Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C.

v.

Interpol

136th Session **Judgment No. 4660**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. C. against the International Criminal Police Organization (Interpol) on 27 February 2020, Interpol's reply of 7 October 2020, the complainant's rejoinder of 13 November 2020 and Interpol's surrejoinder of 15 January 2021;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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

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

The complainant challenges the Secretary General's decision to dismiss him summarily without indemnities on disciplinary grounds.

The complainant joined the Organization as a grade 8 Principal Security Guard in November 2014. At the material time, he held a fixed-term appointment ending on 31 October 2020.

On 10 January 2018 the complainant removed a JPX gun – a weapon equipped with an irritant liquid propulsion system – from its safe at the security post at the entrance to Interpol Headquarters in order to show it to a newly recruited colleague. While handling the gun, the colleague accidentally discharged a shot inside the building. Gas was released and the area had to be evacuated.

The complainant provided details of the course of the incident in a report sent to his supervisors on 12 January 2018. On 8 February 2018 he received a confidential memorandum dated 30 January 2018 informing him that disciplinary proceedings against him were being considered and setting out the charges of which he was accused. After providing comments on 22 February 2018, he was informed by a memorandum of 8 March 2018 of the Secretary General's decision to initiate disciplinary proceedings and to seek the opinion of the Joint Disciplinary Committee. The complainant was heard by this committee on 22 May 2018. In its opinion of 7 June 2018, the Committee recommended that the Secretary General impose on the complainant the disciplinary measure of deferment of advancement for a period of six months.

On 26 June 2018 the complainant was summoned by the Head of the Security Department, who gave him a decision of the Secretary General dated 20 June dismissing him summarily without termination indemnities.

On 20 August 2018 the complainant lodged an internal appeal which he completed on 29 October after having been invited to do so by the Joint Appeals Committee. By email of 27 February 2019, the Chairman of the Committee informed the complainant that the exchange of written submissions between the parties was complete and that deliberations could therefore begin. From 8 October 2019 the complainant made several enquiries about the progress of his internal appeal. In an email of 18 February 2020, he stated that, unless the Committee delivered its opinion within six days, he would bring the case before the Tribunal.

On 27 February 2020 the complainant – whose email had remained unanswered – filed a complaint with the Tribunal against the decision of 20 June 2018. In its opinion of 24 April 2020, the Joint Appeals Committee found that the disciplinary measure imposed on the complainant was disproportionate and recommended that the Secretary General consider reinstating the complainant. However, on 12 August 2020 the Secretary General rejected the complainant's internal appeal. That decision was sent to the complainant by registered post on 19 August. After receiving a notification that the decision of 12 August

had not been received, the Organization sent it to the complainant by email on 10 September 2020.

The complainant asks the Tribunal to set aside the contested disciplinary measure and to order his reinstatement, accompanied if necessary by a new three-year contract, with all the legal consequences that this entails. Subsidiarily, he seeks an award of material damages equivalent to the salaries he would have received had his employment continued for a period of five years, including salary adjustments and step advancements, as well as a reclassification at grade 7, which he states all security guards have received. He also claims interest at the rate of 5 per cent per annum as from the date of each payment. Lastly, he seeks moral damages in the amount of at least 50,000 euros for the moral injury he considers he has suffered, and the sum of 10,000 euros in costs.

Interpol requests the Tribunal to dismiss the complaint in its entirety as irreceivable owing to the complainant's failure to exhaust internal remedies or, alternatively, as unfounded.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 12 August 2020 whereby the Secretary General of Interpol, despite the contrary opinion of the Joint Appeals Committee, confirmed the complainant's summary dismissal without indemnities which he had ordered in a decision of 20 June 2018.

This severe disciplinary sanction was imposed owing to the fact that the complainant, who worked as Principal Security Guard, had contributed to a serious incident at the security post at the entrance to Interpol Headquarters on 10 January 2018. During a conversation with a newly recruited colleague about the weapons kept by the Organization for its protection, the complainant had, on his own initiative and without authorisation or clearance, removed a JPX gun – a non-lethal weapon that sprays an incapacitating liquid that is extremely irritating to the eyes, skin and respiratory tract – from its safe and handed it over to his colleague. The colleague had then mishandled the gun and accidentally

discharged it in the vicinity of other guards who were present. As a result, a highly unpleasant gas was released and the area had to be evacuated temporarily.

