

## NINETY-FIFTH SESSION

**Judgment No. 2247**

The Administrative Tribunal,

Considering the complaint filed by Mr M. J. against the International Criminal Police Organization (Interpol) on 1 July 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 Article II, paragraph 5, 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, who was born in 1958 and has German nationality, is an official of the Council of Europe. On 5 June 2000, while on leave for personal grounds, and having obtained the approval of his employer, he accepted the post of Deputy Legal Director at grade 2 at Interpol, which has its headquarters in Lyons (France). In his complaint, the complainant explains that his main reason for doing so was to enable his wife, who was suffering from a serious illness, to move closer to her family and to benefit from the high standard of care available in hospitals located in Lyons.

In January 2001 the Secretary General of Interpol, who had taken up office in November 2000, reorganised the Legal Department and created, "on an interim basis", a Legal Counsel's Office under the supervision of the complainant, who was appointed Acting Legal Counsel. On 16 May 2001, in the complainant's probationary period report for the period from 5 June 2000 to 4 June 2001, the Secretary General gave the complainant the highest rating ("Outstanding") and wrote that he was "an excellent lawyer, a man of integrity and an excellent colleague", adding that "he [would] play an important role in Interpol's growth and development". By a decision of 31 May he confirmed the complainant's appointment. However, on 4 June, replying to the complainant's enquiries as to his career prospects, the Secretary General told the complainant that although he considered him to be "a great person", he felt that he lacked the necessary skills and experience to be Legal Counsel of Interpol.

By an e-mail message of 3 October addressed to his Director and Chief of Cabinet, respectively, and copied to the complainant, the Secretary General strongly criticised the quality of the work performed by the Legal Counsel's Office. Having brought this message to the attention of the staff he supervised, the complainant replied on 8 October, contesting the Secretary General's assertions and asking him to substantiate his accusations. On 10 October the Secretary General relieved the complainant of his duties as legal counsel and appointed Mr G. - a grade 3 legal officer likewise employed in the Legal Counsel's Office - as "Coordinator" responsible for performing the said duties on an interim basis. This was intended to be the first appointment to a rotating supervisor's post for which each member of the Legal Council's Office would be eligible, but the members of that Office indicated that they considered it preferable that those duties should not be reassigned on a monthly basis.

By an e-mail of 18 October 2001 the Secretary General criticised the complainant for having disclosed to his staff his e-mail of 3 October, which was marked "private" and which had merely been copied to the complainant. He also criticised the complainant for having informed 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 Secretary General, and for unauthorised communication with a journalist, in breach of the applicable rules. He accused the complainant of having "flagrantly disobeyed clear orders". Lastly, he rejected the complainant's request

to be transferred to another department so that he would not have to take orders from a person whom he had previously supervised. By a decision of that same date, he informed the complainant that since the duties of the Legal Counsel corresponded to grade 1, he had decided to grant him a special post allowance for the period from 15 February to 12 October 2001, "the date when a new structure was established and when, as a result, [his] temporary assignment at a higher grade ceased". By a decision of 19 October he transferred the complainant to the post of Technical Adviser in the Legal Counsel's Office, still at grade 2. By a letter of 30 October the complainant replied that he considered his transfer to be a disguised disciplinary sanction compromising his dignity and reputation, particularly because it resulted in his being placed under the hierarchical authority of a person whom he had previously supervised and whose grade was lower than his. He added that he was nevertheless obliged to accept the transfer since his employment status (on leave from the Council of Europe for personal reasons) was primarily due to his wife's medical condition.

However, on 6 November the Secretary General, who considered that the complainant's consent was invalid because he had called into question the legality of the decision and reserved the right to appeal against it, reiterated the decision, reminded the complainant of the three faults brought to his attention and informed him that he envisaged sending him a written warning with a transfer not resulting in downgrading. On 12 November the Secretary General sent the complainant a document entitled "Simplified Disciplinary Procedure [...] Summary of faults and supporting documents", in which he provided details of the said three faults. By a letter of 16 November the complainant asked the Secretary General to review the decision relieving him of his duties as Acting Legal Counsel and transferring him to the post of Technical Adviser, "as notified by [his] e-mail [...] of 18 October 2001". Although he noted that the decision had since been revoked, he considered that it was unlawful and that it had caused him injury. By an individual decision of 13 December the Secretary General sanctioned the complainant 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. His job description was the same as that which he had received with the decision of 19 October 2001. By a letter of 19 December 2001, the complainant tendered his resignation, for which his period of notice expired on 19 June 2002. On 9 January 2002 the Secretary General informed him that he would not be required to report for duty with effect from 16 January. The complainant has since resumed his former duties with the Council of Europe.

