

REGISTRY'S SUMMARY¹: *Mr. "QQ", Applicant v. International Monetary Fund, Respondent (Motion to Dismiss in Part)*, IMFAT Judgment No. 2020-1 (November 2, 2020)

SUMMARY DISMISSAL – MOTION TO DISMISS IN PART – INTERTWINED CLAIMS – ANONYMITY

Applicant filed an Application challenging two decisions of the Fund: (i) not to promote him from Grade All to Grade A12 in 2016; and (ii) to credit only partially his earlier contractual employment in a different Fund department in setting his starting Grade at A11 when he was first appointed to the staff in 2013. Applicant contends that both decisions were improperly motivated by discrimination on the basis of his nationality. In Judgment No. 2020-1, the Tribunal dealt with a preliminary matter in the case.

In response to the Application, the Fund had filed a Motion to Dismiss in Part, seeking summary dismissal—that is, dismissal without a full exchange of pleadings on the merits—of that part of the Application challenging the 2013 starting grade decision. The Fund contended, with respect to that claim, that Applicant had not met the requirement of Article V of the Tribunal's Statute that all channels of administrative review must be exhausted before an Application is filed with the Tribunal.

In filing the Motion to Dismiss in Part, the Fund cited Rule XII (Summary Dismissal) of the Tribunal's Rules of Procedure. Rule XII provides that the Tribunal “. . . may, on its own initiative or upon a motion by the Fund, decide summarily to dismiss *the application* if it is clearly inadmissible.” (Emphasis added.) Although the Fund has invoked Rule XII in a number of cases in the past to seek summary dismissal of an application *in its entirety*, the case of *Mr. "QQ"* was only the second in which the Fund sought summary dismissal of an application *in part*. The issues before the Tribunal in *Mr. "QQ"* were whether the Motion to Dismiss in Part was admissible, and, if the Motion was admissible, whether it should be granted.

In its 2019 decision in *Ms. "PP", Applicant v. International Monetary Fund, Respondent (Applicant's Request for Provisional Relief and Respondent's Motion to Dismiss in Part)*, IMFAT Order No. 2019-1 (October 10, 2019), the Tribunal had decided that although the Tribunal's Statute and Rules of Procedure do not provide expressly for a motion to dismiss *part* of an application before a full exchange of pleadings on the merits of the case, neither do they exclude that possibility. In that case, the Tribunal decided to admit a motion to dismiss in part, given the “unusual context” in which it arose. In its 2020 decision in *Mr. "QQ"*, the Tribunal further developed its jurisprudence relating to motions to dismiss in part.

¹ This summary is provided by the Registry to assist in understanding the Tribunal's Judgment. It does not form part of the Judgment. The full Judgment of the Tribunal is the only authoritative text. The Tribunal's Judgments and Orders are available at: www.imf.org/tribunal .

In *Mr. "QQ"*, the Tribunal observed that Rule XII sets a high bar for the dismissal of an application prior to a full airing of the merits of a case. Only if an application is "clearly inadmissible" will it be summarily dismissed. The Rule accordingly protects applicants against having their right to be heard by the Tribunal being cut off prematurely. At the same time, it provides a mechanism to shorten the proceedings where inadmissibility is clear at the outset, thereby protecting the Tribunal (and the Fund) from the expenditure of time and resources on matters that have no reasonable ground for advancing beyond the threshold. The Tribunal also observed that the high bar set by the "clearly inadmissible" standard protects against the risk of the Tribunal's taking an erroneous decision as to admissibility when the pleadings before it have yet to unfold in full.

In *Mr. "QQ"*, the Tribunal addressed the difficulty of transposing the principles underlying the Tribunal's authority to dismiss summarily an application *in its entirety* to the question whether to dismiss summarily an application *in part*. Unlike a motion to dismiss an application in its entirety, a motion to dismiss in part will necessarily raise questions for the Tribunal about relationships between the claim targeted by the Fund's motion and the other claims asserted in the application that would proceed on the merits if the motion were granted. These relationships, observed the Tribunal, may not be readily apparent prior to a full exchange of pleadings on the merits. Accordingly, the potential benefit in terms of procedural efficiency will be diminished, and the risk of an erroneous decision at the threshold will be heightened, in the event that part of an application is to be summarily dismissed and another part allowed to go forward.

In light of these considerations, the Tribunal decided that it will be the exception and not the rule to admit a motion to dismiss in part. In determining whether to admit a motion to dismiss in part, the Tribunal will weigh such factors as efficiency, fairness, and the potential for the Tribunal to dispose reliably of the issue of admissibility, applying the "clearly inadmissible" standard of Rule XII. Only if, weighing these factors, the Tribunal concludes that it will serve the interests of justice to take a decision on the admissibility of a claim in advance of a full exchange of pleadings on the merits of the application as a whole will it decide to admit a motion to dismiss in part.

Applying these factors in the case of *Mr. "QQ"*, the Tribunal concluded that the interests of justice would best be served by deferring a decision on the admissibility of one of Applicant's principal claims until the Tribunal has the benefit of a full exchange of pleadings on the merits of both claims. This was so, said the Tribunal, because the two principal claims raised in the Application were closely intertwined. Furthermore, the issue of the inter-relatedness of the claims was pertinent to one of the arguments Applicant had advanced in support of the admissibility of the claim that the Fund sought to dismiss by its motion.

The Tribunal explained its reasoning as follows:

Given that the Tribunal will be required to assess the merits of the claim that goes forward, and given that that claim is closely connected with the claim the Fund seeks to dismiss by its Motion to Dismiss in Part, the Tribunal will in all likelihood have to consider the facts and perhaps the law related to the connected claim as well. In such circumstances, the potential benefit of a summary procedure in terms of efficiency will be absent. Moreover, after a full exchange of pleadings on the merits, the Tribunal will be better positioned to decide whether the claim the Fund seeks to dismiss summarily is indeed inadmissible. Therefore, where claims are closely intertwined, it will rarely serve either efficiency or fairness to dismiss one of the claims at the outset.

(Para. 56.) Accordingly, in *Mr. "QQ"*, the Tribunal dismissed as inadmissible the Motion to Dismiss in Part, without prejudice to the Fund's right to raise in its pleadings on the merits its challenge to the admissibility of part of the Application.

In the course of its consideration of the Motion to Dismiss in Part, the Tribunal also granted Applicant's request for anonymity, pursuant to Rule XXII of the Tribunal's Rules of Procedure, for two reasons: (i) to protect candor in the assessment of professional competencies in the context of a challenge to a non-promotion decision; and (ii) because Applicant alleges discriminatory treatment by Fund officials on the basis of his nationality, serious allegations that have not yet been tested by the Tribunal. The effect of granting anonymity to Applicant is that not only will his identity be protected but that of other staff members involved in the matters under consideration will also be protected.

Following the issuance of Judgment No. 2020-1, the exchange of pleadings on the merits of the Application resumed.