ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2016-3

Ms. "M" and Dr. "M" (No. 2), Applicants v. International Monetary Fund, Respondent
(Interpretation of Judgment No. 2006-6)

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INTRODUCTION

1. On October 31, 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 Ms. "M" and Dr. "M",[1] Applicants in an earlier case before the Tribunal. Dr. "M" represented the Applicants in the proceedings. Respondent was represented by Ms. Diana Benoit, Senior Counsel, and Ms. Juliet Johnson, Counsel, IMF Legal Department.

2. Applicants seek to raise before the Tribunal a controversy arising out of the implementation of the Judgment in the case of *Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (November 29, 2006). In that Judgment, the Tribunal, in accordance with Section 11.3 of the Staff Retirement Plan (SRP or Plan), ordered the Fund to make a 16⅔ percent deduction from the prospective monthly pension payments of a Fund retiree Mr. "N" and to pay those amounts over to Applicants in order to discharge a sum owing to them pursuant to child support orders against Mr. "N". In the instant Application, Applicants contend that the payments they received fall short of the amount due them under the Tribunal's Judgment. They argue that although the full amount stated in the Judgment was deducted from Mr. "N"'s pension, Applicants' German bank account was not credited with that full amount because Applicants incurred bank fees associated with the monthly transactions paying over these sums to them. Applicants contend that Mr. "N"'s obligation has not been fully discharged as required by the Tribunal's Judgment and that the Fund is responsible for the difference. The Fund has advised Applicants that it is not responsible for any bank fees incurred. Applicants seek to contest that decision.

3. Applicants seek as relief payment by the Fund of the differential amount required to discharge the total owed under the child support orders as awarded in Judgment No. 2006-6 and reimbursement of the bank fees incurred. Applicants also seek legal fees and costs, which the

[1] Applicants were afforded anonymity in accordance with the Tribunal's practices at the time of the filing of their initial Application in 2004 and retain anonymity in the light of the private nature of the matters central to the dispute, which concerns orders for child support. *See generally Ms. N. Sachdev, Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2012-1 (March 6, 2012), para. 9 (in interpreting later adopted Rule XXII of its Rules of Procedure, the Tribunal has applied the principle that anonymity is to be granted "in such cases as those involving . . . matters of personal privacy such as health or family relations").

Tribunal may award, in accordance with Article XIV, Section 4, of the Statute, if it concludes that the Application is well-founded in whole or in part.

4. Respondent, for its part, maintains that the Application is inadmissible because Applicants do not challenge the legality of an "administrative act" of the Fund in terms of Article II of the Statute. Nor is the Application an admissible request for interpretation of Judgment No. 2006-6, submits the Fund, because the terms of that Judgment are not "obscure or incomplete" within the meaning of Article XVII. In Respondent's view, what Applicants seek is amendment of the Judgment in contravention of Article XIII, which provides that Judgments are "final . . . and without appeal." The Fund also asserts that the Application should be dismissed as untimely. Alternatively, in the event that the Tribunal reaches the merits of the controversy, Respondent maintains that there is no basis for Applicants' claim that the Fund is responsible for bank fees they may have incurred in connection with the implementation of Judgment No. 2006-6.

PROCEDURE

5. On December 17, 2015, Applicants filed an Application with the Administrative Tribunal. The Application was supplemented on January 4, 2016, pursuant to Rule VII, para. 6, and transmitted to Respondent on the same date. On January 5, 2016, 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.

6. On February 18, 2016, Respondent filed its Answer to the Application. On March 14, 2016, Applicants submitted their Reply. The Fund's Rejoinder was filed on April 14, 2016.

7. In the light of the Tribunal's disposition of the Application as set out below, it has not invited Mr. "N"'s comments on the Application.

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.

FACTUAL BACKGROUND

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

11. In Judgment No. 2006-6, the Tribunal ordered the Fund, pursuant to SRP Section 11.3, to give effect to a series of child support orders against Mr. "N" by making deductions from his prospective monthly pension payments (at the maximum percentage prescribed by the Plan provision) to be "paid over to the Applicants, in order to discharge the total sum owing them." The operative provisions of the Judgment state in pertinent part:

> 1. A 16⅔ percent deduction shall be made from prospective monthly pension payments to Mr. "N", which shall be paid over to the Applicants, in order to discharge the total sum owing them by reason of the Darmstadt Court Orders of 1991, 1994, and 1995, as confirmed and totalled by the Superior Court of the District of Columbia in its Orders of April 30, 2002, November 25, 2002, and June 21, 2006. That sum is $71,905.81 plus $27,904.81 in interest, plus interest at the prevailing rate compounded quarterly on the total sum from November 25, 2002 until the date on which each monthly pension payment is made.
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> 2. In respect of the time period from February 6, 2003 (the date on which Applicants filed their third request with the Administration Committee) until Ms. "M" attained the age of 22 (the age limit prescribed in Section 11.3) the amount accrued by the sum of 227,03 Euros monthly under the January 20, 2003 Order of the Frankfurt Court, with interest at the prevailing rate compounded quarterly, shall be added to the total liability of Mr. "N" and paid out as prescribed in paragraph 1 of this Decision. If and when a future order of the Frankfurt Court is received by the Administration Committee, which adjusts the Euro sum due, the liability of Mr. "N" shall be altered to take account of that Order.

Ms. "M" and Dr. "M", Decision paras. 1 and 2.

12. The parties agree that the amount of the child support payments (principal plus interest) that the Tribunal ordered to be given effect totaled $209,171.25 and that Respondent made the required 16⅔ percent deductions from the retiree's monthly pension payments, beginning January 31, 2007 until that total was reached on October 27, 2015. The controversy in this case concerns bank fees charged to Applicants when Respondent deposited the payments to their German bank account.

13. It is not disputed that the first time that Applicants raised with the Fund the issue of an alleged shortfall in payments as a consequence of bank fees was on November 10, 2015, when Dr. "M" wrote to an officer of the Fund's Human Resources Department (HRD), stating that the payments received ". . . amount only to $208.641.25." She further stated: "Also, we had to pay each month a transfer fee of €12 (from April, 2011 it was €15) plus an account maintenance fee of around $5 each month." In addition, asserted Dr. "M", the "amounts which arrived from May, 2012 on were always $10 less than indicated on your payment records," giving examples. (The $10 monthly charge from May 2012 onwards is denominated—in English translation—as a "fee of foreign bank.") Applicants attached to the correspondence a listing of credits to, and fees charged against, their account.

14. Applicants requested of the HR officer: "Could you please transfer to us the missing amounts . . . ," setting out the amounts requested.[2] In their correspondence with the HR officer, Applicants further asserted: "The Administrative Court has not explicitly ordered the IMF to pay the German transfer fees but even without explicit statement it is absolutely clear that [Mr. "N"] (and so the IMF) has to take care that [Ms. "M"] receives the full amounts (and not a fraction thereof) so that we can speak of the 'discharge' the Administrative Court has provided for." Applicants further stated: "[I]f we do not promptly obtain those missing amounts, the Administrative Court will have to decide again."

15. The HR officer replied on December 2, 2015, attaching the Fund's payment records, showing monthly payments from 1/31/2007 through 10/27/2015 totaling $209,171.25. The HR officer stated: "With regard to your request for compensation for transfer and account maintenance fees, in the Judgment No. 2006-6, the IMF Administrative Tribunal did not order the Fund to pay such fees."

16. The matter was referred from HRD to the Fund's Legal Department, which "confirm[ed] that the IMFAT Judgment is explicit about the payments that are to be made by the Fund, and those are, principal and interest payments. The IMFAT Judgment does not provide that the Fund is obliged to pay for your bank's various fees." The Fund's Legal Department further stated: "[T]he IMFAT Judgment was published on November 29, 2006, and you have been receiving Fund payments since April 2007, yet you have never raised an issue about reimbursement for personal bank account maintenance or transfer fees with the Fund, nor with the Tribunal. The Fund is not responsible for these fees."

CHANNELS OF ADMINISTRATIVE REVIEW

17. There are no channels of administrative review applicable in the circumstances in which the instant Application arises. *See Moses (No. 2) v. International Bank for Reconstruction and Development*, WBAT Decision No. 138 (1994), para. 24 (when issue is interpretation of a judgment, "[n]othing could be gained by exposing such a matter to the internal processes of the [organization] when it is the Tribunal, and the Tribunal alone, that has the power to give a final and binding interpretation of its decision.").

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

A. Applicants' principal contentions

18. The principal arguments presented by Applicants in the Application and Reply may be summarized as follows:

[2] Respondent has noted a discrepancy between the amounts Applicants requested in their correspondence with the HR officer and the relief they seek before the Tribunal. Respondent asks, in the event that Applicants prevail on the merits of their claim, that the Tribunal seek verification of the amounts in question. Applicants have responded that in their Application to the Tribunal they have "decided to only claim compensation for transfer fees concerning the amounts transferred by the IMF and not to claim any account maintenance fees . . . ."

