ADMINISTRATIVE TRIBUNAL

OF THE

INTERNATIONAL MONETARY FUND

Judgment No. 2024-3

June 7, 2024

"YY", Applicant v. International Monetary Fund, Respondent
(Admissibility of the Application)

Office of the Registrar

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INTRODUCTION

1. The Administrative Tribunal of the International Monetary Fund ("Tribunal"), composed for this case, pursuant to Article VII, Section 4 of the Tribunal's Statute, of Judge Nassib G. Ziadé, President, and Judges Maria Vicien Milburn and Andrew K.C. Nyirenda, has decided the Motion for Summary Dismissal ("Motion") of the Application brought against the International Monetary Fund ("Respondent" or "Fund") by "YY", a retired staff member of the Fund. Applicant was represented in the proceedings by Messrs. Peter C. Hansen, J. Michael King, and Francis E. Waliczek, Law Offices of Peter C. Hansen, LLC. Respondent was represented by Ms. Evelyn Kachaje, Counsel, in the Administrative Law Unit of the IMF Legal Department.

2. In the Application, Applicant challenges the decision to ban his entry to the Fund Headquarters buildings. The entry ban was placed as a result of an allegation of sexual harassment made against Applicant by a Fund staff member. Applicant contends that the contested decision was taken in the absence of any due process; that the Fund caused Applicant further harm by publicizing the entry ban within one of the Fund's departments; and that the ban hampers Applicant's post-Fund career.

3. Applicant filed the Application with the Tribunal concurrently with filing a Grievance with the Fund's Grievance Committee. Applicant asks the Tribunal to accept jurisdiction and to declare any Grievance Committee proceedings to be exhausted.

4. The Fund has responded to the Application with a Motion for Summary Dismissal on the grounds that the Tribunal lacks jurisdiction *ratione temporis* and *ratione materiae* over the Application, and that Applicant's claims regarding his entry request are unripe.

5. A Motion for Summary Dismissal suspends the period for answering the Application until the Tribunal decides the Motion. Accordingly, at this stage, the case before the Tribunal is limited to the question of the admissibility of the Application.

FACTUAL BACKGROUND

6. As the pleadings on the merits have been suspended until the Tribunal decides the Motion, Respondent's version of the facts has yet to be presented fully to the Tribunal. With this caveat, the key facts relevant to consideration of the Motion may be summarized as follows:

A. Applicant's Fund employment, 2008 retirement, and subsequent work

7. Applicant was employed by the Fund for several decades and in various capacities before his retirement from the Fund in 2008.

8. Applicant states that in 2017 he was recruited to advise a member country of the Fund (the "Member Country"), in which capacity he attended at least the 2018 and 2019 IMF-World Bank Spring Meetings at the Fund. Applicant serves as an advisor to the Governor of the National Bank of the Member Country (the "Governor").

B. Applicant's relationship with a Fund staff member, 2010-2020

9. According to Applicant, he had a romantic relationship with a Fund staff member (the "Complainant") after he retired from the Fund. He describes a consensual, "on-again-off-again romantic affair" with the Complainant between 2010 and 2020. Applicant states that he last saw the Complainant in January 2020, and that the last communication between Applicant and the Complainant was in November 2020.

C. Fund's imposition of an entry ban on Applicant in April 2021

10. On April 13, 2021, the Fund notified Applicant that the Complainant had reported that Applicant had "repeatedly sexually harassed her" and thus Applicant was barred from entering Fund Headquarters "for any reason." The full text of the notice, as sent by e-mail from the Fund's Chief of Headquarters Security and copied to the Fund's Ethics Office and Administrative Law Unit, with the subject line "Sexual harassment allegation," reads:

> A current staff member of the International Monetary Fund, [the Complainant], has reported to the Fund's Workplace and Domestic Violence Prevention Program that you have repeatedly sexually harassed her. The staff member reported that she has, on numerous occasions, asked you in very clear terms to stop contacting her and you have ignored those pleas and have continued to pursue her. As a result, your name has been placed on Fund Headquarters' do not admit list. This means that your retiree badge has been deactivated and you will not be permitted entry into Fund Headquarters for any reason, including as a guest or member of a delegation.
>
> Please understand that if we receive further reports from [the Complainant] that you have attempted to contact her or continue to harass her, we will provide her with the relevant contact information for the Metropolitan Police Department of Washington, DC, the Federal Bureau of Investigation, as well as [the Member Country's] Police and the UN security officials covering [the Member Country], so that she may pursue any claims she may have against you.

> Should you need access to the Bank-Fund Staff Federal Credit Union, you may use the branch that is located outside of the Fund's headquarters on 1725 I Street NW.

11. The notice did not request Applicant's response to the allegations; and the record does not show any response from Applicant at that time. Applicant states that "[t]he no-access flag's impact took time to be felt since pandemic lockdowns prevailed in 2021."

D. Applicant's initial responses to the entry ban, March-May 2022

12. In 2022, the IMF and the World Bank resumed their in-person Spring and Annual (Fall) Meetings.

13. On March 17, 2022, Applicant wrote to the Fund's Managing Director. Applicant asserted that the entry ban was "unduly harsh" and imposed without due diligence, discovery, or "the standard Fund practice of following up with the accused person." He stated that, "[w]ith the prospects of offline IMFC Meetings and Annual Meetings resuming," the Governor of the National Bank of the Member Country "would like [Applicant] to accompany him to Washington as a [Member Country] delegate, like [Applicant] did in the pre-pandemic days." Accordingly, Applicant asked that the Fund "restore [Applicant's] right to enter the Fund HQ buildings as a [Member Country] delegate." Applicant stated he would "gladly agree to a virtual meeting with the Ethics Officer and the Ombudsperson to be questioned by them on the allegation levelled against [him]."

14. After receiving no response from the Managing Director, Applicant forwarded his March 17, 2022 letter to the Fund's Ethics Officer and Ombudsperson on April 1, 2022 to reiterate his views, his offer to meet virtually with them, and his request for permission to enter the Fund's buildings for the upcoming Spring Meetings and subsequent Annual Meetings.

15. On April 6, 2022, the Fund's Director for Corporate Services and Facilities ("CSF Director") responded to Applicant's March 17, 2022 letter. The CSF Director's letter read:

> This responds to your letter to the Managing Director dated March 17, 2022.
>
> As we advised in April 2021, your access to the Fund's premises has been restricted in response to credible concerns raised by a current serving staff member. Those concerns persist and warrant continued access restriction to Fund premises.
>
> We note your request to attend the IMFC and Spring Meetings as part of the delegation of [the Member Country]. We are unable to grant you in-person attendance at the Spring Meetings. As part of the delegation of [the Member Country] you may, however, attend the Spring Meetings remotely.

