

NINETY-FIFTH SESSION

(Interlocutory Order)

Judgment No. 2248

The Administrative Tribunal,

Considering the second complaint filed by Mr M. J. against the International Criminal Police Organization (Interpol) on 12 September 2002 and corrected on 9 October, the Organization's reply of 20 December 2002, the complainant's rejoinder of 21 February 2003 and Interpol's surrejoinder of 17 April 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. Some of the facts relevant to this case are summarised under A in Judgment 2247 delivered this day, to which reference is made. Suffice to recall that by an individual decision of 13 December 2001 the Secretary General sanctioned the complainant - who was Acting Legal Counsel - by means of a written warning with a transfer not resulting in downgrading. The complainant was transferred to the post of Technical Adviser in the Legal Counsel's Office. By a letter of 19 December the complainant tendered his resignation.

On 9 January 2002 the complainant submitted a request for review of the decision imposing the disciplinary measure. On 8 April, referring to procedural irregularities and to an abnormal delay in the communication of documents, he informed the Chairman of the Joint Appeals Committee that he wished to have "no further involvement in what [was] turning into a masquerade from a legal point of view", since he considered that the Committee had seriously failed in its duty to treat the parties equally. He expressed the wish that the Committee should issue an opinion rapidly, and that the Secretary General's final decision should be notified to him without delay. By an individual decision of 18 April, considering that the purpose of sanctioning the complainant had "disappeared" as a result of his resignation, and that it was "not appropriate, from the point of view of the Organization and of the proper use of its limited resources, to maintain the disciplinary sanction", the Secretary General decided to revoke his decision of 13 December 2001. He added, however, that he "consider[ed] that the facts on which the sanction was based exist[ed] and [had] justified the sanction".

In its opinion of 2 August 2002, the Joint Appeals Committee found that, of the three faults which the complainant was accused of having committed (namely: circulation to his staff of an e-mail from the Secretary General marked "private"; disclosure to the Chairman of the Commission for the Control of Interpol's Files of the decision not to renew the latter's term, in breach of a decision taken by the Executive Committee and the Secretary General; and unauthorised communication with a journalist), only the second was founded. However, it considered that the sanction imposed was proportionate to the fault committed and that the decision of 13 December 2001 was well founded. Regarding the compensation claimed by the complainant for the injury he had suffered, the Committee, noting that the decision had since been revoked, referred to Article 156 of the Staff Rules, which provides that the Secretary General may grant compensation to a staff member - on condition that the staff member in question renounces all rights to any subsequent claim to such an indemnity - if, in spite of the annulment of a decision, "the situation of the person concerned cannot be restored to the *status quo ante*". By an individual decision of 19 August 2002, which constitutes the decision impugned in the present complaint, the Secretary General rejected the request for review of 9 January 2002.

B. The complainant maintains the version of the facts presented in his first complaint, to which he refers in

connection with his arguments concerning defects in the internal appeal proceedings, harm to his dignity, moral harassment and "financial strangulation". He considers that his complaint has not become devoid of substance despite the withdrawal of the sanction and asserts that mistaken conclusions were drawn from the evidence on two counts.

Firstly, the second fault of which he was accused by the Secretary General is unfounded. The complainant explains that the Executive Committee had decided, during its 131st session, not to renew the term of the Chairman of the Commission for the Control of Interpol's Files, but that no decision was taken as to how or when the latter was to be informed of this. He points out that the first version of the minutes of that session contains no mention of a decision on that subject - which, had the decision in fact been adopted, would have constituted a gross and highly unusual error on the part of a professional minute-writer - and that the insertion of a paragraph in the second version, at the request of the new Acting Legal Counsel, on the day before the official notification of the Secretary General's criticisms, "seems remarkably well-timed". He produces documents to support his affirmation that this second version does not match his recollection of the facts, nor indeed that of other colleagues, and observes that the substitute Chairman of the Joint Appeals Committee stood down on the grounds that he had been a witness to facts which were liable to be disputed during the internal appeal. He therefore asks the Tribunal to order the defendant to produce recordings of the discussions of the Executive Committee at its 131st and 132nd sessions, as well as a written statement by the substitute Chairman of the Joint Appeals Committee providing details of the facts which led him to stand down.

