ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2006-6

Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent

Introduction

1. On June 8 and 9 and November 27, 28 and 29, 2006, the Administrative Tribunal of the International Monetary Fund, composed of Judge Stephen M. Schwebel, President, and Judges Nisuke Ando and Michel Gentot, Associate Judges, met to adjudge the case brought against the International Monetary Fund by Ms. "M" and her mother Dr. "M", non-staff members of the Fund.[1] Applicants contest the Fund's decisions denying requests of 1999 (renewed in 2002, in light of a change in the applicable Fund policy) and 2003 to give effect under Section 11.3 of the Staff Retirement Plan ("SRP" or "Plan") to a series of child support orders issued by German courts[2] by deducting the support payments for Ms. "M" from the SRP pension benefits of Mr. "N", a retired participant in the Plan.

---

[1] The Tribunal's jurisdiction *ratione personœ* over Applicants is not disputed. The Tribunal has held that non-staff members asserting rights under Fund benefit plans are within the Tribunal's jurisdiction *ratione personœ* pursuant to Article II, Section 1(b) of the Statute, which provides:

> "1. The Tribunal shall be competent to pass judgment upon any application:
>
> …
>
> b. by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant."

See Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application), IMFAT Judgment No. 2001-1 (March 30, 2001), paras. 58-63; Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-2 (November 20, 2001), paras. 51-65. In the present case, Applicants made requests under SRP Section 11.3, which confers on a child of a Fund retiree (or a parent acting on behalf of the child) a right to request that the Administration Committee give effect to a court order awarding child support by deducting payments from the SRP pension benefits of the Fund retiree. Therefore, the Tribunal is open to Applicants for the purpose of challenging the adverse decisions of the Administration Committee with respect to their requests. *See* Mr. "P" (No. 2), paras. 7, 48-65. Although in Mr. "P" (No. 2) the former spouse sought access to the Tribunal as an applicant for intervention, the Tribunal's ruling on that issue is applicable to those seeking to initiate proceedings by filing an application with the Tribunal. *See* Rule XIV, para. 1 ("Any person to whom the Tribunal is open under Article II, Section 1 of the Statute …" may apply to intervene.) Additionally, Applicant Ms. "M" has designated Applicant Dr. "M" as her representative and counsel, pursuant to Rule VII, para. 1 of the Administrative Tribunal's Rules of Procedure.

[2] In the context of these requests, it appears that Applicants also brought to the attention of the Fund orders of the District of Columbia courts of August 5, 1999 and April 30, 2002. *See infra* The Factual Background of the Case; Proceedings in the Administration Committee of the Staff Retirement Plan.

2. Applicants challenge the denial of their first, i.e. 1999, request on the ground that it was based on a provision of SRP Section 11.3, subsequently revised, that effectively precluded requests under Section 11.3 by or on behalf of children born out of wedlock. Applicants maintain that the denial of their 1999 request on the basis of that provision represented impermissible discrimination. Applicants contend that exceptional circumstances justify their failure to seek timely review by the Administrative Tribunal of the denial of their 1999 request and urge the Tribunal to waive its statute of limitations to consider their claim.

3. As to the denial of their second, i.e. 2002, request, which was to reinstate the 1999 request in view of the amendment of Section 11.3 to encompass support orders for children born out of wedlock, Applicants contend that Rule 9 of the Rules of the Administration Committee under Section 11.3[3] of the Staff Retirement Plan, upon which that denial was, in part, based, is unreasonably interpreted to prohibit payment of past-due child support from future pension benefits. Applicants further maintain that the child support orders of 1991, 1994, and 1995 that form the bases for their 1999 and 2002 requests satisfied all of the requirements set forth in Section 11.3 and the applicable Administration Committee Rules.

4. Applicants challenge the denial of their third, i.e. 2003, request on the ground that the Administration Committee erred in concluding that a *bona fide* dispute existed as to the efficacy, finality, or meaning of the 2003 court order underlying that request, which provided for maintenance for Ms. "M" after reaching the age of majority.

5. Applicants further contend, as to their requests to give effect to each of the court orders at issue, that Section 11.3 does not require that a court order underlying a request either expressly direct payment from the retiree's pension benefits or require the retiree to make such a direction. Finally, Applicants assert that the Fund has committed "grave legal and factual errors" in responding to their requests.

6. Respondent, for its part, maintains, as to the denial of the 1999 request, that Applicants have failed to show exceptional circumstances to justify waiver of the statute of limitations. Moreover, even if the Tribunal were to reach the merits of the 1999 request, Respondent contends, the "marital relationship" requirement on which its denial was based is dispositive. Additionally, in the Fund's view, had the 1999 request been reviewed on the merits by the Administration Committee, it also properly would have been denied because the court orders underlying the request suffered from defects of efficacy, finality, or meaning.

7. With respect in particular to Applicants' 2002 request, Respondent contends that the policy of providing only for "prospective payments" under Section 11.3, i.e. giving effect to orders for ongoing support but not for payment of "judgment debts," is reasonable and appropriate.

---

[3] Unless otherwise specified, all references herein to the Rules of the Administration Committee under Section 11.3 are to the 1999 version of those Rules, as notified to the staff by Staff Bulletin No. 99/12 (June 9, 1999).

8. As to Applicants' 2003 request, Respondent maintains that the SRP Administration Committee correctly concluded that there existed a *bona fide* dispute as to the efficacy, finality, or meaning of the underlying court order.

9. Moreover, Respondent contends that Section 11.3 requires that the court order underlying a request either expressly direct payment from a Fund retiree's pension or order the retiree to direct the Administration Committee to pay a portion of his Fund pension to the alternate payee. Respondent accordingly maintains that all of Applicants' requests could be denied on the basis of that requirement alone. Additionally, Respondent asserts that Applicants failed to provide the Administration Committee with relevant documents in the course of its consideration of their requests.

The Procedure

10. On May 18, 2004, Ms. "M" and Dr. "M" filed an Application with the Administrative Tribunal. Pursuant to Rule VII, para. 6 of the Tribunal's Rules of Procedure, the Registrar advised Applicants that the Application did not fulfill the requirements of paras. 2(c) and 2(d) of that Rule. Accordingly, Applicants were given fifteen days in which to correct the deficiencies. The Application, having been brought into compliance within the indicated period, is considered filed on the original date.[4]

11. The Application was transmitted to Respondent on June 1, 2004. On June 21, 2004, pursuant to Rule XIV, para. 4,[5] the Registrar issued a summary of the Application within the

---

[4] Rule VII provides in pertinent part:

> "*Applications*
>
> ...
>
> 2. ... Each application shall contain:
>
> ….
>
> (c) the decision being challenged, and the authority responsible for the decision;
>
> (d) the channels of administrative review, as applicable, that the Applicant has pursued and results thereof;
>
> ….
>
> 6. If the application does not fulfill the requirements established in Paragraphs 1 through 4 above, the Registrar shall advise the Applicant of the deficiencies and give him a reasonable period of time, not less than fifteen days, in which to make the appropriate corrections or additions. If this is done within the period indicated, the application shall be considered filed on the original date...."

[5] Rule XIV, para. 4 provides:

(continued)

Fund. Respondent filed its Answer to Ms. "M"'s and Dr. "M"'s Application on July 30, 2004. On November 2, 2004, Applicants submitted their Reply. The Fund's Rejoinder was filed on December 3, 2004.

12. On June 15, 2004, the President of the Administrative Tribunal, pursuant to his authority under Rule XXI, paras. 2 and 3[6] of the Rules of Procedure, suspended the pleadings and requested the views of the parties on the question of whether Mr. "N" should be invited to participate as an Intervenor under Rule XIV[7] of the Rules of Procedure and Article X,

---

> "In order to inform the Fund community of proceedings pending before the Tribunal, the Registrar, upon the notification of an application to the Fund, shall, unless the President decides otherwise, issue a summary of the application, without disclosing the name of the Applicant, for circulation within the Fund."

[6] Rule XXI provides in pertinent part:

> "2. The Tribunal, or, when the Tribunal is not in session, the President after consultation where appropriate with the members of the Tribunal may in exceptional cases modify the application of these Rules, including any time limits thereunder.
>
> 3. The Tribunal or, when the Tribunal is not in session, the President may deal with any matter not expressly provided for in the present Rules."

[7] Rule XIV provides:

> "*Intervention*
>
> 1. Any person to whom the Tribunal is open under Article II, Section 1 of the Statute may, before the closure of the written pleadings, apply to intervene in a case on the ground that he has a right which may be affected by the judgment to be given by the Tribunal. Such person shall for that purpose draw up and file an application to intervene in accordance with the conditions laid down in this Rule.
>
> 2. The rules regarding the preparation and submission of applications specified above shall apply *mutatis mutandis* to the application for intervention.
>
> 3. Upon ascertaining that the formal requirements of this Rule have been complied with, the Registrar shall transmit a copy of the application for intervention to the Applicant and to the Fund, each being entitled to present views on the issue of intervention within thirty days. Upon expiration of that deadline, whether or not the parties have replied, the President, in consultation with the other members of the Tribunal, shall decide whether to grant the application to intervene. If intervention is admitted, the intervenor shall thereafter participate in the proceedings as a party.
>
> 4. In order to inform the Fund community of proceedings pending before the Tribunal, the Registrar, upon the notification of an application to the Fund, shall, unless the President decides otherwise, issue a summary of the application, without disclosing the name of the Applicant, for circulation within the Fund."

(continued)

Section 2(b)[8] of the Statute. Applicants responded on June 17, 2004, stating that they were not opposed to Mr. "N"'s intervention, unless it would make the proceedings more complicated, lengthier or costlier. On June 23, 2004, the Fund communicated to the Tribunal that it was strongly of the view that Mr. "N" should be invited to participate as an Intervenor to afford the Tribunal the full benefit of his views on the issues of the case.

13. In Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-2 (November 20, 2001), the Administrative Tribunal granted a request for intervention by an ex-spouse of a Fund retiree whose request under Section 11.3 to give effect to a court order granting her a share of the Applicant's pension benefits had been denied by the Administration Committee. In that case, it was the retiree who was the Applicant in the Tribunal because the Administration Committee, in concluding that there was a *bona fide* dispute as to the meaning, efficacy, or finality of the court order, had exercised its discretion pursuant to its Rules to withhold the disputed amount from Mr. "P"'s pension payments, prompting him to challenge the decision before the Tribunal. When his ex-spouse applied to participate as an Intervenor, the Tribunal granted her application for intervention on the ground that she was, "… for purposes of Article II, Section 1 of the Tribunal's Statute, a beneficiary under a Fund benefit plan, for purposes of challenging the legality of the Administration Committee's Decision on her Request to give effect to the [court] order." Mr. "P" (No. 2), para. 65.

14. In the present case, unlike in Mr. "P" (No. 2), there has been no escrowing of pension payments, and, therefore, the retiree has not been aggrieved. Nonetheless, the President of the Administrative Tribunal, having considered the views of the parties and in consultation with the Associate Judges of the Tribunal, decided to invite Mr. "N" to participate as an Intervenor in this case. While such an invitation to intervene was not at the time provided for expressly by the Tribunal's Rules of Procedure,[9] the decision was taken in the interest of

---

[8] Article X, Section 2(b) provides:

> "2. … The Rules of Procedure shall include provisions concerning:
>
> ….
>
> b. intervention by persons to whom the Tribunal is open under Section 1 of Article II, whose rights may be affected by the judgment;"

[9] The Rules of Procedure subsequently have been amended, with effect with respect to all applications filed after December 31, 2004, to include the following provision:

> "***RULE XIV***
>
> *Intervention*
>
> . . . .

(continued)

providing all interested persons a reasonable opportunity to be heard, and was based on the conclusion that Mr. "N" met the two statutory prerequisites for intervention, i.e. he is a person to whom the Tribunal is open under Article II, Section 1 of the Statute and he has a right that may be affected by the Judgment to be given by the Tribunal.[10] (Article X, Section 2(b); Rule XIV, para. 1.) By Memorandum of July 15, 2004, the parties were informed of the decision to invite Mr. "N"'s intervention and its rationale.

15. On August 23, 2004, the Tribunal, after ascertaining from the Fund the address at which Mr. "N" had been notified of the SRP Administration Committee's final decision of February 25, 2004, invited Mr. "N" to participate in these proceedings as an Intervenor and provided him with copies of Ms. "M"'s and Dr. "M"'s Application and the Fund's Answer. His submission was due September 22, 2004. Mr. "N" did not file a submission, and, on September 27, 2004, he informed the Registrar by telephone that he declined the invitation to do so.[11] The Registrar so notified the parties by letter of September 29, 2004.

16. On September 29, 2004, the President of the Administrative Tribunal, pursuant to his authority under Rule XVII, paras. 3 and 4[12] of the Rules of Procedure, issued a Request for Information to Applicants to provide specified documents referenced in the pleadings and to identify and indicate the current status of any pending litigation relating to any family support obligations of Mr. "N" to Applicants, to explain its relevance to the proceedings before the Tribunal, and to advise the Tribunal on an ongoing basis of any changes in the

---

> 4. In the absence of an application for intervention, the Tribunal may invite the participation as an intervenor of any person to whom the Tribunal is open under Article II, Section 1 of the Statute and who has a right that may be affected by the judgment to be given by the Tribunal. The views of the Applicant and the Fund may be sought, in a manner consistent with Paragraph 3 of this Rule, on the question of whether an individual should be invited to intervene. If the intervention is admitted, the intervenor shall thereafter participate in the proceedings as a party, and the schedule of pleadings shall be modified to accommodate his participation."

[10] The parties also were informed that Applicants' concern that the intervention might make the proceedings lengthier and costlier did not provide a basis for denying Mr. "N" an opportunity to participate as an Intervenor. *See* Ms. "G", Applicant and Mr. "H", Intervenor v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-3 (December 18, 2002), para. 35 (rejecting the view that the Tribunal would have discretion to deny an application for intervention on the basis that the intervention would pose additional burdens on the applicant as a litigant).

[11] At that time, Mr. "N" indicated to the Registrar that he might decide to submit a request under Rule XV to permit him to communicate views to the Tribunal as an *amicus curiæ*. Mr. "N" did not submit such a request.

[12] Rule XVII provides in pertinent part:

> "3. The Tribunal may, subject to Article X, Section 1 of the Statute, order the production of documents or other evidence in the possession of the Fund, and may request information which it deems useful to its judgment.
>
> 4. When the Tribunal is not in session, the President shall exercise the powers set forth in this Rule."

status of such litigation or any new litigation relevant to this Request for Information.[13] Applicants responded with a series of submissions beginning in late 2004 through August of 2006.

17. On February 21, 2006, the President of the Administrative Tribunal issued to Respondent a Request for Information to submit a model court order as referenced in its pleadings and, if it differed, the model court order currently provided to requesters under SRP Section 11.3. Respondent replied on March 3, 2006.[14]

18. Also on February 21, 2006, the President of the Administrative Tribunal, pursuant to his authority under Rule XI[15] of the Rules of Procedure, issued a Request to Applicants and Respondent to file simultaneous Additional Statements, by which the parties were afforded the opportunity to comment on any relevant litigation or other developments that had followed the closure of the regular pleadings. Additional Statements were submitted by Applicants and Respondent on March 14 and March 21, 2006, respectively.

19. On June 12, 2006, the President of the Administrative Tribunal issued an additional Request for Information to Applicants to provide an official translation of a November 18, 2005 order earlier submitted by Applicants relating to the scheduling of a hearing by the Local Court in Frankfurt on the Main for November 10, 2006, to identify to the Tribunal the nature of that hearing, the question(s) to be considered by the court at that time, and when the decision on these matters was expected to be rendered. Applicants replied

---

[13] In subsequent correspondence, the Registrar reminded Applicants of this continuing obligation.

[14] In addition, by letter of March 6, 2006 (and a follow-up letter of March 15, 2006), the Tribunal asked Applicants to indicate whether the Fund had provided them with such a model court order. On March 16, 2006, Dr. "M" replied that she was "not aware" of such a model order, but was unable to state with certainty that the Fund never provided it to her. Subsequently, on March 31, 2006, Dr. "M" wrote to the Tribunal that she "cannot remember having ever received or even seen" the model order submitted by Respondent on March 3, 2006.

[15] Rule XI provides:

> "*Additional Pleadings*
>
> 1. In exceptional cases, the President may, on his own initiative, or at the request of either party, call upon the parties to submit additional written statements or additional documents within a period which he shall fix. The additional documents shall be furnished in the original or in an unaltered copy and accompanied by any necessary translations.
>
> 2. The requirements of Rule VII, Paragraphs 4 and 8, or Rule VIII, Paragraphs 2 and 3, as the case may be, shall apply to any written statements and additional documents.
>
> 3. Written statements and additional documents shall be transmitted by the Registrar, on receipt, to the other party or parties."

on June 22, 2006.[16] On November 20, 2006, the President of the Tribunal issued a final Request for Information to the Fund, which responded on November 22, 2006.

20. The Tribunal decided that oral proceedings, which neither party had requested, would not be held as they were not necessary for the disposition of the case.[17] The Tribunal had the benefit of the submissions made by Applicants and by Mr. "N" in the underlying consideration by the SRP Administration Committee of Applicants' 2003 request, as well as the minutes of the Administration Committee in respect of its 2004 Decision on Review.

The Factual Background of the Case

21. The relevant factual background may be summarized as follows. Additional factual elements will be included in the consideration of the issues of the case.

Overview

22. Mr. "N", a former staff member of the Fund and a national of Finland, began receiving pension benefits from the Staff Retirement Plan in 1998. Applicant Dr. "M", who is not and never has been a staff member of the Fund,[18] is a national and resident of Germany. Dr. "M" maintains that Mr. "N" is the father of her daughter, Applicant Ms. "M", who was born in Washington, D.C. on January 9, 1984, when, according to Dr. "M", she and Mr. "N" were living together. Since 1986, Applicants have resided in Germany and apart from Mr. "N". In the ensuing years, Dr. "M" has sought to obtain child support payments for Ms. "M" from Mr. "N", resulting in this case before the IMF Administrative Tribunal.

23. In 1991, 1994, and 1995, Applicants obtained orders from a German court requiring Mr. "N" to pay child support until Ms. "M" reached the age of majority on January 9, 2002. On January 20, 2003, Applicants obtained an order from a second German court concerning Ms. "M"'s entitlement to maintenance from Mr. "N" after reaching the age of majority, based upon her status as a dependent student. The 2003 Order appears to have been issued pending the resolution of a lawsuit concerning the same entitlement. According to Applicants, a hearing in that latter case has been scheduled for January 30, 2007.

24. Applicants sought recognition and enforcement of the German Orders of 1991, 1994, and 1995 in both Washington, D.C. and Finland. By decisions of July 16 and August 5, 1999, the Superior Court of the District of Columbia recognized these German Orders and ordered that they be enforced.[19] As a result of the Washington, D.C. proceedings, Applicants received

---

[16] Applicants subsequently informed the Tribunal that the hearing had been postponed until January 30, 2007, as service on Mr. "N" had not been effected.

[17] Article XII of the Tribunal's Statute provides that the Tribunal shall "… decide in each case whether oral proceedings are warranted." Rule XIII, para. 1 of the Rules of Procedure provides that such proceedings shall be held "… if the Tribunal decides that such proceedings are necessary for the disposition of the case."

[18] *See supra* note 1.

[19] Several additional orders of the D.C. Superior Court followed, rejecting Mr. "N"'s objections to the enforcement. *See infra*.

partial payment of the amount due before the "apparent abscondance" of Mr. "N" from the court's jurisdiction.[20] On April 30, 2002, the D.C. Superior Court calculated the outstanding amount owed by Mr. "N" and designated Dr. "M" as the appropriate payee.

25. On the basis of the April 30, 2002 Superior Court order, Applicants filed a Motion in the same court for a Qualified Domestic Relations Order ("QDRO")[21] against Mr. "N"'s Fund pension benefits. The Motion was denied on the ground of the Fund's immunity from judicial process, a decision that was sustained by the D.C. Court of Appeals.

26. On June 21, 2006, during the pendency of these proceedings in the Administrative Tribunal, the D.C. Superior Court, on remand from the D.C. Court of Appeals and upon consideration of additional evidence, affirmed its earlier denial of a QDRO against the Fund, but issued a QDRO against Mr. "N", ordering him to direct the Administration Committee to pay past-due child support obligations to Ms. "M" from his future Fund pension payments. This Order was brought to the Tribunal's attention by letter of Dr. "M" dated June 26, 2006, in response to a Request for Information by the Tribunal to Applicants to keep it informed of developments in the litigation. The Fund, in response to a Request for Information of November 20, 2006, has informed the Tribunal that, as of November 22, 2006, it has received neither a direction from Mr. "N" nor a request from Applicants in respect of the June 21, 2006 Order.

27. While judicial proceedings were ongoing in Washington, D.C., Applicants also obtained a decision from the Supreme Court of Finland on May 25, 2001, which ordered enforcement in Finland of the German Order of 1994. Enforcement was stayed, however, as a result of a challenge filed by Mr. "N". Applicants assert that Mr. "N"'s objection was denied on December 14, 2004, but they maintain that execution against Mr. "N"'s property in Finland is not possible because it is encumbered.

28. As detailed below, in addition to their enforcement efforts in the courts of Washington, D.C. and Finland, Applicants made three requests (in 1999, 2002, and 2003) to the Administration Committee of the Fund's Staff Retirement Plan to give effect to the various German child support orders.[22] The denials of these requests form the bases for the Application in the Administrative Tribunal. The first two requests, made in 1999 and 2002, were to give effect to the German Orders of 1991, 1994, and 1995. A third request was made in 2003 on the basis of the 2003 German Order. The relevant judicial proceedings, as well as Applicants' efforts to give effect to the German court orders through the Fund's Staff Retirement Plan are described below.

---

[20] *See* D.C. Superior Court Order of June 21, 2006.

[21] *See infra* Consideration of the Issues of the Case.

[22] In the context of these requests, it appears that Applicants also brought to the attention of the Fund orders of the District of Columbia courts of August 5, 1999 and April 30, 2002. *See infra* The Factual Background of the Case; Proceedings in the Administration Committee of the Staff Retirement Plan.

Judicial Proceedings

Judicial Proceedings in Germany

The 1991, 1994, and 1995 German Orders for support of Ms. "M" before reaching the age of majority

29. In 1991, Dr. "M" brought civil proceedings against Mr. "N" in the Local Court of Darmstadt, Germany, for child support for the period from Ms. "M"'s birth until she reached age eighteen. In a document issued by the Magistrate of the Municipality of Darmstadt, dated January 14, 1991, Mr. "N" acknowledged paternity of Ms. "M":

> "I acknowledge that I am the father of the illegitimate child [Ms. "M"], born 9 January 1984 in Washington … mother: [Dr. "M"].
>
> I know that the acknowledgment is irrevocable…."[23]

30. Mr. "N" was summoned but did not appear in the Darmstadt Court, and Ms. "M" was awarded two default judgments dated March 14, 1991 and July 20, 1994. By the terms of the 1991 Order:

> "1. Defendant is ordered to make payment to plaintiff, care of the respective legal representative, from the day of birth of 1984-01-09 until the attaining of the age of 18 years, of the regular child support according to normal requirement monthly in advance, the arrears immediately.
>
> 2. The costs of the procedure are awarded against defendant.
>
> 3. The judgment is provisionally enforceable."

31. The 1994 Order supplemented by 200 percent the support awarded by the 1991 Order. Like the 1991 Order, the 1994 Order is in the form of a default judgment, noting that "[i]t is established that the respondent was duly summoned to appear in court ... and that he is absent without a valid excuse." The 1994 Order provides:

> "I. In alteration of the Judgment of the Local Court (Amtsgericht) of Darmstadt dated 14 March 1991 … the respondent is sentenced to pay the plaintiff the regular support plus a supplement of 200 per cent of the regular requirement from the day of birth, i.e. 9 January 1984, and until completion of the age of 18, this support being payable to the hands of the respective

[23] The record before the Administrative Tribunal includes certified English translations of this document and the German court orders that Applicants seek to have given effect.

representative at law, on a monthly basis and in advance, arrears being payable at once.

II. The respondent shall bear the costs of the procedure.

III. The Judgment is provisionally enforceable."

32. On February 23, 1995, as Mr. "N" had not complied with the earlier default judgments, the following "attachment order"[24] was issued:

"Enforceable Copy

COURT ORDER

….

The regular support which the respondent shall pay the child on a monthly basis and in advance is fixed as follows:

DM 753.- - from 9 January 1984 till 8 January 1992
DM 912.- - from 9 January 1992 till 30 June 1992
DM 1059.- - from 1 July 1992 till 8 January 1998
DM 1254.- - from 9 January 1998 till 8 January 2004

….
Reasons:

Pursuant to provisionally enforceable Judgment of the local Court (Amtsgericht) of Darmstadt dated 20 July 1994 – … – the respondent is under the obligation to pay the child the regular support in the amount of the regular requirement plus a supplement of 200 per cent of the regular requirement.

….

The above official copy is issued for the petitioner child for the purpose of forcible execution.

An official copy of the Court Order was served upon the respondent by mail on 23 February 1995. Forcible execution may start two weeks after this day at the earliest."

[24] This description is derived from the D.C. Court of Appeals' order of December 8, 2005.

33. According to the calculations of the D.C. Superior Court, reflected in its order of April 30, 2002, *see infra*, the total amount owed by Mr. "N" pursuant to the 1991, 1994, and 1995 German Orders was equivalent to U.S. $71,905.81 (excluding interest, counsel fees and costs) for the period from Ms. "M"'s birth until the age of majority. None of these German court orders makes reference to Mr. "N"'s Fund pension benefits.

34. On May 22, 2002, the Darmstadt Regional Court denied Mr. "N"'s appeal of a 2001 German child support order that appears to have been based on the March 14, 1991 default judgment. The court rejected Mr. "N"'s various objections, stating *inter alia*: Mr. "N" had proper notice of the 1991 judgment; he offered no valid justification for filing his appeal several years late; his pleas of procedural irregularities were made in bad faith; and his objection to paternity was irrelevant, as he had, without explanation, not disputed his acknowledgement of paternity until the appeal.

The 2003 German Order for the maintenance of Ms. "M" after reaching the age of majority

35. Following Ms. "M"'s attaining the age of eighteen, the age of majority, Applicants filed suit against Mr. "N" in the Local Court of Frankfurt on the Main, Germany, seeking maintenance of €847,25 monthly from May 1, 2002, as well as €3,389,00 in arrears for the period from January 1 through April 30, 2002. Ms. "M"'s claim for maintenance after her eighteenth birthday was based on her continuing status as a dependent student.[25]

36. On January 20, 2003, the Frankfurt Court issued an Order, which is the basis for Applicants' third request to the Administration Committee. This Order describes Ms. "M" as the illegitimate child of Mr. "N", states that she had reached the age of majority on January 9, 2002, and orders, on an interim basis, the payment of maintenance of €227,03 monthly from April 30, 2002, based on Ms. "M"'s substantiated representation that she would be continuing to attend school. The Order also states that with the July 20, 1994 Order of the Darmstadt Local Court, the maintenance of Ms. "M" before reaching age eighteen had been "finally judged."