16. On April 22, 2022, Applicant's counsel wrote to the Fund's Director of the Human Resources Department ("HRD Director"), the Head of Internal Investigations, and the Chief of

Headquarters Security. Counsel asserted that the entry ban was unsupported and damaging to "the official interests of a Member State"; noted Applicant's ongoing need to attend Fund meetings on behalf of the Member Country; and requested "that the entry flag be removed, or that the matter at least be fairly investigated."

17. On May 12, 2022, the Fund's Assistant General Counsel ("Assistant GC") responded to the April 22, 2022 letter from Applicant's counsel:

> I refer to your e-mail of April 22, 2022 relating to the restrictions imposed on your client's access to the Fund's premises.
>
> Maintaining security of its premises is a fundamental duty of the Fund, and entry into the Fund's premises is not a right. In his recent request for access, your client did not articulate a business need to enter the Fund's premises that could not be achieved reasonably through alternative means. In this regard, [Applicant] was permitted to attend the Spring meetings remotely online, in the same way as with many other online participants in the meetings.
>
> Going forward, your client may continue to attend meetings with the Fund remotely, or arrangements may be made for such meetings to be held outside of Fund premises. In this regard, we would be prepared to discuss alternative meeting modalities directly with [Member Country] authorities as and when the need arises for meetings in which [Applicant] might need to be involved.
>
> In the event there are compelling circumstances that may warrant granting [Applicant] exceptional access to the buildings, the Fund will make an assessment based on the Fund's business needs and security considerations. In requesting exceptional access, your client may submit a request to me, specifying and providing justification for his need to access the Fund's [p]remises, sufficiently in advance so that these can be assessed in light of the circumstances at the time.

18. According to Applicant, on May 16, 2022, Applicant's counsel spoke with the Assistant GC who reportedly stated "that the Fund did not have a [World] Bank-style flag system, and instead simply balanced concerns"; and "that the Fund was reconsidering retiree access generally." Applicant asserts that the Assistant GC "refused direct recourse to the Tribunal because the facts of the matter were unknown," but "welcomed" the suggestion that Applicant's counsel "submit a proposed protocol for requesting entry" to avoid further delays. Respondent does not dispute this account in the Motion.

E. Discussion of specific entry request protocols, June-August 2022

19. On June 7, 2022, Applicant's counsel sent the Assistant GC a proposed six-point protocol for entry requests with specific timelines and criteria for decision-making, a right of response, and a provision for administrative review:

> 1. [Applicant] may present a request for entry at any time. Security shall have ten (10) working days to review and decide on the request. If Security does not timely respond, the HRD Director shall permit entry unless Security within three (3) days shows good cause not to do so;
>
> 2. Decisions on entry requests: (i) will apply only a physical-threat assessment, (ii) will not presume any threat, (iii) will not accept bare allegations of a threat, (iv) will require a preponderance of evidence of a threat, and (v) will first allow [Applicant] to present his side of the story;
>
> 3. Any official document by any governmental entity of a Member State (*e.g.* [the Member Country]) requesting, stating a need for, or indicating an expectation of [Applicant's] presence on Fund premises at a given time will be deemed an official request by the Member State for his presence;
>
> 4. Any entry will be predicated on a formal understanding that [Applicant] will avoid contact with [the Complainant] while on the Fund's premises, with no breach occurring in the event of: (i) incidental, inadvertent or official interaction, or (ii) mere proximity unless sought by [Applicant];
>
> 5. The substance of any complaint received by the Fund about [Applicant's] presence will be promptly transmitted to him for comment, and Security will thereafter weigh the accusation, his defense, and any other evidence to determine if a breach as defined above occurred; and
>
> 6. Any finding of a breach by [Applicant] will result in Security advising him whether his eligibility for entry has changed, in what way, and for how (reasonably) long, with any such change or denial of entry appealable to the HRD Director per the administrative review rules.

Applicant's counsel asked that Fund Security "conduct an initial review under the process and standards laid out above to determine whether any restriction is actually warranted"; and noted that Applicant "does not seek to force his way into the Fund, but to serve his new employer, who sometimes needs him at the Fund. He does not wish to see [the Complainant], and their different functions and relevant Fund offices make an encounter unlikely in any event."

20. After over a month without a response from the Fund, Applicant's counsel wrote to the Assistant GC again on July 10, 2022 to request the Fund's response to the proposed protocol. Having received no response to this communication, Applicant's counsel followed up with an e-

mail on July 20, 2022, copying the HRD Director, asking whether the proposed protocol was acceptable.

21. On July 20, 2022, the Assistant GC responded to Applicant's June 7, 2022 proposal. The Assistant GC apologized for his delayed response "as [he] conferred internally," and noted that he had removed the HRD Director from copy "because this is not a human resources matter." The Assistant GC rejected Applicant's proposed protocol and set out two different options for entry requests:

> The Fund cannot accommodate your proposed protocol, which creates an erroneous presumption of a right of access to Fund premises, imposes undue burdens on the Fund to assess your client's requests "at any time", and applies legal standards and procedures that are neither applicable nor appropriate in the context of the security of Fund premises, which is a fundamental duty of the institution. As I have explained in my letter dated May 12, 2022, entry into the Fund's premises is not a right. Should there be compelling circumstances put forward for [Applicant's] exceptional access to the buildings, the Fund would make an assessment based on the Fund's business needs and security considerations.
>
> With that said, I can expand upon the two approaches envisaged in my letter:
>
> 1. Request by a Member Country
>
> The Fund is willing to entertain official requests made by [the Member Country's] authorities for [Applicant] to access Fund premises for official business.
>
> Any official request by [the Member Country's] authorities shall be sent to me and shall provide the following information:
>
> a. The date, time and location of the meeting(s) in Fund premises;
> b. The departments and relevant Fund staff who will be attending such meeting(s);
> c. Explanation why [Applicant's] participation in the meeting needs to be in-person at the Fund and cannot be conducted by virtual means or at a location outside of the Fund;
> d. The names and titles of the [Member Country] authorities who will be part of the delegation attending the meeting(s) in the premises of the Fund.
>
> Such request shall be signed and transmitted by an authorized, high-ranking official of the National Bank of [the Member Country], and not by [Applicant]. Also, the request shall be delivered to the Fund no later than 15 days before the intended meeting date. Absent a positive written

> response from the Fund authorizing [Applicant] to access the buildings, he will not be allowed to enter Fund premises.
>
> 2. Request by [Applicant]
>
> In the absence of a request from a member country for official business, it is speculative to suggest what other circumstances arise that give [Applicant] a need for access to Fund premises. But I do not rule out the possibility of compelling circumstances that may warrant exceptional access to the buildings. [Applicant] may submit such a request to me, providing justification for his need to access the Fund's premises and including details on the date, time, location of and with whom any meetings to be held at HQ, sufficiently in advance so that the request can be assessed in light of the circumstances at the time. I will assess whether such request warrants consideration by others.
>
> It is important to note that, under either of these two approaches, the decision upon such entry requests is at the sole discretion of the Fund, based on its business needs and security considerations at the relevant time. Only written responses confirming that [Applicant] may enter Fund premises will serve as valid means of authorization for him to have access to any Fund premises.

