

## **EIGHTY-SECOND SESSION**

### ***In re Souilah***

#### **Judgment 1584**

The Administrative Tribunal,

Considering the complaint filed by Mr. El Hadi Souilah against the World Meteorological Organization (WMO) on 17 May 1996, the WMO's reply of 14 August, the complainant's rejoinder of 16 September and the Organization's surrejoinder of 17 October 1996;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case and the allegations may be summed up as follows:

A. The complainant is an Algerian who was born in 1945. The WMO, whose headquarters are in Geneva, used to employ him at grade G.4.

On 1 March 1975 he got married in Geneva. Two children were born of the marriage. By a judgment of 9 March 1989 the court of first instance of the Republic and Canton of Geneva dissolved the marriage, gave the mother custody of the children and ordered the complainant to pay alimony for her and her children.

By a letter of 5 December 1990 the Permanent Mission of Switzerland to the International Organizations at Geneva informed the WMO of reports from the Cantonal Service for Advances and Recovery of Alimony (SCARPA) that the complainant was in default: he was 63,647 Swiss francs in arrears and SCARPA had had to lend 40,000 francs to his former wife. The Mission sought help from the Organization in getting him to pay up. By a letter of 21 December 1990 the Director of the Department of Administration of the WMO reminded him that standards of conduct required international civil servants to meet their legal obligations. On 29 April 1991 the Director told him that the Secretary-General saw his persistent default as serious misconduct.

By a judgment of 13 February 1992 a police court of Geneva sentenced him to three months' imprisonment, subject to five years' stay, for failing to pay the alimony and for misappropriating property under distraint. The judgment was confirmed by the criminal chamber of the cantonal court on 9 November 1992.

In 1992 and 1993 other creditors approached the Organization. They told the Personnel Division, among others, that he had defaulted on payments; they asked for his address; and they supplied a copy of a final demand they had sent him for payment before taking legal action. In a letter of 15 November 1993, prompted by yet another demand from an unpaid creditor, the Secretary-General ordered him to sort out his finances and warned that any further such grievances would lead to disciplinary action.

On 8 December 1993 the police court gave him another suspended sentence, to one month's imprisonment, for misappropriation of property under distraint.

In a letter of 18 January 1994 in reply to the Secretary-General's one of 15 November 1993 he said he would be "putting his financial situation to rights" within the next few months.

On 1 December 1994 the police court gave him further suspended sentences, to two months' imprisonment and to three years' expulsion from Switzerland, for default in payment of alimony, and revoked the stay of the sentence imposed on 9 November 1992. The cantonal court of Geneva upheld that judgment on 4 May 1995. By a judgment of 15 June, which again the cantonal court upheld on appeal on 23 October, the police court gave him suspended sentences, to one month's imprisonment and to three years' expulsion from Switzerland, for threat of assault against another member of the staff.

By a letter of 16 November 1995 the Director of the Resource Management Department told him that disciplinary proceedings were to be brought against him and that the matter would go to the Joint Disciplinary Committee. The Director informed him of the Committee's membership.

In its report of 12 January 1996 the Committee recommended dismissing him for repeated breach of the standards of conduct of the international civil service. It further recommended paying him, in accordance with Staff Rule 193.1(c), salary and allowances in lieu of the prescribed three months' notice and, in accordance with 193.2(c), a termination indemnity not to exceed one-half of the sum ordinarily due.

By a letter of 18 January 1996 -- the impugned decision -- the Secretary-General told him that he was dismissed as from 20 January under Rule 192.1(a). On 23 January his counsel asked the Secretary-General to suspend the dismissal and let him go straight to the Tribunal. On 31 January the Director of Resource Management replied that he had leave from the Secretary-General to do so. By a letter of 8 February counsel again asked the Secretary-General to suspend "the effects" of the dismissal, but on 4 March 1996 the Director answered that that request should be put to the Joint Appeals Board.

B. The complainant submits that dismissal, the harshest sanction of all, is disproportionate to his case.

His conduct within the Organization has never been at issue and for default on alimony a penal sentence is almost inevitable in Switzerland. No disrepute attaches to it: it is much like the penalty imposed for the careless driving of a motor vehicle. The complainant admits, however, that he was guilty of oversight in failing to apply promptly for a lowering of the amount of alimony set in the divorce decree.

He says that the dismissal came out of the blue. The Organization was lax: it should have punished him at once by withholding the amounts of alimony from his pay. Disciplinary action in 1993 or 1994 would have made him sort things out earlier. But in November 1995, when it brought the disciplinary proceedings, there was no recent cause for dismissing him: since October 1994 he had been meeting his financial obligations to his former wife and to his children and making obvious efforts to pay his other debts.

He contends that his dismissal defeats the purpose: if he has to leave Switzerland he will be further away from his children and unable to maintain them or repay SCARPA.

He asks the Tribunal to give the complaint "suspensory effect" and order his provisional reinstatement in the WMO and to quash the decision of 18 January 1996 and reinstate him with full entitlements. He has a subsidiary claim to payment of the full amount of the termination indemnity.

C. In its reply the Organization points out that the complainant was dismissed, not for serious misconduct under Regulation 10.1, but for unsatisfactory conduct. Regulations 1.1 and 1.5, which lay down the duties of international civil servants, and Regulation 4.2, which sets the criteria for recruitment, lay down general rules on the conduct of staff both within and outside the Organization. No one may so behave as to harm its good name or that of other staff. The complainant's conduct undoubtedly tarnished the reputation of the WMO and its employees.

Dismissal with notice was a fitting punishment for his serious lapses, especially since he had been warned several times what the outcome might be.

D. In his rejoinder the complainant denies that his running up debts offended against the standards of conduct of the international civil service. The Organization could have advised him in 1990 to try to have the amount of the alimony reduced and could have made monthly deductions from his pay. Though he was wrong not to pay any amount at all, the alimony was obviously far more than he could afford.

E. In its surrejoinder the WMO points out that its rules do not empower it to withhold any of a staff member's pay to discharge a debt incurred towards a third party. The complainant consistently refused offers of help from its social welfare officer. Besides, his failure to pay the alimony was only one of several reasons for dismissal.

## CONSIDERATIONS

1. The complainant used to be employed by the WMO. His last grade was G.4. For the month of May 1995 his pay came to 6,988.40 Swiss francs plus 1,051.35 in allowances; after deductions totalling 1,152.80 francs, for pension contributions, insurance premiums and the rental of a garage, he was left with 6,886.95 francs in take-home pay.

He got married in Geneva on 1 March 1975. By the marriage he had a son, born in Geneva on 19 May 1975, and a daughter, born, also in Geneva, on 5 September 1978. By a decree of 9 March 1989 the cantonal court of first instance dissolved his marriage, gave custody of his two children to their mother and ordered him to pay alimony which it set at 1,000 francs for each of his children and 700 francs for his former wife. The sums were to be indexed. He neither defended the divorce suit nor objected to the terms of the decree. He neither kept up the payments of alimony nor met other debts, such as bank loans, rent and bills from doctors.

When he failed to pay the alimony the Geneva Cantonal Service for Advances and Recovery of Alimony, known as SCARPA, lent sums to his former wife and sought to recover them from him. On 20 February 1990 it prosecuted him for default of maintenance under section 217 of the Swiss Penal Code. He promised the court that he would pay up but failed to do so. SCARPA referred the matter to the Permanent Mission of Switzerland to the International Organizations at Geneva. In a letter of 5 December 1990 the Mission told the WMO that the canton had lent over 40,000 Swiss francs on the 63,647 due in alimony and had not recovered the sum. On 21 December 1990 the Organization wrote to remind the complainant of his duties towards both it and the host country. By a letter of 11 March 1991 the Mission again drew the WMO's attention to the complainant's debts. There ensued much written and oral discussion about his case between the Swiss authorities, including the Mission, and the WMO. Constant reminders from the Organization elicited no lasting improvement from him, and it warned him that he was at risk of disciplinary action. Creditors sued him; the court ordered him to make monthly payments into the Receiver's Office, he failed to do so, and the Office seized some of his assets. By a judgment of 13 February 1992, upheld on 9 November 1992 by the criminal chamber of the Geneva cantonal court a police court sentenced him to three months' imprisonment, subject to five years' stay of execution, for default of maintenance under section 217 of the Penal Code and for misappropriation of property under distraint in breach of section 169.

On 8 December 1993 the police court again gave him under section 169 a suspended sentence to one month's imprisonment for failure to pay into the Receiver's Office sums he owed to another creditor.

The complainant admits that he stopped paying alimony on 2 July 1993 on the grounds that his former wife would not let him see his children. That allegation, which is challenged, is not proved, and in any case infringement of visiting rights afforded no proper grounds for refusal to pay.

On 18 January 1994 he told the WMO that he had made arrangements to pay his debts. On 3 June 1994 the Secretary-General sent him a formal warning. On 19 July the Permanent Mission and representatives of the Organization met to discuss his case. On 1 September a further order of distraint was issued. On 10 October he signed an agreement with his former wife for payment of the alimony. He gave his bank standing instructions to pay 500 francs a month to SCARPA against the arrears.

Yet on 1 December 1994 the police court again sentenced him for default of maintenance under section 217 to two months' imprisonment and to three years' expulsion from Switzerland, both penalties to be subject to three years' stay of execution. It revoked the stay granted on 9 November 1992. The criminal chamber of the cantonal court upheld the sentence on 4 May 1995. The court stated that according to SCARPA the arrears came to 67,010 francs, whereas in a letter of 8 May 1995 the Mission said they totalled 159,450. The true figure remains unclear.