37. The 2003 Order provides:

> "The following interim order is herewith given:
>
> Defendant shall be obligated to pay to petitioner every month … a maintenance sum of 227,03 Euro as of 2002-04-30.
>
> The wider petition shall be dismissed.
>
> The costs of this procedure are part of the costs in the main case.

[25] The record contains a minor inconsistency: Dr. "M" has indicated that this lawsuit seeks *inter alia* the arrears from January 1, 2002, while Ms. "M" did not turn eighteen until January 9, 2002. This appears to be a mistake by Dr. "M", as she later indicated that this claim is for support from January 9, 2002. The January 20, 2003 German Order suggests the same conclusion.

Reasons:

Petitioner is the illegitimate child of defendant, born on 1984-01-09.
With sentence of the Local Court at Darmstadt on 1994-07-20 the maintenance for petitioner until reaching the age of 18 has been finally judged…. Petitioner has reached the age of majority on 2002-01-09.

Maintenance shall be paid to petitioner by means of an interim order amounting to 227,03 Euro monthly effective from filing the petition (Section 644 Code of Civil Procedure).

Petitioner of age has substantiated that she will continue to go to school – probably until June 2004 – and that she has no personal income.

She has also substantiated that defendant disposes of a net income of 15,000.00-17,000.00 US-Dollars, and her mother of net 7,216,51 Euro monthly.

In the procedure of an interim order, only the minimum maintenance can be secured which is shown in the Dusseldorf list with 311,00 Euro. Since both parents have to contribute to the maintenance for petitioner of age, and since according to the substantiated affirmation by petitioner, a share of defendant of 73 percent is resulting, the maintenance to be paid by defendant amounts to 227,03 Euro monthly."

(Emphasis in original.) Like the earlier orders of the Darmstadt Local Court for support until the age of majority, the 2003 Order of the Frankfurt Local Court makes no reference to Mr. "N"'s Fund pension benefits.

38. Dr. "M" asserts that it has not been possible to effect service of the complaint on Mr. "N" because he has frustrated attempts "to serve him with documents" in Finland and Washington, D.C.[26] An "Affidavit of Non-service" states that service was attempted on Mr. "N" at his Washington, D.C. address on June 30, 2003.[27] Dr. "M" indicated to the SRP Administration Committee, on reconsideration of her 2003 request, that the documents being

[26] However, in a submission made in the D.C. Superior Court dated July 25, 2002, Dr. "M" stated: "[Mr. "N"'s] obligation to pay child support continues even though [Ms. "M"] … has reached majority; in June, Defendant was served with the summons of a new child support proceeding by the Court of Frankfurt." While it appears that Dr. "M" was referring to the aforementioned lawsuit, Applicants represented to the Tribunal that no service has been effected with respect to this lawsuit and the evidence discussed below indicates the same.

[27] The document cites the following reasons for failure to effect service: "Not found. Female occupant stated subject not known at address."

served were the "new court decisions ... referring to child support for [Ms. "M"] from the age of 18;" however, the affidavit does not identify the document(s) being served. The November 5, 2004 minutes of a session of the Frankfurt Local Court,[28] bearing the same case number, state that service on Mr. "N" at his Finnish address had not been effected and that a new court hearing was ordered.

39. Dr. "M" subsequently submitted to the Tribunal a decision of November 18, 2005 pertaining to the same case, concluding that "[t]he realization of a hearing in conciliation proceedings shall be dropped … because conciliation proceedings appear as a hopeless venture." By the same decision, Mr. "N" was summoned to appear at a hearing of the Frankfurt Court to be held on November 10, 2006. Dr. "M" described this proceeding as

> "… the regular hearing concerning the complaint filed on April 26, 2003 demanding support of Mr. ["N"] in the amount of €847,25 per month beginning May 1, 2002. It is the general, regular hearing about the matter. After the hearing, a judgment can be rendered. …. However, this applies only if Mr. ["N"] can be successfully served on his [Washington, D.C.] address."

More recently, Dr. "M" informed the Administrative Tribunal that the hearing has been postponed until January 30, 2007 as a result of inability to effect service on Mr. "N".

Judicial Proceedings in the United States

U.S. litigation seeking enforcement of the German Orders of 1991, 1994, and 1995

40. In 1997, Dr. "M" initiated proceedings in the Family Division of the Superior Court of the District of Columbia seeking enforcement of the German Orders of 1991, 1994, and 1995.[29] Her request initially was denied by a Hearing Commissioner on March 13, 1998 on the grounds that (1) the D.C. Superior Court lacked jurisdiction over Mr. "N" (who the court determined was a resident and domiciliary of Finland) under the Uniform Interstate Family Support Act ("UIFSA") and the D.C. long-arm statute; and (2) the German court's personal jurisdiction was doubtful.

41. On July 16, 1999, the D.C. Superior Court reversed the Hearing Commissioner's decision, rejecting the two statutory defenses raised to the registration and enforcement of the support orders, i.e. lack of personal jurisdiction of the issuing German court and of the D.C. Superior Court. The Superior Court concluded as follows:

> "[The Hearing] Commissioner … stated that he doubted that the Republic of Germany had any basis for personal jurisdiction over the respondent. To the extent the trial court based its ruling of

[28] Dr. "M" submitted an unofficial English translation.

[29] The claim was filed on Applicants' behalf by the German Institute for Guardianship on December 4, 1997.

> dismissal on this section [D.C. Code § 30-346.7 (a)(1)], this Court concludes this was error as it is plainly wrong and without evidence to support it. First, respondent never claimed at trial that the issuing tribunal lacked personal jurisdiction over him. Indeed, respondent specifically testified that he had not made any attempts to challenge the support Order in Germany because he had no ties there and the enforcement matter was brought in the District of Columbia. . . . As such, respondent has waived this defense. Second, there is simply nothing in the record to support the contention that the German courts lacked the jurisdiction to issue the Order at hand. Thus, this Court concludes that the trial court erred in rendering its decision on this basis."[30]

The D.C. Superior Court further concluded that it had personal jurisdiction over Mr. "N".[31] Accordingly, on August 5, 1999, the D.C. Superior Court recognized the German Orders and ordered their enforcement.[32]

42. In December 1999, a writ of attachment was served on the Bank-Fund Staff Federal Credit Union to garnish Mr. "N"'s bank account, which Applicants acknowledge yielded $37,607.53 in partial satisfaction of the amount due. Thereafter, in December 2001, the D.C. Superior Court held Mr. "N" in contempt of court for failing to pay the remaining obligation and issued a warrant for his incarceration. Mr. "N" was not incarcerated at that time, however. The court set a payment schedule and withheld Mr. "N"'s passport. After he made a single payment of $10,000, the court granted Mr. "N"'s request for his passport in order to travel abroad on business. Mr. "N" failed to appear at the subsequent hearings and another warrant was issued in March of 2002.[33]

43. On April 30, 2002, the D.C. Superior Court ordered that the total amount of child support owed pursuant to the German Orders of 1991, 1994, and 1995 (calculated at

---

[30] As noted above, Mr. "N" subsequently appealed the German Orders, but his appeal was denied on May 22, 2002 as untimely.

[31] This holding was based on the findings that: (1) neither "continuing exclusive jurisdiction," nor residency in D.C. is required to enforce a support order under UIFSA; and (2) the D.C. court has jurisdiction under UIFSA's long-arm provision, since Mr. "N" was personally served with notice within D.C.; and, alternatively, Mr. "N" had significant contacts with D.C. that establish jurisdiction under both UIFSA and D.C.'s general long-arm statutes.

[32] Some decisions of the D.C. Superior Court and D.C. Court of Appeals appear to treat the complaint of the German Institute of Guardianship filed in 1997 (which initiated this registration of the German Orders in the U.S.) as the registered order. Thus, any references to a German order of 1997 are essentially references to the German Orders of 1991, 1994, and 1995 that underlie the child support obligation asserted in the 1997 complaint. This confusion is explained in the D.C. Superior Court order of August 12, 2003.

[33] Mr. "N"'s counsel proffered that Mr. "N"'s passport had expired and he was unable to renew it due to the fact that he owed outstanding child support to Dr. "M".

U.S. $71,905.81[34]) be paid by Mr. "N" and disbursed "as [Dr. "M"] shall direct." The order stated that, contrary to Mr. "N"'s contention, Ms. "M", rather than the German authorities, was the appropriate payee for the child support awarded.[35] On November 25, 2002, the Superior Court further ordered Mr. "N" to pay an additional $30,137.63 in attorneys' fees and costs and $27,904.81 in interest plus 4% per annum on the outstanding award.

44. Mr. "N" undertook several rounds of appeal with respect to the writ of attachment issued against his bank account in Washington, D.C., culminating in a denial of his objections by the D.C. Court of Appeals on December 8, 2005. The Court of Appeals affirmed the Superior Court's order of August 12, 2003 directing Mr. "N" to pay the support arrears in full. The Court of Appeals upheld the trial court's determination that Mr. "N"'s contentions that the German court lacked personal jurisdiction and Dr. "M" lacked standing to enforce the judgments were barred because of his failure to appeal from the D.C. Superior Court's July 16, 1999 order that had decided these issues. The Court of Appeals also rejected Mr. "N"'s challenge to the D.C. Superior Court's subject matter jurisdiction, as well as his contentions that the matter should be removed to a U.S. federal court or to a court in Finland. Over the years, the D.C. courts have characterized Mr. "N"'s numerous motions challenging the various orders of the D.C. Superior Court in this matter as "repetitive," "baseless," "frivolous," and "abusive."

45. The Fund asserts that of the District of Columbia court orders considered above, Dr. "M" provided only one to the SRP Administration Committee as part of its consideration of Applicants' requests, i.e. the D.C. Superior Court order of August 5, 1999, which appears to have been submitted with her first request. However, as explained below, on May 2, 2002, Dr. "M" apparently forwarded to the Secretary of the Administration Committee another order issued by the D.C. Superior Court, which appears to have been the order of April 30, 2002.

U.S. litigation seeking a Qualified Domestic Relations Order ("QDRO")

46. On the basis of the foregoing orders, on June 28, 2002, Dr. "M" initiated a separate effort through the District of Columbia courts to obtain a Qualified Domestic Relations Order "for enforcement of child support arrears as stated in the Order of this Court of April 30, 2002 ($71,905.81)." The proposed order submitted to the court by Dr. "M" stated that it was "intended to be a Qualified Domestic Relations Order for enforcement of child support arrears pursuant to the domestic relations law of the District of Columbia." The proposed order is similar but not identical to the model order provided by the Fund to

[34] This amount was arrived at by subtracting the amounts obtained from Mr. "N" from the total amount of $122,513.34 owed by Mr. "N" under the German Orders of 1991, 1994, and 1995.

[35] The court relied on the documentation submitted by Dr. "M", in which the relevant German authorities indicated that "they are not to receive any of the funds now on deposit with the court or to be deposited in compliance with the German Orders" and that Dr. "M" was authorized by these agencies to collect from Mr. "N" any sums paid by those agencies to her in child support. The court added that "any issue as to whether the funds should be paid to German government agencies as reimbursement would be an issue between those agencies and [Ms. "M"]."

requesters under SRP Section 11.3. It is a matter of factual dispute as to whether Dr. "M" was provided by the Fund with its model order or whether, as she contends, she submitted the motion on the advice of an acquaintance.

47. On September 30, 2003, the D.C. Superior Court denied Dr. "M"'s motion for a QDRO on the ground that the Fund is immune from garnishment proceedings.[36] On December 8, 2005, the D.C. Court of Appeals affirmed,[37] without prejudice to reconsideration by the Superior Court in light of additional documentation submitted by Dr. "M" for the first time on appeal.

48. According to Respondent, the Superior Court thereafter requested that the Fund make an appearance at a hearing on reconsideration to provide its views on the question of the immunities of the Fund and the SRP. Instead, the Fund responded to the request by providing the court with an aide-mémoire, stating its views on the question of immunity and the scope of Section 11.3 with respect to past-due child support. The Fund additionally noted: "The IMFAT is the proper forum for resolving [Ms. "M"]'s complaint about the scope of Section 11.3 of the SRP, because only the IMFAT has jurisdiction to grant a remedy to [Ms. "M"] as against the SRP or the IMF."

49. On June 21, 2006, the D.C. Superior Court issued a "Memorandum and Order Denying Petitioner's Motion for Reconsideration of Proposed QDR Order *Against the IMF*" (emphasis supplied), affirming its previous decision concerning immunity of the IMF and the SRP. At the same time, the Court issued a "Qualified Domestic Relations Order *Directed to [Mr. "N"]*" (emphasis supplied), which appears to be based on the Model Qualified Domestic Relations Order (described below) that the IMF provides to requesters under SRP Section 11.3. The June 21, 2006 Superior Court Order provides in pertinent part:

> "… in accordance with Section 11.3 of the Plan, [Mr. "N"] as soon as may reasonably be done following the issuance of this Order, shall irrevocably direct in writing to the Secretary of the Administration Committee of the Plan that, if as and when they become payable, a portion of [his] benefits, that is $16^2/_3$ percent of each monthly payment, shall be paid to [Dr. "M"], the Alternate Payee, from the Plan and from the Supplemental Retirement Benefits Plan, to the extent that implementation requires payment through it, in a amount equal to $71,905.81 in U.S. Dollars ...."

Accordingly, the 2006 Order of the D.C. Superior Court requires Mr. "N" to direct that past-due child support obligations to Ms. "M" be paid from his future Fund pension payments. In so deciding, the court observed that Mr. "N" "… has made no effort to fulfill his Court-

[36] Respondent asserts that Dr. "M" did not inform the Administration Committee of any proceedings relating to this motion; Mr. "N" submitted an excerpt from the September 30, 2003 order at the time of reconsideration by the Committee of the denial of Applicants' 2003 request.

[37] On January 13, 2006, the D.C. Court of Appeals denied a Motion for reconsideration of this decision.

ordered obligations to support his child. Indeed, ["Mr. "N"] appears to have left the jurisdiction and is attempting to avoid the legal process of this Court by absconding from the United States."

Judicial Proceedings in Finland

50. In 1999, Dr. "M" also initiated proceedings in Finland seeking enforcement of the German Orders of 1991, 1994, and 1995. On May 25, 2001, the Supreme Court of Finland ordered that two judgments of the German Court of Darmstadt, awarding child support and legal expenses, dated July 20, 1994 and December 19, 1994, respectively, are "in force in Finland without separate confirmation" and are "ordered to be enforced."[38] This decision also concluded that there was no indication in the record that Ms. "M" had transferred her receivables to the German authorities. This finding was made, apparently, in response to Mr. "N"'s contention that Dr. "M" lacked standing to seek enforcement of these Orders because German Government agencies had been paying support to Ms. "M" and were, therefore, the real parties in interest.[39]

51. Based on the decision of the Finnish Supreme Court, execution commenced against shares owned by Mr. "N" in a company in Finland, but was stayed for two weeks in December 2001 to allow Mr. "N" to file a claim contesting execution based on his assertion that he already had paid the amount due, pursuant to an order of the D.C. Superior Court of August 10, 1999.[40] Subsequently, Mr. "N" filed a claim in the Turku District Court, Finland, contesting the German Orders based *inter alia* on his objections to the determination of paternity and Applicants' standing, and demanding reimbursement of certain amounts obtained by Applicants through the proceedings in Washington, D.C.[41] Dr. "M" asserted before the Tribunal that Mr. "N"'s claim "has been rejected by the Local Court of Turku on December 14, 2004," but did not provide any supporting documentation.[42]

52. Applicants maintain that although the German Orders are enforceable in Finland, execution is impossible because "the only assets owned by [Mr. "N" in Finland] are

[38] The court also noted that, by order of the D.C. Superior Court of August 5, 1999, this judgment was in force in Washington, D.C.

[39] The record reflects that Dr. "M" did not bring the decision of the Supreme Court of Finland to the attention of the Administration Committee prior to her request for reconsideration of the Committee's denial of her 2003 request.

[40] This, apparently, is a reference to the August 5, 1999 order of that court.

[41] Mr. "N" was apparently referring to this lawsuit, when he stated in his January 28, 2003 fax to the Administration Committee that he had filed "a case seeking reimbursement of payments that I have made 'under pressure' in D.C."

[42] On March 21, 2006, Respondent, in response to a Request for Information, informed the Tribunal that it had received two communications from Mr. "N" regarding litigation in Finland. Respondent states that it informed Mr. "N" that the Fund would not submit any communications to the Tribunal on his behalf, and that he should do so himself if he wished to enter this information into the Tribunal's record. The Tribunal has not received any such communications from Mr. "N".

completely pledged to Nordia Bank, Finland." The Fund takes the view that "[i]t is not clear whether any execution of the German judgments has occurred in Finland." None of the orders obtained from the Finnish courts appears to refer to Mr. "N"'s Fund pension benefits.

Proceedings in the Administration Committee of the Staff Retirement Plan

53. In addition to seeking enforcement of the German support orders in the courts of the United States and Finland, Applicants made three requests, in 1999, 2002, and 2003, to the Administration Committee of the Fund's Staff Retirement Plan to have the German Orders of 1991, 1994, 1995 and 2003 given effect under Section 11.3 of the Plan.[43] As detailed

---

[43] Section 11.3 provides in full:

> "11.3 Notwithstanding the provisions set forth in Section 11.1, a participant or retired participant may, pursuant to a legal obligation arising from a marital relationship or pursuant to a legal obligation to make child support payments, evidenced by an order of a court or by a settlement agreement incorporated into a court order, direct in writing to the Secretary of the Administration Committee that a benefit that would otherwise be payable to him during his life under the Plan be paid to one or more former spouses or a current spouse from whom there is a decree of legal separation, his child or children, who are under 22 years of age, or the court approved guardian of such child or children.
>
> (a) The benefit payable shall not exceed:
>
> (i) when payable to the spouse or former spouse, 50 percent of the portion of the participant's or retired participant's benefit that is attributable to his eligible service during the period of the couple's marriage whenever the obligation or obligations to which the court order relates are for support of the spouse or former spouse or division of marital property or both, and
>
> (ii) when payable to a child or children or their parents or guardians, 16⅔ percent of the benefit payable to the participant or retired participant whenever the court ordered obligation is for support of his child or children. The sum of payments to two or more children, or their parents or guardians on their behalf, shall not exceed 16⅔ percent of the benefit payable to the participant or retired participant; such payments shall be made in equal shares unless otherwise allocated by decision of the Administration Committee pursuant to rules adopted by it.
>
> (b) In the event that a participant or retired participant fails to submit a timely written direction in compliance with the court order to the Secretary of the Administration Committee, under such rules and conditions of acceptance as are prescribed by the Administration Committee, a spouse or former spouse or a child or children, or parents or guardians acting on their behalf, of such participant or retired participant who is a party to the court order or orders may request that the Administration Committee give effect to such court order or orders and treat the request in the same manner as if it were a direction from such participant or a retired participant. Pending the

(continued)

below, each of these requests was denied, resulting in the present Application before the Administrative Tribunal.

Applicants' 1999 Request to the Administration Committee

54. On September 15, 1999, Dr. "M" made her first request to the Administration Committee:

> "[W]ith reference to the numerous conversations and the correspondence between my lawyers and the German Foreign Office on the one hand and ... representatives of the IMF on the other hand ... as well as your Staff Bulletins dating May 4 and June 8, 1999 provided to me … by the German Embassy, I enclose herewith the following documents:
>
> ....

Administration Committee's consideration of such request or the resolution of a dispute between a participant or retired participant and the spouse or former spouse, or the child or child's parent or guardian, regarding payment of amounts payable under the Plan, the Administration Committee may withhold, in whole or in part, payments otherwise payable to the participant or retired participant or the spouse or former spouse, child or child's parent or guardian.

(c) A direction or accepted request or payment incident thereto shall not convey to any person an interest in the Retirement Fund of the Plan or give any elective rights under the Plan to such person. A direction or accepted request must be consistent with the provisions of the Plan, which in the event of conflict will be deemed to override the direction or accepted request. Any direction or accepted request shall be irrevocable; provided, however, that a participant or retired participant, spouse or former spouse, child or child's parent or guardian, as the case may be, may request, upon evidence satisfactory to the Administration Committee based on a court order or a provision of a settlement agreement incorporated into a court order, that he be permitted to issue a new direction or submit a new request in writing that would increase, diminish, or discontinue the payment or payments; and provided, further, that any direction or accepted request shall cease to have effect following the death of the participant or retired participant. If a beneficiary under a direction or accepted request predeceases the participant or retired participant, the payments shall not commence or if they have commenced shall thereupon cease. In the event that the payment or payments under a direction or accepted request have been diminished, discontinued or have failed to commence or have ceased, the corresponding amount of benefit payable to the participant or the retired participant shall be restored less the value of any amounts paid as withdrawal or commuted sums."

> I herewith confirm and repeat my request to you to honour [the German Orders of 1991, 1994 and 1995] for child support for [Ms. "M"] ...."[44]

Dr. "M" attached various documents, including: a certified copy of Mr. "N"'s recognition of paternity of January 14, 1991; the German Orders of 1991, 1994, and 1995; the D.C. Superior Court order registering the German Orders pursuant to UIFSA; and Mr. "N"'s letter of October 25, 1993 to the Darmstadt Local Court, stating (with reference to the case number indicated on the 1994 and 1995 German Orders) that he objected to the legal proceedings commenced against him by Ms. "M" and that he "[did] not recognize any part of these false claims."

55. Shortly thereafter, on September 24, 1999, a member of the Fund's Legal Department, who served as the Legal Representative to the SRP Administration Committee, responded to Dr. "M"'s request as follows:

> "While the court orders you presented might have been effective for the garnishment of wages if Mr. ["N"] had continued to be employed by the Fund and was receiving a salary from the Fund, they are not effective with respect to the … SRP or any pension payments made by the SRP. In order to fulfill the legal requirements to maintain its qualified status, the SRP has 'non-alienation' provisions that prohibit the SRP from diverting pension payments from a retiree and making payments for the debt obligations of a retiree. There are provisions in the SRP under which payments for support of a former spouse or a child may be allowed under specified circumstances, <u>but only when the support payments are pursuant to a legal obligation arising from a marital relationship</u> evidenced by a court order or decree. (Section 11.3 of the SRP is attached). Based upon the information we have, it appears that you would not qualify as a spouse or former spouse in order to pursue your claim under the provisions of the SRP.
>
> Therefore, under the circumstances, there would be no basis upon which the Fund could act favorably upon your request."

(Emphasis supplied.) This communication was copied to the Secretary of the Administration Committee, as well as to Mr. "N".

---

[44] Dr. "M" indicated to the Committee that she was repeating an earlier request made on her behalf by the German Embassy by a letter in June of 1998. According to the Fund, this was a request to the Fund to "use its influence to convince [Mr. "N"] to meet his parental obligations as established by the German courts." However, Dr. "M" apparently does not challenge Respondent's treatment of that request in her pleadings before the Administrative Tribunal, and the record contains no evidence of any Administration Committee action on that request.

56. Dr. “M” responded to the Legal Representative a week later, on October 1, 1999, challenging the Fund’s interpretation of Section 11.3 and the legality of the “marital relationship” requirement:

> “I cannot agree with your interpretation of your internal rules which you attached to your letter [of September 24, 1999]:
>
> … [T]hose court orders which were attached to [my letter of September 15, 1999] entitle **the child itself** to payment and not the mother or the father or a ‘spouse’. It is therefore not ‘my’ claim (‘your claim’) which I am pursuing, but that of [Ms. “M”]. I therefore think that your internal rules [SRP Section 11.3] have to be interpreted in the way that the ‘protected class’ with respect to child support is the **respective child itself** ….”

(Emphasis in original.) Dr. “M” provided a detailed analysis of the language of Section 11.3, which she contended constituted a proper interpretation of this Section.[45] She further stated:

> “… I cannot imagine any reason why the [IMF] would make a distinction between children (‘designees’) represented by a ‘spouse or former spouse’ and those represented … by another person or entity (e.g. natural mother or father not being a spouse, guardian etc.). A ‘spouse or former spouse’ may be deceased or otherwise not available. Interpreted the wrong way, your internal rules may even conflict with universally recognised human rights which prohibit discrimination by ‘birth’ and with the constitutions of your member and donor states which require the governments to make sure that children born ‘out of wedlock’ receive equal treatment to those ‘born in wedlock’ (see e.g. Article 6 para. 5 of the German Grundgesetz). ….
>
> I therefore think that [Ms. “M”], [Mr. “N”]’s daughter, is very well entitled that you honour judgements in her name under your own internal rules. However, if we cannot reach an agreement in the above matter soon, the judgements will have to be enforced by the competent courts.”

57. The record contains no evidence of any further response by the Fund to Dr. “M”’s 1999 request. Thereafter, according to Respondent’s account, Dr. “M” contacted the offices of the Fund’s Executive Directors for Germany and the United States, and the former office engaged the Fund’s management in a discussion that led to the abolition of the “marital relationship” requirement for giving effect to child support orders. On December 27, 2001, the IMF Executive Board amended Section 11.3 of the Plan to authorize

[45] She also asserted that, with respect to wage garnishment orders, the Fund accepted requests from an individual having custody of the child, not only from a former spouse, citing Staff Bulletin No. 99/11 (May 4, 1999).

the Administration Committee to permit payment of a portion of a Fund retiree's pension for child support "… pursuant to a legal obligation arising from a marital relationship <u>or pursuant to a legal obligation to make child support payments</u>" (emphasis supplied), effectively abolishing the distinction between a child born within a marriage or out of wedlock for purposes of Section 11.3.[46]

<u>Applicants' 2002 Request to the Administration Committee</u>

58. On January 31, 2002, approximately one month following the amendment of SRP Section 11.3, Dr. "M" made a second request to the Administration Committee to give effect to the identical court orders that were the subject of her 1999 request, noting the change in the Fund's policy. On March 18, 2002, the Secretary of the Administration Committee responded, enclosing a copy of the amended Section 11.3, the applicable Rules of the Administration Committee, and a "model request" to give effect to a court order to guide Dr. "M" in the preparation of her request.

