

G.-B. (No. 3)

v.

UNWTO

(Application for interpretation filed by UNWTO)

138th Session

Judgment No. 4874

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 4453 filed by the World Tourism Organization (UNWTO) on 2 August 2023, Mr J. G.-B.'s reply of 16 January 2024, UNWTO's rejoinder of 15 February 2024 and the complainant's surrejoinder of 18 March 2024;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal, and Article 6, paragraph 5, of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. UNWTO has applied for the interpretation of Judgment 4453, delivered in public on 27 January 2022. This judgment concerns that application. However, the introductory observations in considerations 1 to 4 of Judgment 4873 are apt to apply in this matter as well.

2. The orders made in Judgment 4453 were:

"1. The decision of 1 August 2018 to summarily dismiss the complainant and the decision of 1 July 2019 to dismiss his appeal are set aside.

2. In furtherance of what is said in consideration 18 above, the complainant shall deliver to UNWTO his claim for material damages, UNWTO shall reply within 60 days and within that period UNWTO shall pay to the complainant such sums, if any, it admits to be due. In the event that the complainant's claim for material damages is not satisfied by this process, the parties are to forward to the Tribunal their respective documents to enable the Tribunal to finally determine and assess such material damages as may be payable.
3. UNWTO shall pay the complainant 40,000 euros moral damages.
4. UNWTO shall pay the complainant 8,000 euros costs."

Consideration 18, referred to in the second order, said:

"In its reply, UNWTO does not come to grips with these claims other than to say, as a generalisation, they are not substantiated and that all the amounts claimed are, in aggregate, 1,632,434 euros which represent over 10 per cent of UNWTO's 2020 budget. Plainly the amounts are potentially significant. It is desirable the Tribunal has the benefit of as full an account from the complainant as possible of the amounts claimed, taking into account his employment with the Spanish Civil Service, and their justification and submissions from the Organization responding, in detail, to each element of the claim for material damages and the quantification of the amount claimed. An order will be made to facilitate this process. However, the Tribunal should observe that the complainant may well have been found guilty of the misconduct alleged, even taking into account, in a fair and balance way, the evidence of the former Secretary-General. That may have led to a sanction that had financial consequences for the complainant. It would be appropriate at the end of the day to discount material damages to which the complainant might be entitled for this possibility."

3. The principles governing an application for interpretation have recently been set out in Judgment 4732, consideration 3 (see also Article 6 of the Tribunal's Rules):

"According to the Tribunal's case law, and as recalled in Judgment 4567, consideration 3, an application for interpretation is receivable only if the meaning of the judgment concerned is uncertain or ambiguous to such an extent that the judgment cannot be executed (see, for example, Judgments 4409, consideration 6, 3984, consideration 10, 3822, consideration 5, and 3014, consideration 3). Moreover, ordinarily such an application can concern only the decision in a judgment, and not the grounds thereof. It is, however, accepted that it may additionally concern the grounds if the decision refers to them explicitly so that they are indirectly incorporated in the decision (see aforementioned Judgments 4409,

consideration 6, 3984, consideration 10, and 3822, consideration 5, and also Judgments 3564, consideration 1, 3271, consideration 4, and 2483, consideration 3). The Tribunal notes that these requirements are actually set out at the beginning of the form used to file an application for interpretation.”

4. In its pleas, the Organization develops a number of arguments challenging the reasoning of the Tribunal leading to the orders made in this matter as set out above. They are substantially repetitive of the arguments advanced in the application for review of Judgment 4453. It endeavours to link the orders actually made with the reasons in their entirety by saying:

“In keeping with the above [the preceding critical analysis of the reasons], it is submitted that the meaning of the Decision in Judgment 4453, which refers explicitly to the grounds of the judgment, and are therefore indirectly incorporated in the Decision, is uncertain and ambiguous to such an extent that the judgment should not have been executed.”

5. This led to a concluding plea that:

“The Tribunal is therefore asked to interpret its Judgment 4453 with a view to confirming that it is uncertain and ambiguous and that the damages and legal costs paid to the Complainant in execution of this Judgment should be reimbursed to the Organisation.”

6. These pleas entail an impermissible extension of the principles which apply to an application for interpretation. Ordinarily it is the words, and only the words, of the orders in the decision that are the subject of interpretation if they are uncertain or ambiguous. However, in circumstances where the orders themselves refer to and thereby incorporate statements made in the reasons (typically by reference to a specified consideration or considerations) then the relevant parts of the reasons are treated as incorporated, by reference, into the orders.

7. In the present case, the only consideration incorporated by reference, is consideration 18. No argument is advanced in the pleas of the Organization that the orders in the decision are ambiguous or uncertain or that, additionally, consideration 18 as incorporated, renders the orders ambiguous or uncertain. Indeed, they are clear and certain. No occasion arises for the interpretation of Judgment 4453 and

the application for interpretation should be dismissed. That being so, it is unnecessary to deal with the pleas of the complainant that the application is moot and time-barred and that, additionally, the principles of waiver and estoppel operate to preclude the making of the application.

8. The complainant seeks an order for costs in the sum of 1,500 euros to which he is entitled in the circumstances of this case given that he has been put to the trouble and expense of, legitimately, answering the Organization's pleas in this application to protect his interests.

DECISION

For the above reasons,

1. The application for interpretation is dismissed.
2. UNWTO shall pay the complainant costs in the sum of 1,500 euros.

In witness of this judgment, adopted on 7 May 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER