

## SEVENTIETH SESSION

### ***In re* EL GHABBACH**

#### **Judgment 1079**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Mahmoud el Ghabbach against the International Criminal Police Organization (Interpol) on 12 February 1990, Interpol's reply of 9 May, the complainant's rejoinder of 14 June and the Organization's surrejoinder of 12 September 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 23 and 52(3) of the Staff Regulations and Article 103(3) and Appendix VII of the Staff Rules of Interpol;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant served on the staff of Interpol, first as a translator and later as a reviser, from 1 April 1981 to 16 June 1989, when he was dismissed on the transfer of the Organization's headquarters from Saint-Cloud to Lyons.

On 19 September 1988 the Secretary General sent him and the other revisers of the language sections a minute setting out plans for reform of the Language Department. The minute said that in future there was to be only one post for a reviser in each of the sections and after the move to Lyons competitions would be held to fill those posts; revisers who were unsuccessful in the competitions would be offered translator's posts. The complainant acknowledged receipt of the minute on 18 October 1988 saying that since it was only a proposal he was merely reserving his rights for the time being, including the right to appeal against any decision that might be to his detriment if the proposal went through.

In keeping with Article 2(3) of Section 2 of Appendix VII to the Staff Rules an individual decision was communicated to the complainant on 12 October 1988 to abolish his post on 19 June 1989 and create an identical one in Lyons to be offered him. He was given until 18 December 1988 as the "period for consideration"; if he refused the transfer he would have his appointment terminated and be given six months' notice of termination, those six months to start on the day after the date of expiry of the "period for consideration" and expire on the date of abolition of his post. If, after accepting transfer to Lyons, he changed his mind, Article 2(6) would then apply: he would not lose the benefit of any "period of notice of termination of appointment" which would still have been left to run "if he had not initially accepted his transfer". Under the heading "Grounds" the text declared that by virtue of Articles 1 and 2(1) of Section 2 of Appendix VII he had an acquired right to keep Saint-Cloud as his duty station and that the length of notice was determined according to Article 5 of Section 1 of Appendix VII and a Staff Instruction of 11 December 1974. Article 5 provides that an official "who took up his post before the date of entry into force of the Staff Regulations and the present Rules" - as the complainant did - shall be entitled to the period of notice applicable to him "under the terms of his employment agreement or of any Staff Instructions issued before that date". The Staff Instruction of 1974 increased the period from three to six months for officials with over five years' seniority.

On 9 November 1988 the complainant filed a "request for review" of the decision of 12 October 1988. He alleged, among other things, breach of his right to a period of notice starting at the date at which he might change his mind about acceptance of transfer, and he reserved his right to appeal against any further decision to his detriment. By a letter of 16 December 1988 the complainant notified to the Secretary General his consent to the transfer but said he reserved his rights. On 8 February 1989 the Secretary General rejected his request for review as irreceivable on the grounds that the decision of 12 October had caused him no injury. In a letter of 31 May 1989 the complainant informed the Secretary General that he had changed his mind about the transfer and was asserting his acquired right

to his duty station. By a decision of 5 June 1989 the terms of the decision of 12 October 1988 were applied to him. On 13 July 1989 he sent the Secretary General a request for review of the decision of 5 June. The Secretary General rejected the request by his decision of 15 November 1989, the decision impugned.

B. The complainant maintains that the impugned decision was in breach of his acquired rights. He explains that he changed his mind about transfer largely because of plans to restructure the Language Department and consequent uncertainty about his career prospects. One outcome of the abolition of his post was his downgrading, and that was in breach of the promise in the letter of 12 October 1988 - of which he formally took note in his letter of 16 December 1988 - to create an identical post for him in Lyons and of Article 52(3) of the Staff Regulations, which safeguards the rights officials acquired before the Staff Regulations came into force. There was also breach of Article 103(3) of the Staff Rules in that the period of notice was reckoned in his case, not "from the date on which the decision to terminate" his appointment was notified, but from the day after the date of expiry of the "period for consideration". That was contrary to the rule against retroactivity in that the Organization later converted into a period of notice of termination the time that elapsed from the date of expiry of the period for consideration up to the date at which he asserted his acquired right to his duty station.

