



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: www.icj-cij.org

Press Release

Unofficial

No. 2012/2
25 January 2012

**Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization
upon a complaint filed against the International Fund for Agricultural Development
(Request for Advisory Opinion)**

The Court to deliver its Advisory Opinion on Wednesday 1 February 2012 at 10 a.m.

THE HAGUE, 25 January 2012. On Wednesday 1 February 2012, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, will deliver its Advisory Opinion concerning the Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development.

A public sitting will be held at 10 a.m. at the Peace Palace in The Hague, during which the President of the Court, Judge Hisashi Owada, will read out the Advisory Opinion.

History of proceedings

On 26 April 2010, the Court received a request for an advisory opinion from the International Fund for Agricultural Development (IFAD), aimed at obtaining the reversal of a judgment rendered by an administrative court, the Administrative Tribunal of the International Labour Organization (hereinafter “the Tribunal” or “ILOAT”).

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 to rule on the merits of a complaint against IFAD introduced by Ms S-G., a former 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”). Ms S-G. 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, the Tribunal decided that the decision of the President of IFAD rejecting the recommendation of the Joint Appeals Board should be set aside. 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 that judgment to the International Court of Justice for an advisory opinion.

That Article 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 contained the nine 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?"

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

By an Order of 29 April 2010, the Court:

1. 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 were considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion;
2. fixed 29 October 2010 as the time-limit within which written statements on these questions could be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute;
3. fixed 31 January 2011 as the time-limit within which States and organizations having presented written statements could submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute;

4. decided to request the President of the International Fund for Agricultural Development to 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 might 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 could be presented to the Court and 31 January 2011 as the time-limit within which any possible comments by the complainant could be presented to the Court.

On 26 October 2010, the General Counsel of IFAD submitted a written statement of the Fund and a statement setting forth the views of the complainant.

On 28 October 2010, the Ambassador of the Plurinational State of Bolivia to the Kingdom of the Netherlands submitted a written statement of the Government of Bolivia.

By Order of 24 January 2011, the President of the Court extended to 11 March 2011 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, as well as the time-limit within which any comments by the complainant in the proceedings against the Fund before the Tribunal may be presented to the Court. The time-limits were extended in response to a request to that effect made by the General Counsel of IFAD.

The written comments of the Fund and those of the complainant were presented within the time-limit thus extended.

*

NOTE TO THE PRESS AND PUBLIC

1. The public sitting will be held in the Great Hall of Justice of the Peace Palace. Mobile telephones are permitted in the courtroom provided they are switched off.

2. **Media representatives** are subject to an **online accreditation procedure**, details of which can be found in the Media Advisory (2012/a) attached to this Press Release. **The accreditation procedure will close at midnight on Monday 30 January 2012.**

3. **Individual visitors** (with the exception of members of the Diplomatic Corps) **and groups are subject to an online admission procedure.** They are kindly requested to fill out the relevant form on the Court's website (click on "Attending a Hearing"). **The admission procedure will close at midnight on Monday 30 January 2012.**

4. At the end of the sitting, a Press Release, a summary of the Advisory Opinion and the full text of the Advisory Opinion will be distributed. All of these documents will be made available at the same time on the Court's website.

Note: The Court's press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. It is assisted by a Registry, its international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English.

The ICJ, a court open only to States for contentious proceedings and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial institution composed of Lebanese and international judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA), an institution founded in 1899, which is independent of the United Nations.

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)

Mr. Boris Heim, Information Officer (+31 (0)70 302 2337)

Ms Joanne Moore, Associate Information Officer (+31 (0)70 302 2394)

Ms Genoveva Madurga, Administrative Assistant (+31 (0)70 302 2396)



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: www.icj-cij.org

Advisory
Unofficial

No. 2012/a
25 January 2012

Media advisory

Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development (Request for Advisory Opinion)

Accreditation procedure for the reading of the Court's Advisory Opinion to be held on Wednesday 1 February 2012

Media representatives are required to fill out the online accreditation form on the Court's website (www.icj-cij.org). **Applications for accreditation must reach the Court by midnight on Monday 30 January 2012.** Only online application forms will be accepted. Each application will be checked by the Information Department, and replies will be sent by e-mail. Applications received after the deadline will not be considered.

Entry to the Peace Palace

Media representatives must bring with them their personal ID and press card. They are asked to arrive at the Peace Palace gates **between 8.30 and 9.30 a.m.** **Only duly accredited individuals with valid identification will be permitted to enter the Peace Palace grounds.**

No parking is allowed in the Peace Palace grounds apart from satellite vehicles. Media wishing to park satellite vehicles are requested to fill in the appropriate fields in the online accreditation form.

Great Hall of Justice

Tables reserved for media representatives are located on the far left of the Great Hall of Justice. However, photographers and camera crews are only permitted to enter the room for a few minutes at the start of the sitting. Photographers and camera crews must keep to the right side of the Great Hall.

Press room

Proceedings will be transmitted live to the Press Room in English and French. The room is equipped with Wi-Fi and modem internet access. Live video and audio feeds are available via the breakout box (PAL video output). The Press room will be open between **8.30 a.m. and 4 p.m.** on the day of the sitting. **Please note that all media representatives must leave the Peace Palace grounds by 4 p.m.**

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)

Mr. Boris Heim, Information Officer (+31 (0)70 302 2337)

Ms Joanne Moore, Associate Information Officer (+31 (0)70 302 2394)

Ms Genoveva Madurga, Administrative Assistant (+31 (0)70 302 2396)