

**ADMINISTRATIVE TRIBUNAL OF THE
INTERNATIONAL MONETARY FUND**

JUDGMENT No. 2016-1

Mr. J. Prader, Applicant v. International Monetary Fund, Respondent

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INTRODUCTION

1. On March 14 and 15, 2016, the Administrative Tribunal of the International Monetary Fund, composed for this case, pursuant to Article VII, Section 4 of the Tribunal's Statute, of Judge Catherine M. O'Regan, President, and Judges Andrés Rigo Sureda and Francisco Orrego Vicuña, met to adjudge the Application brought against the International Monetary Fund by Mr. Johann Prader, a retired participant in the Fund's Staff Retirement Plan (SRP or Plan). Applicant was represented by Mr. Willy Kiekens, acting in his personal capacity. Respondent was represented by Ms. Diana Benoit, Senior Counsel, and Ms. Juliet Johnson, Counsel, IMF Legal Department.

2. Applicant challenges the decision of the SRP Administration Committee (Committee) denying his request to revoke his election under SRP Section 16.3 that part of his pension be paid in the currency of the country of which he is a national and to which he repatriated following retirement. As permitted under rules adopted by the Committee relating to local currency elections under SRP Section 16.3, Applicant made a currency election prior to his pension effective date and his resettlement abroad. Thereafter, following the pension effective date but before repatriating to his home country or receiving his first pension payment, Applicant sought to revoke the currency election. The Committee denied his request on the grounds that the election was irrevocable as of the pension effective date, except in circumstances not pertinent to his case, and that Applicant had acknowledged in making the election both that it was irrevocable and that he understood the implications of such election.

3. Applicant contends that the Committee's decision was contrary to the governing Plan provision. Applicant asserts that a currency election remains revocable until all the conditions set out in SRP Section 16.3(a) for election have been met, including that the participant has retired and resides in the country in whose currency he seeks to draw part or all of the pension. Applicant also alleges that the Fund failed to meet its obligation as employer to advise him properly of his currency election rights under the SRP and that the Committee failed to take the contested decision in accordance with fair and reasonable procedures.

4. Applicant seeks as relief: (i) rescission of the Committee's decision denying his request to revoke his currency election, and confirmation of the validity of the revocation; (ii) an order that the Fund pay Applicant's full pension from its effective date onwards solely in U.S. dollars until he has made at any future time a valid currency election under SRP Section 16(d); and (iii) an order that the Fund settle with Applicant, for past pension payments, the exchange rate difference between the payments already made in his home country currency and the amount due in U.S. dollars. Alternatively, Applicant seeks essentially the same elements of relief to

compensate him for damage caused by the Fund's alleged failure to advise him properly about his pension rights.

5. Respondent, for its part, maintains that the SRP Administration Committee did not err in denying Applicant's request to revoke his currency election and that the decision was taken in accordance with fair and reasonable procedures. In the view of the Fund, the Committee's rules governing currency election are not contrary to the relevant Plan provision and represent a sound exercise of the Committee's authority to interpret the Plan and promulgate rules to administer it. Respondent asserts that Applicant's currency election became irrevocable as of the pension effective date and that Applicant acknowledged at the time of the election that it was irrevocable except in circumstances not relevant to his case. The Fund additionally maintains that it did not fail to meet any obligation to provide Applicant with sufficient information on which to base his pension decisions.

PROCEDURE

6. On May 15, 2015, Applicant filed an Application with the Administrative Tribunal. The Application was supplemented on May 20, 2015, pursuant to Rule VII, para. 6, and transmitted to Respondent on the same date. On May 21, 2015, pursuant to Rule IV, para. (f), of the Tribunal's Rules of Procedure, the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

7. On July 6, 2015, Respondent filed its Answer to the Application. On August 5, 2015, Applicant submitted his Reply. The Fund's Rejoinder was filed on September 8, 2015.

A. Oral proceedings

8. 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 deems such proceedings useful." Neither party has requested oral proceedings in this case.

9. In view of the written record before it and in the absence of any request, the Tribunal decided that oral proceedings would not be useful to its disposition of the case.

B. Applicant's request for anonymity

10. Applicant has requested anonymity pursuant to Rule XXII¹ of the Tribunal's Rules of Procedure. Applicant contends that "publication of the Tribunal's decision, internally in the

¹ Rule XXII provides:

Anonymity

1. In accordance with Rule VII, Paragraph 2(j), an Applicant may request in his application that his name not be made public by the Tribunal.

(continued)

Fund, and publicly on the Fund’s external website, does not require that applicant’s name be disclosed” in order to inform interested parties, while “anonymity for the applicant is necessary to protect his legitimate privacy” interests. In particular, Applicant seeks anonymity to protect against potentially “embarrassing comments” from former colleagues and others. He also posits that, as a former IMF Executive Director, his case might draw additional attention and that anonymity would serve to avoid “tabloid-like comments in the press or social media” and “protect the interest of all staff members and of the Fund by avoiding . . . damaging press coverage related to the pension scheme of the IMF.” Applicant also asserts that the Fund itself handles pension matters with a high level of confidentiality “in order to respect staff members’ privacy” and that the Tribunal “should adhere to the standard of confidentiality and privacy that is generally applied and accepted by the Fund,” including that the “pension rules themselves are [kept] secret to outsiders of the Fund.”

11. Respondent opposes Applicant’s request for anonymity. The Fund rejects the view that protecting against potentially “embarrassing comments” or “damaging press coverage” meets the standard of “good cause” for granting an anonymity request under Rule XXII. In the view of the Fund, Applicant has not identified “any matter of personal privacy at stake, let alone one that has been recognized by the Tribunal as sufficient to overcome the ‘value of public justice.’” Furthermore, the Fund asserts, the focus of the Application is a “challenge to the validity of a Fund rule relating to the SRP, as well as the standard practices of HRD [the Human Resources Department] in implementing that rule. Applicant’s personal circumstances are not pertinent to the Tribunal’s consideration of either of these issues” and matters of personal privacy are not likely to be discussed in the Tribunal’s Judgment. The Fund also rejects Applicant’s assertion that pension rules are “kept secret” from outsiders to the Fund.

12. Rule XXII provides that the Tribunal shall grant a request for anonymity when “good cause has been shown for protecting the privacy of an individual.” The Tribunal has interpreted the “good cause” standard in the light of the principle that granting anonymity to an applicant is an exception to the ordinary rule that the names of parties to a judicial proceeding should be made public. *See Ms. K. Abu Ghazaleh, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2015-2 (November 11, 2015), para. 11; *Ms. “AA”, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 27, 2006), para. 13. Applying that standard, the Tribunal has granted applicants’ anonymity requests in cases involving “alleged misconduct or matters of personal privacy such as health or family relations,” *Ms. N. Sachdev*,

2. In accordance with Rule VIII, Paragraph 6, the Fund may request in its answer that the name of any other individual not be made public by the Tribunal. An intervenor may request anonymity in his application for intervention.

3. In accordance with Rule VIII, Paragraph 5, and Rule IX, Paragraph 6, the parties shall be given an opportunity to present their views to the Tribunal in response to a request for anonymity.

4. The Tribunal shall grant a request for anonymity where good cause has been shown for protecting the privacy of an individual.

Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2012-1 (March 6, 2012), para. 9 and note 7 (collecting cases), and where key evidence brought out in the judgment relates to the assessment of an applicant’s job performance, so as to protect the candor of the performance assessment process, *Mr. “HH”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-4 (October 9, 2013), paras. 42-43. In *Ms. D. Pyne, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2011-2 (November 14, 2011), paras. 9-12, the Tribunal rejected an applicant’s argument that her salary and pension entitlements following a reduction in force were “precisely the very private issues that Rule XXII was intended to protect.”

13. The Tribunal has also rejected anonymity requests where the gravamen of the complaint was a challenge to a Fund rule. *See Mr. E. Weisman, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2014-2 (February 26, 2014), para. 14 (“Applicant’s personal circumstances are not pertinent to the Tribunal’s consideration of the essential issue of the case,” where applicant brought direct challenge to rule relating to mobility assignments); *Mr. S. Ding, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2009-1 (March 17, 2009), paras. 8-11 (challenge to policy governing eligibility for education allowances and its application in his case); *see also Abu Ghazaleh*, para. 12 (“gravamen of Applicant’s complaint, namely, that she has been denied recourse to an impartial arbitrator, is an issue of law that does not bear upon issues of personal privacy.”).

14. In deciding requests for anonymity pursuant to Rule XXII, the Tribunal has often referred to “balancing the value of public justice against the privacy interests of individuals.” *Abu Ghazaleh*, para. 15; *Mr. “HH”, paras. 38-39*. Applicant argues that the purpose of public justice will be met by the publication of the Tribunal’s Judgment, while omitting his identity would protect his legitimate interest in personal privacy. In weighing such considerations, the Tribunal has recognized that its Judgments are “subject to search on the Internet for purposes that are unrelated to the goals of public justice,” while at the same time concluding that reluctance of potential applicants to exercise their rights to judicial review “of itself is not sufficient to warrant exception from the rule of publication” of applicants’ names. *Mr. “HH”, para. 41*. The Tribunal accordingly has continued to grant anonymity to applicants only exceptionally.

15. The Tribunal has not recognized that an assertion of an interest in personal privacy, without more, will support a grant of anonymity under Rule XXII. Accordingly, the Tribunal concludes that Applicant’s request for anonymity is denied.