22. On August 18, 2022, Applicant's counsel informed the Assistant GC that "the Fund's position is not acceptable to my client since it treats him as a wrongdoer without any proper review, and even treats Member State requests with disdain." Counsel stated that Applicant wished to proceed to administrative review, and requested clarification as to whom the request for administrative review should be directed.

23. Applicant asserts that, at some point in the summer of 2022, he "learned through contacts that staff members in the Fund's [Department from which he retired] had been informed that [Applicant] had been banned from entering the Fund's premises."

F. Member Country request and further exchanges, September-November 2022

24. On September 5, 2022, the Governor of the National Bank of the Member Country wrote to the Fund's Managing Director to request expedited arrangements for Applicant's entry ahead of the 2022 Annual Meetings. The text of the Governor's request reads in full:

> I write to you about a matter of concern for [the Member Country] with regard to the upcoming Fall Meetings.
>
> [Applicant] is a former senior Fund official and has for several years served as an advisor to [the Member Country]. Applicant has even individually represented [the Member Country] at international meetings. He is an esteemed member of [the Member Country's] delegation to the Fund.

> It appears that [Applicant] has been blocked from entry onto the Fund's premises for reason unknown to me or to the representatives of [the Member Country]. But to the best of my knowledge, [Applicant] has not been officially accused of any misconduct.
>
> Unfortunately, this bar on entry negatively impedes [the Member Country's] delegation and its ability to participate fully in the Fall meetings. I would, therefore, ask that your office undertakes all needed arrangements that are necessary for [Applicant's] participation.
>
> [Applicant] has repeatedly assured me of his willingness and desire to provide full assistance and cooperation to the Fund in the process.
>
> With appreciation for your expedited resolution of this matter ahead of the Annual [M]eetings 2022[.]

25. On September 7, 2022, the Assistant GC responded to the previous letter from Applicant's counsel of August 18, 2022. This reply did not address the Governor's request of September 5, 2022. The Assistant GC informed Applicant's counsel that "[t]he Fund makes no judgment about your client." Rather, he stated, the Fund "has merely suggested a process – in response to your request for a process – by which your client may have access to Fund premises as a visitor if he ever shows a need for access." On Applicant's question about the process for administrative review, the Assistant GC stated: "As far as I have seen from the various correspondence, the issue remains entirely hypothetical for your client. Because hypothetical questions do not give rise to reviewable decisions, there is no answer to your questions about administrative review and appeal at this stage." Absent an access request, the Assistant GC stated, "I consider this subject to be closed."

26. On September 17, 2022, Applicant's counsel forwarded to the Assistant GC the Governor's September 5, 2022 request. Applicant's counsel noted that "[t]he Fund has evidently not responded to the Governor"; and requested a response soonest "[g]iven the imminence of the Fall Meetings, and the fact that [the Member Country] booked [Applicant's] flights during the extended period since it made the request."

27. On September 20, 2022, Applicant received a letter issued jointly by registration officers of the Fund and World Bank Group stating that he "ha[d] been registered as an accredited representative of [the Member Country] to attend the 2022 Annual Meetings" to be held in Washington, D.C., from October 10-16, 2022.

28. On September 22, 2022, Applicant's counsel forwarded to the Assistant GC a copy of the Annual Meetings registration letter and "request[ed] confirmation . . . that [Applicant] will be permitted to participate normally in activities, including on the premises of the Fund and Bank, like any other accredited representative and for the entire duration of the Fall Meetings (*i.e.* October 10-16, 2022)."

29. Several weeks later, the Fund held its Annual Meetings as scheduled from October 10-16, 2022. Applicant states that because the Fund had not responded to the Governor's September 5, 2022 request, or to the follow-up letters from Applicant's counsel on September 17 and 22, 2022, he "was forced to remain outside the Fund's premises, at great inconvenience to [the Member Country] delegation."

30. Following the conclusion of the Meetings, on November 10, 2022, the Fund's Secretary replied on behalf of the Managing Director to the Governor's September 5, 2022 request. The Secretary stated: "As [the Executive Director representing the Member Country on the Fund's Board of Executive Directors] will have conveyed to you, the restrictions regarding [Applicant's] access to the Fund Headquarters Buildings remain in place. I wanted to assure you that this matter was handled fully in accordance with how the Fund addresses such cases."

31. On November 14, 2022, Applicant's counsel informed the Assistant GC that, in view of the November 10, 2022 letter sent on behalf of the Managing Director's office "confirm[ing] . . . that it refuses to revisit the means by which [Applicant] was barred from entry to the Fund's premises," Applicant "intends to litigate the matter, and to vindicate his rights to due process and to traditional retiree access." Applicant's counsel "request[ed] the Fund's consent for direct recourse to the Tribunal" because "the Grievance Committee will be loath to address [the matter] given that a Member State is involved" and "also for the sake of juridical efficiency."

32. On November 21, 2022, the Assistant GC responded to Applicant's counsel that the Fund's November 10, 2022 letter was not an appealable "administrative act or decision"; rather, it was "merely a factual statement that there has been no change to the restrictions regarding [Applicant's] access to IMF Headquarters," of which Applicant had been notified on April 13, 2021. Asserting that Applicant and his complaints were outside the jurisdiction of the Grievance Committee and the Tribunal, the Assistant GC stated: "It is improper to threaten frivolous litigation in the absence of meritorious claims and contentions."

33. Applicant's counsel responded later the same day, November 21, 2022. Counsel asserted that Applicant's "intention to pursue litigation is well-founded in law, and in perfect good faith" and stated that "[t]he only question is whether [Applicant] first proceeds to the Grievance Committee out of an abundance of caution, or goes directly to the Tribunal." Counsel requested the Fund's agreement to proceed directly to the Tribunal. Applicant states that the Assistant GC did not respond.

PROCEDURAL HISTORY

34. On January 10, 2023, Applicant filed a Grievance with the Grievance Committee (the "Grievance"), simultaneously with his Application to the Tribunal.

35. On January 27, 2023, the Grievance Committee Chair wrote to the parties concerning the matter. The Chair noted Applicant's position that while the Grievance Committee could properly exercise jurisdiction, the matter should proceed to be heard by the Tribunal. The Chair requested "that the Fund state its position on whether the Grievance Committee has jurisdiction and, even if it does, whether for the reasons articulated by Grievant it should not hear this case."