In his decision of 20 June 2018, the Secretary General had considered that the complainant, whose actions had been "the catalyst for the unfortunate events on that day", had shown "carelessness and a lack of maturity surrounding the handling of a weapon" warranting his summary dismissal without indemnities.

2. The Organization submits that the complaint is irreceivable on the ground that it was filed without complying with the requirement under Article VII, paragraph 1, of the Statute of the Tribunal that internal remedies must first be exhausted. It submits that, when the complainant filed his complaint on 27 February 2020, the internal appeal proceedings that he had initiated were still in progress, since the opinion of the Joint Appeals Committee, subsequently delivered on 24 April 2020, had not yet been issued and the Secretary General's final decision on the complainant's appeal was not taken until 12 August.

These statements are factually correct but, while a complaint made directly to the Tribunal is indeed usually irreceivable, the case law allows for an exception to be made to that rule where a complainant shows that the requirement to exhaust internal remedies has the effect of paralysing the exercise of her or his rights. A complainant is thus entitled to file a complaint directly with the Tribunal against the initial decision which she or he intends to challenge where the competent bodies are not able to determine the internal appeal within a reasonable time having regard to the circumstances, provided that 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 final decision within a reasonable time (see, in particular, Judgments 4271, consideration 5, 4200, consideration 3, 3558, consideration 9, 2039, consideration 4, and 1486, consideration 11).

However, the Tribunal considers that, as the complainant rightly submits, the conditions allowing this jurisprudential exception to be applied are satisfied in the present case.

3. As the complainant lodged his internal appeal on 20 August 2018, a period of 18 months had passed when he filed his complaint with the Tribunal on 27 February 2020. Such a delay must be regarded as unreasonable in the circumstances, since the appeal in question concerned the disciplinary sanction of summary dismissal without indemnities, that is a decision with serious repercussions for the complainant, and the case therefore merited priority treatment by its very nature. This is particularly true given that in this case the Secretary General departed from the recommendation of the Joint Disciplinary Committee in choosing a more severe sanction and, if only for this reason, the complainant's appeal could not be considered *prima facie* as devoid of any substance. Furthermore, although the Organization submits that the delay in examining the complainant's appeal can be explained in part by the difficulties faced by the Joint Appeals Committee in operating owing to lockdown measures during the Covid-19 pandemic, the Tribunal notes that this justification cannot apply to the period prior to 27 February 2020, since the measures referred to were not implemented by the Organization until March 2020.

4. The evidence in the file also shows that the complainant – who had, in his submissions to the Joint Appeals Committee, directed that body's attention to the importance he attached to his appeal being dealt with promptly in view of the seriousness of the effects of the contested decision and stated that he would not reply to Interpol's previous brief in order not to prolong the proceedings – attempted on four occasions to accelerate the consideration of the case by sending emails to the Chairman of the Committee on 8 October 2019, 3 December 2019, 16 January 2020 and 18 February 2020, as no progress seemed to have been made since the parties were informed on 27 February 2019 that the written procedure was complete. Since, at best, those emails only received holding responses that did not state exactly when the Committee would deliver its opinion, it must be considered that, in the circumstances of the case, the complainant did his utmost, to no avail, to accelerate the internal appeal procedure.

It is true that the final step taken to this end, namely sending the fourth of the aforementioned emails, dated 18 February 2020, was inappropriate in that the complainant stated in it that he would bring the matter before the Tribunal if the Committee did not give its opinion by 24 February. Apart from the fact that a period of six days – of which only four were working days – would have been incompatible with the administrative constraints inherent in holding a meeting of the Committee, the method consisting in sending that body such a message in the form of an ultimatum is unacceptable in its very principle. However, the fact remains that, by the time of this ill-conceived initiative, the internal appeal procedure had objectively been inordinately long, as stated above.