1. The Tribunal is competent to decide the complaint pursuant to Article XVII of the Tribunal's Statute because the dispute concerns the interpretation of Judgment No. 2006-6.

2. The Tribunal also has jurisdiction over the Application pursuant to Article II, Section 1(b), because the refusal of the Fund to bear the bank transfer fees constitutes an "administrative act" concerning a Fund benefit plan.

3. Judgment No. 2006-6 clearly states that the Fund is to pay over to the Applicants, in full, the amounts deducted from Mr. "N"'s pension, without any charges or deductions of any kind. According to the wording of the Judgment, it is the Fund that is required to make the money transfers happen.

4. Under German law, under which the support orders originated, the debtor has to transfer the money to the place of the creditor at the risk and cost of the debtor. Moreover, it is a "universally accepted" rule that the costs of money transfers are borne by the person making the transfer, namely, the debtor and in no case the creditor.

5. Applicants seek as relief:

   (a) the difference between the total amount due to Applicants pursuant to Judgment No. 2006-6 and the amount credited to their account, in the sum of $529.89;

   (b) bank transfer fees from January 2007 to March 2011, in the sum of $851.45;

   (c) bank transfer fees from April 2011 to October 2015, in the sum of €825,00; and

   (d) legal fees and costs, in the sum of €1.719,69.

B. Respondent's principal contentions

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

1. The Application should be dismissed as inadmissible.

2. Applicants do not challenge the legality of an "administrative act" of the Fund within the meaning of Article II of the Statute.

3. Applicants have not raised an admissible request for interpretation of a judgment pursuant to Article XVII because the terms of Judgment No. 2006-6 are not "obscure or incomplete." Applicants seek an amendment of the Judgment rather than an interpretation, in contravention of Article XIII, which provides that Judgments are "final . . . and without appeal." There is no ambiguity in Judgment

No. 2006-6 that would override its finality under Article XIII so as to permit an interpretation of the Judgment pursuant to Article XVII.

4. Alternatively, the Application should be dismissed on equitable grounds as untimely.

5. If the Tribunal reaches the merits of the dispute, the Application should be denied because, under the applicable internal law of the Fund, the cost of transfer of payments in the context of SRP Section 11.3 is to be borne by the recipient.

RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW

20. 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 11.3 (*See* Staff Bulletin No. 02/5 (Changes to Section 11.3 of the Staff Retirement Plan Concerning Court-Ordered Support Payments for Children) (February 26, 2002), Attachment I.)

21. In Judgment No. 2006-6, the Tribunal ordered the Fund to give effect to child support orders against a retired Plan participant, pursuant to SRP Section 11.3(b). SRP Section 11.3 provides:

> 11.3 Notwithstanding the provisions set forth in Section 11.1, a participant or retired participant may, pursuant to a legal obligation arising from a marital relationship or pursuant to a legal obligation to make child support payments, evidenced by an order of a court or by a settlement agreement incorporated into a court order, direct in writing to the Secretary of the Administration Committee that a benefit that would otherwise be payable to him during his life under the Plan be paid to one or more former spouses or a current spouse from whom there is a decree of legal separation, his child or children, who are under 22 years of age, or the court approved guardian of such child or children.
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> (a) The benefit payable shall not exceed:
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> i. when payable to the spouse or former spouse, 50 percent of the portion of the participant's or retired participant's benefit that is attributable to his eligible service during the period of the couple's marriage whenever the obligation or obligations to which the court order relates are for support of the spouse or former spouse or division of marital property or both, and
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> ii. when payable to a child or children or their parents or guardians, $16^{2}/_{3}$ of the benefit payable to the

participant or retired participant whenever the court ordered obligation is for support of his child or children. The sum of payments to two or more children, or their parents or guardians on their behalf, shall not exceed $16^2/_3$ percent of the benefit payable to the participant or retired participant; such payments shall be made in equal shares unless otherwise allocated by decision of the Administration Committee pursuant to rules adopted by it.

(b) In the event that a participant or retired participant fails to submit a timely written direction in compliance with the court order to the Secretary of the Administration Committee, under such rules and conditions of acceptance as are prescribed by the Administration Committee, a spouse or former spouse or a child or children, or parents or guardians acting on their behalf, of such participant or retired participant who is a party to the court order or orders may request that the Administration Committee give effect to such court order or orders and treat the request in the same manner as if it were a direction from such participant or a retired participant. Pending the Administration Committee's consideration of such request or the resolution of a dispute between a participant or retired participant and the spouse or former spouse, or the child or child's parent or guardian, regarding payment of amounts payable under the Plan, the Administration Committee may withhold, in whole or in part, payments otherwise payable to the participant or retired participant or the spouse or former spouse, child or child's parent or guardian.

