2020, Volume 10, International Conference Globalization, Innovation and Development. Trends and Prospects (G.I.D.T.P.), pages: 269-275 |
<https://doi.org/10.18662/lumproc/gidtp2018/30>

The Appeal in Interpretation in the International Jurisdictional Practice

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Abstract: Apart from other remedies - reviewing or appealing, jurisdictional practice also knows the recourse in interpreting and rectifying errors. Thus, when the IJC had the power to pronounce a decision, it also has the competence to interpret it, as in art. 98 of the ICJ Regulation. The Court may, at the request of either party, interpret one of its judgments if there is a disagreement between the views of the parties as to the meaning of the Court's judgments. In practice, few interpretations requests are known to the Court. The Permanent Court of International Justice was seized twice with such requests, in 1925, for the interpretation of the judgment of 12 September 1924 in the Neuilly Treaty of Peace, the examination of which was refused because it exceeded the provisions of that judgment and in 1926, concerning the interpretation of the judgment of 25 May 1925 pronounced in the Case of German Interests in Upper Silesia, which was admitted by the Court for consideration.

As regards the rectification of errors, this appeal is recognized, unlike the ICJ, only by the ECHR practice, and is governed by the Court's Rules of Art. 81, according to which the errors of writing or computing and the obvious inaccuracies can be rectified by any jurisdictional body of the ECHR, either ex officio, or at the request of a party. Also, the UN Convention on the Law of the Sea in Annex VII art. 12 provides for the option to lodge an appeal for interpretation on the arbitral award issued. Thus, in the event of differences between the parties regarding the interpretation or the method of interpreting the judgment, the interested party has the right to refer the arbitral tribunal of the decision to a request for interpretation.

Keywords: *jurisdictional practice; the interpretation; the method; decision; the competence.*

How to cite: Barbu, D. (2020). The Appeal in Interpretation in the International Jurisdictional Practice. In I. Panagoreț & G. Gorghiu (vol. ed.), *Lumen Proceedings: Vol. 10. International Conference Globalization, Innovation and Development. Trends and Prospects (G.I.D.T.P.)* (pp. 269-275). Iasi, Romania: LUMEN Publishing House.

<https://doi.org/10.18662/lumproc/gidtp2018/30>

1. Introduction

When the IJC had the power to deliver a judgment, it also has jurisdiction over its interpretation.

The Court may, at the request of either party, interpret one of its judgments if there is a discrepancy between the views of the parties as to the meaning of the Court's judgments.

2. Cases known in practice

There are few requests for interpretation in the Court's practice. The Permanent Court of International Justice was twice apprised of such requests in 1925, in connection with the interpretation of the judgment of 12 September 1924 in the *Peace Treaty of Neuilly* [1], the examination of which was refused because it exceeded the provisions of the judgment in question; and in 1926, concerning the interpretation of the judgment of 25 May 1925 in the case of *German Interests in Upper Silesia* [2], which was accepted by the Court for consideration.

The International Court of Justice was also heard in two cases for the interpretation of its judgment of 20 November 1950 in the *Asylum Case* (Colombia v. Peru) [3] and of the judgment of 11 June 1998 in the *Land and Maritime Border between Cameroon and Nigeria* (Cameroon v. Nigeria) [4].

Regarding the first application [5], the Court stated that this was inadmissible, citing several arguments in that regard. First, the issues submitted for interpretation contain new elements which were not mentioned by the parties in the proceedings before the Court and go beyond the content of the judgment, the actual purpose of the application being to interpret the judgment. Secondly, the Court noted that one of the conditions laid down in Art. 60 of the Statute, which states that there must be „a misunderstanding between the parties” on the meaning and purpose of the judgment [5: 11].

