may arise from the nicety of combining the applicable provisions, this procedure must in fact be regarded as tantamount to an appeal.

23. Indeed, that is the position taken on the question by the International Court of Justice itself. In its advisory opinion of 23 October 1956, referred to above, the Court found that its seisin through this procedure "appears as serving, in a way, the object of an appeal against the […] [impugned] Judgments, seeing that the Court is expressly invited to pronounce, in its Opinion, which will be 'binding', upon the validity of these Judgments" and that "Article XII of the Statute of the Administrative Tribunal was designed to provide that certain challenges relating to the validity of Judgments rendered by the Tribunal in proceedings between an official and the international organization concerned should be brought before the Court and decided by it". The Court also stated that it was because Article 34, paragraph 1, of its own Statute enabled only States to be parties in cases before the Court that it was necessary, for the benefit of international organisations, to devise the advisory opinion procedure in Article XII, but that the purpose of the procedure was "nevertheless [to] secur[e] an examination by and a decision of the Court".

24. In these circumstances, it is clear that a judgment whose validity is challenged through this procedure can be affected by the opinion rendered by the Court. Moreover, the Tribunal has already had occasion to confirm this, pointing out that its decisions could lose their *res judicata* authority as a result of such an opinion, which underscored "the absolutely compulsory character of the context in which the Tribunal passes judgment" (see Judgment 1328, under 11). It follows that the question of whether the execution of a judgment challenged before the Court can be stayed is in fact relevant, provided of course that the request for an opinion was made as soon as notice was given of the judgment.

25. As for the fact that there is no provision in the Statute or Rules of the Tribunal stating that an application to the Court under Article XII will automatically have a suspensory effect on the impugned judgment, this does not, in itself, preclude the possibility of requesting the Tribunal to order a stay of execution of the judgment.

26. In Judgment 82, cited earlier, the Tribunal recalled, under 5, that "[i]n accordance with a well-established and generally recognised principle of law, any judgment compelling one party to pay to the other party a sum of money implies, in itself, the obligation to pay that sum without delay", and that "[i]t could be otherwise only in the event that the judgment expressly mentioned that this sum would be payable only at a later date and where the statutes of the court concerned make provision for the right to appeal against the judgments delivered by it and formally state that exercise of that right of appeal carries suspensory effect on execution of those judgments". Referring to the provisions of Article VI, paragraph 1, of the Statute, according to which its judgments are final and without appeal, the Tribunal added, under 6, that "while, in fact, [the organisation concerned], by virtue of Article XII of the aforementioned Statute, has the option of asking the International Court of Justice for an opinion, which is binding, on the validity of judgments delivered by the Tribunal, this option, which can moreover be used without any restriction as to time, does not affect, in the absence of any explicit provisions in the above-mentioned Article XII, the immediately operative character of those judgments".

27. Whilst this makes it clear that the submission of a request for an opinion to the Court will not automatically stay the effects of the contested decision, the above-cited statement in Judgment 82 does not necessarily imply that it is impossible for the Tribunal to order a stay of execution of the decision at the request of the organisation concerned. Moreover, in consideration 8 of the same judgment, the Tribunal expressly left open that question by stating that it was sufficient to note that in the case before it the organisation had not made any request for it to order a stay of execution in respect of the payment ordered against it. Judgment 1620, by which the Tribunal subsequently confirmed, in consideration 7, the principles established by Judgment 82, likewise did not decide this issue.

28. Lastly, the fact that none of the applicable provisions expressly provides that, at the request of an organisation, the Tribunal can order such a stay of execution is not conclusive either. Like

any judicial body, and in accordance with the combined provisions of Article X of its Statute and Article 16 of its Rules, the Tribunal possesses general powers, inherent in its role, for taking such steps within its area of competence as it deems to be essential to ensure the proper administration of justice. It should also be noted that it is by virtue of the general powers thus conferred upon it that the Tribunal has previously recognised the possibility of submitting an application for review (see Judgment 442, which defined the theoretical basis for such an application), for interpretation (see, for example, Judgments 802 and 2483), or, of course, for execution (see, in particular, Judgment 649, under 5, and the aforementioned Judgment 1328, under 9 and 10), even though the possibility of submitting such applications is not expressly provided for in its Statute or Rules. The Tribunal has taken the view that its judicial role necessarily required it to entertain such applications in order fully to dispose of the cases brought to it.

29. The foregoing observations, while removing some of the objections of principle which might be raised to the submission of an application to stay the execution of a judgment being challenged before the Court, do not however imply that the possibility of an application of this kind is admitted. There are three sets of considerations that lead the Tribunal to exclude such a possibility.

30. Firstly, it should be pointed out that if, by recognising the admissibility of such an application, the Tribunal were to derogate from the principle that its judgments are immediately operative, it would undermine one of the cornerstones of its case law. The firm legal foundations of this principle have been evoked in consideration 12 above, and for the staff of international organisations it represents a fundamental guarantee of the effectiveness of the justice dispensed by the Tribunal. That is why the Tribunal has always reaffirmed it with considerable emphasis in its decisions (in addition to the above-cited Judgments 1328 and 1620, see for example Judgment 1887, under 8). It has, in particular, made clear that internal debates within an organisation about the consequences of a judgment of the

Tribunal are irrelevant to its obligation to execute the judgment faithfully and promptly (see Judgment 2327, under 7), the only instance in which a judgment is capable of not being executed as ruled being that in which execution proves to be impossible owing to facts of which the Tribunal was unaware when adopting the judgment (see Judgment 2889, under 6 and 7). To accept that an organisation can be released, through the grant of a stay of execution, from the obligation to execute a judgment unfavourable to itself, on the grounds that it has challenged the validity of the judgment under Article XII of the Statute, would not only constitute a major exception to the application of this case law but would also, above all, seriously impair the legitimate right of the staff member concerned to benefit from immediate application of the judgment.

31. The Tribunal must point out that the "application for suspension of execution" which the organisation seeks to submit to it is fundamentally distinct, in this respect, from the other kinds of application which it has found to be admissible, in the absence of express provisions, on the basis of the general powers inherent in its judicial role. Whereas applications for review, for interpretation or for execution are, as explained above, essentially intended to bring the Tribunal to complete the disposal of a case on which it has already adjudicated, this is by no means true of a request for a temporary stay of execution of one of its decisions, which stems from a different concern. Moreover, whereas an application for review responds to the specific necessity of enabling correction of a judgment rendered *per incuriam*, an application for execution, which serves to compel an organisation to act upon a previous judgment, and an application for interpretation, which seeks to dispel any uncertainty or ambiguity affecting the judgment for the very purpose of enabling the organisation to act upon it, both tend to bring about execution of the judicial decision in question. The possibility of such applications is therefore perfectly consistent with the case law cited above, according to which organisations have a duty to apply the Tribunal's judgments as speedily as possible. By contrast, the submission of a request for a stay of execution of a judgment is by definition a step in the opposite direction

to the aim pursued both by these other kinds of application and by the said case law, and it is therefore all the more difficult, in the absence of any textual provision, to conceive of the possibility that such an application might be admissible.

32. It should also be pointed out that, as IFAD itself states in its written submissions, the Tribunal may at any time decide, when it renders a judgment, to defer the execution thereof if it considers such a measure justified (see Judgment 82 cited earlier, under 5). It is therefore for the organisation concerned, if it seeks to have the execution of a judgment deferred in the event that it proves unfavourable to itself, to submit a subsidiary claim for that purpose. If the Tribunal did not order such a deferral in its decision, it must be deemed to have implicitly required the decision to be executed immediately, in conformity with the general rule, and it is therefore scarcely conceivable that an organisation could be allowed to request a stay of execution of the judgment at a later stage. Indeed, the true purpose of such a request would be not only to enable the organisation to escape the obligation to execute the judgment without delay, but also to have the Tribunal judge the case afresh on this point, which would deny the immediately operative nature of its decisions as well as the principle that a court which has already ruled on a case has exhausted its jurisdiction.

33. The second obstacle to the admissibility of a request made in these circumstances for a stay of execution of a judgment, which is not unrelated to the latter consideration, has to do with the legal anomaly which would occur if the Tribunal itself were to rule on such a request. In a national legal system, unless the question of the suspensory effect of an appeal is settled by the applicable texts or by the terms of the judgment itself, it is normally the court handling the appeal against the judgment in question which is competent to decide on a request for a stay of execution of the judgment, not the court which rendered the judgment. This is also the case in the new system of administration of justice in the United Nations, introduced on 1 July 2009. It is the United Nations Appeals Tribunal which has to decide on any request for a stay

of execution of a judgment issued at first instance by the United Nations Dispute Tribunal, not the Dispute Tribunal itself. Indeed, Article 9, paragraph 4, of the Statute of the Appeals Tribunal confers jurisdiction on it to "order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal".

34. It must be conceded that the possibility of seeking a stay of execution of a judgment, which can readily be provided for in a two-tier court system, would raise considerable difficulties if it were allowed by this Tribunal, which does not form part of such a system and which would therefore have to decide itself on applications submitted for this purpose. Quite apart from the fact already mentioned, that the Tribunal would then have to decide afresh a matter which it may be deemed to have considered already when issuing its initial judgment, there would be two key problems in such a procedural arrangement.

35. The first concerns the fact that, since a staff member in whose favour a judgment has been rendered by the Tribunal normally has the right to its immediate execution, it would be difficult to conceive of the execution being stayed without there being any prior verification to ensure that a challenge raised by the organisation against the judgment in question has at least some chance of succeeding. It therefore seems essential for there to be at least some scrutiny, however rudimentary, of the relevance of the arguments raised in support of the request to the Court for an opinion. For similar reasons, in many national legal systems, one of the criteria for granting a stay of execution of a court decision against which an appeal has been filed is, precisely, the seriousness of the arguments raised against the decision. But whereas their seriousness is normally probed by the higher-tier court handling the appeal against the judgment concerned, no such mechanism could, by definition, be applied here. For obvious reasons, the Tribunal could not give any appraisal of the correctness or soundness of its own judgments. It follows that the criterion based on the requirement that the arguments invoked by the organisation against the impugned

judgment should show at least a degree of relevance cannot be contemplated here.

36. This gap in the judicial mechanism would be all the more problematic for the fact that requests for advisory opinions submitted to the Court on the basis of Article XII are not subjected to any prior selection procedure to ascertain that they are based on serious arguments. In this connection, it should be pointed out that the mechanism provided for in Article XII differs from the one defined in the former Article 11 of the Statute of the United Nations Administrative Tribunal, which also provided for the possibility of submitting to the International Court of Justice a request for an advisory opinion on the validity of the judgments rendered by that Tribunal. This Article 11, in force from 1955 to 1996, established a "Committee on Applications for Review of Administrative Tribunal Judgements", which had to ensure that the requests submitted had a "substantial basis" before the Court itself could entertain the case. Admittedly, under Article XII of the Annex to the Statute of the present Administrative Tribunal, the possibility of submitting to the Court a request for an advisory opinion is limited to cases in which the Executive Board of the organisation concerned considers that the Tribunal was wrong in confirming its jurisdiction, or that its decision is vitiated by a fundamental fault in the procedure followed. But in the absence of any prior screening mechanism comparable to the one formerly provided by the Statute of the United Nations Administrative Tribunal, the restrictive nature of these criteria cannot offer any actual guarantee of the seriousness of requests for opinions submitted to the Court.

37. This conclusion is all the more inescapable because, if the possibility for organisations to seek a stay of execution of a judgment challenged through the Article XII procedure were recognised, they would in all likelihood be encouraged to make greater use of the procedure in future, and for the very purpose, in some extreme cases, of delay. Indeed, it is not inconceivable that the prospect of being temporarily released from the obligation to execute a Tribunal judgment immediately would prompt some organisations, especially

where a large amount of compensation has been awarded to a complainant, to have recourse to the Court in order to be able to request a stay of execution of the judgment. Even if such a request were ultimately rejected by the Tribunal, the very fact of its submission would have the effect of enabling the organisation concerned to escape this obligation throughout the period in which the request is being examined, which as a rule lasts for several months. The risk of this procedure being abused cannot, in these circumstances, be wholly excluded.