(c) A direction or accepted request or payment incident thereto shall not convey to any person an interest in the Retirement Fund of the Plan or give any elective rights under the Plan to such person. A direction or accepted request must be consistent with the provisions of the Plan, which in the event of conflict will be deemed to override the direction or accepted request. Any direction or accepted request shall be irrevocable; provided, however, that a participant or retired participant, spouse or former spouse, child or child's parent or guardian, as the case may be, may request, upon evidence satisfactory to the Administration Committee based on a court order or a provision of a settlement agreement incorporated into a court order, that he be permitted to issue a new direction or submit a new request in writing that would increase, diminish, or discontinue the payment or payments; and provided, further, that any direction or accepted request shall cease to have effect following the death of the participant or retired participant. If a beneficiary under a

> direction or accepted request predeceases the participant or retired participant, the payments shall not commence or if they have commenced shall thereupon cease. In the event that the payment or payments under a direction or accepted request have been diminished, discontinued or have failed to commence or have ceased, the corresponding amount of benefit payable to the participant or the retired participant shall be restored less the value of any amounts paid as withdrawal or commuted sums.

B. Rules of the Administration Committee Under Section 11.3 of the Staff Retirement Plan (*See* Staff Bulletin No. 99/12 (Changes in Section 11.3 of the SRP) (June 9, 1999), Attachment.)

22. The SRP Administration Committee has adopted Rules relating to the administration of SRP Section 11.3. These Rules provide in part:

> . . . .
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> (b) In the event that a participant or retired participant fails to submit a direction within thirty (30) working days of the issuance of a relevant court order or decree, the Administration Committee may accept a request made by the participant's or retired participant's spouse or former spouse to give effect to the relevant court order or decree and treat the request in the same manner as if it were a direction from the participant or retired participant. The Secretary of the Administration Committee will give a participant or retired participant written notice of such a request from a spouse or former spouse. The participant or retired participant will be allowed, as the Administration Committee shall specify, at least thirty (30) working days either to consent or to object to the request, giving a full written explanation for any objection. The Administration Committee will make its decision on whether or not it will accept the request and treat it in the same manner as if it were a direction within forty-five (45) working days after the participant or retired participant responds or the time for a response expires. If the Administration Committee is satisfied that there is a bona fide dispute as to the application, interpretation, effectiveness, finality or validity of the court order or decree, no action shall be taken on the request unless and until the matter is resolved to the satisfaction of the Administration Committee. However, if the Administration Committee determines that there is no substantial reason for not giving effect to the court order or decree, it may accept the request and treat it in the same manner as if it were a direction made by the participant or retired participant under Section 11.3 of the Staff Retirement Plan. The Secretary of the Administration Committee will promptly notify in writing both

parties of such determination or decision of the Committee. Any payment withheld pending the Committee's consideration of the request will be paid to the person determined by the Committee to be entitled to such payment; provided that the Administration Committee may deposit it in escrow in the Bank-Fund Staff Federal Credit Union in an interest-bearing account until such payment is made.

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

2. Unless a participant or retired participant, spouse or former spouse objects, the Administration Committee may presume that a court order or decree concerning the payment of amounts from the Staff Retirement Plan

(A) Is valid by reason that:

(1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and

(2) the judgment has been rendered by a court of competent jurisdiction rendition and in accordance with such requirements of the state of as are necessary for the valid exercise of power by the court;

(B) is the product of fair proceedings;

(C) is final and binding on the parties; and

(D) does not conflict and is not inconsistent with any other valid court order or decree.

If a party objects to giving effect to a court order or decree, the Administration Committee will assess its adequacy based on the criteria listed in (A) through (D) in the preceding sentence. The Administration Committee will not review the court order or decree concerning the merits of the case and will not attempt to review the judgment of the court regarding the rights or equities between the parties. If the Administration Committee finds that the court order or decree does not satisfy any one or more of the criteria listed in (A) through (D) above, the parties will be notified

of its conclusions and the order or decree will not be given effect unless and until the deficiencies are remedied. In addition, if there is an inconsistency or conflict under (D) above with the court order or decree that was the basis of a prior direction or accepted request, the Administration Committee will notify the parties that neither order or decree will be given effect unless and until the conflict or inconsistencies are resolved.