Concerning the interpretation of the judgment of 11 June 1998 [6], the Court also held the inadmissibility of the application because, in its application, Nigeria requested the examination and interpretation of issues which were rejected by the Court in the previous judgment, and certain legal and factual matters which, by the judgment of the Court of 11 June 1998, have acquired the force of *res judicata*. Moreover, the Court emphasized that the admissibility of requests for interpretation of its judgments requires increased attention, given the tendency to avoid as far as possible the

diminution of the definitive nature and the immediate execution of the judgment.

Also, according to art. 79 par (1) of the Regulation of the European Court of Human Rights, any party to the proceedings brought by the Court „may request the interpretation of the judgment within a period of one year from the date of the judgment”. In reality, the interpretation to which the text relates concerns the operative part of the judgment of a Chamber or the Grand Chamber of the Court.

Article 79 of the Regulation states that the request for interpretation shall be submitted to the Registry. It must indicate precisely the point (s) of the judgment whose interpretation is required. As mentioned *above*, the handling of the request for interpretation respects the same procedure as the examination of the review request, and the examination of the application is finalized by a judgment.

However, the European Court of Justice has held that a request for interpretation of a judgment is in no way an appeal, since it is addressed to the Court itself. By examining that request, the Court has the power to impute it: it is simply called upon to clarify the meaning and scope which it has agreed to attribute to an earlier judgment resulting from its own deliberations, stating, where appropriate, what he has legally imposed.

Thus, in the case of *Allenet de Ribemont v. France* [7], after examining the merits, the European Court concluded that the French authorities had violated several of the applicant's rights guaranteed by Art. 6 of the Convention and, in terms of fairness, obliged the French State to pay him an important sum of money „for damages”. The former Commission has referred the Court for a preliminary ruling on a threefold application: (a) whether the amount awarded to the applicant must be paid in a non-self-made manner; (b) whether a distinction is made between the amount awarded in respect of pecuniary damage and that awarded for pecuniary damage; (c) if the answer to the second question is in the affirmative, what amount has the Court understood to grant the applicant compensation for material and non-material damage suffered by him.

As regards the first aspect, the European Court of Justice stated that Article 50 (now Article 41) does not confer on it the power to invite the State concerned to ensure the non-seizure of the amount it has granted to the applicant as compensation, „this issue is left to the discretion of the national courts, which will apply internal rules in the matter”. As regards the other two issues, the Court held that, in the reasoning developed in application of the provisions of the Convention on Equal Satisfaction, it considered „part of the applicant's claim for reparation of material damage”; and found that he „suffered irrefutable moral damage”; by reference to the

„various relevant elements” of the case, and, in so doing, by the same judgment the European Court decided to grant a certain amount of money to the applicant. In so doing, „it did not consider it necessary to distinguish between the amount awarded in respect of pecuniary damage and the amount of the damage suffered as a result of non-pecuniary damage”, and did not have such an obligation; the Court has decided to grant an overall amount of „fair satisfaction”, taking into account that in practice it is often difficult, if not impossible, to make such a distinction. As such, the European Court held that the operative part of the judgment whose interpretation was sought was clear, thus rejecting the request for interpretation made by the former Commission.

Although international arbitration does not recognize the appeal or cassation institution, the appeal to the interpretation of the arbitration award is admissible if there has been a disagreement between the parties to the dispute about its meaning. This appeal is made before the court that adopted the sentence. Example: *The Great Britain-France Channel* (Great Britain and France) (1977), when I sentence was issued by the same tribunal in 1978 [8: 39].

Recognition in the practice of international tribunals of such an appeal raises the question as to whether the authority of the trial is prejudiced by a request for interpretation by a party or both parties of a judicial decision made in the event of a difficulty in applying it. This leads to the emergence of the difficulties that have been called: the court being closed by the judgment, an interpretative decision involves the establishment of a new court; since it is desirable that the request be lodged with the same court, which alone can give an authentic interpretation of the court judgment that is involved; (CU Statute, Article 60; 1970 Hague Convention, Article 82), even in the case of an ad hoc tribunal (the French-British compromise in 10 July 1975 in the case of the *Delimitation of the Continental Plate*, Article 10, paragraph 2, which allowed the same court to make a judgment on 14 March 1978 interpreting its sentence of 30 June 1977).

