



**World Bank Administrative Tribunal**

**2013**

**Decision No. 484**

**Daniel Lecuona,  
Applicant**

**v.**

**International Bank for Reconstruction and Development,  
Respondent**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**Daniel Lecuona,  
Applicant**

**v.**

**International Bank for Reconstruction and Development,  
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Ahmed El-Kosheri, Andrew Burgess and Abdul G. Koroma.

2. The Application was received on 28 January 2013. The Applicant was represented by Nicolas C. Johnson of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. Nélide Cubile-Lecuona filed an application to intervene on 8 May 2013. The Tribunal granted her application on 20 May 2013. She was assisted by her counsel, Facundo Juez Perez.

3. The Applicant challenges the decision of 14 September 2012 of the Pension Benefits Administration Committee (“PBAC”), which upheld the decision of 8 June 2012 of the Pension Benefits Administrator, to deduct spousal support payments in the amount of \$1,500 from the Applicant’s monthly pension and pay them directly to Nélide Cubile-Lecuona, the Intervenor.

**BACKGROUND**

4. The Applicant is a Bank retiree. He joined the Bank in 1966 and retired in 1987.

5. The Applicant and Nélide Cubile-Lecuona, the Intervenor, were married in 1985. They shared their marital home in Tucumán, Argentina.

6. According to the Applicant, on 4 September 2000, he filed a petition in the court of Tucumán for “a temporary measure authorized by ... Art. 243 of the Tucumán Province Code of

Civil Procedure, to permit a spouse to reside outside the marital home, pending a decree of divorce or marital separation.”

7. According to the English translation provided by the Applicant, Article 243 of the Tucumán Code of Civil Procedure states as follows:

Article 243: DIVORCE, ANNULMENT OF MATRIMONY Once an action for separation, for divorce or for annulment of matrimony is filed, or before such filing in cases of urgency, the court may decide whether one of the spouses must withdraw from the marital home or be returned thereto, may determine to whom corresponds the provisional custody of the children in accordance with the provisions of the Civil Code and establish the provisional alimony payable to the spouse to whom it should be paid and to the children, as well as the expenses necessary for the lawsuit.

8. In response to the Applicant’s petition, a court in Tucumán issued an order dated 15 September 2000 (hereinafter “September 2000 Court Order”). The Order established separate domiciles for the parties, alimony payments for the Intervenor, and visitation rights for the Applicant to see their minor daughter.

9. The English translation of the September 2000 Court Order as provided by the Bank reads in relevant part as follows:

Suit: Lecuona, Daniel César v Cubile, Nélica del Valle- Custody and Support

Having heard the submissions, the court DECIDES: ...

(IV) In these proceedings I rule that an order be issued for the Bailiff to enforce the measures requested that have been approved, and, if necessary, place Dr. Daniel César Lecuona in the domicile located at calle Salta No. ... in this city, and Ms. Nélica del Valle Cubile de Lecuona in the domicile located at calle San Lorenzo No. ... in this city, in this case, along with her daughter ....

(V) With authorization for specific days and times, the help of law enforcement personnel, and search of premises using a judicial warrant if necessary, the Bailiff shall remove from the domicile located at calle San Lorenzo No. ... Mr. Daniel César Lecuona’s personal effects, books, and documents that he needs for his work and in order to practice his profession, and hand them over to him.

(VI) The parties are hereby advised to refrain from altering the established custody arrangements in any way whatsoever, under pain of contempt of court.

(VII) In the exercise of the powers vested in me by Article 252 of the Code of Civil and Commercial Procedure, and Articles 198 and 265 of the Civil Code, I hereby order that the legal support payment be made pursuant to the provisions of Article 409 of the Code of Civil and Commercial Procedure, in the amount of one thousand pesos. Such payment shall be made during the interim period pending the resolution of the issue of temporary support payments, for which the relevant suit must be filed. ... In these proceedings, Mr. Daniel César Lecuona is granted visitation rights for his daughter ... .

10. On 20 March 2002, the Applicant and the Intervenor entered into an agreement (“the 2002 Agreement”). The 2002 Agreement provided *inter alia* that: (i) the parties’ individual petitions would be revised into a single petition for divorce by mutual consent; (ii) the parties would attend a second hearing to be convened by the court as required under Article 236 of the Argentine Civil Code; (iii) the Applicant would pay his spouse the sum of \$1,500 a month until the conclusion of the proceedings for divorce by mutual consent; and (iv) in the event that the Applicant’s spouse breached the Agreement through repudiation or otherwise by failing to comply with any obligations under the Agreement, the Agreement would lapse by virtue of Clause VIII of the 2002 Agreement. A court in Argentina approved the Agreement.

11. The Intervenor repudiated the Agreement on 22 March 2002 and that repudiation was noted in a court order of 13 September 2002. On appeal, the Intervenor’s repudiation was set aside by a court order of 11 December 2003.

