

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

A. (Nos. 1, 2 and 3)

v.

Interpol

129th Session

Judgment No. 4268

THE ADMINISTRATIVE TRIBUNAL,

Considering the first, second and third complaints filed by Mr H. A. against the International Criminal Police Organization (Interpol) on 23 May 2019;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. Since the complainant's three complaints are closely linked, the Tribunal considers it appropriate to join them in order to rule on them in the same judgment.

2. The complainant was charged with having threatened a colleague and a preliminary inquiry was opened. Thereafter, the investigators delivered a report in which they concluded that the complainant had behaved inappropriately on several occasions and recommended that disciplinary proceedings be instituted against him. On 17 April 2018 the complainant received a copy of that report, together with the decision of the Secretary General to institute disciplinary proceedings and the decision of 3 April to suspend him

from duty under Staff Rule 12.2.2(2) with pay. It was specified that that measure, which had been taken at his supervisors' request, was not a disciplinary measure, that it would be reviewed after two months and that it would be revoked after a maximum period of four months or at such time as the Joint Disciplinary Committee handed down its opinion, whichever occurred first. On 11 June the complainant lodged an internal appeal against the decision of 3 April. The Secretary General declared that appeal admissible on 30 July and referred it to the Joint Appeals Committee on 30 August. By a memorandum of 4 October, the complainant was advised of the Committee's composition and was given an opportunity to complete his appeal, which he did on 18 October.

3. In the meantime, on 20 September, the complainant had lodged an internal appeal against the decision of 8 August by which the Secretary General had extended the suspension until 17 October unless the Joint Disciplinary Committee submitted its report prior to that date. By a letter of 12 October, the Secretary General advised the complainant that that appeal was admissible and that he had referred it to the Joint Appeals Committee.

4. On 11 October, since the Joint Disciplinary Committee had not yet issued its opinion, the Secretary General wrote to the complainant informing him of his decision to extend his suspension until 17 December unless the Committee submitted its report prior to that date. The complainant filed an internal appeal against that decision on 17 October. On 25 October the Secretary General advised him that his appeal was admissible and that he had referred it to the Joint Appeals Committee.

5. By a letter of 13 December, the Secretary General informed the complainant that he had received the report of the Joint Disciplinary Committee and that he was extending the suspension until 24 December in order to allow himself sufficient time to take a decision.

6. By a memorandum of 19 December, the chairman of the Joint Appeals Committee forwarded to the complainant Interpol's reply to his first appeal, invited him to complete his two other appeals and

informed him that, pursuant to Staff Rule 10.3.4(5), the Committee had decided to join his three appeals. On 20 December the complainant advised that he would not file a rejoinder for his first appeal or complete his second and third appeals.

7. On 24 December 2018 the Secretary General decided to dismiss the complainant. The latter filed a fourth internal appeal against that decision on 15 February 2019, which was also declared admissible and forwarded to the Joint Appeals Committee. By a memorandum of 22 March 2019, the Committee's chairman invited the complainant to complete that fourth appeal and advised him that it had been joined to the three previous ones. In concluding, he emphasised that the complainant would be advised of the Organization's reply to his appeals, that he would be given an opportunity to reply to its submissions and that the Committee would "continue to meet with a view to ensuring [him] a response in the best conditions".

8. On 27 March the complainant sent the members of the Joint Appeals Committee an email in which he stated that there was no reason for the Committee to delay the examination of his three appeals relating to the decision to suspend him from duty so as to allow it to examine at the same time his fourth appeal directed against the decision to dismiss him. He asked that the Committee examine his first three appeals "without further delay" and stipulated that if it had not begun its examination within 15 days, he would file a complaint with the Tribunal. On 28 March the Committee's chairman replied that since his four appeals "[sought] the same redress and rest[ed] on submissions which [were], for the most part, identical", the Committee had considered it "in the interest of all the parties" to join them, that that decision came within his "sovereign and exclusive competence" and that it "[needed] no justification" from him. The chairman ended by repeating the concluding sentences of the memorandum of 22 March. On 15 April the complainant again requested the Committee to examine promptly his appeals relating to the decision to suspend him from duty which, in his view, had been "left aside, without a valid reason" and reasserted that, failing this, he would file a complaint with the Tribunal.

On 26 April the chairman of the Joint Appeals Committee replied by assuring him that his appeals were being followed up in a “proper and rigorous” manner and repeating the same concluding sentences as previously. The complainant filed his complaints with the Tribunal on 23 May 2019, impugning the decisions of 3 April, 8 August and 11 October 2018.

9. The complainant states that he has complained about the delay in the appeal proceedings and made plain his desire for a swift resolution. Since, in his view, the internal proceedings have become “bogged down” and completely paralysed since the decision of 22 March 2019 to join his four appeals, he considers that he can bring the matter directly before the Tribunal.

10. Article VII, paragraph 1, of the Statute of the Tribunal states that “[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations”. However, the Tribunal has accepted that where there is an inordinate and inexcusable delay in the internal appeal procedure, the official concerned must be considered to have exhausted the internal means of redress (see, for example, Judgment 3947, consideration 4).

11. Under the Tribunal’s case law, an argument based on an inordinate and inexcusable delay may not be accepted unless a complainant shows that the requirement to exhaust the internal remedies has had the effect of paralysing the exercise of her or his rights. It is only then that she or he is permitted to come directly to the Tribunal where the competent bodies are not able to determine an internal appeal within a reasonable time, depending on the circumstances. A complainant can make use of this possibility only where she or he has done her or his utmost, to no avail, to accelerate the internal procedure and where the circumstances show that the appeal body was not able to reach a decision within a reasonable time (see Judgments 3558, consideration 9, or 4200, consideration 3).

12. In this case, the complainant lodged his first appeal with the Joint Appeals Committee on 30 August 2018 and then his second and third appeals in the course of October 2018. Seven months later, on 23 May 2019, the complainant filed his three complaints. The Tribunal considers that at that date, the appeal proceedings were not paralysed and a period of seven months is not unreasonable. The complainant could still reasonably expect to receive a final decision which he could then challenge before the Tribunal if he found it necessary. As his complaints are thus premature and hence clearly irreceivable, they must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 13 November 2019, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