59. The model request forwarded to Dr. "M" provided in part:

> "**<u>REQUEST TO GIVE EFFECT TO COURT ORDERED SUPPORT FOR A CHILD OF A PARTICIPANT BY THE PARENT OR GUARDIAN</u>**
>
> I, [NAME], in accordance with Section 11.3 of the Staff Retirement Plan of the International Monetary Fund (the 'Plan') and the Rules of the Administration Committee under Section 11.3 of the Staff Retirement Plan (the 'Rules'), and pursuant to a [DECREE OR ORDER NAME] entered by the [COURT], an authenticated copy of which is attached hereto, hereby request the Plan to treat this request as if it were a direction from [PARTICIPANT OR RETIRED PARTICIPANT] and to pay to me, as (parent or guardian) of [CHILD'S NAME] if as and when they become payable to [NAME OF PARTICIPANT OR RETIRED PARTICIPANT], a portion of the pension benefits attributable under the Plan (and under the Supplemental Retirement Benefits Plan to the extent that implementation requires payment through it) in the amount of ...., not to exceed 16 2/3% of the benefits payable to [NAME OF PARTICIPANT OR RETIREE] for support payments to all children.
>
> The attached court order, which is currently in effect and binding on the parties, required [PARTICIPANT OR RETIRED PARTICIPANT] to submit a direction to the Plan to give effect to the order. At least thirty (30) working days have expired since the issuance of the court order and to the best of my knowledge and

---

[46] *See infra* Consideration of the Issues of the Case. *See also* <u>Mr. "P" (No. 2)</u>, paras. 69-87.

belief, [PARTICIPANT OR RETIRED PARTICIPANT] has failed to submit such direction.

...."

60. While the Secretary's letter also stated that a model court order was enclosed, the record is not clear as to whether the Fund ever provided such a "model order" to Applicants.[47] (The "model order" is to be distinguished from the "model request" described above, which the parties do not dispute was provided to Dr. "M".) In response to a Request for Information from the Administrative Tribunal, Respondent submitted the model court order provided to individuals who inquire about Section 11.3 of the SRP, stating that the model order has remained unchanged since 1999. The model order provides in relevant part:

"**QUALIFIED DOMESTIC RELATIONS ORDER**

….

… this Order relates to, recognizes, and governs the [MARITAL PROPERTY RIGHTS OF] [ALIMONY and/or CHILD SUPPORT PAYABLE TO] [SPOUSE'S NAME], the Alternate Payee, and [HIS/HER] right to portion of the benefits of [STAFF MEMBER'S NAME], a [PARTICIPANT OR RETIRED PARTICIPANT] in the Staff Retirement Plan ("Plan") of the International Monetary Fund and its Supplemental Retirement Benefits Plan to the extent that implementation requires payment through it; …

….

ORDERED, that in accordance with Section 11.3 of the Plan, the [PARTICIPANT OR RETIRED PARTICIPANT], as soon as may reasonably be done following the issuance of this Order, shall irrevocably direct in writing to the Secretary of the Administration Committee of the Plan that, if as and when they become payable, a portion of the [PARTICIPANT'S OR RETIRED PARTICIPANT'S] benefits, [including applicable costs of living supplements], shall be paid to the Alternate Payee from

[47] The Fund maintains that the model order is provided to all interested parties. However, Dr. "M" maintains that she "cannot remember having ever received or even seen [the Fund's model order]," despite substantial similarities between this order and the proposed order (described above) filed by Dr. "M" with the D.C. Superior Court on June 28, 2002. Dr. "M" earlier had indicated to the Tribunal that she could not "exclude with absolute certainty that [she] did not receive any ... 'model order' at any time in any manner." The Fund initially asserted in its pleadings before the Tribunal that the model order was provided to Applicants as referenced in the Secretary's letter, but later indicated that its file of the Secretary's correspondence to Dr. "M" does not contain a copy of the model order, and therefore Respondent is unable to confirm whether it was in fact provided to Dr. "M".

> the Plan and [from the Supplemental Retirement Benefits Plan, to the extent that implementation requires payment through it,] in an amount equal to [DESCRIBE AMOUNT AND TYPE OF BENEFIT (specific percentage or specific amount; see Rules 3, 4, 5, 7, 8 and 9)]; [AND REFER TO THE PLAN & SUPPLEMENTAL RETIREMENT BENEFITS PLAN]; …
>
> …."

61. On March 20, 2002, two days following the Secretary's correspondence with her, Dr. "M" resubmitted her request of January 31, 2002, this time using the model request and noting that the request was a "confirmation and repetition" of her September 15, 1999 request to give effect to the German Order of February 23, 1995. Additionally, as evidenced by an email trail between the Secretary and Dr. "M", it appears that on May 3, 2002, Dr. "M" forwarded to the Secretary an order of the D.C. Superior Court, which was likely the order of April 30, 2002, ordering that the total amount of child support owed pursuant to the German Orders of 1991, 1994, and 1995 (calculated at U.S. $71,905.81) be paid by Mr. "N" and disbursed "as [Dr. "M"] shall direct." It is not clear from the record whether the Secretary's further email responses to Dr. "M" in 2002 related to the D.C. order or to the German orders on which it was based (and upon which Dr. "M" had based her March 20, 2002 request to the Administration Committee). The rationale for the Fund's decision, however, would appear to be equally applicable to either the D.C. order or the German orders on which that D.C. order was predicated.

62. On May 21, 2002, the Secretary of the Administration Committee informed Dr. "M" that the "order you submitted" had been reviewed by the Fund's Legal Department and did not meet the requirements of SRP Section 11.3 for two primary reasons. First, as Ms. "M" had attained the age of eighteen by the time of the 2002 request, the order was for "past due amounts" rather than "prospective" payments. Second, the order did not meet the requirement for a "court order affecting pension payments, [as] it does not order the pensioner to direct the SRP to make payments to you on behalf of your child."

63. Dr. "M" responded to the Secretary on the following day, maintaining that Mr. "N" was "intentionally evading/delaying service of a new complaint/court order which would stipulate child support … 'prospectively.'" She also inquired if judgments for past-due amounts may be given effect under Section 11.3 when "the delay to enforce the respective court order has been intentionally or negligently caused by a staff member, a retiree or the administration of the IMF?"

64. The next day, May 23, 2002, the Secretary reiterated that, even if everything else were in order, the Plan would not make payments beyond the date specified in the order, and that, to his knowledge, no pension plan provides for the payment of past debts; therefore, proper recourse would be in the courts against Mr. "N"'s other assets. Moreover, the Secretary stated, referencing Section 11.3 and the Rules thereunder, that "[t]he order should specify that the participant is required to direct the Plan to make the support payments out of his future benefits."

65. Dr. "M" replied to the Administration Committee's Secretary on the following day, asserting, in respect of the "prospective payments" requirement of Rule 9 of the Rules of the Administration Committee under Section 11.3, that her first request had been made "through letter of the Embassy of the Federal Republic of Germany of June 8, 1998," and was "repeated by letter of September 15, 1999" and subsequently "renewed by letter of January 31, 2002." Dr. "M" added that she had "serious doubts" regarding the validity of Rule 9 in light of Section 11.3, international law, and German constitutional law. Dr. "M" further questioned:

> "I cannot believe that it is possible that court orders have to 'specify that the participant is required to direct the Plan to make the support payments out of his future benefits': The rule you quoted (11.3) says only that the 'participant or retired participant may … direct in writing' and not the court order: The court order is only 'evidencing' the legal obligation to make child support payments and no more!
>
> If the two of us (including your legal department) do not agree, what are the legal remedies for [Ms. "M"]? Is the Administrative Court of the IMF available for us? To whom are you reporting?"

66. In what appears to have been the final response by the Fund to Dr. "M"'s 2002 request, by email of June 14, 2002, the Secretary of the Administration Committee, "[a]fter further research and consultation with the Fund's Legal Department," replied:

> " ....
>
> You will recall that the amendments to Section 11.3 of the Staff Retirement Plan that allow[] for payment of child support for children born out of wedlock when specified conditions are met did not take effect until December 27, 2001. The amendments were considered and adopted in light of the applicable Rules of the Administration Committee that expressly provide that 'payments pursuant to a direction or accepted request shall be prospective only....' Before the effective date of the amendment, requests for payments for children born out of wedlock had no basis under the Plan and the possibility of payments for such support, if all other conditions were met, would apply only to support from the effective date of the enabling amendment forward.
>
> You have been provided with copies of the provisions of the Plan, applicable rules and standard forms, but you have never submitted a valid request that complies with the requirements and conditions of the Plan and Rules.
>
> According to the court order you submitted, child support was due from Mr. ["N"] until your daughter reached eighteen years of age.

> Since she is over eighteen years of age, there is no continuing obligation to pay child support for her and unpaid amounts for child support due in the past are debts and no longer prospective obligations to provide child support. Under Section 11.1, the Plan is prohibited from making payments to discharge the debts of a participant...."

67. The record evidences no further action on Applicants' 2002 request.

Applicants' 2003 Request to the Administration Committee

68. By letter of February 6, 2003 to its Secretary, Dr. "M" initiated a third request to the Administration Committee, based on the 2003 German Order, as follows:

> "I refer to my applications to the IMF of September 15, 1999 and of March 20, 2002 and enclose a new court order of the Local Court of Frankfurt/Germany against [Mr. "N"] for child support in the amount of €227,03 per month. Please honor this decision by deducting the amount from [Mr. "N"]'s pension."

69. Applicants' 2003 request initially was sent by the Secretary for review by the Fund's Legal Department, which advised that it contained the necessary elements to start the process of consideration under Section 11.3. According to the summary of events later provided in the minutes of the Administration Committee:

> "The order did not specify that the amounts should be paid out of [Mr. "N"'s] pension, nor did it impose an obligation on the pensioner to direct the payment out of his pension. Nevertheless, in the context of the history of this case, the Legal Department had advised [the Committee] that although the court order did not comply with the form of the model QDROs, it contained the necessary elements to initiate the Section 11.3 review."[48]

Accordingly, pursuant to Rule 1(b)[49] of the Administration Committee's Rules under Section 11.3, on February 26, 2003, the Administration Committee transmitted Dr. "M"'s request to Mr. "N" for his comments.

---

[48] This view of the Legal Department was communicated in essentially the same terms by the Secretary's Memoranda to the Committee of May 30, 2003 (concerning the initial request) and January 27, 2004 (concerning the request for review), as well as in the minutes of the Administrative Committee's meeting on Applicants' Request for Review.

[49] Rule 1(b) of the Administration Committee Rules under Section 11.3 provides in pertinent part:

> "(b) in the event that a participant or retired participant fails to submit a direction within thirty (30) working days of the issuance of a relevant court order or decree, the Administration Committee may accept a request made by the participant's or retired participant's spouse or former spouse to give

(continued)

70. On April 10, 2003, Mr. “N” responded to the Committee with a lengthy statement of his objections to Applicants’ request to give effect to the 2003 German Order. In particular, Mr. “N” asserted that the Order was preliminary and not a final and binding order as required by the Administration Committee Rules under Section 11.3, and that the matter was the subject of active litigation in three countries. Mr. “N” further contended: he had no notice of the hearing that led to the issuance of the order; he had not been served in respect of any German proceedings; the Frankfurt Court did not have jurisdiction over him; Dr. “M” did not have standing to seek enforcement of the German Orders of 1991, 1994, and 1995;[50] and the 2003 German Order had no legal effect in Finland where he is domiciled because Applicants had not obtained recognition and enforcement of the order in Finland. Mr. “N” also asserted that he is not the father of Ms. “M”, that he was disputing paternity in various ongoing legal proceedings, that under Finnish law he has no child support obligation with respect to Ms. “M”, and that the order is not enforceable against him in the absence of a determination of paternity by a competent Finnish court. Finally, Mr. “N” further asserted that the order did not comply with the requirements of Section 11.3 because it did not on its face impose any obligation on him “to execute and deliver papers to the Committee.”[51]

71. Although neither the Rules of Procedure of the Administration Committee nor the Committee’s Rules under Section 11.3 provide for a subsequent exchange of views, on May 19, 2003, Dr. “M” responded by email to Mr. “N”’s objections.[52] She stated that Mr. “N” had never revoked his acknowledgement of paternity and would not be able to do so. She further maintained that the German Orders of 1991, 1994, and 1995 had been recognized in Finland by the Helsinki Court of Second Instance, and that the “additional [German] order of December 6, 2002/January 20, 2003 ... is the prolongation of the previous orders in light of the fact that [Ms. “M”] is continuing school....” She also indicated that the German court rejected Mr. “N”’s attempts to reopen the case in Germany. She further asserted:

> effect to the relevant court order or decree and treat the request in the same manner as if it were a direction from a participant or retired participant. The Secretary of the Administration Committee will give a participant or retired participant written notice of such a request from a spouse or former spouse. The participant or retired participant will be allowed, as the Administration Committee shall specify, at least thirty (30) working days either to consent or to object to the request, giving a full written explanation for any objection. …”

[50] Mr. “N” also contended that Dr. “M” had no capacity to file a request on behalf of Ms. “M” because Ms. “M” had reached the age of majority. In response, Dr. “M” submitted a power of attorney authorizing her to “conduct a lawsuit” and carry out other actions in connection with judicial and extra-judicial proceedings.

[51] Mr. “N” also submitted a number of documents, including excerpts from the record of the Helsinki Court of Appeals, an excerpt from a document issued by the Turku District Court setting a deadline for Mr. “N” to clarify a claim he apparently attempted to file against Applicants on October 13, 2002, the Paternity Act of Finland, and a certificate from the Lapland Local Register Office, stating that the Finnish Population Information System contained no record of Mr. “N”’s being the father of Ms. “M”.

[52] The email appears to have been addressed to a staff member of the Fund’s Human Resources Department and copied to the Secretary of the Administration Committee.

> "This order, even though being 'provisional,' is in itself 'final' as no legal remedies have been filed by [Mr. "N"]. The provisional order is necessary because the 'final' legal procedure – especially, if somebody like [Mr. "N"] is the father – may drag on for many years and the child has to be raised and/or continue her professional education in the meanwhile."

72. On May 30, 2003, the Secretary of the Administration Committee transmitted a Memorandum to the Committee, summarizing the submissions and contentions of the parties and recommending that the request to give effect to the 2003 Order be denied:

> "… we understand through informal consultation with a German lawyer, that the Order is in the nature of a preliminary injunction and does not grant enforceable title under German law.…
>
> ….
>
> There are valid questions about the finality and validity of the German Order. Based on the information supplied by the parties, there are at least two points where the criteria for a valid order have not been met. First, a question exists as to the finality of the German Order. Second, two courts are involved and claim jurisdiction. It is not clear that the Helsinki court has recognized the German Order. Consequently, the potential for a conflict in the findings of the courts exists.
>
> Under the circumstances, it is recommended that the Committee reject [Dr. "M"]'s request because the German Order is not final and recognition of the German Order by the Helsinki Court of First Instance has not been documented."

SRP Administration Committee's Decision of June 16, 2003

73. On June 16, 2003, the Committee notified Dr. "M" (with copy to Mr. "N") that it had rejected Dr. "M"'s request to give effect to the 2003 German Order:

> "The Committee has concluded that, based on the information supplied by the parties, the finality of the German Order has not been established to the Committee's satisfaction. Moreover, it appears that there are unresolved jurisdictional questions with respect to the German and Helsinki courts; and recognition of the German Order by the Helsinki Court of First Instance has not been documented.
>
> For the above reasons, the Committee has rejected your request and the Committee will take no action on the Order until and unless the parties have resolved these points.

> In addition, please note that neither the Fund nor the Committee has the authority to negotiate a lump sum settlement with Mr. ["N"] on behalf of your daughter."

The Channels of Administrative Review

74. The case of Ms. "M" and Dr. "M" is the second to be considered by the Administrative Tribunal involving a dispute arising under Section 11.3 of the Staff Retirement Plan. As such, it is subject to the channel of administrative review, established in 1999 by the Administration Committee of the Staff Retirement Plan, for contesting decisions of that body.[53] Rule VIII[54] of the Rules of Procedure of the SRP Administration

---

[53] *See, generally,* Mr. "P" (No. 2), paras. 31-37. Decisions arising under the SRP that are within the competence of the Administration Committee are expressly excluded from the jurisdiction of the Fund's Grievance Committee. *See* GAO No. 31, Section 4.03 (iii). Under Section 7.2 (b) of the SRP, the Administration Committee is charged *inter alia* with:

> "7.2 … the exclusive right to interpret the Plan; to determine whether any person is or was a staff member, participant, or retired participant, to direct the employer to make disbursements from the Retirement Fund in payment of benefits under the Plan, to determine whether any person has a right to any benefit hereunder and, if so, the amount thereof, and to determine any question arising hereunder in connection with the administration of the Plan or its application to any person claiming any rights or benefits hereunder, and its decision or action in respect thereof shall be conclusive and binding upon all persons interested, subject to appeal in accordance with the procedures of the Administrative Tribunal."

Two other applications arising through the channel of review provided by the SRP Administration Committee challenged the denial of requests under SRP Section 4.3 (Disability Retirement). *See* Ms. "J", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-1 (September 30, 2003) and Ms. "K", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-2 (September 30, 2003).

[54] Rule VIII of the Rules of Procedure of the Administration Committee of the SRP provides:

> "1. A Requestor, or any other person claiming any rights or benefits under the Plan, who wishes to dispute a Decision may submit an Application for Review of a Decision (hereinafter 'Application') to the Secretary within ninety (90) days after the Requestor receives a copy of the Decision. ….
>
> 2. The Committee may review a Decision, either in response to a timely Application or at is own initiative. The Committee may also be required to review a decision at the request of the Pension Committee in accordance with the jurisdiction of that Committee as set out in Section 7.1(c) of the Plan. The Committee shall not, however, review a Decision so as to affect adversely any action taken or recommended therein, except in cases of:
>
> (a) misrepresentation of a material fact;
> (b) the availability of material evidence not previously before the Committee; or

(continued)

Committee, which were notified to staff of the Fund by Staff Bulletin No. 99/17 (June 23, 1999), provides that a Requestor, or any person claiming any rights or benefits under the Plan who wishes to dispute a Decision, may file with the Administration Committee an application for review of a Decision of the Committee within ninety days of its receipt. Pursuant to Rule X,[55] the channel of review for a Request submitted to the SRP Administration Committee has been exhausted for the purpose of filing an application with the IMF Administrative Tribunal when the Committee has notified the applicant of the results of its review of that Decision.[56]

> (c) a disputed claim between two or more persons claiming any rights or benefits under the Plan.
>
> 3. If the Committee undertakes to review a Decision, or if it declines to review a Decision, all parties to the Decision shall be notified in writing.
>
> 4. Any review of a Decision shall be conducted in accordance with Rules IV, VI and VII. The Committee shall notify the Applicant of the results of its review within three months of the receipt of the Application by the Secretary."

[55] Rule X of the Rules of Procedure of the Administration Committee of the SRP provides in pertinent part:

> "Exhaustion of Administrative Review
>
> 1. The channel of administrative review for a Request submitted to the Committee shall be deemed to have been exhausted for the purpose of filing an application with the Administrative Tribunal of the Fund when, in compliance with Article V of the Statute of the Administrative Tribunal (Statute):
>
> (a) three months have elapsed since an Application for review of a Decision was submitted to the Committee in accordance with Rule VIII, paragraph 1 and the results of the review have not been notified to the Applicant; or
>
> (b) the Committee has notified the Applicant of the results of any review of a Decision, or its decision to decline to review a Decision; or
>
> (c) the conditions set out in Article V, Section 3(c) of the Statute have been met."

[56] The Tribunal has distinguished its role in respect of cases arising through the SRP Administration Committee from those arising through the Grievance Committee:

> "... unlike the Grievance Committee, the Administration Committee of the Staff Retirement Plan plays a dual role within the Fund's dispute resolution system. It is responsible for taking the administrative act that may be contested in the Administrative Tribunal and it also supplies what is deemed a channel of review for purposes of the exhaustion of remedies requirement of Article V of the Tribunal's Statute when, pursuant to Article VIII of its Rules of Procedure, it reconsiders its own decision."

(continued)

75. The Tribunal notes that Applicants' 1999 and 2002 requests were both dismissed at a threshold stage, in 1999 by the Legal Representative and in 2002 by the Secretary of the Administration Committee. These requests, therefore, were not considered by the Administration Committee as a whole pursuant to the Rules and no channels of review were pursued thereafter; the admissibility of these decisions is considered below. Only the Committee's decision denying Applicants' 2003 request proceeded through the channel of administrative review constituted by the SRP Administration Committee.

Applicants' Request for Review by the SRP Administration Committee of its 2003 Decision

76. On July 28, 2003, pursuant to Rule VIII of the Rules of Procedure of the Administration Committee, Dr. "M" requested that the Committee review its Decision of June 16, 2003, and submitted the following additional documentation: the May 25, 2001 order of the Supreme Court of Finland, stating that the 1994 German Order was "in force in Finland without separate confirmation and [is] to be enforced here;" the "protocol of unsuccessful service of the new court decisions ... referring to child support for [Ms. "M"] from the age of 18" at Mr. "N"'s Washington, D.C. address; and a May 22, 2002 order of the Darmstadt Regional Court, denying Mr. "N"'s appeal of an earlier judgment of the Darmstadt Local Court and ordering Mr. "N" to pay costs. In addition, Dr. "M" submitted four orders of the Frankfurt and Darmstadt Courts directing Mr. "N" to pay court costs and attorney fees,[57] and she asked the Committee to deduct these awards from Mr. "N"'s pension benefits as "child support owed for special purposes." None of the documents provided by Dr. "M" referred specifically to the 2003 German Order.

77. The record reflects that the Administration Committee notified Mr. "N" of Dr. "M"'s Request for Review and provided him with a copy of the newly submitted documentation.[58] Mr. "N" responded to Dr. "M"'s submissions with a series of memoranda in September and October 2003, along with voluminous documentation. Mr. "N" contended that, as Ms. "M" had reached majority, she could no longer make a request under Section 11.3. He also reiterated his aforementioned objections to the 2003 German Order. Mr. "N" submitted numerous documents, including: pleadings filed by Mr. "N" in the Turku Local Court, Finland, in March and October of 2002, contesting the execution of the 1994 German Order,

---

Ms. "J", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 98. The Tribunal accordingly has observed that "... while a decision of the Grievance Committee will not be subject to direct review by the Administrative Tribunal, a decision of the SRP Administration Committee necessarily will be." Ms. "J", para. 98.

[57] Based on the case numbers, one of these orders relates to the German Order of 1991, and another relates to the German Orders of 1994 and 1995.

[58] The January 27, 2004 Memorandum of the Secretary of the Administrative Committee stated that "[p]ursuant to the Committee's rules, and following a review of the documents [submitted by Dr. "M"] by the Legal Department, the Secretary notified the retired participant, [Mr. "N"], of the request for reconsideration, provided him with a copy of [Dr. "M"'s] documentation and asked that he respond within the time period prescribed by the rules."

along with related documents from the Turku Execution Office;[59] court documents and D.C. court orders related to Mr. "N"'s appeals of the writ of attachment; an excerpt from the September 30, 2003 order of the D.C. Superior Court denying Applicants' motion for a QDRO;[60] a copy of Finnish law on Child Maintenance; and reports of diverse German child support cases.

SRP Administration Committee's Decision on Review

78. In a Memorandum to the Administration Committee dated January 27, 2004, the Secretary of the Committee summarized the arguments and submissions of the parties on the Request for Review. He noted that Dr. "M" did not provide evidence of Finnish courts' having recognized the 2003 German Order, and that, according to Mr. "N", this question had not yet been settled. The Secretary further noted that the "protocol of unsuccessful service" submitted by Dr. "M" did not identify precisely what document was being served. He also observed that the orders submitted by Dr. "M" awarding costs and attorney fees ordered payments of past-due amounts that could not be given effect under Section 11.3. With respect to Mr. "N"'s submissions, he stated that, while many appeared irrelevant, they did show the existence of an ongoing dispute between the parties on the child support question.

79. On February 20, 2004, the Administration Committee met to address Dr. "M"'s Request for Review. According to the minutes of that meeting, the Legal Representative reiterated the points made in the Secretary's Memorandum of January 27, 2004. The Legal Representative further distinguished the request of Ms. "M" and Dr. "M" from the case of Mr. "P" (No. 2),[61] suggesting that in the earlier case there had been a clear order for the Plan to pay benefits and that therefore escrowing a portion of the pension payments was appropriate, while in the present case there was no clear order directing the Plan to pay child support. In addition, the Legal Representative noted that in Mr. "P" (No. 2) there was a former spouse having clear standing and that the Tribunal determined that the two orders were not inconsistent, as only one dealt with the division of property. According to its minutes, the Committee agreed that a *bona fide* dispute still existed and that the parties had not adequately addressed its concerns.

80. Accordingly, by letter of February 25, 2004, the Secretary of the Administration Committee notified Dr. "M" (with copy to Mr. "N") that, upon review, the Committee sustained its decision to deny Applicants' request to give effect to the 2003 German Order:

> "In its reconsideration of the matter, the Committee examined the Order and all information submitted in light of each of these criteria. The Committee noted in particular the decision from Finland that you provided, which orders enforcement against

[59] Mr. "N" included a document in Finnish, which he stated represents "a certification by the Turku Court that attests to the fact that the case is under examination by the Court (*lis pendens*)."

[60] The only substantive part of the order contained in this excerpt is the "Conclusion" section of the order.

[61] Although the minutes do not refer to this case by its name, it is clear that this was the case in question.

> Mr. [“N”] of certain German court orders but not the Order to which you have requested the Committee give effect under Section 11.3, which postdates the Finnish decision. The Committee also noted that the Order does not require Mr. [“N”] to direct the Committee to make payments out of his pension benefits, nor does it make any mention of payment from his pension benefits, and thus, the Committee has no basis for determining that the court intended this Order to override the general rule against alienation of benefits in Section 11.1 of the Plan.
>
> In view of the above, and considering Mr. [“N”]’s continuing objections to your request, the Committee has determined that the additional information submitted by the parties did not establish the finality and binding nature of the Order, and that a *bona fide* dispute remained regarding the efficacy and meaning of the Order.
>
> For the above reasons, the Committee has rejected your request and consistent with the Section 11.3 rules, the Committee will take no action on the Order. You should be aware that the decision of the Committee may be appealed to the Administrative Tribunal of the International Monetary Fund within three months of the date of this letter.”

81. On May 18, 2004, Applicants filed their Application with the Administrative Tribunal.

<u>Summary of Parties’ Principal Contentions</u>

<u>Applicants’ principal contentions</u>

82. The principal arguments presented by Applicants in the Application, Reply, and Applicants’ Additional Statement may be summarized as follows.

1. “Exceptional circumstances” justify waiver of the time limit under Article VI, Section 3 of the Tribunal’s Statute to challenge the 1999 decision of the Legal Representative to the Administration Committee refusing to give effect to the German Orders of 1991, 1994, and 1995.

2. Applicants suffered gross injustice by the denial of their 1999 request, which was based on the “discriminatory” and “scandalous” marital relationship condition, later abolished after intervention by the German Ministry of Justice. Furthermore, Applicants were not informed of the possibility of challenging the decision in the Tribunal.

