

The Administrative Tribunal,

Considering the complaint filed by Mr F. L. against the International Olive Oil Council (IOOC) on 7 December 2005 and corrected on 16 December 2005, the IOOC's reply of 20 March 2006, the complainant's rejoinder of 22 June, the IOOC's surrejoinder of 23 September, the complainant's further submissions of 12 October and the Council's comments thereon of 27 October 2006;

Considering Articles II, paragraph 5, and VII 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 European Community is a party to the International Agreement on Olive Oil and Table Olives and, through the European Commission, contributes more than 75 per cent of the IOOC's administrative budget. The complainant, an Italian national born in 1939, was an official of the European Commission when it was decided to appoint him, with effect from 1 October 1987, to head the IOOC's Executive Secretariat, that is, to appoint him Executive Director. During his appointment with the Council, which has its headquarters in Madrid, his status was that of an official on detachment.

At its 86th Session, the IOOC commissioned a group of experts to carry out an audit of its administrative budget for the period 2000-2002, with a view to making recommendations to the Financial Committee "regarding compliance with the principles of sound financial management and internal operation". The audit took place between 1 and 10 October 2002. In its report the group of experts noted that several items of expenditure did not appear to comply with those principles. It also made numerous comments concerning the Executive Director and, in particular, his "housing allowance", his pay rise and his travel and entertainment expenses.

In a letter of 9 December 2002 the European Commission's Directorate-General for Personnel and Administration informed the complainant that, in the light of that audit report, it had been decided to terminate his detachment with effect from 1 January 2003. The complainant then asked to retire from the European Commission on the same date, and his request was accepted.

On 19 December 2002 the Council was told that the complainant had had the sum of 228,950 United States dollars, which he considered was due to him as a repatriation grant, transferred from the IOOC's bank account to his own. At the Council's request, the complainant immediately reimbursed that sum. On 20 December 2002 he resigned. His resignation was accepted the same day, with immediate effect, by the Council, which decided also to "reserve all its rights in the matter". A supplementary audit of the administrative budget was carried out between 20 January and 1 April 2003. On 14 May 2003 the IOOC waived the immunities previously enjoyed by the complainant in order to enable the competent Spanish authorities to conduct a full investigation into the facts. In September 2004 the Spanish Department of Public Prosecution brought charges against the complainant before the criminal courts of Madrid, accusing him of having unlawfully collected thousands of euros. When the present complaint was filed, those proceedings were still pending.

Meanwhile, in a letter of 27 January 2003, the complainant had requested payment of all the "end-of-service benefits" to which he considered he was entitled under the Staff Regulations and Rules. He repeated his request in letters dated 14 March, 30 April, 3 July and 25 November 2003. On 19 December 2003 the acting Executive Director replied that the Heads of Delegation, meeting at the IOOC's 89th Session, had expressed the view that his request for payment of the repatriation grant as well as travel and removal expenses was unfounded. In a letter dated 20 January 2004 the complainant repeated his request and endeavoured to substantiate his claim. On 12 February the acting Executive Director replied that the Heads of Delegation had referred the complainant's request to an external legal adviser and that he would be informed in due course of the decision that would ultimately be

taken. The complainant sent a reminder on 17 December 2004 and again on 9 March and 23 August 2005, but obtained no reply. He challenges the implicit decision to reject his claim of 20 January 2004.

B. The complainant considers that the present dispute began on 19 December 2003 and, referring to the versions that then applied of Article 64 of the Staff Regulations and Article 16 of the International Agreement, contends that the Tribunal is competent to hear the complaint he has lodged in his capacity as former Executive Director of the IOOC. In support of this argument he cites Judgment 2232, concerning the case of the former Director-General of another international organisation, in which the Tribunal upheld its jurisdiction both *ratione personae* and *ratione materiae*.

Regarding the receivability of his complaint, the complainant asserts that the decision of 19 December 2003 cannot be considered final. He points out that despite all the reminders he sent he never succeeded in eliciting a final decision within a reasonable time, and he therefore considers that, in accordance with the Tribunal's case law, he was not required to exhaust internal remedies. He further recalls that according to Annex I to the Rules of Procedure of the IOOC, the Executive Director may appeal directly to the Tribunal.

On the merits, the complainant maintains that his entitlement to the repatriation grant and to the refund of travel and removal expenses "cannot seriously be contested". He points out that payment of the repatriation grant, in accordance with the Staff Regulations applicable at that time, was expressly mentioned in a note which his predecessor sent him on 15 July 1986. He adds that entitlement to the grant was provided for in the Staff Regulations applicable at the time when his appointment ended and that provision is made in the annual administrative budgets for a repatriation grant for the Executive Director.

