

**ADMINISTRATIVE TRIBUNAL  
OF THE AFRICAN DEVELOPMENT BANK**

QUORUM:	Professor Maurice GLELE AHANHANZO	President
	Professor Christian TOMUSCHAT	Member
	Professor Yadh BEN ACHOUR	Member

**APPLICATION N° 2006/01**

Request for Interpretation of the Judgment delivered on 1 December 2005  
by the Administrative Tribunal in Application N° 2004/02, Mr. Derris JENKINS-  
JOHNSTON v. the African Development Bank

Decision of the Tribunal delivered on 11 May 2006

**I. THE FACTS**

1. The Administrative Tribunal of the African Development Bank delivered a judgment on Application No. 2004/02 filed by Mr. Derris Jenkins-Johnston.

The operative provisions of the judgment are worded as follows:

*“On that basis, the Tribunal:*

- 1) *Rescinds the decision of 21 January 2004 taken by the Bank President to summarily dismiss the Applicant;*
- 2) *Orders the payment of the Applicant’s salary retroactively from the date of dismissal up to the date of this judgment*
- 3) *Orders that the legal costs be borne by the Bank;*
- 4) *In addition, authorizes Bank Management to choose from among the following:*
  - *Reinstatement of the Applicant or*
  - *in lieu thereof payment of compensation equal to:*
    - \* *six (6) months’ salary in lieu of notice of termination;*
    - \* *one (1) month’s salary for every year of service in the Bank;*
    - \* *one (1) month’s salary as compensation for moral damage;*
- 5) *Reject any other request.*

2. The above operative provisions of the judgment are the subject of this Request for Interpretation filed by the Respondent on 25 January 2006, pursuant to Article XII (3) of the Statute of the Administrative Tribunal and Rule XXIII of the Rules of Procedure.

The Request for Interpretation was forwarded to the other party, pursuant to Article XXIII of the Rules of Procedure. The said party forwarded its views to the Tribunal. The Tribunal took note of those views.

## **II. OBJECT OF THE REQUEST FOR INTERPRETATION**

3. The three questions brought before the Tribunal are as follows:
  - 1) Is the retroactive payment of salary ordered in sub-paragraph 2 of the judgment cumulative with the compensation ordered under sub-paragraph 4 of the same decision, in the light of Article XIII (1) of the Statute of the Tribunal?
  - 2) What consequences would the rescission of the Bank's decision of 1 January 2004 ordered by the judgment have on eventual claims of such entitlements as the Bank's contribution to the retirement plan, health insurance, dependency allowance and education benefits?
  - 3) What is the limit of the legal costs mentioned in sub-paragraph 3 of the Tribunal's judgment that the Bank should bear, pursuant to Article IX (4) of the Statute of the Tribunal?
4. To the Respondent, these three questions raise practical issues with regard to the execution of the judgment delivered by the Tribunal on 1 December 2005.
5. Concerning the issue of compensation, the Respondent maintains that the limit of the compensation is determined by Article XIII (2) of the Statute of the Tribunal in the event where the Respondent "decides not to implement a rescission of an administrative decision as ordered by the Tribunal." The compensation ordered by the Tribunal would far exceed the limit prescribed under Article XIII (2). It would amount to the equivalent of fifty-two months and ten days of salary, whereas the limit authorized by Article XIII (2) is thirty-six months of salary.
6. Concerning entitlements or benefits for the 1 January 2004 to 1 December 2005 period, the Respondent maintains that it interprets the Tribunal's judgment to exclude entitlements or benefits other than the net salary, and that if unresolved, the issue could be a source of future complications or litigation between the Applicant and the Respondent.
7. Lastly, with regard to the legal fees, the Respondent is of the view that the amount requested by the Applicant in this case is totally disproportionate, in the light of fees reimbursed following the Tribunal's order on previous cases. Furthermore, the Respondent maintains that the legal fees by far exceed the reasonable limit prescribed under the article of the Statute.

