

**International organizations — Personality — Legal capacity — Capacity to enter into contracts — Arrangements whereby one organization hosted by another — Modalities of hosting arrangement — Employment of staff members — Global Mechanism of the United Nations Convention to Combat Desertification, 1994 — Arrangement for hosting by International Fund for Agricultural Development — Whether Global Mechanism a separate entity**

**International organizations — Staff members — Appeals — International Labour Organization Administrative Tribunal — Jurisdiction — International Fund for Agricultural Development — Acceptance of jurisdiction of Tribunal — Whether extending to complaints brought by persons employed to work on programme of body hosted by Fund — Complainant offered position by IFAD to work as programme officer with Global Mechanism of the United Nations Convention to Combat Desertification — Whether staff member of IFAD — Redundancy — Decision not to renew contract — Grounds for challenge — Excess of authority — Procedure**

SG v. INTERNATIONAL FUND FOR AGRICULTURAL  
DEVELOPMENT<sup>1</sup>

(Judgment No 2867)

*International Labour Organization Administrative Tribunal.*  
3 February 2010

(Gaudron, *President*; Ba, *Vice-President*; Barbagallo,  
Hansen and Frydman, *Judges*)

SUMMARY:<sup>2</sup> *The facts:*—The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (“the Convention”) was adopted in 1994. The Conference of Parties (“COP”), the supreme body of the Convention, concluded with the International Fund for Agricultural Development (“IFAD” or “the Fund”), a specialized agency of the United Nations, a 1999 Memorandum of Understanding (the “MOU”) under which IFAD agreed to host the “Global Mechanism”, one of the institutions created by the Convention.

<sup>1</sup> For related proceedings, see 164 ILR 18, 37 and 134.

<sup>2</sup> Prepared by Mr D. McKeever.

In 2000, Ms Saez García, a national of Venezuela, was sent a letter by IFAD offering her “a fixed-term appointment for a period of two years with the International Fund for Agricultural Development”. The position was that of a Programme Officer with the Global Mechanism. The letter stated that her appointment would be governed by the terms set out in the IFAD personnel manual and would be terminable by notice to, or from, IFAD. The appointment was renewed on the same terms in 2002 and 2004. On 15 December 2005, the Managing Director of the Global Mechanism informed her that the Conference had decided to cut the budget of the Global Mechanism for 2006-7, and that, as a result, the number of core staff had to be reduced. Consequently, her post would be abolished and her contract would not be renewed. The complainant requested an administrative review of this decision, but was informed that the review process had been replaced by a facilitation process. The facilitation process did not succeed, and the complainant filed an appeal with the IFAD Joint Appeals Board. That Board concluded that: (i) in the absence of evidence that the Managing Director had consulted the President of the Fund before the decision to abolish the post, the decision was tainted with abuse of authority; (ii) the decision had been taken in breach of human resources procedures; and (iii) she had been denied due process as she had been incorrectly informed that the review process had been replaced by facilitation. The Board recommended reinstatement and payment of all monies lost since March 2006. On 4 April 2008, the President of IFAD reached the opposite conclusion, and rejected the appeal. The complainant challenged the President’s decision before the International Labour Organization (“ILO”) Administrative Tribunal.

Before the Tribunal, the complainant contended that the decision of the Managing Director was tainted with abuse of authority as he was not entitled to determine the Global Mechanism’s programme of work. In addition, she contended that the failure to consider her for other posts or provide additional training in order to enable her to find alternative employment was contrary to IFAD staff rules. She requested rescission of the decision, reinstatement for a minimum of two years, reimbursement for loss of salary and entitlements since 15 March 2006, compensation for the suffering caused, and costs.

In response, IFAD contended that the ILO Administrative Tribunal had no jurisdiction to hear the complaint, on the basis that the Global Mechanism was not an organ of the Fund and so the acts of its Managing Director were not attributable to the Fund. IFAD argued that its own acceptance of the Tribunal’s jurisdiction did not extend to entities that it may have hosted pursuant to international agreements with third parties. Neither the Global Mechanism nor the COP had recognized the jurisdiction of the Tribunal. Since the complainant was never a staff member of IFAD, the IFAD staff rules on redundancy were not applicable. In the alternative, IFAD submitted that the Managing Director did have the authority to decide not to renew the complainant’s contract.