38. Moreover, the fact that it would be impossible for the Tribunal to make the grant of a stay of execution conditional upon verification of the seriousness of the arguments deployed against the impugned judgment would have the consequence that the only yardstick that could be used in deciding whether to grant such a stay would undoubtedly be the difficulty of undoing the consequences of executing the judgment, i.e. in most cases, the risk of outright loss of a sum of money disbursed by the organisation concerned. In practice, this would be a very awkward criterion to apply in most cases.

39. The other key problem mentioned above is that the Tribunal, which as stated earlier is competent, like most courts, to deal with applications for the execution of its own judgments, could be confronted at the same time, for the same judgment, with an application for that purpose from the staff member concerned and a request for a stay of execution from the organisation. The coexistence of mutually contradictory applications raises no particular problem where the grant of a stay of execution is a matter for a higher court, but in the scenario evoked here the Tribunal would be faced with a delicate balancing act in handling the two applications. In fact this hypothetical situation could well have occurred in the present case if the defendant, who would normally have been entitled to receive payment of the awards made in her favour as soon as she had supplied IFAD with the information required of her, had herself chosen to submit an application for execution against the organisation.

40. Thirdly, and this is a major obstacle as far as the Tribunal is concerned, it must be emphasised that the question of whether international organisations should be allowed to request a stay of execution of a judgment that they intend to challenge under Article XII of the Statute arises in the context of a procedure which is already fundamentally imbalanced to the detriment of staff members. As mentioned above, the option of submitting a request to the Court for an opinion on the basis of that article is confined to the organisations.

41. In its advisory opinion of 23 October 1956, the Court drew attention to the inequality thus created between the parties, and even wondered whether this should prompt it to reject the request for its opinion. Although it ultimately concluded that it should not reject the request and that it was "not necessary for the Court to express an opinion upon the legal merits of Article XII of the Statute of the Administrative Tribunal", this was only after pointing out that "the inequality thus stated does not in fact constitute an inequality before the Court" and that it did not affect the manner in which the Court undertook its examination of the request before it.

42. In this regard, it may be noted that the procedure established by Article XII is essentially different from the procedure referred to above, defined in the former Article 11 of the Statute of the United Nations Administrative Tribunal. In the latter article, the option of submitting such a request was given to staff members, as well as to the Secretary-General of the United Nations and the Member States. The procedure it established did not therefore create any such inequality and was, in fact, mainly used by staff members.

43. The fact that recourse to the Court under Article XII is confined to the organisations and hence can only relate to judgments unfavourable to them, means that the possibility of obtaining a stay of execution would, by definition, only benefit the organisations themselves. This would doubly worsen the imbalance between the parties created by the Article XII procedure, to the detriment of the staff members.

44. Indeed, the legal regime governing this new form of application would itself be structurally imbalanced in favour of the organisations. They alone would be entitled to submit an application for a stay of execution, whereas the staff members, who cannot challenge judgments unfavourable to them before the Court, would not have this option. Moreover, a stay of execution granted by the Tribunal could only, as a result, run counter to the interests of the staff member concerned. A mechanism of this kind would therefore depart from the absolute rule of equality between the parties, a rule which is however respected, for example, in the aforementioned provisions of Article 9, paragraph 4, of the Statute of the United Nations Appeals Tribunal, according to which interim measures can be ordered by the latter "to provide temporary relief to either party". It may of course be observed that in most cases the judgments rendered by the present Tribunal which are unfavourable to staff members are those which dismiss their complaints, and that a stay of execution of a judicial decision of that kind would of itself serve little purpose. But there are also circumstances in which Tribunal judgments place an obligation on a staff member, and there is nothing in the case law to prevent a pecuniary award being made, in some instances, against a complainant. It is therefore difficult to justify that organisations should be able to seek a stay of execution where the staff members concerned are without any parallel recourse in law.

