

NINETY-SIXTH SESSION

Judgment No. 2294

The Administrative Tribunal,

Considering the complaint filed by Mr S. S. against the International Criminal Police Organization (Interpol) on 21 June 2002 and corrected on 2 September, the Organization's reply of 18 December 2002, the complainant's rejoinder of 8 April 2003 and Interpol's surrejoinder of 30 June 2003;

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 complainant, a Belgian national born in 1949, joined Interpol in 1985, on detachment from his country's administration, as liaison officer at grade B5. In 1994 his fixed-term detachment was converted to an indeterminate detachment. At the time of the material facts, he was Assistant Director for Communications and Public Relations and held grade A2.

At the start of 2001, the Secretary General, who had taken office in November 2000, announced that he intended to reorganise the General Secretariat. The general budget for the project was approved by Interpol's Executive Committee in March 2001 and an announcement was made to staff on 12 September 2001 regarding its implementation.

That same day, the complainant was informed orally that his post was being suppressed. On 18 September he had an interview with the Secretary General and, by letter of 19 September, the Secretary General notified him of his decision to terminate his appointment as from that date, because his post had been suppressed. As indicated in that letter, he was granted a six-month notice period up to 18 March 2002; during that time the complainant was to be "assigned special tasks related to the duties of Technical Adviser in the Cabinet", but it was pointed out in the letter that "this assignment [did] not mean that a new post [had] been created".

On 16 October the complainant sent the Secretary General a request for review of the above decision. He explained that the decision had caused him considerable injury, from both a professional and a moral point of view, whereas he could "legitimately have expected [his] career in the Organization to progress", and requested compensation for this injury. The Joint Appeals Committee, to which the Secretary General had referred the matter on 19 November 2001, gave an opinion on 6 March 2002, in which it found that the procedure was tainted with two "anomalies". Moreover, it found that Interpol had suppressed two posts and had created two others, but regretted that, "despite [the Committee's] request to that effect, it had been unable to obtain the job descriptions for the new posts". The Committee recommended that the Secretary General consider the complainant's appeal well founded, grant him "indemnities on termination of appointment" and use his discretionary power to apply Article 61(6) of the Staff Rules⁽¹⁾ to the complainant's case. On 27 March 2002, the Secretary General notified the complainant that he had decided to dismiss his request for review. That is the impugned decision.

B. The complainant objects to the belated referral of his case to the Joint Appeals Committee and to the fact that a communication from his counsel to the Committee was opened by the Organization's acting legal adviser.

He refers to the "special nature" of his contractual ties with Interpol. Given that he held an indeterminate

appointment, he could reasonably expect to stay on and, considering his age, to end his career with the Organization.

He maintains that the suppression of his post was spurious and that in fact he had merely changed positions with Mr H., who previously worked as Technical Adviser in the Cabinet of the Secretary General. In his view, he was transferred for the period of notice to Mr H.'s post, which, contrary to the allegations made by the Organization in the course of the internal procedure, was never suppressed. Meanwhile, his own post, with new duties added, had been assigned to Mr H. under the title of Assistant Director responsible for the Communications and Publications Office. In support of his arguments, he points out that the Organization has not furnished any written evidence - such as descriptions of the jobs concerned - to contradict his suspicions.

The complainant contends that he was denied the procedural safeguards to which he was entitled. Even if his post had genuinely been suppressed, at the time that decision was taken there were four other vacancies for which he possessed the required qualifications; in addition, he could have been assigned to one of the many posts which were created or which fell vacant subsequently.

Lastly, he alleges that both he and his family have suffered serious moral and financial injury. The members of his family were "shaken" and their health was affected. For his part, he was reinstated in the Belgian police force at the grade he held when he joined Interpol, so that his pay is only about one third of what he earned in the Organization.

The complainant seeks the quashing of the impugned decision and either reinstatement with an indemnity payment of 30,000 euros by the Organization in compensation for the moral injury he and his family have suffered or, failing that, payment by the Organization of a sum equivalent to five years' gross salary, with all related benefits, in compensation for injury under all heads. He also claims costs.

C. In its reply Interpol maintains that the complainant's claim to be reinstated is not receivable because he did not exhaust internal remedies. Since this main claim is irreceivable, so too is the claim for payment of a sum equivalent to five years' gross salary. In the defendant's view, the only receivable claim is that for the payment of 30,000 euros on grounds of moral injury.