FACTUAL BACKGROUND

16. The key facts, some of which are disputed between the parties, may be summarized as follows.

17. From 1987 until his retirement in 2014, Applicant served as an Alternate Member and then as a Member of the IMF Executive Board, and on that basis became a participant in the Fund’s Staff Retirement Plan.² The controversy in this case centers on the local currency election

² The Tribunal’s jurisdiction in this case is found in Article II, Section 1(b) of the Statute, which provides that the “Tribunal shall be competent to pass judgment upon any application . . . by an enrollee in, or beneficiary under, any

provision of the Plan and its interpretation and application by the SRP Administration Committee in the circumstances of Applicant's case.

A. Local Currency Election under SRP Section 16.3

18. The Fund's SRP is a contributory defined benefit pension plan under which "[e]xcept pursuant to an election or as otherwise provided in the Plan, all payments from the Plan to participants, retired participants and beneficiaries shall be made in United States dollars." (SRP Section 16.2.) (Emphasis added.) SRP Section 16.3 (Election of Other Currency for Pensions) provides an exception to that general rule by permitting, under specified circumstances, that a pension may be paid in full or in part in the local currency of the country to which the participant retires, either as a national or as a permanent resident.

19. The text of SRP Section 16.3³ comprises five subsections. Subsection (a) sets out a retired participant's eligibility for making a local currency election and the timing thereof, the permissible proportions of the pension that may be paid in the local currency, and the option to increase (but not decrease) the proportion of local currency in the future:

16.3 (a) A retired participant may, within 90 days after his pension becomes effective, elect to receive not less than 25 percent of his pension in the currency of the country in which he resides at the time of the election if (i) he is a national of that country or (ii) he furnishes evidence satisfactory to the Administration Committee that he has established permanent residence in that country. . . .

Subsection (b) provides that an election made under subsection (a) will be irrevocable. Subsection (c) provides that the applicable exchange rate, in relation to any particular retiree, will be based on the average exchange rate between the local currency and the U.S. dollar in the 5 years immediately preceding the pension effective date. Subsections (d) and (e) provide for, and regulate, exceptions to the irrevocability of a local currency election in the case of a retiree who has maintained permanent residence for at least 12 months in a country other than the country in whose currency his pension is being paid, or in cases of hardship.

B. The SRP Administration Committee's rules relating to local currency election

20. In December 2004, the SRP Administration Committee, pursuant to its authority under SRP Section 7.2(c) to "make, establish and prescribe such rules, policies, procedures and forms for the administration of the Plan [and] its interpretation," adopted Rules for the Election of Currency for Pensions Under the Staff Retirement Plan (Local Currency Rules). These Rules are to provide "practical operational guidance for the orderly implementation of the currency

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."

³ SRP Section 16.3 is set out in full *infra* at RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW.

election provisions of the Plan,” and they delegate to the Secretary of the Committee authority to approve such elections. (Memorandum from Secretary of SRP Administration Committee to Committee Members, “Revised Local Currency Rules and Proposed Delegation of Authority,” December 2, 2004.) Rules promulgated by the Committee pursuant to its authority under SRP Section 7.2(c) “. . . shall not be contrary to the provisions” of the Plan. (SRP Section 7.2 (c).)

21. In the section titled “Eligibility,” the Local Currency Rules repeat the essential elements of SRP Section 16.3(a) as to the eligibility to make local currency elections and the timing thereof, stating that a “Pensioner, may, within 90 days after his pension becomes effective, elect to receive not less than 25 percent of his pension in the currency of the country in which he resides at the time of the Election if (i) he is a national of that country or (ii) he furnishes evidence satisfactory to [the] Secretary of the Administration Committee that he has established permanent residence in that country.” (Local Currency Rules, Section II.)

22. However, under the heading “Timing of Election,” the Local Currency Rules differ from SRP Section 16.3(a) by stating: “Participants may make an Election *prior to the effective date* of their pension *or* within 90 days following that effective date.” (Local Currency Rules, Section III. A.) (Emphasis added.)

23. The Local Currency Rules additionally provide for a “Form of Election,” which is to include an acknowledgement by the participant that a local currency election may result in payments that are “greater or less, at current exchange rates” than the U.S. dollar payments that would have been made in the absence of such election and that the election “shall remain irrevocable unless [the participant] demonstrate[s] to the Secretary of the Administration Committee that [he has] established a permanent residence in a different country for at least one year.” (*Id.*, Section III. B.) Notably, the “Form of Election” section of the Local Currency Rules refers to making an election “within 90 days *of* [the] pension effective date” (*id.*, Section III. B) (emphasis added), substituting the word “of” for “after”; moreover, it does not expressly mention the possibility of making an election “prior to” the pension effective date.

24. Section IV (“Proof of Repatriation”) and Section V (“Proof of Permanent Residence”) of the Local Currency Rules foresee elections by a “Pensioner, *or prospective Pensioner*” (emphasis added), and prescribe the submission of “[u]sed tickets or boarding passes for the airline journey to the country of the currency being elected” or “[d]ocumentation of shipping of household goods consistent with the Pensioner’s, or prospective Pensioner’s, stated intention to resettle in the country for which he is making an Election.” (*Id.*, Sections IV and V.)

25. The Local Currency Rules also require that exchange rate information be provided to the retiring Plan participant: “At the time a Pensioner, or prospective Pensioner, makes his Election, a simulation using the 5-year (or 60-month) average exchange rate in effect prior to the actual or expected date of retirement, will be submitted for his review and acknowledgment.” (*Id.*, Section VII.) The election must be accompanied by a “written acknowledgment (including email) of the established 60-month exchange rate and pension simulation.” (*Id.*)

26. The timeframe for currency elections as adopted by the SRP Administration Committee in the “Timing of Election” section of the Local Currency Rules is repeated in the Staff Retirement Plan Handbook (Handbook): “You may make this election *prior to the effective date*

of your pension or within 90 days following the effective date. If the currency option is not exercised during this initial period, it cannot be exercised until permanent residence has been established and maintained for at least 12 months while retired.” (Staff Retirement Plan Handbook, pp. 23-24.) (Emphasis added.) The Handbook is “designed to help [Plan participants] understand the benefits of the SRP and to assist [them] in financial planning.” (*Id.*, p. 4.) By its terms, the Handbook is “not a legal document.” The Handbook states that the “Plan itself is the only document that determines the entitlement and the amount of benefits payable under or any rights created by the SRP.” (*Id.*)

C. Applicant’s local currency election and his request to have it nullified

27. On October 3, 2014, in anticipation of Applicant’s retirement at the end of that month, the Fund provided him with a standard memorandum “Your Estimated Staff Retirement Plan Benefits,” which included a section titled “Currency option.” (Memorandum from HR Officer to Applicant, “Your Estimated Staff Retirement Plan Benefits,” October 3, 2014.) The Memorandum referred to the timing of currency elections in the same terms as does SRP Section 16.3(a):

Under the pension parity system presently in effect, if you intend to reside permanently in a country other than the United States, you may elect, *within ninety days after your pension becomes effective*, to have a percentage (from 25 percent to 100 percent) of your pension paid in the currency of the country of which you will be a permanent resident. To elect this option, you will need to submit evidence satisfactory to the Administration Committee of your intent and ability to establish permanent residence in that country. If your election of local currency is approved by the Administration Committee, that percentage of the U.S. dollar pension will be converted into local currency at the average exchange rate between the two currencies over the 60 months prior to the effective date of your pension. . . .

(*Id.*, p. 1.) (Emphasis added.) The Memorandum additionally advised that a currency election is irrevocable, except in three circumstances:

An election for local currency is irrevocable unless you: (1) establish permanent residence in another country and submit evidence satisfactory to the Administration Committee that you intend to reside there permanently, in which case you may elect to have your pension valued in the currency of your new country of residence after you have lived there for 12 months; (2) prove hardship to the satisfaction of the Administration Committee (which would take into account the entire record of pension payments) in which case the Committee could permit a reversion to U.S. dollars; or (3) subsequently elect to increase the portion of your pension payable in local currency.

You can elect to increase the portion of your pension payable in local currency three times without a change in your country of residence (but you cannot elect to increase the portion payable in U.S. dollars). . . .

(*Id.*, pp. 1-2.) (Emphasis added.)

28. Although the Memorandum does not state that currency elections may be made *prior to* the pension effective date, it nonetheless instructed Applicant to “[p]lease complete the attached *Pension Election Form* prior to your pension effective date” and send it to the Human Resources Department (HRD) (*id.*, p. 3); the Pension Election Form asked *inter alia* for the retiring participant’s currency election. The accompanying Memorandum additionally cautioned: “Please note that retirements are always effective the first of the month. Payment of the retirement pension cannot commence until your election has been submitted. Therefore, failure to submit your pension election form prior to the date in which the retirement pension is scheduled to commence results in the forfeiture of the benefits, in accordance with the provisions of the SRP.” (*Id.*)

29. It is notable that the Pension Election Form asks the retiring participant not only to choose (i) whether he elects payment of all or part of the pension in a local currency (and the proportion thereof) but also (ii) whether (and to what extent) he elects to commute the pension, i.e., to convert part of the monthly pension payments to a lump sum, and (iii) whether he elects a reduced pension with pension to a designated survivor pursuant to SRP Section 4.6. These two additional elections—i.e., for Commutation pursuant to SRP Section 15.1 and for Reduced Pension with Pension to Survivor pursuant to SRP Section 4.6—about which participants are asked to register their decisions on the Pension Election Form are elections that, by the terms of the Plan (and unlike the local currency election), are required to be made by written notice to the SRP Administration Committee “*before [the] pension becomes effective.*” (See SRP Section 4.6(a) and SRP Section 15.1(a).)⁴ (Emphasis added.)