5. Lastly, the fact that the Joint Appeals Committee was eventually able to issue its opinion on 24 April 2020 does not alter this finding, given that the complainant had not been informed of that date when he filed his complaint and that almost six months more elapsed between its filing and the Secretary General's decision of 12 August 2020 on the complainant's internal appeal.

Interpol's objection to receivability will therefore be dismissed.

6. In view of the adoption of the aforementioned decision of 12 August 2020 during the proceedings before the Tribunal, which the complainant challenged in his rejoinder and on which the parties were able to express their views in their submissions, the Tribunal considers that it is appropriate to treat the complaint as being directed against that final decision (see, in particular, for comparable situations, Judgments 4065, consideration 3, and 2786, consideration 3).

7. On the merits, the Tribunal notes first of all that, of the complainant's numerous pleas on procedural grounds, there are three which are well founded and which, being based on serious procedural defects, are each sufficient in themselves to warrant setting aside the impugned decision.

8. Firstly, the Joint Disciplinary Committee's opinion of 7 June 2018 shows that, when establishing the existence of particular facts and assessing the seriousness of the misconduct with which the complainant was charged, the Committee relied to a large extent on video footage of the incident of 10 January 2018 taken by a closed-circuit camera installed at the security post. The Committee used that footage to assess the complainant's behaviour for almost two minutes before the unfortunate shot was fired, during which, according to the Committee, he stood by while his colleague carelessly handled the weapon that he had just given him. In the first place, this contradicted the account that the complainant gave in memoranda addressed to the Organization's senior management and during his hearing and, in the second place, showed that he had failed to appreciate the danger of the situation.

However, it is clear from the details contained in the Committee's opinion that the video footage was watched by only two of the three members of the Committee, who did so on 18 May 2018 between the Committee's meetings. The Tribunal has already ruled in a similar case that such a practice is irregular in its very principle. Making clear that each member of a collegiate body has an individual responsibility to be fully engaged in the fact-finding process in the case before it, which involves the assessment of the evidence of those facts in terms of its admissibility, reliability, accuracy, relevance and weight, the Tribunal held that the whole panel of such a body is required to consider that evidence and that this responsibility cannot be delegated to one or more of its members (see Judgment 3272, consideration 13). This holding, which was applied to a joint appeals body, must also apply to a collegiate body dealing with disciplinary matters such as Interpol's Joint Disciplinary Committee. The Tribunal sees no reason here to depart from the case law in question, which seems to it to be salutary, since it is unacceptable for a member of an administrative committee to deliberate on a case without having examined for herself or himself a piece of evidence examined by the other members – which is thereby placed, by definition, in the file of that case – especially if, as in the present case, that committee actually uses the piece of evidence in question as a foundation for its opinion. The procedure followed was therefore flawed on that account.

9. Secondly, also with regard to the video footage referred to above, the complainant takes issue with the fact that he himself was not able to view it, even though the Joint Disciplinary Committee had accepted it into evidence, and that he was therefore not able to defend himself effectively at his hearing before that committee, where he was questioned about the facts brought to light by that footage.

That plea must also be accepted. Staff Rule 10.3.2(5) provides that "[t]he official concerned [...] shall have access to all documents and forms of evidence submitted to the Joint Committees", bearing in mind that, although it appears that it was at the initiative of the Committee itself that certain members viewed the footage in question, that footage must obviously be considered as evidence submitted to the Committee for the purposes of this provision. This statutory requirement is in line with the Tribunal's case law, applicable even where there is no explicit provision, under which a staff member must, as a general rule, have access to all evidence on which an authority bases or intends to base a decision that affects her or him (see, for example, Judgments 4343, consideration 13, 3640, consideration 19, 3295, consideration 13, and 2229, consideration 3(b)). This case law, which aims to allow the staff member concerned to comment on the evidence, applies to video footage as it does to any other piece of evidence, it being noted in this respect that, although such a recording by definition captures an objective reality, it is nonetheless likely to give rise to explanations and comments that may influence the way its content is evaluated.