12. In the following years, a number of judicial decisions addressed various issues in dispute between the Applicant and the Intervenor. A judicial decision of 12 March 2004 ordered precautionary measures consisting of the garnishment of any amount the Applicant should receive from certain investment to meet the obligations owed to the Intervenor under the 2002 Agreement.

13. A judicial decision of 13 September 2006 declared the Applicant’s non-compliance with his family support obligations.

14. A judicial decision of 13 March 2007 decided that the proceedings for a joint motion for divorce had been discontinued given the Intervenor's failure to appear at the second hearing.

15. A judicial order of 27 November 2007 ordered that the Intervenor be reimbursed for medical expenses she incurred, and that she and their daughter be enrolled as dependents of the Applicant in the social security system. A judicial decision of 18 February 2008 rejected the Applicant's request for the annulment of the judicial order dated 27 November 2007.

16. On 27 March 2008, a judicial order instructed the Applicant to pay \$1,500 each month to the Intervenor as alimony. The Applicant filed an appeal against the order. On 6 September 2013, the appeal was rejected.

17. A judicial order of 23 December 2011 by a Family and Probate Court of Tucumán granted the Intervenor's request to garnish the sum of \$1,500 each month from the Applicant's Bank pension.

18. A Letter Rogatory, dated 27 December 2011, was sent by the Family and Probate Court to the Bank, transmitting the judicial order of 23 December 2011.

19. The Applicant had filed an appeal against the court order of 23 December 2011, which is still pending.

20. In the meantime, in July 2008 the Intervenor contacted the Bank's Pension Administration about the spousal support. She states that: "After numerous and unsuccessful motions to collect the spousal support in Argentina ... I decided to request the Bank to make payments applying [Article 5.1(c)] of the Staff Retirement Plan ("SRP" or "Plan")." This Article allows the Bank to deduct spousal support from a retiree's monthly pension and pay it directly to the retiree's legally separated or divorced spouse if so ordered by a court. The Pension Administration retained Argentine counsel to assist in this matter. On 17 August 2009, the Pension Benefits Administrator advised the Intervenor that:

Our counsel in Argentina has advised that, consistent with Argentine law and the terms of the Plan, you would need to obtain a court order addressed to the Bank calling for (1) the deduction of Mr. Lecuona's monthly spousal support obligation from his Staff Retirement Plan pension, and (2) the payment of the amount so deducted to you. While normally the Bank would be immune from such an order, the provisions of the Staff Retirement Plan explicitly allow for such deductions of court ordered spousal support to a former or legally separated spouse.

The order should clearly state the amount and duration of the monthly spousal support payment to you from Mr. Lecuona's pension. In any event, under the Plan, any monthly payment to you from Mr. Lecuona's pension would cease upon the earlier of your death or Mr. Lecuona's death, when the pension itself would cease.

The order will only be applied by the Plan prospectively, and the Plan will not decide on its own to collect any back payments, if Mr. Lecuona is in arrears. However, if a court order includes an additional prospective monthly deduction to address an arrearage of spousal support payments, and clearly specifies the amount and duration of that additional deduction, it may be possible for the Plan to make an additional deduction as so ordered.

21. On 7 September 2009, the Pension Benefits Administrator again wrote to the Intervenor as follows:

This is in response to your letter dated August 18, 2009, which I needed to have translated into English before I could respond to you.

In response to your assertion that the order of March 27, 2008 already requires a payment of spousal support, I should clarify that our outside counsel in Argentina has advised us that there should be an order addressed to the Bank establishing Mr. Lecuona's default and calling for the deduction of the support obligation from Mr. Lecuona's pension, consistent with the terms of the Plan. The March 27, 2008 order, though it appears to direct Mr. Lecuona to make support payments, does not appear to authorize the Plan to deduct any amount from his pension and make payments directly to you.

Your letter raises another important issue. Section 5.1(c) of the Staff Retirement Plan calls for the deduction of spousal support obligations to former spouses, or to legally separated spouses. According to our translation, in your letter, at paragraph 4 you state emphatically that you and Mr. Lecuona are neither divorced nor legally separated. If this is the case, the criteria for deduction of spousal support would not be satisfied. The Plan does not contain any provisions for deducting payments from the pension of one spouse and directing those payments to the other spouse if the two are still married and not divorced or legally separated.

22. Thus, as of September 2009 the Pension Benefits Administrator was not satisfied that the Intervenor met the requirements of Article 5.1(c) of the SRP. He advised the Intervenor, on the basis of the opinion of an Argentine counsel, to obtain a court order directing the Bank to make a \$1,500 deduction from the Applicant's monthly pension and pay that amount to her directly.