The Organization recognises that it was slow in bringing the case before the Joint Appeals Committee but maintains that the delay did not adversely affect the complainant and that the subsequent procedure was conducted strictly according to the rules. The opening of the mail sent to the Joint Appeals Committee may be explained by the fact that, since it was addressed to the unnamed Chairman of the Committee, it was delivered to the Legal Counsel's Office. The Acting Legal Counsel, who was aware that another internal appeal was pending which the Chairman of the Committee in charge of the complainant's case had declined to deal with, decided to open the letter in order to identify the addressee. That act was not at all detrimental to the complainant, however.

Interpol does not deny that the complainant held an indeterminate appointment, but argues that "this situation was most unusual, to say the least, and was due to political reasons".

It maintains that the complainant was assigned to a non-existent post created on a temporary, ad hoc basis to give him an opportunity to work during his period of notice, in accordance with his own wishes. The organisation chart it submitted to the Joint Appeals Committee shows both the suppression of Mr H.'s previous post and the creation of the post of Assistant Director for the Communications and Publications Office. Considering the scope of the reorganisation exercise undertaken at the General Secretariat, the Administration could hardly be expected to issue individual decisions for each case.

The Organization explains that, despite his professional abilities, the complainant was not qualified for any of the four posts to which he refers. It adds that those posts were intended for officials who were either seconded or under contract and that, unless he resigned from his national administration, the complainant would not be eligible. As for the vacancies notified after the termination of his appointment, the complainant never applied. The Organization was therefore unable to consider an application which did not exist, especially since the complainant had not asked to be reinstated.

It points out that it was thanks in particular to the "special care" it took "to support his return to his administration" that the complainant obtained a position as liaison officer in Rome.

Lastly, it contends that the administrative decisions taken by an organisation cannot be made to depend on their potential effects on the families of the officials concerned.

D. In his rejoinder the complainant argues that the general wording of the claims he put forward in his request for review of 16 October 2001 shows that he was open to any form of compensation, including the possibility of continuing to serve with the Organization.

He maintains that the suppression of his post was spurious and comments that an organisation chart is not sufficient to establish a clear comparison of the content of the posts which have supposedly been eliminated and created. Only job descriptions could serve that purpose.

The complainant notes that, although the Organization has admitted that four posts were vacant when the decision was taken to suppress his post, and indeed that several vacancy notices have since been published, it does not put forward any convincing reasons why he was not given one of the posts in accordance with the principle of priority reassignment. He explains that if he did not apply for any of the vacancies, it was because he thought he had no chance of being selected. The situation would have been quite different had the Organization suggested in good faith that he should apply for one of them.

The complainant asserts that it was not thanks to the Organization that he obtained an assignment at the Belgian Embassy in Rome. In any case, that assignment has been a real step back in his career, since his current position is lower than that of Assistant Director he occupied in Interpol and he earns about 33 per cent less than he did with the Organization.

E. In its surrejoinder Interpol points out that it is not at liberty to decide alone whether to reinstate the complainant in the Organization. Since the complainant is an official of a national administration, namely the Belgian Federal Police, and since the Belgian authorities have agreed to take him back, he could not be reinstated in the Organization without the consent of those authorities.

It maintains that the complainant's post has been well and truly suppressed and explains that it did not produce the job description for the new post because it was not ready at the time of the material facts.

According to the Organization, the Secretary General "unequivocally" invited the complainant to apply for the vacant posts.

Lastly, Interpol comments that it would never interfere in the workings of a national administration in order, for instance, to obtain a higher salary for the complainant or to further his career.

CONSIDERATIONS

1. The complainant, who was working at Interpol on detachment from the Belgian police force, was informed, by decision of 19 September 2001, that his appointment was to be terminated, in accordance with Article 36(3)(d) of the Staff Regulations, on account of the suppression of his post as Assistant Director for Communications and Public Relations, and that in accordance with Article 37(2) of those Regulations he was entitled to a period of notice of six months, starting on 19 September 2001 and ending on 18 March 2002. During that period, he was to be assigned special tasks related to the duties of Technical Adviser in the Cabinet of the Secretary General. It was made clear that this assignment, which was intended only to allow him to complete the period of notice, did not signify that a new post had been created. He was also told that, pursuant to Article 38(d) of the Staff Regulations, he would not be entitled to an indemnity on termination of appointment.

The complainant acknowledged that decision without prejudice to his rights.

2. On 16 October 2001 he submitted a request for review of the decision of 19 September to the Secretary General. The latter referred the matter to the Joint Appeals Committee by memorandum of 19 November 2001.

On 7 March 2002 the Committee informed the Secretary General of its opinion dated 6 March, in which it recommended that he should:

"- Consider the appeal well founded against the decision of 19 September 2001, which is flawed by an error of law needing to be set right in accordance with the terms of Articles 36(3)(d) and 38 of the Staff Regulations;

- Grant the complainant indemnities on termination of appointment [...];

- Use his discretionary power to apply Article 61(6) of the Staff Rules to the complainant's case."

On 27 March 2002 the Secretary General notified the complainant of his final decision to dismiss his request for review. That is the impugned decision.

3. The complainant seeks the quashing of the final decision of 27 March 2002; reinstatement as from the date of the termination of his appointment, with payment of an indemnity of 30,000 euros in compensation for the moral injury he and his family have suffered or, failing that, payment by the Organization of a sum equivalent to five years' gross salary, with all related benefits, in compensation for injury under all heads; and an award of costs.

Receivability

4. The Organization submits that the claim for reinstatement, being a new claim, is not receivable under the terms of Article VII(1) of the Statute of the Tribunal.

It contends that the claim for the payment, failing reinstatement, of a sum equivalent to five years' gross salary is likewise irreceivable under the same provision, since its receivability will depend on that of the main claim. The only claim which is receivable, according to the Organization, is that for the payment of the sum of 30,000 euros.

This objection to receivability fails since the claims for reinstatement or for compensation for injury do not exceed the scope of those submitted during the internal appeal procedure (see Judgment 429). In the brief he initially submitted to the Joint Appeals Committee, the complainant had stated, referring to Article 124 of the Staff Rules, that he should be considered as automatically reinstated with the same status and duties he held prior to the decision of 19 September 2001 and that the pleas he was submitting to the Committee were to be considered subsidiary. The fact that he did not apply to be reinstated in the course of the internal procedure cannot therefore be held against him. Furthermore, even if he had not asked to be reinstated, the complainant would not on that account have lost his right to claim financial compensation.

The Merits

5. It should be recalled at the outset that, at the Organization's request, the complainant had been since 1994 on detachment of indeterminate duration. This meant that he enjoyed the benefits of an indeterminate appointment, thanks to which, in his relations with the Organization, he was covered by all the guarantees provided in the Staff Regulations and Staff Rules for officials on indeterminate appointments. The Secretary General could terminate his appointment only in the cases provided for in Article 36(3) of the Staff Regulations. Pursuant to paragraph 3(d) of that article, the Secretary General may take such a decision "if, following [...] suppression of the official's post [...], there is no vacant post which is to be filled and for which the Secretary General considers that the official concerned has the requisite qualifications".

6. The complainant's main plea is that the suppression of his post was spurious. He alleges that he simply switched posts with another official who had been serving until then as Technical Adviser in the Cabinet of the Secretary General.

He adds, with reference to the case law (see Judgment 2092), that the Organization has not shown that the number of staff in the affected department was actually reduced.

7. As the Tribunal has consistently held, the decision to suppress a post lies within the discretion of the executive head of an organisation (see, for example, Judgment 139). It follows that the Tribunal will not interfere with such a decision unless it is tainted by procedural irregularities or by illegality or is based on incorrect facts, or unless essential facts have not been taken into consideration, or again, unless conclusions which are clearly false have been drawn from the documents in the dossier.

8. In this instance, several aspects of the case, in particular the absence of a new job description, which allegedly was not ready at the time of the material facts, and the exclusive reliance on an organisation chart without reference

to a decision of any kind to justify the suppression of the complainant's post, cast doubts on the genuineness of that post suppression. This is implied, moreover, by the findings of the Joint Appeals Committee.

But even if the Tribunal accepts that the suppression of the complainant's post was genuine, that fact alone should not necessarily have led to his departure from the Organization.

9. Under Article 36(3)(d) of the Staff Regulations, the Secretary General may decide to terminate the appointment of an official in the event that the latter's post is suppressed only if there is no vacant post which is to be filled and for which the Secretary General considers that the official concerned has the requisite qualifications.

Those provisions do not authorise the Secretary General to decide arbitrarily that there is no post for which he considers the official concerned has the requisite qualifications. Rather, they require him to undertake appropriate enquiries in order to identify vacant posts, or posts falling vacant within a certain time, depending on the circumstances, and to explain, if such posts exist, the reasons why the official concerned is not suitable to perform adequately the duties attached to those posts.