36. On February 3, 2023, the Assistant GC wrote to the Grievance Committee stating "the Fund's position that the Grievance Committee lacks jurisdiction in this case." The Assistant GC stated that the jurisdictional questions presented in the matter "will be informed by persuasive jurisprudence from the World Bank Administrative Tribunal [WBAT]," which "[o]nly the IMF Administrative Tribunal can definitively apply or distinguish." Asserting the interests of judicial economy, lack of any hardship from a stay, and the view that "[t]he Tribunal should go first because it is a maker of Fund law," the Fund requested that the Grievance Committee proceedings be stayed "pending a final decision from the Tribunal in the related case."

37. On January 18 and 19, 2024, Applicant and Respondent confirmed to the Tribunal that Grievance Committee proceedings had been stayed on February 3, 2023 by mutual agreement of the parties.

PROCEDURE BEFORE THE TRIBUNAL

38. Simultaneously with filing his Grievance before the Grievance Committee, Applicant filed the instant Application with the Tribunal on January 10, 2023.

39. The Application was transmitted to Respondent on January 12, 2023. On January 13, 2023, pursuant to Rule IV(f) of the Tribunal's Rules of Procedure, the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

40. On February 10, 2023, pursuant to Rule XII[1] of the Tribunal's Rules of Procedure, Respondent filed its Motion for Summary Dismissal of the Application (the "Motion"). Following

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[1] Rule XII (Summary Dismissal) provides:

> 1. Pursuant to Article X, Section 2(d) of the Statute, 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.
>
> 2. The Fund may file such a motion within thirty days of its receipt of the application. The filing of the motion shall suspend the period of time for answering the application until the motion is acted on by the Tribunal.
>
> 3. The complete text of any document referred to in the motion shall be attached in accordance with the rules established for the answer in Rule VIII. The requirements of Rule VIII, Paragraphs 2 and 3, shall apply to the motion. If these requirements have not been met, Rule VII, Paragraph 6 shall apply *mutatis mutandis* to the motion.
>
> 4. Upon ascertaining that the motion meets the formal requirements of this Rule, the Registrar shall transmit a copy to the Applicant.
>
> 5. The Applicant may file with the Registrar an objection to the motion within thirty days from the date on which the motion is received by him.

(continued)

the Registrar's request for supplementation on February 13, 2023, Respondent supplemented the Motion with a response to Applicant's request for anonymity on February 16, 2023. The Motion as supplemented was transmitted to Applicant on February 17, 2023.

41. Applicant filed a brief in opposition to the Motion (the "Objection") on March 20, 2023. Following the Registrar's requests for supplementation on March 21 and 27, 2023, Applicant supplemented the Objection with additional documents on March 27 and 31, 2023, respectively. The Objection as supplemented was transmitted to Respondent on March 31, 2023.

42. On January 12, 2024, Applicant was requested to submit documentation of costs incurred in responding to the Motion. On January 17, 2024, Applicant filed a Request for Costs, which was transmitted to Respondent on January 19, 2024. On January 25, 2024, Respondent commented on Applicant's Request for Costs. Respondent's comments were transmitted to Applicant on February 5, 2024, for his information.

A. Applicant's request for anonymity

43. In his Application, Applicant requested anonymity, asserting that the challenged entry ban "logically implies misconduct, a security threat, or moral turpitude" and "a Tribunal publication of his name in this type of case – and especially in this case's unusually personal circumstances – would harm [Applicant] and gravely undermine any relief granted" for "his lost reputation and professional standing."

44. Respondent opposed Applicant's request on the ground that the only issue presented by the Motion is "a pure question of law" for which there is "no need . . . to publish an extensive discussion of the facts and background that led to the Applicant's entry ban." Respondent asserted that Applicant had not demonstrated "good cause" for anonymity, either through a credible claim of detriment to his career or through "any of the classic reasons for anonymity, such as challenges to a performance assessment, misconduct allegations or matters of personal health." Respondent stated in particular that "Applicant was not charged with misconduct, and his entry ban was imposed not as a disciplinary measure . . . but as a security measure."

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6. The complete text of any document referred to in the objection shall be attached in accordance with the rules established for the reply in Rule IX. The requirements of Rule VII, Paragraph 4, shall apply to the objection to the motion.

7. Upon ascertaining that the objection meets the formal requirements of this Rule, the Registrar shall transmit a copy to the Fund.

8. There shall be no further pleadings in respect of a motion for summary dismissal unless the President so requests.

45. Pursuant to Rule XXII, para. 4 of the Tribunal's Rules of Procedure, the Tribunal may grant a request for anonymity on a showing of "good cause." The Tribunal has interpreted this "good cause" standard "in the light of the principle that granting anonymity to an applicant is an exception to the ordinary rule that the names of parties to a judicial proceeding should be made public." *"TT", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2022-1 (June 30, 2022), para. 22. To date, the Tribunal has found "good cause" to grant anonymity in three main types of circumstances: (i) cases challenging performance assessments; (ii) cases involving allegations of staff misconduct; and (iii) cases in which the health of the applicant is at issue. *See Mr. "SS", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2021-3 (December 27, 2021), para. 21 (citing *Mr. "KK", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-2 (September 21, 2016), para. 16).

46. The Tribunal observes that the Fund's notice of Applicant's entry ban expressly stated that Applicant was alleged to have engaged in repeated sexual harassment. The notice also threatened potential referral to law enforcement authorities in multiple jurisdictions. While Applicant was not formally charged with or investigated for misconduct, the Tribunal's jurisprudence does not suggest that the grant of anonymity in cases of alleged misconduct requires the conduct of formal investigative or disciplinary proceedings against the accused party. The Tribunal has previously granted anonymity precisely to protect those against whom untested allegations of misconduct have been lodged. *See, e.g.*, *Mr. "QQ", Applicant v. International Monetary Fund, Respondent (Motion to Dismiss in Part)*, IMFAT Judgment No. 2020-1 (November 2, 2020), para. 12 (finding anonymity warranted where the applicant made serious, untested allegations of discrimination against his managers and HRD); *Ms. "GG", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2013-3 (October 8, 2013), para. 13 (granting anonymity as requested by an applicant who alleged sexual harassment, discrimination, and retaliation, as such conduct, "if established, would constitute serious misconduct"); and *Ms. "AA", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 27, 2006), para. 15 (granting anonymity to protect supervisors from untested allegations of harassment and hostile work environment).

47. Given that the entry ban—which is the subject of this dispute—was based on allegations that, if established, would amount to serious misconduct, the Tribunal granted Applicant's request for anonymity. This decision was communicated to the parties on January 12, 2024.

B. Applicant's requests for production of documents

48. Pursuant to Rule XVII of the Tribunal's Rules of Procedure, in his Application, Applicant made requests for the production of documents. Respondent did not respond in its Motion to those requests, and Applicant did not address them in his Objection. The Tribunal considered that the disposition of Applicant's document requests was not necessary to the determination of the Motion, and Applicant had not so argued. Accordingly, the Tribunal deferred its decision on Applicant's requests for the production of documents, and the parties were so notified on January 12, 2024.