The complainant submits that the Organization adopted the Staff Rules and the appendices thereto unilaterally: the staff representatives on the joint advisory committee set up to look at the drafts of the Staff Regulations and Staff Rules were given little time to do so.

He claims (1) compensation in lieu of notice of termination equivalent to six months' gross salary, plus fifteen days' leave, (2) interest reckoned from the date of termination at the prevailing rate in France and (3) an award of 50,000 French francs in costs.

C. In its reply Interpol submits that the complainant's initial consent to his transfer to Lyons cancelled his acquired right to his duty station at Saint-Cloud. By later changing his mind he unilaterally broke his contract of service, thereby causing injury to the Organization since it had to look belatedly for someone to take over from him. Yet by virtue of Article 2(6) of Section 2 of Appendix VII to the Staff Rules the Organization did him the favour of letting him change his mind. According to 2(6) when someone changes his mind about going to Lyons his status is the same as it would have been had he refused the offer of transfer by the date of expiry of the period for consideration. So he has to work out the period of notice, which is deemed to have started at the same date at which it would have started had he not first consented to the transfer.

That is why the complainant did not work out a shorter period of notice but completed the six-month period that ought to have begun on the day after the date of expiry of the period for consideration. There was therefore no breach of his acquired right to six months' notice of termination. The special procedure that was followed in his case constitutes a derogation from Article 103(3) of the Staff Rules and was allowed because of the peculiar importance of the transfer of headquarters.

The impugned decision was not in breach of the rule against retroactivity since it gave effect to a provision of the Staff Rules that had come into force long before the complainant changed his mind about the transfer. It is unclear how the plans for reform of the Language Department could support a claim to compensation in lieu of notice of termination. The sole purpose of the letter of 19 September 1988 was to convey information which could help the revisers in making up their minds about transfer. Besides, the plans have not yet been carried out and the promise the Organization gave of an identical post in Lyons does not rule out abolishing posts later for the sake of greater efficiency.

Lastly, Interpol denies that the Staff Rules were adopted unilaterally: the staff representatives were duly consulted through the joint advisory committee.

D. In his rejoinder the complainant seeks to refute each of the pleas in the Organization's reply. He contends that his qualified consent to transfer did not cancel the acquired right to his duty station at Saint-Cloud which, moreover, he asserted in his letter of 31 May 1989. It was not a case of "letting him change his mind" about transfer. He neither broke his contract of service nor harmed Interpol's interests. Being a mere proposal in the guise of a decision, the so-called "decision" of 12 October 1988 amounted to misrepresentation. He discusses the matter of the starting date of the period of notice. He took note by letter of 16 December 1988 of the Secretary General's offer of an identical post in Lyons, which the Organization itself referred to as a promise, and contends that it was the plans for reform, among other things, that put him off going to Lyons. He argues that Interpol shirked its

obligations by unilaterally bringing in a new set of rules more to its liking.

E. In its surrejoinder the Organization states that, in the light of Judgments 1023 (in re O'Sullivan 2) and 1024 (in re Burnett 2 and Vicente-Sandoval 2), which were about complaints showing the same cause of action, which quashed the decisions impugned and which referred the complainants to the Organization for determination of the compensation due, it sought to settle with the complainant, but in vain. If the Tribunal makes a similar ruling on this case the Organization would like it to set the amount of compensation, not to exceed the amount equivalent to six-and-a-half months' salary that he claims. The amount should take account of the terminal payments already made to him and of the fact that he sustained little material injury since he was free to stay on either as a reviser if he passed the examination or, if not, as a translator.

#### CONSIDERATIONS:

1. Interpol, an organisation that has its headquarters in France, decided in 1988 to move from Saint-Cloud to Lyons, and it did so in June 1989. It invited its staff to agree to the transfer on terms that were set out in the Staff Regulations and Staff Rules, in particular in an appendix to the Rules that contained special provisions for the purpose. The staff were of course free to refuse and in that event provision was made for termination.

2. Like others the complainant turned the offer down, and his case is similar to complaints which eight other Interpol officials filed and on which the Tribunal ruled in Judgments 1019 to 1024 of 26 June 1990 and, more particularly, to Mr. O'Sullivan's (Judgment 1023).