The complainant asks the Tribunal to set aside the implicit decision to reject his request for payment of end-of-service benefits and to order that such benefits be paid. He also claims compensation for moral injury, and costs.

C. In its reply the IOOC states that it expressly recognises the Tribunal's competence to hear this case despite some uncertainty as to whether it had actually recognised the Tribunal's competence at the time the dispute arose.

With regard to receivability, the defendant submits that the complainant has not exhausted internal remedies, since he did not even initiate the internal appeal procedure provided for in Article 64 of the Staff Regulations in order to challenge the decision of 19 December 2003. It considers that the provisions of Annex I to the Rules of Procedure are not applicable to the complainant because by the time they came into force he had left the IOOC's service. In addition, according to the defendant, the reference to Judgment 2232 is irrelevant insofar as the situation of the complainant in that case was very different to that of the present complainant, who is not challenging a decision to dismiss him. The IOOC explains that it did not reply to the various letters received from the complainant because it wanted to avoid interfering with the pending criminal proceedings.

The IOOC argues further that, even though the complainant felt that he was not required to lodge an internal appeal against the final decision of 19 December 2003, he was nevertheless obliged to file his complaint within the time allowed under Article VII(2) of the Statute of the Tribunal, which he failed to do. In the defendant's view, the complaint is therefore irreceivable.

On the merits, the Council maintains that in this case the issue of the repatriation grant is governed by Staff Rule 9.12 as applicable in 2002, but that the complainant, who bears the burden of proof, has not produced the slightest evidence to show that he satisfies the requirements mentioned in that provision, and has failed to specify the precise sum he is claiming. It considers that his argument regarding the budgetary provision cannot stand, because the fact that such a provision exists does not imply that all officials of the IOOC's Executive Secretariat, "regardless of their personal circumstances", are automatically entitled to receive the grant in the event that their appointment ends. Quite on the contrary, every case has to be examined individually in order to ensure that the conditions of entitlement are met.

As far as travel and removal expenses are concerned, the IOOC points out that the complainant has put forward no argument or legal basis to support his claims, and has failed to produce any evidence of expenses incurred.

Lastly, the IOOC observes that the complainant makes no reference at all in his complaint to any alleged moral injury.

D. In his rejoinder the complainant maintains that the decision of 19 December 2003 cannot be considered final

owing to the fact that the acting Executive Director informed him in his letter of 12 February 2004 that a final decision would be taken in due course, in the light of external legal advice. He considers that, since he received that letter before the time limits for lodging an internal appeal or filing a complaint with the Tribunal had expired, the Tribunal cannot accept the IOOC's argument that his complaint is time-barred.

On the merits, the complainant recalls that he was recruited internationally and should therefore be repatriated to his home town in Pantelleria, Italy. He points out that he gave precise figures for each of his claims in his letters of 25 November 2003 and 20 January 2004.

With regard to the issue of moral injury, he asserts that he has found himself in a "constant state of frustration and even despondency" on account of the extremely negative image of him that the IOOC has not ceased to project.

E. In its surrejoinder the IOOC reiterates its position regarding the receivability of the complaint.

On the merits, it confirms that the complainant has still not produced a shred of evidence to show that he met the conditions for entitlement to the sums he is claiming. It states that it has been led by a "number of clues" to conclude that the complainant does not meet the main condition for payment of those sums – namely his "effective" return to his home country – insofar as he appears to have taken up permanent residence in Spain. Consequently, in accordance with Staff Rule 4.7(b) applicable in 2002, the complainant has forfeited his entitlement to the repatriation grant and to payment of his travel and removal expenses.

F. In his further submissions the complainant maintains that his main residence is in Italy. He produces three documents – including his voting card – to support that assertion.

G. In its final comments the defendant argues that the documents produced by the complainant with his further submissions do not prove that he actually incurred travel and removal expenses. On the contrary, it considers that if the complainant has been unable to produce the necessary evidence it is quite simply because he did not incur such expenses. It reiterates that the complainant is now permanently resident in Spain and has therefore forfeited his entitlement to a repatriation grant. It adds that the fact that he owns a residence in that country has not been denied by him and may therefore be considered as established.

