

NINETY-FOURTH SESSION

(Interlocutory order)

Judgment No. 2192

The Administrative Tribunal,

Considering the complaint filed by Mr R. E. K. against the International Criminal Police Organization (Interpol) on 12 November 2001 and corrected on 12 February 2002, Interpol's reply of 22 April, the complainant's rejoinder of 29 July and the Organization's surrejoinder of 4 October 2002;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, who was born in 1933 and has British nationality, joined Interpol in 1971. In 1978 he married a staff member of the Organization. He was appointed Secretary General of Interpol in 1985 and, his mandate having been renewed twice, his functions ceased on 4 November 2000.

On 29 October 2000, during the Executive Committee's session in Rhodes (Greece), the complainant presented a decision whereby his wife, Mrs M.-K., was to be made redundant because of the abolition of her post. At the Committee's request, he left the meeting room. He was allowed back into the room two hours later and was informed that the Committee had taken note of his decision but regretted that it had not been informed of the decision sooner, given the particular circumstances involved. By an "individual decision of 30 October 2000" the complainant notified his wife that her post would be abolished with effect from 1 November 2000. He pointed out, in particular, that "[t]he political and administrative reasons for this decision were presented to the Executive Committee, which endorsed them, during its October 2000 session". Since the period of notice for termination was six months, the actual date for the cessation of her duties was set at 30 April 2001. Mrs M.-K. was not required to come to work during that period. Her salary would be paid until 30 April 2001, and at that date she would receive a compensation payment for termination and would qualify for the Internal Unemployment Compensation Scheme.

On 29 January 2001 the complainant wrote to the President of the Organization's Executive Committee (hereinafter "the President of the Organization"). The complainant stated that information emanating from his country of origin led him to believe that his honesty and integrity had been brought into question during the Executive Committee's discussion on the decision to end his wife's appointment. He explained the circumstances which had led him to take that decision, pointing out in particular that it was his successor who had asked that the issue of Mrs M.-K.'s employment be resolved before he took up his functions.

On 23 April the new Secretary General sent the complainant's wife an individual decision of that same date inviting her to resume her functions with effect from 2 May 2001, together with a legal opinion written by a professor of law. He stated that the Executive Committee had expressed its support for this decision at its last meeting held in Lyons (France) in March 2001. In his decision, the Secretary General stated that his predecessor's decision of 30 October 2000 was "clearly irregular", that his "administrative reasons" were erroneous and that behind "political reasons" the complainant had "in fact concealed his family interests", committing an abuse of authority in order to secure undue advantages for his wife. Lastly, he denied that his predecessor's decision had been approved by the Executive Committee, since the "ratification" had "been obtained by deceit"; those attending the meeting had only been able to take note of a decision which the complainant had presented as having already been adopted, though it was dated only the following day. On 30 April 2001 the complainant acknowledged receipt of this letter on behalf

of his wife and sent the Secretary General a medical certificate stating that Mrs M.-K. had suffered moral harassment at work and prescribing sick leave for six weeks. At the Organization's request, Mrs M.-K. then underwent a medical examination which confirmed the initial report of incapacity for work.

By a letter of 26 May the complainant protested to the President of the Organization against the accusations levelled at him by his successor. He informed him that he wished to obtain certain documents, in particular the minutes of the last two meetings of the Executive Committee. On 30 May he asked the Secretary General to provide him with the minutes of the Executive Committee's meetings of October 2000 and March 2001 concerning the termination of his wife's appointment. On 7 June the Acting Legal Counsel informed him on behalf of the Secretary General that his request was denied. On 6 July 2001 the complainant sent the Secretary General a request for review of this decision. On 18 July he had a meeting with the President of the Organization and two other members of the Executive Committee. On 20 August the Secretary General sent him a copy of *Interpol* (the international criminal police review), which contained a tribute to him. With regard to his request for documents, the Secretary General considered that the meeting he had with the complainant on 18 July had "addressed the concerns underlying [his] request in a way that [had] preserved the confidentiality" of the Executive Committee's sessions. Aiming to avoid an action before the Tribunal, on 1 September the complainant sent the President of the Organization a settlement proposal. That same day, he reiterated his request to the Secretary General for documents to be made available to him. On 24 September the President of the Organization replied that the complainant must have misunderstood the purpose of the meeting of 18 July, which was to convince him that the current managing officials of the Organization felt no personal animosity towards him, but that this did not prevent the Organization from defending its interests; that the Executive Committee and the Secretary General were in perfect agreement as to the handling of the issue of Mrs M.-K.'s employment and of the complainant's requests; and, lastly, that on the advice of the Organization's external legal adviser, he and the Organization would cease corresponding with the complainant on the subject of his wife and of his requests. By a letter of 22 November 2001 the complainant informed the Secretary General that he had filed a complaint with the Tribunal. He reiterated his offer of a settlement. In a letter of 4 December 2001, to which a legal opinion written by a professor of law was attached, the Secretary General warned the complainant that by pursuing his action before the Tribunal he ran the risk of damaging his reputation.