On 15 June 1995 the police court again gave him a suspended sentence under section 180 of the Penal Code to one month's imprisonment for threat of assault to another official, who had filed suit against him. The criminal chamber of the cantonal court upheld the judgment in substance on 23 October 1995. He made two applications for pardon but a legislative body of the Canton of Geneva (le Grand Conseil) dismissed them.

His landlord and his dentist approached the WMO about unpaid bills. It then came to light that the United Nations Staff Mutual Insurance Society had made him a loan to pay the dentist, but he had used the money to clear other debts. He offers the gratuitous explanation that he did so with the dentist's consent.

2. By a letter of 16 November 1995 the WMO told him that it was starting disciplinary proceedings which might lead to his dismissal for misconduct. His case went to the Joint Disciplinary Committee. The Committee met several times and gave him a hearing. In its report of 12 January 1996 it was unanimous that he had been guilty of breach of duty warranting dismissal and that that sanction would not be disproportionate to the offence.

3. The Secretary-General endorsed that recommendation in a letter of 18 January 1996 to the complainant

dismissing him as from 20 January under Staff Rule 192.1(a), read together with Staff Regulations 1.1, 1.5, 1.10 and 9.2(a)(i). He applied for waiver of the internal appeal procedure and the Organization agreed.

4. The complainant's preliminary claims are to the suspension of his dismissal and to provisional reinstatement; his main claims to the quashing of the impugned decision and to reinstatement with full entitlements; and his subsidiary claim to payment of the termination indemnity in full.

He submits that his conduct, though no doubt remiss, must be seen in context: it was confined to his private life, his services being found satisfactory. Besides, dismissal was far too harsh a punishment for someone who had kept his commitments under the agreement of 10 October 1994. What he did was no worse than a traffic offence. The Organization failed to see him through hard times. The punishment is too severe also in the way it affects others: he cannot now meet his debts to his family and other creditors.

The defendant asks the Tribunal to uphold the complainant's dismissal. It observes that he fell deeply into debt, the Canton of Geneva had to lend large sums and he incurred several convictions. Such behaviour was quite unacceptable to the host country and so to the Organization. Despite many warnings his behaviour grew not a whit better but still showed serious shortcomings. There was nothing disproportionate in punishing him with dismissal. The Organization offered him the help of its social welfare officer but he declined. For all its forbearance he tried no harder; his latest convictions alone were damaging to his reputation in the host country and so to the Organization's interests.

#### *Receivability*

5. The Organization having waived the appeal procedure under Rule 1112.1, the internal means of redress are exhausted and the complaint is receivable under Article VII, paragraph 1, of the Tribunal's Statute.

6. By way of preliminary claim the complainant asks the Tribunal to suspend his dismissal so that he may stay in employment at least pending its judgment. According to Article VII(4) of its Statute a complaint has no suspensory effect and it is not empowered to make a ruling of the kind the complainant seeks. The claim is therefore irreceivable.

#### *The application for hearings*

7. The complainant has applied for the hearing of four witnesses: three members of the WMO's staff and his former wife. Since any material issue of fact or of law may be decided on the written evidence such hearing would serve no purpose. The application is therefore disallowed.

#### *The merits*

8. The impugned decision was taken under the Staff Regulations. Regulation 10.1 reads:

"The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. He may summarily dismiss a member of the staff for serious misconduct."

The Organization submits that, having granted the complainant pay in lieu of three months' notice, it did not summarily dismiss him for serious misconduct under the second sentence of that provision: it dismissed him as a disciplinary sanction under Rule 1101.1(a) for failing in his duties as an international civil servant. And it cites the provisions that lay down those duties, namely Regulation 1.5:

"Members of the secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on that status ... they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status."

Regulation 4.2 further declares the paramount consideration in the appointment of staff to be the need to secure the highest standards of efficiency, competence and integrity. And the Organization takes the quite proper view that it must follow the same criteria in deciding whether to keep someone on its staff.

Since those provisions offered a sufficient basis in law for the impugned decision, the material issue is whether the Organization applied them correctly.

9. Besides carrying out his allotted tasks an international civil servant has a duty to show such dignity of behaviour as not to harm the good name that the organisation must enjoy if it is to do its job properly. He must in particular abide by the law and respect the public order of the host state or of any other country it may assign him to. He must govern his private life accordingly, especially as it may touch on society at large: see, for example, Judgment 1501 (*in re Cesari*). Thus the Tribunal upheld the dismissal of an official who had complained about his organisation to the host country and accused another staff member of many offences (Judgment 63, *in re Andreski*); of one who had embezzled funds and run up debts (Judgment 79, *in re Giannini*); of one who kept reporting drunk for work (Judgment 207, *in re Khelifati*); and of one who had without consent set up a business of his own in the area of the organisation's work (Judgment 1363, *in re Popineau* Nos. 6, 7 and 8).