Pursuing his argument, the complainant points out that even if such a decision had been taken, which he denies, the sanction was disproportionate in relation to the alleged fault. The Joint Appeals Committee disregarded the circumstances, and particularly the fact that the complainant's attitude had helped to resolve an extremely tense situation caused by the way in which the Secretary General had treated the Chairman of the Commission for the Control of Interpol's Files; the complainant produces a written witness statement. He also considers that the true sanction was not the written warning with a transfer not resulting in downgrading, but "the decision to assign him, against his will, to a post under the hierarchical authority of a person whom he had previously supervised, who had immediately been given a two-grade promotion". That, he submits, was a measure "causing serious harm to his reputation and dignity" and constituting an infinitely more severe disciplinary sanction.

Referring to the comments he made on this issue in his first complaint, the complainant states that he suffered considerable moral and financial injury. He seeks the annulment of the impugned decision, damages equal to 12 months of his last gross salary, including the corresponding allowances, and costs.

C. Interpol likewise refers expressly to its written submissions concerning the first complaint. It considers that the complainant abusively pursued the proceedings after the withdrawal of the sanction by the decision of 18 April 2002. It argues that the complaint is irreceivable, since the decision of 9 January 2002 by which the complainant did not need to report for duty during his notice period, and that of 18 April withdrawing the decision by which he was sanctioned, answered his request for review of 9 January 2002. Those two decisions have not been challenged and have therefore become final. The impugned decision of 19 August 2002 merely confirms the former two decisions.

In subsidiary arguments on the merits, the defendant points out that the Joint Appeals Committee, relying on the minutes and audio recording of the Executive Committee's 131st session, established that a fault had been committed by the complainant. It considers that his remarks concerning the addition of a passage are particularly uncalled for, since the minutes in question were approved by the Executive Committee during its 132nd session. It states that the corresponding evidence is available to the Tribunal, but considers that the disclosure to the complainant of a statement by the substitute Chairman of the Joint Appeals Committee would be contrary to the principle of the independence of members of internal committees. Regarding the recollections of the complainant and some of his colleagues, these can be of no help to the complainant insofar as they contradict the minutes. Interpol asserts that the fault committed by the complainant could have had serious consequences for the trust placed by Member States in the Secretariat.

With regard to the proportionality of the sanction, it argues that even an "extremely tense" situation, which remains to be proved, cannot justify the violation of a clear decision of the Executive Committee. The defendant explains that it opted for one of the least severe sanctions provided for in the Staff Regulations, in view of the complainant's family situation. It adds that the complainant was entrusted with important files and that he was eligible, on the same basis as his colleagues, for the rotating supervisory role in the Legal Counsel's Office, although he has never

commented on that possibility. If his reputation and dignity were harmed, which has yet to be established, it was as a result of a disciplinary sanction imposed in respect of a professional fault, and the Organization can hardly be criticised for having taken such a decision. Interpol asserts that the decision of 13 December 2001 never had the effect of placing the complainant under the authority of a person whom he had previously supervised, and that his arguments on this issue are therefore unfounded. Lastly, as in its reply to his first complaint, Interpol states that the only reason for the complainant's resignation was his desire to return to the Council of Europe.

D. In his rejoinder the complainant submits that his complaint is receivable because, for the most part, the claims he put forward in his request for review retain their cause of action.

He states that the deadline for adding corrections to the minutes of the Executive Committee's 131st session was 3 October 2001, and that Mr G., who was then under his authority, had not corrected the point at issue in any way. It was not until 17 October - the day before the Secretary General's criticisms were officially notified to the complainant - that Mr G. had "recovered his 'good memory'". In the complainant's view, these were "strange coincidences". He also contends that the waiving of his notice period was designed to prevent him from meeting members of the Executive Committee. He maintains his request for the production of a written statement from the substitute Chairman of the Joint Appeals Committee and states that there are "serious indications" that the minutes were revised for the sole purpose of lending credibility to one of the criticisms voiced by the Secretary General.

On the proportionality of the sanction in relation to the fault, the complainant considers that the Organization's position is contradictory, since it describes the alleged fault as being extremely serious whereas the sanction imposed is one of the least severe. Moreover, had the fault been extremely serious, it would not have been logical to entrust him with important files. Consequently, he considers Interpol's argument to be unconvincing. He reiterates that he was subjected to a disciplinary sanction infinitely more severe than that which was officially imposed, and which was not provided for in the applicable texts.

E. In its surrejoinder Interpol maintains its position regarding the irreceivability of the complaint. It then recalls the facts and reiterates its arguments. The fault committed could have justified terminating his functions, but by choosing a mild sanction and then withdrawing it following the complainant's resignation, it had wished to protect his interests and to take into account his personal and family situation. It argues that even if the minute in question was amended belatedly, the fact remains that it was approved by the Executive Committee during its 132nd session. Lastly, it accuses the complainant of bad faith and considers that the statement by the former Chairman of the Commission for the Control of Interpol's Files is partial and unreliable.