23. The Intervenor only managed to obtain such an order two years later in 2011. The Intervenor explains as follows:

The delay was due to constant controversies provoked by Lecuona in the spouse support proceedings with the purpose of delay [sic] resolutions. The file was constantly in the judge chamber "for resolution" or sent to the Appeal Court. The suspension of legal term [sic] was also constant since Mr. Lecuona asked the disqualification of five (5) judges.

24. On 5 January 2012, the Intervenor wrote a letter to the Pension Benefits Administrator requesting support payments from the Applicant's pension attaching the court order in the form of a Letter Rogatory dated 27 December 2011 issued by the Family and Probate Court. The Letter Rogatory states in relevant part as follows (as translated by the Bank):

[T]his letter rogatory has been issued for the purpose of ensuring compliance with the order which reads as follows: ... SAN MIGUEL DE TUCUMÁN, December 23, 2011 - HAVING HEARD THIS CASE ... CONSIDERING ... I HEREBY RESOLVE: (I) TO APPROVE the measure requested, to garnish payments that [the Applicant] receives each month from the World Bank, under the Staff Retirement Plan, in the amount of US\$1,500 (one thousand five hundred United States dollars) per month for spousal support as stipulated in the court records. These monthly sums shall be paid directly to [Ms. Cubile-Lecuona] until a new order is issued to the contrary. (II) The World Bank is hereby OFFICIALLY NOTIFIED for the purpose of ensuring compliance with the instructions in point I of this order.

25. In the view of the Pension Administration's internal counsel, "the Letter Rogatory, if authentic, was a spousal order enforceable under Argentine law, having been issued by a judge of competent jurisdiction." The Bank adds that: "On the request of the [the Pension Administration's internal counsel] Argentine counsel confirmed with the Tucumán Court that the Letter Rogatory was indeed genuine, that it had been entered by the Court, and therefore the spousal support obligation contained therein was valid and legally binding under local law."

26. In her letter of 5 January 2012, the Intervenor asserted that she was legally separated under local law on the basis of the September 2000 Court Order. In view of the Letter Rogatory and the Intervenor's assertion that she was legally separated from the Applicant, the Pension Benefits Administrator was satisfied that the Intervenor had made a prima facie case for spousal support under the SRP. The Administrator informed the Applicant of the Letter Rogatory on 10 April 2012. On 21 April 2012, the Applicant sent a letter to the Pension Benefits Administrator objecting to the Intervenor's request for spousal support from his pension.

27. By a letter of 8 June 2012, the Pension Benefits Administrator informed the Applicant and the Intervenor that he had concluded that Section 5.1(c) of the SRP had been satisfied and spousal support payments would be made to the Intervenor from the Applicant's pension in the amount of \$1,500 each month commencing in July 2012. In that letter, the Pension Benefits Administrator explained the basis of this decision as follows:

Section 5.1(c) of the Staff Retirement Plan of the World Bank (the "Plan") calls for the deduction of spousal support obligations to former spouses, or to legally separated spouses, pursuant to a final court order establishing a legal obligation to pay such spousal support. After consultation with our internal and local counsel, and after careful consideration of the history of the case and the issues raised by both parties, we find that the conditions of Section 5.1(c) have been met to our satisfaction.

The principal issues are as follows:

*Authenticity of the Order.* The [Letter Rogatory] was sent to us via Ms. Cubile-Lecuona, rather than through the Ministry of Foreign Affairs, which we understand from local counsel means the Bank does not technically have in its possession a letter rogatory. However, our local counsel independently verified the authenticity of the Letter with the Tucumán Court. Since we are aware of the Letter and are satisfied with its authenticity, we will not require Ms. Cubile-Lecuona to request the Court to resend the Letter through diplomatic channels to prove its authenticity.

*Legal Obligation to Pay Spousal Support.* Our local counsel has confirmed that the Letter includes a final and valid spousal support order that is enforceable under Argentine law. The Letter serves to notify the Bank that Mr. Lecuona has a legal obligation, pursuant to court order, to pay spousal support to Ms. Cubile-Lecuona, and that such amounts should be deducted from Mr. Lecuona's monthly pension payments.



*Legally Separated Status.* For purposes of the Plan, Ms. Cubile-Lecuona and Mr. Lecuona are legally separated. We have confirmed with our local counsel that the September 15, 2000 court order ... establishes that the parties are legally separated under local law.

...

*Form of the Court Order.* The Letter is not in the form normally required by the Plan. ...

Given the unique circumstances of this case (including the extreme length of time that has elapsed since the parties first brought this matter to us, and the unclear instructions regarding the Plan requirements), we have determined that in the interests of expediting the matter, the Bank will look to the intent, rather than the exact form, of the Court's Letter.

The clear intent of the Court in drafting the Letter was to ensure direct payment to Ms. Cubile-Lecuona from Mr. Lecuona's pension payments. We presume that the Court intended to order every step required to effectuate the order, including instructing Mr. Lecuona to direct the Plan to make such payments. ...