B. The complainant accuses Interpol of having breached its duty to respect the dignity and reputation of its present and former staff members. He considers that there is every indication that his good name "was seriously challenged during the discussions of the Executive Committee" and that his "reputation beyond the institution was tarnished". In support of this view he refers, first, to the accusation of deceit which appeared in a letter not addressed to him but invoking the support of the Executive Committee, and secondly to "the suspension of the procedure by which he was to be granted an honour", which could only be attributed to the "rumours spread, particularly among the authorities of the United Kingdom", by members of the governing bodies, including the Executive Committee.

He also argues that his right to be heard and to have access to all relevant documents has been violated. Without access to the extracts of the minutes of the Executive Committee meetings of October 2000 and March 2001 concerning him, the rights of the defence could not be guaranteed. He believes that the refusal to grant his request is connected with the fact that these documents would reveal that the accusations levelled at him are the result of his successor's one-sided and biased presentation of the facts. He emphasises that "the reasons for [Mrs M.-K.'s] departure from the Organization were solely linked to the new Secretary General and therefore directly related to her work". Indeed, his wife could not remain in the employ of a secretariat run by the new Secretary General, because in view of certain "disgraceful precedents" of which he claims to have written evidence, there was every reason to believe that the new Secretary General would not have treated Mrs M.-K. properly. He adds that it was his successor who asked that the matter be resolved before he took up office.

The complainant asks the Tribunal to annul the implied decision to reject his request of 6 July 2001 for review of the decision of 7 June 2001 denying him access to certain documents, and to apply all legal consequences of such annulment, particularly by ordering the disclosure of the relevant passages of the said documents and by ordering Interpol to pay him moral damages. He also seeks an award of costs.

C. In its reply the Organization submits that neither the terms of his employment contract, nor the provisions of the Staff Regulations and Staff Rules, nor any Staff Instruction can provide a basis under Article 121(2) of the Staff Rules for the complainant's appeal. It asserts that the rules governing the disclosure of Executive Committee documents clearly "specify that the minutes of the Committee are not intended for publication", and the Secretary General, like any other staff member, is subject to those rules. Consequently, the complainant does not have

locus standi. Nor has he established that he suffered any injury as a result of the implied decision of rejection that he challenges. His allegation that "rumours" led to the suspension of the honours procedure is not supported by any evidence and is insulting to both the Organization and the Executive Committee.

Regarding the right to be heard, the Organization considers that the complainant has had numerous opportunities to express his point of view, as shown by the correspondence he produces as evidence and the fact that he was granted a meeting with the President of Interpol and two other members of the Executive Committee. Although the decision of 23 April 2001 which was sent to his wife referred to the deceit used to secure the ratification of the Executive Committee, first "that decision [did] not concern the complainant" and, secondly, the reasons for the decision, which had to be stated, were by no means excessive in the light of the facts. Thus, the Organization did not damage the complainant's reputation.

Interpol adds that the complainant's assertion that Mrs M.-K.'s departure was "solely linked to the new Secretary General" shows that he acted for a personal reason, whereas a post should only be abolished for objective reasons and in the interest of the Organization. The Organization denounces the complainant's insulting and defamatory allegations and asks the Tribunal to order the production of the alleged "written evidence", failing which it threatens to sue him "before the competent courts". According to the Organization, had the complainant's decision really been based on evidence he claims to possess, the fact that he failed to inform the Executive Committee of this though he was obliged to do so is a further element of deceit.

D. In his rejoinder the complainant submits that, in practice, the preparation of Executive Committee minutes is a task entrusted to the Secretary General and that a copy is sent to the directors who attended the meeting. He adds that "the Secretary General is somewhat different to other staff members" and that pursuant to Article 29 of the Organization's Constitution:

"He shall have the right to take part in the discussions of the General Assembly, the Executive Committee and all other dependent bodies."

