

FICSA LEGAL ADVISOR\*

TIPS AND INFORMATION NEWSLETTER

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**ILO Administrative Tribunal Takes Execution of Its Judgments Seriously**

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The ILOAT considers the failure of an international organization to satisfy its judgments timely unacceptable. It resent this message in its last session when it awarded a former staff member of the International Fund for Agricultural Development (IFAD) 50,000 euros in moral damages for the late execution of its judgment, and ordered a default penalty of 25,000 euros per month in the event IFAD failed to execute the most recent judgment. Judgment No. 3152.

The former IFAD staff member had won an appeal to the ILOAT in February 2010. Judgment No. 2867. IFAD was upset by the decision and instead of paying the award to the staff member decided to seek an advisory opinion from the International Court of Justice (ICJ) challenging the ILOAT's jurisdiction. In the meantime as well, IFAD applied to the ILOAT for a stay of execution of the award, which was rejected by the Tribunal in Judgment No. 3003, in July 2011. IFAD continued to refuse to execute the judgment and did not finally do so until the ICJ rejected its application in February 2012. IFAD, however, did not pay interest on any sums withheld. The staff member applied to the ILOAT for payment of interest and moral damages for having to wait so long (some 2 years) for payment of the award. The Tribunal expressed its serious dismay with IFAD's actions.

“14. However, IFAD's unlawful conduct became extremely serious when, notwithstanding the dismissal of its application by the Tribunal in Judgment 3003, the Fund still refused to pay the various sums due to the complainant until the Court had delivered its advisory opinion, thus flouting the res judicata authority of both Judgment 2867 and Judgment 3003 itself. This attitude is all the more shocking for the fact that the Tribunal had taken care to state expressly in Judgment 3003, in consideration 49, that “[t]he Fund must [...] proceed without delay to execute Judgment 2867” and, in consideration 51, that “the rejection of IFAD's application

implied that the awards decided in Judgment 2867 must be paid immediately”, thus defining the Fund’s obligations with the utmost clarity. By acting in disregard of res judicata, IFAD not only ignored its duty, flowing from its recognition of the Tribunal’s jurisdiction, to comply with the judgments delivered by it, but also behaved towards the complainant with a bad faith ill-befitting an international organisation.”

This should send a clear signal to international organizations that once a judgment is delivered in favor of the staff member, it must immediately pay.

In another judgment from the last session (3153), the ILOAT reiterated that it would not order the payment of lost pension benefits from the United Nations Joint Staff Pension Fund unless it orders reinstatement.

"As the complainant was not reinstated, her employment relationship with WMO ended on 3 November 2006 and with her separation from service, her right to participate in the UNJSPF ended (see Judgments 1338, 1797 and 1904). Further, as also stated in Judgment 2621 under 5, 'had it been its intent the Tribunal would have specifically ordered the payment of an amount equivalent to the pension fund contributions that would otherwise have been paid by the [organisation]'".

It is important to request during the internal appeal and before the Tribunal reinstatement and in the alternative, material damages equivalent to the United Nations Joint Staff Pension Fund contributions that would have been paid by the organization.

The ILOAT’s 115th session will be held from 22 April to 10 May 2013, and it will make its decisions public on Thursday 4 July 2013.

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