For all the foregoing reasons, consistent with the intent of the Bank's policy on spousal support, and consistent with the intent of Section 5.1(c), the Plan will make spousal support payments on Mr. Lecuona's behalf in order to assist him in fulfilling his legal obligation to make such payments.

28. On 28 June 2012, the Applicant appealed to PBAC. The Intervenor submitted her response on 19 July 2012. With her submission the Intervenor also attached the court order of 23 December 2011 issued by the Family and Probate Court.

29. After considering the submissions of all the relevant parties, PBAC concurred with the determination of the Pension Benefits Administrator that the parties were legally separated for purposes of the SRP, and that the Letter Rogatory by itself was sufficient to establish the Applicant's legal obligation to pay spousal support, as required by the SRP. On 14 September 2012, PBAC informed the Applicant of its decision as follows:

In response to your request dated June 28, 2012, the Pension Benefits Administration Committee (the "Committee") has reviewed Pension Administration's decision to commence, effective July 31, 2012, monthly

payments to Ms. Nélide Cubile-Lecuona in the amount of \$1,500, to be deducted from your monthly pension benefit under the World Bank's Staff Retirement Plan (the "Plan").

After careful consideration of all the relevant facts, the Committee concludes that Pension Administration correctly found that the Plan requirements regarding spousal support payments have been satisfied, and therefore affirms Pension Administration's decision. Pursuant to Section 5.1(c) of the Plan, Ms. Cubile-Lecuona is entitled to spousal support payments as described in the letter, dated December 27, 2011, addressed to the World Bank from the Civil Family and Probate Court in the Fourth District of the Judiciary of the Province of Tucumán, Republic of Argentina (the "Letter") and the December 23, 2011 spousal support order referenced therein (the "Spousal Support Order").

Furthermore, the Committee finds that Ms. Cubile-Lecuona was entitled to receive spousal support payments starting from the first pension payment after the Bank received the Letter, which would have been your January 31, 2012 pension payment. Accordingly, the Committee has instructed Pension Administration to:

- (1) Continue deduction of \$1,500 from your monthly pension, payable to Ms. Cubile-Lecuona until Pension Administration receives a spousal support order to the contrary; and
- (2) Commence an additional deduction of \$1,500 per month from your monthly pension, payable to Ms. Cubile-Lecuona, for the next six months, as retroactive spousal support payments covering the period of January 2012 through June 2012 (an aggregate of \$9,000).

In reaching the above decision, the Committee has satisfied itself that you and Ms. Cubile-Lecuona are legally separated, that you are under a legal obligation to make spousal support payments, and that a final court order directs the payments to be deducted from your monthly pension benefit and paid directly to Ms. Cubile-Lecuona.

If you still disagree with the Committee's decision, your recourse is to petition the Argentine court to reduce or terminate the obligation it has imposed on you. You may also file, within 120 days of receiving this email, an appeal before the World Bank Administrative Tribunal contesting the Committee's decision.

30. The Applicant disagreed with PBAC's decision and filed his Application with the Tribunal on 28 January 2013 challenging the deduction of spousal support payments from his monthly pension.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

*The Applicant's contentions*

31. The Applicant claims that the divorce proceedings between the Applicant and his spouse have not been concluded and there is no final court order or decree of legal separation. The Applicant contends that Articles 201-202 of the Argentine Civil Code govern legal separation and no decree has been issued under these articles. According to the Applicant, the September 2000 Court Order does not meet the requirement of Section 5.1(c) of the SRP because this Order simply allowed them to take up separate domiciles with visitation rights and imposing support obligations on the Applicant. He maintains that there is no decree of legal separation as required under Articles 201-202 of the Argentine Civil Code.

32. The Applicant argues that in April 2012 he filed an appeal against the court orders of 23 and 27 December 2011 that apparently imposed a legal obligation on him to pay the Intervenor from his pension. He contends that the appeal is still pending and therefore these court orders are not final. Therefore the requirements of Section 5.1(c) are not met.

*The Bank's contentions*

33. The Bank contends that the couple is legally separated for the purposes of Section 5.1(c) of the SRP as the September 2000 Court Order clearly established legal separation as was confirmed by the Argentine counsel retained by the Bank. The Bank adds that since that Order, the couple has also behaved as though they were legally separated.

34. The Bank argues that the court orders of 23 and 27 December 2011 are final in the sense that they have established an immediate legal obligation until the orders are revoked or amended. It argues that interpreting "final order" to mean "non-appealable order" in the context of Section 5.1(c) would frustrate the purpose of that provision.