3. A direction or accepted request may apply to pension benefits, amounts to be commuted or withdrawn, and any other benefits payable under the Staff Retirement Plan which are payable during the life of the participant or retired participant. Payments to a spouse or former spouse pursuant to a direction or accepted request shall not commence prior to the effective date that payment of the participant's or retired participant's benefits under the Staff Retirement Plan commences. Such payments shall relate to the same type of benefits that the participant or retired participant elects to receive and shall not be payable in a manner that would apply a type of benefit to the spouse or former spouse that is different from the type of benefit applied to the participant or retired participant. Whenever payments to a spouse or any former spouses pursuant to a direction or accepted request are for support of the spouse or any former spouses or for the division of marital property or both in accordance with a court order or decree, such payments shall not exceed 50 percent of the benefits payable under the Staff Retirement Plan that are attributable to the number of months of eligible service during which the participant or retired participant was married to such spouse or former spouses. However, whenever the court order or decree includes child support, the aggregate of payments to a spouse or any former spouses shall not exceed 66 2/3 percent of the benefit payable to the participant or retired participant under the Staff Retirement Plan. Any amounts of payments that exceed the limits applicable to payments to a spouse or any former spouses must be directly related to court ordered or approved child support payments. A participant may exercise his right to receive a commuted amount, a withdrawal amount, or a reduced pension with pension to survivor, to elect or change the currency or currencies in which his benefit is payable or to request a transfer of his accrued benefits to another international organization or member government, but no such exercise shall negate a direction once made. In the event of a conflict, the direction or accepted request shall override a subsequent inconsistent election or request to transfer. Directions and accepted requests may specify payment to a former spouse of: (a) a percentage of the retired participant's pension (not augmented by a cost of living pension supplement); (b) a fixed amount; or (c)

either (a) or (b) increased by the applicable annual cost of living pension supplement calculated in the manner prescribed under Section 4.11 of the Plan. The amount of the payment will be calculated on the basis of the base amount in U.S. dollars or, if the retired participant elects another currency (or combination of currencies) in that currency (or the combination). A direction or accepted request specifying (a) or (b) shall be payable in the initial currency selection made by the retired participant at the end of the 90-day period specified in Section 16.3(a) of the Staff Retirement Plan and shall continue regardless of changes that the retired participant may elect subsequently. If a direction or accepted request specifies (c), the currency or currencies in which the direction shall be paid shall change in accordance with subsequent changes of currency that the retired participant may elect.

4. A payment from a withdrawal benefit or a commuted lump sum shall be paid in United States dollars. Other payments will be paid as described in paragraph 3 of these Rules. If upon or subsequent to retirement the retired participant is not entitled under Section 16 of the Staff Retirement Plan to the currency specified, the payment will be made in United States dollars from the amount of dollars which the retired participant may elect under Section 16.3(a). If the retired participant is not entitled to United States dollars and the currency specified is other than a currency which he is entitled to elect under Section 16.3, he will be so informed and requested, with the written consent of his former spouse to issue a new direction specifying a currency that he is entitled to receive under that provision. Failure to issue a new direction or to obtain the written consent shall result in the payment being made in United States dollars which shall be deducted from the initial calculation of the payment to which the retired participant is entitled prior to any conversion that has been elected. The split currency election under Section 16 of the Staff Retirement Plan shall not be available at the option of a designee under a direction or under an accepted request. Benefit deductions shall be made on the basis of the amount of a retired participant's pension before payment of the former spouse's pension and shall be deducted solely from the portion due to the retired participant. *Payment shall be effected by direct deposit in an account of the former spouse in a bank in the Washington locality or, at the expense of such person, to another account by wire transfer.*

. . . .

(Emphasis added.)

C. Staff Bulletin No. 02/5 (Changes to Section 11.3 of the Staff Retirement Plan Concerning Court-Ordered Support Payments for Children) (February 26, 2002)

23. Staff Bulletin No. 02/5 announced revisions to SRP Section 11.3 to include support orders for the benefit of children born out of wedlock, and stated that the SRP Administration Committee would apply its existing Rules under SRP Section 11.3 (*see above*) to the administration of the revised Plan provision:

> This Bulletin describes changes to Section 11.3 of the Staff Retirement Plan (SRP) that were approved by the Executive Board on December 27, 2001. The amended Section 11.3 is attached in its entirety. These changes authorize the SRP Administration Committee, under certain conditions, to give effect to a court order for the payment of a part of a retiree's Fund pension for child support, regardless of whether a child is born within a marriage or out of wedlock.
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> . . . .
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> **Broadening the provision on child support**
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> The new changes allow the Administration Committee to give effect to a court order for the payment of child support, whether or not in conjunction with an order for spouse support or the division of marital property. They also place on equal footing the treatment of children born in and out of wedlock by separating payments for child support from those for spousal support. Under the amended Section 11.3, no more than $16^2/_3$ percent of a participant's SRP benefit may be paid for support of one or more children born either in or out of wedlock. As with the spouse support ceiling, the intention is to preserve a reasonable share of the pension for the retiree.
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> **Administration**
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> *In administering the payments to or on behalf of children, the Administration Committee will apply the Administration Committee's existing rules on Section 11.3 (See Staff Bulletin 99/12)*. The Committee will not resolve disputes about parentage or who was properly acting for the child or the validity of the court order. The parties would have to resolve the dispute themselves before benefits could be paid. Child support payments made out of the retiree's pension will end as specified by the court order but not later than the child's reaching age 22.
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> . . . .

(Emphasis added.)

CONSIDERATION OF THE ISSUES

24. The Application raises the following issues for consideration. Is the Application admissible? Have Applicants challenged an "administrative act" of the Fund in terms of Article II of the Tribunal's Statute? Alternatively, have Applicants raised an admissible request for interpretation of a judgment in terms of Article XVII of the Tribunal's Statute? If the Application is otherwise admissible, should it be dismissed as untimely? If the Tribunal concludes that the Application is admissible, the further question arises: Does Judgment No. 2006-6 require the Fund to reimburse Applicants for bank fees incurred in crediting to their German bank account the sums deducted from Mr. "N"'s pension payments?

A. Admissibility of the Application

25. The Tribunal must decide at the outset whether Applicants have brought an admissible Application by (i) challenging an "administrative act" of the Fund (Article II) or (ii) requesting an interpretation of a judgment (Article XVII).

(1) Have Applicants challenged an "administrative act" of the Fund in terms of Article II of the Tribunal's Statute?

26. Respondent contends that the Application is inadmissible because Applicants have not challenged an "administrative act" of the Fund in terms of Article II of the Statute. The Fund maintains that the implementation of a judgment is not such an act. Applicants counter that the Fund's refusal to pay the bank fees when requested in 2015 was an "administrative act" of the Fund in terms of Article II, Section 1(b), which provides: "The Tribunal shall be competent to pass judgment upon any application: . . . b. by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant."

27. In *Mr. "N", Applicant v. International Monetary Fund Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2007-7 (November 16, 2007), the Tribunal held inadmissible Mr. "N"'s challenge to the enforcement of Judgment No. 2006-6, concluding that the Fund's implementation of a judgment is not an "administrative act" of the Fund in terms of Article II. Individual and regulatory decisions taken by the Fund in order to implement a judgment of this Tribunal do not fall within the contemplation of Article II. This is because judgments of the Tribunal are final and binding on the Fund, consistent with the "universally recognized principle of *res judicata*, which prevents the relitigation of claims already adjudicated, promoting judicial economy and certainty among the parties." *Mr. "N"*, para. 19. Article XIII, Section 2, of the Statute codifies and applies that principle to the judgments of the Administrative Tribunal. "As a party to the Tribunal's Judgment, the Fund is bound to implement it." *Id.*

28. Likewise, when, as in the instant case, a party to a judgment of the Tribunal seeks to challenge as inconsistent with the essential terms of that judgment the manner in which it has been implemented, that challenge ordinarily will not be to an "administrative act" of the Fund

within the contemplation of Article II. Accordingly, the Tribunal concludes that Applicants have not brought an admissible Application under Article II of the Statute.

(2) Have Applicants raised an admissible request for interpretation of a judgment in terms of Article XVII of the Tribunal's Statute?

29. Respondent additionally challenges the admissibility of the Application on the ground that Applicants have not raised an admissible request for interpretation of a judgment, pursuant to Article XVII of the Statute. Applicants, for their part, submit that the Tribunal is competent to decide their complaint because the dispute concerns the interpretation of Judgment No. 2006-6.

30. Article XVII provides: "The Tribunal may interpret or correct any judgment whose terms appear obscure or incomplete, or which contains a typographical or arithmetical error." The associated Commentary[3] on the Statute, p. 41, states in part:

> The tribunal would be empowered to interpret its own judgment upon the request of a party if the terms were unclear or incomplete in some respect as demonstrated by the party requesting the interpretation. . . . The ability of the tribunal to interpret its own judgments where the parties are unable to discern the intended meaning would help to ensure that judgments are given effect in accordance with the tribunal's findings and conclusions.