3. Dr. “M” had standing to bring lawsuits seeking enforcement of the German Orders of 1991, 1994, and 1995 because German authorities, having paid a small portion of the awarded support to Ms. “M”, had transferred their outstanding claim against Mr. “N” to Dr. “M”.

4. With respect to a Qualified Domestic Relations Order ("QDRO"), the Fund "had never informed [Dr. "M"] about a 'QDRO' nor is such a 'QDRO' mentioned in the 'rules' of the IMF which were made known to Applicants." Rather, Dr. "M" attempted to obtain a QDRO from a U.S. court on the advice of an acquaintance.

5. Rule 9 of the Rules of the Administration Committee under SRP Section 11.3, which the Committee concluded precluded it from giving effect to court judgments for past-due obligations and was the basis for the denial of Applicants' 2002 request, unreasonably favors the security of retirement savings over enforcement of child support obligations and rewards "criminal evasion" of child support. Undue hardship for the child and custodial parent results because court judgments are typically "for the collection of past due amounts" and obtaining a final judgment may take years, especially in "international" proceedings and when the defendant evades his obligations. Accordingly, the decision of the Secretary of the Administration Committee denying Applicants' 2002 request cannot be upheld.

6. As to the 2004 decision of the Administration Committee, denying Applicants' request to give effect to the 2003 German Order, the Committee erroneously assumed that a child support order of the home country of the child, to be valid and honored by the IMF, has to be recognized by the home country of the retired participant. This requirement is not in the SRP Rules and would make a timely application to the Committee nearly impossible, since recognition of foreign judgments may take several years. German court decisions need not be recognized in Finland to be valid, and any ongoing litigation in Germany, Finland and the United States should not disqualify Applicants' request.

7. The Supreme Court of Finland has held that the 1994 German Order is "in force in Finland without separate confirmation and [is] to be enforced here." This is also true with respect to the 2003 German Order, because it is "the prolongation of the previous orders" in light of the fact that Ms. "M" is attending school.

8. Mr. "N" is frustrating Dr. "M"'s attempts "to serve him with documents" in Finland and in Washington, D.C., and thus proper service has not been effected. However, notice to Mr. "N" was not required for the proceedings that resulted in the issuance of the 2003 German Order.

9. The 2003 German Order is final, as no legal remedies or appeal have been sought by Mr. "N". This Order is in the nature of an emergency injunction, which will be later replaced and modified "retroactively" by a final judgment. Such orders serve the purpose of securing child support before a final judgment is obtained, which may take many years. In the present case, the final judgment has been delayed due to Mr. "N"'s evasion of Dr. "M"'s attempts to serve him with documents. Accordingly, the Tribunal should order

payments from Mr. "N"'s pension in the amount stated in the 2003 German Order (€227,03 monthly) "or whatever the Local Court of Frankfurt/Main orders in the future ('retroactively' or not)."

10. The Administration Committee erroneously assumed that pursuant to SRP Section 11.3 a child support order must expressly "direct the Committee to make payments out of [the participant's] pension benefits" or otherwise mention pension benefits. Such a requirement cannot be found in the internal rules of the Fund. Furthermore, no court in Germany would issue such an order because such a remedy does not exist in the German law, as "the laws in Germany do not permit a court decision in which the defendant is condemned to pay child support (or any other debt) out of specific assets, trusts, accounts, salaries etc.;" plaintiffs in Germany may not dictate to the court how to formulate its orders; and garnishment of Mr. "N"'s pension "is excluded under German rules of civil procedure due to the immunity of the IMF."

11. The German court correctly assumed jurisdiction over Mr. "N", as his daughter is a resident of Germany.

12. Contrary to Mr. "N"'s assertion, he never revoked his acknowledgement of paternity and such a revocation would not be possible. This issue, however, "could not be examined by the IMF," since it could only be decided by the national courts.

13. The Fund's contention that Applicants can pursue Mr. "N"'s other assets has no factual basis, since Mr. "N" is almost bankrupt, his Washington, D.C. house could not be seized, his "apartment shares" seized by Applicants have already been pledged to the NORDEA-Bank of Finland, and since Mr. "N" "made sure that there were no more bank accounts to attach."

14. As evidenced by the Fund's Answer, the Fund has committed "grave legal and factual errors" and developed a bias in favor of a former staff member.

15. Applicants "expressly reserve their claim for damages for the case that the IMF-Administration has, intentionally or negligently, prevented Applicants from timely exercising their rights under the Rules of Procedure or the Statute of this Administrative Court or under any other internal rules of the IMF including the IMF-Treaty or from enforcing the child support claim against [Mr. "N"]."

16. Contrary to the Fund's suggestion, Applicants never deliberately withheld any information from the IMF; rather, the Fund has withheld information that could have been useful in Dr. "M"'s efforts to obtain child support.

17. Applicants seek as relief:

"… all of [Ms. "M"'s] child support (past due and due in future) from her father who is able to pay these modest amounts from his pension without any difficulty:

a) payment from [Mr. "N"]'s pension of €227,03 per month or whatever the Local Court of Frankfurt/Main orders in the future ('retroactively' or not),

b) payment from [Mr. "N"]'s pension of U.S. $71,905.81 (child support), U.S. $30,137.63 (U.S.-attorney fees) and U.S. $27,904.81 (interest) – in monthly installments of $1,500."

Respondent's principal contentions

83. The principal arguments presented by Respondent in its Answer, Rejoinder, and Respondent's Additional Statement may be summarized as follows.

1. Applicants' challenge to the Fund's 1999 decision, refusing to give effect to the German Orders of 1991, 1994, and 1995, is time-barred because it was not initiated within three months of the Administration Committee's decision, as prescribed by Article VI of the Tribunal's Statute, but rather "almost 5 years later."

2. Applicants' assertions that they suffered gross injustice by the 1999 decision and that they were not informed of the possibility of review by the Tribunal do not establish "exceptional circumstances" to justify waiver of the statute of limitations under Article VI, Section 3 of the Statute.

3. If the Tribunal were to waive the time limit and consider Applicants' challenge to the Administration Committee's decision, the Tribunal also would have to review the "regulatory decision" on which that individual decision was based, i.e. the "marital relationship" requirement that was part of Section 11.3 at the time of the decision. This provision was not illegal in 1999, but rather constituted a reasonable exercise of the Executive Board's discretion.

4. Even if the Tribunal were to reach the merits, Applicants' 1999 request would have been denied because it suffered from the same defects of efficacy, finality, and meaning as the 2003 request. For example, the 1991, 1994, and 1995 German Orders do not order payment from Mr. "N"'s pension, nor could they have done so because he was not retired at the time of those orders. Thus, those orders are simply judgment debts that cannot be enforced against his pension, pursuant to Section 11.1 of the Plan.

5. The policy of allowing only prospective payments under Section 11.3 reflects the Fund's reasonable judgment that the Plan's primary purpose of providing secure pensions to retired staff "outweighs the policy of giving

effect to alimony and support awards, when such awards are past-due rather than prospective, and when there are other means for enforcement through national courts, including attachment of the delinquent's other assets and even incarceration." The public interest in the collection of debts is not as strong as the interest in enforcement of awards for ongoing support. The Plan's strong anti-alienation rule is consistent with the practices of the World Bank, the United Nations Joint Staff Pension Fund, most U.S. public sector pension plans, and every U.S. private sector pension plan that is qualified under the U.S. Internal Revenue Code.

6. As to Applicants' 2003 request, the Committee properly applied the Rules under Section 11.3 in determining that submissions by Dr. "M" and Mr. "N" gave rise to a *bona fide* dispute as to the efficacy, finality, or meaning of the 2003 German Order that was the basis of Dr. "M"'s request. Applicants failed to provide a satisfactory response to Mr. "N"'s objections to the efficacy of this order, which included that (1) the German court lacked jurisdiction over him; (2) he had no notice of the hearing which led to the issuance of the order; (3) Dr. "M"' lacked standing to seek child support; and (4) the order had no legal effect in Finland where he is domiciled. Similarly, Applicants did not rebut Mr. "N"'s contentions that the order was preliminary and not final and binding, and that the matter in question is the subject of ongoing litigation in three countries. Finally, Applicants did not adequately answer Mr. "N"'s assertion that the order failed to comply with the requirements of Section 11.3 because it did not direct that payments be made from his pension.

7. Dr. "M" had the burden of proof on these issues and failed to satisfy it. Although various facts undermined Mr. "N"'s credibility, the Committee "did not accept his contentions wholesale," but gave Dr. "M" a full opportunity to respond.

8. The Administration Committee, which is comprised of laypersons, does not have the expertise to decide the contested issues of German and Finnish family law and civil procedure, international conflicts of laws, and recognition of foreign judgments; nor should it engage in a quasi-judicial application of law to the facts. Furthermore, to do so would be outside the scope of its authority, in light of the expressed intent of the Executive Board. Even if the Committee were so authorized, it would be unfair for it to look behind Dr. "M"'s submissions with the purpose of refuting Mr. "N"'s assertions about German and Finnish law in the absence of a substantive response by Dr. "M".

9. Applicants have not provided the Administration Committee with any court order that explicitly orders Mr. "N" to direct the Committee to pay a portion of his Fund pension benefits to Applicants. Such an order is an essential requirement under Section 11.3, and Dr. "M"'s failure to satisfy it was, in and of itself, sufficient to justify the denial of all three requests.

"Because there is no court order against [Mr. "N"'s] pension benefits, there is nothing to which the Administration Committee can 'give effect' under Section 11.3(c) of the Plan."

10. More specifically, Section 11.3 should be interpreted to require "a court order that obliges the participant to direct the Administration Committee to give effect to the order requiring payments from his pension benefits, thereby leaving no doubt that the court intended to effect a transfer of pension benefits." Such an order is "akin" to a Qualified Domestic Relations Order under U.S. law; in particular, it must clearly indicate the court's intention to garnish or transfer pension benefits. "Although [Dr. "M"] was provided with Section 11.3 and the Rules, as well as a copy of the model order and the form of Request to give effect to the order, which clearly set out the elements that the order should contain, including the court's direction that payments be made out of pension benefits, she did not provide the Committee with an Order that conformed with these requirements." It was the intent of the Executive Board that the Administration Committee, in determining whether court orders satisfy the requirements of Section 11.3, not "look behind the form of the court order" and, if there is any doubt, the Administration Committee "… should reject the request and maintain the anti-alienation rule."

11. Furthermore, in the course of the litigation in three countries, no court has seen fit to issue a final order against Mr. "N"'s pension, and the Administration Committee should not overturn those judgments. Moreover, "one U.S. court specifically decided <u>not</u> to award her payment from [Mr. "N"'s] pension."[62]

12. Contrary to Dr. "M"'s assertion, there is no reason why the Fund's immunity would prevent a German court from ordering Mr. "N" to direct that a portion of his Fund pension be paid to Applicants. "The Fund considers that its immunity from garnishment suits is completely irrelevant to the question of whether a QDRO should be issued against [Mr. "N"'s] pension." The September 30, 2003 decision of the D.C. Superior Court, which denied Dr. "M"'s motion for a QDRO "was correct, insofar as [it] concluded that the Fund, including [the SRP], is immune from garnishment suits for enforcement of judgment debts and that Section 11.3 allows the Plan to voluntarily give effect solely to *prospective* court orders for alimony and child support. Hence, it was not

[62] As noted above, following the submission of Respondent's pleadings, on June 21, 2006, the D.C. Superior Court issued a "Qualified Domestic Relations Order Directed to [Mr. "N"]," recognizing Dr. "M"'s "right to a portion of the benefits of [Mr. "N"] ... in the Staff Retirement Plan ... to the extent that implementation requires payment through it, in a amount equal to $71,905.81 in U.S. Dollars ...." *See supra* The Factual Background of the Case; U.S. litigation seeking a Qualified Domestic Relations Order ("QDRO").

within the court's power to grant [Dr. "M"]'s request for a QDRO to enforce past judgment debts." (Emphasis in original.)

13. To the extent that Applicants are implying that German law prevents German courts from ordering execution of their judgment against Mr. "N"'s Fund pension, such a limitation would only confirm the correctness of the Committee's denial of their request.

14. Unlike in the case of Mr. "P" (No. 2), if the Tribunal affirms the Administration Committee's decision, Dr. "M" would not be left indefinitely without a remedy, as Applicants have recourse in national courts against Mr. "N"'s other assets. Dr. "M"'s assertions that execution against such other assets is not possible is contrary to the facts and the law. In particular, Dr. "M" could move against the Washington, D.C. bank accounts into which Mr. "N"'s pension is paid and against the Washington, D.C. house that remains in the name of Mr. "N".

15. At the time that the Administration Committee was considering the three decisions in question, Dr. "M" and Mr. "N" failed to provide the Committee with a number of highly relevant documents and other information.

Consideration of the Issues of the Case

84. This case raises for the Administrative Tribunal the following principal issues: (1) are Applicants' challenges to the denials of their 1999 and 2002 requests admissible for review by the Tribunal; (2) was the "marital relationship" requirement of SRP Section 11.3, later revised, dispositive of Applicants' requests to give effect to court-ordered support for Ms. "M" relating to the period pre-dating the revision; (3) in denying Applicants' requests to give effect to each of the court orders at issue, did the Fund err in interpreting SRP Section 11.3 to require that the court order either specify that support is to be paid from the retiree's Fund pension benefits or direct the retiree to submit a direction to the Administration Committee to that effect; (4) is the Fund's interpretation of the requirements of Rule 9 of the Administration Committee Rules under Section 11.3, to preclude giving effect to court orders for support payments that were due prior to the dates of Applicants' requests, a necessary one; (5) had the Administration Committee reviewed Applicants' 1999 and 2002 requests pursuant to its Rules under Section 11.3, should it properly have denied them on the ground that a *bona fide* dispute existed as to the efficacy, finality, or meaning of the German Orders of 1991, 1994, and 1995, and (6) as to the Applicants' 2003 request, did the Administration Committee err in concluding that a *bona fide* dispute existed as to the efficacy, finality, or meaning of the 2003 German Order, and that therefore it did not satisfy the conditions prescribed by the Rules of the Administration Committee under Section 11.3 for giving effect to a support order?

Admissibility of Applicants' Challenges to the 1999 and 2002 Decisions

85. As detailed above, Applicants made three requests to the Administration Committee of the Staff Retirement Plan, in 1999, 2002, and 2003. It is not disputed that with respect to the 2003 request (relating to post-majority support), Applicants exhausted the applicable channels of administrative review and filed a timely Application with this Tribunal.[63] The Tribunal must decide whether Applicants' challenges to the denials of their 1999 and 2002 requests (relating to support for Ms. "M" prior to reaching age eighteen) are likewise admissible for review by the Administrative Tribunal.

86. It is recalled that Applicants' 1999 request was rejected by a member of the Fund's Legal Department who served as the Legal Representative to the Administration Committee, on the basis that the request did not meet a threshold requirement, prescribed at that time by Section 11.3, that the court orders arise from a "marital relationship." The Legal Representative's decision was notified simultaneously to the Secretary of the Administration Committee, Dr. "M" and Mr. "N". Dr. "M" responded by letter of October 1, 1999, reiterating her request and questioning the basis for its denial. The Fund apparently offered Dr. "M" no further response.

87. Thereafter, Dr. "M" contacted the offices of the Fund's Executive Directors for Germany and the United States and the former office engaged the Fund's management in a discussion that led to the abolition of the "marital relationship" requirement. The amended SRP Section 11.3 was adopted by the IMF Executive Board on December 27, 2001.

88. On January 31, 2002, approximately one month following the revision of Section 11.3 and before its announcement to the staff of the Fund by Staff Bulletin No. 02/5 (February 26, 2002), Dr. "M" renewed her request to the Administration Committee in light of the change in the terms of the Plan provision. She noted on her Request form of March 20, 2002 that the 2002 request was intended as a "confirmation and repetition" of the 1999 request and that she sought to give effect to the same court orders that she had submitted with her 1999 request.[64] (Additionally, in follow-up email correspondence, Dr. "M" appears to have brought to the attention of the Secretary of the Administration Committee the April 30, 2002 Order of the D.C. Superior Court.)

89. On May 21, 2002, the Secretary of the Administration Committee denied Dr. "M"'s request on the grounds that (1) because Ms. "M" had now reached the age of eighteen (as of January 9, 2002) the court orders at issue were no longer for current or prospective support, and (2) the order was not a "court order affecting pension payments." In the days following the May 21, 2002 decision, Dr. "M" communicated through several email exchanges with the

---

[63] *See supra* The Channels of Administrative Review.

[64] The renewal of Applicants' request in 2002 on the basis of a change in the applicable regulation is readily distinguishable from the circumstances that obtained in Mr. "X", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No.1994-1 (August 31, 1994), in which the Tribunal held that renewal of a challenge to an earlier administrative act, which had taken place outside of the Tribunal's jurisdiction *ratione temporis*, does not confer jurisdiction to review the legality of that act.

Secretary of the Administration Committee that she challenged the substance of that decision. Finally, by email of May 24, 2002, Dr. "M" expressly inquired of the Secretary about the possibility of obtaining judicial review of the decision:

> "If the two of us (including your legal department) do not agree, what are the legal remedies for [Ms. "M"]? Is the Administrative Court of the IMF available to us? To whom are you reporting?"

There followed what appears to have been the final response by the Fund to Dr. "M"'s 2002 request, an email of June 14, 2002, again from the Secretary of the Administration Committee, prepared "after further research and consultation with the Fund's Legal Department," affirming the view that payments pursuant to a direction or accepted request shall be prospective only. In addition, the Secretary asserted that the recent Plan amendment would apply only to support obligations from the amendment's effective date. He offered no information about any further recourse through the Fund.

90. Applicants concede that their challenge to the denial of the 1999 request was not timely filed with the Administrative Tribunal but maintain that "exceptional circumstances" excuse the delay.

91. With respect to the denial of the 2002 request, the question of timeliness has not been expressly raised or briefed by the parties. Respondent has asserted that only the Fund's decisions resulting from Applicants' 1999 and 2003 requests have been challenged in the Application. For the following reasons, the Tribunal rejects this contention. The Application, while initially identifying the 1999 and 2003 decisions as those challenged, later in reference to the 2002 decision states that "this ruling cannot be upheld." Moreover, while Respondent in its Answer asserts "Applicants do not challenge the denial of their second [2002] request," in its March 2006 aide-mémoire to the D.C. Superior Court, the Fund states that "[o]ne element of [Applicants'] complaint before the IMFAT is that the SRP had declined in 2002 to give effect under Section 11.3 to certain German court orders against Mr. ["N"] for child support payable until the minor child reached age 18." The Tribunal concludes that it is clear that Applicants have placed before the Tribunal—and the Fund has responded to—a challenge to the 2002 decision, in particular with regard to the interpretation of Rule 9 (the "prospective payments" rule) of the Rules of the Administration Committee under Section 11.3.

92. As noted, with respect to the denial of the 2003 request, it is not disputed that Applicants exhausted the channels of review provided by the SRP Administration Committee and filed their Application with the Tribunal within three months of the Administration Committee's February 25, 2004 Decision on Review. The Fund contends that the only decision properly before the Administrative Tribunal is the denial of Applicants' 2003 request, i.e. the request to give effect to the January 20, 2003 Order of the Frankfurt Court for maintenance of Ms. "M" following her eighteenth birthday.

93. For the reasons set out below, the Tribunal concludes that Applicants' challenges to all three of the contested decisions, denying their requests of 1999, 2002, and 2003, are admissible for review by the Tribunal.

Exhaustion of Channels of Administrative Review

94. An initial question of admissibility arises as to whether Applicants have met, in respect of the Fund's decisions of 1999 and 2002, the requirement of Article V, Section 1 of the Tribunal's Statute, which provides: "When the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review."

95. The Tribunal observes that Respondent has framed the admissibility issue solely in terms of the question of the waiver of the Tribunal's statute of limitations pursuant to Article VI of the Statute (see below) and has not separately contested the admissibility of Applicants' challenges to the 1999 and 2002 decisions on the ground of any alleged failure of Applicants to meet Article V's exhaustion of remedies requirement. The Tribunal concludes that there is room to question whether any administrative review was offered by the Administration Committee or exhausted by Applicants in respect of their 1999 and 2002 requests. Nonetheless, in the view of the Tribunal, responsibility for that course of events should not be borne by Applicants. As considered below, the summary course of the denials of Applicants' initial requests has significance also for the question of whether "exceptional circumstances" have been established to overcome the time bar of Article VI.

96. In 1999 and 2002, the Legal Representative and the Secretary of the Administration Committee, respectively, made threshold assessments that Applicants' requests did not meet the minimum criteria for giving effect to support orders under SRP Section 11.3, and, accordingly, the Administration Committee itself did not proceed to consider the requests in accordance with the procedures set out in its Rules.[65] Consequently, the Committee did not

[65] Thus, with respect to Applicants' 1999 and 2002 requests, the Fund did not follow the procedure prescribed by Rule 1(b), as the Administration Committee itself did not consider the request of the Applicants nor transmit it to Mr. "N" for his views. Rule 1(b) of the Rules of the Administration Committee under Section 11.3 provides:

> "(b) In the event that a participant or retired participant fails to submit a direction within thirty (30) working days of the issuance of a relevant court order or decree, the Administration Committee may accept a request made by the participant's or retired participant's spouse or former spouse to give effect to the relevant court order or decree and treat the request in the same manner as if it were a direction from the participant or retired participant. The Secretary of the Administration Committee will give a participant or retired participant written notice of such a request from a spouse or former spouse. The participant or retired participant will be allowed, as the Administration Committee shall specify, at least thirty (30) working days either to consent or to object to the request, giving a full written explanation for any objection. The Administration Committee will make its decision on whether or not it will accept the request and treat it in the same manner as if it were a direction within forty-five (45) working days after the participant or retired participant responds or the time for a response expires. If the Administration Committee is satisfied that there is a bona fide dispute as to the application, interpretation, effectiveness, finality or validity of the court order or decree, no action shall be taken on the request unless and until the

(continued)

consider the question of whether the orders for Ms. "M"'s support prior to reaching the age of eighteen satisfied the conditions prescribed by the Rules of the Administration Committee under Section 11.3. By contrast, in response to Applicants' 2003 request, the Legal Department advised, as recounted in a subsequent memorandum of the Secretary of the Committee, that "in the context of the history of this case" the court order at issue "contained the necessary elements to initiate the Section 11.3 review." The 2003 request was processed accordingly, and, upon denial of Applicants' Request for Review, Dr. "M" was advised of her right to review of that denial in the Administrative Tribunal.

97. This Tribunal has commented on a number of occasions on the twin purposes of administrative review as "providing opportunities for resolution of the dispute and for building a detailed record in the event of subsequent adjudication." Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application), IMFAT Judgment No. 2001-1 (March 30, 2001), para. 66; *see also* Mr. "O", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-1 (February 15, 2006), para. 67; Ms. "W", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-2 (November 17, 2005), para. 118.

98. Because Applicants' 1999 and 2002 requests were summarily denied by the Fund, Mr. "N" was not at that stage afforded the opportunity to respond to the requests, although he was notified of the 1999 request's denial. In the context of this case, however, Mr. "N" has had a full measure of opportunity to present his views, providing opportunities for settlement of the dispute and building an evidentiary record. The Tribunal has before it the extensive record of the proceedings in the Administration Committee on the 2003 request, including voluminous submissions by Mr. "N". *See* Estate of Mr. "D", para. 135 ("... Respondent's concern that, without a decision on the merits in this case by the Grievance Committee, the Tribunal will lack a full evidentiary record, is misplaced. The Tribunal in this case has the benefit of an extensive documentary record ....") Significantly, the documentation and argumentation presented to the Administration Committee in 2003 related also to the two earlier requests, and Respondent itself notes that many of Mr. "N"'s detailed objections to Applicants' 2003 request are directly applicable to the consideration of the merits of the two earlier requests. In Respondent's view, the 1999 request "suffered from the same defects of efficacy, finality and meaning as [Dr. "M"'s] later request."

---

matter is resolved to the satisfaction of the Administration Committee. However, if the Administration Committee determines that there is no substantial reason for not giving effect to the court order or decree, it may accept the request and treat it in the same manner as if it were a direction made by the participant or retired participant under Section 11.3 of the Staff Retirement Plan. The Secretary of the Administration Committee will promptly notify in writing both parties of such determination or decision of the Committee. Any payment withheld pending the Committee's consideration of the request will be paid to the person determined by the Committee to be entitled to such payment; provided that the Administration Committee may deposit it in escrow in the Bank-Fund Staff Federal Credit Union in an interest-bearing account until such payment is made."

99. It is significant that Mr. "N" had notice of the proceedings in this Tribunal and declined the opportunity offered to him to participate as an Intervenor. Mr. "N" knowingly relinquished this opportunity after being notified of the proceedings and receiving Ms. "M"'s and Dr. "M"'s Application and the Fund's Answer, which fully set out the issues of the case.

100. In view of the foregoing, the Tribunal concludes that Applicants' challenges to the denial of their 1999 and 2002 requests are not debarred on the ground of failure to exhaust channels of administrative review as prescribed by Article V, Section 1 of the Statute. Accordingly, the Tribunal now turns to the question of whether Applicants have established "exceptional circumstances" to overcome the time bar imposed by Article VI.

Waiver of Statute of Limitations

101. Article VI of the Statute of the Administrative Tribunal provides in pertinent part:

> "*ARTICLE VI*
>
> 1. An application challenging the legality of an individual decision shall not be admissible if filed with the Tribunal more than three months after all available channels of administrative review have been exhausted, or, in the absence of such channels, after the notification of the decision.
>
> 2. An application challenging the legality of a regulatory decision shall not be admissible if filed with the Tribunal more than three months after the announcement or effective date of the decision, whichever is later; provided that the illegality of a regulatory decision may be asserted at any time in support of an admissible application challenging the legality of an individual decision taken pursuant to such regulatory decision.
>
> 3. In exceptional circumstances, the Tribunal may decide at any time, if it considers the delay justified, to waive the time limits prescribed under Sections 1 or 2 of this Article in order to receive an application that would otherwise be inadmissible.
>
> ...."

102. The question arises whether, as Applicants maintain, "exceptional circumstances" justify waiver of the statute of limitations in respect of the challenges to the 1999 and 2002 decisions. The Commentary on the Statute states in reference to Article VI, Section 3:

> "The tribunal would have discretion, in exceptional circumstances, to waive the time limits for filing imposed under the Article; this might be appropriate, for example, in situations where, due to extensive mission travel, prolonged illness, or other exigent personal circumstances, a staff member was unable to file his

> application within the prescribed period. The staff member could request a waiver either before the deadline if he anticipated that he would be unable to file on time, or after the deadline had passed. However, such a waiver would have to be predicated on a finding that the delay was justified under the circumstances."

(Report of the Executive Board, p. 26.)