Also on 9 January, the complainant submitted a second request for review, directed against the decision of 13 December 2001 imposing the disciplinary sanction. The rejection of that request forms the basis of his second complaint, on which the Tribunal has ruled in Judgment 2248 delivered this day.

The Chairman of the Joint Appeals Committee and his substitute stood down for the two appeals filed by the complainant. In its opinion of 27 March 2002 on the complainant's first request for review, the Joint Appeals Committee addressed three issues raised by the Organization in its fourth and final memorandum to the Committee. It concluded that the request for review should be rejected, but noted that, notwithstanding the legality of the challenged decision, certain documents issued by the Legal Counsel's Office "barely conceal[ed] the subjective opinion of their author, falling short of the legal impartiality and objectivity that one [was] entitled to expect" of that Office, and that the complainant had been treated in a manner that harmed his dignity and therefore caused him moral injury. The Organization's fourth memorandum, mentioned above, had been filed on 30 January 2002 but was not made available to the complainant until 28 March 2002 (as an appendix to another Interpol memorandum submitted during the second appeal proceedings), that is after the opinion of the Appeals Committee had been adopted. By an individual decision of 5 April 2002, which constitutes the impugned decision, the Secretary General rejected the request for review dated 16 November 2001.

B. The complainant contends that the main reason for his "eviction" was the fact that his legal analysis had differed from that of the Secretary General on several files, and particularly on the file concerning the wife of the previous Secretary General. According to the complainant, there is evidence of a series "of contingent and highly contradictory measures showing no obvious practical purpose but a clear intention to harm him and to tarnish his reputation".

He asserts that he was denied due process: the Organization submitted multiple memoranda in reply to his internal appeal, so as to make it more difficult and more expensive for him to defend his case, whilst the Joint Appeals Committee violated the requirement that the parties be treated equally and denied him his right to be heard, by failing to provide him with a copy of Interpol's fourth memorandum, which it had taken into account in its opinion, having restated word-for-word the issues raised by the defendant.

The complainant contends that both his successor for the post of Acting Legal Counsel and the Secretary General subjected him to moral harassment and "financial strangulation". He refers to the "representations made by the Secretary General to the complainant in the presence of all his staff", the decision to place him under the hierarchical authority of a person whom he had previously supervised, the latter's "regal and finicky [exercise] of his authority", the decisions belatedly revoked, the fact that he was denied access to the premises of the General Secretariat of Interpol during his period of notice, the decision temporarily to suspend payment of his monthly non-resident's allowance on the grounds that he had been party to "patent illegality" - a decision that was likewise subsequently revoked - and the fact that he was led to believe that a negotiated solution could be envisaged.

The complainant states that he has suffered considerable moral and financial injury. Indeed, the Joint Appeals Committee recognised that the conduct of the current Legal Counsel was inappropriate and that the complainant had suffered injury. He submits that the way in which he was treated had and continues to have negative repercussions on his family, since his return to the Council of Europe obliges him to keep two residences and to be away from his family.

Lastly, the complainant draws attention to the medical certificate drafted by the Organization's doctor on 11 June 2002, for end-of-service purposes, which indicates that the complainant "has health problems which appear to be directly related to his period of employment at Interpol, which have been the subject of medical examinations and active treatment, and which cannot be considered to be cured at this date".

The complainant seeks the annulment of the impugned decision, damages equal to 12 months of his last gross salary, including his various allowances, and costs.

C. In response to the complainant's allegations concerning the origin of his difficulties, Interpol criticises him for having chosen to be represented before the Tribunal by the same counsel as the previous Secretary General and his wife, despite the fact that the complainant had defended the interests of the Organization in those cases. It criticises the counsel in question for employing what it describes as a "constant tactic" of relying on arguments derived from the cases of his other clients which, in its view, are entirely unrelated. It accuses the complainant of displaying bad faith by raising, for the first time at this stage of the proceedings, the argument concerning the connection between his difficulties and the case of the previous Secretary General. It considers this argument to be opportunistic and invites the complainant and his counsel to retract their allegations.