30. Applicant completed and signed the Pension Election Form on October 15, 2014 (and formally submitted it on October 22, 2014), electing under “Currency Information” that 75 percent of his pension be paid in the currency of the country to which he would be repatriating and 25 percent in U.S. dollars. (Applicant’s Pension Election Form, submitted October 22, 2014.) Consistent with the Local Currency Rules (*see* above), the currency election section of the Pension Election Form completed by Applicant included the following acknowledgement:

⁴ SRP Section 4.6(a) provides in part: “Any participant or retired participant may, *by written notice received by the Administration Committee before his pension becomes effective*, elect to convert the pension otherwise payable to him . . . into two pensions, in accordance with one of the options named below.” (Emphasis added.) SRP Section 15.1(a) provides in part: “Any participant or retired participant entitled to receive a normal, early retirement or deferred pension may, *by notice in writing filed with the Administration Committee before his pension becomes effective*, elect to commute a stated portion, not exceeding one third, of his pension plus accumulated pension supplements into a lump sum payment.” (Emphasis added.)

I acknowledge that I have made this election with full awareness that it could, in certain circumstances, result in payments which are greater or less, at current exchange rates, than the U.S. dollar pension payments that I would have received under the Staff Retirement Plan had I not made this choice, depending on exchange rate changes and consumer price index changes. . . . I recognize that this election shall remain irrevocable unless I demonstrate to the Administration Committee that I have established a permanent residence in a different country for at least one year.

31. A chronology prepared by the Secretary of the SRP Administration Committee in connection with Applicant's request to revoke his currency election states: "October 15: [Applicant] submitted his Pension Election Form. At that time, I explained the local currency rules, including that he had 90 days from his pension effective date to make an election so if he was not certain, he could be paid in US dollars until he decided. He wanted to proceed with his election so I then informed him that we were required to send him a currency simulation before his election could be finalized." (Memorandum from Secretary of the Administration Committee to Members of the Administration Committee, "Revocation of Initial Local Currency Election—[Applicant], December 12, 2014, p. 1.) The record of the case does not provide Applicant's version of any exchange of October 15, 2014.

32. On October 21 and 22, 2014, Applicant exchanged emails with the HR Officer who also served as Secretary of the SRP Administration Committee. In accordance with the Local Currency Rules, the HR Officer provided Applicant with a pension simulation, applying the 5-year average exchange rate to the local currency portion (75 percent) of his pension and comparing it to payment of the pension fully in U.S. dollars. Applicant, for his part, forwarded documentation of his relocation travel authorization, as well as of the shipping of his household goods, as evidence of his intent to repatriate to his home country. Applicant asked the HR Officer to "Pls confirm that you have received both forms signed and filled out from me so that I can be sure that the matter is settled." The HR Officer advised that a written "acknowledgement" was required before the election could be approved. Applicant provided by email the following acknowledgement, repeating the terms supplied by the HR Officer: "I hereby confirm that after reviewing the currency simulation I fully understand the implications and the consequences of my elections. I also understand the rules and the relevant provisions of the SRP." (Email exchange between Applicant and HR Officer, October 21-22, 2014, and attached documentation.)

33. On October 27, 2014, the Secretary of the Administration Committee approved the payment of Applicant's pension 75 percent in the currency of his home country, i.e., Euros, and 25 percent in U.S. dollars and forwarded the package of documentation to the Finance Department for implementation. (Email from Secretary of the Administration Committee to Finance Department, "Authorization to pay a local currency other than U.S. dollars—[Applicant]," October 27, 2014.) Applicant separated from the Fund on October 31, 2014 and his pension became effective on the following day, November 1, 2014. In accordance with SRP

Section 4.7,⁵ the first payment would be made on the last business day of that month, i.e., November 28, 2014.

34. According to the chronology prepared by the Secretary of the SRP Administration Committee, Applicant contacted the Secretary a few weeks later, on November 21, 2014, seeking to revoke his currency election and to have 100 percent of the pension paid in U.S. dollars. The Secretary advised that a formal request would need to be made to the Committee. (Memorandum from Secretary of the Administration Committee to Members of the Administration Committee, “Revocation of Initial Local Currency Election—[Applicant], December 12, 2014, p. 1.) On November 24, 2014, Applicant is said to have contacted the Finance Department, which informed him that the pension payment instructions for November had already been set in motion. (*Id.*, p. 2.)

35. On November 24, 2014, Applicant filed a formal request with the SRP Administration Committee to void his currency election of October 22, 2014, and to change his “original selection of $\frac{3}{4}$ Euro plus $\frac{1}{4}$ U.S.-\$ to $\frac{3}{4}$ U.S.-\$ and $\frac{1}{4}$ Euro.” (Email from Applicant to Secretary of SRP Administration Committee, “Request to Administration Committee regarding change in selection of currency in pension payment,” November 24, 2014.)

36. On November 28, 2014, while his request was pending with the Committee, Applicant’s first pension payment was made in accordance with the currency election he had submitted on October 22, 2014. On November 29, 2014, Applicant repatriated to his home country.

37. On December 19, 2014, the SRP Administration Committee notified Applicant that it had denied his request to revoke his currency election on the basis that (i) the Local Currency Rules “stipulate that the election is irrevocable, except in specific circumstances not present in [his] case (*see* Articles VI [Changing the Election Percentage] and XI [Hardship])” and (ii) Applicant had acknowledged his understanding of the rules and the consequences of his currency election in his email of October 22, 2014 and in executing the Pension Election Form. (Letter from Secretary of SRP Administration Committee to Applicant, December 23, 2014.)

CHANNELS OF ADMINISTRATIVE REVIEW

38. On March 11, 2015, pursuant to Rule VIII⁶ of the SRP Administration Committee’s Rules of Procedure, Applicant filed a request for review by the Committee of its December 19,

⁵ SRP Section 4.7 provides in part: “All pensions shall be payable in equal monthly installments commencing at the end of the calendar month in which the pension becomes effective”

⁶ Rule VIII (Review of Decisions) of the SRP Administration Committee’s Rules of Procedure 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. An Application shall satisfy all of the requirements as to form set forth in Rule III and otherwise applicable to a Request. Subject to Rule X, paragraph 2, if no Application has been submitted within this period and an extension of time described in Rule IX, paragraph 2 has not been granted, the right to submit an Application shall cease.

(continued)

2014 decision, asking the Committee to withdraw its decision and “agree instead with the cancelation of my initial erroneous currency option for my pension, and to allow me to opt for a payment of my entire pension in US dollars” (Request from Applicant to Secretary of SRP Administration Committee, March 11, 2015.)

39. On March 18, 2015, Applicant followed up his March 11 request for review with a memorandum from his counsel requesting “cancelation of [Applicant]’s initial, preliminary, premature and erroneous currency option decision.” In his submissions to the Committee of March 11 and 18, 2015, Applicant raised similar arguments to those he now presents to the Administrative Tribunal. In the March 18 submission, Applicant additionally made a “request to be heard,” seeking that his counsel be permitted to appear before the Committee to address it and answer questions relating to his request for review. (Memorandum from Applicant and Applicant’s counsel to Chairman and Members of SRP Administration Committee, “Request to cancel the election of other currency for [Applicant’s] pension,” March 18, 2015.)

40. On April 22, 2015, the Committee notified Applicant that his request for review had been denied, stating that “[i]n accordance with the Rules for the Election of Currency for Pensions under the Staff Retirement Plan (SRP), your election became irrevocable as of your pension effective date, November 1, 2014.” (Letter from Secretary of SRP Administration Committee to Applicant, April 22, 2015.) The Committee also reaffirmed that (i) Applicant had acknowledged in making the election both that it was irrevocable and that he understood the implications of such election and (ii) circumstances under which local currency elections may be changed (namely, following permanent residence in another country for 12 consecutive months or in cases of hardship) were not present in his case.

2. The Committee may review a Decision, either in response to a timely Application or at its 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
- (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.

41. The Committee further held that the “Local Currency Rules as adopted by the Administration Committee do not abridge the rights of Plan participants and are consistent with the provisions on currency election set forth in the Plan.” (*Id.*, p. 1.) In the view of the Committee: “The intent behind allowing a currency election within 90 days following the pension effective date is to set an outer limit; it does not preclude an earlier election. If an election is made before the pension effective date, it has legal effect and *becomes irrevocable on the pension effective date*, and the 90 day outer limit is irrelevant.” (*Id.*, p. 2.) (Emphasis added.) The Committee additionally rejected the argument that a participant should be able to change a currency election at any time prior to receiving the first pension payment, on the ground that it is “. . . necessary for HRD and FIN to have time to establish the pensioner’s records and banking instructions—a deadline is required, and the Plan has established the deadline at the pension effective date, not the date of payment.” (*Id.*)

42. The Committee also rejected Applicant’s assertion that the Fund has a duty to advise Plan participants as to the currency election that would be in their “best interest.” It noted that Applicant had had an “individual meeting with an HR pension officer to discuss [his] pension benefits and the elections available to [him] in greater detail” and that he was “provided with the necessary information to make an informed decision.” (*Id.*) The Committee also stated that to make an exception to the Local Currency Rules in Applicant’s case would “result in inequity and unfairness to other Plan participants in prior cases.” (*Id.*) The Committee additionally denied Applicant’s request for an oral hearing in his case.