C. Applicant's request for oral proceedings

49. Pursuant to Rule XIII of the Tribunal's Rules of Procedure, in his Application, Applicant made a request for oral proceedings in the case. Respondent did not respond in its Motion to that request, and Applicant did not address it in his Objection. In the absence of a request for oral argument on the issue of summary dismissal, the Tribunal decided that oral proceedings would not be held, as it did not deem such proceedings useful to the disposition of the Motion. The Tribunal therefore deferred its decision on Applicant's request for oral proceedings, and the parties were so notified on January 12, 2024.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

50. The parties' principal arguments as presented by Applicant in his Application and Objection, and by Respondent in its Motion, may be summarized as follows:

A. Applicant's principal contentions on the merits

1. "The primary question in the present case is whether the Fund owes due process to [Applicant] regarding the entry ban, and whether that ban has a reasonable, non-arbitrary basis."

2. WBAT precedents regarding the use of entry bans "present fundamental tenets of due process in international administrative law." Such standards should be adopted by the Fund, which has acted abusively and arbitrarily in the absence of a formal system to handle such matters, and by this Tribunal.

3. The Fund has wronged Applicant by denying him due process, including by conflating misconduct and security concerns; presuming the allegations against him to be true despite the lack of any evidence; and denying him any chance to be heard. The Fund's approach "violated the contract and terms of appointment by which [Applicant] holds retiree status."

4. The Fund barred Applicant from Headquarters under the pretext of "security" without a reasonable basis to impose the ban, let alone to maintain it after the Complainant's reassignment from Headquarters.

5. The Fund's internal deliberations about Applicant's entry ban did not meet the minimum requirements of due process: written notification and the right to reply.

6. The Fund caused extreme harm to Applicant by broadcasting his entry ban within his former Department without justification.

7. Applicant seeks as relief:

    a. rescission of the entry ban as arbitrary and capricious, or, if this is not granted, an Order requiring a Fund review of the entry ban fully conforming to the rules and principles articulated in the jurisprudence of the WBAT;

b. compensation in the amount of $300,000, plus any related tax allowance, as compensatory, moral and intangible damages for the Fund's imposition, maintenance, and publication of the entry ban and denials of due process;

c. reimbursement of all fees and costs incurred by Applicant in this matter; and

d. all other relief that the Tribunal deems just and appropriate.

B. Respondent's principal contentions on admissibility

1. Respondent seeks summary dismissal of the Application for lack of jurisdiction *ratione materiae* and *ratione temporis* as well as lack of ripeness.

2. The Tribunal should summarily dismiss the Application for lack of jurisdiction *ratione materiae*. The provision or deactivation of a retiree badge is not an appealable individual decision or a regulatory decision affecting any terms and conditions of Fund employment. Nor did the entry ban placed on Applicant, long after his Fund employment ended and for matters unrelated to his Fund employment, affect his terms of employment as a Fund staff member.

3. The Tribunal should summarily dismiss the Application for lack of jurisdiction *ratione temporis* because Applicant failed to contest the April 2021 entry ban within six months, instead waiting until January 2023 to file his claims. Applicant fails to show any exceptional circumstances to excuse his delay. Nor do his various efforts to obtain reconsideration of the entry ban yield new justiciable acts so as to extend time limits or make his claims timely.

4. Access to Fund premises is not an absolute right, even for current staff, and may be revoked based on the Fund's security considerations. The Fund's broad discretion to impose access restrictions applies in cases of sexual harassment, and is particularly broad for persons who are not current staff.

5. Applicant's claims regarding an exception to the entry ban are unripe because no entry request was ever submitted in conformity with the protocol communicated by the Assistant GC on July 20, 2022.

C. Applicant's principal contentions on admissibility

1. None of the arguments advanced for summary dismissal meets the Tribunal's stringent standard of "clear inadmissibility."

2. The Fund's fundamental objection on jurisdiction is expressed by the Fund's invocation of security concerns as an insuperable barrier to Tribunal review. Contrary to Respondent's position, however, the Tribunal may review the reasonableness of the Fund's efforts to control access to its premises, particularly where there is no evidence of any threat to security.

3. Applicant's retiree status in itself confers jurisdiction on the Tribunal. The Tribunal has jurisdiction *ratione personae* to hear Applicant's claim as a retired Fund staff member. The Tribunal has jurisdiction *ratione materiae* based on Applicant's "current duties" as a representative of a Member State, on disciplinary grounds and on Applicant's "legal and customary rights as a Fund retiree."

4. The Tribunal has jurisdiction *ratione temporis*, as Applicant has timely contested both the entry ban as recast on May 12, 2022, and the Fund's denial of an entry request under those terms. To the extent there were any delays, they would be excused by exceptional circumstances, including the Fund's threats and other attempts to thwart Applicant's pursuit of relief.

5. Respondent's assertion that the Member Country's request for Applicant's entry was insufficient to give rise to a ripe claim goes to the merits of the case, not jurisdiction, and should be reviewed accordingly.

6. The Tribunal should dismiss the Motion and award costs at this stage in the amount of $4,500.

CONSIDERATION OF THE ADMISSIBILITY OF THE APPLICATION

51. A motion for summary dismissal presents one principal issue for decision: is the application "clearly inadmissible" in terms of Rule XII of the Tribunal's Rules of Procedure?

A. The "clearly inadmissible" standard for summary dismissal

52. Rule XII, paragraph 1, of the Tribunal's Rules of Procedure 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."

53. The Tribunal has emphasized that "Rule XII sets a high bar for the dismissal of an application prior to a full airing of the merits of a case," with such dismissals intended only for applications that the Tribunal deems "clearly irreceivable or devoid of merit." *"VV", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2023-3 (March 30, 2023), para. 35 (quoting *Mr. "QQ"*, para. 45). This high bar "protects applicants against having their right to be heard by the Tribunal being cut off prematurely," *"VV"*, para. 36 (quoting *Mr. "QQ"*, para. 47); and "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," *"VV"*, para. 37 (quoting *Mr. "QQ"*, para. 48).

54. At the same time, the Tribunal has recognized that summary dismissal "provides a mechanism to shorten the proceedings where inadmissibility is clear at the outset, thereby protecting the Tribunal (and the Respondent) from the expenditure of time and resources on matters that have no reasonable ground for advancing beyond the threshold." *"VV"*, para. 36 (quoting *Mr. "QQ"*, para. 47). In the recent case of *"UU", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2022-3 (December 22,

2022), for example, the Tribunal granted the Fund's motion for summary dismissal where it was "clear and dispositive" that the applicant's case was inadmissible due to his failure to exhaust all available channels of administrative review for his individual challenge. *"UU"*, para. 23.