31. Rule XX[4] of the Tribunal's Rules of Procedure governs interpretation of judgments. In accordance with para. 2 of that Rule, an application for interpretation of a judgment ". . . shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete."

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[3] The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Report of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009).

[4] Rule XX (Interpretation of Judgments) provides:

> 1. In accordance with Article XVII of the Statute, after a judgment has been rendered, a party may apply to the Tribunal requesting an interpretation of the operative provisions of the judgment.
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> 2. The application shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete.
>
> 3. The Tribunal shall, after giving the other party or parties a reasonable opportunity to present its or their views on the matter, decide whether to admit the application for interpretation. If the application is admitted, the Tribunal shall issue its interpretation, which shall thereupon become part of the original judgment.

32. Respondent contends that Applicants have not raised an admissible request for interpretation of a judgment because the terms of Judgment No. 2006-6 are not "obscure or incomplete" (Article XVII). In the Fund's view, Applicants seek an amendment of the Judgment rather than an interpretation, in contravention of Article XIII, which provides that the Tribunal's judgments are "final . . . and without appeal." Respondent asserts that there is no ambiguity in the Judgment that would override its finality under Article XIII so as to permit an interpretation of the Judgment.

33. In the view of the Tribunal, the gravamen of Applicants' complaint is that implicit in Judgment No. 2006-6 is a requirement that the Fund reimburse Applicants for bank fees incurred in crediting to their German bank account the sums deducted from Mr. "N"'s pension payments. *See* Email from Dr. "M" to HR officer ("The Administrative Court has not explicitly ordered the IMF to pay the German transfer fees but even without explicit statement it is absolutely clear that [Mr. "N"] (and so the IMF) has to take care that [Ms. "M"] receives the full amounts . . . ."). Inasmuch as the kernel of the controversy in this case is whether the Fund has failed to implement Judgment No. 2006-6 consistent with its terms, Applicants seek an interpretation of that Judgment.

34. If the Tribunal were not able to respond when a party believes that the operative terms of a judgment are "obscure or incomplete," it would not be able to ensure that its judgments are given effect consistently with the Tribunal's intent. This is the essential purpose of Article XVII.[5] *See* Commentary on the Statute, p. 41. In the view of the Tribunal, Applicants have "state[d] with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete" (Rule XX, para. 2). Accordingly, they have raised an admissible request for interpretation of Judgment No. 2006-6.

(3) If the Application is otherwise admissible, should it be dismissed as untimely?

35. Respondent additionally maintains that even if Applicants' claim is admissible, it should be dismissed "on equitable grounds" as untimely. In the view of the Fund, Applicants' "unreasonable delay" in making their claim deprived the Fund of an opportunity to avoid the disputed fees by making alternate payment arrangements.

36. The Tribunal observes that the Statute does not provide a time limit for raising a request for interpretation of a judgment. In this case, however, it is not necessary to decide whether there may ever be grounds to bar such a request on timeliness grounds as the Fund argues. Here, promptly following the last payment made pursuant to Judgment No. 2006-6, Applicants alleged that the Fund had failed to give effect to that Judgment consistently with its terms. Accordingly, it cannot be said that Applicants delayed unreasonably in bringing their Application.

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[5] *See, e.g., Ms. "C", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 1997-1)*, IMFAT Order No. 1997-1 (December 22, 1997) (interpreting terms "costs" and "legal representation"). *See also Mr. "F", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 2005-1)*, IMFAT Order No. 2005-2 (December 6, 2005), para.17 (denying request for interpretation of judgment where requesting party sought "advice rather than interpretation").

B. Does Judgment No. 2006-6 require the Fund to reimburse Applicants for bank fees incurred in crediting to their German bank account the sums deducted from Mr. "N"'s pension payments?

37. Applicants cite the text of Judgment No. 2006, stating that the deductions from Mr. "N"'s pension payments ". . . shall be paid over to the Applicants, in order to discharge the total sum owing them," *Ms. "M" and Dr. "M"*, Decision para. 1, and assert that the Judgment ". . . clearly indicates that the Court condemns the IMF to pay the amounts deducted in full, 1:1 and without any charges or deductions of any kind." In Applicants' view, this text does not indicate that further monies would necessarily need to be deducted from Mr. "N"'s pension payments to resolve the dispute because ". . . it is the Fund who has been condemned to make the money transfers happen." Applicants also refer to the comment in Respondent's Answer indicating that the Fund had the ability to avoid the contested fees by making alternative payment arrangements.