*The Intervenor's contentions*

35. The Intervenor contends that pursuant to the September 2000 Court Order the couple has been de facto separated and all the requirements of Section 5.1(c) are present here.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

36. The Bank amended its SRP in 1995 to provide that court-ordered support payments to a former or separated spouse of a retiree may be deducted from a retiree's pension, if certain requirements are met. The amendment as incorporated in Section 5.1(c) of the SRP provides as follows:

A participant or a retired participant, pursuant to a legal obligation, as evidenced by a final order of a court, arising from a marital relationship to support one or more former spouses, or a spouse from whom there is a decree of legal separation, may direct that a specified amount or part of a pension ... shall be paid to one or more such former spouses or the spouse. If the participant or retired participant is obligated by a final order of a court to direct that such a payment be made, the Benefits Administrator shall pay the pension or lump sum payment accordingly after receipt of the order; provided, however, that neither the participant, retired participant, nor the Benefits Administrator may convey an interest in the Retirement Trust Fund of the Plan or in the pension or other benefits of a participant or retired participant to any person. The amount or part of a pension payable pursuant to such an obligation may be increased at any time by a participant or retired participant. The payment may be decreased when the obligation diminishes, and the payment shall terminate when the obligation terminates, provided, in each case, that the participant or retired participant furnishes evidence satisfactory to the Administration Committee of such diminution or termination. No payment hereunder pursuant to a final order of a court will be payable sooner than the end of the month which is at least 60 days after the Benefits Administrator has received an authenticated copy of the order.

37. The purpose of the amendment was to ensure that Bank retirees comply with their family legal obligations in retirement. The underlying policy rationale of the amendment was to protect the interests and welfare of the retired staff members' former spouses. In *Aleem & Aleem*, Decision No. 424 [2009], paras. 58-60, the Tribunal noted that:

Previously, it had been possible for Bank Group staff members to divorce their spouses in retirement or shortly before retirement and leave them without means of support in their old age. Because of the Bank's immunities, and the SRP's prohibition on alienation (including garnishments and assignments) of Plan benefits, former spouses had no legal ability to recover portions of a Bank Group retiree's pension if the retiree left the jurisdiction or otherwise refused to pay the former spouse directly, whether voluntarily or following a valid court order. To address this problem, with the support of the Staff Association and the World Bank Volunteer Services (a group of Bank Group spouses now known as the World Bank Family Network), the Bank amended the SRP in 1995.

...

The policy rationale behind Section 5.1(c) of SRP is clearly to protect the interests and welfare of the retired staff members' former spouses. The amendment was enacted to prevent the staff members from evading domestic court orders using the legal loopholes that existed prior to the amendment.

38. The context and the purpose of Section 5.1(c) must be taken into account in addressing the issues raised in this Application.

39. Under the Bank's practice, pursuant to Section 5.1(c) of the SRP, the Pension Benefits Administrator requests evidence (in the form of one or more court orders) of the following two requirements prior to approving spousal support claims: (i) the legal separation or divorce of the parties; and (ii) a legal obligation of the participant or retired participant to pay spousal support from his or her pension benefits under the SRP. Here, the Administrator and PBAC concluded that each of these requirements had been satisfied. The Applicant disagrees.

40. The issue before the Tribunal is whether the decisions of the Pension Benefits Administrator and PBAC were validly made in accordance with the terms of the SRP, not whether they are correct as a matter of Argentine law. Neither the Pension Administration nor PBAC or for that matter the Tribunal has authority to interpret Argentine law or pronounce on the validity of the decisions of Argentine courts. *See Verdier*, WBAT Order [May 15, 1998], para. 6.

41. The Tribunal will now examine whether the requirements under Section 5.1(c) have indeed been satisfied taking into account the object and purpose of Section 5.1(c). The Tribunal

has set out the scope of its review in pension matters like the present one in *Mills*, Decision No. 383 [2008], para. 31, in which it stated that

appeals brought to [the Tribunal] under the SRP may involve issues that cannot be regarded purely as a matter of executive discretion, which is certainly the case here. Accordingly, the Tribunal must examine whether the Plan Administrator and the PBAC correctly interpreted the law and whether the requirements of due process have been observed. The examination of the facts of the case and the conditions required by the SRP for the handling of spousal support orders is central to the Tribunal's review.

*Legal separation*

42. The following facts are undisputed :

- a) on 4 September 2000, the Applicant filed a petition in the court of Tucumán for “a temporary measure authorized by ... Art. 243 of the Tucumán Province Code of Civil Procedure, to permit a spouse to reside outside the marital home, pending a decree of divorce or marital separation;”
- b) on 15 September 2000, a court in Tucumán issued an order or decree that established separate domiciles for the parties, alimony payments for the Intervenor, and visitation rights for the Applicant to see the couple's then minor daughter. Under the court order, the bailiff of the court was ordered to personally place the parties at their separate and respective domiciles, and remove the Applicant's personal belongings from the marital home and deliver them to him;
- c) in March 2002, the parties agreed to convert two standing divorce filings into a single joint petition for divorce through an Agreement, which stated that the Applicant would pay the Intervenor \$1,500 a month until the conclusion of the divorce by mutual consent proceedings; and
- d) for the last 13 years, the Applicant and the Intervenor have lived separately pursuant to the September 2000 Court Order, have continued their divorce

litigation that resulted in various judicial rulings and have apparently shown no intention to reconcile and live together again.