43. In accordance with Rule X, para. 1(b),⁷ of the SRP Administration Committee’s Rules of Procedure, the channels of review provided by that Committee are exhausted for purposes of filing an application with the Administrative Tribunal when the Committee has notified the requestor of the results of its review of the contested decision.

44. On May 15, 2015, Applicant filed his Application with the Administrative Tribunal.

⁷ Rule X (Exhaustion of Administrative Review), para. 1, of the SRP Administration Committee’s Rules of Procedure provides:

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.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

A. Applicant's principal contentions

45. The principal arguments presented by Applicant in his Application and Reply may be summarized as follows:

1. The SRP Administration Committee erred in denying Applicant's request to revoke his currency election. The Committee acted contrary to the provisions of the Plan because, at the time of the election, Applicant had not met the criteria prescribed by SRP Section 16.3(a) for making a valid election, namely: the participant is retired; the pension has become effective; the election is made within 90 days after the pension has become effective; and, at the time of the election, the retiree resides in a country other than the United States either as a national or as a permanent resident. As a local currency election is irrevocable pursuant to Section 16.3(b) only when a valid election has been made under Section 16.3(a), Applicant's currency election was "untimely, premature, not (yet) valid, and at best preliminary and revocable."
2. The Fund fell short of its obligation as employer to inform Applicant adequately about his complex rights under the SRP.
3. The SRP Administration Committee failed to take its decision in accordance with fair and reasonable procedures.
4. Applicant seeks as relief:
 - a. rescission of the Committee's decision denying his request to revoke his currency election, and confirmation of the validity of the revocation;
 - b. an order that the Fund pay Applicant's full pension from its effective date onwards solely in U.S. dollars until he has made at any future time a valid currency election under SRP Section 16(d); and
 - c. an order that the Fund settle with Applicant, for past pension payments, the exchange rate difference between the amounts already made in his home country currency and the amount due in U.S. dollars.

Alternatively, Applicant seeks essentially the same elements of relief to compensate him for damage caused by the Fund's alleged failure to advise him properly about his pension rights.

B. Respondent's principal contentions

46. The principal arguments presented by Respondent in its Answer and Rejoinder may be summarized as follows:

1. The SRP Administration Committee did not err in denying Applicant's request to revoke his currency election. That decision was fully in accord with the provisions of the Plan. The Local Currency Rules represent a sound exercise of the Committee's authority to interpret the Plan, and it properly applied the Plan and the rules to Applicant's case. The Committee's determination that local currency elections may be effective prior to actual physical relocation is fully consistent with the SRP.
2. The Fund provided Applicant with sufficient information to make an informed currency election decision.
3. The SRP Administration Committee's decision was taken in accordance with fair and reasonable procedures. Applicant was afforded due process in the consideration of his request.

RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW

47. For ease of reference, the principal provisions of the Fund's internal law relevant to the consideration of the issues of the case are set out below.

A. SRP Section 16.3 (Election of Other Currency for Pensions)

48. SRP Section 16.3 governs the election of payment of all or part of a pension in a currency other than U.S. dollars:

16.3 Election of Other Currency for Pensions

(a) A retired participant may, within 90 days after his pension becomes effective, elect to receive not less than 25 percent of his pension in the currency of the country in which he resides at the time of the election if (i) he is a national of that country or (ii) he furnishes evidence satisfactory to the Administration Committee that he has established permanent residence in that country. The election shall not be permitted to reduce any other currency that he will receive below 25 percent. Thereafter, if he is receiving less than 100 percent of his pension in a currency other than United States dollars, a retired participant may, on not more than three occasions, elect to increase the portion of his pension paid in that currency, provided that it is the currency of the country of which he is a permanent resident, to (i) any higher percentage up to 75 percent or (ii) 100 percent. The election shall also be available to a survivor entitled to a pension, under Section 4.6, 4.9 or 4.10 of the Plan.

(b) Any election under subsection (a) shall be irrevocable, except as provided in subsection (d) below. An

election under subsections (a) or (d) also applies to any pension to which a survivor of the person making the election may thereafter be entitled, unless that survivor elects otherwise in accordance with subsections (a) or (d).

(c) The amount of a pension paid in a currency other than United States dollars under subsections (a) or (b) shall be the equivalent of the United States dollar amount of the pension determined on the basis of the average of the exchange rates between the United States dollar and the currency elected at the end of the 60 consecutive calendar months before the date on which such pension became effective. Payments in the currency elected shall commence with the pension payment for the first month following the approval of election by the Administration Committee.

(d) A person receiving a pension under the Plan may furnish evidence satisfactory to the Administration Committee that he has established and, after his pension became effective, has maintained permanent residence for at least 12 consecutive calendar months in a country other than the country in whose currency his pension is being paid, and that he intends to continue to maintain permanent residence in that other country. Such a person may elect to receive thereafter not less than 25 percent of his pension in the currency of the country in which he has established his permanent residence. The portion elected must equal or be greater than any portion that was previously paid in a currency other than United States dollars before the election. The remaining portion of the pension, if any, shall continue to be paid in United States dollars, provided that any portion payable in dollars shall not be reduced below 25 percent. Any such election shall be irrevocable, except that (i) the person concerned may further elect in accordance with the provisions of this subsection if, upon a finding by the Administration Committee, a new permanent residence has been established and maintained in another country; and (ii) the Administration Committee may, in a case of hardship demonstrated to its satisfaction, and after taking due account of the entire record of pension payments, permit a change from local currency to the United States dollar in such proportion consistent with this subsection as it may allow.

(e) The amount of a pension paid in another currency under subsection (d) shall be the same amount as if payment of the pension in that currency had originally been elected under subsection (a) or, where applicable, under the provisions of the

pension parity adjustment system that preceded the adoption of subsection (a). Payments in the currency elected shall commence with the pension payment for the first month following approval of election by the Administration Committee.

B. SRP Section 7.2 (Administration Committee)

49. SRP Section 7.2 sets out the role and responsibilities of the SRP Administration Committee:

7.2 Administration Committee

(a) The Administration Committee shall be composed of five persons, each with an alternate, appointed by the Pension Committee upon nomination by the Managing Director of the Employer, to serve at the pleasure of the Pension Committee. Each member and each alternate appointed after January 1, 1978 shall serve for a period of three years, subject to the pleasure of the Pension Committee, but may be reappointed. The Pension Committee shall designate one of the members of the Administration Committee as chairman and another as vice chairman of the Administration Committee. The alternate of any member of the Administration Committee may act and vote in his stead.

(b) The Administration Committee, subject to the supervision and control of the Pension Committee, shall be responsible for the administration of the Plan and its application to participants, former participants and persons claiming through them. Except as may be herein otherwise expressly provided, the Administration Committee shall have 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. Nothing herein shall prevent the Administration Committee, at its own discretion, from reconsidering a decision taken or from submitting a matter to

the Pension Committee in accordance with subsection (c) of Section 7.1.

(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.

(d) The Administration Committee shall maintain accounts showing the fiscal transactions of the Plan, and shall keep in convenient form such data as may be necessary for actuarial valuations of the Plan. The Administration Committee shall prepare annually a report showing in reasonable detail the assets and liabilities of the Plan and giving a brief account of the operation of the Plan for the past year. Such report shall be submitted to the Pension Committee, and a copy shall be on file at the headquarters of the Employer, where it shall be open to inspection by any participant or retired participant.

(e) In any case where it shall be necessary to determine the part of any benefit under the Plan that is provided by the contributions of a participant or of the Employer, the Administration Committee, subject to any rules or orders of the Pension Committee with respect thereto, shall make such determination in such manner as it shall deem equitable.

C. Rules for the Election of Currency for Pensions Under the Staff Retirement Plan (Local Currency Rules) (December 2004)

50. The SRP Administration Committee has adopted rules governing currency elections pursuant to SRP Section 16.3, which provide in pertinent part:

I. Introduction

These rules supersede the August 24, 1973 rules for the administration of the Pension Parity Adjustment System (PPAS), which provided for the election of pensions under the Staff Retirement Plan (SRP) denominated in currencies other than U.S. dollars (hereafter referred to as "local currencies") and cost of living adjustments for pensions denominated in those local currencies.

II. Eligibility

1. A retired participant or any person receiving a pension from the Fund (a "Pensioner"), including a pension under SRP Section 4.6, 4.9 or 4.10 who has established permanent residence in a country other than the United States may make an election to receive payment of all or a portion of his pension in the currency of that country (an "Election") in accordance with Section 16.3 of the Plan. The Secretary of the Administration Committee shall review the eligibility of Pensioners who make that Election.
2. As provided under Section 16.3(a) of the Plan, a Pensioner, may, within 90 days after his pension becomes effective, elect to receive not less than 25 percent of his pension in the currency of the country in which he resides at the time of the Election if (i) he is a national of that country or (ii) he furnishes evidence satisfactory to [the] Secretary of the Administration Committee that he has established permanent residence in that country.
3. As provided under Section 16.3(d) of the Plan, a Pensioner may furnish evidence satisfactory to the Secretary of the Administration Committee that he has established and, after his pension became effective, has maintained permanent residen[ce] for at least 12 consecutive calendar months in a country other than the country in whose currency his pension is being paid.
4. A recipient of benefits under Section 4.4.(b) of the Plan shall be ineligible to make an Election.

