

REGISTRY'S SUMMARY¹: *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)

DENIAL OF APPLICATION FOR INTERPRETATION OF JUDGMENT – OPERATIVE TERMS NOT “OBSCURE” OR
“INCOMPLETE” (STATUTE, ARTICLE XVII) – FINALITY OF JUDGMENTS (STATUTE, ARTICLE XIII(2))

Pursuant to Article XVII of the Tribunal’s Statute and Rule XX of its Rules of Procedure, Applicants filed an Application for Interpretation of *Elkjaer et al. (No. 2), Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2023-1 (January 30, 2023). In that Judgment, the Tribunal decided that Fund Management—in recommending to the Executive Board (“Board”) the FY2022 staff compensation decision—failed to comply fully with the 2019 Comprehensive Compensation and Benefits Review (“CCBR”) decision when 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. Recognizing that the Board’s lawful exercise of its discretionary authority was predicated on Management’s full compliance with the CCBR rules, the Tribunal concluded that “[g]iven 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 accordingly 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.

Following the issuance of Judgment No. 2023-1, the Fund took steps to implement its operative provisions including, first, to 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. Second, 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 analysis of the four factors yielded a proposal that no retroactive salary increase would be warranted. On April 20, 2023, the Board adopted Management’s proposal and the staff was so advised.

In their Application for Interpretation of Judgment, Applicants disputed the manner in which Management conducted the four-factor analysis and asked the Tribunal “to clarify that Clause 5 [of the Decision in Judgment No. 2023-1] requires consideration of the four-factor analysis based on all pertinent information that would have been available to the Fund in May

¹ This summary is provided by the Registry to assist in understanding the Tribunal’s Order. It does not form part of the Order. The full Order of the Tribunal is the only authoritative text. The Tribunal’s Orders are available at: www.imf.org/tribunal.

2021.” The Fund, for its part, contended that the Application for Interpretation sought to “amend rather than interpret Clause 5 of the Decision, because it addresses a matter that was not contested in the underlying litigation.” (Quoted at Order, Paras. 7-8.)

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 Tribunal observed that the purport of Article XVII 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.” (Order, Para. 14.) At the same time, the Tribunal’s authority to interpret its judgments is necessarily a narrow one, given the importance of the finality of judgments, as codified by Article XIII(2) of the Tribunal’s Statute, which provides: “Judgments shall be final . . . and without appeal.”

Having reviewed the text of *Elkjaer et al. (No. 2)* and the arguments of the parties, the Tribunal concluded that Clause 5 of the operative provisions of the Judgment was 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 was not “incomplete” because the Tribunal “did not intend to address the details of the implementation of the four-factor analysis.” The Tribunal noted that the latter was a matter for Fund Management and the Board to undertake, subject to the usual constraints on the lawful exercise of discretionary authority. (Order, Para. 15.)

The Tribunal accordingly concluded that Applicants had not demonstrated that the operative provisions of Judgment No. 2023-1 were either “obscure” or “incomplete.” The Application for Interpretation of Judgment did not fall within the narrow exception to the finality of the Tribunal’s judgments and, accordingly, it was denied.