The request for interpretation is therefore, to some extent, an accessory to the initial application, which confirms the possibility for the IJC to admit it through the application. But beyond these facilities, the request for interpretation should not be distorted, and the courts are strictly vigilant not to accept under this mask an appeal against the decisions they have taken previously or a request to regulate the new issues.

As regards the rectification of errors, this appeal is recognized, unlike the ICJ, only in the ECHR practice and is governed by the Court’s Rules of Article 81, that written or computational errors and obvious inaccuracies can be rectified by any ECHR jurisdiction, either ex officio or at the request of a

party. The time limit for submitting the request for rectification of errors is one month from the date of delivery of the decision or judgment. However, the Court is not bound by that term, and it may at any time have it remedied such an error.

For example, in *Curuțiu v. Romania* [9], in a letter addressed to the parties on 27 May 2003, the Court informed them that it found a contradiction between the terms of paragraph 57 of the judgment, in which it refers to the restitution of the litigant „within six months from the date of judgment delivery”, and those in the instrument referring to „a period of three months from the date on which the judgment becomes final”. Therefore, considering that there is a clear error that does not prejudice the merits of the case, in Article 81 of the Regulation, the Court ordered the rectification of this error, and the order of the judgment with the content of paragraph 57 should be reconciled.

The Regulation (Rules of Procedure) [10] of the successor UNTSD-United Nations Tribunal for the Settlement of Disputes in Article 30 and the Statute of the Tribunal [11] in Article 12 par 3 rule on the appeal procedure for interpretation, each party to the dispute having the right to refer the case to the Court of First Instance for the interpretation of the judgment given if it is not the subject of the appeal. The application submitted will be sent to the other party, who will comment on it within 30 days. The Dispute Settlement Tribunal will decide on the admissibility of the appeal for interpretation and will subsequently rule directly on the interpretation.

The arbitration procedure also provides for the possibility of recourse to interpretation [12, art. 35] [13, art. 35] [14, art.35] and recourse to the rectification of the arbitral sentence [12, art.36] [13 art. 36] [14, art. 36]. The three acts (Optional Rules of the Permanent Court of Arbitration on arbitration of disputes between two States, arbitration of disputes between two parties, of which only one is state, for international organizations and states) to the same article (35) provide that within 60 days after receiving the arbitration award, a party may, by notifying the other party, ask the arbitration tribunal for an interpretation. The interpretation must be made in writing within 45 days of receipt of the request, being an integral part of the arbitral sentence. According to article 36, similar to the three preacred acts, the correction of an error in the arbitral sentence is possible at the request of a party, also within 60 days from the receipt of the arbitral sentence. By doing so, it is possible to correct any calculation error, material, typography or any such error. Additionally, the arbitral tribunal may, of its own motion, correct the arbitral sentence within 30 days of the date of communication to the parties.

Also, the UN Convention on the Law of the Sea in Annex VII article 12 provides for the option to lodge an appeal for interpretation on the arbitration judgment issued. Thus, in the event of divergences between the parties as to the interpretation or method of interpretation of the judgment, the party concerned is entitled to bring an action before the tribunal of the arbitrator issuing the judgment with a request for interpretation. In case of divergences regarding the receiving court of the appeal for interpretation, it may be submitted to other courts, such as TIM, CIJ, etc., on the basis of the consensual agreement of the parties to the dispute.

3. Conclusions

So, as a fundamental guarantee of the quality of the act of justice, the legal means of opposing are genuine legal instruments through which it may be required to verify the lawfulness and validity of the judgment given by an international tribunal and, finally, to remedy the errors committed.

However, it should not be forgotten that their exercise is minimized, and their character remains singular, limited and exceptional.

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