III. Process of Currency Election under Section 16.3 of the Plan

A. Timing of Election

Participants may make an Election prior to the effective date of their pension or within 90 days following that effective date. Participants who elect a deferred pension may defer that Election until the pension commences.

Subsequent Elections may only be made if a Pensioner has established a permanent residence for at least 12 consecutive months in the country of the currency being elected.

If the Fund authorizes a Pensioner, or prospective Pensioner, to defer repatriation to his home country for a period of up to one year after his pension becomes effective, he may make the

Election within 90 days prior to his departure from the United States, but the Election shall take effect as of the calendar month following the month in which his departure occurs. He would have to furnish evidence satisfactory to the Secretary of the Administration Committee that he resides in his home country.

B. Form of Election

An Election under Section 16.3 shall be made by the Pensioner on the form provided by the Administration Committee "Election of Currency of Pension Payment" (Appendix 1).

The form shall include the following statement:

"I acknowledge that I have made this election with full awareness that it could, in certain circumstances, result in payments which are greater or less, at current exchange rates, than the U.S. dollar payments I would have received under the Staff Retirement Plan had I not made this choice, depending on exchange rate changes and consumer price index changes; moreover, I make this election on behalf of any of my heirs, beneficiaries, or minor children who may be entitled to continuing benefits under that Plan. I recognize that this election shall remain irrevocable unless I demonstrate to the Secretary of the Administration Committee that I have established a permanent residence in a different country for at least one year"

In accordance with Section 16.3(a), a national of the country for which the currency is elected within 90 days of his pension effective date shall provide the Secretary of the Administration Committee with satisfactory evidence of repatriation to his home country as set forth in Section IV below.

A person who is not a national of the country for which the currency is being elected and who makes an election within 90 days of his pension effective date shall provide the Secretary of the Administration Committee with satisfactory evidence that he has established or intends to establish permanent residence in that country.

If the first 90 days from the pension effective date lapsed, a Pensioner who wishes to make an Election must furnish evidence to the Secretary of the Administration Committee that he has established and maintained permanent residence for at least 12 consecutive calendar months in a country other than the country in whose currency his pension is being paid, as provided in Section 16.3(d). The Election will be effective in the month following the month in which the Secretary of the Administration Committee approves the Election.

C. Notification to the Finance Department

The Secretary of the Administration Committee, after approving the Election, shall notify the Finance Department regarding the Pensioner's eligibility to receive pension payments and cost of living adjustments in such currency pursuant to Sections 16.3 and 4.11, respectively. Such payments and adjustments will be made to that pension beginning with the first pension payment (or monthly accrual of a pension under Section 4.5(b)) after the end of the calendar month in which the Election is approved by the Secretary of the Administration Committee.

IV. Proof of Repatriation

A Pensioner, or prospective Pensioner, who is repatriating to his home country shall submit one of the following as evidence of residence in that country: (Section 16.3(a))

- Used tickets or boarding passes for the airline journey to the country of the currency being elected; or
- Documentation of shipping of household goods consistent with the Pensioner's, or prospective Pensioner's, stated intention to resettle in the country for which he is making an Election.

The Secretary of the Administration Committee has the discretion to require additional evidence if deemed necessary.

V. Proof of Permanent Residence

The establishment of a Pensioner's permanent residence in a country for the purposes of a local currency Election shall be based on evidence including the following indications, none of which shall preclude the Secretary of the Administration Committee from finding that permanent residence has or has not been established by the Pensioner:

- (1) The Pensioner's nationality;
- (2) The Pensioner's statement of intent to the Administration Committee that the country will remain his permanent residence;
- (3) The addresses for correspondence with the Pensioner and payments to him;
- (4) Evidence of status as a resident under the tax or other laws of the country in question;
- (5) Evidence of any ownership of real estate in the country in question;
- (6) Evidence of the presence of any dependents or close relatives in the country in question;

Questionnaire

The Pensioner, or prospective Pensioner, making the Election shall submit a form provided by the Administration Committee together with proof of residence (Questionnaire and Evidence of Permanent Residence- see Appendix 2). The Secretary of the Administration Committee has the discretion to require additional evidence if deemed necessary. Upon approval of the Election, unless it has been determined otherwise or following a Pensioner's request, payment will be made by electronic transfer to the Pensioner's bank account in the country recognized by the Secretary of the Administration Committee as his place of residence .

VI. Changing the Election Percentage

The Election shall not be permitted to reduce any other currency that a Pensioner will receive below 25 percent. Thereafter, if a Pensioner is receiving less than 100 percent of his pension in a currency other than United States dollars, he may, on not more than three occasions, elect to increase the portion of his pension paid in that currency up to 50 percent, 75 percent or 100 percent, provided that it is the currency of the country of which he is a permanent resident.

As provided in Section 16.3(d), a Pensioner who wishes to elect to have a portion of, or to increase the portion of, his pension paid in a currency of a country other than the United States, shall furnish evidence, satisfactory to the Secretary of the Administration Committee, that he has maintained a permanent residence in that country for at least 12 consecutive months. The Election will become effective in the month following the month in which the Secretary of the Administration Committee approves the Election .

Any election shall be irrevocable, except that (i) the person concerned may further elect, upon a finding by the Secretary of the Administration Committee, that a new permanent residence has been established and maintained in another country for at least 12 consecutive calendar months and (ii) the Administration Committee may, in case of hardship demonstrated to its satisfaction, and after taking due account of the entire record of pension payments from the date of retirement in local currency and United States dollar, as applicable, permit a change from local currency to the United States dollar.

VII. 60-Month Average Exchange Rate

The amount of a pension paid in a currency other than the United States dollar shall be equivalent to the United States dollar amount of the pension determined on the basis of the average of the exchange rates between the United States dollar and the currency elected at the end of the 60 consecutive calendar months immediately prior to the date on which the initial pension became effective.

At the time a Pensioner, or prospective Pensioner, makes his Election, a simulation using the 5-year (or 60-month) average exchange rate in effect prior to the actual or expected date of retirement, will be submitted for his review and acknowledgement. In the case of an Election made at the time of retirement, there may be a slight variation in the rate applied to the actual pension since the simulation is done close to the actual retirement date, and the last month's actual rate will be different from the one used in the simulation; e.g., for a September 1 retirement, a simulation at the beginning of August would be based on the 60 months through July 31. The actual 60 months, for the guaranteed 60 months average exchange rate will be based on the August 31 rate, which will not be available until mid-September.

Except with regard to lump sum benefits, any maximum or minimum amounts in U.S. dollars, specified in the Plan, (e.g., children's benefits) shall be converted into a currency elected under Section 16.3 at the rate of exchange applicable to the recipient's pension. Lump sum benefits (withdrawal and commutation payments) are always paid in U.S. Dollars. If data required for the application of Section 16.3 (c) are unavailable, the Administration Committee shall determine the exchange rate to be used in those circumstances.

Written acknowledgment

A Pensioner, or prospective Pensioner, making an Election must provide a written acknowledgment (including email) of the established 60-month exchange rate and pension simulation. The Pensioner, or prospective Pensioner, will also acknowledge that the actual amount of local currency is an estimate at the time the simulation is provided and may be different at the date that the pension becomes effective.

....

XI. HARDSHIP

In accordance with Section 16.3(d), the Administration Committee may allow a Pensioner who had retired abroad and elected local currency to revert to payment in U.S. dollars of some or the entire pension in the case of extreme hardship demonstrated to its satisfaction.

....

CONSIDERATION OF THE ISSUES

51. The Application presents the following issues for decision: First, did the SRP Administration Committee err in denying Applicant's request to revoke his currency election? Second, as an alternate ground for relief, did the Fund fail to fulfill its obligation as employer to advise Applicant properly of his currency election rights under the SRP? Third, did the Committee take the contested decision in accordance with fair and reasonable procedures?

A. What standard of review governs Applicant's challenge to the decision of the SRP Administration Committee?

52. Unlike in the case of a challenge to an individual decision taken in the exercise of managerial discretion, when the Administrative Tribunal reviews a decision of the SRP Administration Committee it does not review that decision for abuse of discretion. Rather, the Tribunal decides whether the Committee has correctly interpreted the provisions of the Plan and soundly applied them to the facts of the case, and also decides whether the decision was taken in accordance with fair and reasonable procedures. *Ms. "J", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 128; *Mr. R. Niebuhr, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-1 (March 12, 2013), paras. 98-100. In *Ms. "J"*, para. 128, the Tribunal also formulated as part of the standard of review the question whether the Committee's decision was in any respect arbitrary, capricious, discriminatory or improperly motivated. As this is not a claim that has been made in the Application, it is not necessary to consider it here. In the case of a challenge to a

decision of the SRP Administration Committee, if the Tribunal concludes that the Committee's decision was "in error," it may rescind the decision. *See, e.g., Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2001-2 (November 20, 2001), para. 144 (giving effect to order for division of marital property pursuant to SRP Section 11.3).

53. The reasons for this approach are twofold. First, the decisions of the SRP Administration Committee (in contrast to recommendations of the Fund's Grievance Committee) are not subject to further consideration by Fund Management. Pursuant to Section 7.2(b) of the Plan, the authority to take an individual decision under the SRP is vested exclusively in the SRP Administration Committee, subject only to appeal (following reconsideration by that Committee) to the Tribunal. Second, the "... process of construing the applicable terms of the Staff Retirement Plan and applying them to the facts of a particular case to determine an applicant's entitlement or not to the requested benefit more closely resembles a judicial act than one typically taken pursuant to managerial authority." *Ms. "J"*, paras. 112-113 (rescinding denial of disability pension).