103. The Application of Ms. "M" and Dr. "M" is the first in which the Tribunal is presented with a request for waiver of the statute of limitations in the context of a substantial delay–more than four years–between the contested decision and its challenge in the Administrative Tribunal. In Ms. "Z", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-4 (December 30, 2005), note 1, the Tribunal granted a two-month waiver of the statutory time limit for the filing of the Application after Ms. "Z" brought to the Tribunal's attention, prior to the filing of her Application, "exigent personal circumstances" that the Tribunal concluded met the requirements of Article VI, Section 3 of the Statute.[66]

104. Applicants Ms. "M" and Dr. "M" advance two principal arguments in support of their claim of exceptional circumstances: (1) that they suffered "gross injustice" by the 1999 decision denying their request on the basis of the "marital relationship" requirement of Section 11.3 then in force; and (2) that they were not informed by the Fund of the possibility of recourse to the Administrative Tribunal. Respondent counters that it has no obligation to notify a potential applicant of the right to review in the Tribunal, and, moreover, that Dr. "M" was a sophisticated applicant who made a knowing decision to forego the option of Tribunal review, lobbying instead for a legislative remedy to the "marital relationship" requirement through amendment of SRP Section 11.3 by the Fund's Executive Board.[67] Additionally, the Fund maintains that in 1999, prior to the Tribunal's 2001 Judgment in Mr. "P" (No. 2), it operated under a good faith belief that the Administrative Tribunal did not have jurisdiction *ratione personae* over persons such as the Applicants in this case, i.e. non-staff members adversely affected by a decision on a Section 11.3 request. Respondent further maintains that Applicants have not suffered "gross injustice" because they have had available to them other avenues of relief, namely to seek enforcement of the support orders against assets of Mr. "N" other than his Fund pension benefits.

105. In the absence of any evidence thereof in the record, the Tribunal is unwilling to impute to Applicants a knowing relinquishment of their right to judicial review of their claim. Respondent maintains that Dr. "M" "...had access to the inner workings of the Fund and to Fund officials at the highest levels including Executive Directors." The Tribunal rejected a somewhat similar contention in Estate of Mr. "D", para. 119, in which the Fund

---

[66] In Baker et al., Applicants v. International Monetary Fund, Respondent (Admissibility of the Applications), IMFAT Judgment No. 2005-3 (December 6, 2005), para. 4, the Tribunal rejected requests by Applicants, filed along with their Applications, for waiver of the statute of limitations to file amended Applications.

[67] The Tribunal notes that this remedy was incomplete in view of the decisions by the Administration Committee on Applicants' subsequent requests.

urged that although the applicant was a non-staff member she was "... a highly educated and adept claimant who did not make a reasonable effort to inform herself of the Fund's administrative procedures."

106. The Tribunal repeatedly has emphasized the importance of adherence to time limits in legal processes, stating that such requirements should not be lightly dispensed with and "exceptional circumstances" should not easily be found. Estate of Mr. "D", para. 104 (finding an implied "exceptional circumstances" exception in Article V analogous to that explicitly stated in Article VI); *see also* Mr. "O", para. 50. With respect to the exhaustion of remedies requirement of Article V, the Tribunal has commented that applicants having knowledge of internal review requirements may not simply choose to ignore them, and their "own casual treatment of the relevant legal requirements" does not excuse delay. Estate of Mr. "D", para. 104, citing Hans Agerschou v. International Bank for Reconstruction and Development, WBAT Decision No. 114 (1992), para. 45. A plea of exceptional circumstances (with respect to Article V) must be evaluated in light of the extent and nature of the delay, as well as the underlying purposes of the procedural requirements. Estate of Mr. "D", para. 108; Mr. "O", paras. 48-49.

107. The Tribunal has observed that while, as a general rule, lack of individual notification of review procedures does not excuse failure to comply with such procedures, Estate of Mr."D", para. 120, it also has held that in some circumstances the Fund has an obligation to provide timely and sufficient notice of review procedures:

> "The Tribunal concludes that, in this case, it was incumbent on the Fund to inform Ms. "D" – who could not be assumed to know – of the specifics of the further recourse open to her. … The Fund, in this case of exchanges with a non-staff member, could easily and should routinely have informed Ms. "D" of her options, as by attaching to its denial of coverage the text of GAO No. 31 and information on recourse to the Administrative Tribunal. The Fund had no reason to presume that Ms. "D" had knowledge of, or should be charged with knowledge of, recourse procedures to which it made not the slightest allusion; on the contrary, the Fund gave the impression to Ms. "D" that, with the report of the external medical examiner, she had reached the end of the road."

Estate of Mr. "D", para. 128. In reaching this conclusion, the Tribunal considered a number of factors that may give rise to this obligation. In particular, the Tribunal held that because the applicant was not and had never been a staff member of the Fund she could not be assumed to have had access to the information on dispute resolution disseminated to staff members. Similarly, in 1999 as well as in 2002, the Fund provided no information on the recourse procedures to the Applicants[68] in this case, who are non-staff members of the Fund.

---

[68] It is clear and undisputed that Dr. "M" conducted on behalf of Ms. "M"(who was a minor child until January 9, 2002) all communications with Respondent associated with Applicants' three requests. Thus, the issue of notice need not be considered separately with respect to Ms. "M".

In deciding questions of admissibility, this Tribunal repeatedly has "… taken account of the effect of the Fund's communications to a staff member in assessing his actions in seeking further review." Mr. "O", para. 66, and cases cited therein.

108. Based on the foregoing analysis, the Tribunal concludes that, in the circumstances of this case, in the absence of notice by the Fund, Applicants should not have been expected to know the Fund's procedures for bringing a challenge in the Tribunal. Accordingly, the Tribunal finds that there are "exceptional circumstances" justifying waiver of the time limits prescribed under Article VI of its Statute.

109. As the Tribunal has found "exceptional circumstances" in this case of non-staff members challenging a decision on a request under Section 11.3, a request that was summarily dismissed and did not go through the full channels of review provided by the Administration Committee, it need not address whether, as Applicants maintain, "gross injustice," i.e. the alleged gravity of the injury, may form a further basis for waiver of the statute of limitations.

110. The Tribunal does observe, however, that the alleged injustice of which Applicants complain, i.e. discrimination in the Plan's provision against children born out of wedlock, was of a nature that implicates a "regulatory decision"[69] of the Fund. This fact further weighs in favor of finding "exceptional circumstances." Accordingly, Dr. "M" may reasonably have believed that a legislative solution was her only recourse, especially when the Fund failed to respond to her express inquiry as to the availability of judicial review. Indeed, the Fund has contended in its pleadings before the Tribunal that it apparently shared the view that she did not have recourse to the Tribunal, as it claims to have held a "good faith belief" that the Tribunal did not have jurisdiction *ratione personæ* over Dr. "M" until it learned otherwise through the Tribunal's 2001 decision in Mr. "P" (No. 2). Accordingly, that it was a rational response of Applicants in 1999 to seek a legislative remedy to amend the offending Plan provision does not imply that they knew, or should have known, of the possibility of judicial review in the Administrative Tribunal.[70] Moreover, in respect of the denial of Applicants' 2002 request, the Tribunal notes that, following its 2001 decisions in Mr. "P" (No. 2) and Estate of Mr. "D", Respondent was on notice (1) that Applicants had standing to bring an Application to the Administrative Tribunal, and (2) Respondent was obliged to inform them of that avenue of recourse.

---

[69] Article II, Section 2.b. provides:

> "the expression 'regulatory decision' shall mean any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund."

[70] *Compare* Mendaro v. International Bank for Reconstruction and Development, WBAT Decision No. 26 (1985), paras. 32-33 (rejecting plea of "exceptional circumstances" and finding that applicant had made "conscious choice" to pursue complaint in U.S. courts even after she had been informed by the Bank of the creation of the Tribunal and that it would be the exclusive forum to hear her claims.)

111. For the following reasons the Tribunal concludes that Applicants have met the requirements of Articles V and VI of the Statute. First, Applicants are non-staff members and could not be expected to know the recourse procedures of the Fund. Second, Applicants' conduct does not demonstrate casual disregard of legal requirements but rather prompt attention to such requirements where notified. Third, the availability in this case of internal recourse procedures appeared to be uncertain both to the Fund and the Applicants, a problem compounded by the summary procedures with which the Fund responded to the 1999 and 2002 requests. Fourth, there is no evidence that Applicants knowingly relinquished their right to Tribunal review in favor of an alternative legislative remedy, a remedy which in any case proved incomplete.

Was the "marital relationship" requirement of SRP Section 11.3, later revised, dispositive of Applicants' requests to give effect to court-ordered support for Ms. "M" relating to the period pre-dating the revision?

112. Having concluded that Applicants' challenge to the denial of their 1999 request is admissible for review, the Tribunal now turns to the question of whether the "marital relationship" requirement of Section 11.3, which governed that denial, is dispositive of Applicants' requests to give effect to court-ordered support for Ms. "M" relating to the period pre-dating its revision on December 27, 2001. The Tribunal notes that the question is not one of retroactive application of the revised Plan provision but rather of the validity of the prior Plan provision, in light of Applicants' contention that it represented impermissible discrimination.

113. Applicants' 1999 request was denied by the Legal Representative to the SRP Administration Committee on the ground that the court orders did not "aris[e] from a marital relationship" as required by the terms of Section 11.3 in effect at that time. (SRP Section 11.3 (1999 Revision).) *See* Mr. "P" (No. 2), paras. 74, 83-84; Staff Bulletin No. 99/12 (June 9, 1999) and Attachment. Applicants contest the legality of the "marital relationship" requirement as evincing impermissible discrimination against children born out of wedlock.

114. In her October 1, 1999 response to the Legal Representative's decision, Dr. "M" asserted:

> "… the German Orders entitle **the child itself** to payment and not the mother or the father or a 'spouse'. … I therefore think that your internal rules [SRP Section 11.3] have to be interpreted in the way that the 'protected class' with respect to child support is the **respective child itself**.…Therefore, there can be no doubt that the child itself and not a 'spouse or former spouse' must be the beneficiary of your rules with respect to child support and that every person duly representing the child, including guardians, persons having custody as well as 'spouses or former spouses' under certain circumstances, … but also the child itself, may rightfully make a 'request.'

> … I cannot imagine any reason why the [IMF] would make a distinction between children ('designees') represented by a 'spouse or former spouse' and those represented … by another person or entity (e.g. natural mother or father not being a spouse, guardian etc.) …. Interpreted the wrong way, your internal rules may even conflict with universally recognised human rights which prohibit discrimination by 'birth' and with the constitutions of your member and donor states which require the governments to make sure that children born 'out of wedlock' receive equal treatment to those 'born in wedlock' (see e.g. Article 6 para. 5 of the German Grundgesetz)."

(Emphasis in original.)

115. Respondent, for its part, maintains that the "marital relationship" requirement of Section 11.3, which obtained until its 2001 amendment, was a reasonable exercise of the Executive Board's discretion in defining the conditions under which the Plan would give effect to support orders. The Fund contends that the provision implemented a legitimate and reasonable classification scheme that differentiated between spouses (or former spouses) of Fund retirees and all other persons seeking enforcement of court orders against the Fund retiree's pension benefits.

116. The Tribunal has recognized that "[t]he management of the Fund necessarily enjoys a managerial and administrative discretion which is subject only to limited review by this Tribunal." Mr. "R", Applicant, International Monetary Fund, Respondent, IMFAT Judgment No. 2002-1 (March 5, 2002), para. 65. This deference is at its height when the Tribunal reviews regulatory decisions, as contrasted with individual decisions, especially policy decisions taken by the Fund's Executive Board. *See, e.g.*, Ms. "G", Applicant and Mr. "H", Intervenor v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-3 (December 18, 2002), para. 80 (reviewing Executive Board's decision on expatriate benefits); *see, generally,* Ms. "J", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 105. With respect to the Tribunal's competence to review the Fund's regulatory decisions, the Commentary on the Statute states:

> "As applied to the review of regulatory decisions, the case law of administrative tribunals in general demonstrates that although there exists a competence to review regulatory decisions, the scope of that review is quite narrow. There are broad and well-recognized principles protecting the exercise of authority by the decision-making organs of an institution from interference by a judicial body. The Fund tribunal would have to respect those principles in reviewing the legality of regulatory decisions."

(Report of the Executive Board, p. 19.)

117. SRP Section 11.3 was recommended by the Pension Committee and approved by the Executive Board of the Fund. (Staff Bulletin No. 95/4, (March 16, 1995).) Thus, the Tribunal is mindful of the deference required in deciding whether the "marital relationship" requirement, formerly incorporated into Section 11.3, was valid under the internal law of the Fund. At the same time, however, the Tribunal also notes that it has been called upon to review the Executive Board's discretionary authority in the light of a claim that the contested Plan provision, a "regulatory" decision of the Fund, as well as its application in the individual case of Applicants Ms. "M" and Dr. "M", violated a universally recognized human right. The very nature of this grave complaint requires a greater degree of scrutiny over the Fund's exercise of its discretion.

118. A review of the history of the relevant provision of the Plan will initially be instructive. As the IMF's immunities protect both the organization and its retirement fund from judicial process, the Fund in the last decade has taken alternative steps to provide mechanisms for giving effect to domestic relations orders, while at the same time preserving its immunities. Mr. "P" (No. 2), para. 74. In 1995, the IMF took an initial step toward revising its policy with respect to giving effect to domestic relations orders by amending Section 11.3 of the SRP to authorize the SRP's Administration Committee, under specified conditions, to give effect to such orders upon a voluntary direction of the retired participant. *See* Staff Bulletin No. 95/4 (March 16, 1995). The 1995 amendment also incorporated a marital relationship requirement, inasmuch as directions could be made only "to satisfy the marital obligations of a divorce or legal separation."

119. On May 26, 1999, the Executive Board approved a further amendment to Section 11.3 of the SRP, announced to the Fund staff by Staff Bulletin No. 99/12 (June 9, 1999), which "authoriz[ed] the Administration Committee of the SRP, under prescribed conditions, to approve a request from a spouse or former spouse of a participant to give effect to a court order requiring that spouse or child support payments be made from the SRP benefits otherwise payable to the retired participant." S*ee* Mr. "P" (No. 2), paras. 83-84. It is this version of SRP Section 11.3 that governed Applicants' 1999 request and its denial by the Legal Representative to the Administration Committee. The 1999 amendment had expanded the reach of the 1995 revision by authorizing the SRP Administration Committee to give effect to an applicable domestic relations order not solely upon the voluntary direction of the Plan participant but, alternatively, upon the request of the affected spouse or former spouse.

120. The amended Section 11.3 stated in relevant part:

> "11.3 Notwithstanding the provisions set forth in Section 11.1, a participant or retired participant may, pursuant to a legal obligation arising from a marital relationship (which shall be understood to include an obligation to make child support payments) evidenced by an order of a court or by a settlement agreement incorporated into a divorce or separation decree, direct in writing to the Secretary of the Administration Committee that a benefit that would otherwise be payable to him during his life under the Plan be paid to one or more former spouses or a current spouse from whom there is a decree of legal separation. ... In the event that a

> participant or retired participant fails to submit a timely written direction in compliance with the court order or decree to the Secretary of the Administration Committee, under such rules and conditions of acceptance as are prescribed by the Administration Committee, a spouse or former spouse of a participant or retired participant who is a party to the court order or decree may request that the Administration Committee give effect to such court order or decree and treat the request in the same manner as if it were a direction from a participant or a retired participant…"

(SRP Section 11.3 (1999 Revision).) (Emphasis supplied.)

121. On December 27, 2001, the Fund's Executive Board adopted an amendment to Section 11.3 of the Plan that authorized the Administration Committee, under certain conditions, to give effect to a court order for child support, regardless of whether a child is born within a marriage or out of wedlock. These changes were announced by Staff Bulletin No. 02/5 (February 26, 2002), which noted that the new amendment was designed to "… place on an equal footing the treatment of children born in and out of wedlock by separating payments for child support from those for spousal support." The Staff Bulletin further acknowledged that, under the pre-existing provision, "[c]hild support payments had to be included in payments that were to be made to (former) spouses and were, therefore, linked to the marital relationship. This requirement effectively precluded payment from SRP benefits of court-ordered child support to children born out of wedlock."

122. Accordingly, the current Section 11.3 provides in relevant part:[71]

> "11.3 Notwithstanding the provisions set forth in Section 11.1, a participant or retired participant may, pursuant to a legal obligation arising from a marital relationship or pursuant to a legal obligation to make child support payments, evidenced by an order of a court or by a settlement agreement incorporated into a court order, direct in writing to the Secretary of the Administration Committee that a benefit that would otherwise be payable to him during his life under the Plan be paid to one or more former spouses or a current spouse from whom there is a decree of legal separation, his child or children, who are under 22 years of age, or the court approved guardian of such child or children.
>
> ....
>
> (b) In the event that a participant or retired participant fails to submit a timely direction in compliance with the court order to the Secretary of the Administration Committee, under such rules and conditions of acceptance as are prescribed by the Administration

[71] For the full text of Section 11.3, see note 43, *supra*.

> Committee, a spouse or former spouse or a child or children, or parents or guardians acting on their behalf, of such participant or retired participant who is a party to the court order or orders may request that the Administration Committee give effect to such court order or orders and treat the request in the same manner as if it were a direction from such participant or a retired participant…."

(SRP Section 11.3 (2001 Revision).) (Emphasis supplied.)

123. It may be observed that the formal, or written, law of the Fund (discussed *infra*) expressly addresses the issue of discrimination only with reference to the Fund's regulatory and individual decisions affecting members of the Fund's staff. The internal law of the Fund, however, "includes both formal, or written, sources ... and unwritten sources." (Report of the Executive Board, pp. 17-18.) In particular, Article III of the Tribunal's Statute provides *inter alia* that "[i]n deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts." In commenting on this provision, the Commentary on the Statute elaborates that such principles "are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund." (Report of the Executive Board, p. 18.) Applicants invoke a concept of universal human rights in support of their argument that the "marital relationship" requirement resulted in impermissible discrimination between children born within a marriage and those born out of wedlock.

124. In Mr. "F", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-1 (March 18, 2005), this Tribunal recognized a distinction between a general principle of equality of treatment and a principle of nondiscrimination that implicates "universally accepted principles of human rights:"

> "Applicant's case is the first in which the IMFAT has been called upon to address an allegation that a staff member's career has been adversely affected by religious prejudice, a source of discrimination prohibited by the Fund's internal law [footnote omitted] as well as by universally accepted principles of human rights. Other applicants have alleged discrimination of a distinctly different and less serious type, i.e. that a classification scheme relating to Fund salary or benefits unfairly favored one category of staff members over another. *See* Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1996-1 (April 2, 1996) (economist v. non-economist staff); Mr. "R", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-1 (March 5, 2002) (overseas Office Directors v. Resident Representatives); Ms. "G", Applicant and Mr. "H", Intervenor v. International Monetary Fund, Respondent,

> IMFAT Judgment No. 2002-3 (December 18, 2002) (Legal Permanent Residents v. G-4 visa holders)."

Mr. "F", para. 81.

125. Similarly, other international administrative tribunals have applied universally accepted principles of human rights as a constraint on discretionary authority. In In re Mr. I. M. B., ILOAT Judgment No. 2120 (2002), Consideration 10, the International Labour Organisation Administrative Tribunal, citing "general principles of law and those which govern the international civil service, as well as international instruments on human rights," held that a staff regulation improperly discriminated between candidates for appointment based on their marital status and family relationship. In so holding, the ILOAT asserted:

> "The principles of Article 26 of the International Covenant on Civil and Political Rights (1966), although not strictly binding on the Agency are relevant. That article provides that:
>
> > 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'"

See also Bernstein v. International Bank for Reconstruction and Development, WBAT Decision No. 309 (2004), para. 36 (citing "recognized international standards" relating to discrimination on the basis of pregnancy and childbirth).

126. The express provisions of the Fund's nondiscrimination law do not refer to discrimination on the ground of birth, an omission readily explained by the fact such discrimination, which is typically directed at children, does not ordinarily arise in the context of employment law. The Fund's written law necessarily sets forth a principle of nondiscrimination within the context of the employment relationship. Nevertheless, the pertinence of principles of human rights to practices of the Fund is reflected in that sphere by Rule N-2 of the Fund, as well as the jurisprudence of this Tribunal. Rule N-2 provides:

> "N-2. Subject to Rule N-1 above, the employment, classification, promotion and assignment of persons on the staff of the Fund shall be made without discriminating against any person because of sex, race, creed, or nationality.
>
> *Adopted as N-1 September 25, 1946, amended June 22, 1979"*

The Tribunal observed in Mr. "F", para. 83, that the Fund has "recognized from its inception the importance to a global institution of maintaining a nondiscriminatory workplace," and in recent years has taken additional steps evidencing the significance which it attaches to the

matter. Accordingly, discrimination implicating universally accepted principles of human rights is addressed in the Fund's Discrimination Policy, adopted on July 3, 2003, which was designed by its terms to "consolidate in one document the policies and safeguards in place" with respect to discrimination. This document defines discrimination within the context of the Fund as follows:

> "In the Fund, discrimination should be understood to refer to differences in the treatment of individuals or groups of employees where the differentiation is not based on the Fund's institutional needs and:
>
> - is made on the basis of personal characteristics <u>such as</u> age, creed, ethnicity, gender, nationality, race, or sexual orientation;
> - is unrelated to an employee's work-related capabilities, qualifications and experience—this may include factors such as disabilities or medical conditions that do not prevent the employee from performing her or his duties;
> - is irrelevant to the application of Fund policies; and
> - has an adverse impact on the individual's employment, successful job performance, career opportunities, compensation, or other terms and conditions of employment."

(Discrimination Policy, July 3, 2003, p. 4.) (Emphasis supplied.)

127. In the case of <u>Mr. "R"</u>, and subsequently in <u>Ms. "G"</u>, the Tribunal has recognized:

> "It is a well-established principle of international administrative law that the rule of nondiscrimination imposes a substantive limit on the exercise of discretionary authority in both the policy-making and administrative functions of an international organization."

<u>Mr. "R"</u>, para. 30. That nondiscrimination is essential as well to the lawful exercise of the administrative functions of the organization is emphasized by the Commentary on the IMFAT Statute:

> "…with respect to review of individual decisions involving the exercise of managerial discretion, the case law has emphasized that discretionary decisions cannot be overturned unless they are shown to be arbitrary, capricious, *discriminatory*, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures."

(Report of the Executive Board, p. 19.) (Emphasis supplied.) Furthermore, the Administrative Tribunal has recognized that:

> "Cases of alleged discrimination may arise in two distinct ways. First, a classification may expressly differentiate between two or more groups of staff members, giving rise to a charge of discrimination. Second, a policy, neutral on its face, may result in some kind of consequential differentiation between groups."

Mr. "R", para. 36.

128. The Tribunal summarized its standard for assessing classification schemes against a general principle of equal treatment as follows:

> "... the Tribunal may ask whether the decision '…could … have been taken on the basis of facts accurately gathered and properly weighed.' (Lindsey, para.12.) Second, the Tribunal must find a '… rational nexus between the classification of persons subject to the differential treatment and the objective of the classification.' (Mould, para. 26.) Thus, the Tribunal may consider the stated reasons for the different benefits and assess whether their allocation to the two categories of staff is rationally related to those purposes. …"

Mr. "R", para. 47; *see also* Mr. "G", para. 76. It is this standard that Respondent seeks to be applied in the present case.

129. Respondent maintains that the "marital relationship" requirement constituted a reasonable exercise of the Executive Board's discretion in implementing a classification scheme that differentiated between spouses (or former spouses) of Fund retirees and all other persons seeking enforcement of court orders against the Fund retiree's pension (including custodial parents of children born out of wedlock).) As the rationale for this classification, Respondent cites the following factors. First, Respondent asserts that the 1999 amendment to Section 11.3 constituted a limited exception to the anti-alienation rule set out in Section 11.1,[72] which serves the Plan's paramount purpose of securing retirement income for the staff members of the Plan. Indeed, Staff Bulletin No. 99/12, para. 7, emphasized that "the primary

---

[72] SRP Section 11.1 provides in pertinent part:

> "No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, seizure or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber, seize or charge the same shall be void, nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit, except as may be specifically provided in the Plan …."

purpose of the Plan … [is] to provide pension to participants ….” Second, Respondent asserts that preferential treatment of spouses and former spouses under Section 11.3 was justified because it is

> “consistent with the policy behind all spousal rights and benefits under pension plans, which is that the spouse is presumed to have uniquely contributed to the financial security of the marital unit, through work in the home or otherwise, and thus, has a justified expectation of sharing in the participant’s pension income, even after the participant’s death or a divorce.”

Respondent maintains that

> “…such a condition does not violate any general principles of international administrative law that are so widely accepted and well-established in different legal systems that they would be regarded as generally applicable to all decisions taken by the Fund. [Footnote omitted] Rather, preferences for married persons over the unmarried were once ubiquitous in pension schemes throughout the world, and remain the rule rather than the exception, despite instances where governments and international organizations, including the Fund, have made amendments creating limited rights in unmarried persons.”

The Fund’s internal documents indicate that one of the stated reasons for the enactment of Section 11.3 was, indeed, the Fund’s recognition that “[p]ension rights represent a significant portion of the value of the marital estate and are subject to division in the event of a divorce.” (Report from the Secretary of the Administration Committee to the Members of the Pension Committee of January 24, 1995, para. 2.) Therefore, maintains Respondent, the relevant Plan provisions “represent a deliberate and reasoned balancing of interests in requiring former staff members to comply with their family obligations as imposed by law, with the Plan’s primary purpose of providing secure pension to retired staff.” Accordingly, Respondent takes the view that any disparate effect with respect to children born out of wedlock was merely consequential to a legitimate classification based on marital status.

130. The Tribunal observes, however, that the disparate – and discriminatory – effect with respect to children born out of wedlock followed directly from the intended classification by marital status and by treating child support awards as incidental to a dissolution of marriage and payment of spousal support. Hence, the rationale proffered by Respondent in support of the policy of preferential treatment of spouses does not appear to support the resulting disparity in the treatment of children. In particular, the policy of recognizing spousal contribution to the marital unit cited by Respondent as a justification for the “marital relationship” requirement does not provide a reasonable basis for such differential treatment, as a court-ordered entitlement to child support essentially rests with the child. That child has had no say in whether or not he or she springs from a marital relationship. The governing consideration is that the child is innocent of the marital – or non-marital – relationship of his

or her parents and, as an innocent human being, is entitled to the human right of being free from impermissible discrimination.

131. Additionally, this Tribunal has recognized that "… the care with which a reform has been studied" may be taken into account by the Tribunal in giving deference to a regulatory decision. Ms. "G", para. 77. Accordingly, in considering a challenge to a regulatory decision, the Tribunal may examine the Fund's decisionmaking process underlying the classification scheme. Mr. "R", paras. 63-64. Respondent has put forth no evidence that, in devising the applicable provisions, the Fund gave consideration to its effect on children born out of wedlock, notwithstanding the stated purpose of the 1999 amendment to address the "concerns that SRP participants could use the Fund's immunities to avoid being compelled to fulfill their legitimate spouse *and child support* obligations." (Staff Bulletin No. 99/12 (June 9, 1999).) (Emphasis supplied.)