The Secretary General should have terminated the complainant's appointment, therefore, only after completing all appropriate enquiries.

10. It is plain from the evidence that, in the decision of 19 September 2001, the Secretary General simply indicated that at the time the decision was taken there was no vacant post in the General Secretariat for which the complainant had the requisite qualifications, without giving any further details. In its submissions, Interpol merely says that only four posts were vacant at the time of the material facts and that the Secretary General, in accordance with Article 101 of the Staff Rules, considered that despite his professional qualities the complainant did not have the requisite qualifications to occupy any of the four posts. It adds that the posts were intended for officials either on secondment or under contract and that the complainant could not have held a post under contract unless he had resigned from his national administration.

It adds that although the complainant was entitled to apply for posts which fell vacant after his appointment had been terminated, he did not do so. Had he applied, his application would have been given priority.

11. The Tribunal finds that while the Organization recognises that four posts were vacant at the time of the material facts and could have been offered to the complainant, the arguments it puts forward to justify the Secretary General's refusal to appoint the complainant to one of them are open to criticism.

Insofar as it merely asserts that the complainant did not have the requisite qualifications to occupy one of those posts, without providing any evidence in support of that conclusion regarding an official who served the Organization for 16 years and always gave his supervisors satisfaction, the Organization does not allow the Tribunal any means of verifying whether the decision was lawful.

Furthermore, the Tribunal does not consider the distinction, drawn by the Organization to justify its position, between posts under contract and posts occupied by detached officials to be relevant. As indicated above, in view of his particular status as an official detached for an indeterminate period, the complainant found himself, as far as his relations with the Organization were concerned, in the same situation as officials on an indeterminate appointment. There was therefore no reason not to offer him a post under contract in order to enable him to remain in the Organization.

With regard to the posts which fell vacant after the material facts, the Tribunal considers that it was up to Interpol to make proposals to the complainant and to give some preference to his application. But this it did not do.

12. It must be concluded from the above that the decision taken on 19 September 2001 breached the provisions of Article 36(3)(d) of the Staff Regulations and must therefore be set aside.

13. The complainant being a Belgian civil servant on detachment, the Tribunal does not consider it appropriate to order his reinstatement, since the Organization cannot act alone in that respect. As he has returned to his national administration, the complainant can no longer be reinstated in the Organization without that administration's consent.

14. With regard to the alternative claim, which would be for the complainant to be paid a sum equivalent to five

years' gross salary in compensation for injury, while the Tribunal agrees in principle that compensation should be paid, it considers the amount claimed to be excessive. The complainant, who it is true has rejoined his national administration and now serves as liaison officer with the Belgian Embassy in Rome, has undoubtedly suffered both material and moral injury as a result of the impugned decision.

In the light of these factors and the complainant's status as a detached official, the Tribunal considers it fair to award him the sum of 40,000 euros in compensation for injury under all heads, excluding compensation for the injury allegedly suffered by his family as a result of the decision terminating his appointment; this is because the relevant arguments fail to establish a causal link between the injury suffered by his family and his administrative situation.

15. The award of an indemnity on termination of appointment is not in this case justified. The complainant, a detached official, who had the possibility of rejoining his national administration within a reasonable time, and who did so, was not entitled to that indemnity according to Article 38(d) of the Staff Regulations.

16. With regard to the grievance related to undue delays in the internal procedure, the Tribunal considers that, even though such delays are to be regretted, they did not cause the complainant any injury warranting compensation.

17. As he succeeds in part, the complainant is entitled to costs set at 4,000 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The Organization shall pay the complainant the sum of 40,000 euros for injury under all heads.
3. It shall pay him 4,000 euros in costs.
4. The complainant's other claims are dismissed.

In witness of this judgment, adopted on 13 November 2003, Mr James K. Hugessen, Vice-President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

(Signed)

James K. Hugessen

Jean-François Egli

Seydou Ba

Catherine Comtet

1. Article 61(6) reads as follows: "If the reasons for the termination of his appointment are not attributable to the Organization's official concerned, the Secretary General, exercising his discretionary power, may decide in exceptional circumstances and subject to budgetary limits, to grant the official concerned a supplementary indemnity on termination of appointment, taking into account the particular circumstances relating to the personal situation of the official concerned, such as his family commitments or the fact that, although relatively advanced in years, he cannot yet claim his retirement entitlements."