The complainant was, like Mr. O'Sullivan, a reviser in the Language Department, and had been since 1 April 1981.

The complainant got from the Secretary General of Interpol a decision dated 12 October 1988 informing him that at 19 June 1989 a post which would be identical to the one he had, and which he was offered, would be created at Lyons. He was allowed until 18 December 1988 to make up his mind. In a letter of 16 December he accepted the transfer, albeit with reservations. A few months later, like Mr. O'Sullivan, he changed his mind: by a letter of 31 May 1989 he turned down the offer. On 5 June 1989 the Secretary General acknowledged his letter and dismissed him at 19 June. He thereupon made a request for review, and the outcome was that the Secretary General confirmed the date of notice of termination and refused to pay him any indemnity against the period of notice. That is the decision impugned, and there is no objection to receivability.

3. Before getting official notice of the transfer and the arrangements to be made for the purpose, the complainant had received a letter of 19 September 1988 from the Secretary General announcing his intention of reforming the Language Department after the move to Lyons: each language section was to have only one reviser; to reduce the number of revisers competitions were to be held under the auspices of an independent jury; and revisers who proved unsuccessful would be offered posts as translators.

The complainant acknowledged receipt of that letter on 18 October 1988. He observed that since it spoke only of intentions he could not yet appeal, but he reserved his right to appeal against any decision that might be to his detriment. In conclusion he acknowledged the promise to offer him a post as translator if his own post were abolished.

No evidence before 31 May 1989 makes further reference to the matter. In a letter he wrote at that date to the Secretary General the complainant refused transfer to Lyons. He cited, without explanation, personal and family reasons and contended that both the change of duty station and uncertainty over the plans for reform announced on 19 September 1988 were detrimental to him. He pointed out that he had had no answer to his letter of 18 October 1988 and that his career prospects would suffer if he lost his post as reviser.

He adduces the same argument in his complaint. His case is that in doing away with his post Interpol acted in breach of Article 52(3) of the Staff Regulations, which safeguards the rights acquired by staff before the text came into force. It also thereby broke the promise of an identical post at Lyons which the Secretary General made in his letter of 12 October 1988 to staff announcing the transfer and assuring them that it would have no other consequences.

4. The reasoning is the same as Mr. O'Sullivan's and there was a ruling on it in Judgment 1023. So the Tribunal need only reaffirm that ruling, to which it has nothing to add, either on issues of fact or on issues of law, but this time it will also rule on the matter of compensation, which it did not take up in its earlier judgment.

5. There has to be good faith in applying the rules. By its letter of 19 September 1988 Interpol warned the complainant of likely changes in his status and throughout the period of transition it failed to explain or alter its position. So he had good reason to infer that if he consented to transfer he would have to face the uncertainty of a competition and the risk of downgrading. The safeguards embodied in the material rules were not fully respected.

The impugned decision gave effect to Article 2 of Section 2 of Appendix VII to the Staff Rules and to the decision of 12 October 1988 about notice of termination. But the conditions laid down therein were not fully met, and Interpol therefore acted in breach of the complainant's rights as prescribed in Article 23 of the Staff Regulations.

6. The conclusion is that the ruling on Mr. O'Sullivan's complaint holds good for this one.

7. In its surrejoinder Interpol asks the Tribunal, should it make the same ruling as before, to set the amount of compensation due to the complainant.

He seeks an award of compensation in lieu of notice of termination and compensation for 15 days' accrued annual leave.

The Tribunal cannot determine the amounts due. Before Interpol filed its surrejoinder the parties had made no submissions on the issue and the complainant has not had the opportunity of answering the Organization's latest brief. So the Tribunal can only rule that Article 2 of Section 2 of Appendix VII was misapplied. It refers the complainant to Interpol for determination of the amount of the compensation which he is entitled to, and which shall bear interest at the rate of 10 per cent a year from the date of termination.

The Organization shall also pay him 10,000 French francs in costs.

#### DECISION:

For the above reasons,

1. The impugned decision is set aside.

2. The complainant is referred to Interpol for determination of the compensation he is entitled to, the amount to bear interest at the rate of 10 per cent a year from the date of termination.

3. The Organization shall pay him 10,000 French francs in costs. In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
Mella Carroll  
A.B. Gardner