

NINETY-EIGHTH SESSION

Judgment No. 2405

The Administrative Tribunal,

Considering the complaint filed by Mrs A.M. M.-K. against the International Criminal Police Organization (Interpol) on 7 October 2003 and corrected on 19 January 2004, the Organization's reply of 27 February, the complainant's rejoinder of 26 May and Interpol's surrejoinder of 3 September 2004;

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

Having examined the written submissions and disallowed the Organization's request for hearings;

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

A. Facts related to this case are given in Judgments 2192 and 2246 delivered respectively on 3 February and 16 July 2003. Suffice to recall that the complainant, a French national born in 1944, joined Interpol in 1964. In 1978 she married a staff member of the Organization who was Secretary General of Interpol from 1985 to 2000. At the time of the material facts, the complainant worked as technical editor at grade 5 in the Specialised Publications Service, where she was in charge of describing counterfeit banknotes for a specialised review. While his appointment was to end on 4 November 2000, the Secretary General notified his wife, on 30 October 2000, of a decision to terminate her appointment on the grounds that her post was to be abolished on 1 November. He pointed out that "[t]he political and administrative reasons for this decision were presented to the Executive Committee which endorsed them, during its October 2000 session". The required period of notice, which would expire on 30 April 2001, was waived and she was to receive an indemnity on termination of appointment and would be affiliated to the Internal Unemployment Compensation Scheme.

By a decision of 23 April 2001 the new Secretary General asked the complainant to resume her post, failing which he would consider that she had abandoned her post. He accused his predecessor of having given priority to family interests, of having allowed the complainant to benefit unduly from advantages, of committing an abuse of authority and of having obtained the approval of the Executive Committee by deceit, at its October 2000 session, by making it believe that the decision had already been taken. On 30 April 2001 the complainant's husband sent the Secretary General a medical certificate which indicated that the decision of 23 April had "plunged [the complainant] again into a state of anguish and [that] she [was] unable to react in an appropriate and coherent manner". The doctor considered "the situation as a whole as a case of moral harassment at work" and prescribed six weeks' sick leave. On 13 July 2001 the complainant was asked to undergo a medical counter-examination which confirmed that she was unfit for work. Her sick leave was extended several times until her invalidity status was recognised by the French Social Security, starting from 1 July 2002.

In a letter of 21 May 2002 the complainant asked the Secretary General to reconsider his decision of 23 April 2001. The latter refused in a letter of 29 May and suggested that the complainant appeal directly to the Tribunal. On 1 June, however, the complainant asked for her case to be referred to the Joint Appeals Committee. By a memorandum of 12 July the Secretary General, fearing a conflict of interests, delegated his powers to the Executive Director to act in the case and take a decision in the light of the Committee's opinion. He informed the Chair of the Committee and the complainant accordingly the same day. In a letter of 19 July the complainant contested the delegation of powers to the Executive Director – whose independence was questionable insofar as he was under the authority of the Secretary General – arguing that the powers should have been delegated instead to the Organization's Executive Committee. On 20 September 2002 the Executive Director notified the complainant of his decision to "waive the time limit" which, in his view, would undoubtedly have barred her request for review. In its opinion dated 23 June 2003 the Joint Appeals Committee found that the decision of 30 October 2000 had not been taken in accordance with Article 3 of the Staff Regulations and that the complainant had failed to provide grounds to justify reversing the decision of 23 April 2001. By individual decision of 15 July 2003 the Executive Director endorsed those findings and dismissed the request. That is the impugned decision.

B. The complainant invites the Tribunal to determine whether the Secretary General's delegation of powers to the Executive Director in this case was valid or not. She submits that according to Article 103(5) of the Staff Rules, the Secretary General may not in principle revoke a decision to terminate an appointment without the consent of the official concerned. She states that the real reason for revoking the termination of her appointment was the Secretary General's prejudice against her and her husband. In fact, she points out, the termination was properly reasoned and decided in accordance with the applicable rules and principles, whereas the "revocation of the termination" was merely a form of reprisal aimed at tarnishing the reputation of the former Secretary General.

