ADMINISTRATIVE TRIBUNAL

OF THE

INTERNATIONAL MONETARY FUND

Order No. 2023-1

August 30, 2023

Elkjaer et al. (No. 2), Applicants v. International Monetary Fund, Respondent
(Application for Interpretation of Judgment No. 2023-1)

Office of the Registrar

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(Application for Interpretation of Judgment No. 2023-1)

The Administrative Tribunal of the International Monetary Fund,

- considering that on May 15, 2023, Applicants filed an Application for Interpretation ("Application") of *Elkjaer et al. (No. 2), Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2023-1 (January 30, 2023);

- considering that on May 18, 2023, the Application was notified to Respondent, and the parties were advised that the President of the Tribunal had decided that two exchanges of written pleadings would be afforded the parties under Rule XX[1] of the Tribunal's Rules of Procedure;

- considering that on June 6, 2023, Respondent filed its Answer to the Application;

- considering that on June 16, 2023, Applicants filed a Reply to Respondent's Answer;

- considering that on June 21, 2023, Respondent waived its opportunity to file a Rejoinder and Applicants were so notified; and

- having considered the arguments of the parties,

unanimously adopts the following decision:

[1] Rule XX (Interpretation of Judgments) provides:

> 1. In accordance with Article XVII of the Statute, after a judgment has been rendered, a party may apply to the Tribunal requesting an interpretation of the operative provisions of the judgment.
>
> 2. The application shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete.
>
> 3. The Tribunal shall, after giving the other party or parties a reasonable opportunity to present its or their views on the matter, decide whether to admit the application for interpretation. If the application is admitted, the Tribunal shall issue its interpretation, which shall thereupon become part of the original judgment.

BACKGROUND

1. In *Elkjaer et al. (No. 2), Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2023-1 (January 30, 2023), para. 115, the Tribunal concluded that in recommending to the IMF Executive Board ("Board") the FY2022 staff compensation decision of May 1, 2021, Fund Management failed to comply fully with the 2019 Comprehensive Compensation and Benefits Review ("CCBR") decision because it calculated the comparatio, for purposes of applying the safeguard mechanism, using salary data that terminated before the end of the Fund's financial year (April 30). The Tribunal further recognized that the Board's lawful exercise of its discretionary authority was predicated on Management's full compliance with the CCBR rules. Accordingly, the Tribunal concluded: "Given Management's flawed implementation of those rules, the Board was not in a position to exercise properly its discretionary authority in taking the FY2022 staff compensation decision." *Id.*, para. 117. The Tribunal decided that the appropriate remedy was "to place the Board in a position to exercise properly its discretionary authority in relation to the FY2022 staff compensation decision, and for the Board to take any further steps as may, in its view, be warranted." *Id.*, para. 122.

2. The operative provisions of Judgment No. 2023-1 are set out in its Decision as follows:

> 1. Management failed to comply fully with the rules governing the safeguard mechanism, as prescribed by the 2019 CCBR decision, when it calculated the comparatio using salary data that terminated prior to the "end of the financial year."
>
> *2. To correct the effects of that decision, Management shall rerun the safeguard mechanism calculation for the FY2022 compensation decision on the basis of salary data concluding at the end of the Fund's financial year, that is, April 30, 2021.*
>
> 3. The Tribunal does not sustain Applicants' additional allegation that Management failed to comply with the safeguard mechanism rules in respect of its treatment, for purposes of calculating the comparatio, of the lower salary increase applicable to Grades B4-B5 staff members.
>
> 4. In recalculating the comparatio for the FY2022 compensation decision, Management could nonetheless consider whether to take account of the actual salary increase to Grades B4-B5 staff members of 1.8 percent.
>
> *5. If the recalculated comparatio falls below the safeguard threshold of 98 percent, then the Board shall consider whether any adjustment to staff salaries, retroactive to FY2022, is warranted, following an analysis of the four factors set out in paragraph 21 of the 2019 CCBR decision.*
>
> *6. The Fund shall take all measures necessary to implement any such adjustment to staff salaries.*

7. *The Fund shall notify all staff members that it has taken the above steps and the results thereof, along with the essential elements of the underlying analysis, in accordance with its commitment to transparency in the compensation review process.*

8. The Fund shall pay Applicants $28,987.50, which is the total amount of legal fees and costs they have incurred in the case.

(Emphasis added.)