132. The Administrative Tribunal does not question the Fund's motives or good faith in enacting a classification scheme that distinguishes between married and unmarried persons. It recognizes that many pension plans do so, and that many more pension plans did so; however, the Fund's apparent failure to provide consideration to the effect of this classification on children born out of wedlock is not compatible with contemporary standards of human rights, standards which obtained in 1999, as they do in 2006. Therefore, although the Administration Committee's reliance on the regulations as they stood in 1999 was understandable, nevertheless, the Administrative Tribunal is of the view that the challenged rule was fundamentally defective as it failed to make adequate provisions for children born out of wedlock, a failure that was incompatible with the international standards of nondiscrimination that the Fund itself professes.

133. Although the diplomatic note of the U.S. Secretary of State of 1998 that stimulated international organizations based in the United States to review their regulations and revise them to preclude its current and former staff members from avoiding court orders for family support[73] did not address the distinction between children born in and out of wedlock, it did request that "all international organizations [located in the U.S.] voluntarily take steps to enforce court-ordered payments to divorced spouses *and dependent children*." (Emphasis supplied.) The Universal Declaration of Human Rights – adopted as long ago as 1948 – is quite forthright in stating, in Article 25, that "[a]ll children, whether born in or out of wedlock, shall enjoy the same social protection."[74] Thus, while the terms of the provision in question may have been understandable, they nevertheless cannot be sustained.

> In denying Applicants' requests to give effect to each of the court orders at issue, did the Fund err in interpreting SRP Section 11.3 to require that the court order either specify that support is to be paid from the retiree's Fund pension benefits or direct the retiree to submit a direction to the Administration Committee to that effect?

---

[73] *See* Mr. "P" (No. 2), paras. 69, 78-79.

[74] Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948, *available at*: http://www.un.org/Overview/rights.html

134. Central to the controversy to be resolved in this case is the question of whether, as the Fund maintains, to be given effect pursuant to SRP Section 11.3[75] a court order for spousal or child support must either specify that the support payments be made from the retiree's Fund pension benefits or require the retiree to so direct the SRP. It is undisputed that none of the court orders that Applicants have sought to have given effect under the Fund's Staff Retirement Plan, i.e. neither the 1991, 1994, or 1995 German Orders relating to Ms. "M"'s support as a minor child, nor the 2003 German Order for post-majority support, refers to Mr. "N"'s Fund pension benefits.[76] Accordingly, maintains Respondent, the Fund properly denied Applicants' requests and the denials may be sustained on that basis alone. Applicants, for their part, contend that Respondent's interpretation of SRP Section 11.3 is unreasonable and not consistent with the intent of the Plan provision.

135. It is recalled that in denying both the 2002 and 2003 requests, the Secretary of the Administration Committee expressly cited among the grounds for denial the absence of any reference by the issuing courts to Mr. "N"'s Fund pension benefits. As to the 2002 request (relating to Orders for support of Ms. "M" as a minor), the Secretary informed Dr. "M" that the Order did not "... meet the requirements for a court order affecting pension payments [as] it does not order the pensioner to direct the SRP to make payments to you on behalf of your child," and later confirmed the view that "[t]he order should specify that the participant is required to direct the Plan to make the support payments out of his future benefits." Similarly, in communicating the Administration Committee's February 25, 2004 Decision on Review of Applicant's 2003 request (to give effect to the 2003 Order for support after reaching age eighteen), the Secretary explained: "The Committee also noted that the Order does not require [Mr. "N"] to direct the Committee to make payments out of his pension benefits, nor does it make any mention of payment from his pension benefits, and thus, the Committee has no basis for determining that the court intended this Order to override the general rule against alienation of benefits in Section 11.1 of the Plan." The Fund's interpretation of Section 11.3 is reflected as well in the "Model Order" and "Form of Request" provided by the Committee to interested parties.[77]

136. As Respondent explains in its pleadings before the Tribunal, the IMF Staff Retirement Plan is a tax-qualified retirement plan, classified as a "governmental plan,"[78] under the U.S. Internal Revenue Code. As a "governmental plan," it is not subject to the anti-alienation provisions applicable to tax-qualified retirement plans sponsored by private

---

[75] For the full text of Section 11.3, see note 43, *supra.*

[76] Nor do the District of Columbia court orders of August 5, 1999 and April 30, 2002 that Applicants also appear to have brought to the attention of the Fund. *See supra* The Factual Background of the Case; Proceedings in the Administration Committee of the Staff Retirement Plan.

[77] *See supra* The Factual Background of the Case; Proceedings in the Administration Committee of the Staff Retirement Plan; Applicants' 2002 Request to the Administration Committee.

[78] A "governmental plan" includes "... any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act...." 26 U.S.C. § 414 (d).

employers in the United States.[79] Nonetheless, the IMF's Plan and many other "governmental" pension plans have adopted anti-alienation provisions that support the policy that such plans have as their primary purpose providing retirement income security to participants.[80] The anti-alienation provision of the Fund's Staff Retirement Plan provides broadly that:

> "11.1 No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, seizure or charge,... nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit, except as may be specifically provided in the Plan;…."

137. In respect of the required anti-alienation provision of tax-qualified private employer pension plans, an exception is drawn under U.S. law for payment from a participant's benefits of child or spousal support pursuant to a Qualified Domestic Relations Order ("QDRO"). A QDRO is defined as a domestic relations order,[81] made pursuant to state law,

> "which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan...."

26 U.S.C. § 414(p)(1)(A)(i). Accordingly, under U.S. law, as to private employer plans subject to the Internal Revenue Code and the Employee Retirement Income Security Act ("ERISA"), support payments may be made from pension benefits only if the court order specifically refers to payment from pension benefits. It may be observed that these elements of U.S. law respond to a larger public policy objective, i.e. reserving favorable treatment under U.S. income tax law to income that is directed to prescribed forms of retirement savings.

138. Respondent maintains that SRP Section 11.3 was drafted with the intent of creating a voluntary exception to the IMF Staff Retirement Plan's anti-alienation rule that would be "akin" to the QDRO exception found in U.S. private employer pension plans. The QDRO analogy was made explicit in the Report of the Administration Committee of 1995, recommending the adoption of Section 11.3 to the Pension Committee and ultimately to the IMF Executive Board:

---

[79] *See* 26 U.S.C. § 401 (a)(13).

[80] Additionally, according to the 1995 Report "...the Fund Plan is subject to the 'exclusive benefit' rule, a qualification requirement, set out in IRC § 401(a)(2). It is believed that Section 11.1 of the Plan was drafted as a response to the pre-ERISA qualification requirements of IRC § 401." (1995 Report, note 2.)

[81] Under the U.S. Internal Revenue Code, a "domestic relations order" is defined as "... any judgment, decree, or order (including approval of a property settlement agreement) which – (i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a participant, and (ii) is made pursuant to a State domestic relations law...." 26 U.S.C. § 414(p)(1)(B).

> "As a matter of policy, the benefits subject to a direction would be subject to limitations analogous to those set out in [U.S. Internal Revenue Code] § 414(p)(1), (3) and (4) from which they otherwise would be exempt by virtue of the status of the Plan as a governmental plan."

(1995 Report, p. 5.)

139. Accordingly, a principal – and difficult – question posed by this case is whether, as Respondent maintains, in enacting SRP Section 11.3 as an exception to Section 11.1, the Fund's Executive Board limited the Administration Committee's authority to give effect only to those domestic relations orders that by their express terms specify that an alternate payee may receive pension benefits otherwise payable to a participant in the Plan. Alternatively, might SRP Section 11.3 admit of a broader interpretation than that urged by the Fund, in view of the language of its text, the underlying policies of the Fund, the multinational character of the IMF (and its staff and their dependents), and the circumstances of the instant case? For the reasons set out below, the Tribunal concludes that in this case it does. Accordingly, the Tribunal holds that the fact that the court orders at issue do not by their terms direct that support payments be made from Mr. "N"'s Fund pension benefits does not debar their being given effect pursuant to SRP Section 11.3.

140. In assessing the reasonableness of the Fund's interpretation of Section 11.3 in this case, two competing factors require consideration. On the one hand, the provision was expressly drafted as an exception to the general prohibition against alienation of Plan benefits embodied in Section 11.1 of the Plan, which seeks to safeguard the Plan's primary purpose of providing retirement income security to staff members of the Fund. (*See* Report from the Secretary of the Administration Committee to the Members of the Pension Committee of January 24, 1995, para. 5 ("1995 Report"); Report from the Secretary of the Administration Committee to the Members of the Pension Committee of March 26, 1999 ("1999 Report").) In the Fund's view, the anti-alienation rule supports a restrictive interpretation of this provision. On the other hand, as this Tribunal observed in Mr. "P" (No. 2), para. 151, Section 11.3 and the Rules thereunder embody a competing policy of "encourag[ing] enforcement of orders for family support and division of marital property." In adopting this provision in 1995 and expanding its reach in 1999, the Fund expressly sought to address the concern that Fund retirees might use the immunities of the SRP to avoid fulfilling their legitimate family support obligations. (1995 Report, para. 2; 1999 Report, para. 4; *see also* Mr. "P" (No. 2), paras. 78-80, 83.) This competing interest counsels a more inclusive interpretation that takes into consideration the effect on spouses and children seeking to obtain court-ordered support.

141. In Mr. "P" (No. 2), the Tribunal identified in some detail the policies underlying the decision to permit dependents of SRP participants to seek enforcement of support orders through the pension Plan. As reviewed in that decision, in July 1998, the Fund issued a Code of Conduct governing current staff members. Paragraph 8 of the Code of Conduct provides in pertinent part:

> "The Fund attaches great importance to the observance of local laws by staff members, as well as the avoidance of actions that could be perceived as an abuse of the privileges and immunities conferred on the Fund and its staff, as the failure to do so would reflect adversely on the Fund. For example, staff members are expected to meet their private legal obligations to pay child support and alimony...."

The Code of Conduct makes clear that failure to pay spousal or child support obligations is a violation of the Fund's standards of conduct. (Code of Conduct, p. 16.) In addition, as the Fund observed in Mr. "P" (No. 2), para. 78, the 1998 Diplomatic Note of the United States Secretary of State considered the social responsibility of the organization in "'...protecting the welfare of children and spouses who have been a part of the IMF community.'"

142. In announcing to the staff of the Fund the 1999 amendment of SRP Section 11.3, Staff Bulletin No. 99/12, para. 4, noted that the revision served to address the following problem:

> "... a participant subject to a court order could ignore the order and avoid its enforcement by moving outside the area where the court had jurisdiction or where its orders would be given effect. While the Fund can insist that serving staff members fulfill their personal legal obligations under the Fund's Rules and Regulations and Code of Conduct, the Fund has no comparable authority with respect to a retired participant who fails to comply with a court order."

Finally, Staff Bulletin No. 99/11, in notifying the staff that the Fund would give effect to wage garnishment and withholding orders, noted:

> "3. Please bear in mind that the Fund has always insisted that staff meet their legal obligations and comply with court orders. The standards of conduct required by the Fund are set out in the Rules and Regulations and in the Code of Conduct. [Footnote omitted.] The changes announced in this Bulletin simply reinforce the importance the Fund places on its **employees--both active and retired**--honoring their personal legal obligations and conducting themselves in a manner that does not reflect negatively on the Fund as an employer."

(Staff Bulletin No. 99/11 (May 4, 1999, p. 1).) (Emphasis in original.)

143. Accordingly, while the immediate purpose of the adoption of Section 11.3 may have been to remove a particular impediment to the enforceability of family support orders arising from courts in the United States, the larger purpose of the amendment was just as clearly to give effect to a more general policy, under what the Tribunal has termed the "public policy of its forum," i.e. "... to encourage enforcement of orders for family support and division of marital property." Mr. "P" (No. 2), paras. 151, 156.

144. The Tribunal notes that the legislative history of Section 11.3 lends support to the Fund's view that Section 11.3 should be narrowly construed to encompass only support orders that expressly designate payment from pension benefits. Thus, the opening paragraph of the 1999 Report states that Section 11.3(b) "would authorize the Administration Committee of the SRP, under prescribed conditions, to approve a request from a spouse or former spouse of a participant to give effect to a court order requiring that spouse or child support payments be made from the SRP benefits payable to the participant." (Para. 1.) (Emphasis supplied.) The Report further states that "[t]he amendment would allow a spouse or former spouse who is a party to the court proceedings to bring a request to the Administration Committee, asking that the court order or approved settlement agreement which requires that spouse or child support payments be made from the SRP benefits, be given effect." (Para. 5; *see also* paras. 4, 6.) (Emphasis supplied.) Likewise, the Executive Board was informed that the purpose of the 2001 amendment was to "… treat all children the same when a court order provides for the payment of a part of a retiree's pension for child support, regardless of whether a child is born within a marriage or out of wedlock." ("Proposed Revision of SRP Section 11.3 Concerning Support Payments for Children, Including Those Born Out of Wedlock" EBAP/01/140 (December 19, 2001).) (Emphasis supplied.)

145. Similarly, in notifying the 1999 amendment to the staff of the Fund, Staff Bulletin No. 99/12 (June 9, 1999) stated: "These changes authorize the Administration Committee of the SRP, under prescribed conditions, to approve a request from a spouse or former spouse of a participant to give effect to a court order requiring that spouse or child support payments be made from the SRP benefits otherwise payable to the participant. (Para. 1.) (Emphasis supplied.) *See also* para. 6 ("The changes allow a spouse or former spouse who is a party to the court proceedings to bring a request to the Administration Committee, asking that the court order or approved settlement agreement, which requires that spouse or child support payments be made from SRP benefits, be given effect.") (Emphasis supplied.)

146. It is nevertheless the express language of Section 11.3 that constitutes the primary basis for its interpretation in this case. The text of the Plan provision governs. Section 11.3, as amended in 2001, provides in relevant part:

> "11.3 Notwithstanding the provisions set forth in Section 11.1, a participant or retired participant may, pursuant to a legal obligation arising from a marital relationship or pursuant to a legal obligation to make child support payments, evidenced by an order of a court or by a settlement agreement incorporated into a court order, direct in writing to the Secretary of the Administration Committee that a benefit that would otherwise be payable to him during his life under the Plan be paid to one or more former spouses or a current spouse from whom there is a decree of legal separation, his child or children, who are under 22 years of age, or the court approved guardian of such child or children.
>
> (a) The benefit payable shall not exceed:

....

(ii) when payable to a child or children or their parents or guardians, 16 2/3 percent of the benefit payable to the participant or retired participant whenever the court ordered obligation is for support of his child or children....

(b) In the event that a participant or retired participant fails to submit a timely direction in compliance with the court order to the Secretary of the Administration Committee, under such rules and conditions of acceptance as are prescribed by the Administration Committee, a spouse or former spouse or a child or children, or parents or guardians acting on their behalf, of such participant or retired participant who is a party to the court order or orders may request that the Administration Committee give effect to such court order or orders and treat the request in the same manner as if it were a direction from such participant or a retired participant…."

(Emphasis supplied.) The first paragraph of Section 11.3, in essence, corresponds to the original version of Section 11.3, as adopted in 1995; while Section 11.3(b) was added in 1999 (and amended in 2001 to include child support obligations arising outside of a marital relationship).

147. Respondent asserts that the emphasized language of the first paragraph of Section 11.3 evidences the requirement of an order that obligates the retiree to submit a direction to the Committee,[82] and further contends that Section 11.3(b) "maintained this requirement."[83] However, in the Tribunal's view, this interpretation is not a necessary one, or, in the light of the essential purpose of the 1999 amendment to Section 11.3, an appropriate one. The "legal obligation" referred to in this provision is "to make child support payments," not to submit a direction; and it is this obligation to make child support payments that must be evidenced by a court order. The word "pursuant" means only that the direction cannot be made in the absence of a court-ordered child support obligation.[84] In addition, the words "may … direct" suggest that directions need not be mandated by a court in all cases.

---

[82] The same language was also cited by the Administration Committee Secretary in an email to Dr. "M" as evidence of this requirement.

[83] It may be noted that the issue of the proper form of a court order underlying a direction is not before the Tribunal, but is raised by Respondent in support of its interpretation of Section 11.3(b) at issue in this case.

[84] Similarly, the 1995 Report stated that Section 11.3 would allow a retiree to make a direction to the Plan "provided that ... the direction is made to satisfy the marital obligations of a divorce …." (Emphasis supplied.) A nearly identical description of Section 11.3 was provided in the Staff Bulletin No. 96/9, May 15, 1996 (which announced the Administration Committee Rules under Section 11.3 adopted by that Committee).

148. The Tribunal recognizes that Respondent's interpretation, nevertheless, finds support in the legislative history of Section 11.3(b). Specifically, the 1999 Report stated:

> "[t]he proposed amendments to the SRP would extend the present provisions allowing participants to direct the payment of their benefits to cover situations in which the participant failed to submit the payment direction required by a court order. The amendments would allow a spouse or former spouse who is a party to the court proceedings to bring a request to the Administration Committee asking that the court order or approved settlement agreement which requires that spouse or child support payments be made from SRP benefits, be given effect. If accepted by the Committee, benefit payments from the SRP would be redirected to the spouse or former spouse as if the participant had himself or herself given the court-ordered direction."

(Emphasis supplied.) This same description of the amendment was included in Staff Bulletin No. 99/12 (June 9, 1999) that notified this amendment to the Fund staff.

149. In challenging the Fund's interpretation of Section 11.3, Applicants assert that an order of the type that the Fund maintains is required under Section 11.3 would not be issued by a German court because "the laws in Germany do not permit a court decision in which the defendant is condemned to pay child support (or any other debt) out of specific assets, trusts, accounts, salaries etc.," because German courts do not accept directions from litigants about the drafting of their orders and because garnishment of Mr. "N"'s pension "is excluded under German rules of civil procedure due to the immunity of the IMF." Respondent counters that while "[t]he Fund knows of no reason why its immunity would prevent a German court from ordering [Mr. "N"] to direct that a portion of his Fund pension be paid to [Dr. "M"]," Applicants' assertion that German law precludes awards directed at Mr. "N"'s pension only supports the denial of their request, i.e. that without an order requiring that SRP benefits be directed to an alternate payee, there is nothing to which the Administration Committee can give effect.

150. The reference in Section 11.3(b) to the retiree's failure to "submit a timely direction in compliance with the court order to the Secretary of the Administration Committee" could be seen as supporting the Fund's interpretation. Furthermore, Rule 2 of the Rules of the Administration Committee under Section 11.3 refers to an order underlying a request as "a court order or decree concerning the payment of amounts from the Staff Retirement Plan …."

151. Finally, the Tribunal recalls that it itself characterized the case of Mr. "P" (No. 2) as "... aris[ing] under the Fund's revised policy, adopted in 1999, of giving effect, upon request of a spouse or former spouse of an SRP participant or retired participant, to a court order requiring that spouse or child support payments or the division of marital property be made from SRP benefits that otherwise would be payable to the participant." (Para. 69.) (Emphasis supplied.) The question did not arise in that case of whether effect could be given to a court order that did not prescribe that payments be made from Fund pension benefits. In that case, the divorce decree at issue expressly provided: "'... the Plaintiff [Ms. "Q"] shall be entitled to

a continuing share of the Defendant's [Mr. "P"'s] ongoing pension entitlement in the amount of 50% of the marital portion (56%) of all monies due the Defendant under his retirement annuity from the International Monetary Fund, plus a proportionate share of all cost of living supplements ....'" Mr. "P" (No. 2), para. 38.

152. Nevertheless, the text of Section 11.3 governs and, in the view of the Tribunal, does not preclude giving effect to an order that does not specify pension benefits. The legislative history of Section 11.3 suggests that in enacting this provision the Fund was motivated in particular by a problem that arose most often in the U.S. jurisdictions surrounding the Fund's Washington, D.C. headquarters, i.e. of Fund retirees using the Fund's immunity from process of the U.S. courts to shield themselves from spousal and child support obligations. Accordingly, the Fund understandably looked for guidance to the provisions of the U.S. law that provide for the issuance of Qualified Domestic Relations Orders ("QDROs") in private sector pension plans. In proposing the enactment of Section 11.3, the 1995 Report noted that a majority of support orders would likely originate from the courts of the District of Columbia, Maryland and Virginia, which are familiar with the U.S. law on redirection of pension payments to support obligations. In adopting Section 11.3(b), it was also noted that this provision is "similar to practices of many courts in the United States and certain other countries where a division of marital property with a spouse may include a pension ...." (Para. 7.)

153. As noted above, the anti-alienation rule weighs in favor of limiting the scope of Section 11.3. Nonetheless, in Mr. "P" (No. 2), para. 151, the Tribunal observed that it may give preference to those legal systems that recognize the public policy underlying the Fund's internal law, namely "to encourage enforcement of orders for family support and division of marital property." In interpreting Section 11.3 the Fund, as a global multinational organization, must take account of the character of different legal systems. In first adopting Section 11.3, the Fund expressly noted that it would allow retirees "by a direction [to] give effect to divorce orders from courts other than those in the United States." (1995 Report, para. 8.) The requirement of the N Rules that the Fund hire on a geographically diverse basis is consistent with this approach. (Rules and Regulations of the International Monetary Fund, N-Staff Regulations, N-1.)

154. The question arises whether assuming that there are jurisdictions (Germany purportedly being one of them) that would not issue an order expressly awarding support from pension benefits, the Fund properly may interpret Section 11.3 to include this requirement. In the words of Respondent, "[b]ecause there is no court order against Mr. ["N]'s pension, there is nothing to which the Administration Committee can 'give effect' under Section 11.3(c) of the Plan." "It would be manifestly unjust and contrary to the purpose of Section 11.3 of the Plan for the Committee to purport to give effect as against Mr. ["N']'s Fund pension to German court orders which do not require and, according to Applicants' own representations, could not have required under German law, payment of past due child support from that pension."

155. While the Fund's Executive Board sought to resolve a problem that may have arisen only in jurisdictions that had QDRO statutes, the policy adopted raises an issue of treatment of Fund staff and their dependents in diverse legal systems. The rights of the child born out

of wedlock who is raised in a foreign jurisdiction should not turn on the particularities of the law of the District of Columbia, Maryland or Virginia. The Fund is a universal organization that in its operation must give due weight to legal principles and procedures of a variety of jurisdictions. The Tribunal holds that the SRP Administration Committee, and this Tribunal, are entitled to weigh factors such as the foreign residence of the child and her guardian, the Applicants' asserted and apparent difficulty or inability in obtaining a court order in Germany that in terms specifies what a QDRO specifies, the difficulty or inability of the Applicants to move effectively against other assets of the retiree, and the bad faith and questionable tactics displayed by the retiree in evading his elementary paternal responsibilities. These factors support giving effect in this case to German court orders that do not expressly require that support payments be made from the retiree's Fund pension. This holding does not detract from the right of the retiree otherwise to question the efficacy, finality or meaning of the German court orders, pursuant to the Rules of the Administration Committee under Section 11.3. Nor, of course, can the retiree's pension security be undermined because the Plan itself places a cap of 16⅔ percent on all child support payments. In upholding Applicants' challenge, the Tribunal responds to the policy of its forum, namely, the internal law of the Fund, which favors enforcement of family support orders wherever they originate and however drafted. *See* Mr. P (No. 2), paras. 151, 156.

156. Furthermore, given the fact that a requirement of an express reference to the Fund's Staff Retirement Plan is not clearly stated in Section 11.3, the Tribunal declines to read such a requirement into that provision. What is important is that an alternate payee submit a valid court order entitling the applicant to support arising out of a marital or parental relationship. The precise terms in which the obligation for support is cast are not dispositive. Thus, in the case now before the Tribunal, the fact that the Applicants submitted orders which, on their face, require the retiree to provide child support but do not refer to his pension benefits suffices for the Fund to provide benefits to Applicants drawn from the retiree's pension entitlement, assuming that the orders meet the requirements set out in the Rules of the Administration Committee under Section 11.3. That question is considered below.

157. It should further be noted that national courts may be reluctant to issue orders that specify payment of spousal or child support from the IMF Staff Retirement Plan precisely because they are aware of the Fund's immunity from legal process. The history of this case illustrates this point in that the D.C. Superior Court initially rejected a suit brought by Applicants on the ground of the Fund's immunity.[85] That consideration provides further reason not to require national courts specifically to engage the question of payment out of the SRP.

158. Accordingly, the Tribunal holds that Section 11.3 does not necessarily exclude from its reach court orders that do not expressly provide that payment be made from a retiree's

---

[85] The 1995 Report (para. 8) addressed the issue of immunity by stating that "[a]ll court orders and decrees [under Section 11.3] would be issued and directed to participants or retired participants and not to the Plan which would continue to assert its traditional immunity from them." However, this distinction (i.e. between orders directed at the Plan or the Fund and orders directed at the retiree) may not be readily apparent to individuals seeking support, their attorneys, or even the courts.

Fund pension benefits. Rather, the text and history of that Plan provision permit the conclusion, in the circumstances of Applicants' case, that Section 11.3 may be interpreted more broadly to permit giving effect to support orders that lack such an express direction.

159. As the Fund states in its aide-mémoire to the D.C. Superior Court, "[t]he IMFAT is the proper forum for resolving [Ms. "M"]'s complaint about the scope of Section 11.3 of the SRP, because only the IMFAT has jurisdiction to grant a remedy to [Ms. "M"] as against the SRP or the IMF." At the same time, the Tribunal takes notice of the D.C. Superior Court's June 21, 2006 Order. By its terms, Applicants now have obtained an order that expressly requires Mr. "N" to direct that child support obligations accruing up until Ms. "M" reached the age of eighteen be paid from his future Fund pension payments.

> <u>Is the Fund's interpretation of the requirements of Rule 9 of the Administration Committee Rules under Section 11.3, to preclude giving effect to court orders for support payments that were due prior to the dates of Applicants' requests, a necessary one?</u>

160. The Tribunal has concluded that there are circumstances, as in the present case, under which the Fund may give effect under Section 11.3 to support orders that do not specify that the support is to be drawn from pension benefits. The Tribunal now addresses how the "prospective payments" rule, i.e. Rule 9 of the Rules of the Administration Committee under Section 11.3, is to operate in the case of such an order.

161. It may be recalled that, in denying Applicants' 1999 request, the Legal Representative to the SRP Administration Committee responded to Dr. "M"' as follows:

> "While the court orders you presented might have been effective for the garnishment of wages if Mr. ["N"] had continued to be employed by the Fund and was receiving a salary from the Fund, they are not effective with respect to the … SRP or any pension payments made by the SRP. In order to fulfill the legal requirements to maintain its qualified status, the SRP has 'non-alienation' provisions that prohibit the SRP from diverting pension payments from a retiree and making payments for the debt obligations of a retiree."