54. Mindful of the "unique nature of the [Tribunal's] appellate authority" in such cases, *Niebuhr*, para. 99, *citing Ms. "J"*, para. 114, and *Mr. "P" (No. 2)*, para. 141, the Tribunal will consider: (i) whether, in denying Applicant's request to revoke his currency election, the Committee erred; (ii) whether the Fund failed to fulfill its obligation as employer to advise Applicant properly of his currency election rights under the SRP; and (iii) whether the contested decision was taken in accordance with fair and reasonable procedures.

B. In denying Applicant's request to revoke his currency election, did the SRP Administration Committee err?

55. The core issue raised by the Application is whether the SRP Administration Committee acted "contrary to the provisions" of the Plan by permitting Applicant, in accordance with the Committee's Local Currency Rules, to make a currency election prior to meeting the criteria prescribed by SRP Section 16.3(a) and then treating that election as irrevocable when Applicant sought to cancel it following his pension effective date.

56. Applicant contends that a currency election remains revocable until all the conditions set out in SRP Section 16.3(a) have been met, namely: the participant is retired; the pension has become effective; the election is made within 90 days after the pension has become effective; and, at the time of the election, the retiree resides in a country other than the United States either as a national or as a permanent resident. Applicant cites Section 16.3(b), which provides that "[a]ny election *under subsection (a)* shall be irrevocable . . ." (Emphasis added.) In Applicant's case, his currency election was made on October 22, 2014, he retired on October 31, his pension became effective on November 1, his first pension payment was made on November 28, and he repatriated to his home country on November 29, 2014. In Applicant's view, his October 22, 2014, currency election was "untimely, premature, not (yet) valid, and at best preliminary and revocable" under the Plan, and the Committee accordingly erred in denying his November 24, 2014 request to void that election.

57. Respondent, for its part, maintains that the Committee's decision was a sound one, fully in accord with the provisions of the Plan. The Fund asserts that the Local Currency Rules

represent an appropriate exercise of the Committee's authority under SRP Section 7.2(c) and that its determination that currency elections may be effective prior to a participant's physical relocation abroad is consistent with the SRP. In the Fund's view, the Committee properly applied the relevant Plan provision and the Local Currency Rules in deciding that Applicant's pre-retirement currency election became irrevocable once his pension effective date had passed.

58. In addressing the core question in this case, two questions have to be considered. Was Applicant's currency election of October 22, 2014, which was made prior to the pension effective date, an election made in terms of Section 16.3(a) of the SRP? The second question that must be answered in the light of the answer to the first question, is did the Committee err in deciding that Applicant's election was irrevocable?

- (1) Was Applicant's currency election of October 22, 2014, which was made prior to the pension effective date, an election made in terms of Section 16.3(a) of the SRP?

59. SRP Section 16.3 and the Local Currency Rules differ as to the permissible time period for making a currency election and the conditions prerequisite to such an election.

60. Applicant correctly observes that the timeframe for a local currency election as set out in Section 16.3(a), i.e., "within 90 days after his pension becomes effective," is underscored by the language that follows in the same subsection, which refers to the "currency of the country in which [the retired participant] *resides at the time of the election*" either as a national or by furnishing evidence that he has "*established permanent residence in that country.*" (Emphasis added.) That text suggests that the rationale for starting the period for currency election with the pension effective date is to ensure that the pensioner elects the currency of the country to which he actually retires.

61. Respondent, for its part, maintains that permitting elections prior to the pension effective date is not inconsistent with the "purpose" of the Plan because "documentation for the shipment of household effects is a sound proxy" for the retiring participant's intention to establish permanent residence abroad. The Fund asserts that the Committee's rules are not "contrary to the provisions" of the Plan because they were adopted to "fulfill the purpose of Section 16.3, and in a manner that eased Plan administration for employer and retiree alike, without in any way curtailing the rights of the retirees." In the view of the Fund, these are "[p]ragmatic accommodations regarding the administration of the Plan" that are "fully within the purview of the Committee"

62. Respondent also invokes the legislative history of Section 16.3 in support of its view that allowing for a currency election prior to retirement is not contrary to the Plan. The Fund cites the 1990 decision of the IMF Executive Board, along with the Board paper of the following year that accompanied the formal amendment of the Plan. Both of these documents state: "A person entitled to receive a pension may, prior to the ninetieth day following the date his pension becomes effective, elect under the Pension Parity Adjustment System to have his pension denominated and paid in part in U.S. dollars and in part in the currency of the country in which he has established permanent residence." (See EBAP/90/95, Supp. 1, p. 4, "Decision Adopting Modifications in the Staff Retirement Plan," April 19, 1990; EBAP/91/98, "Staff Retirement Plan – Proposed Amendments," April 23, 1991, p. 22.) Respondent asserts that these documents

provide evidence that the “Board’s intent was that the election would be made *no later than 90* days after the pension effective date, and not to prohibit staff members from making their pension elections in advance of their pension effective date.” (Emphasis in original.)

63. While the Fund emphasizes the portion of the above quoted sentence that reads, “prior to the ninetieth day following the date his pension becomes effective,” the same sentence equally states that the participant may make an election in the currency of the country “in which he has established permanent residence.” Accordingly, in the view of the Tribunal, the legislative history produced by the Fund is not conclusive in showing that the Board, in adopting SRP Section 16.3, intended either to allow for—or, not to preclude—currency elections *prior to the pension effective date*, given that the text of the provision states that such elections may be made “within 90 days after his pension becomes effective.” (Emphasis added.)

64. The Tribunal observes that it has not been called upon to pass on the validity of the Local Currency Rules but rather to decide whether the Committee erred in holding irrevocable Applicant’s pre-retirement currency election when he sought to revoke it following his pension effective date but before fulfilling all of the criteria that SRP Section 16.3(a) envisages as prerequisite to making a currency election. The Committee’s denial of Applicant’s request to revoke the election is the “administrative act” by which Applicant has been “adversely affect[ed]” within the meaning of Article II of the Statute.⁸

65. In deciding whether the Committee erred in refusing Applicant’s request to revoke his election, the Tribunal must first determine whether the election made by Applicant on October 22, 2014 was an election in terms of Section 16.3(a) of the SRP. In making that determination, the Tribunal observes that there is a clear hierarchy of norms in relation to the SRP and the Local Currency Rules. Rules promulgated by the Committee pursuant to its authority under SRP Section 7.2(c) “. . . shall not be contrary to the provisions” of the Plan. Thus, when there is a conflict between a Plan provision and a rule promulgated by the Committee, the Plan provision must govern. The Plan is adopted by the IMF Executive Board, the highest decision-making authority within the Fund, save for the Board of Governors⁹ and it is appropriate, therefore, that the Plan should take precedence over rules established by the Committee. The consequence of this hierarchy of norms is that when considering whether an election is irrevocable, the Committee should start by considering the provisions of the Plan and assessing whether the relevant election was made in accordance with the provisions of the Plan.

66. As set out above, Section 16.3(a) is the provision of the Plan that governs elections relating to the payment of a part or all of a pension in a currency other than U.S. dollars. It provides that retirees may, within 90 days after their pension effective date, elect to receive a portion of their pensions in the currency of the country in which they live at the time of their

⁸ Article II, Section 1(b) of the Statute provides that the “Tribunal shall be competent to pass judgment upon any application . . . 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.”

⁹ See *Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-1 (January 24, 2007), para. 46 and note 9.

election if they are a national of that country or can provide proof that they have established permanent residence there. Section 16.3(b) provides that an election under subsection (a) shall be irrevocable. An election will only be an election “under” Section 16.3(a) if it complies with the requirements stipulated in that section. Accordingly, to determine whether an election is irrevocable under Section 16.3(b), it must be ascertained (i) whether the election was made by a retiree; (ii) within 90 days after the pension effective date; and (iii) whether the retiree was both a national and a resident of the country of the specified local currency or a permanent resident of that country at the time the election was made.

67. The Tribunal observes that there are key differences between SRP Section 16.3(a) and Sections III.A and III.B of the Local Currency Rules. These are the following: (i) under the Plan provision, the election is to be made “within 90 days after [the] pension becomes effective,” whereas under the Local Currency Rules, such election may be made “prior to the effective date of [the] pension or within 90 days following that effective date”; (ii) under the Plan provision, the currency election is made by a “retired participant,” whereas under the Local Currency Rules, a participant may make the election prior to retirement; and (iii) under the Plan provision, the currency election is for the “currency of the country in which [the retired participant] resides at the time of the election,” whereas under the Local Currency Rules, the election is for the currency of the country to which the participant intends to retire, as evidenced by documentation of the shipping of household goods. It is also significant that, in implementing the Local Currency Rules, the Fund supplies the Plan participant with a Pension Election Form with the instruction that it be returned prior to the pension effective date.

68. The question before the Tribunal is not whether the Local Currency Rules have been lawfully made or are rational or have a pragmatic basis but rather whether the Committee erred in denying Applicant’s request to revoke his election of October 22, 2014. Although these questions are, of course, related, the Tribunal has sought to focus pertinently on the question raised in the Application, which is the latter, not the former, question.

69. In the view of the Tribunal, in deciding whether to accede to Applicant’s request, the Committee should have commenced by ascertaining whether the election made by Applicant on October 22, 2014 was an election in terms of Section 16.3(a) of the Plan. The Committee does not appear to have approached the question in this manner and, in failing to do so, failed to interpret correctly—or interpret at all—Section 16.3 and soundly apply it to the facts of Applicant’s case.