CONSIDERATIONS

1. The complainant served as Executive Director of the IOOC from 1 October 1987 to 20 December 2002. He was on detachment from the European Commission and, following an audit report on the IOOC's administrative budget, the competent department of the European Commission decided to terminate his detachment with effect from 1 January 2003. The complainant then asked to retire from the European Commission. Before leaving the IOOC, he felt entitled to credit his bank account with the sum of 228,950 United States dollars, representing the repatriation grant which he considered was due to him. It was under those circumstances that the IOOC Heads of Delegation, meeting in Madrid on 19 and 20 December 2002, asked him to return the sum – which he did – and agreed to his resignation, which immediately terminated his appointment with the organisation.

2. The IOOC subsequently decided to waive the immunities of its former Executive Director and to forward the audit report, which in its view revealed serious irregularities, to the Spanish Department of Public Prosecution, which in turn brought charges before the criminal courts under the Spanish Criminal Code. The fact that a criminal investigation has been initiated is not directly related to the dispute before the Tribunal, but it does explain, without justifying it, the position of the organisation, which decided not to maintain any contact with the complainant, even on a purely administrative basis, and, in particular, not to reply to his requests for payment of the repatriation grant and of his travel and removal expenses.

3. On 27 January 2003 the complainant submitted a first request for payment of his "end-of-service benefits". He repeated his request on 14 March, 30 April, 3 July and 25 November 2003. After several months' silence, the acting Executive Director replied on 19 December 2003 that the Heads of Delegation, who had met the day before in the context of the 89th Session of the IOOC, had expressed the view that his request was unfounded. The complainant reiterated his claim and, in a letter of 12 February 2004, the acting Executive Director replied that before taking a decision on his request the Heads of Delegation, who had met on 28 January 2004 on the occasion of the twelfth extraordinary session of the IOOC, had instructed the Executive Secretariat to forward the

complainant's request to the IOOC's external legal adviser for the latter to study the complainant's case and the documents he had produced. The acting Executive Director added that the complainant would be "informed of the decision that will ultimately be taken by the Members". Despite reminders he sent to the new Executive Director on 17 December 2004 and 9 March 2005, the complainant received no reply regarding the decision that was to be taken and, on 23 August 2005, he wrote a last letter asking for a final decision within two months, failing which he would consider "that the IOOC ha[d] been unable to reach a decision within a reasonable time and [he would] then seek all legal remedies available".

4. Having received no reply, the complainant filed a complaint on 7 December 2005 asking the Tribunal to set aside the implicit decision to refuse payment of his repatriation grant, his travel expenses back to his country and his removal expenses. He asks it to order payment of those sums and to award him compensation for the moral injury he considers he has suffered.

5. The defendant organisation, which recognised the Tribunal's competence by a letter of 19 September 2003 addressed to the Director-General of the International Labour Office (ILO), expressly recognises that the Tribunal is competent to hear this case. Although the complainant's appointment with the IOOC ended prior to that recognition, which was approved by the ILO's Governing Body at its 288th Session in November 2003, the Tribunal considers that it may properly hear the present case brought by a former official of the IOOC who, subsequently to that recognition, has alleged a breach of statutory provisions.

6. The defendant considers the complaint irreceivable for two reasons. It contends, firstly, that the complainant has not exhausted the available internal remedies and, secondly, that in any case his complaint is time-barred.

7. Regarding the first of these points, it is true that the complainant did not appeal to the IOOC's Joint Committee, whereas according to Article 64 of the Staff Regulations – which was applicable at the date his complaint was filed and on which the IOOC relies – members of the Executive Secretariat appealing against decisions concerning them individually "must appeal first to the Joint Committee" before appealing to the Tribunal. The complainant argues that this provision is not applicable to him since, according to the final paragraph of Annex I to the current Rules of Procedure of the IOOC, the Executive Director may appeal directly to the Administrative Tribunal. In the Tribunal's opinion, however, this exemption from the internal appeal procedure applies only to the Executive Director in office. The complainant further cites Judgment 2232, in which the Tribunal held that the executive head of an international organisation could challenge a decision to terminate his appointment without first appealing to the internal appeal bodies. That solution, which may be explained by the fact that it would have been inappropriate, in such a case, to have a decision of the Conference of the States Parties reviewed by an internal body, cannot be applied in the present case where it is simply a matter of assessing the entitlement of a former official to certain benefits. However, under the applicable rules internal remedies are available only to members of the Executive Secretariat, that is, to serving officials. As the Tribunal indicated in Judgments 1399 and 2461, if the right to file an internal appeal is enjoyed only by serving officials, it follows that former officials have no access to internal remedies and may appeal directly to the Tribunal, which is open to any official lodging a complaint alleging non-observance of the terms of his contract or the rules that apply to him, "even" – as stated in Article II(6)(a) of the Tribunal's Statute – "if his employment has ceased" (see Judgment 1399, under 7). The complainant, a former official of the IOOC was therefore entitled to appeal directly to the Tribunal.