Similarly, in 2002, the Secretary of the Administration Committee rejected Applicants' request in the following terms:

> "According to the court order you submitted, child support was due from Mr. ["N"] until your daughter reached eighteen years of age. Since she is over eighteen years of age, there is no continuing obligation to pay child support for her and unpaid amounts for child support due in the past are debts and no longer prospective obligations to provide child support. Under Section 11.1, the Plan is prohibited from making payments to discharge the debts of a participant...."

162. It may be observed that because, in Respondent's view, orders that may be given effect under Section 11.3 must specify that support payments be made from the retiree's pension, the prospective payments rule of the Committee's Rules under Section 11.3 necessarily assumes the same. The Tribunal observes that the Fund's interpretations of the two provisions are closely related and embedded in the anti-alienation principle. Indeed, the Model Order states that a portion of pension benefits may be paid to the alternate payee "if as and when they become payable" to the participant. The question arises whether the meaning of the Rule is simply that support payments must be taken from prospective pension payments even if based on a past obligation. It may be recalled that in respect of the division of marital property incident to divorce, i.e. the "marital portion" of the pension, meaning the spouses' past contribution to the household, the spouse's contributions during the marriage are taken into account. *See* Mr. "P" (No. 2), para. 28.

163. Section 11.1, the anti-alienation provision of the Fund's Plan provides that no benefit under the Plan shall be "… in any manner liable for or subject to the debts…of the person entitled to such benefit, except as may be specifically provided in the Plan…." It is important to note that Section 11.3 *is* such an exception to the prohibition of Section 11.1, as emphasized by the first line of Section 11.3, which begins: "Notwithstanding the provisions set forth in Section 11.1…." Accordingly, the terms of the Plan itself do not prohibit giving effect to court orders to enforce judgment debts arising from marital or parental obligations.

164. Nonetheless, Rule 9 of the Rules of the Administration Committee under Section 11.3 provides in relevant part:

> "Payments pursuant to a direction or an accepted request shall be prospective only; no payment will be made for amounts payable or due prior to the later of the date that the direction or request was received or the effective date referred to in the direction. ..."

165. In challenging the Fund's application of Rule 9, Applicants assert that it unreasonably favors the security of retirement savings over enforcement of child support obligations and rewards "criminal evasion" of child support. Applicants maintain that undue hardship results, because court judgments are typically "for the collection of past due amounts" and obtaining a final judgment may take years, especially in "international" proceedings in which the defendant evades his obligations.

166. Respondent counters that the policy of allowing only prospective payments under Section 11.3 reflects the Fund's reasonable judgment that the Plan's primary purpose of providing secure pensions to retired staff "outweighs the policy of giving effect to alimony and support awards, when such awards are past-due rather than prospective, and when there are other means for enforcement through national courts, including attachment of the delinquent's other assets and even incarceration." The rationale cited by Respondent is that the public interest in the collection of debts is not as strong as the interest in enforcement of awards for ongoing support, nor as compelling as the anti-alienation rule that governs the Fund's, and other, pension plans. The Tribunal notes that by contrast, as to wages, the Fund's policy is to give effect to garnishment orders for past-due amounts. (Staff Bulletin No. 99/11.)

167. The Rules of the Administration Committee under SRP Section 11.3, including Rule 9 were adopted by the Administration Committee, pursuant to its authority prescribed in the SRP Section 7(2)(c).[86] While the Rules of the Administration Committee under SRP Section 11.3 were adopted by that Committee,[87] and not by the Executive Board of the Fund, the prospective payment limitation was expressly stated in the Report of the Secretary of the Administration Committee of January 24, 1995, which recommended the adoption of Section 11.3 to the Pension Committee and, ultimately, to the Executive Board. This document stated that "[p]ayments pursuant to a direction made under it would be prospective only. This would be the case even if the court order or decree on which the direction is based had been obtained earlier." (1995 Report, para. 10.)

168. The substance of Applicants' challenge requires consideration of two competing policies that Section 11.3 and the Rules thereunder seek to balance and implement. On the one hand, as noted above, Section 11.3 was expressly drafted as an exception to the general prohibition against alienation of Plan benefits embodied in Section 11.1 of the Plan, a prohibition which seeks to safeguard and promote the Plan's primary purpose of providing pensions to participants.[88] On the other hand, as this Tribunal has emphasized in Mr. "P" (No. 2), para. 151, Section 11.3 and the Rules thereunder implement a competing policy of "encourag[ing] enforcement of orders for family support and division of marital property." As previously stated, in adopting this provision in 1995 and expanding its reach in 1999, the Fund expressly sought to address the concern that Fund retirees could use the immunities of the SRP to evade their court-ordered family support obligations.[89] One way in which the drafters sought to balance these two competing policies was by incorporating into Section 11.3 and the Rules thereunder several provisions—including the prospective payment provision—that limit the nature and amount of payments that may be diverted. As noted earlier, the Fund's policy of voluntarily giving effect to court orders for garnishment or withholding from Fund employees' wages of spousal and child support allows payment of past-due amounts (although it also limits the amounts that may be so diverted[90]). (*See* Staff Bulletin No. 99/11 (May 4, 1999); Staff Bulletin No. 99/12 (June 9, 1999), para. 2.)

---

[86] SRP Section 7(2)(c) provides:

> "(c) The Administration Committee, subject to the general authority of the Pension Committee, shall have authority to make, establish and prescribe such rules, policies, procedures and forms for the administration of the Plan, its interpretation, the exercise by individuals of rights or privileges hereunder, the disbursement of the Retirement Fund and the application of the Plan to individuals and the Employer as shall not be contrary to the provisions hereof."

[87] *See* Section 11.3; Staff Bulletin No. 99/12 (June 9, 1999).

[88] *See* 1995 Report, para. 5; 1999 Report.

[89] *See* 1995 Report, para. 2; 1999 Report, para. 4.

[90] "Requirements and Conditions for Giving Effect to Court Orders for Garnishment or Withholding from Wages for Spouse or Child Support," Staff Bulletin No. 99/11 (May 4, 1999), Attachment, paras. 6, 7.

169. In its June 21, 2006 Order, the D.C. Superior Court required Mr. "N" to direct 16⅔ percent of all future SRP payments to Dr. "M" until U.S. $71,905.81 in past due child support payments has been met. In that Court's view, the "prospective payments" provision of Rule 9 means merely that "… the SRP will not attempt to retrieve money that has already been paid to the Respondent [i.e. Mr. "N"] and redirect it to the beneficiary of the court order."

170. The Tribunal accordingly turns to the question of whether Rule 9 should be interpreted to bar giving effect to the 2006 QDRO issued against Mr. "N" by the D.C. Superior Court. That Order was brought to the Tribunal's attention by letter of Dr. "M" dated June 26, 2006, in response to a Request for Information by the Tribunal to Applicants to keep it informed of developments in the litigation. The 2006 Order creates an entitlement to the monies previously owed by Mr. "N" for support of Ms. "M" prior to her reaching the age of eighteen. Having previously recognized the German court orders for pre-majority support and ordered that they be given effect, and in view of Mr. "N"'s failure to comply with that D.C. court order, the D.C. Superior Court in its 2006 Order decided that his pension must be garnished "prospectively," in the sense that the monies shall be taken from *future pension payments*, at the maximum rate permitted by Section 11.3 of 16⅔ percent.

171. While the Tribunal recognizes that there is room for another conclusion, and while it fully understands the position heretofore adopted by the Fund, the Tribunal concludes that a court order, such as the 2006 Order against Mr. "N", that expressly specifies that support payments be made from future pension payments – even if the liability for that support was incurred at some period in the past – is consistent with the requirements of Section 11.3. In the Tribunal's view, it is the better conclusion. This interpretation of the "prospective payments" rule is consonant with the anti-alienation principle embodied in the Fund's SRP because it contains an incentive for the alternate payee to exhaust first recourse against other assets. This is so because the payment of 16⅔ percent of prospective pension benefits will normally stagger the payment of the sum due to the alternate payee over a period of years. Clearly the capture of the present value of an award is more advantageous than its payment over an extended period, particularly because such payment would be terminated at the death of the retiree.

172. The Tribunal concludes that, when a court finds on the facts of the particular case it to be appropriate to order payment from future benefits of past liabilities, it is not for the Fund to look behind such a determination by the court. Nor should an alternate payee be penalized for the time required to pursue recourse against other assets and to acquire an order "akin to" a QDRO.

173. If the June 21, 2006 Order of the D.C. Superior Court had not been issued and the instant case were to be decided only on the basis of the German court orders of 1991, 1994 and 1995, the Tribunal is of the view that those orders would suffice to entitle the Applicants to require the Fund to make the requisite deductions in their favor from Mr. "N"'s future pension payments. That is so even though the German court orders do not expressly specify recourse against Mr. "N"'s pension. For the reasons indicated above, such a requirement unduly prefers form over substance. Nor, since an enforceable court order need not refer to the Staff Retirement Plan, it need not refer to the question of prospective payments. In that

circumstance, however, the prospective payments rule would have operated to give effect to those Orders only from the date of Applicant's September 15, 1999 request to the Fund. In the Tribunal's view, a reasonable distinction may be drawn in the application of the prospective payments rule as between an order such as the 2006 QDRO that expressly specifies that support payments be drawn from future pension payments and the German Orders that require only that support be paid by the parent to the dependent child.

> Had the Administration Committee reviewed Applicants' 1999 and 2002 requests pursuant to its Rules under Section 11.3, should it properly have denied them on the ground that a *bona fide* dispute existed as to the efficacy, finality, or meaning of the German Orders of 1991, 1994, and 1995, and that they therefore did not satisfy the conditions prescribed for giving effect to a court order?

174. The Tribunal observes that the 2006 Order of the D.C. Superior Court has not been the subject of either a direction by Mr. "N" or a request by the Applicants. For that reason, the Tribunal proceeds to review the 1991, 1994, and 1995 German Orders—which form the basis for the 2006 D.C. Order—for consistency with the Administration Committee's Rules for giving effect to court orders pursuant to Section 11.3.

175. As detailed above, the Fund twice rejected Applicants' requests (in 1999 and 2002) to give effect to the 1991, 1994, and 1995 German Orders relating to support of Ms. "M" before reaching the age of eighteen. Because these requests were rejected at a threshold stage by the Administration Committee's Legal Representative and Secretary, respectively, the Committee did not review these Orders for compliance with the Committee's Rules under Section 11.3 for giving effect to support orders. Having concluded that the bases for the Fund's denials of Applicants' 1999 and 2002 requests, i.e. that the orders at issue did not arise from a "marital relationship" nor did they specify payment from Mr. "N"'s pension benefits, are, on balance, unpersuasive, the Tribunal now turns to the question, of whether, as Respondent maintains, the requests nonetheless should have been denied on the ground that a *bona fide* dispute existed as to the efficacy, finality, or meaning of the orders.

176. In Mr. "P" (No. 2), para. 122, the Tribunal held that its authority to resolve the underlying dispute

> "...must be predicated upon a finding of error in the contested decision of the Administration Committee. If the Tribunal concludes that the Committee did not properly apply SRP Section 11.3 or the Rules thereunder, or that these regulations are themselves invalid, then the Tribunal would be authorized to invoke its remedial authority to correct the effects of the decision."

In the case of the 1999 and 2002 requests, the Tribunal finds error, not in the decision of the Administration Committee, which did not pass on these requests, but in the threshold determinations of the Fund. The Tribunal observes that it is not necessary or appropriate for it to refer the matter to the Administration Committee at this stage, however. *Cf.* Estate of Mr. "D", para. 135 (rejecting Fund's suggestion that case be returned to Grievance Committee for review; "… Respondent's concern that, without a decision on the merits in

this case by the Grievance Committee, the Tribunal will lack a full evidentiary record, is misplaced. The Tribunal in this case has the benefit of an extensive documentary record….”) The proper remedy is rescission of such a decision and correction of its effects. (Mr. “P” (No. 2),[91] paras. 123, 156; *see also* Article XIV of the Statute of the Administrative Tribunal.)

177. Rule 2 of the Rules of the Administration Committee under SRP Section 11.3 sets forth four substantive criteria under which a court order is accorded a presumption of validity in the absence of an objection:

> “2. Unless a participant or retired participant, spouse or former spouse objects, the Administration Committee may presume that a court order or decree concerning the payment of amounts from the Staff Retirement Plan
>
> (A) is valid by reason that:
>
> (1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and
>
> (2) the judgment has been rendered by a court of competent jurisdiction ... and in accordance with such requirements of the state as are necessary for the valid exercise of power by the court;
>
> (B) is the product of fair proceedings;
>
> (C) is final and binding on the parties; and
>
> (D) does not conflict and is not inconsistent with any other valid court order or decree.”

In the event of an objection, the Committee will assess the adequacy of the court order by reference to the same criteria:

> “If a party objects to giving effect to a court order or decree, the Administration Committee will assess its adequacy based on the criteria listed in (A) through (D) in the preceding sentence. The Administration Committee will not review the court order or decree concerning the merits of the case and will not attempt to review the judgment of the court regarding the rights or equities between the parties.”

Finally, the order will not be given effect if it fails to satisfy any of the stated criteria:

---

[91] In Mr. “P” (No. 2), the Tribunal concluded that the Administration Committee erred in refusing to give effect to a Maryland divorce judgment and that this decision should be given effect under the Plan. (Paras. 145, 156.)

> "If the Administration Committee finds that the court order or decree does not satisfy any one or more of the criteria listed in (A) through (D) above, the parties will be notified of its conclusions and the order or decree will not be given effect unless and until the deficiencies are remedied. In addition, if there is an inconsistency or conflict under (D) above with the court order or decree that was the basis of a prior direction or accepted request, the Administration Committee will notify the parties that neither order or decree will be given effect unless and until the conflict or inconsistencies are resolved."

(1999 Rules of the Administration Committee under SRP Section 11.3 (Rule 2).)

178. The Rules place the following limitations on the Administration Committee's authority to act upon a request. The Committee will take no final action in the circumstance that there is a "bona fide dispute" regarding the validity of the court order in question, but may place in escrow the disputed amount:

> "(b) …If the Administration Committee is satisfied that there is a bona fide dispute as to the application, interpretation, effectiveness, finality or validity of the court order or decree, no action shall be taken on the request unless and until the matter is resolved to the satisfaction of the Administration Committee. ... Any payment withheld pending the Committee's consideration of the request will be paid to the person determined by the Committee to be entitled to such payment; provided that the Administration Committee may deposit it in escrow in the Bank-Fund Staff Federal Credit Union in an interest-bearing account until such payment is made."

(1999 Rules of the Administration Committee under SRP Section 11.3 (Rule 1 (b).)

> "(c) The Administration Committee will not (i) interpret agreements between spouses or former spouses, directions or accepted requests to pay or orders or decrees of courts in cases of ambiguity, or (ii) resolve questions where there is a *bona fide* dispute about the efficacy, finality or meaning of an order or decree. In these cases, activation of the direction or accepted request and any associated payment may be suspended until such ambiguity or dispute shall have been settled in the judgment of the Administration Committee."

(1999 Rules of the Administration Committee under SRP Section 11.3 (Rule 1 (c).)

179. Respondent asserts that Applicants' 1999 request would have been denied "because it suffered from the same defects of efficacy, finality and meaning as their [2003] request," but does not elaborate on this assertion in light of the criteria prescribed in Rule 2. Rather,

Respondent suggests that Mr. "N"'s objections to the 2003 German Order apply also to the German Orders of 1991, 1994, and 1995 and give rise to a *bona fide* dispute under the Administration Committee Rules.

180. As Respondent does not elaborate its position with respect to these Orders -- beyond the analogy to the 2003 German Order -- it is necessary to refer to the Fund's treatment of Mr. "N"'s objections to the 2003 Order, as reflected in the Administration Committee's decisions and Respondent's pleadings.[92] The record reflects that the Administration Committee's decision of February 25, 2004 was based on the following objections raised by Mr. "N" with respect to the 2003 German Order, which are equally applicable to the 1991, 1994, and 1995 Orders.[93]

181. Mr. "N" raises three principal arguments: (1) he contests paternity of Ms. "M"; (2) he claims that the support orders must be recognized by the country of domicile of the retiree in order to be given effect under SRP Section 11.3; and (3) he maintains that Finnish law applies to the question of paternity and any support obligations. While Mr. "N"'s objections specific to the Orders of 1991, 1994, and 1995 formed part of the record before the Administration Committee in 2003, Respondent does not specifically address them and Mr. "N" chose not to raise them before the Tribunal. The record reflects the following relevant objections:

- Mr. "N" asserted before the Administration Committee that he has not been served in respect of any German legal proceedings.[94]

- The record reflects that Mr. "N" also objected in various legal proceedings to the Darmstadt Court's jurisdiction with respect to the German Orders of 1991, 1994, and 1995.

- Mr. "N" also asserted that Ms. "M"'s child support claims have been transferred to the German authorities that had paid child support to Ms. "M", and therefore Applicants lack standing to seek their enforcement.

182. As stated in para. 177 above, review of the adequacy of a support order calls for the consideration of each of the criteria prescribed in Rule 2(A)-(D). (As application of Rule 2(A) is central to the controversy between the parties, it will be addressed lastly.) Rule 2(B)

---

[92] The Administration Committee's decisions did not specify precisely which criteria or limitations prescribed in the Administration Committee Rules were implicated by each of Mr. "N"'s objections, in the view of the Committee. While some of these objections were expressly referenced in the Committee's decisions, others apparently were given weight by the Committee in reviewing Applicants' request, as evidenced by the Memoranda of the Secretary of the Committee of May 30, 2003 and January 27, 2004, and the minutes of the Committee's meeting of February 20, 2004.

[93] The objection specific to the 2003 German order is discussed below.

[94] This objection was considered by the Committee in rendering its 2003 decision.

was not invoked by the Committee (or by Respondent), as the fairness of the proceedings underlying the German Orders has not been called into question.

183. Rule 2(C) provides that only orders that are "final and binding on the parties" may be given effect under SRP Section 11.3. Respondent's assertion that the German Orders of 1991, 1994, and 1995 raised the same issue of finality as the 2003 Order is without basis. While the 2003 Order was by its terms an "interim order," the German Orders of 1991, 1994, and 1995, taken together, would appear to evidence a final and enforceable obligation.[95] Moreover, the 2003 Order states that with the July 20, 1994 Order of the Darmstadt Local Court, the maintenance of Ms. "M" before reaching age eighteen had been "finally judged."[96] It therefore appears that Respondent's assertion refers to the fact that these Orders were the subject of ongoing recognition and enforcement proceedings in Finland. However, the term "final" in Rule 2(C) refers to the conclusive nature of the order in the context of the proceedings in the issuing jurisdiction.[97] Because several years had elapsed since the issuance of the German Orders, Mr. "N"'s failure to timely appeal such orders evidenced their final nature, and his appeal was, in fact, denied on May 22, 2002 as untimely. (*See* Mr. "P" (No. 2), para. 144: "The finality of the Maryland Judgment is supported by the fact that no appeal has been taken and both Applicant and Intervenor have averred to the Administrative Tribunal that no litigation is pending that would bear upon its validity.")

184. In Mr. "P" (No. 2), para. 144, this Tribunal clarified that, in that case, the requirement that the order be "binding on the parties" under Rule 2(C) raised the question of the court's jurisdiction, which is also addressed in Rule 2(A)(2). The Administration Committee in the case of Applicants' 2003 request apparently interpreted this requirement more broadly when it concluded that "there is also the issue of whether the order is binding on the parties in light of the position of the retiree that the German court has no jurisdiction over him, that the question of paternity is unresolved and that the matter remains under litigation in Finnish court."[98] (Minutes of the February 20, 2004 meeting of the Administration Committee, p. 3.) The question of whether the Committee erred in its application of Rule 2(C) is addressed below with reference to the issues of paternity and Finnish litigation, respectively.

185. An order will satisfy the requirement of Rule 2(D), if it "does not conflict and is not inconsistent with any other valid court order or decree."[99] The record before the Tribunal

---

[95] Thus, even though the Orders of 1991 and 1994 were by their terms "provisionally enforceable," the 1995 Order stated that it was issued for the purpose of "forceable execution," pursuant to the 1994 judgment.

[96] *See* paragraphs 36-37, *supra*.

[97] This interpretation finds support in the fact that the Fund's internal document, entitled "Requirements and Conditions for Giving Effect to Court Orders for Garnishment and Withholding from Wages for Spouse and Child Support," requires that the order be "final and binding on the parties *and not subject to or pending appeal*." (Staff Bulletin 99/11, (May 4, 1999), p. 4.) (Emphasis supplied.)

[98] The Secretary of the Administration Committee reached the same conclusion in recommending to the Committee the rejection of Applicants' 2003 Request for Review.

[99] As this Tribunal noted in Mr. "P" (No. 2), there is some ambiguity in the text of the Rule as to whether factor "D" relates to a court order or decree that formed the basis of a prior direction or accepted request under the

(continued)

contains no evidence of a valid order that is inconsistent or in conflict with the German Orders under review, and Respondent does not claim otherwise.[100]

186. Finally, Rule 2(A) calls for a determination whether the Order:

> "(A) is valid by reason that:
>
> > (1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and
> >
> > (2) the judgment has been rendered by a court of competent jurisdiction … and in accordance with such requirements of the state as are necessary for the valid exercise of power by the court;"

The courts of Germany, Finland and Washington, D.C. rejected Mr. "N"'s objections to the validity of the German Orders. This and other evidence discussed below establishes the validity of the German Orders.

187. The record reflects that Mr. "N" asserted lack of reasonable notification and opportunity to be heard with respect to the German proceedings that led to the issuance of the German Orders. However, the German Orders of 1991 and 1994 stated that he was properly summoned to appear in these proceedings, and the 1994 Order noted that he was "absent without a valid excuse."[101] Furthermore, one of the documents submitted by Dr. "M" along with her 1999 request was Mr. "N"'s letter of October 25, 1993 to the Darmstadt Local Court, stating (with reference to the case number indicated on the 1994 and 1995 German Orders) that he objected to the legal proceedings commenced against him by Ms. "M" and "[did] not recognize[] any part of these false claims." This evidence undermines Mr. "N"'s claim that he had no notice of the relevant proceedings. Furthermore, by Order of May 22, 2002 the Darmstadt Regional Court rejected Mr. "N"'s appeal of the German Orders, holding that his allegations of procedural irregularities were in bad faith.

188. It is clear from the record that Mr. "N", during the enforcement proceedings in Washington, D.C., also disputed the personal jurisdiction of the Darmstadt Local Court, which issued the German Orders in question. Applicants maintain that the German courts correctly assumed jurisdiction over Mr. "N", since his daughter is a resident of Germany.

Plan. (Para. 144.) In the present case, however, this ambiguity is immaterial, as the record contains no evidence of a valid inconsistent order.

[100] Although the June 16, 1999 Order of the D.C. Superior Court indicates that there was an earlier decision by a Hearing Commissioner denying recognition of the German Orders on the grounds *inter alia* that the jurisdiction of the German Court was doubtful, the June 16, 1999 Order reversed this earlier decision, stating that this finding was "plainly wrong and without evidence to support it." Thus, the Hearing Commissioner's decision did not constitute a "valid" inconsistent order under Rule 2(D).

[101] *See* para. 31, *supra*.

189. Aside from Mr. "N"'s assertions, the record does not indicate that there was ever a substantial question as to the German Court's personal jurisdiction, based on the evidence submitted to the Administration Committee. The record reflects that, while Mr. "N" was properly notified of the German child support proceedings, he did not appear before the German court to raise this objection and did not appeal the resulting German Orders until years later, when such appeal was no longer timely.[102]

190. The D.C. Superior Court held that the German Court had personal jurisdiction over Mr. "N", stating:

> "First, respondent never claimed at trial that the issuing tribunal lacked personal jurisdiction over him. Indeed, respondent specifically testified that he had not made any attempts to challenge the support Order in Germany because he had no ties there and the enforcement matter was brought in the District of Columbia. … As such, respondent has waived this defense. Second, there is simply nothing in the record to support the contention that the German courts lacked the jurisdiction to issue the Order at hand."

191. Applicants' position regarding the validity of the German Orders is buttressed by the fact that the D.C. Superior Court recognized and enforced these Orders, over Mr. "N"'s objections, by Order of August 5, 1999, which was provided to the Administration Committee at the time of the 1999 request. The issuing court's lack of jurisdiction is a standard defense to recognition and enforcement of foreign judgments, generally recognized in domestic and international law.[103] Thus, although the D.C. Superior Court's Order of

---

[102] The May 22, 2002 Order of the Darmstadt Regional Court states:

> "Despite its best intentions, the Division can no longer comprehend, when the Defendant ... pleads ... that it is unfair that the Defendant should find out about such a judgment only now after several years. According to the affidavit signed by the Defendant himself, he received the default judgment dated March 14, 1991.
>
> As evidenced by the proof of dispatch ..., the judgment was sent on May 22, 1991 with instructions about the right to appeal. ... Moreover,... it should have been clear to the Defendant even without such instructions, that it would be impossible for there to be no consequences if he were to take no action for several years after receiving this judgment. ... [The Division] considers that Defendant's plea of irregularities in the proceedings to be in bad faith."

[103] "Enforcement of Judgments," circular prepared by the U.S. Department of State, Bureau of Consular Affairs, *available at*: http://travel.state.gov/law/info/judicial/judicial_691.html; *see, e.g.*, Article 34 of the "Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters," Official Journal of the European Communities (OJ L 12, 16.1.2001, p. 1), *available at*: http://europa.eu/eur-lex/pri/en/oj/dat/2001/l_012/l_01220010116en00010023.pdf).

August 5, 1999, submitted to the Committee, did not expressly address this issue, it nevertheless demonstrated that the Orders had been recognized in another jurisdiction. Similarly, on May 25, 2001, the Supreme Court of Finland ordered the German Orders to be enforced, rejecting Mr. "N"'s objections, as did earlier the Helsinki Court of Appeals. The fact that the courts of Finland and Washington, D.C. had granted recognition to the German Orders of 1991, 1994, and 1995 over Mr. "N"'s objections constituted compelling evidence of the validity of these Orders under the Administration Committee Rules.[104]

Did Mr. "N"'s objections on the issue of paternity give rise to a *bona fide* dispute under the Administration Committee Rules?

192. The record reflects that Mr. "N" raised two objections on the issue of paternity. First, he asserted that he is not the father of Ms. "M" and that the German courts improperly relied on his acknowledgment of paternity that he had purportedly revoked in 1991, due to its being fraudulently obtained by Dr. "M". Second, Mr. "N" argued that the Administration Committee may not give effect to an order unless the child support obligation has been established under the legal standard of the retiree's country of domicile. It is clear that these objections apply to the German Orders of 1991, 1994, and 1995, as well as to the 2003 German Order.

