



INTERNATIONAL COURT OF JUSTICE

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Press Release

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The International Fund for Agricultural Development requests an advisory opinion from the Court on a judgment rendered by the Administrative Tribunal of the International Labour Organization

THE HAGUE, 10 May 2010. On 26 April 2010, the International Court of Justice received a request for an advisory opinion from the International Fund for Agricultural Development (IFAD), concerning a judgment rendered by an administrative court, the Administrative Tribunal of the International Labour Organization (hereinafter “the Tribunal”).

IFAD is one of the specialized agencies of the United Nations which have been authorized by the General Assembly, on the basis of Article 96, paragraph 2, of the Charter of the United Nations, to request advisory opinions of the Court on legal questions arising within the scope of their activities.

Ms S-G., a staff member of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereinafter “the Global Mechanism”), held a fixed-term contract of employment which was due to expire on 15 March 2006.

When her contract was not renewed, Ms S-G. made approaches to various organs of IFAD, which houses the Global Mechanism. In particular, she filed an appeal with the Joint Appeals Board, which recommended in December 2007 that Ms S-G. be reinstated within the Global Mechanism for a period of two years and paid an amount equivalent to all the salaries, allowances and entitlements she had lost since March 2006. The President of IFAD rejected this decision in April 2008.

In view of the failure of this approach, Ms S-G. filed a complaint against IFAD with the Tribunal on 8 July 2008. In her complaint, Ms S-G. asked the Tribunal to order IFAD to reinstate her, for a minimum of two years, in her previous post or an equivalent post with retroactive effect from 15 March 2006, and to grant her monetary compensation equivalent to the losses suffered as a result of the non-renewal of her contract.

In its judgment No. 2867 (S-G. v. IFAD), delivered on 3 February 2010, the Tribunal found that it had jurisdiction under the terms of Article II of its Statute and set aside the decision of the President of IFAD. It ordered IFAD to pay the complainant damages equivalent to the salary and other allowances she would have received if her contract had been extended for two years from 16 March 2006, together with moral damages in the sum of €10,000 and costs in the amount of €5,000.

The Executive Board of IFAD, by a resolution adopted at its ninety-ninth session on 22 April 2010, acting within the framework of Article XII of the Annex of the Statute of the Tribunal, decided to challenge the above-mentioned judgment of the Tribunal and to refer the question of the validity of judgment No. 2867 to the International Court of Justice for an advisory opinion.

That Article XII reads as follows:

“1. In any case in which the Executive Board of an international organization . . . 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.

2. The opinion given by the Court shall be binding.”

The request for an advisory opinion was transmitted to the Court by a letter from the President of the Executive Board of IFAD dated 23 April 2010 and received in the Registry on 26 April.

It contains the following questions:

“I. Was the ILOAT competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms A.T.S.G., an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?

II. Given that the record shows that the parties to the dispute underlying the ILOAT’s Judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the Complainant was a member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT’s statement, made in support of its decision confirming its jurisdiction, that ‘the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes’ and that the ‘effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund’ outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

III. Was the ILOAT’s general statement, made in support of its decision confirming its jurisdiction, that ‘the personnel of the Global Mechanism are staff members of the Fund’ outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IV. Was the ILOAT’s decision confirming its jurisdiction to entertain the Complainant’s plea alleging an abuse of authority by the Global Mechanism’s Managing Director outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

V. Was the ILOAT’s decision confirming its jurisdiction to entertain the Complainant’s plea that the Managing Director’s decision not to renew the

Complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VI. Was the ILOAT's decision confirming its jurisdiction to interpret the Memorandum of Understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VII. Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VIII. Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IX. What is the validity of the decision given by the ILOAT in its Judgment No. 2867?"

Procedure followed

By letters dated 26 April 2010, the Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court, pursuant to Article 66, paragraph 1, of the Statute.

By an Order of 29 April 2010, the Court:

- decided that the International Fund for Agricultural Development and its Member States entitled to appear before the Court, the States parties to the United Nations Convention to Combat Desertification entitled to appear before the Court and those specialized agencies of the United Nations which have made a declaration recognizing the jurisdiction of the Administrative Tribunal of the International Labour Organization pursuant to Article II, paragraph 5, of the Statute of the Tribunal are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion;
- fixed 29 October 2010 as the time-limit within which written statements on these questions may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute;
- fixed 31 January 2011 as the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute;
- decided that the President of the International Fund for Agricultural Development shall transmit to the Court any statement setting forth the views of the complainant in the proceedings against the Fund before the Administrative Tribunal of the International Labour Organization which the said complainant may wish to bring to the attention of the Court; and fixed 29 October 2010 as the time-limit within which any possible statement by the complainant who is the subject of the judgment may be presented to the Court and 31 January 2011 as the time-limit within which any possible comments by the complainant may be presented to the Court.

The subsequent procedure was reserved for further decision.

Information on advisory proceedings

The advisory procedure is open to five United Nations organs and 16 agencies of the United Nations system. It enables them to request opinions from the Court on legal questions.

On receiving a request for an advisory opinion, the Court itself draws up a list of those States and organizations that may be able to furnish relevant information. It then organizes the written and/or oral proceedings pursuant to Articles 66 of its Statute and 105 of its Rules. The Court's advisory opinions are read in public sitting. Since 1946, the Court has given 24 advisory opinions on a wide range of legal questions.

The request for an advisory opinion received in the Registry on 26 April 2010 falls within the framework of a rarely used procedure, that of the review of judgments of administrative tribunals, which has given rise to the delivery of only four advisory opinions since 1946. In 1955, the Executive Board of UNESCO, acting within the framework of Article XII of the Statute of the Administrative Tribunal of the ILO, decided to challenge two decisions rendered by the Tribunal and to refer the question of their validity to the Court for an advisory opinion. In 1972, 1981 and 1984, the Committee on Applications for Review of [United Nations] Administrative Tribunal Judgements, acting within the framework of Article 11 of the Statute of that Tribunal, decided that there was a substantial basis within the meaning of that Article for the applications for review of Judgements Nos. 158, 273 and 333. It therefore requested the Court to give an advisory opinion on the matter in respect of each of those applications.

The full text of the request for an advisory opinion and that of the Order of the Court will be available shortly on the Court's website: www.icj-cij.org.

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