55. Respondent's Motion, pursuant to Rule XII of the Tribunal's Rules of Procedure, asks the Tribunal to dismiss the Application summarily, that is, without a full exchange of pleadings on its merits, on the ground that the Tribunal lacks jurisdiction *ratione materiae* and *ratione temporis* over the Application, and that Applicant's claims regarding his entry request are unripe. Respondent does not dispute that the Tribunal has jurisdiction *ratione personae* because Applicant, as a Fund retiree, qualifies as a "member of the staff," as that term is defined under Article II(2)(c)(i) of the Tribunal's Statute.

56. The Tribunal addresses, below, the questions whether it lacks jurisdiction *ratione materiae* and *ratione temporis.* In light of its conclusions regarding jurisdiction *ratione materiae* and *ratione temporis,* the Tribunal need not address the issue of ripeness.

B. Has Respondent shown that the Application is "clearly inadmissible" for lack of jurisdiction *ratione materiae*?

57. Article II of the Tribunal's Statute delineates the type of cases which comprise the subject-matter jurisdiction of the Tribunal, *i.e.*, the competence *ratione materiae* of the Tribunal. Article II, Section 1(a) provides that "[t]he Tribunal shall be competent to pass judgment upon any application . . . by a member of the staff challenging the legality of an administrative act adversely affecting him." Article II, Section 2(a) defines "administrative act" to mean "any individual or regulatory decision taken in the administration of the staff of the Fund." Section 2(b) of Article II provides that a regulatory decision is "any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund."

58. The Commentary on the Tribunal's Statute explains that the definition of administrative act "is intended to encompass all decisions affecting the terms and conditions of employment at the Fund, whether related to a staff member's career, benefits, or other aspects of Fund appointment, including the staff regulations set forth in the N Rules." Commentary, p. 14. Therefore, "[i]n order to invoke the jurisdiction of the tribunal, there would have to be a 'decision,' whether taken with respect to an individual or a broader class of staff, identified in the application filed by the staff member." *Id.*

(1) Does either the disabling of Applicant's retiree badge or the entry ban constitute an administrative act?

59. Respondent asserts that the Tribunal lacks jurisdiction *ratione materiae* because neither the disabling of Applicant's retiree badge nor the entry ban placed on Applicant constitutes an administrative act that affects the terms and conditions of his employment at the Fund—*i.e.*, his career, benefits, or other aspects of his Fund employment. Further, Respondent notes that there are no binding Fund rules on providing or disabling building access badges to retirees, and that the

only reference to staff retiree badges is found in a section of the Fund's Administrative Manual entitled "FAQs on IMF Building Access (for staff and visitors)." This provision reads:

> 9. What happens to a staff member's ID when they leave the Fund?
> Staff members separating from the Fund are required to return their ID badges to the Pass ID Office. Retiring staff may apply for a retiree badge which grants them access to the Fund during business hours.

60. Respondent also asserts that *the practice* of providing or revoking retiree badges does not constitute a regulatory decision. In support of its position, Respondent refers to the Tribunal's Judgment in *Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 35, where the Tribunal held that no regulatory decision exists when "[t]he practice is distilled in no rule, General Administrative Order, handbook or handout, statement on conditions of employment, contract or other published official paper of the Fund." Therefore, according to Respondent, Applicant's contention that he has been "denied the traditionally liberal access to Fund premises accorded to retirees" based on an unwritten practice does not give rise to an expectation or right to Fund access, or a challengeable decision before the Tribunal.

61. The Tribunal observes that the absence of a specific rule regarding the disabling of a retiree's access badge, or the placement of an entry ban on a retiree's badge, should not serve as a convenient predicate to deny a Fund retiree (over whom Respondent acknowledges the Tribunal has jurisdiction *ratione personae*) an opportunity to be heard. Respondent's position suggests that former staff have lesser rights than current staff to seek recourse through available channels of administrative review, which is not tenable. *See generally Mr. B. Tosko Bello, Applicant v. International Monetary Fund, Respondent (Admissibility of the Application),* IMFAT Judgment No. 2012-3 (September 11, 2012). Both current and former staff have basic rights to due process in their relations with the Fund.

62. The Tribunal also observes that but for Applicant's employment at the Fund Applicant would not have had a retiree badge. Therefore, his access to Fund premises as a retiree has a nexus to the terms and conditions of his employment. Notably, the Commentary on Article II of the Tribunal's Statute suggests an expansive definition of the term "administrative act." The definition "is intended to encompass all decisions affecting the terms and conditions of employment at the Fund, whether related to a staff member's career, benefits, *or other aspects of Fund appointment*, ..." Commentary, p. 14. (Emphasis added.)

63. The expression "other aspects of Fund appointment" is broad enough to include decisions impacting a Fund retiree's access to Fund premises. To conclude otherwise would necessarily mean that a Fund retiree—such as Applicant—who is denied access to Fund premises based solely on an accusation of misconduct by a current staff member would have no recourse to challenge the access restriction. Such an outcome would not comport with the basic principle of the right to be heard. The Commentary on Article III provides at p. 18 that "certain general principles of international administrative law, such as the right to be heard (the doctrine of *audi alteram partem*) are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to *all decisions* taken by international organizations, including the Fund."

(Emphasis added.) The Commentary does not distinguish between current and retired staff in this respect.

(2) Is WBAT jurisprudence applicable in determining jurisdiction *ratione materiae*?

64. Both parties assert that this Tribunal's consideration of the case should be informed by the WBAT's jurisprudence in cases challenging entry restrictions. In a February 3, 2023 e-mail to the Grievance Committee, the Assistant GC expressed the view that the answer to the question of jurisdiction *ratione materiae* "will be informed by persuasive jurisprudence from the World Bank Administrative Tribunal. . . . [and that] [o]nly the IMF Administrative Tribunal can definitively apply or distinguish that jurisprudence, and the Tribunal's conclusions of law in the related case would be binding on the Grievance Committee."

65. Among the WBAT cases cited by the parties, principal cases include: *Mwake v. International Bank for Reconstruction and Development*, WBAT Decision No. 318 (2004); *Q v. International Bank for Reconstruction and Development*, WBAT Decision No. 370 (2007); and *CR (No. 2) v. International Bank for Reconstruction and Development*, WBAT Decision No. 582 (2018). Applicant asserts that these cases demonstrate the WBAT's recognition of jurisdiction *ratione materiae* to review entry bans imposed on former staff after they ended employment; whereas Respondent asserts that the WBAT's jurisprudence reflects an approach to finding jurisdiction *ratione materiae* only where challenged access flags are based at least in part on the applicant's conduct during the course of World Bank employment.