According to the complainant, the "administrative reasons" contained in the decision to terminate her appointment were well founded in view of the gradual reduction in her workload and the reorganisation of tasks within her service (due in particular to the introduction of the euro in replacement of many European currencies). While the present and former Secretaries General may have held different views as to the practical and political impact on Interpol of the introduction of the euro, that cannot justify revoking a lawfully adopted decision to terminate an appointment on the grounds that a post was being suppressed. She criticises the Appeals Committee for misinterpreting its obligations and points out that the Organization has proved neither that the maintenance of her post was justified nor that there was another post available to which she could have been reassigned. The "political reasons", moreover, were no more than a "euphemism for the present Secretary General's predictable prejudice" against her. She accuses the latter of psychological and sexual harassment and draws attention to his change of attitude both in his relations with her and in his statements regarding the necessity of her termination.

The complainant contends that she suffered substantial material and moral damage and that she was extremely shocked that the Organization had submitted medical certificates concerning her to the Joint Appeals Committee without her consent.

She seeks the quashing of the impugned decision and an award of damages for moral injury and costs.

C. In its reply Interpol contends that the delegation of powers by the Secretary General is provided for in Article 4(2) of the Staff Regulations and in Article 5 of the Staff Rules and that, in view of this, questioning the lawfulness of the delegation of power in the present case "makes no sense". It points out that it submitted the delegation of powers for approval by the Executive Committee as requested by the complainant. Interpol accuses the latter's husband of misrepresenting the facts before the Executive Committee, on 29 October 2000, by pretending that the decision to terminate his wife's appointment, which was dated 30 October, had already been taken. Contrary to what is indicated in the decision, the Committee did not "endorse" it but said it "regretted" not having been informed earlier. The misrepresentation renders the decision unlawful. The Organization recalls that the Tribunal, in its Judgments 2192 and 2304, found that Interpol had not impaired the reputation, honour or dignity of the former Secretary General.

It maintains that the so-called "administrative reasons" are utterly unfounded. The workload of the complainant's service was sufficient to justify her presence. It shares the view of the Joint Appeals Committee that the workload issue was used to justify, *a posteriori*, the decision to abolish the post. The real reason was the complainant's desire to leave the Organization, and the termination of appointment was decided by the Secretary General because it was financially advantageous for his spouse. Furthermore, even if those reasons were accepted as valid, they would justify only the post suppression and not the termination of the complainant's appointment. According to the Staff Regulations and Rules and the Tribunal's own case law, the Organization must ascertain before terminating the appointment of an official that there is no vacant post to which the official can be assigned. While there is no evidence that any such attempt was made, a new official had just been recruited and the contract of an external consultant had been extended. According to the defendant, all this clearly demonstrates abuse of authority, aggravated by an obvious conflict of interests in view of the fact that the decision was taken by the complainant's spouse.

According to Interpol, the so-called "political reasons" are not apparent in the decision of 30 October 2000, which tends to show that the complainant's spouse was indeed guilty of abuse of authority. It rejects the complainant's accusation of prejudice, on the grounds in particular that all the decisions received the backing of the Executive Committee and that the impugned decision was not taken by the Secretary General. It also rejects the accusations of harassment brought against the latter, pointing out that at no time prior to the decision to revoke the termination of appointment did either the complainant or her spouse ever complain about their relations with him or about his attitude towards the complainant. Interpol denounces the "build-up of accusations" levelled at the Secretary General, the "pure fabrication intended to do [him] personal harm" and the absence of evidence. It recalls that the

Secretary General is duty bound to bring to the attention of the Organization's governing bodies any information which may detract from its image or its proper functioning, and it is therefore surprised that the former Secretary General did not report the matter earlier, in particular before his successor was appointed. According to the defendant, the only possible "political reason" which would justify the decision of 30 October 2000 is the complainant's wish – and that of her spouse who was an indirect beneficiary – to be granted a handsome indemnity for the termination of her appointment, which in no way served the interests of the Organization.

Lastly, Interpol points out that medical certificates are an integral part of an official's personal file and that it was therefore at liberty to refer to the certificates for the purposes of the internal appeal procedure.

D. In her rejoinder the complainant maintains that the Secretary General, who was the Executive Director's direct supervisor, could not delegate his powers to the latter in a case in which he was personally involved. She asserts that it was the present Secretary General who expressly asked for the matter of the complainant's departure to be settled before he took office. Pointing out that misrepresentation, according to the definition given by the defendant itself in its reply, consists of "fraudulent manoeuvres and dishonest dealings intended to surprise and deceive a person in order to persuade that person to make a commitment which he or she would otherwise not have made", she argues that the former Secretary General never asked the Executive Committee to make any commitment – which in the event it did not do – and that the question of misrepresentation, therefore, does not arise. Furthermore, the Committee did not regret the decision to terminate her appointment as such but simply the fact that it had not been consulted earlier.

With regard to the "administrative reasons" for the decision to terminate her appointment, the complainant submits that the decision was duly substantiated and indicated that in the Secretary General's opinion there was no suitable vacancy she could be offered. She submits that the defendant has failed to show that this was not the case and she produces testimonies by two of her former supervisors as evidence that the suppression of her post was justified. With regard to the "political reasons", she reasserts that "the present Secretary General feels strong resentment and is clearly prejudiced" against her, as shown by the tone of the decision of 23 April 2001 and the defamatory allegations it contained. She maintains that by the time he was appointed he had been on bad terms with her and her husband for more than two years.

Lastly, she argues that medical information contained in an official's personal file is covered by medical confidentiality. In conclusion, she expresses the conviction that she was "used" by the present Secretary General, who wanted both to take revenge on his predecessor for not having sufficiently supported him at the time of his appointment and to "make her pay" for refusing his advances. She emphasises that this attitude had "disastrous consequences" for her health.

E. In its surrejoinder the defendant reiterates its arguments at length. It accuses the complainant and her counsel of bad faith and of trying to injure the Organization's image and reputation. It denounces what it considers to be the many inconsistencies and variations between the statements made by the complainant and those made by her spouse, despite being represented by the same lawyer, in the complaints that he himself filed with the Tribunal. It accuses their lawyer of having "deliberately deceived the Tribunal" and disagrees with the outcome of Judgment 2192. It expresses surprise at the fact that the complainant should consider herself injured not by the termination of her appointment – as decided by her spouse – but by the reversal of the termination, which shows according to the defendant that there was a conflict of interests. In actual fact there was no injury, especially since the decision to reinstate the complainant was not given effect owing to the complainant's poor state of health, which the defendant regrets but for which it does not consider itself responsible.

In reply to the complainant's assertion that "the former Secretary General never asked the Executive Committee to make any commitment", Interpol cites extracts from briefs submitted by the complainant's spouse in proceedings before the Tribunal, in which he stated that he had submitted the decision to terminate the complainant's appointment to that Committee "for approval". It also produces a statement made by the President of the Organization at the material time, which proves in its view that if the Committee had not been deceived by the Secretary General it would have ensured that the decision to terminate the complainant's appointment was not implemented. As for the testimonies produced with the rejoinder, it submits that they support its own position since they show that there was work to be done and that the suppression of the complainant's post was therefore unjustified.

The defendant explains that it produced the complainant's medical certificates in order to show that her health

problems already existed prior to the alleged harassment. It points out that the certificates were used only for the purposes of its legal dispute with the complainant and solely before authorised bodies. According to the Organization, there is no evidence to support many of the complainant's allegations; for instance, she provides no documentary evidence to substantiate her allegation that her spouse "did not support" the present Secretary General's candidacy, an allegation which was contradicted by the former President of the Organization in his statement as well as by the flattering comments made by the former Secretary General about his successor at the time of the latter's appointment. As, in its view, the Joint Appeals Committee rightly pointed out, the accusation of harassment is likewise unsubstantiated. The same applies to the assertion that it was the present Secretary General who had sought the complainant's termination. With regard to the alleged breach of Article 103(5) of the Staff Rules, it submits that this provision is applicable only if the decision to terminate an appointment is "valid". Lastly, it indicates that the Secretary General would like to be heard by the Tribunal "in view of the incessant attacks" levelled at him.

CONSIDERATIONS

1. The complainant joined the Organization in 1964. By a decision of 30 October 2000 the Secretary General, the complainant's spouse whose appointment was due to end on 4 November 2000, notified her that her appointment would be terminated on 1 November 2000 on the grounds that her post was being suppressed. On 23 April 2001 the new Secretary General reversed that decision and ordered the complainant to resume her duties as from 2 May 2001 on the grounds that the decision to terminate her appointment was clearly unlawful in the light of the provisions of the General Regulations of the Organization and its Staff Regulations and Staff Rules.

2. The relevant provisions in this case read as follows:

Article 22, especially sub-paragraph (d), of the General Regulations of the Organization:

"The Executive Committee shall:

[...]

(d) Supervise the administration and work of the Secretary General;"

Article 29 of the General Regulations of the Organization:

"The Secretary General shall [...] direct the staff [...]."

Article 3 of the Staff Regulations:

"[...] the Secretary General [...] shall take decisions on individual cases in application of the present Regulations, the Staff Rules, and the Staff Instructions."

Article 36, paragraph 3, of the Staff Regulations:

"The Secretary General may [...] terminate the appointment of an official of the Organization:

[...]

(d) 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;

[...]"

Article 101, paragraph 1, of the Staff Rules:

“Before terminating the appointment of an official of the Organization in application of Article 36(3,d) of the Staff Regulations, the Secretary General shall ascertain that there is no vacant post to be filled within the Organization for which he considers that the official concerned has the requisite qualifications. [...]”

Article 103, paragraph 5, of the Staff Rules:

“Once a decision to terminate an appointment has been notified to an official, the Secretary General may not revoke his decision without the consent of the official concerned.”

3. In view of the circumstances of this case, the Tribunal shall not dwell on the issue of whether the provisions of the above-mentioned Article 103(5) of the Staff Rules were applicable. Nor shall it give consideration to arguments put forward by either side which in no way further a settlement of the dispute.

4. As the decision of 30 October 2000 was taken by a competent authority in application of the provisions of the Staff Regulations and Staff Rules, the Tribunal considers that it can be challenged only to the extent that those provisions were breached in their application or their interpretation.

In the present case, it is for the defendant to prove that breaches occurred which rendered the decision of 30 October 2000 unlawful and justified its revocation.

The defendant contends firstly that the former Secretary General misrepresented the facts for the purpose of obtaining the Executive Committee’s “endorsement” of the decision to dismiss the complainant on the grounds that her post was being suppressed.

The question of whether such misrepresentation was committed or not may remain undecided since by virtue of the above-cited provisions the Secretary General was authorised to take the individual decision in question without the need to seek any “approval”.

5. Secondly, the defendant maintains that the suppression of the complainant’s post was not justified and the termination of her appointment even less so.

The Tribunal recalls that, according to consistent precedent (see for instance Judgment 2294, under 7), the decision to suppress a post lies within the discretion of the executive head of an organisation. Such a measure may be reviewed, therefore, only if there is evidence that it is tainted by illegality. In this case, it emerges from the evidence on file that the new Secretary General merely substituted his own assessment of the effects of the introduction of the euro for that of his predecessor in order to justify the decision to reverse the latter’s decision of 30 October 2000.

With regard to the termination of the complainant’s appointment, the defendant submits that, contrary to that which is stated in the decision of 30 October 2000, the former Secretary General “never ascertained whether there was a vacant post for which [the complainant] was suitable and, worse still, endeavoured to justify this omission *a posteriori* by recruiting, even though he was presumably aware that her workload was diminishing as he had been warned of that several months earlier”. It is clear that, on this point, the defendant is merely putting forward allegations and even accusations that are not backed by evidence. Even though in its submissions it observes that “[i]f the post was suppressed in order to offset the creation of another post, it is odd that this other post was not offered to the complainant as required by Article 36(3,d) of the Staff Regulations”, it has produced no evidence that there was a post suited to the complainant’s experience and skills which could have been offered to her, considering that one of the posts identified by the defendant, at grade 8, was not suited to her experience or skills and that for the other post – namely that of technical editor in charge of genuine banknotes – she did not possess the required qualifications.

6. The defendant contends that the decision of 30 October 2000 was unlawful owing to clear abuse of authority, compounded by a real conflict of interests, committed with the sole intention of enabling the complainant, and indirectly her spouse, to obtain undue financial benefits. The Tribunal notes that these are allegations for which there is no proof nor any corroborative evidence.

7. In the light of the above, the decision of 15 July 2003, which confirms that of 23 April 2001 reversing without valid reason the termination of the complainant's appointment on the grounds that her post was being suppressed, must be set aside.

8. The complainant seeks compensation for moral injury. The Tribunal considers this request to be justified because the above-mentioned decisions were unlawful and because they impaired the complainant's health.

9. The complainant is also entitled to 3,000 euros in costs.

DECISION

For the above reasons,

1. The impugned decision is set aside.

2. The Organization shall pay the complainant the sum of 5,000 euros in compensation for moral injury.

3. It shall also pay her the sum of 3,000 euros in costs.

In witness of this judgment, adopted on 15 November 2004, Mr Seydou Ba, Presiding Judge for this case, Mr Agustín Gordillo, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2005.

Seydou Ba

Agustín Gordillo

Claude Rouiller

Catherine Comtet