193. The record reflects that the Administration Committee found there to be an unresolved issue in respect of Mr. "N"'s paternity. The minutes of the Committee meeting of February 20, 2004 reflect its determination that a question existed whether the 2003 German Order was "binding on the parties in light of the position of the retiree that … the question of paternity is unresolved and that the matter remains under litigation in Finnish court."[105] Similarly, Respondent maintains that the "contested issues of German and Finnish family law" raised by Mr. "N" constituted a *bona fide* dispute under the Administration Committee Rules. Applicants, for their part, assert that Mr. "N" never revoked his acknowledgement of paternity and that it would not be possible. Applicants add that this issue "could not be examined by the IMF," since it could be decided only by national courts.

---

[104] There is no evidence that Mr. "N" has prevailed in his attempts to challenge execution proceedings in Finland and Washington, D.C. in the ensuing years. He undertook several rounds of appeal with respect to the writ of attachment issued against his bank account in Washington, D.C. pursuant to the Orders of the D.C. Superior Court, culminating in a denial of his objections by the D.C. Court of Appeals on December 8, 2005. Over the years, the D.C. courts have characterized. Mr. "N"'s numerous motions challenging the various orders of the D.C. Superior Court in this matter as "repetitive," "baseless," "frivolous," and "abusive." Similarly, as detailed below, Mr. "N" resisted execution that commenced in Finland pursuant to the Order of the Supreme Court of Finland by filing a claim in the Turku District Court, asserting his objections to paternity and Applicants' standing. Dr. "M" has asserted before the Tribunal that Mr. "N"'s claim "has been rejected by the Local Court of Turku on December 14, 2004."

[105] The Secretary stated the same conclusion in recommending the rejection of Applicants' 2003 Request for Review. Respondent also asserts that based on its review of Mr. "N"'s submissions, the Legal Department had determined that they "did appear to show that the paternity issue and the enforceability of the German Orders remained in dispute."

194. Staff Bulletin No. 02/5, announcing the 2001 revision of Section 11.3 cautioned that the Administration Committee "… will not resolve disputes about parentage. …" However, it falls to this Tribunal to resolve a question to which the Administration Committee gave undue credence. Mr. "N"'s objections to paternity are manifestly in bad faith. Along with her 1999 request, Dr. "M" submitted an acknowledgement of paternity, quoted *supra* at paragraph 29, issued on January 14, 1991 by the Magistrate of the Municipality of Darmstadt, Germany, which was signed by Mr. "N" and stated *inter alia*: "I know that the acknowledgment is irrevocable …." Mr. "N" was clearly aware of the legal proceedings in question, yet chose not to appear before the German Court to assert his defenses with respect to paternity; he attempted to do so years later when his appeal was no longer timely. At the same time, Mr. "N" did not submit any evidence of his alleged revocation of the acknowledgment of paternity. The certificate from the Lapland Local Register Office, stating that the Finnish Population Information System contains no record of Mr. "N"'s being the father of Ms. "M", plainly is not sufficient to raise a *bona fide* dispute.

195. While Mr. "N" has disputed his child support obligations in the courts of three countries, there is no evidence that any court has credited his objections to paternity. The May 22, 2002 Order of the Darmstadt Regional Court expressly rejected Mr. "N"'s challenge to the determination of paternity on the grounds that:

> "the dispute over paternity is in any case irrelevant after the Defendant had originally acknowledged paternity, as the claim that was first made in the appeal procedure is thus diametrically opposed to his earlier stance. As the Defendant has not cleared up this contradiction, the Division has considered this dispute to be irrelevant in the context of the free evaluation of evidence."

Furthermore, the fact that the Supreme Court of Finland and the D.C. Superior Court ordered enforcement of these Orders undermines Mr. "N"'s contention that the Orders were the result of fraud.

196. Mr. "N"'s assertion that only a support obligation imposed under the maintenance law of Finland, his asserted country of domicile, could be properly enforced against him also fails to give rise to a *bona fide* dispute under the Administration Committee Rules.[106] The Administration Committee unpersuasively gave weight to this objection with respect to the 2003 German Order, as Respondent does in its pleadings by asserting that "the

[106] In support of this objection, Mr. "N" stated:

> "[T]here is broad agreement in international law … to determine family relations according to the legal concept of domicile …. It follows that the Committee cannot set aside the legal effect of the more restrictive Finnish laws … that govern the disposition of my property…. Where the national laws and regulations conflict, the Finnish laws and regulations control any disposition by international bodies of my income, property and assets."

(Mr. "N"'s submission to the Administration Committee of April 10, 2003.)

Administration Committee, comprised of laypersons, ... has neither the expertise to conduct its own research nor the resources to hire outside advisors to sort out these contested issues of German and Finnish family law ….”

197. There is no requirement under Section 11.3 and the Rules thereunder that an obligation to pay child support be established under the law of the retiree’s country of domicile. Accordingly, this factor in and of itself is not material in the determination of the adequacy of an order under these Rules. *See, generally,* Mr. “P” (No. 2).[107] To the extent that Mr. “N” was challenging the choice of law applied by the German Court in deciding the issue of paternity, the Tribunal recalls its conclusion in Mr. “P” (No. 2), para. 146, that “[a]s no appeal has been taken, the Administrative Tribunal regards the Circuit Court decision as the prevailing statement of Maryland law under the circumstances of the case.” In the present case, Mr. “N”’s appeal was rejected by the Darmstadt Regional Court by Order of May 22, 2002, which reaffirmed that the “German law on maintenance should be applied here.”

198. Mr. “N”’s contentions on this issue are apparently related to his claim that a child support order may not be given effect by the Fund without being recognized by the retiree’s country of domicile because it has “no effect” with respect to the retiree. There is no such requirement under the Administration Committee Rules. For all the reasons set forth, the evidence in the record does not substantiate a finding of a *bona fide* dispute as to paternity under the Administration Committee Rules. Nor does the Tribunal find substance in the contention of Mr. “N” that Dr. “M” was not authorized to seek enforcement of the German Orders because the right to collect child support from Mr. “N” pursuant to these Orders had been transferred to a German governmental agency that has paid Ms. “M” child support.

Litigation in Finland

199. As additional objections to the efficacy and binding nature of the 2003 German Order, Mr. “N” asserted that (1) the German Order must be recognized by his country of domicile, i.e. Finland, in order to be given effect under the Administration Committee Rules; and (2) that the Order is not enforceable in Finland and that this matter is the subject of ongoing litigation in Finland. For reasons detailed below, these objections did not give rise to a *bona fide* dispute and have no weight with respect to the German Orders of 1991, 1994, and 1995.

200. Mr. “N”'s objections concerning “two-country situations” were apparently given considerable weight by the Administration Committee and lack of recognition of the 2003 German Order in Finland was specifically cited as one of the grounds for the denial of Dr. “M”’s 2003 request. In recommending to the Committee the rejection of Applicants’ 2003 request, the Secretary of the Administration Committee stated that “the criteria for a valid order have not been met ... [because] two courts are involved and claim

[107] It may also be noted that, in contrast to Mr. “P” (No. 2), where the Committee was faced with two competing divorce judgments that reflected a difference in the laws and public policy of two countries, such “conflict of laws” has not materialized in this case, as Mr. “N” did not produce any competing order.

jurisdiction. It is not clear that the Helsinki court has recognized the German Order. Consequently, the potential for a conflict in the findings of the courts exists." With respect to Applicants' Request for Review, the Secretary stated that "there is question of whether the order is binding on the parties in light of the position of the retired participant that [*inter alia*]… the matter remains under litigation in Finnish court." Similarly, Respondent asserts in its pleadings in this Tribunal that the Committee properly concluded "that a dispute existed between the parties, one which moreover apparently was in active litigation."

201. The record reflects that at the time of their 1999 request, Applicants had a claim pending against Mr. "N" in a Finnish Court, seeking recognition and enforcement of the support obligation embodied in the German Orders of 1991, 1994, and 1995.[108] The evidence indicates that Mr. "N" was actively contesting this claim, and filed two appeals,[109] culminating in the May 25, 2001 decision of the Supreme Court of Finland, which ordered that the German Order of 1994 is "in force in Finland without separate confirmation and [is] … to be enforced here."[110] Mr. "N" subsequently filed a claim in the Turku District Court challenging the enforcement of these Orders. Dr. "M" has asserted before the Tribunal that Mr. "N"'s claim "has been rejected by the Local Court of Turku on December 14, 2004," but did not provide any supporting documentation. On March 21, 2006, Respondent, in response to a Request for Information, informed the Tribunal that it has received two communications from Mr. "N" regarding litigation in Finland. Respondent states that Mr. "N" was informed that Respondent would not submit his communications to the Tribunal on his behalf, and that he should do so himself if he wished to enter this information into the Tribunal's record. Mr. "N" has not communicated any information to the Tribunal. While there is some uncertainty in the record regarding the current status of litigation in Finland, for reasons stated below these proceedings do not give rise to a *bona fide* dispute under the Administration Committee Rules.

Is recognition of a support order by the retiree's country of domicile required under Section 11.3 and the Rules thereunder?

202. Applicants maintain that the Administration Committee erroneously assumed that a child support order of the home state of the child, in order to be valid and honored by the Fund, has to be recognized by the home country of the retiree, since this requirement is not stated in the SRP rules and would make a timely request under Section 11.3 nearly impossible, given that recognition of foreign judgments may take several years. Applicants further assert that a German court's decisions need not be recognized in Finland to be valid.

203. As Applicants correctly point out, Section 11.3 and the Rules thereunder do not, by their terms, provide that support orders must be recognized by the Fund retiree's country of

[108] The earliest record of these proceedings is a reference to an appeal filed apparently filed by Mr. "N" on January 29, 1999.

[109] Appeals were apparently filed on January 29, 1999 and on September 11, 2000.

[110] The Court noted that by Order of the D.C. Superior Court of August 5, 1999, this judgment was in force in Washington, D.C.

domicile. The Fund's policy of giving effect to family support orders constitutes a voluntary undertaking to allow children of Fund retirees to obtain payments directly from the Plan, which is protected by the Fund's immunity from judicial process.[111] (*See* Mr. "P" (No. 2), paras. 126-31; 1995 Report, para. 8; Staff Bulletin No. 99/11, May 4, 1999, pp. 1, 2.) As this Tribunal emphasized in Mr. "P" (No. 2), SRP Section 11.3 and the Rules thereunder were expressly designed to apply to retired participants who ignore family support orders and avoid their effect by moving outside the area where the court had jurisdiction or where its orders would be given effect. (Para. 153, citing Staff Bulletin No. 99/12 (June 9, 1999), p. 1.) Therefore, the Rules were intended to prevent Fund retirees from shielding themselves from support obligations imposed by the courts of competent jurisdiction. These Rules strive to encourage prompt compliance with such obligations and not to create additional obstacles to the enforcement of support orders.

204. The Fund's authority to give effect to family support orders is derived from and defined by the provisions of the internal law of the Fund, namely Section 11.3 and the Rules thereunder. As this Tribunal stated in Mr. "P" (No. 2), para. 156, when faced with a two-country situation, the Committee "[did] not enforce the law of Maryland and decline to enforce the law of Egypt. Its decision rather responds to what may be termed the public policy of its forum, namely, the internal law of the Fund." In that case the Tribunal contrasted the laws of Maryland that recognize family support obligations incidental to a divorce with the laws of Egypt that allow for an ex parte divorce and apparently preclude division of property after dissolution of marriage. *Id.*, paras. 151-52.

205. In the present case, the record reflects that Mr. "N" raised essentially the same objections in contesting the enforceability of the German Orders of 1991, 1994, and 1995 before the Finnish courts as he did before the Administration Committee with reference to the 2003 German Order. In reviewing Mr. "N"'s "statement of claims and their reasons,"

---

[111] Section 9.1 of the Fund's Staff Retirement Plan provides that all contributions, assets, funds, and income of the Plan are the property of the IMF. This provision states:

> "**9.1** All the contributions made by the Employer and by participants pursuant to Article 6 hereof, and all other assets, funds, and income of the Plan, shall be transferred to and become the property of the Employer, and shall be held and administered by the Employer, separately from its other property and assets, as the Retirement Fund, solely for use in providing the benefits and paying the expenses of the Plan, and no part of the corpus or income of the Retirement Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of participants and retired participants or their beneficiaries under the Plan, prior to the satisfaction of all liabilities with respect to such participants, retired participants, and beneficiaries. No person shall have any interest in or right to any part of the Retirement Fund or of the earnings thereof or any rights in, or to, or under the Plan, or any part of the assets thereof, except as and to the extent expressly provided in the Plan."

(SRP, Section 9.1.)

dated March 11, 2002 (apparently filed with the Turku District Court),[112] the following objections could be identified: that no child support obligation exists in the absence of a paternity determination under Finnish law, that Dr. "M" was not the "owner" of these claims since they had been transferred to the German authorities; that German proceedings were "wrong" because he did not have sufficient contacts with Germany (apparently a challenge to personal jurisdiction), and that these decisions were issued "unilaterally." Mr. "N"'s objections concerning Dr. "M"'s standing and the applicability of Finnish law are not material in this case. While objections to jurisdiction and notice are generally relevant in assessing the adequacy of support orders under the Administration Committee Rules, in light of the ample evidence of the validity of the German Orders, the fact that Mr. "N" was asserting these objections as a defense to their enforcement in Finland did not of itself give rise to a *bona fide* dispute with respect to these issues.

206. It may be observed that assigning significance to pending collateral litigation can be prejudicial to children and spouses, as it creates an incentive for protracted and possibly frivolous or contumacious litigation, which may take many years. The governing consideration is that a child support order must be issued by a court of competent jurisdiction. Recognition by the courts of the residence of a parent is not required, although, as far as the record in this case reveals, Finnish courts have not questioned the validity of the German orders.

207. In summary, while Mr. "N" disputed the legal effect of the German Orders of 1991, 1994, and 1995, this dispute was never *bona fide*, since contentions advanced by Mr. "N" are spurious. These Orders are valid and final, and Mr. "N"'s objections to paternity are manifestly in bad faith. Furthermore, the Supreme Court of Finland upheld the validity of the 1994 German Order, and the courts of the District of Columbia also recognized the validity of the German Orders.

> <u>As to Applicants' 2003 request, did the Administration Committee err in concluding that a *bona fide* dispute existed as to the efficacy, finality, or meaning of the 2003 German Order and that it therefore did not satisfy the conditions prescribed by the Rules of the Administration Committee under Section 11.3 for giving effect to a court order?</u>

208. On February 6, 2003, Applicants requested that the SRP Administration Committee give effect to the January 20, 2003 German Order against Mr. "N" to pay €227,03 monthly, which was issued pending the consideration of a claim filed by Dr. "M" against Mr. "N" in the Frankfurt Local Court, seeking €847,25 monthly for the maintenance of Ms. "M" after reaching the age of majority, based on her status as a dependent student. The 2003 Order of that Court is of interest in the following respects: (1) it is, by its terms, an "interim order;" (2) it confirms that Ms. "M" "is the illegitimate child of defendant, born on 1984-01-09;" and (3) it states that pursuant to the July 20, 1994 Order of the Darmstadt Court, "the maintenance for [Ms. "M"] until reaching the age of 18 has been finally judged." The interim Order

---

[112] As noted above, after execution commenced in Finland in 2001, Mr. "N" filed a claim in the Turku District Court, contesting execution of this Order against his assets in Finland.

provides that beyond that age Ms. "M" shall be paid a maintenance of €227,03 monthly effective from the date of the petition, i.e. April 30, 2002.

209. On June 16, 2003, the Administration Committee denied Applicants' request to give effect to the 2003 German Order on the grounds that "the finality of the German Order has not been established.... Moreover, it appears that there are unresolved jurisdictional questions with respect to the German and Helsinki courts; and recognition of the German Order by the Helsinki court of First Instance has not been documented." Following a review of this decision, on February 25, 2004, the Committee confirmed the denial, stating *inter alia*:

> "… The Committee noted in particular the decision from Finland that you provided, which orders enforcement against Mr. ["N"] of certain German court orders but not the Order to which you have requested the Committee give effect under Section 11.3, which postdates the Finnish decision. ….
>
> In view of the above, and considering Mr. ["N"]'s continuing objections to your request, the Committee has determined that the additional information submitted by the parties did not establish the finality and binding nature of the Order, and that a *bona fide* dispute remained regarding the efficacy and meaning of the Order."

210. Respondent asserts that the Administration Committee properly concluded that, pursuant to Rule 1(c), submissions by Dr. "M" and Mr. "N" gave rise to a *bona fide* dispute as to the efficacy, finality and meaning of the 2003 German Order. In Respondent's view, Applicants failed to provide a satisfactory response to Mr. "N"'s assertions that the Order was not effective because the German court lacked jurisdiction, proper notice was not given, and the Order had no effect in Finland; and failed to rebut Mr. "N"'s contentions that the order was not final and binding, and was the subject of ongoing litigation.

211. In the view of the Tribunal, the contentions raised by Mr. "N" in respect of the 2003 Order are essentially of the same content as those raised in respect of the 1999 and 2002 requests and are no more persuasive. There is no *bona fide* dispute as to the validity of the 2003 Order. The question of its finality is addressed below.

212. In denying Applicants' request, the Administration Committee also considered additional objections specific to the 2003 German Order, namely that the Frankfurt Court lacked personal jurisdiction; that Mr. "N" was not given proper notice;[113] and that the Order was not final. (Secretary's Memoranda of May 30, 2003 and January 27, 2004; Minutes of the Committee Meeting of February 20, 2004.) In reviewing the soundness of the Committee's decision, these objections must be considered in light of the criteria set forth in Rule 2 that determine whether an order may be given effect under Section 11.3.

---

[113] Lack of notice was not expressly cited by the Committee in its decisions, but was noted in the Secretary's Memorandum to the Committee of January 27, 2004.

213. The 2003 German Order conforms to the criteria prescribed in Rules 2(B) (the court order "is the product of fair proceedings") and (D) (the order "does not conflict and is not inconsistent with any other valid court order or decree"), since the fairness of the legal proceedings in Germany apparently was not at issue, and there was no evidence of a valid court order inconsistent with the German Order of 2003. The remaining criteria prescribed in Rule 2, which are the subject of controversy between the parties, are addressed in turn.

214. Under Rule 2(A), the order must be:

> "... valid by reason that:
>
> (1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected …."

Applicants acknowledge that Mr. "N" has not been given notice of the proceedings in question, but assert that notice to Mr. "N" was not required for the proceedings that resulted in the issuance of the 2003 provisional German Order. Mr. "N" apparently acknowledged that under the German law no notice was required with respect to these proceedings, but argued that lack of notice, nevertheless, invalidated this Order under the Administration Committee Rules.

215. The evidence before the Tribunal indicates that notice was not given to Mr. "N" with respect to the proceedings in question, but attempts were made to give Mr. "N" such notice, which were frustrated by the retiree's efforts to evade service. This fact is illustrated most graphically by the evidence establishing that when Dr. "M" attempted to serve Mr. "N" at his Washington, D.C. home, "female occupant stated subject not known at address," as indicated in the affidavit of non-service provided by Dr. "M" to the Administration Committee with her Request for Review. This conclusion is further supported by Dr. "M"'s uncontroverted assertion that her efforts to serve Mr. "N" at the Finnish address he had provided have failed, as did her attempts to establish Mr. "N"'s whereabouts in Finland through Finnish authorities and Mr. "N"'s brother. At the same time, Mr. "N"'s evasiveness and bad faith in avoiding his child support obligations are demonstrated by the determination of the Darmstadt Court that his allegations of procedural irregularities were made in bad faith, by contempt orders issued by the D.C. Superior Court, and by that Court's conclusion that Mr. "N" avoided compliance with its Orders by filing baseless motions and departing from Washington on false pretenses despite his undertaking to the Court to return to its jurisdiction.

216. The Tribunal concludes that Mr. "N"'s evasion of service was tantamount to notice. Accordingly, the Tribunal resolves that, in the present case, Applicants' efforts to provide notice to Mr. "N", coupled with Mr. "N"'s evasion of service, satisfy the requirements of "a reasonable method of notification" and "a reasonable opportunity to be heard," prescribed in Rule 2(A)(1).

217. For the support order to be valid under Rule 2(A), it must further be determined that

> "(2) the judgment has been rendered by a court of competent jurisdiction … and in accordance with such requirements of

> the state as are necessary for the valid exercise of power by the court;”

The Administration Committee’s concern with respect to this requirement was expressed by the Secretary of the Committee, who stated in recommending the denial of Applicant’s request that “the criteria for a valid order have not been met ... [because] two courts are involved and claim jurisdiction. It is not clear that the Helsinki court has recognized the German Order.” The Secretary was apparently referring to Mr. “N”’s contemporaneous claim opposing the enforcement in Finland of the German Orders of 1991, 1994, and 1995 (issued by the Darmstadt Court), pursuant to the May 25, 2001 Order of the Supreme Court of Finland.

218. The Tribunal cannot sustain the Administration Committee’s conclusion that Mr. “N”’s challenge to the Darmstadt Court’s jurisdiction – asserted as a defense to enforcement of these Orders in Finland[114] – put into question the jurisdiction of the Frankfurt Court with respect to the 2003 German Order. Proceedings in the Supreme Court of Finland provided sufficient evidence of the validity of the German Orders of 1991, 1994, and 1995, as that Court (as well as lower courts) recognized these Orders, evidently over Mr. “N”’s objections. The same can be said of the U.S. litigation leading to the recognition and enforcement of these Orders in Washington, D.C., as evidenced by the August 5, 1999, April 30, 2002, and June 21, 2006 Orders of the D.C. Superior Court.

219. The record does not reflect that a substantial question existed with respect to the personal jurisdiction of the Frankfurt Court, and Mr. “N”’s voluminous submissions provided no evidence to that effect. Mr. “N” chose not to appear before the Administrative Tribunal to assert and substantiate his objections. As Respondent acknowledges in its pleadings, Mr. “N” had “damaged his own credibility by the way he conducted himself, including threats of legal action against members of the Administration Committee if they should find for [Dr. “M”], and by the German court’s conclusion that his arguments on appeal [of the Darmstadt Court’s Orders] were made in bad faith.”

220. The record before the Tribunal reflects that Mr. “N” did not challenge the Frankfurt Court’s jurisdiction before that Court and did not appeal the 2003 German Order, but instead evaded the proper service with respect to the relevant proceedings. Accordingly, in the Tribunal’s view, Mr. “N”’s unsubstantiated objection to the German Court’s jurisdiction did not give rise a *bona fide* dispute as to the validity of the 2003 German Order.

221. In addition to the aforementioned criteria, Rule 2(C) provides that to be given effect by the Fund pursuant to Section 11.3, a support order must be “final and binding on the parties.” The German Order of 2003, is by its terms an “interim order.”[115]

---

[114] It may be noted that Mr. “N”’s does not appear to clearly raise a challenge to the German court’s jurisdiction, but rather to dispute the applicability of the German law on maintenance.

[115] The Order is quoted *supra* at paragraph 37.

222. Dr. “M” has argued before the Administration Committee that this Order “even though being ‘provisional,’ is in itself ‘final’” as no legal remedy or appeal has been sought by Mr. “N”. Dr. “M” further asserted that such orders serve the purpose of securing child support before a final judgment is obtained, which may take many years. Dr. “M” now maintains that this provisional order is in the nature of an emergency injunction, which—although formally final—will be later replaced and modified “retroactively” by a final judgment. Dr. “M” further asserts that the final judgment has been delayed due to Mr. “N”’s evasion of service. According to Dr. “M”, the underlying lawsuit remains pending and a hearing is scheduled for January 30, 2007.

223. The Order in question confirms that Ms. “M” “is the illegitimate child of defendant, born on 1984-01-09” and states that the “[d]efendant shall be obligated to pay to petitioner every month ... a maintenance sum of 227,03 Euro as of 2002-04-30.” However, questions remain as to support due to Ms. “M” based on her status as a dependent student subsequent to attaining the age of eighteen. In particular, it is clear that this Order is provisional with respect to the Frankfurt Court’s determination of the amount of support and this question is to be resolved, in the Tribunal’s understanding, at a hearing that is to take place on January 30, 2007.[116] The Tribunal is not adequately informed as to what other issues may be passed on in subsequent proceedings before the Frankfurt Court.

224. In the light of the foregoing discussion, the Tribunal accepts that the Administration Committee correctly concluded that the 2003 German Order was not a final judgment. What is clear, however, by the force of the Order, Applicants are entitled to a minimum monthly payment in Euros, the precise amount of which awaits determination by the Frankfurt Court.

---

[116] Consequently, Applicants urge the Tribunal to order payments from Mr. “N”’s pension of the amount stated in the 2003 German Order (€227,03 monthly) “or whatever the Local Court of Frankfurt/Main orders in the future (‘retroactively’ or not).”

Decision

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

1 A 16⅔ percent deduction shall be made from prospective monthly pension payments to Mr. "N", which shall be paid over to the Applicants, in order to discharge the total sum owing them by reason of the Darmstadt Court Orders of 1991, 1994, and 1995, as confirmed and totalled by the Superior Court of the District of Columbia in its Orders of April 30, 2002, November 25, 2002, and June 21, 2006. That sum is $71,905.81 plus $27,904.81 in interest, plus interest at the prevailing rate compounded quarterly on the total sum from November 25, 2002 until the date on which each monthly pension payment is made.

2. In respect of the time period from February 6, 2003 (the date on which Applicants filed their third request with the Administration Committee) until Ms. "M" attained the age of 22 (the age limit prescribed in Section 11.3) the amount accrued by the sum of 227,03 Euros monthly under the January 20, 2003 Order of the Frankfurt Court, with interest at the prevailing rate compounded quarterly, shall be added to the total liability of Mr. "N" and paid out as prescribed in paragraph 1 of this Decision. If and when a future order of the Frankfurt Court is received by the Administration Committee, which adjusts the Euro sum due, the liability of Mr. "N" shall be altered to take account of that Order.

3. While Applicants reserve their claims for damages on the ground that the Fund intentionally or negligently prevented Applicants from timely exercising their right to child support, the Tribunal does not find it appropriate to deal with that claim because Applicants do not adequately set forth its elements.

4. Applicants have requested payment of $30,137.63 in attorney's fees incurred in U.S. courts in pursuance of the litigation referred to in this Judgment. Since these fees were incurred not before this Tribunal but in the District of Columbia courts, the Tribunal is not authorized to make such an award. Since the Tribunal has concluded that the Application before this Tribunal is well-founded, it orders that the reasonable costs incurred by the Applicants be borne by the Fund, pursuant to Article XIV, Section 4 of the Tribunal's

Statute. The Tribunal invites the Applicants to submit a statement of the legal costs incurred in pursuing their remedies in the Fund and before this Tribunal.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

____

Stephen M. Schwebel, President

____

Celia Goldman, Registrar

Washington, D.C.
November 29, 2006