CONSIDERATIONS

1. The facts of the present dispute are set out in the Tribunal's Judgment 2247 delivered on this day, to which reference should be made.

In his complaint filed on 12 September 2002, the complainant challenges the decision of 19 August 2002 by which the Secretary General of the Organization rejected his request for review of a decision of 13 December 2001 imposing a disciplinary sanction in the form of a written warning with a transfer not resulting in downgrading. The impugned decision was subsequently revoked by the Secretary General's decision of 18 April 2002.

2. The complainant asks the Tribunal to annul the impugned decision and to apply all legal consequences of such annulment, particularly by ordering the Organization to pay him the equivalent of 12 months of his last gross salary, including his allowances, in compensation for the injury he suffered. He also claims costs.

In support of his complaint, the complainant asserts that the impugned decision was flawed, because the Joint Appeals Committee wrongly found that he had committed the second fault of which he was accused by the Secretary General - namely, disclosure to the Chairman of the Commission for the Control of Interpol's Files of an Executive Committee decision concerning him, in breach of instructions given by the Secretary General and by the Executive Committee - before concluding that the sanction imposed was proportionate to the fault thus committed.

3. Interpol objects to the receivability of the complaint. It argues that it is the decisions of 9 January and 18 April 2002 that ought to have been challenged by the complainant before the Tribunal. However, those decisions have become final.

The Tribunal considers that no serious objection to the receivability of the complaint can be raised: not only does the complainant have an interest in obtaining a ruling as to whether the sanction imposed on him, though subsequently withdrawn, was unlawful, but he is also entitled to seek redress in respect of the injury allegedly suffered by him, and the pecuniary claims already submitted to that end remain pertinent.

4. On the merits, the complainant asserts that patently mistaken conclusions have been drawn from the evidence insofar as, in his view, the second fault of which he was accused by the Secretary General was unfounded, contrary to the findings of the Joint Appeals Committee.

He considers that he has not violated any Executive Committee decision obliging him to abstain from informing the Chairman of the Commission for the Control of Interpol's Files of the non-renewal of his term until after his speech to the General Assembly.

The complainant submits that he is not convinced by the position of the Joint Appeals Committee, which, to justify its findings, stated that it:

- had, at his request, "access to the confidential information on this issue, which was raised during the Executive Committee meeting";

- was "able to confirm, having listened to the recordings of the discussions which constitute the said confidential information, that the manner and timing [of the notification of the decision concerning the Chairman of the Commission for the Control of Interpol's Files] were discussed, and [that a] decision [had] in fact been taken, following a proposal by the Secretary General, to which the Executive Committee had agreed";

- considered "that the Executive Committee [had] taken that decision" (i.e. not to inform the Chairman of the Commission for the Control of Interpol's Files of the non-renewal of his term until after his speech to the General Assembly).

The complainant notes that the Joint Appeals Committee did not specify which recordings of the Executive Committee discussions it had listened to.

He contends that there are serious indications that the minutes of the Executive Committee meeting were amended for the sole purpose of lending credibility to one of the faults of which he was accused by the Secretary General, as he has consistently maintained on the basis of his recollection and of that of his colleagues.

For that reason he asks the Tribunal to order the following provisional measures:

- (1) that the Organization provides the Tribunal with audio recordings of the discussions of the Executive Committee at its 131st and 132nd sessions and the full transcript thereof (the defendant indicates that the above-mentioned evidence can be made available to the Tribunal provided that it remains confidential);

- (2) that it submits to the Tribunal a written statement by the substitute Chairman of the Joint Appeals Committee containing details of the facts witnessed by him which prompted him to stand down.

5. The Tribunal considers that it would be useful to have access to the recordings of the discussions of the Executive Committee at its 131st and 132nd sessions, and to the full transcript thereof, before ruling on this case. It does not, however, see any need to obtain a statement from the substitute Chairman of the Joint Appeals Committee who stood down.

6. Consequently, before ruling on the case, the Tribunal shall order the Organization to produce the recordings of the discussions of the Executive Committee at its 131st and 132nd sessions and the full transcript thereof.

DECISION

For the above reasons,

1. The recordings of the discussions of the Executive Committee at its 131st and 132nd sessions, and the full transcript thereof, shall be submitted by Interpol to the Registrar of the Tribunal within thirty days of notification of the present judgment.
2. That evidence 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 20 May 2003, 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 16 July 2003.

(Signed)

Jean-François Egli

Seydou Ba

Hildegard Rondón de Sansó

Catherine Comtet