

ADMINISTRATIVE TRIBUNAL

ORDER 2/2024

of 19 August 2024

Application for Interpretation of Judgments in Cases ESMAT 2/2022 and ESMAT 1/2023

Concerning the submissions filed by the Appellant AC on 20 May 2024 and the Reply filed by ESM on 7 June 2024

The Administrative Tribunal of the European Stability Mechanism

Composed, in accordance with Article 8(1) of the Statute, of Virginia MELGAR, President of the Tribunal and members Celia GOLDMAN and Gerhard ULLRICH,

Adopts the present **ORDER**

I. FACTS AND PROCEDURE

1. On 30 November 2023, the Tribunal rendered Judgments in Case ESMAT 2/2022 (*AC, Appellant v. European Stability Mechanism*) and Case ESMAT 1/2023 (*AC (No. 2), Appellant v. European Stability Mechanism*).
2. In Case ESMAT 2/2022, the Tribunal considered the Appellant's challenge to the 2021 performance appraisal rating. The Judgment ordered that the impugned decision be set aside, and that the ESM bear the reasonable costs incurred by the Appellant in the proceedings.
3. In Case ESMAT 1/2023, the Tribunal considered the Appellant's challenge to the decision that the fixed-term contract would be allowed to expire. The Judgment ordered:

“1. The impugned decision of 30 January 2023 is set aside.

2. The ESM shall pay the Appellant material damages in the amount of one year's salary and allowances.

3. The ESM shall pay the Appellant moral damages in the amount of 50.000 Euros.

4. In accordance with Article 14(3) of the Tribunal's Statute, the ESM must bear the reasonable costs incurred by the Appellant in the proceedings."

4. On 21 February 2024, following post-Judgment exchanges between the parties in which the Tribunal was not involved, concerning the implementation of the Judgment in Case ESMAT 1/2023, the Appellant filed with the Tribunal a "request for clarification", dated 20 January 2024, of the Judgments in both cases.
5. The request of the Appellant of 20 January 2024 for clarification of Judgment 1/2023 was rejected in part as unfounded and in part as inadmissible by Order 1/2024 on 2 April 2024.

II. APPLICABLE LAW

6. Article 10(1) Statute, provides:

"If the Tribunal finds that the decision by the Managing Director, as referred to in Article 2(2) of this Statute, is illegal, wholly or in part, the ESM shall be required to take the necessary measures to comply with the judgment of the Tribunal. If agreed between the Appellant and the ESM, the Tribunal shall indicate these measures."

7. Article 11(2) Statute, provides:

"Judgments of the Tribunal shall be final and without further appeal."

8. Article 12(2) Statute, provides:

"The Tribunal may interpret or rectify any judgment whose terms appear obscure or incomplete or which contains a typographical, clerical or arithmetical error."

9. Article 23 Rules of Procedure, provides:

"1. In accordance with Article 12(2) of the Statute, in the event of a dispute as to the meaning of a judgment whose terms appear obscure or incomplete, any party to the judgment may at any time make a reasoned request for an interpretation by the Tribunal.

2. In accordance with Article 10(1) of the Statute, in the event of a dispute as to the measures necessary to implement a judgment, both parties may agree to submit a reasoned request in that respect to the Tribunal.

3. Any such interpretation or guidance for its implementation shall be given by reasoned order of the Tribunal."

III. CONSIDERATIONS

10. The judgments of the Tribunal are final and without further appeal (Art. 11 (2), Statute of the Tribunal). They carry the authority of *res judicata*. An application for rectification, for interpretation, implementation or revision is permissible only on very restricted grounds (Art. 22, 23 and 24, Rules of Procedure of the Tribunal). It is widely recognized that the authority granted a tribunal to render an interpretation of judgment is a narrowly drawn exception to the finality of judgments. See *Elkjaer et al. (No. 2), Applicants v. International Monetary Fund, Respondent (Application for Interpretation of Judgment No. 2023-1)*, IMFAT Order No. 2023-1 (August 30, 2023), para. 11.
11. There are two requirements for an admissible request for interpretation of a judgment. First, its terms must “appear obscure or incomplete,” and, second, there must be a “dispute as to the meaning” of the judgment.
12. Article 23(2) of the Rules of Procedure addresses the circumstance of a “dispute as to the measures necessary to implement a judgment” and envisages that in the event of such dispute “both parties may agree to submit a reasoned request” to the Tribunal.
13. In the Request for Interpretation and Resolution of Dispute Regarding Implementation (“Request”) of 20 May 2024, the Appellant sought interpretation and resolution of disputes regarding Judgment 1/2023 and Order 1/2024 concerning the payment of material damages in the amount of one year salary and the payment of moral damages, in particular, the “tax treatment applied by ESM to the payments made to [the Appellant] in execution of the Judgement.”
14. The terms of Judgment 1/2023 and Order 1/2024 are neither obscure nor incomplete in the meaning of Art.12.2 of the Statute and Art.23.1 of the Rules of Procedure of the Tribunal.
15. The quantum of moral damages granted cannot be ascertained by using mathematical methods. The amount is based on all aspects peculiar to a case, such as the type of injury, the seriousness of injury, the professional status or the official responsible for the injury. Finally, the amount of moral damages is based on the discretion of the Tribunal. Moral damages are not subject to internal taxation by the ESM.
16. As far as the material damages are concerned, the Appellant ‘s arguments are based on an incomplete reading of Judgment 1/2023 and of Order 1/2024. In paragraph 49 of Judgment 1/2023 and in paragraph 19 of Order 1/2024, it is clearly stipulated that the ESM had to pay a salary “which the Appellant would have received by granting sufficient time to improve performance”. This wording implies a hypothetical determination of the salary basis for the

calculation of the material damages. This includes a deduction of taxes at the source from the gross salary and excludes the contributions to the sickness insurance and the pension plan which were not due in this case.

17. The Appellant's latest submission is clearly an attempt to relitigate a question that was dealt with in Judgment 1/2023 and corroborated in Order 1/2024, which is not permissible because the Tribunal's Judgments and Orders have the authority of *res judicata* (Article 11(2), Statute).

Decision

For these reasons:

The Appellant's Request of 20 May 2024 is inadmissible and is hereby dismissed.

Virginia MELGAR (President)

(signed)

Celia GOLDMAN

(signed)

Gerhard ULLRICH

(signed)