70. The Tribunal must accordingly now consider whether the election of October 22, 2014 was an election in accordance with Section 16.3(a). It is not disputed that on October 22, 2014, Applicant had not yet retired, nor had he repatriated to his home country. In the circumstances, and on a plain reading of Section 16.3(a), Applicant’s election made on October 22, 2014 was not an election that fell within the contemplation of Section 16.3(a) and the Tribunal so concludes.

- (2) In the light of the conclusion that Applicant’s election made on October 22, 2014 was not an election made in accordance with Section 16.3(a) of the SRP, did the Committee err in deciding that Applicant’s election became irrevocable as of the pension effective date?

71. Applicant contends that a currency election becomes irrevocable only when all of the conditions set out in Section 16.3(a) have been met: “Paragraph 16.3(b) SRP restricts the irrevocability of a currency selection to elections made in accordance with paragraph 16.3(a).”

72. Respondent, for its part, maintains that a currency election becomes irrevocable as of the pension effective date. This was the position adopted by the Committee in its decision on review: “In accordance with the Rules for the Election of Currency for Pensions under the Staff Retirement Plan (SRP), your election became irrevocable as of your pension effective date, November 1, 2014.” (Letter from Secretary of SRP Administration Committee to Applicant, April 22, 2015.) It is notable, however, that the Committee’s initial decision denying Applicant’s request made no mention that the election had become irrevocable *as of the pension effective date*; rather, it appeared to assume that the election was irrevocable from the time it was made. (See Letter from Secretary of SRP Administration Committee to Applicant, December 23, 2014.)

73. Although the Administration Committee in its decision on Applicant’s request for review, and the Fund in its pleadings before the Tribunal, take the position that a currency election made before the effective date of a pension is revocable until that date, there is nothing in the information provided to retiring Plan participants—in the Plan itself, the Local Currency Rules, the standard Memorandum “Your Estimated Staff Retirement Plan Benefits,” the Pension Election Form, or the SRP Handbook—to indicate that this is so. To the contrary, an acknowledgment is required from the retiring Plan participant of the irrevocability of the election.

74. Both parties appear to agree, however, that it is not the participant’s “acknowledgement” of irrevocability that binds the participant but rather the governing law which he “acknowledges” by that statement. Applicant states:

The standard clause on irrevocability, included in the currency election form, is unilaterally drafted by the Administration Committee. The clause has not the intention to ask the future retiree to surrender an essential right under the pension plan, namely a pension in US dollar[s], unless a valid currency election made has been in accordance with the provisions of the SRP. The clause only intends to draw the attention of the (future) retiree to the rule of irrevocability under the terms of the SRP, and to have him acknowledge that he has been duly informed by the Fund on this very important provision in the SRP.

The Fund responds: “Applicant appears to believe that the Fund relies on the irrevocability clause in the pension election form as the basis for denying Applicant’s request, and implies that the form’s language is akin to a clause of adhesion that goes beyond the provisions of the Plan. . . . In fact, Applicant’s request to revoke his local currency election was denied based on the terms

of the Plan.” Accordingly, the fact that an “acknowledgement” was inscribed on the Pension Election Form signed by Applicant does not preclude his challenge.

75. The Fund refers to practical reasons for setting irrevocability at the pension effective date, citing the reasoning adopted by the Committee in its decision on review: “[I]t is necessary for HRD and FIN to have time to establish the pensioner’s records and banking instructions—a deadline is required, and *the Plan has established the deadline* at the pension effective date, not the date of payment.” (Letter from Secretary of SRP Administration Committee to Applicant, April 22, 2015.) (Emphasis added.) In fact, the Plan has established the pension effective date as the *starting point* for making a currency election.

76. The Tribunal has concluded that the election made by Applicant on October 22, 2014 was not an election made in accordance with the requirements of Section 16.3(a) of the SRP, and accordingly, Section 16.3(b) did not apply to that election, as that subsection applies only to elections made under Section 16.3(a). As Section 16.3(b) did not apply to the election made by Applicant on October 22, 2014, that election was not rendered irrevocable by operation of Section 16.3(b). Was there any other provision that rendered the election irrevocable?

77. Neither the Fund nor the Committee in its decision pointed to any provision in the Local Currency Rules or elsewhere that provides that an election made otherwise than in accordance with Section 16.3(a) is irrevocable, either with effect from the pension effective date or from any other date. Moreover, the Fund accepts that the election made by Applicant on October 22, 2014 did not become irrevocable by operation of the acknowledgement made by Applicant in the Pension Election Form.

78. Accordingly, the Tribunal observes that no legal basis has been identified by the Fund to support its assertion that the election made by Applicant on October 22, 2014 was irrevocable. The Committee, in reaching the conclusion that it was irrevocable, also did not point to any legal basis for its decision. The Tribunal accordingly concludes that the Committee erred in deciding, in the circumstances of this case, that Applicant’s currency election became irrevocable as of his pension effective date. The Committee’s decision denying Applicant’s request to revoke his currency election was therefore in error and must be rescinded.

C. Did the Fund fail to fulfill its obligation as employer to advise Applicant properly of his currency election rights under the SRP?

79. Applicant asserts as a “subsidiary reason” for challenging the legality of the Committee’s decision denying his request to revoke his currency election that the Fund failed to fulfill its obligation as employer to advise him properly of his rights under the Plan. The essence of this complaint is that, by allegedly failing to provide Applicant with adequate information on which to base his currency election decision, the Fund should be held responsible for his making a “hasty and economically erroneous selection.” (Email from Applicant to Secretary of SRP Administration Committee, “Request to Administration Committee regarding change in selection of currency in pension payment,” November 24, 2014.) In particular, Applicant contends that the Fund failed to: (i) advise him of the possibility of making a local currency election, pursuant to SRP Section 16.3(d), following 12 months of permanent residence in his home country; and (ii)

draw to his attention the difference between the 5-year average exchange rate, according to which local currency payments are to be calculated, and the current exchange rate.

80. Respondent, for its part, maintains that it provided Applicant with sufficient information on which to base his personal pension decisions. Respondent cites SRP Section 13.4 that Fund staff “shall use ordinary care and diligence in the performance of their duties and functions,” asserting that staff who administer the SRP “more than satisfy this duty when they provide a personal overview memorandum to staff members on their retirement benefits, a copy of the Currency Rules, and a simulation of the local currency election personalized to the retiree’s indicated choice.” As to Applicant’s assertion that the “Fund omits to inform transparently about the possibility to make a local currency election, under section 16.3(d) SRP, after the 90-day deadline,” the Fund responds that the Local Currency Rules and the SRP Handbook inform Plan participants of this possibility.

81. Applicant asserts that making informed pension decisions is complex and requires “interactive counseling” and that the “pension rules are written in a language which is difficult to understand, even for well educated professionals.” Applicant contends that the information provided “fall[s] short of the information which a diligent, prudent and honest employer should provide to future pensioners.” In its decision on review, the Committee stated that Applicant had an “individual meeting with an HR pension officer to discuss [his] pension benefits and the elections available to [him] in greater detail.” (Letter from Secretary of SRP Administration Committee to Applicant, April 22, 2015.) Applicant does not dispute that such meeting took place.

82. The Tribunal’s jurisprudence suggests that ordinarily a Plan participant will be expected to know the benefits and requirements of the SRP, as long as the Fund has furnished the participant with the full Plan. *See Niebuhr*, para. 111 (Committee did not err in denying applicant’s request, pursuant to a Committee rule allowing for acts to be performed beyond time limits under certain circumstances, for waiver of one-year period following post-retirement marriage to elect reduced pension with pension to surviving spouse under Section 4.6(c); rejecting contention that Fund failed to give applicant adequate notice of Plan provision). Unlike the applicant in *Niebuhr*, who had retired and moved away from Fund headquarters before the facts giving rise to that dispute took place, Applicant in this case was still employed at the Fund at the time he made the election that is the subject of the controversy. Applicant does not contend that he did not have access to the Plan or the Local Currency Rules.

83. Applicant contends that the Fund fails to make clear to retiring SRP participants that if they do not make a local currency election at the time of retirement they may still do so, in accordance with SRP Section 16.3(d), once they have established permanent residence in their country of retirement for at least 12 months. The purport of Applicant’s argument is that a failure to inform retiring SRP participants may lead them to make hasty and poorly-considered decisions. Applicant asserts that Section 16.3(d) “was not communicated to the applicant.”

84. The Tribunal notes, however, that the record of the case shows that the possibility of changing (or making) a currency election after 12 months of permanent residence is stated in the Plan, the Local Currency Rules, the SRP Handbook, and the Memorandum “Your Estimated Staff Retirement Plan Benefits.” The Fund cites the following statement in the SRP Handbook:

“If the currency option is not exercised during this initial period, it cannot be exercised until permanent residence has been established and maintained for at least 12 months while retired.” (Staff Retirement Plan Handbook, p. 23.) In these circumstances, the Tribunal concludes that Applicant has not established that the Fund failed to communicate to him the possibility of making a currency election, pursuant to SRP Section 16.3(d), following 12 months of permanent residence in his home country.

85. Applicant also asserts that the Fund’s duty as employer extends to advising the retiring participant of the financial consequences of a particular currency election in relation to current exchange rates. The record shows that, in accordance with the Local Currency Rules, the HR Officer provided Applicant with a pension simulation, which applied the 5-year average exchange rate to the local portion of his pension and compared it to payment of the pension fully in U.S. dollars.¹⁰ The question is whether, by not drawing to Applicant’s attention the difference between the 5-year average exchange rate (applicable pursuant to Section 16.3(c)) and the current exchange rate, the Fund failed to fulfill any duty to advise Applicant of his currency election rights under the Plan. Applicant contends that the “third missing scenario is essential, and must be considered in order to make an informed decision on a currency election.”

86. The Fund disputes Applicant’s assertion that HRD staff should “invite retirees to consider postponing the currency election” during certain periods in exchange rate markets. In the view of the Fund: “Not only do HRD staff have no express or implied duty to give financial advice to retirees, but they would be incapable of doing so given that each retiree will have his or her own individual preferences and calculus regarding exchange rate risk, return, and time horizon.”

87. In the view of the Tribunal, it would be inappropriate for Fund officials to provide individualized financial advice to retiring SRP participants who should, when they are uncertain about what course to take in relation to their pension options, seek independent financial advice. Accordingly, the Tribunal concludes that the Fund did not fail in any duty as employer when, in providing a simulation of Applicant’s proposed currency election, it did not compare the 5-year average exchange rate with the current exchange rate.

88. For these reasons, and in view of the Tribunal’s decision sustaining the merits of Applicant’s challenge to the Committee’s decision denying his request to revoke his October 22, 2014 currency election, Applicant’s “subsidiary” challenge to the legality of that decision on the grounds that the Fund failed to advise him properly of his rights under the SRP must be denied.

D. Did the SRP Administration Committee take the contested decision in accordance with fair and reasonable procedures?

89. Applicant contends that the absence of a formal intervention by the Fund as employer, combined with a denial of oral argument to the pensioner, “prevents full and free exchange of views that would allow the Administration Committee to come to a fully informed decision.” Applicant argues that the “independence of the Administration Committee should not be construed as a prohibition for the employer from openly and transparently pleading before the

¹⁰ See *supra* FACTUAL BACKGROUND.

Committee” Applicant specifically contends that the Committee wrongfully denied his request for an oral hearing in his case pursuant to Rule VI, para. 1,¹¹ of the Committee’s Rules of Procedure.

90. Respondent, for its part, maintains that the independence of the Committee from those Fund departments involved in the day-to-day administration of the SRP has been further enhanced since 2012, and that “[g]iven this framework, and no evidence that any Committee member did not act in accordance with his or her fiduciary duty to the Plan, Applicant’s ruminations about the ‘blurred’ decision-making process of the Committee cannot give rise to a due process violation.” As to Applicant’s complaint that the Committee denied his request for an oral hearing, the Fund maintains this decision was not unfair or unreasonable and that it was fully consistent with the Committee’s Rules of Procedure to make the decision on the basis of the written record.

91. Applicant states that his primary objective is a judgment in his favor on “substantive grounds,” in which case, he asserts, there may be no need for the Tribunal to pass on his procedural complaints. Applicant asserts that he raises procedural complaints as (a) subsidiary reasons to reverse the contested decision, and (b) for the Tribunal to formulate observations on fair procedures for the future guidance of the Committee. At the same time, Applicant “. . . recognizes that both the proceedings before the Tribunal, with both parties present, and the full review by the Administrative Tribunal resulting in a well informed ruling, may largely remedy the absence of fair and reasonable procedures before the Administration Committee.”

92. Given that Applicant accepts that review by the Administrative Tribunal would largely remedy any procedural failure before the Committee, and given that the Tribunal has decided in favor of Applicant’s complaint on the merits, the Tribunal concludes that it need not reach his procedural complaints. *See Ms. “J”*, para. 171.

CONCLUSIONS OF THE TRIBUNAL

93. For the reasons elaborated above, the Tribunal concludes that Applicant has succeeded on his principal claim. It is not disputed that at the time that Applicant submitted his October 22, 2014 currency election he had neither retired nor repatriated to the country of his currency election. Accordingly, he had not met essential criteria prescribed by SRP Section 16.3(a) for making a valid currency election under the Plan. Within the 90-day period in which a retiree is

¹¹ Rule VI (Proceedings), para. 1, of the SRP Administration Committee’s Rules of Procedure provides:

1. The Committee will inquire about all information it needs for an equitable consideration of a Request. In considering a Request, the Committee may rely on written submissions or it may decide to convene an oral hearing, and decide who may attend such hearing. The Secretary will provide the Requestor with reasonable notice of the date of any proceeding in the matter, except in the circumstances described in Rule II, paragraph 5.

permitted to make a currency election pursuant to Section 16.3(a), Applicant applied to the Committee to seek revocation of the earlier election. Because a currency election becomes irrevocable under Section 16.3(b) of the Plan only when a valid election has been made under Section 16.3(a), and the Fund has identified no other ground on which to hold Applicant's currency election irrevocable, the Tribunal concludes that the Committee erred in denying Applicant's request to revoke his currency election of October 22, 2014.

94. As to Applicant's secondary claim that the Fund failed to advise him properly of his currency election rights under the SRP, the Tribunal is not able to sustain that complaint in the light of the record of the case. As to his allegation that the Committee failed to take its decision in accordance with fair and reasonable procedures, the Tribunal need not reach that question, given Applicant's acceptance that review by the Administrative Tribunal would largely remedy any procedural failure by the Committee and his success in contesting the merits of the Committee's decision.

REMEDIES

95. Applicant seeks as relief: (i) rescission of the Committee's decision denying his request to revoke his currency election, and confirmation of the validity of the revocation; (ii) an order that the Fund pay Applicant's full pension from its effective date onwards solely in U.S. dollars until he has made at any future time a valid currency election under SRP Section 16.3(d); and (iii) an order that the Fund settle with Applicant, for past pension payments, the exchange rate difference between the payments already made in his home country currency and the amount due in U.S. dollars. Alternatively, Applicant seeks essentially the same elements of relief to compensate him for damage caused by the Fund's alleged failure to advise him properly about his pension rights.

96. The Tribunal's remedial authority is found in Article XIV, Section 1, of the Statute, which provides:

If the Tribunal concludes that an application challenging the legality of an individual decision is well-founded, it shall prescribe the rescission of such decision and all other measures, whether involving the payment of money or otherwise, required to correct the effects of that decision.

The Tribunal recently has observed that its jurisprudence reflects that its remedial powers fall broadly into three categories: (i) rescission of the contested decision, together with measures to correct the effects of the rescinded decision through monetary compensation or specific performance; (ii) compensation for procedural failure in the taking of a sustainable decision; and (iii) compensation to correct the effects of intangible injury consequent to the Fund's failure to act in accordance with its legal obligations in circumstances where there may be no decision to rescind. *Ms. "GG" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 444.

97. The Tribunal has concluded that Applicant has prevailed on his principal claim that the SRP Administration Committee erred in denying his request to revoke the currency election he

made on October 22, 2014, before his pension effective date. Accordingly, the Tribunal rescinds that decision.

98. The Tribunal notes that in his Application to the Tribunal, Applicant seeks as relief that his pension be paid 100 percent in U.S. dollars; Applicant sought the same relief in his March 11, 2015 request for review to the Committee. However, these requests to be paid 100 percent of his pension in U.S. dollars were made by Applicant after the expiry of the 90-day period following his pension effective date.

99. On the other hand, the Tribunal observes that Applicant's request to the Committee of November 24, 2014 was made within the 90-day period following Applicant's pension effective date, as contemplated by SRP Section 16.3(a). On that date, Applicant requested that his pension be paid 75 percent in U.S. dollars and 25 percent in local currency. There is nothing in the record to indicate that Applicant would have made a different request after he repatriated to his home country just five days later on November 29, 2014.

100. Accordingly, to correct the effects of the rescinded decision, Applicant's pension shall be paid 75 percent in U.S. dollars and 25 percent in his home country currency, consistent with his request to the Committee of November 24, 2014. Applicant's past pension payments shall be adjusted to give effect to this election retroactively to his pension effective date of November 1, 2014.

DECISION

FOR THESE REASONS

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

1. The decision of the SRP Administration Committee denying Mr. Prader's request to revoke his currency election of October 22, 2014 is rescinded.
2. To correct the effects of the rescinded decision, it is ordered:
 - (a) Mr. Prader's pension shall be paid 75 percent in U.S. dollars and 25 percent in Euros, retroactively from his pension effective date of November 1, 2014, the exchange rate to be calculated as stipulated in SRP Section 16.3(c);
 - (b) Within 30 days of the Fund's receipt of this Judgment, the Fund shall ensure that Mr. Prader's future pension payments be calculated and paid in accordance with the order made in paragraph 2(a) above;
 - (c) The Fund shall calculate the difference between the pension payments made to Mr. Prader in the period from November 1, 2014 until the 30th day after the Fund's receipt of this Judgment, and the pension payments due to him in relation to that period as calculated in accordance with the order made in paragraph 2(a) above; and
 - (d) Within 60 days of the Fund's receipt of this Judgment, the Fund shall ensure that Mr. Prader is paid any difference, calculated in terms of paragraph 2(c) above, owing to him.
3. Mr. Prader's additional complaints are not sustained.

Catherine M. O'Regan, President

Andrés Rigo Sureda, Judge

Francisco Orrego Vicuña, Judge

/s/

Catherine M. O'Regan, President

/s/

Celia Goldman, Registrar

Washington, D.C.
March 15, 2016