It is not disputed that the complainant was not invited to view the footage in question, even though part of its content was used in evidence against him. The Organization maintains that this does not mean that the procedure followed was flawed, since the complainant was informed of the substance of the content of this footage during his hearing before the Committee and was questioned during that hearing about the facts that it revealed, which thus enabled him to express his views on this piece of evidence. However, this argument will be dismissed, as the Tribunal considers that in the present case it was essential, for the complainant to comment meaningfully thereon, that he be able to view the content of the footage for himself and that he be

afforded this opportunity prior to his hearing in order to allow him time to prepare his defence. Lastly, while the Organization seeks to argue that the complainant had not requested access to the footage in question, that objection is irrelevant as the complainant had not been notified in advance of the Committee's intention to use this piece of evidence or of its very existence, which at most he could have suspected.

10. Thirdly, the opinion of the Joint Appeals Committee of 24 April 2020 shows that the Committee did not respond to the complainant's procedural objections, including those repeated in the complaint before the Tribunal and discussed above. The Committee merely stated in its opinion, without even mentioning these objections, that "the Organization [...] applied the established procedure under the Staff Manual for imposing disciplinary measures, including the establishment of a JDC [Joint Disciplinary Committee]". Such a brief and generic formulation does not provide any insight into the reasons why the Committee dismissed the objections in question or even make it possible to ascertain whether it actually examined them. The Tribunal further notes that the decision of 12 August 2020 makes no mention of these objections.

It is true that the Joint Appeals Committee considered in its opinion that the complainant's dismissal was unlawful on the merits owing to a breach of the principle of proportionality and therefore recommended that the Secretary General reconsider the decision ordering it. No doubt that was why it considered it could dispense with responding to the complainant's procedural objections. However, given that a finding that one of these objections was well founded, which would have justified the outright cancellation of the disciplinary proceedings, would have had a more fundamental impact than this recommendation, which merely sought a less severe sanction, the Tribunal considers that, by acting in this manner, the Committee inevitably failed to discharge its duty.

It follows that the complainant is correct to submit that there was a breach of his right to an effective internal appeal (see in particular, for similar precedents, Judgments 4169, consideration 5, 4063, consideration 5, and 4027, consideration 5).

11. As regards the substantive lawfulness of the impugned decision, the Tribunal observes first of all that, contrary to what the complainant submits – and without it being necessary to rely on the content of the video footage referred to above as a basis for that finding –, the complainant was guilty of misconduct during the incident of 10 January 2018.

It is not disputed that the complainant, who had not previously received training in the use of the JPX gun, was not authorised to handle it, and that the same was true of the colleague who fired it. Moreover, the opinion of the Joint Disciplinary Committee shows that the complainant himself admitted during his hearing before the Committee that he was aware that neither of them had authorisation. It was therefore unlawfully that the complainant, on his own initiative and without clearance, removed the weapon from its safe and passed it to his colleague.

Moreover, this misconduct was far from trivial because, while the JPX gun is, as has been said, a non-lethal weapon, the documents in the file show that it is nonetheless potentially dangerous when not properly handled. Its user manual, produced by the Organization, states inter alia that "[i]f used inappropriately, the device may be harmful to health" and that operating it without taking the requisite precautions "may cause irreversible injury". Irrespective of these specific risks, it is common ground that the irritant spray discharged by this weapon and the tear gas given off cause highly unpleasant effects. Even supposing that, as the complainant submits – albeit unconvincingly –, the Organization is incorrect in asserting that a receptionist present at the security post suffered temporary breathing difficulties during the incident, it is clear, in any event, that the shot discharged in that confined space caused staff in the vicinity serious inconvenience. The need to hurriedly evacuate the area is sufficient proof in this respect.

Lastly, while the complainant points out that, according to instructions in use at Interpol, any security officer may exceptionally use a JPX gun in an emergency to deal with an intrusion into the premises or an immediate threat to people or property, which the Organization acknowledges, the Tribunal will not endorse the complainant's argument that it was therefore reasonable for him to wish

to familiarise his new colleague with how to handle that weapon. Assuming that this consideration could justify the complainant telling his colleague where the weapon in question was stored, it cannot in any event be inferred that he was authorised to take hold of the weapon and allow his colleague to handle it when there was no emergency necessitating such action.

12. Although the Tribunal agrees with both the Joint Disciplinary Committee and the Joint Appeals Committee that the complainant was guilty of misconduct, the sanction of summary dismissal without indemnities decided on that account and confirmed by the impugned decision is nonetheless unlawful on two grounds – in addition to the procedural defects identified above – which will be discussed below.

13. Firstly, the complainant is correct in submitting that the sanction imposed on him is based on an error of law.

Staff Regulation 12.1 concerning "[d]isciplinary measures for unsatisfactory conduct or misconduct" provides that:

> "In accordance with the Staff Rules, the Secretary-General may:
>
> (a) impose disciplinary measures on officials of the Organization whose conduct is unsatisfactory;
>
> (b) summarily dismiss an official of the Organization for serious misconduct."

Staff Rule 12.1.3(1), which lists the various disciplinary measures that may be taken against an official, sets out the following sanctions in subparagraphs (i) and (j):

> "(i) Dismissal with or without forfeiture of part of the relevant period of notice, the termination indemnity and other allowances, including the ISCILE[*] compensation;
>
> (j) Summary dismissal for serious misconduct with forfeiture of the termination indemnity and other allowances, including the ISCILE compensation."

[*] The Internal Scheme for the Compensation of Involuntary Loss of Employment (ISCILE) is an unemployment insurance scheme for Interpol staff members, governed by Annex 3 to the Staff Manual.

The Secretary General's decision of 20 June 2018 imposing the disciplinary measure challenged by the complainant describes that measure in the following terms:

> "Dismissal with forfeiture of notice period, the termination indemnity and other allowances, including the ISCILE compensation in accordance with Staff Rule 12.1.3[(1)(i)]."

It must be noted that the sanction imposed on the complainant breaches the legal framework created by the aforementioned provisions, which do not provide for summary dismissal without indemnities except in the case of dismissal for serious misconduct.

14. Staff Rule 12.1.3(1)(i) and (j) draw a distinction between dismissal, which may be ordered with or without a reduction in the notice period and the indemnities normally awarded on termination of appointment, and summary dismissal for serious misconduct, which is the most severe of the disciplinary measures listed in aforementioned Staff Rule 12.1.3(1). It corresponds to the specific sanction referred to in Staff Regulation 12.1(b) and is governed by particular legal rules that provide, inter alia, that it can be imposed without the Joint Disciplinary Committee being consulted in advance. As its name indicates, this sanction can only be imposed on an official if she or he commits serious misconduct.

In the present case, it is clear that, as shown by the reference to Staff Rule 12.1.3(1)(i) in the decision of 20 June 2018, and as confirmed by the Organization in its submissions, the Secretary General did not intend to impose on the complainant the disciplinary measure of summary dismissal for serious misconduct. If this decision were to be construed as having in fact ordered a summary dismissal for serious misconduct, it would be manifestly unlawful as it would be tainted by an error of legal characterisation and an inadequate statement of reasons, since the Organization does not accuse the complainant, in the present case, of serious misconduct within the meaning of the aforementioned provisions, and the reasoning for the decision makes no reference to that concept.

However, the Tribunal must note that, while dismissal for serious misconduct is accompanied by a forfeiture of the notice period and termination indemnities, the same cannot be said of dismissal ordered on the basis of Staff Rule 12.1.3(1)(i), which can only be accompanied by a possible "reduction" in those benefits, as the provision puts it. The Organization attempts to argue that the wording of this subparagraph does not prevent the Secretary General from "deem[ing] it appropriate to reduce the notice period and the said indemnities to zero". However, it is clear that, in the provisions in question, the reference to a reduction in those benefits cannot be construed as authorising their outright removal, as confirmed by the English version of Staff Rule 12.1.3(1)(i), which, even more clearly on this point than the French version, reads as follows: "(i) Dismissal with or without forfeiture of part of the relevant period of notice, the termination indemnity and other allowances, including the ISCILE compensation" (emphasis added). Moreover, the Organization's line of argument would lead to an acceptance that a disciplinary measure of dismissal ordered on the basis of Staff Rule 12.1.3(1)(i) could in practice have the same effect as a summary dismissal under Staff Rule 12.1.3(1)(j), even though these measures apply to misconduct of a different degree of seriousness, which would contradict the principle of the gradation and proportionality of sanctions which applies in this area.