38. Applicants additionally seek to invoke German law, under which the support orders originated, for the proposition that a debtor must transfer the money owed to the place of the creditor at the risk and cost of the debtor. They also state that it is a "universally accepted" rule that the costs of money transfers are borne by the person making the transfer, namely, the debtor and in no case the creditor. Applicants' further argument is that if Mr. "N" had paid the support orders directly as he should have, then he would bear responsibility for any associated transaction costs. The facts of the case, however, are that Mr. "N" did not pay those support orders. Instead, the Tribunal ordered that they be given effect through the mechanism provided by the Fund's Staff Retirement Plan, under Section 11.3 of the Plan and the rules governing its administration.

39. The Tribunal has made clear that, in giving effect to orders for child support and division of marital property pursuant to SRP Section 11.3, it does not apply the law of any nation but rather the internal law of the Fund. *Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2001-2 (November 20, 2001), para. 156 ("Tribunal does not enforce the law of Maryland and decline to enforce the law of Egypt. Its decision rather responds to what may be termed the public policy of its forum, namely, the internal law of the Fund"; giving effect to order for division of marital property). It was on this basis that Applicants prevailed on their claim that the Fund should give effect to German child support orders pursuant to SRP Section 11.3 even though the support orders in question did not expressly require that the support payments be drawn from Mr. "N"'s IMF pension benefits. *See Ms. "M" and Dr. "M"*, para. 155 ("In upholding Applicants' challenge, the Tribunal responds to the policy of its forum, namely, the internal law of the Fund, which favors enforcement of family support orders wherever they originate and however drafted.").

40. Respondent cites the "Rules of the SRP Administration Committee under Section 11.3 of the Staff Retirement Plan" (*See* Staff Bulletin No. 99/12 (Changes in Section 11.3 of the SRP) (June 9, 1999), Attachment),[6] which anticipate the question of responsibility for transfer fees associated with giving effect to support orders pursuant to SRP Section 11.3. The Rules state: "Payment shall be effected by direct deposit in an account of the former spouse in a bank in the

[6] *See supra* RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW.

Washington locality or, at the expense of such person, to another account by wire transfer." Respondent asserts: "Applicants . . . chose the method of payment (wire transfer to a German bank), and the Fund should not be financially liable for their decisions . . . . [B]ecause Applicants directed that the child support payments be made to a bank account outside of Washington D.C., Applicants must bear the expense of the wire transfers."

41. Applicants protest that the Rules do not apply in the circumstances of their case because there is no "former spouse" involved. Staff Bulletin No. 02/5 (Changes to Section 11.3 of the Staff Retirement Plan Concerning Court-Ordered Support Payments for Children) (February 26, 2002) makes plain, however, that, following the 2001 amendment of SRP Section 11.3 to include support orders for the benefit of children born out of wedlock "[i]n administering the payments to or on behalf of children, the Administration Committee will apply the Administration Committee's existing rules on Section 11.3." The Tribunal in Judgment No. 2006-6 interpreted and applied elements of those Rules in the circumstances of Applicants' case. In the view of the Tribunal, it is reasonable to assimilate the cited provision to the circumstance of the child support orders that the Tribunal ordered to be given effect in Judgment No. 2006-6. Accordingly, there is no basis for Applicants to invoke a source of law other than the Fund's rules to decide the issue. Should there be any question as to the meaning of the Tribunal's Judgment, that doubt must be resolved in favor of the Fund's internal law.

42. Accordingly, the Tribunal concludes that Judgment No. 2006-6 does not require that the Fund reimburse Applicants for bank fees incurred in crediting to their German bank account the sums deducted from Mr. "N"'s pension payments.

CONCLUSIONS OF THE TRIBUNAL

43. For the foregoing reasons, the Tribunal concludes as follows. Applicants have not raised a challenge to an "administrative act" of the Fund in terms of Article II of the Statute. They have, however, raised an admissible request for interpretation of Judgment No. 2006-6, pursuant to Article XVII of the Statute. Having considered the merits of that request, the Tribunal concludes that Applicants' claim that the Fund has failed to implement the Judgment consistently with its operative terms cannot be sustained. Accordingly, the Application must be denied.

DECISION

FOR THESE REASONS

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

The Application of Ms. “M” and Dr. “M” is denied.

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.
October 31, 2016