Consequently, the Secretary General cannot be denied access to the minutes of meetings in which he had "the right to take part". He argues that his request is properly founded on a text of indisputable authority and that the impugned decision did cause him injury. The accusation of deceit is particularly serious and the fact that it appears in a decision that was not addressed to him is irrelevant: whatever the official document implicating him may be, the complainant is entitled to defend himself. Furthermore, he considers that the fact that the new Secretary General's assumption of his duties coincided with the suspension of the honours procedure was not fortuitous.

The complainant denies that his right to be heard was respected. He was not asked to express his point of view before accusations of deceit were levelled at him and the Organization did not give him the opportunity fully to defend his honour and reputation. He points out that the meeting with members of the Executive Committee was granted him after the accusations had been made against him, at a time when to take his views into account would necessarily have entailed contradicting the new Secretary General, which the Organization was not prepared to do. Regarding the alleged deceit, he submits that the date of the decision to abolish Mrs M.-K.'s post shows that although the decision, the preparation of which had involved all competent departments, was ready from a material point of view, he was waiting for the Executive Committee to approve it before notifying the person concerned. Such approval was not a legal requirement but he had wished to obtain it in order to maintain transparency. He therefore denies the accusation of deceit and asks to be provided with the minutes of the meeting in order to prove this.

Lastly, with regard to the allegedly unjustified nature of the abolition of his wife's post, the complainant observes that the Organization challenges neither the assertion that it was the new Secretary General who had asked that this issue be resolved before he took up office, nor the validity of the administrative reasons justifying the decision. With regret he produces documents which, in his view, prove that for years his successor's behaviour towards Mrs M.-K. was tantamount to harassment, which had affected her health to such an extent that it was inconceivable that she should continue working at Interpol.

E. In its surrejoinder the Organization points out that at the time when the minutes were drafted, the complainant was no longer Secretary General and that he was therefore no longer involved in the process of drafting and approving the minutes. Although Article 29 of the Organization's Constitution provides that the Secretary General shall attend the meetings of the Executive Committee, he is not involved in the adoption of the minutes.

Consequently, there was no reason to provide the complainant with the requested documents, particularly since they concerned a meeting which he had attended only in part: to have provided him with the documents would have compromised the independence which the deliberating bodies of the Organization must enjoy in making their decisions. Interpol observes that the complainant has not proved that a procedure by which an honour was to be granted to him had been initiated, nor that any such procedure had been suspended. Consequently, he cannot claim to have suffered any injury whatsoever.

The Organization argues that the complaint is directed solely against the decision to deny him access to the Executive Committee documents. It had therefore not been necessary to hear the views of the complainant before the decision of 23 April 2001, concerning his wife, had been taken. On this issue, Interpol notes that he did, however, have the opportunity to express his views prior to that date, particularly in his letter of 29 January 2001 to the President of the Organization. Consequently, the issue of whether deceit occurred, and likewise that of the legality of the abolition of Mrs M.-K.'s post, are beyond the scope of the present dispute. The Organization only agrees to respond to them on a subsidiary level. It maintains that the complainant was guilty of deceit and denies that he was asked by the new Secretary General to resolve his wife's situation before his departure. The complainant's allegations on this subject are contradictory and unfounded.

The Organization rejects the complainant's assertion that it has not challenged the validity of the administrative reasons mentioned in support of the abolition of Mrs M.-K.'s post. Regarding the "libellous" accusations levelled at the Secretary General, the Organization states that the documents submitted as evidence do not establish that harassment occurred. Lastly, it submits that Mrs M.-K.'s health problems stemmed from the difficult working conditions that she encountered even at the time when her husband was Secretary General.

CONSIDERATIONS

1. The complainant joined Interpol in 1971. He was elected Secretary General of the Organization in 1985 and held that post until 4 November 2000.

Prior to becoming Secretary General, he had married a staff member of Interpol who had joined the Organization in 1964.

On 30 October 2000 the complainant, acting in his capacity as Secretary General, notified his wife of a decision to terminate her appointment on the grounds that her post was to be abolished, which stipulated that she was not required to come to work during the six-month period of notice and that the date of the actual cessation of her functions was to be 30 April 2001. On the day before he notified his wife, he had informed the Executive Committee of his decision at its October 2000 session in Rhodes. However, he had only been able to present the decision briefly, since he was asked to leave the meeting room while the issue was discussed. Having been allowed to re-enter the room only two hours later, he was informed that the Executive Committee had taken note of his decision but regretted that it had not been informed of it earlier, in view of the particular circumstances involved.