Interpol submits that under Article 42(1) of the Staff Rules, a temporary assignment, such as the complainant's appointment to the post of Legal Counsel, can last no longer than 12 months, and the complainant had been warned as early as 4 June 2001 that the Secretary General did not intend to assign him to that post on a permanent basis. According to the Organization, the disclosure to the Chairman of the Commission for the Control of Interpol's Files of the decision not to renew his term breached the confidentiality of the discussions and decisions of the Executive Committee, which could have serious consequences for the Organization and the Secretary General. However, although the three faults for which the complainant was criticised prompted the Secretary General to implement his decision immediately, they were not the basis for the decision, which can therefore not be interpreted as a disciplinary sanction.

With regard to the complainant's arguments challenging the legality of the internal appeal proceedings, the defendant points out that it was not responsible for splitting up the proceedings, since it had merely replied to the various memoranda submitted by the complainant.

The argument that the complainant was placed under the authority of a person whom he had previously supervised is considered by Interpol to be irreceivable, because the decision in question did not have that effect: it merely ended his assignment and granted him a special post allowance.

Subsidiarily, the Organization argues at length on the justification for the choice of Mr G. as the complainant's successor and explains that his performance in that post was entirely satisfactory. It denies that it subjected the complainant to excessive supervision, or that it morally harassed him or attempted to "strangle him financially". It accuses him of distorting the meaning of the Organization's reactions in his attempt to establish that harassment occurred. Regarding the decision temporarily to suspend his non-resident's allowance, it submits that although it considers that the complainant was not entitled to that allowance, it decided to continue paying it "so as best to preserve [his] rights". This, and likewise the fact that it entrusted the complainant with very important files after having transferred him, shows that it did not intend to cause him any injury. Lastly, it asserts that the only

reason for the complainant's resignation was his wish to return to the Council of Europe.

Interpol concludes that the complaint is unfounded in both fact and law. On the latter issue, it considers that the complainant has not established that it breached any statutory provision whatsoever in terminating his temporary assignment.

D. In reply to that argument the complainant states in his rejoinder that his complaint is founded in law on the general principles established by the Tribunal's case law, which the defendant conveniently overlooks. He denounces the Organization's contradictions as to the reasons for the decision to end his temporary assignment. He expresses surprise at the abrupt change of attitude towards him between 16 May, when a very laudatory probationary period report was signed, and 4 June, when difficulties began to be created for him, and asserts that the only facts arising during that period which can explain the abrupt change are a question he put to the Secretary General, and the latter's embarrassed reply, concerning his behaviour towards the wife of the previous Secretary General. He had not mentioned this prior to the proceedings before the Tribunal because he wished to avoid mentioning facts implicating staff members of the Organization before the Joint Appeals Committee. As for the remarks concerning his choice of counsel, these, he considers, merely betray the defendant's irritation at the fact that this situation affords a "fairly panoramic view" of the "brutality" of its methods of management and supervision.

Regarding his plea concerning procedural irregularities, the complainant emphasises that he submitted only one memorandum on substantive issues to the Joint Appeals Committee, whereas the defendant submitted four. He reiterates that the Secretary General's final decision must necessarily be considered illegal, in view of the defects of the Commission's report on which it is based.

He accuses Interpol of displaying bad faith by referring to the individual decision of 18 October 2001, rather than to the e-mail of that same date against which his initial challenge was directed, in arguing "in the face of the obvious" that the decision to end his temporary assignment did not have the effect of placing him under the hierarchical authority of a person whom he had previously supervised. He expresses surprise at the Organization's reliance on Article 42(1) of the Staff Rules, given that the temporary assignment of his successor, Mr G., has comfortably exceeded the 12-month period, and that in its reply it appears to extol the virtues of that situation, despite the fact that it is patently illegal. He also wonders why the Legal Counsel's Office, which was created "on an interim basis" in January 2001, has been managed for more than two years by staff members temporarily assigned to it. He denounces the fickleness displayed by the Organization, which first cast doubt on the legality of his entitlement to a non-resident's allowance, then asked the complainant to explain the matter before reinstating his right to it and finally asserting before the Tribunal that it considered that he was not entitled to it. He maintains that Mr G. supervised him over-zealously and considers it paradoxical that at the same time as it was continuously criticising his conduct and professional ability, the defendant entrusted him with strategic files which had decisive implications for the future of the Organization and which required the full confidence of the Secretary General. He states that he resigned from Interpol because he could no longer bear the treatment he was receiving from his supervisors.