15. By imposing a disciplinary measure of summary dismissal without termination indemnities on the complainant, the Secretary General therefore breached the provisions of aforementioned Staff Rule 12.1.3(1)(i) and thereby committed an error of law. The Tribunal observes that it is even possible to consider that this measure, insofar as it amounts in practice to a summary dismissal for mere misconduct, is not among those listed in Staff Rule 12.1.3(1) and that the Secretary General therefore breached the principle *nulla poena sine lege*, applicable in disciplinary matters, according to which an authority cannot lawfully impose a sanction other than those provided for in the organisation's staff rules and regulations (see, in particular, Judgment 757, consideration 7).

16. Secondly, the Tribunal considers that the complainant is also correct in submitting that the measure of dismissal was adopted in breach of the principle of proportionality.

Under settled case law of the Tribunal, "[t]he disciplinary authority within an international organisation has a discretion to choose the disciplinary measure imposed on an official for misconduct. However, its decision must always respect the principle of proportionality which applies in this area" (see, for example, Judgments 4504, consideration 11, 3971, consideration 17, 3944, consideration 12, and 3640, consideration 29).

As a justification for maintaining the contested sanction, the Secretary General referred in the impugned decision of 12 August 2020 to the lists of criteria to be taken into consideration in assessing the seriousness of unsatisfactory conduct and in determining specifically whether the sanction of dismissal should be imposed, which are set out in Staff Rule 12.1.4(2) and (3) respectively. The Tribunal does not find any obvious error in the application of the criteria in question, although it does observe that, in the French version, Staff Rule 12.1.4(3) refers – apparently mistakenly – to the disciplinary measure of summary dismissal *(renvoi sans préavis)* and not dismissal *(renvoi)*. In addition, the Tribunal is sympathetic to the argument, also set out in the reasoning for the impugned decision and repeated by the Organization in its submissions, that, precisely in view of the purpose underlying Interpol's mandate, it must be especially strict as regards compliance with security rules and cannot, in particular, tolerate careless use of a weapon by one of its own staff responsible for protection.

17. However, the evidence shows that the complainant can refer to significant mitigating circumstances, which should be given due consideration in accordance with both the general principles applicable in disciplinary matters and the express provisions of Staff Rule 12.3.2(7), which states that "in reaching his decision, the Secretary General shall take into account any evidence in the official's defence".

It must firstly be noted in this respect that, when the complainant handed a JPX gun to his colleague, he could hardly have imagined – even if he was aware, as stated above, that neither of them was

authorised to handle it – that this colleague, who was deemed, by the very fact of his recruitment, to possess the professional qualities required to perform the duties of a security guard, would make the disgraceful use of it that was observed.

However, the Tribunal also notes above all that, at the material time, there was a failure to strictly comply with the safety instructions for JPX guns, owing in particular to inadequate training for security guards on this topic, which resulted in the idea spreading that these guns were harmless. Among several highly revealing pieces of evidence on this point, this is borne out by the distribution of several memoranda following the incident of 10 January 2018, of which one, dated 11 January, recalls that "the JPX is [...] A WEAPON" – a statement whose wording and typography suggest that security staff were not necessarily aware of this fact – and invites to complete the register for these guns, which "[had] not been active since 2015", and another, dated 12 January, recalling that "AUTHORISATION is needed to carry a JPX" and announcing that training in handling this weapon would be forthcoming. Moreover, the Tribunal observes that, if the instructions in force had actually been applied, the incident in question could not have occurred, as they provided that the weapon was not to remain loaded outside periods of use and that its frame and cartridges were to be kept in separate safes. This background, which led the Joint Disciplinary Committee to consider that its opinion should be accompanied by "structural recommendations" to improve compliance with the safety rules for handling JPX guns and more generally the service weapons of the Organization's security staff, undoubtedly made the misconduct attributed to the complainant more likely.