43. As shown below, the Applicant, the Intervenor and the Bank have different opinions on the meaning of these rulings and orders.

44. According to the Intervenor, the September 2000 Court Order established a separation of the couple and since then the couple has been de facto separated. The Applicant takes the position that the September 2000 Court Order or decree does not meet the requirement of “decree of legal separation” used in Section 5.1(c). He argues: “In Argentina, a legal separation requires a court decree or order pursuant to Article 204 of the Argentine Civil Code, which in turn requires 2 years of separation. There has been no such order or decree. The December 15, 2000 order could not have decreed the separation of the parties because the two years required by Article 204 had not yet elapsed.” The Bank adds that: “According to the documents of record, the parties have lived separately since 2000 with no intention of reconciling, and have been involved in numerous legal actions and proceedings in Argentine court relating to divorce and alimony disputes.”

45. Given the object and purpose of Section 5.1(c), the Tribunal cannot accept the Applicant’s rigid and formalistic approach. The Pension Benefits Administrator needs only to determine whether a “decree of legal separation” or its functional equivalent has been presented for the purposes of Article 5.1(c). If the Administrator has a reasonable and objective basis to conclude that the decree at issue meets the terms of Article 5.1(c), the Tribunal will not set aside such a finding.

46. The Pension Administration consulted in-house counsel as well as local counsel in Argentina. They both advised that the decree met the terms of Article 5.1(c). In particular, the Argentine counsel confirmed that the September 2000 Court Order established that the parties were legally separated under local law. Ultimately, the Pension Benefits Administrator concluded that the decree under consideration was the equivalent of a separation decree in other national jurisdictions because it “dealt with issues of separate living arrangements, child

visitation rights, and spousal support.” The Administrator also took account of the fact that the parties have behaved as though they are legally separated. Since the September 2000 Court Order, the parties have been living separately with apparently no intention of reconciling. They filed divorce proceedings and the litigation had continued for many years when the Pension Benefits Administrator made his determination in 2012. Moreover, the Bank states that the Applicant has consistently refused to acknowledge the Intervenor to third parties as his spouse. The Applicant has removed the Intervenor from his health insurance policy, under which she would have been eligible for benefits had she not been legally separated from the Applicant. The Applicant also blocked the Intervenor’s application to open an account at the Bank-Fund Federal Credit Union, stating that she was not his wife. In light of all these considerations, the Tribunal finds that the Pension Benefits Administrator and PBAC had a reasonable and objective basis for their determination that the functional equivalent of a “decree of legal separation” existed, and that the requirement of Section 5.1(c) had been satisfied in that regard.

47. The Applicant emphasizes the fact that in 2008 when the Intervenor first approached the Bank for support payments from the Applicant’s pension, she insisted that they were neither legally separated nor divorced. The Bank diminishes the significance of this factor by stating that it “is unsure whether Ms. Cubile-Lecuona was genuinely mistaken at the time, or whether her statement was a result of language and cultural barriers, or whether she was under the belief that she would jeopardize her entitlement to pension and other benefits if she asserted the parties were legally separated.” In any event, the Intervenor subsequently insisted to the Pension Benefits Administrator that she and the Applicant had been separated on the basis of the September 2000 Court Order. She has maintained that claim before the Tribunal.

48. It is not the Tribunal’s role to determine what constitutes a “decree of legal separation” under Argentine law. The Tribunal has no power to do so. The Tribunal’s role is to determine whether the Pension Benefits Administrator had a reasonable basis for its determination that there is a “decree of legal separation” for the purpose of Article 5.1(c) of the SRP. The Tribunal finds that the Administrator and PBAC reasonably concluded that the September 2000 Court Order met the requirement of “decree of legal separation” under Section 5.1(c). Moreover, before he made his determination in June 2012, the Administrator gave the Applicant an opportunity to



provide his comments. On 21 April 2012, he provided his comments but failed to present any substantive objections that could have created any reasonable doubt that the required “decree of legal separation” had been rendered. The Tribunal finds no ground on which to set aside this finding of the Pension Benefits Administrator and PBAC, and concludes that it was not unreasonable for the Administrator and PBAC to conclude that a court order that establishes the separation of a couple that has endured for more than 12 years satisfies the requirement that there be a “decree of legal separation” for the purposes of Article 5(1)(c).