66. The Tribunal does not disagree with Respondent's interpretation of the relevant WBAT jurisprudence. In *Mwake*, WBAT Decision No. 318, the WBAT expressly declined to find jurisdiction *ratione materiae* for a former employee's challenge even though his "limited access" flags were first placed shortly before he ended employment. The WBAT noted that the entry restrictions arose not in relation to the applicant's Bank employment, but rather for unrelated reasons concerning his participation in a scholarship program. As the WBAT stated at *Mwake*, para. 33:

> [F]or the Tribunal to have jurisdiction *ratione materiae*, the former staff member must be alleging non-observance of his contract of employment. There is serious doubt that this is the case with respect to the Bank's placement of "limited access" flags in the Applicant's file in 1997. Although the flags were placed there during the term of the Applicant's Consultancy, and very shortly before the termination of his employment, the circumstances leading to the placement of the flags were the Applicant's repeated demands upon the office of the Joint Scholarship Program, and it was in fact that office which had requested that the flags be placed in his file. As noted above, there is thus a serious question whether the Applicant's grievance arose from his "contract of employment or terms of appointment," as distinguished from his status as a student (or lapsed student) under the Joint Scholarship Program.

While the WBAT then went on to address the merits of the former employee's complaint, it did so not because it had found jurisdiction, but only to conclude that the applicant's claims "would therefore be without merit *even if jurisdiction were to have existed*." *Id.*, para. 36 (emphasis added). *See also id.*, para. 34 ("[E]ven if the Tribunal were to assume that the Applicant's complaint about the 'limited access' flags was somehow related to his former employment with the Bank, that complaint must be rejected on the merits.").

67. In *Q*, WBAT Decision No. 370, the WBAT found jurisdiction over a former employee's challenge to "no access" and "no re-hire" flags where the bans imposed on the applicant were placed as disciplinary measures based in whole or in part on the applicant's conduct during the course of his employment. As the WBAT observed: "Jurisdiction *ratione materiae* is found in cases where a flag has been entered as a disciplinary measure." *Q*, para. 36. Likewise, the WBAT specified that it had jurisdiction *ratione materiae* to consider a former employee's access challenges in *CR (No. 2)*, WBAT Decision No. 582, precisely because access restrictions had been imposed in that case as disciplinary measures for misconduct. *CR (No. 2)*, paras. 56-57 (citing *Q*, para. 36).

68. The WBAT's jurisprudence thus reflects a consistent approach in finding jurisdiction *ratione materiae* where the challenged flags are based at least in part on the applicant's conduct during the course of Bank employment. *See also Kobli v. International Bank for Reconstruction and Development (Preliminary Objection)*, WBAT Decision No. 588 (2018), paras. 17-19 (finding lack of jurisdiction to hear a challenge to a former Bank staff member's ejection from Bank premises where "[t]he Applicant ended his employment in 1997, some 20 years ago. . . . [and] [h]e does not demonstrate how the incident in 2014 relates to any alleged violation of his right as a former staff member.").

69. The WBAT's jurisprudence, however, is not binding on this Tribunal. Article III of the IMFAT's Statute sets out the sources of law to which the Tribunal must adhere. Article III provides that "[i]n deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law . . . ." The Commentary to the Statute cautions that "to the extent . . . a tribunal's decision is dependent on the particular law of the organization in question . . . , the decision would be regarded as specific to the organization in question . . . ." Commentary, p. 19.

70. Further, the WBAT's jurisprudence in question is not persuasive because it assesses the World Bank's unique policy framework governing access to the World Bank. The Fund itself acknowledges in its Motion that "this alone distinguishes the instant case from those at the World Bank and the related case law." The WBAT's jurisprudence is also distinguishable because the WBAT's competence differs from the IMFAT's competence. Pursuant to its Statute, the WBAT is competent to "hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member" (WBAT Statute, Article II(1)), whereas the IMFAT is competent to pass judgment upon any application "by a member of the staff challenging the legality of an administrative act adversely affecting him." The WBAT's jurisprudence on access restrictions reflects this different jurisdictional approach. For example, in *Q*, WBAT Decision No. 370, para.

36, the WBAT stated that for a present or former staff member to have standing to challenge an access restriction, the challenged decision "must relate significantly to the staff member's contract of employment or terms of appointment . . . ." *See also Mwake*, WBAT Decision No. 318, para. 33, where the WBAT held that "for the Tribunal to have jurisdiction *ratione materiae*, the former staff member must be alleging non-observance of his contract of employment."

71. In light of the above, the Tribunal finds that although Respondent is not incorrect in its understanding of the WBAT's jurisprudence, such jurisprudence is not binding and not persuasive in the particular circumstances of this case and is distinguishable. The WBAT is assessing the World Bank's unique framework on access restrictions and is applying a standard in determining its jurisdictional competence that is different than the standard applied by the IMFAT.

(3) The Tribunal's conclusion on the question of jurisdiction *ratione materiae*

72. The Tribunal concludes that the entry ban placed on Applicant constitutes an administrative act under Article II of the Tribunal's Statute. The Tribunal therefore has jurisdiction *ratione materiae.*

73. Respondent asserts that security restrictions are a means by which the Fund may fulfill its "duty of care to the staff to provide a safe work environment" and that "[d]ue to the significance and importance of staff security, the discretion to impose access restrictions is broad." The Tribunal observes that these assertions go to the merits of the dispute. In any event, the Tribunal's conclusion neither confers a right on Fund retirees to enter Fund premises nor limits the Fund's discretion to take necessary security measures to protect Fund premises and the safety of staff. The Tribunal's conclusion simply finds that it has competence *ratione materiae* to hear claims brought by a retired Fund staff member concerning access restrictions placed in his file.

C. Has Respondent shown that the Application is "clearly inadmissible" for lack of jurisdiction *ratione temporis*?

74. Having concluded that it has jurisdiction *ratione materiae*, the Tribunal now turns to the question whether Applicant exhausted all available channels of administrative review in a timely manner.

75. Article V(1) of the Tribunal's Statute provides that "[w]hen the Fund has established channels of administrative review for the settlement of disputes, an application may be filed with the Tribunal only after the applicant has exhausted all available channels of administrative review." The prior exhaustion of administrative review channels must itself be timely, for example in accordance with the six-month timeline for staff grievances submitted to the Grievance Committee. The Tribunal has long recognized the importance of timely exhaustion of remedies. *See, e.g.*, *"VV*", para. 70. The "[p]rompt exhaustion of remedies provides an early opportunity to the institution to rectify possible errors – when memories are fresh, documents are likely to be in hand, and disputed decisions are more amenable to adjustment." "*QQ" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2022-2 (October 25, 2022), para. 50, referring to *Estate of Mr. "D", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2001-1 (March 30, 2001), para. 95.

Article VI(1) of the Statute sets a three-month limit for individual challenges brought to the Tribunal, with such applications to be filed within "three months after all available channels of administrative review have been exhausted, or, in the absence of such channels, after the notification of the decision."