On the jurisdictional argument, the complainant responded that at no stage during the internal procedure did IFAD raise this issue: she was advised to undergo IFAD facilitation, as a prerequisite to filing an internal appeal with IFAD, while in the impugned decision the President of IFAD did not raise any issue of competence to hear her case. The complainant asserted that she was a staff member of IFAD until her separation from service.

*Held* (unanimously):—The President's decision of 4 April 2008 was set aside.

(1) The fact that the Global Mechanism was an integral part of the Convention and was accountable to the COP did not necessitate the conclusion that it had a separate legal personality. It was significant that, according to the MOU, the chain of accountability was not run directly from the Managing Director of the Global Mechanism to the COP, but rather from the Managing Director to the President of IFAD, and then to the COP. The President of the Fund was to review the programme of work and budget prepared by the Managing Director before it was forwarded to the Executive Secretary of the Convention for consideration. Additionally, the Global Mechanism was not financially autonomous. Administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism were therefore, in law, decisions of IFAD (paras. 7-8).

(2) The contention that the complainant was not a staff member of IFAD was contrary to the terms of her appointment. She had accepted an offer, written on paper bearing the letterhead of IFAD, of "a fixed-term appointment with the International Fund for Agricultural Development". Subsequent extensions were to similar effect. These offers and their subsequent acceptance clearly constituted the complainant a staff member of IFAD. An adverse administrative decision affecting the complainant was therefore subject to internal review and appeal, and appeal to the Tribunal, in the same way as were decisions relating to other IFAD staff members (paras. 9-11).

(3) Decisions to abolish a post and not renew a contract were discretionary decisions which could be reviewed on limited grounds only, including whether the decision was taken without authority or based on an error of law (para. 12).

(4) The MOU made it clear that the Global Mechanism functioned under the authority of the COP. It was common ground that the COP had approved a budget for 2006-7 which expressly allowed for the continuation of nine professional posts, including that of the complainant. The decision of the Managing Director to abolish it was therefore taken without authority (paras. 14-16).

(5) Given that the Managing Director had no authority to abolish the post, his decision not to renew her contract on the basis of that abolition constituted an error of law. The President of IFAD erred in not so finding, and his decision was set aside (para. 17).

(6) IFAD was ordered to pay the complainant material damages equivalent to the salary and allowances she would have received if her contract had been

extended for two years from 16 March 2006, with interest; compensation of €10,000 for moral damage; and costs (paras. 22-3).

The following is the text of the judgment of the Tribunal:

The Administrative Tribunal,

Considering the complaint filed by Mrs A. T. S. G. against the International Fund for Agricultural Development (IFAD) on 8 July 2008, IFAD's reply of 12 September, the complainant's rejoinder of 31 October and the Fund's surrejoinder of 18 December 2008;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereinafter "the Convention") entered into force on 26 December 1996. By decision 24/COP.1 the Conference of the Parties, which is the Convention's supreme body, established the Global Mechanism, which is responsible for increasing the effectiveness and efficiency of existing financial mechanisms with a view to assisting country Parties in implementing the Convention. The Global Mechanism is housed by IFAD, and its modalities and administrative operations are set out in a Memorandum of Understanding (hereinafter "the MOU") signed between the Conference of the Parties and IFAD on 26 November 1999. The MOU provides in Section II.A that the Global Mechanism has a separate identity within IFAD and is an organic part of the structure of the Fund directly under the President of the Fund. According to Section III.A, paragraph 4, the Managing Director of the Global Mechanism is responsible for preparing the Global Mechanism's programme of work and budget, including proposed staffing, and his proposals are reviewed and approved by the President of the Fund before being forwarded to the Executive Secretary of the Convention for consideration in the preparation of the budget estimates of the Convention. Section III.B states that the Managing Director, on behalf of the President of the Fund, will submit a report to each ordinary session of the Conference on the activities of the Global Mechanism.