2. On 23 April 2001 the new Secretary General sent the complainant's wife an individual decision inviting her to resume her functions with effect from 2 May 2001, on the grounds that his predecessor's decision clearly contravened the Organization's Constitution as well as various provisions of the Staff Regulations and Staff Rules. He indicated that the Executive Committee had expressed its support for this measure at its last meeting, which had been held in Lyons in March 2001. The Secretary General pointed out that although the complainant had indeed raised the issue of his wife's departure from the Organization before the Executive Committee at the end of his own mandate, and although the decision of which she had been notified referred to the "ratification" of the reasons for the decision by the Executive Committee, that "ratification" had clearly been obtained by deceit. He added, in particular, that:

"That deceit result[ed] primarily, though not exclusively, from the fact that [his] predecessor [had] led those participating in the Executive Committee meeting, including [himself], to believe that he was merely informing the Executive Committee of an individual decision concerning his wife which had already been taken."

3. On 26 May 2001 the complainant protested to the President of the Organization against the accusations levelled at him by the Secretary General and informed him that he wished to obtain copies of the minutes of the last two

Executive Committee meetings.

On 30 May he asked the Secretary General to provide him with copies of the minutes of the Executive Committee's meetings of October 2000 and March 2001, considering that his reputation was being smeared on the basis of documents to which he did not have access.

On 7 June the Acting Legal Counsel informed him on behalf of the Secretary General that his request had been rejected on the grounds that the minutes of the Committee's meetings are confidential.

4. On 6 July 2001, in accordance with Article 121(1) of the Staff Rules, the complainant submitted to the Secretary General a request for review of the decision of 7 June 2001.

Since no decision was taken in response to that request within sixty days of the notification thereof, the complainant filed a complaint with the Tribunal on 12 November 2001 in accordance with Article VII, paragraph 3, of its Statute.

5. The complainant asks the Tribunal to annul the implied decision to reject his request of 6 July for review of the decision of 7 June 2001 denying him access to the minutes of the Executive Committee meetings of October 2000 and March 2001, and to draw all legal consequences of such annulment, notably by ordering the disclosure of the relevant passages of the said minutes and by ordering Interpol to pay him moral damages and costs.

In support of his complaint the complainant submits that the Organization has breached its duty to respect the dignity and reputation of its employees, whether serving or retired; that his right to be heard has been denied; and that it has not been possible to exercise the rights of the defence in accordance with due process.

According to the complainant, there is every indication that notwithstanding the denials of certain members of the Executive Committee, his good name "was seriously challenged during the discussions" of that Committee, from which he had been excluded, despite the fact that he was still Secretary General of the Organization, and that his reputation was also tarnished outside Interpol.

Regarding his right to be heard and the exercise of the rights of the defence, the complainant argues that by denying him access to all the relevant documents the Organization has prevented him from defending himself against general accusations which are not based on any precise fact.

6. The Organization, for its part, considers that the complainant lacks *locus standi*, because under Article 121(2) of the Staff Rules a complaint is a written request aimed at obtaining "an individual decision in application of the terms of the employment agreement of the person concerned or of the provisions of the Staff Regulations, of the [Staff] Rules or of Staff Instructions".

It argues that in the present case the complainant cannot rely on a provision of his employment agreement, nor on any provision of the Staff Regulations and Staff Rules, in support of his request for access to confidential documents concerning the work of the Executive Committee.

It emphasises that the rules governing the disclosure of Executive Committee documents are clear. Article 8(3) of the Committee's Rules of Procedure provides that:

"The Secretariat of the Executive Committee shall prepare the minutes and the abstract of decisions in the languages covered by Article 9 of the present Rules of Procedure. Except in exceptional circumstances, it shall send them to the members of the Executive Committee, at least one month before the beginning of the following session."

7. At this stage of the proceedings, and without prejudice to the ruling it may subsequently deliver, the Tribunal considers that it would be useful to consult the extract of the minutes of the Executive Committee meeting held in Rhodes in October 2000 concerning the decision to terminate the appointment of the complainant's wife on the grounds of post abolition, as well as the extract of the minutes of the meeting held in Lyons in March 2001 concerning the revocation of that decision.

DECISION

For the above reasons,

1. The documents mentioned under 7, above, shall be submitted by the Organization to the Registrar of the Tribunal within thirty days of notification of the present judgment.
2. These documents shall not be disclosed to the complainant pending a decision on the matter by the Tribunal.
3. The Tribunal reserves judgment on the claim for costs.

In witness of this judgment, adopted on 8 November 2002, Mr Jean-François Egli, Presiding Judge for this case, Mr Seydou Ba, Judge, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2003.

(Signed)

Jean-François Egli

Seydou Ba

Hildegard Rondón de Sansó

Catherine Comtet