*Legal obligation to pay spousal support from pension by a final order of a court*

49. In its decision of 8 June 2012 the Administrator relied on the court order of 27 December 2011 — presented in the form of a Letter Rogatory issued by the Family and Probate Court — to conclude that the Applicant was under a legal obligation to pay spousal support from his pension to the Intervenor.

50. Upon appeal by the Applicant, PBAC on 14 September 2012 upheld the Pension Benefits Administrator’s decision and concluded that the Letter Rogatory was sufficient to establish the Applicant’s legal obligation to pay spousal support. PBAC also looked into the 23 December 2011 court order by the same court and concluded that this order also independently established the Applicant’s obligation to pay spousal support. This order was reproduced in the Letter Rogatory issued four days later.

51. In sum, PBAC concluded that both the Letter Rogatory of 27 December 2011 and the court order of 23 December 2011 met the requirements of Section 5.1(c).

52. The Applicant asserts that in April 2012 he filed an appeal against the court orders of 23 and 27 December 2011. He claims that the appeal is still pending and therefore these court orders are not final.

53. The Bank acknowledges that in the past, the Pension Benefits Administrator used to read the term “final order” to mean “non-appealable.” However, since *Aleem & Aleem*, Decision No.

424 [2009], and *Mills*, Decision No. 383 [2008], the Bank has changed its policy. On 2 February 2009, the Bank adopted a new Staff Rule 3.06 (“Family Obligations - Spouse and (or) Child Support Obligations and Divorce”), which no longer requires that a judgment be non-appealable before it is considered final. This Staff Rule, which deals with spousal support payments for active staff members, has now dropped the word “final” and states as follows: “The Bank Group may honor a court order or request establishing spousal ... support.”

54. The Bank adds that this Rule “no longer requires a non-appealable (or non-contested) judgment in order to commence deduction of spousal support payments, and payments are now made until a superseding judgment dictates otherwise.” The Bank explains the rationale for this change: “One issue faced by the Bank was the very real possibility that a staff member or retiree could frustrate a support order by continually appealing it, potentially delaying payments to a separated or divorced spouse for years. Such result would be contrary to the rationale for the Bank’s policy on spousal support.” The Bank argues that nothing in the SRP prevents the Pension Benefits Administrator from interpreting the term “final Order” in line with Staff Rule 3.06. The Bank points out that in the present case orders calling for spousal support were issued in December 2011 and as of now the appeal is still pending. The Bank adds that this is precisely the kind of delay the Bank sought to prevent when it adopted Staff Rule 3.06. The Bank contends that since active staff members can no longer delay implementation of a support order by filing appeals, a retired staff member should not be permitted to do so. The Bank submits that, given the change in policy, the Pension Benefits Administrator and PBAC acted reasonably in honoring the orders, despite the Applicant’s appeal. In the Bank’s view, the orders may not have been final in the sense of being “non-appealable,” but they were final in the sense that they had been “entered into law in the applicable jurisdiction and were therefore enforceable and legally binding.”

55. The Applicant points out that Staff Rule 3.06 applies to current staff only, and not to retired staff. The Applicant adds that the term “final order” must be read in line with the plain language of Section 5.1(c). Staff Rule 3.06 clearly states that it does not apply to pension matters. The Applicant adds that if the Bank wished to amend Section 5.1(c), it could have done

so but it did not. Therefore, under Section 5.1(c), the court order is not final until the appeal process is completed.

56. The Tribunal notes that the SRP does not define the term “final order.” Nor has the Tribunal previously provided any authoritative guidance on how the term should be interpreted.

57. The Pension Administration has been tasked with the implementation of the spousal support policy as reflected in Section 5.1(c). As the agency assigned to implement the policy, the Pension Administration certainly has some discretion on how to interpret and implement the policy reflected in Section 5.1(c). As long as the interpretation and implementation are reasonable, the Tribunal will not interfere. The question is therefore whether the Pension Benefits Administrator’s new interpretation is incompatible with Section 5.1(c) or is otherwise unreasonable.

58. The Tribunal first looks to the plain and ordinary meaning of a term used in a Staff Rule or policy, in this case the SRP (*Mould*, Decision No. 210 [1999], para. 13.) The plain and ordinary meaning of “final order” is not necessarily “non-appealable” or “without appeal.” *Black’s Law Dictionary* (9<sup>th</sup> ed. 2009), for example, defines “final” in the context of a judgment or order as follows:

1. (Of a judgment at law) not requiring any further judicial action by the court that rendered judgment to determine the matter litigated; concluded.
  2. (Of an equitable decree) not requiring any further judicial action beyond supervising how the decree is carried out.
- Once an order, judgment, or decree is final, it may be appealed on the merits.