Here the complainant, though well paid, failed time and again, and quite improperly, to meet his financial obligations, in particular the payment of alimony to his family, and disobeyed orders by the Swiss courts and administrative authorities. The Republic and Canton of Geneva, where the Organization has its headquarters, had to lend large sums, of which he paid back only a small fraction. He caused loss to the canton, and that is the more objectionable in that he was paying no income tax. He got four prison sentences for offences against Swiss law -- default of maintenance, misappropriation of property under distraint and threat of assault -- which seriously disrupted public order. The Swiss Permanent Mission and his creditors approached the Organization many times, thereby putting it under the awkward obligation of acknowledging the misconduct of a member of staff. He made things worse by the threat to the other official. More than once he got money from the United Nations Staff Mutual Insurance Society to pay bills, yet used it for other purposes because he was in financial straits. He says that he did so with his creditors' consent. Whether that allegation, which is not proved, is true or false is immaterial.

He contends that the Organization failed to help him enough to meet his commitments after his divorce and to sort out his finances. He is mistaken: it is plain on the evidence that the Organization wanted the case to be disposed of. It offered him help but by and large he refused it.

He tries to belittle his misbehaviour by making out that the award of alimony by the divorce court was too high. Yet he neither defended the divorce suit, the decree being issued in his absence, nor later challenged the award on the grounds of any new fact. Had it been beyond his means, the Receiver's Office, when his property was distrained, and the court, in ruling on his default, might have proved more lenient. But the court rulings make it plain that he did not pay up even what he could have afforded; indeed at times he was paying no alimony at all. Since he was in default, it is immaterial whether, as SCARPA contended, he drew 400,000 Swiss francs from the sale of a flat in Spain.

In behaving as he did he obviously showed scant regard for his duties as an international civil servant and betrayed the Organization's trust. It was only reasonable that the WMO should consider that his conduct precluded keeping him on.

10. Though not denying misconduct, the complainant suggests that it was not serious, but much like a traffic offence, which would not warrant dismissal.

There is no merit in the argument. His repeated and partly wilful misconduct had nothing in common with traffic offences, which as a rule are occasional and often due to mere oversight.

11. The complainant pleads that the punishment was disproportionately heavy.

According to the rule of proportionality there must be some reasonable connection between offence and punishment, particularly when the official is dismissed on disciplinary grounds: see for example Judgments 937 (*in re Fellhauer*) under 14; 1070 (*in re Couton*) under 9; 1210 (*in re Zaidi*) under 7; 1250 (*in re Peña-Montenegro*) under 11; and 1363 (*in re Popineau* Nos. 6, 7 and 8).

There was no breach of the rule here. The WMO was free to conclude that its own interests required dismissing someone as neglectful of duty as the complainant. It allowed him a long time in which to improve, though to no avail, and thereby gave his own interests ample consideration.

He argues that, his conduct having been beyond reproach since October 1994, it is disproportionately severe to dismiss him for his earlier conduct, particularly as his family and other creditors are now at risk of getting nothing at all. The plea is irrelevant. For one thing, there is no evidence to suggest that he offered the Organization and all

his creditors any sound arrangements for clearing off what he owed and kept to them; had he done so, his creditors and the Permanent Mission would no doubt have dropped the matter. For another thing, according to reports the Organization had after October 1994, his conduct had grown much worse. The conclusion is that it had good reason to believe that keeping him on was unacceptable and its Secretary-General did not exceed the bounds of his discretion in deciding on dismissal.

12. The complaint contains a subsidiary claim to payment of the termination indemnity in full and the complainant presses all his claims in his rejoinder. Yet he offers no argument in support of his subsidiary claim, even though the Organization's reply cites the material rules.

Under Rule 193.1 a staff member whose appointment is terminated is entitled to three months' notice, but the Secretary-General may instead grant him compensation in an amount to be reckoned according to the salary and allowances he would have been paid had the date of termination been at the end of the period of notice. But Rule 193.2 says that someone who is dismissed for misconduct may at the Secretary-General's discretion be paid an indemnity not to exceed one-half of the amount ordinarily due. The Organization maintains that the indemnity that the Secretary-General granted to the complainant was the maximum that the rules allowed.

The complainant rejoins that what he is challenging is not the substance of the rules cited but the way in which they were applied. But in that regard no challenge to the impugned decision is sustainable.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

*(Signed)*

William Douglas  
E. Razafindralambo  
Egli  
A.B. Gardner