45. Moreover, and above all, giving organisations the option of requesting a stay of execution of a judgment which they intend to challenge until the Court issues its advisory opinion would further aggravate the imbalance between the parties which is inherent in the unequal character of the Article XII procedure. It would deprive the staff member concerned, for the duration of the proceedings before the Court, of the benefit of a judgment rendered in his or her favour, including the payment of any monetary award. This situation would be all the more unfair for the fact that, in many cases, the interest for delayed payment accruing on all or part of the sums due to the staff member would not adequately compensate for the disadvantages arising from this temporary stay of execution of the judgment. The difference

in treatment between organisations and their staff which derives from the actual provisions of Article XII, concerning the option of challenging the validity of a judgment by way of an advisory opinion of the Court, would thus be compounded by a further inequality, and one which would doubtless be even more keenly felt in practice, stemming from the fact that an application to the Court in this context could result in a stay of execution of the contested judgment.

46. Clearly, it is not for the Tribunal to express a critical opinion on a provision of its own Statute. However, it does have to take care, given that this particular provision creates an objective inequality between the parties, to ensure that its own case law does not in any way amplify the consequences of this inequality, which would undeniably occur if requests for a stay of execution submitted by organisations availing themselves of the Article XII procedure were to be considered admissible. To adopt that course would cause serious harm to the legitimate interests of the officials concerned, thereby upsetting the balance between the rights of the organisations and those of their staff members which it is the Tribunal's role to preserve.

47. Having regard to all these considerations, the Tribunal does not therefore consider it possible to recognise the admissibility of an application from an organisation for a stay of execution of a judgment in respect of which the procedure set forth in Article XII of its Statute has been initiated.

48. It follows from the foregoing that the application by IFAD must be dismissed.

49. The Fund must therefore proceed without delay to execute Judgment 2867. As for the calculation of the material damages specified in point 2 of the operative part of that judgment, in light of the information provided in the course of these proceedings, it appears that the defendant's total earnings for the period 16 March 2006 to 15 March 2008 amounted to 6,487.55 euros. It is therefore this amount, communicated by her to the organisation in the letter of

8 March 2010 referred to above, and subsequently confirmed in an affidavit drawn up on 27 September 2010, that has to be deducted from the total amount of salary and allowances which she would have received if her contract had been extended for that period.

50. The defendant in these proceedings has requested the payment of moral damages for the "anxiety" caused to her by the actions of the Fund in seeking to delay the execution of Judgment 2867. However, according to the case law of the Tribunal, where an organisation seeks to challenge a judgment unfavourable to itself by way of an application for review, it is not appropriate for the staff member concerned to make a counterclaim for damages in the context of his or her submissions on the application. Such a claim arises from a separate cause of action and should be pursued separately (see Judgments 1504, under 13, and 2806, under 10). This case law also applies in the present case, in which an organisation, which is likewise seeking to evade an unfavourable judgment, has requested a stay of its execution, and where the moral injury its attitude may have caused likewise cannot form the basis of a claim by the defendant for compensation in the same proceedings.

51. Since the rejection of IFAD's application implies that the awards decided in Judgment 2867 must be paid immediately, there is no need for the Tribunal to rule upon the subsidiary claims submitted by the defendant in case these sums were kept in escrow.

52. The defendant, who has been obliged to take part in these proceedings in order to protect her interests vis-à-vis the Fund, is entitled to the sum of 4,000 euros which she is claiming in respect of legal costs.

DECISION

For the above reasons,

1. The application by IFAD “for the suspension of the execution of Judgment 2867” is dismissed.

2. The Fund shall pay the defendant costs in the amount of 4,000 euros.

3. Her other claims are dismissed.

In witness of this judgment, adopted on 11 May 2011, Ms Mary G. Gaudron, President of the Tribunal, Mr Seydou Ba, Vice-President, Mr Giuseppe Barbagallo, Judge, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

(Signed)

MARY G. GAUDRON SEYDOU BA GIUSEPPE BARBAGALLO

DOLORES M. HANSEN PATRICK FRYDMAN

CATHERINE COMTET

In witness of this judgment, adopted on 11 May 2011, Ms Mary G. Gaudron, President of the Tribunal, Mr Seydou Ba, Vice-President, Mr Giuseppe Barbagallo, Judge, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

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Mary G. Gaudron
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