### III. THE LAW

8. First, the Tribunal shall recall the underlying provisions governing the consequences of judgments rendered by the Administrative Tribunal. The cardinal principle governing the matter is set forth in Article XII (1) of the Statute of the Tribunal, according to which:

*"Judgments of the Tribunal shall be binding, final and without appeal."*

9. Since all judgments are binding, the parties must implement them in good faith and as soon as possible.

In turn, this principle governs the signification and the limits of a Request for Interpretation or a Request for Rectification. Such requests shall in no way provide occasion for reopening the legal debate or submitting to the judge fresh claims or points of law of no import or bearing to the decision rendered by the judge. Article XII (3) of the Statute states:

*"The Tribunal may interpret or rectify any of its judgments whose terms appear obscure or incomplete, or which contains a typographical or arithmetical error."*

10. Requests for Rectification are governed by Rule XXI (4) of the Rules of Procedure, to wit:

*"Clerical and arithmetical errors in the judgment may be corrected by the Tribunal."*

Therefore, such requests concern minor rectifications known in comparative procedural law and specifically called "Requests for Rectification of Material Error." Requests for Rectification are not Requests for Revision.

11. Requests for Interpretation are governed by Rule XXIII of the Rules of Procedure of the Administrative Tribunal:

*"Rule XXIII  
Interpretation of Judgments*

1. *In accordance with Article XII, Section 3 of the Statute, after a judgment has been rendered, a party may within sixty (60) days of notification of the judgment, apply to the Tribunal requesting an interpretation of the operative provisions of the judgment.*
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.*”

The purpose of the Request for Interpretation is to clarify the operative provisions that appear obscure or incomplete. It shall not, for instance, override that purpose to lead the Tribunal into reviewing a decision that had acquired the authority of final judgment.

12. At this juncture, the Tribunal shall address the issues raised by the Respondent insofar as it shall consider them compliant with the above principles.
13. The impact of ordering the rescission of an administrative decision is to annul that decision with retroactive effect. It is considered that the decision was never taken. First and foremost, and obviously as humanly possible, the *status quo ante* prior to the annulled decision was taken must be restored. In the case of a termination of employment, the career of the staff must be reconstituted by paying him/her the salary, benefits and entitlements due, pursuant to the regulations. This measure is pecuniary in nature. It must be fully implemented, independent of all other measures (reinstatement, etc.) decided by the Tribunal.

Thereafter, the illegal decision having been annulled by the Tribunal, the staff shall, normally, be reinstated to pursue his/her career as if it were never interrupted. This measure is not pecuniary in nature. That is the measure provided for under Article XIII (2). Failing reinstatement, the staff must be compensated for the damage inflicted on account of the non-reinstatement to which he/she is normally entitled. This effect is independent and must be clearly distinguished from the retroactive payment of salary. That is the meaning of Article XIII (2).

14. Article XIII (2) stipulates that should the President of the Bank decide not to implement a measure “other than payment of money”, which is the case with a reinstatement measure emanating from the Tribunal’s judgment to nullify the administrative decision, the Tribunal shall then determine the amount of compensation to be paid, which shall not exceed the equivalent of three years of annual salary.

The Tribunal did precisely that in paragraph 4 of the operative provisions of the judgment which left the Bank the choice between reinstating the staff or paying him compensation which, in this case, is limited to three years of annual salary. Since the Bank decided to reinstate the staff, the issue of that compensation is no longer pending.

15. Article XIII (2) in no way raises the issue, as claimed by the Respondent, of authorizing it to decide not to implement a rescission of an administrative decision as ordered by the Tribunal (“...in the situation where the Respondent decides not to implement a rescission of an administrative decision as ordered by the Tribunal”). That would mark an exceptionally serious denial of justice that never crossed the mind of the legislator of Article XIII (2).