E. In its surrejoinder Interpol re-examines the facts and accuses the complainant of distorting them so as to gain an undue advantage. It submits that in view of the errors he had committed in the past and of the requirements laid down in the relevant statutory provisions, the complainant's request, in May 2001, to be appointed to the post of Legal Counsel on a permanent basis reflected an attitude that was "questionable, to say the least". It points out that during most of the period covered by the probationary period report mentioned under A, he did not perform supervisory duties. Consequently, there was no abrupt change of attitude towards him, since a staff member may be assessed differently depending on the circumstances. Moreover, it was logical that after his temporary assignment he should be entrusted with important files which could be processed without his having to perform supervisory duties. It maintains its criticism concerning the complainant's choice of counsel, denies his allegations of links with the cases of the previous Secretary General and his wife, and accuses him of making false statements regarding his position in those cases.

Regarding the internal appeal proceedings, Interpol asserts that the Chairman of the Joint Appeals Committee is under no obligation to state his reasons for standing down; that the complainant was not denied his rights, since he did receive a copy of Interpol's final memorandum, albeit belatedly; and that it submitted its memoranda in accordance with the applicable rules.

It contends that the decision of 18 October 2001 terminating the complainant's temporary assignment must be examined in context, and points out that the Joint Appeals Committee considered it to be lawful. Regarding his non-resident's allowance, it maintains that the complainant deceived the Organization in order to gain a personal benefit to which he was not entitled. Interpol praises the ability of the current Acting Legal Counsel and produces a statement written by the latter in response to the complainant's allegations against him. Interpol states that he has retained an "acting" status because he expressly chose not to be transferred to the post of Legal Counsel.

As for the medical certificate produced by the complainant, the defendant argues that no conclusions can be drawn from it because there is no evidence proving that his health problems are related to the alleged moral harassment.

## CONSIDERATIONS

1. In the complaint which he filed on 1 July 2002, the complainant asks the Tribunal to "annul the Secretary General's final decision of 5 April 2001 and to apply all legal consequences of such annulment, that is to say, in particular, [...] to order the Organization to pay [him] an amount equal to twelve months of his last gross salary, including allowances, in compensation for the injury suffered". He also claims costs.

The complainant has two pleas.

Firstly, he argues that the impugned decision was taken in breach of the requirements of due process. Secondly, he submits that the Organization breached its duty to respect his dignity and reputation, and also the general principle that international organisations must act in good faith and for reasonable motives, avoiding any unnecessary or undue injury, since he was subjected to moral harassment and "financial strangulation".

2. The complainant contends that during his internal appeal, the defendant failed to comply with Article 127 of the Staff Rules, concerning the submission of written memoranda to the Joint Appeals Committee.

He states that the defendant submitted numerous responding memoranda in order to make it more difficult and more expensive for him to defend his case and to complicate the proceedings, "in the hope that the Commission would be lost in the twists and turns of its argument".

Indeed, the defendant submitted four responding memoranda, whereas he submitted "only one memorandum on substantive issues".

The complainant points out that the defendant's third responding memorandum, dated 26 December 2001, which was submitted to the Committee on 7 January 2002, was not communicated to him until 15 January 2002, in other words after he had submitted his rejoinder to the said Committee. Furthermore, he considers that the fact that the Commission failed to provide him with a copy of the Organization's fourth memorandum, on which it nevertheless relied in its opinion, constitutes a breach of the principle of equality between the parties and of his right to be heard.

The defendant considers that the complainant's arguments are factually and legally unfounded. It merely responded to the various memoranda which the complaint had submitted on different dates without awaiting its reply, as and when those memoranda were communicated to it by the Joint Appeals Committee in accordance with Article 127 of the Staff Rules.

3. Article 127 of the Staff Rules reads as follows:

### "WRITTEN MEMORANDA

(1) Should he so wish, and insofar as he has not already put forward his arguments in his request for review the appellant shall communicate a written memorandum to the Chairman of the Committee within fourteen days of the date on which he was notified of the composition of the Committee, in conformity with Article 145(8) of the present Rules.

(2) [...]

(3) A copy of the memorandum shall be sent by the Chairman of the Committee to the Secretary General so that he may reply to it within fourteen days of the date on which the memorandum concerned was communicated. The Secretary General's memorandum shall be forwarded to the Chairman of the Committee who shall send a copy of it to the appellant.