3. Following the issuance of Judgment No. 2023-1, Respondent took steps to implement its operative provisions. Specifically, Fund Management "rer[a]n the safeguard mechanism calculation for the FY2022 compensation decision on the basis of salary data concluding at the end of the Fund's financial year, that is, April 30, 2021" (*Id.*, Decision, Clause 2), and, because the recalculated comparatio fell below the safeguard threshold of 98 percent, Management proposed, and the Board "consider[ed] whether any adjustment to staff salaries, retroactive to FY2022, is warranted, following an analysis of the four factors set out in paragraph 21 of the 2019 CCBR decision" (*Id.*, Decision, Clause 5). Management's proposal was communicated to the Board in "FY2022 Review of Staff Compensation—IMF Administrative Tribunal Judgement No. 2023-1," EBAP/23/16 (March 16, 2023).

4. With regard to the four-factor analysis, EBAP/23/16, pp. 9-10, stated: "Note that these factors relate to the data and information that would have been used at the time the FY2022 compensation decision was taken (i.e., before April 2021), and not to the challenging high inflation and labor market conditions that emerged subsequently . . . ." *See also Id.*, note 13 ("Although U.S. inflation and unemployment were 4.2 percent and 6.1 percent, respectively, through April 2021, that data could not have been used by the Board at the time of its decision in April 2021 because it was not published by the U.S. government until May 2021."). It was on this basis that Management conducted its review of the four factors, which comprise: general salary trends; U.S. tax policy; euro- or yen dollar exchange rate developments; and recruitment and retention experience. (*Id.*, pp. 10-11.) Management's four-factor analysis yielded a proposal that no retroactive salary increase would be warranted. (*Id.*, p. 13.)

5. On April 20, 2023, the Board adopted Management's proposal. On the same day, the Human Resources Director advised the staff of the Fund by FUNDALL announcement: "In accordance with the judgment [Judgment No. 2023-1], the Board reconsidered the FY2022 compensation decision, and agreed with Management on the basis of the rules and the circumstances in 2021, that a retroactive adjustment to the FY2022 salary increase was not warranted."

PARTIES' CONTENTIONS ON THE APPLICATION FOR INTERPRETATION

6. The controversy giving rise to the Application for Interpretation of Judgment No. 2023-1 concerns the implementation of Decision, Clause 5, which states: "If the recalculated comparatio falls below the safeguard threshold of 98 percent, then the Board shall consider whether any adjustment to staff salaries, retroactive to FY2022, is warranted, following an analysis of the four factors set out in paragraph 21 of the 2019 CCBR decision."

7. Applicants take issue with the manner in which Management conducted the four-factor analysis, disputing the timeframe for the data utilized. Applicants state that what they seek by their Application for Interpretation is for the Tribunal "to clarify that Clause 5 of the Decision

in Judgment 2023-1 does not permit management or the Board to disregard U.S. inflation data from April 2021 or other relevant, contemporaneous data in conducting the four-factor analysis required under paragraph 21 of the 2019 CCBR decision" and "to clarify that Clause 5 . . . requires consideration of the four-factor analysis based on all pertinent information that would have been available to the Fund in May 2021." Applicants submit that the remedial actions directed by the Tribunal are sequential and because the calculation of the comparatio is to be "based on the relevant data as it exists on April 30, it makes no sense to rely on an earlier time capsule of the data relevant to the step that follows."

8. Respondent, in its Answer, contends that the Application for Interpretation seeks to "amend rather than interpret Clause 5 of the Decision, because it addresses a matter that was not contested in the underlying litigation." Respondent asserts: "Inflation data and other information of potential interest to the Board when conducting the four-factor analysis were not assessed by the Tribunal anywhere in the Judgment," and "[o]nly by a very substantial *amendment* to Clause 5 could the Tribunal do what Applicants ask." (Emphasis in original.) Respondent requests that the Tribunal dismiss the Application for Interpretation on the grounds that the Judgment is not obscure or incomplete, the Application for Interpretation challenges acts arising subsequent to the Judgment, and that it seeks an advisory opinion.

9. In their Reply, Applicants respond that they present a "paradigmatic interpretative question regarding the Tribunal's intent with respect to the four-factor analysis required under Clause 5." They assert that they are "not asking the Tribunal to address a new issue or to add an additional remedial provision [but] merely asking the Tribunal to resolve the parties' conflicting interpretations as to what Clause 5 required the Fund to do."