The complainant is a Venezuelan born in 1958. On 1 March 2000 she was offered a two-year fixed-term appointment with IFAD as a

Programme Officer in the Global Mechanism at grade P-4. Her contract was subsequently renewed several times up to 15 March 2006. By a memorandum of 15 December 2005 the Managing Director of the Global Mechanism informed her that the Conference had decided to cut the Global Mechanism's budget for 2006-7 by 15 per cent. As a result, the number of staff paid through the core budget had to be reduced. He explained that the regional programme for which the complainant was working had become less attractive to donors and that he had decided to cut down the costs related to it; consequently, her post would be abolished and her contract would not be renewed upon expiry on 15 March 2006. He offered her a six-month contract from 16 March to 15 September 2006 as "an attempt to relocate [her] and find a suitable alternative employment". On 15 February 2006 the complainant wrote to the Assistant President of the Finance and Administration Department of IFAD requesting that the President of IFAD establish a review process, as provided for under Chapter 11 of the Human Resources Procedures Manual, to determine whether the "declared post redundancy" was appropriate. The Director of IFAD's Office of Human Resources informed her on 13 March that the decision not to renew her contract was in line with the provisions of the Manual and that the review process had been replaced by a facilitation process.

The complainant wrote to the President of the Fund on 10 May 2006 requesting facilitation. The facilitator concluded on 22 May 2007 that no agreement was likely to be reached between the parties. The complainant filed an appeal with the Joint Appeals Board on 27 June 2007 challenging the Managing Director's decision of 15 December 2005.

In its report of 13 December 2007 the Board held that, in the absence of evidence showing that the Managing Director had consulted or obtained the approval of the President of the Fund before deciding to abolish the complainant's post, the decision not to renew the complainant's appointment was tainted with abuse of authority. It also found that the decision had been taken in breach of the provisions of the Manual concerning redundancy, since the possibility of renewing her contract had not been seriously considered and no attempt had been made to relocate her or to provide her with additional training. In addition, she had been denied due process as the Director of the Office of Human Resources had incorrectly advised her that the review process for job redundancies had been abolished. The Board therefore recommended that the complainant be reinstated within the Global Mechanism under a two-year fixed-term contract and that the Global

Mechanism pay her an amount equivalent to all the salaries, allowances and entitlements she had lost since March 2006.

By a memorandum of 4 April 2008, which is the impugned decision, the President of the Fund informed the complainant that he had decided to reject her appeal. He considered that the decision not to renew her contract had been taken in accordance with section 1.21.1 of the Manual, which provides that a fixed-term contract expires on the date mentioned in the contract. Noting that she had been given three months' notice, that she had been offered a six-month consultancy contract to enable her to search for alternative employment, that a facilitation process had been conducted and that her applications for vacancies within IFAD had been given due consideration, he concluded that she had been afforded due process.

B. The complainant contends that the decision not to renew her contract was tainted with abuse of authority. Indeed, according to the MOU, the Managing Director was not entitled to determine the Global Mechanism's programme of work independently of the Conference of the Parties and of the President of the Fund. According to the 2006-7 programme of work and budget approved by the Conference, the staffing proposal to be financed by the Global Mechanism's core budget was for nine professional posts, which included her post. Consequently, the Managing Director's decision was not in line with the approved programme of work and budget; if he deemed it necessary to modify the programme by suppressing her post, he should have obtained the prior approval of both the President of the Fund and the Conference, but he did not do so. She adds that even though the Conference agreed to a 15 per cent reduction in the core budget, there is no evidence that such "modest budget cuts" required the abolition of her post. She explains that beside the core budget, the activities of the Global Mechanism are financed by voluntary contributions and that the Managing Director has the authority to approve expenditure to be deducted from the voluntary contributions account. She points out that in 2006 several consultants and three professional staff were recruited to work for her programme, the latter under fixed-term contracts.