(4) If the Secretary General's memorandum contains new elements, and the Chairman of the Committee considers it necessary for the appellant to pronounce on those elements, the Chairman shall give him the opportunity to submit an additional reply. This provision shall apply, mutatis mutandis, to each written reply from the appellant or from the Secretary General.

[...]"

4. The Tribunal finds no violation of the provisions cited above. It also notes that even if a defect had arisen in the course of the internal appeal proceedings, it would have to be considered to be removed by the proceedings before the Tribunal, given that the complainant has had every opportunity to present his factual and legal arguments, and hence to defend his interests effectively, even if, as he claims, his rights as a party may not have been fully respected by the Joint Appeals Committee (see in particular Judgment 611).

5. The complainant asserts that he suffered moral harassment and "financial strangulation".

Concerning the moral harassment, he states that he was "made to endure torture", particularly as a result of the "representations" made by the Secretary General in the presence of all the staff he supervised in the Legal Counsel's Office, the Secretary General's decision to place him under the authority of a person whom he had previously supervised, the "regal and finicky" manner in which the latter exercised his authority over him, and the fact that he was denied access to the premises of the General Secretariat during his period of notice.

Regarding the alleged "financial strangulation", he states that having been psychologically incapable, as a result of the treatment to which he was being subjected, of defending his interests to the best of his abilities alone, he had been obliged to secure the assistance of a counsel from the outset of the dispute. He points out that although the Secretary General reconsidered several of his decisions, "his about-turns invariably occurred after numerous documents (letters, notes or memoranda) had been exchanged, thus multiplying the costs incurred [...] in defending his case".

6. It should be noted that in his request for review of 16 November 2001, which was submitted to the Joint Appeals Committee and rejected by the Secretary General's decision of 5 April 2002, the complainant had expressly stated that he was challenging the decision to relieve him of his duties as Acting Legal Counsel and to transfer him to the post of Technical Adviser in the Legal Counsel's Office. He had asked the Secretary General to restore his dignity and reputation and "to alleviate the very serious moral injury" he had suffered. In that connection, he had claimed 12 months' gross salary and allowances in moral damages and had asked the Secretary General to ensure, in future, that the actions referred to in his letter would cease and to appoint him to a clearly-defined post, with duties reflecting his grade, experience and length of service, in a hierarchical structure guaranteeing respect for his dignity and reputation.

Since the Secretary General reconsidered his decision to transfer the complainant to the post of Technical Adviser in the Legal Counsel's Office, and since the complainant has resigned from the Organization, the complaint is partially left with no substance. What remains to be determined is whether the decision to relieve him of his duties as Acting Legal Counsel was lawful, and whether his reputation was harmed.

7. Article 42(1) of the Staff Rules provides, in particular, that:

"In no case may a temporary assignment, which one of the Organization's officials is called upon to accept in conformity with Article 23(4) of the Staff Regulations, last for longer than twelve months."

In view of that provision, the Tribunal considers that there was nothing to prevent the Secretary General from ending a temporary assignment, in the exercise of his discretion, prior to the expiry of the 12-month period. A decision of this kind is subject to only limited review by the Tribunal, which will set it aside only if it was taken without authority, or in breach of a rule of form or of procedure, or if it rested on an error of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence (see in particular Judgment 2040, under 5). In the present case, the impugned decision

cannot be considered unlawful for any of those reasons.

8. However, having examined the evidence on file, the Tribunal considers that the complainant was treated by the Organization in a manner which was harmful to his dignity and reputation, as noted by the Joint Appeals Committee. In this case, that injury resulted particularly from the fact that he was placed under the hierarchical authority of a person whom he had previously supervised.

In view of that treatment, which was harmful to his dignity and reputation, the complainant is entitled to 5,000 euros in damages.

9. The complainant asserts that the Organization subjected him to "financial strangulation", by obliging him to incur "substantial legal costs in order to defend his interests against the Organization's increasingly imaginative attempts to injure and humiliate him".

The Tribunal does not consider it appropriate here to award any indemnity other than the damages awarded in respect of his moral injury. It sets costs in the amount of 5,000 euros.

### DECISION

For the above reasons,

1. The Organization shall pay the complainant 5,000 euros in moral damages.
2. It shall also pay him 5,000 euros in costs.
3. All further claims are dismissed.

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