18. Having regard to all these considerations, the Tribunal considers that the sanction of dismissal imposed on the complainant – unlawfully aggravated by the forfeiture of notice and termination indemnities – was inordinately severe and imposed in breach of the principle of proportionality. Moreover, it should be emphasised that this assessment is in line with that of both the Joint Appeals Committee, which, in its unanimous opinion, concluded that this disciplinary measure was "disproportionately severe", and the Joint Disciplinary

Committee, which recommended that the complainant should only receive the sanction of a six-month deferment in advancement, a far less severe disciplinary measure.

19. It ensues from the foregoing that the Secretary General's decision of 12 August 2020, as well as that of 20 June 2018, must be set aside, without there being any need to rule on the complainant's other pleas.

20. The Tribunal considers that, in view of the time that has passed since the events giving rise to the case and the fact that the complainant held a fixed-term appointment, and taking into account the fact that the complainant's misconduct led to a loss of confidence in him by Interpol – as robustly asserted by the Organization in its submissions – which, given the nature of that misconduct, is based on reasons that can only be regarded as legitimate, it is not appropriate, in the circumstances of the case, to order the complainant's reinstatement in the Organization (see in particular, with regard to the use of these various criteria in assessing the appropriacy of reinstatement in the event that a dismissal on disciplinary grounds is set aside, Judgments 4457, consideration 24, 4310, consideration 13, 4063, consideration 11, and 3364, consideration 27).

21. By contrast, the complainant is entitled to compensation for the entire material and moral injury caused to him by his unlawful dismissal.

22. As regards material injury, the Tribunal observes that, from June 2018, the complainant was unduly deprived of the remuneration he would ordinarily have received until the end of the contract in force at the time of his dismissal, which expired on 31 October 2020, and that he also lost an opportunity to have his appointment subsequently renewed, even if that opportunity was substantially diminished by Interpol's loss of confidence in him referred to above.

In the circumstances, the Tribunal considers that all the injuries suffered by the complainant may be fairly redressed by awarding him a sum equivalent to three years' remuneration, which will be calculated on the basis of the net salary and allowances of any kind which the complainant was receiving at the time of his departure from the Organization, without deducting from this sum any earnings which he may have received since then.

As this lump sum must be regarded as compensating the entire material injury suffered by the complainant, there is no need to add to it the amount of the pension contributions relating to the remuneration in question or to pay interest for late payment thereon.

23. The sanction of summary dismissal without termination indemnities imposed on the complainant also caused him obvious moral injury since it seriously damaged his honour and professional reputation of itself and inevitably caused him a psychological shock and a feeling of anxiety about losing his job.

Although an examination of the evidence does not support a finding that, as the complainant maintains, his departure from Interpol's Headquarters on the day of the notification of this sanction also took place in conditions which violated his dignity, this moral injury was nevertheless further aggravated by the breach of his rights resulting from the various defects, identified above, which tainted the disciplinary proceedings and the internal appeal procedure.

24. Lastly, the complainant's contention that the inordinate length of the internal appeal procedure caused him additional moral injury is also well founded.

It is settled case law that officials are entitled to have their appeals examined with the necessary speed, in particular having regard to the nature of the decision which they wish to challenge (see, for example, aforementioned Judgments 4457, consideration 29, 4310, consideration 15, and 4063, consideration 14).

In the present case, two years elapsed between the complainant lodging his internal appeal on 20 August 2018 and his receipt of notification of the Secretary General's decision of 12 August 2020, which eventually ruled on that appeal after the complaint had been filed.

As stated above, the Tribunal finds this delay unreasonable having regard to the nature of the case, since it concerned a summary dismissal without indemnities on disciplinary grounds.

25. In all, the Tribunal considers that these various heads of moral injury, taken as a whole, will be fairly redressed by awarding the complainant compensation of 40,000 euros in this respect.

26. As the complainant largely succeeds, he is entitled to costs, which the Tribunal sets at 8,000 euros.

DECISION

For the above reasons,

1. The decision of the Secretary General of Interpol of 12 August 2020, as well as that of 20 June 2018, are set aside.
2. Interpol shall pay the complainant material damages calculated as indicated in consideration 22, above.
3. The Organization shall pay the complainant moral damages in the amount of 40,000 euros.
4. It shall also pay him 8,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 10 May 2023, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