The complainant alleges that IFAD acted in breach of its duty of care and good faith. The termination of her contract was abrupt and unjustified and it damaged her professional reputation. According to section 1.21.1 of the Manual, consideration should be given to a staff member's performance, the need for the post and the availability of funding when deciding not to renew a contract. On the basis of these factors, the Joint Appeals Board concluded that her contract should have been renewed. She adds that, in accordance with section 11.3.9(b) of the Manual, the

Fund had a duty to consider her for the new positions to be filled in the Global Mechanism or to provide her with additional training in order to enable her to find suitable alternative employment. Although she had exemplary performance appraisals and was one of the most senior staff of the Global Mechanism, the Fund did not assist her in finding alternative employment. The vacancies for which, according to the President of the Fund, she was given due consideration, arose after she had separated from service; consequently, she had to apply as an external candidate. She stresses that the only employment she was offered was a consultancy contract for which she did not receive the terms of reference until after having separated from service.

In addition, she criticises the Fund's ambivalent attitude towards the staff working in the Global Mechanism. She states that she had an "IFAD contract" but that the defendant preferred to treat her as a "Global Mechanism problem".

Lastly, she indicates that, contrary to the Tribunal's case law, the President of the Fund did not give reasons for departing from the Joint Appeals Board's recommendations.

The complainant asks the Tribunal to quash the impugned decision and to order IFAD to reinstate her, for a minimum of two years, in her previous post or in an equivalent post in IFAD with retroactive effect from 15 March 2006. She also claims reimbursement for "loss of salary, allowances and entitlements, including . . . contributions to the United Nations Joint Staff Pension Fund, potential promotion". She seeks compensation in the amount of 50,000 United States dollars for the suffering caused by the heedless manner in which she was treated by IFAD, and 5,000 euros in costs.

C. In its reply IFAD contends that the Tribunal has no jurisdiction to entertain the argument that the Managing Director of the Global Mechanism abused his authority in deciding not to renew the complainant's contract. Neither is it competent to entertain the argument that the decision-making process of the Fund was flawed, as this may entail examining the decision-making process in the Global Mechanism. IFAD explains that the Global Mechanism is not an organ of the Fund; it is accountable to the Conference, and acts of its Managing Director are not attributable to the Fund. It is indeed clearly stated in decision 24/COP.1 that the role of the Fund is restricted to housing the Global Mechanism. Moreover, Section II.A of the MOU stipulates that the Global Mechanism will have a separate identity within the Fund; thus, the latter merely supports the Global Mechanism in performing its functions in the framework of the mandate and policies of the Fund. The defendant consequently takes the view that IFAD's



acceptance of the jurisdiction of the Tribunal does not extend to entities that it may host pursuant to international agreements with third parties. It adds that neither the Conference of the Parties nor the Global Mechanism has recognised the jurisdiction of the Tribunal.

On the merits the Fund denies having acted in breach of its duty of care. In its view, the complainant is mistaken in considering that she is a staff member of the Fund and that the procedures concerning redundancy laid down in the Manual applied to her. Her legal status is defined in the President's Bulletin No PB/04/01 of 21 January 2004, according to which the application of the aforementioned Manual is subject to limitations and conditions. In particular, the provisions of the Manual concerning redundancy do not apply to her because paragraph 11(c) of the bulletin provides that "IFAD's rules and regulations on the provision of career contracts for fixed-term staff shall not apply to staff of the Global Mechanism." The defendant indicates that the complainant was nevertheless offered a six-month consultancy contract and that she refused it. Thus, the complainant was *de facto* granted by the Global Mechanism the same protection that she would have been given by the Fund had she been an IFAD staff member.

In the event that the Tribunal considers that it is competent to rule on the allegation of abuse of authority, IFAD asserts that the Managing Director had the authority to decide not to renew the complainant's contract. To support its view, it refers to Section III.A, paragraph 4, of the MOU, which provides that the Managing Director is responsible for preparing the programme of work and budget of the Global Mechanism, which includes proposed staffing. Thus, he was authorised to assess and make decisions in relation to the staffing needs of the Global Mechanism insofar as his decisions complied with the budgetary limits established by the Conference. It further submits that the Fund has no authority to examine whether the core budget approved by the Conference warranted the abolition of the complainant's post, because decisions concerning the staffing and budget of the Global Mechanism are not taken by the Fund but by the Conference. It therefore argues that IFAD cannot be held responsible for the Managing Director's decision.

The defendant also rejects the complainant's plea that the President of the Fund failed to give reasons for rejecting the Joint Appeals Board's recommendations. It points out that, in his letter of 4 April 2008, the President explained that he had decided to reject these recommendations on the basis of paragraph 11(c) of his Bulletin No PB/04/01, according to which the renewal of contracts is subject to the functional needs and availability of resources.



D. In her rejoinder the complainant contests the Fund's position regarding the Tribunal's jurisdiction. At no stage during the internal appeal procedure did the defendant suggest that she was mistaken as to the fact that it was competent to consider her appeal. On the contrary, the IFAD Administration advised her to undertake the facilitation process, which was a prerequisite to filing an internal appeal with IFAD. Moreover, the President of the Fund did not state in the impugned decision that the Fund was not competent to deal with her case. She adds that if the Tribunal declines jurisdiction to hear her case, she will be deprived of any legal redress.

Contrary to the defendant's assertion, she contends that she was a staff member of IFAD until her separation from service on 15 March 2006. Indeed, all her letters of appointment provided that she was offered an "appointment with the International Fund for Agricultural Development", and the first also indicated that "the appointment w[ould] be made in accordance with the general provisions of the IFAD Personnel Policies Manual".

With regard to the contention that the Fund cannot be held responsible for decisions taken by the Managing Director, she indicates that such contention is based on the incorrect assumption that he was not a staff member of IFAD. She points out that, according to the Managing Director's job description, he works "under the direction of the President of the . . . Fund".

She maintains that the provisions of the Manual on redundancy were applicable. Paragraph 11(c) of the President's Bulletin No PB/04/01 provides for exceptions to the application of the Manual to staff members working within the Global Mechanism only with regard to the provisions on career contracts, and not those concerning redundancy. Moreover, the President of the Fund made no reference to that paragraph in the impugned decision.

The complainant expands on her claim for compensation, arguing that she was prejudiced by lack of "proper notice", "heedless treatment" and "dilatatory procedures". She contests that she was given three months' notice before separating from service. She received a notice of non-renewal from the Managing Director on 15 December 2005, but it was only on 13 March 2006, i.e. two days before the expiry date of her contract, that she received an "official communication from a personnel officer" stating that her contract would not be renewed.

E. In its surrejoinder IFAD maintains its position. It specifies that it does not challenge the Tribunal's jurisdiction to hear the complaint, but only its jurisdiction to entertain the plea concerning abuse of authority by the Managing Director, the allegation that the abolition

of the complainant's post was not required on financial grounds and the allegation that the decision-making process of the Global Mechanism was flawed.

With regard to the notice given, the defendant reiterates that the Managing Director informed the complainant on 15 December 2005 that her contract would not be renewed upon expiry on 15 March 2006. It denies that her contract was ended prematurely, explaining that it is of the essence of a fixed-term contract that it ends at the expiry date set in the letter of appointment. The complainant's claim for damages on that basis must therefore be rejected.

## CONSIDERATIONS

1. The complainant challenges a decision of the President of the International Fund for Agricultural Development dismissing her internal appeal with respect to a decision not to renew her fixed-term contract as Programme Manager for Latin America and the Caribbean within the Global Mechanism. That decision was contrary to the recommendation of the Joint Appeals Board. The earlier decision not to renew the complainant's contract was taken by Mr M., who described himself as "Managing Director, Global Mechanism, IFAD Rome", and was based on the abolition of the complainant's post for reasons of budgetary constraint. A preliminary question arises as to the extent to which the Tribunal may review that earlier decision. The arguments go to the powers and jurisdiction of the Tribunal and, on that account, must be dealt with even though raised for the first time in these proceedings.

2. The Global Mechanism was established by the United Nations Convention to Combat Desertification in Those Countries Experiencing Severe Drought and/or Desertification, Particularly in Africa. Article 21, paragraph 4, of the Convention provides that the Global Mechanism functions "under the authority . . . of the Conference of the Parties and [is] accountable to it". In accordance with paragraph 6 of that article, a Memorandum of Understanding (the MOU) was later reached with the Fund for it "to house the Global Mechanism for the administrative operations of such Mechanism". The MOU provides that the Global Mechanism is to be housed in Rome "where it shall enjoy full access to all of the administrative infrastructure available to the Fund offices, including appropriate office space, as well as personnel, financial, communications and information management services" (Section VI).