TRIBUNAL'S ANALYSIS

10. Article XVII of the Tribunal's Statute provides: "The Tribunal may interpret or correct any judgment whose terms appear obscure or incomplete, or which contains a typographical or arithmetical error." The authority granted to the Tribunal by that statutory provision is an important one: "The ability of the tribunal to interpret its own judgments where the parties are unable to discern the intended meaning would help to ensure that judgments are given effect in accordance with the tribunal's findings and conclusions." Commentary on the Statute,[2] p. 42.

11. At the same time, the Tribunal observes that the authority to render an interpretation of judgment is one of two narrowly drawn exceptions[3] to Article XIII(2) of the Tribunal's Statute, which provides: "Judgments shall be final, subject to Article XVI and Article XVII, and without appeal." That provision "'codifies and applies to the Judgments of the Administrative Tribunal the universally recognized principle of *res judicata*, which prevents the relitigation of claims already adjudicated, promoting judicial economy and certainty among the parties."' *Mr. "LL", Applicant v. International Monetary Fund, Respondent (Request for Interpretation of Judgment No. 2019-1)*, IMFAT Order No. 2022-1 (April 28, 2022), para. 6, quoting *Ms. "NN",*

[2] The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Reports of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009 and 2020).

[3] The other exception is revision of judgment, as provided by Article XVI of the Tribunal's Statute.

Applicant v. International Monetary Fund, Respondent (Request for Revision of Judgment No. 2017-2), IMFAT Order No. 2018-1 (May 1, 2018), para. 1.

12. Accordingly, in deciding whether it may exercise the authority to interpret its judgments, the Tribunal must not derogate from the "cardinal principle" of *res judicata*. *Mr. "F", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 2005-1)*, IMFAT Order No. 2005-2 (December 6, 2005), para. 6. *See Ms. "Y", Applicant v. International Monetary Fund, Respondent (Interpretation of Judgment No. 1998-1)*, IMFAT Order No. 1999-1 (February 26, 1999), para. 3 ("The adoption of the requested interpretation would constitute an amendment of the Judgment, which is not a matter in respect of which the applicable provisions of the Statute and the Rules of Procedure enable the Tribunal to decide by way of an interpretation, because the Judgment is final and without appeal.").

13. Consistent with the text of Article XVII of the Tribunal's Statute, Rule XX(2) of the Tribunal's Rules of Procedure provides that an application for interpretation of judgment ". . . shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete." When the moving party does not meet that requirement, the request for interpretation of judgment will fail. *See, e.g., Mr. "LL"*, IMFAT Order No. 2022-1, paras. 10-11 (denying applicant's request); *Mr. "F"*, IMFAT Order No. 2005-2, paras. 14 and 18 (denying Fund's request).

14. The purport of Article XVII of the Statute is that the Tribunal may interpret a judgment only if it is persuaded that the judgment's operative provisions are "obscure or incomplete." This provision of the Statute is important because it allows the Tribunal to give effect to the intended meaning of its judgments where their operative provisions are not clear. At the same time, the authority of the Tribunal to interpret its judgments is necessarily a narrow one, given the importance of the finality of judgments.

15. Having reviewed the text of *Elkjaer et al. (No. 2)*, Decision, Clause 5, and the arguments of the parties, the Tribunal concludes that Clause 5 of the operative provisions of Judgment No. 2023-1 is not "obscure" because the Tribunal did not address the details of how Fund Management and the Board may conduct the four-factor analysis prescribed in paragraph 21 of the 2019 CCBR decision. Likewise, Clause 5 is not "incomplete" because the Tribunal did not intend to address the details of the implementation of the four-factor analysis. That is a matter for Fund Management and the Board to undertake, subject to the usual constraints on the lawful exercise of discretionary authority.

16. In this case, Applicants have not demonstrated that the operative provisions of Judgment No. 2023-1 are either "obscure" or "incomplete." (Rule XX(2).) Accordingly, the Application for Interpretation of Judgment does not fall within the narrow exception to the finality of the Tribunal's judgments and must be denied.

ORDER

For the reasons set out above, Applicants' Application for Interpretation of Judgment No. 2023-1 is denied.

Nassib G. Ziadé, President

Edith Brown Weiss, Judge

Andrew K.C. Nyirenda, Judge

/s/
Nassib G. Ziadé, President

/s/
Celia Goldman, Registrar

Washington, D.C.
August 30, 2023