59. In some legal systems, “final appealable orders” or “final non-appealable orders” are well-established concepts. In English law, for example, in the context of enforcement of foreign judgments, finality of judgment does not mean non-appealable or without appeal. In *Cheshire, North & Fawcett: Private International Law* (Fawcett, Carruthers and North, 14<sup>th</sup> ed. 2008) at p. 538, the authors observe the following:

The requirement of finality means that the judgment must be final in the particular court in which it was pronounced. It does not mean that there must be no right of appeal. Neither the fact that the judgment may be reversed on appeal, nor even the stronger fact that an actual appeal is pending in the foreign country, is a bar to an action brought in England; though where an appeal is pending the English court has an equitable jurisdiction to stay execution, which it will generally exercise. If, however, the effect under the foreign law of a pending appeal is to stay execution of the judgment, it would seem that, in the interim, the judgment is not actionable in England.

60. The ordinary meaning or usage of the term “final” is not necessarily “non-appealable”, and it is not necessarily the case that an order becomes final only after an appeal process is completed. It is reasonable to define the term “final order” in the sense that it is final in the particular court in which it was pronounced even though the order might be the subject of appeal. This is the interpretation the Pension Benefits Administrator has adopted. After consulting its Argentine counsel, the Administrator determined that the order of 27 December 2011, in the form of a Letter Rogatory, was final in the court that issued it and entered into law in the applicable jurisdiction so as to be enforceable and legally binding. The Tribunal finds that the Pension Benefits Administrator’s interpretation comes within the range of sustainable interpretations and is reasonable and consistent with the language of Section 5.1(c) of the SRP.

61. This conclusion is reinforced by a purposive interpretation of Section 5(1)(c). The Tribunal has stated that in appropriate cases, in addition to the textual interpretation, the Tribunal may have regard to the object and purpose of the rule (*Cissé*, Decision No. 242 [2001], para. 23.) As stated before, the Tribunal observed in *Aleem & Aleem* that:

The policy rationale behind Section 5.1(c) of SRP is clearly to protect the interests and welfare of the retired staff members’ former spouses. The amendment was enacted to prevent the staff members from evading domestic court orders using the legal loopholes that existed prior to the amendment.

62. The Tribunal finds that interpreting “final order” to mean “unappealable order” could frustrate the object of Section 5.1(c) because, in some legal systems, a retiree could delay implementation of a court order by repeatedly filing appeals against it. This might delay payments to a separated or divorced spouse for years. The Bank adds that:

The Plan cannot be read in a vacuum, without regard for applicable Bank policy. Doing so would have the perverse result of affording to Bank retirees an avenue to delay their legal obligations, when the Bank has deliberately blocked such avenue for active staff. In the present case, the Orders calling for spousal support were issued in December 2011. Respondent observes that eighteen months have already passed without conclusion of Applicant's appeals. This is precisely the kind of delay the Bank sought to prevent when it adopted Staff Rule 3.06.

63. The Tribunal further notes that Section 5.1(c) specifically allows the Pension Benefits Administrator to give effect to any modifications to the payment obligation, as it provides that

The amount or part of a pension payable pursuant to such an obligation may be increased at any time by a participant or retired participant. The payment may be decreased when the obligation diminishes, and the payment shall terminate when the obligation terminates, provided, in each case, that the participant or retired participant furnishes evidence satisfactory to the Administration Committee of such diminution or termination.

Payments of spousal support will accordingly be adjusted if a spouse's obligations change due to a subsequent decision by an appeal court. This serves to balance the rights of a spouse who seeks to appeal an order against those of a spouse who seeks enforcement of an existing order.

#### *Other matters*

64. The Applicant also contends that the Intervenor's claims to the Pension Benefits Administrator is untimely under Section 10.2(f) which states that: "Any claim for benefits, payments or other rights under the Plan must first be submitted to the Benefits Administrator no later than two years after the claim arises." The Applicant argues that the Intervenor and the Bank suggest that the Intervenor's claim to his pension arose on the basis of the 2002 Agreement and therefore her time to claim the support payments from his pension started to run from 2002. He argues that the Intervenor was out of time when she approached the Administrator in 2008 to claim her benefits.

65. The Tribunal is not persuaded. It is questionable whether this provision applies in the context of a support payment to a spouse pursuant to a court order. In any event, the Tribunal

agrees with the Bank's observation that: "Intervenor arguably had a legal right, in 2002, to receive support payments directly from Mr. Lecuona. However, she had no right to receive such amount directly from the Plan until 2011, when she obtained the Orders calling for deduction of spousal support from Applicant's pension." Only the orders of December 2011 called for spousal support payments directly from the Applicant's pension. Time therefore began to run as of that date, not 2002.

#### DECISION

- (1) The decision of PBAC is affirmed.
- (2) The parties will bear their own legal costs.
- (3) All other pleas are dismissed.

/S/ Stephen M. Schwebel  
Stephen M. Schwebel  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, D.C., 3 October 2013