8. The defendant's second objection to receivability is based on the argument that the complainant in any event had only ninety days under Article VII(2) of the Statute to file a complaint with the Tribunal challenging the decision contained in the letter of 19 December 2003, which must be considered as the final decision rejecting his request. This argument fails since, even if by its wording the decision of 19 December 2003 could be regarded as final, the letter of 12 February 2004 informing the complainant that his request was being submitted for legal advice and that he would be "informed of the decision that will ultimately be taken by the Members" necessarily implied a revocation of the negative decision of 19 December 2003. It was therefore reasonable for the complainant to await notification of an explicit decision following consideration of his case, which he did – as mentioned earlier – whilst sending many fruitless reminders to the Administration. Furthermore, the organisation's failure to reply, after informing the complainant that he would be notified of the decision that was to be taken, could not be construed as an implicit decision rejecting his request, against which the complainant would have had to appeal within the applicable time limits. This failure to reply could not indefinitely paralyse the exercise of the complainant's right to appeal to the Tribunal. Judgments 1528 and 2011 cited by the defendant concern the irreceivability of appeals against decisions that confirm earlier decisions which have become final, and they have

no bearing on this case. The complainant was therefore quite right to notify the defendant on 23 August 2005 that, if he did not obtain a final decision within two months, he would seek whatever legal remedies were available to him. The complaint must consequently be regarded as impugning an implicit negative decision resulting from the organisation's failure to reply to his request of 23 August. It is receivable.

9. On the merits, the complainant endeavours briefly to show that he satisfies the conditions for payment of the sums he is claiming. The defendant equally briefly replies that the complainant has never proved that he fulfilled the conditions laid down in the relevant provisions of the Staff Rules to qualify for the repatriation grant and for the refund of his travel and removal expenses. It also accuses the complainant of having not even specified the amounts to which he considers himself entitled. On this last point, the IOOC acknowledges in its surrejoinder that the complainant referred in his rejoinder to letters – in particular his letter of 25 November 2003 – in which he quoted detailed figures for his three claims, but paradoxically it expresses surprise at the fact that it had “to wait until the rejoinder to know the precise sums claimed” by the complainant.

10. The Tribunal considers that, even though the complainant has an obligation to supply the IOOC with the necessary evidence – showing in particular that his repatriation to his home country did in fact occur and, as the case may be, that he incurred expenses on that occasion – it is up to the Administration to decide, on the basis of the applicable regulations and whatever information it has available regarding the situation of its former official, whether or not he is entitled to the benefits he is claiming and, if so, to settle them. The submissions in this case, including the last items produced by the complainant which the defendant views as having no evidential value, are not sufficient for the Tribunal to give a ruling on that point without an administrative inquiry, which only the organisation can undertake. It is the latter's prolonged failure to reply which prevented the complainant from exercising his rights, after being notified on 12 February 2004 that a decision would “ultimately” be taken, and the defendant has an obligation to deliver a reasoned decision on the merits of his request. The complainant is therefore right to contend that this refusal to respond to his request, which was a breach of the commitments that were made, was unlawful and cannot be maintained. The Tribunal will therefore set aside the implicit negative decision resulting from the organisation's failure to respond to the complainant's request. It will send the matter back to the IOOC for the latter, after considering the merits of the complainant's request in accordance with the applicable rules and whatever information he has supplied, to take an explicit, reasoned decision regarding the benefits he is claiming.

11. The complainant is seeking compensation for moral injury arising, he claims, from the state of uncertainty in which he has been kept regarding the outcome of his request and from a breach of the principle of legitimate expectations. Contrary to the defendant's version, this claim, though not in explicit form, was already put forward in the complaint. In view of all the circumstances of the case, the Tribunal shall award the complainant the sum of 1,000 euros in compensation for moral injury caused to him by the organisation's attitude.

12. As he partially succeeds, the complainant is entitled to costs, which are set at 2,000 euros.

DECISION

For the above reasons,

1. The implicit decision resulting from the IOOC's failure to respond to the complainant's request is set aside.
2. The case is sent back to the IOOC for the complainant's entitlements to be determined in accordance with paragraph 10 above.
3. The IOOC shall pay the complainant the sum of 1,000 euros in compensation for moral injury.
4. It shall also pay him 2,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 15 November 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2007.