76. The Tribunal may consider "exceptional circumstances" in assessing whether an applicant has proceeded in a timely fashion. This applies to both the exhaustion of internal remedies, *see, e.g.*, *Estate of Mr. "D",* paras. 102-103, as well as the timing of an application to the Tribunal, per Article VI of the Statute.

(1) What administrative acts does Applicant contest in the Application and was the Application timely filed?

77. The Tribunal observes that in order to assess the timeliness of Applicant's claims, including the timeliness of Applicant's pursuit of any available administrative review channels prior to the Tribunal, the Tribunal must first identify the administrative acts subject to individual challenges.

78. In Respondent's view, Applicant's claims rest on a challenge to the original entry ban as communicated on April 13, 2021. Applicant, on the other hand, asserts that he is challenging the entry ban as "recast" on May 12, 2022, and the Fund's denial of the Member Country's entry request on November 10, 2022.

79. In the present case, there are several possible administrative acts: (a) the original entry ban notice of April 13, 2021, which categorically stated no entry "for any reason"; (b) the Assistant GC's letter of May 12, 2022, which, in contrast, offered that Applicant could submit a request for "exceptional access" based on "compelling circumstances"; (c) the Assistant GC's letter of July 20, 2022, which detailed two paths to request access, either through Applicant's request for exceptional access or a Member Country request sent 15 days in advance of specific meetings; and (d) following the Member Country's request of September 5, 2022 for Applicant's access to Annual Meetings in October 2022, the Fund Secretary's response on the Managing Director's behalf sent on November 10, 2022.

(a) The original entry ban notice of April 13, 2021

80. The original entry ban notice of April 13, 2021 put Applicant on notice in clear terms that his retiree badge had been "deactivated and [he would] not be permitted entry into Fund Headquarters for any reason, including as a guest or member of a delegation." The notice further explained the reason for the access restriction and identified the name of the Fund staff member who had lodged the complaint that triggered the notification. Therefore, as of April 13, 2021, Applicant was fully aware of the access restriction and had an opportunity to respond.

81. If April 13, 2021, is considered the *dies a quo*, Applicant (pursuant to GAO 11, Chapter 11.03, Section 4.7) should have filed his Grievance with the Grievance Committee within six months (*i.e.,* on or around October 13, 2021) of that date. He failed to do so, having filed his Grievance on January 10, 2023. Under these circumstances, the Grievance would be untimely,

absent exceptional circumstances, because Applicant failed to exhaust all available channels of administrative review in a timely manner.

82. However, the April 13, 2021 act set in motion a series of subsequent acts any one of which Applicant might have sought to challenge. The subsequent acts did not preclude the possibility of Applicant entering Fund HQ. The question therefore arises whether the subsequent acts could be considered separate "administrative acts" subject to challenge in the Tribunal. *See Mr. "O", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-1 (February 15, 2006), para. 56.

(b) The Assistant GC's communication of May 12, 2022

83. On May 12, 2022, the Assistant GC offered that Applicant could submit a request for "exceptional access" based on "compelling circumstances." This is the first instance where the Fund provided to Applicant the possibility of an exception to the entry ban. This communication is a later formulation of the initial entry ban and therefore a separate administrative act for purposes of assessing admissibility. It adversely affected Applicant because it revised the parties' understanding of the conditions under which Applicant would be permitted entry to Fund HQ. Using May 12, 2022 as the *dies a quo*, Applicant should have filed a Grievance with the Grievance Committee within six months of that date—*i.e.*, by November 12, 2022. Having failed to do so—and absent exceptional circumstances—the Grievance would be considered untimely.

(c) The Assistant GC's communication of July 20, 2022

84. The Assistant GC's communication of July 20, 2022 articulated the same "compelling circumstances" standard that was in the May 12, 2022 letter, but added a detailed protocol for Applicant to request access to Fund HQ: either through a request by Applicant for exceptional access; or a request by a Member Country sent 15 days in advance of specific meetings. The July 20, 2022 e-mail specified the information that must be included in an access request.

85. The July 20, 2022 communication was the final formulation of the initial entry ban and therefore (as with the May 12 communication) a separate administrative act for purposes of assessing admissibility. This communication adversely affected Applicant because it again revised the parties' understanding of the conditions under which Applicant would be permitted entry to Fund HQ. Using July 20, 2022 as the *dies a quo*, Applicant's Grievance was timely because the Grievance was filed on January 10, 2023—*i.e.*, within six months of the July 20, 2022 communication.

(2) The Tribunal's conclusion on the question of jurisdiction *ratione temporis*

86. The Assistant GC's communication of July 20, 2022 was a later formulation of the initial entry ban that revised the parties' understanding of the conditions under which Applicant would be permitted to enter Fund HQ. Consequently, Applicant had six months from that date to file his Grievance with the Grievance Committee. Having done so, the Grievance was timely. In light of this conclusion, the Tribunal need not assess whether the Fund Secretary's communication of November 10, 2022 serves as the *dies a quo*.

CONCLUSIONS OF THE TRIBUNAL

87. For the foregoing reasons, the Tribunal concludes that Respondent has not met the "high bar" set by Rule XII for the dismissal of an application before a full exchange of pleadings on the merits. *See "VV",* paras. 35-37. When issues of admissibility cannot be resolved without consideration of the merits, a motion for summary dismissal must fail. Accordingly, the Fund's Motion is denied.

88. In light of the Tribunal's conclusions, and given the mutual agreement of the parties to stay the Grievance Committee proceedings pending a final decision of the Tribunal, the parties are invited to advise the Tribunal within 30 days of notification of this Judgment as to whether they choose to avail themselves of Article V, Section 4, of the Tribunal's Statute, which provides: "For purposes of this Statute, all channels of administrative review shall be deemed to have been exhausted when the Managing Director and the applicant have agreed to submit the dispute directly to the Tribunal."

LEGAL FEES AND COSTS

89. As noted above at paragraph 42, Applicant submitted his Request for Costs on January 17, 2024. Respondent filed responsive Comments on January 25, 2024.

90. The Tribunal has decided to defer its decision on legal fees and costs until the merits phase of the proceedings.

DECISION

FOR THESE REASONS

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

1. The Motion for Summary Dismissal of the Application of "YY" is denied.

2. The parties are invited to advise the Tribunal within 30 days of notification of this Judgment as to whether they agree to submit the dispute directly to the Tribunal, pursuant to Article V, Section 4, of the Tribunal's Statute.

Nassib G. Ziadé, President

Maria Vicien Milburn, Judge

Andrew K.C. Nyirenda, Judge

/s/
Nassib G. Ziadé, President

/s/
Celia Goldman, Registrar

Washington, D.C.
June 7, 2024