

G.-B. (No. 3)

v.

UNWTO

(Application for interpretation filed by UNWTO)

138th Session

Judgment No. 4876

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 4576 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 4576, delivered in public on 28 November 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 4576 were:

- “1. UNWTO shall pay the complainant 200,000 euros material damages within 30 days from the public delivery of this judgment.
2. All other claims are dismissed.”

3. Some context should be provided for Judgment 4576. In at least some domestic legal systems the trial of a civil claim can, in appropriate cases, be conducted in two separate phases. The first phase involves a determination by the court of whether the defendant is legally liable. This might, for example, involve a determination of whether the defendant is legally liable for a breach of contract or whether the defendant is liable to pay the plaintiff damages for her or his negligence. If the outcome of this first phase is that the defendant is legally liable, then the second phase is undertaken and involves the determination, by way of quantification, of the damages payable to the plaintiff. On occasions, this second phase will require detailed evidence and analysis.

4. It is entirely unusual for the Tribunal to determine a complaint in phases analogous to the phases just discussed. However, the Tribunal decided to do in this matter as explained in Judgment 4453, at least in relation to material damages. This procedure was adopted for the benefit of the Organization, again as explained in Judgment 4453. But what is important, is that the legal liability of UNWTO was determined in that judgment, in the sense that the Tribunal determined that the complainant, Mr G.-B., had been unlawfully dismissed. What remained was only the determination, by way of quantification, of the material damages payable to Mr G.-B.

5. 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.”

6. 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 4576. It endeavours to link the orders actually made with the reasons of both judgments (4453 and 4576) in their entirety by saying:

“In keeping with the above [the preceding critical analysis of the reasons in Judgment 4453], 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, and that Judgment 4576, which confirmed Judgment 4453 is also necessarily uncertain and ambiguous hence.”

7. This led to a concluding plea that:

“The Tribunal is [...] asked to interpret its Judgment 4576 with a view to confirming that it is uncertain and ambiguous and that the damages paid to the Complainant in execution of this Judgment should be reimbursed to the Organisation.”

8. 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.

9. In the present case, no consideration was incorporated by reference. No argument is advanced in the pleas of the Organization that the orders in the decision are ambiguous or uncertain. No occasion

arises for the interpretation of Judgment 4576 and the application for interpretation should be dismissed.

10. 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