Article XIII (2) merely leaves the Bank a certain room for maneuver, enabling only the President of the Bank – in the situation where s/he considers that the reinstatement of the staff would still cause problems, be embarrassing or not serve the interests of the Bank – to not implement this “non-pecuniary measure” in exchange for monetary compensation not exceeding three years of the annual salary of the beneficiary of that measure.

16. Thus, in response to the Respondent’s first question regarding paragraph 2 of the operative provisions of the judgment: “Orders the payment of the Applicant’s salary retroactively from the date of dismissal up to the date of this judgment”, the Tribunal rules that the retroactive payment of the salary must be processed, liquidated and paid, independent of the compensations set forth in paragraph 4 of the judgment which are payable only in the event of non-reinstatement – which is now not the case, the Bank having decided to reinstate the Applicant.
17. The second question concerns the scope of paragraph 1 of the operative provisions of the judgment. As the Tribunal previously stated, since the annulment is retroactive, the Bank is required to promptly pay the Applicant all net salary, benefits and entitlements due for the entire period starting from the date of the annulled termination decision until the date of judgment.
18. The third question concerns paragraph 3 of the operative provisions of the judgment: “orders that the legal costs be borne by the Bank”, pursuant to Article IX (4) of the Statute of the Tribunal. The Respondent maintains that the fees claimed by the Applicant are disproportionate to what is usually paid in previous cases submitted to the Tribunal, and that they exceed the reasonable limits prescribed by Article IX (4).
19. Article IX (4) stipulates:
 

*"The Bank ...and the applicant may be assisted in the proceedings by counsel of their choice and each party shall bear its own costs. Notwithstanding the foregoing, if the Tribunal determines that an application is well founded in whole or in part, it may order that the reasonable costs incurred by the applicant, including legal fees and expenses of the applicant, be totally or partially borne by the Bank..."*
20. The first principle enunciated by this Article is that the legal fees are, as a rule, borne by each party. Therefore, the total or partial coverage of legal fees constitutes an exception that the Tribunal may decide, where it considers the application to be well founded in whole or in part. For that reason, Article IX (4) includes an additional condition: that, should such be the case, the costs shall not exceed a reasonable limit. That is the meaning of the expression “reasonable costs incurred.”
21. In response to a Request for Interpretation, the Tribunal cannot set a limit below which the legal fees would be “reasonably incurred” and a limit above which the legal fees would not be “reasonably incurred.” Furthermore, the Tribunal cannot, under the circumstance, state whether or not the fees presented by the Applicant are excessive. That would amount to judging a contentious matter that had not been submitted to the

Tribunal in the first instance and that goes beyond the limits of a Request for Interpretation.

22. At this juncture and within the framework of the Request for Interpretation, the Tribunal can only state that paragraph 3 of the operative provisions of the judgment must be interpreted in the light of Article IX (4) of the Statute of the Tribunal. The said Article indisputably imposes a reasonable limit and only contemplates one counsel, not several counsel. On this point, the Tribunal can understand the Bank's perplexity if the Applicant's legal fees were excessive.
23. Therefore, paragraph 3 of the operative provisions of the judgment must be interpreted within the limits set by Article IX (4) of the Statute of the Tribunal.

#### **IV. THE DECISION**

24. For these reasons, the Tribunal rules:
- In answer to the first question raised in the Request for Interpretation, that the retroactive payment of salary shall be treated, liquidated and paid, independent of the compensations listed under paragraph 4 of the operative provisions of the judgment.
  - In response to the second question, the Bank shall promptly pay the Applicant all the net salary, benefits and entitlements due for the entire period starting from the date of the annulled termination decision to the date of judgment.
  - In response to the third question, paragraph 3 of the operative provisions of the judgment must be interpreted in the light of Article IX (4) of the Statute of the Tribunal.

Professor Maurice GLELE AHANHANZO

- President

Albertine LIPOU MASSALA

- Executive Secretary

#### **COUNSEL TO THE APPLICANT:**

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