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

**SEVENTY-FIRST SESSION**

# *In re* EL GHABBACH (No. 2)

**Judgment 1124**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Mahmoud el Ghabbach against the International Criminal Police Organization (Interpol) on 16 July 1990, Interpol's reply of 15 October 1990, the complainant's rejoinder of 8 January 1991 as corrected on 8 February and the Organization's surrejoinder of 19 March 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 38, 50 and 52(3) of the Staff Regulations and Articles 61 and 146(3) and Appendix VII of the Staff Rules of Interpol;

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

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

A. As Judgment 1079 said, under A, the complainant served on the staff of Interpol, first as a translator and later as a reviser, from 1 April 1981 until 16 June 1989, when the Organization dismissed him on the transfer of its headquarters from Saint-Cloud to Lyons.

On 19 September 1988 the Secretary General sent him and the other revisers of the language sections a minute setting out plans for reform of the Language Department. The minute said that in future there was to be only one post for a reviser in each of the sections and after the move to Lyons competitions would be held to fill those posts; revisers who were unsuccessful in the competitions would be offered translator's posts.

In keeping with Article 2(3) of Section 2 of Appendix VII to the Staff Rules an individual decision was communicated to the complainant on 12 October 1988 to abolish his post on 19 June 1989 and create an identical one in Lyons to be offered to him. If he did not want the transfer he might have an indemnity on termination of appointment under Article 38 of the Staff Regulations and Article 61 of the Staff Rules. The decision also said what period of notice he would be given.

By a letter of 31 May 1989 he asserted his acquired right to his duty station. A decision of the same date set the amount he was to get on termination at 38,040 French francs according to the scale in 61(1). Regarding the sum offered as "paltry", he applied to the Secretary General on 7 July 1989 for review of the decision. On 26 July 1989 the Secretary General informed him that the figure in the decision of 31 May ought to have been 38,030 francs and that the Organization's Executive Committee had decided to raise the amount of termination indemnities by half. By a letter of 10 August 1989 to the chairman of the Joint Appeals Committee the complainant pressed his request for review.

The chairman was head of a division of the Secretariat that comprised the Legal Sub-division. By a letter of 18 October 1989 he told the complainant that in accordance with Article 146(3) of the Staff Rules he was letting his deputy take over. There followed an exchange of letters between the complainant and the chairman about the reasons for that withdrawal. In its report of 16 March 1990 the Committee recommended dismissing the complainant's request and the Secretary General did so by a decision of 17 April 1990, the one he impugns.

This complaint was lodged on 16 July 1990. On 29 January 1991 the Tribunal ruled in Judgment 1079 on the first complaint, which was about payment of an indemnity in lieu of notice of termination. That judgment referred the complainant to Interpol for determination of the compensation he was entitled to.

B. The complainant objects on several grounds to the amount of his termination indemnity.

Interpol, he says, reckoned it according to the Staff Rules and appendices thereto; without challenging their lawfulness he alleges that Interpol adopted them unilaterally so as to create a "legal vacuum" with everything left to the Secretary General's discretion.

The Organization infringed his acquired rights despite the express safeguard in Article 52(3) of the Staff Regulations. Until 1988, when the Staff Regulations and Staff Rules came into effect, French law governed relations between Interpol and its staff and indeed it still affords the basis in law of their social protection. On recruiting him Interpol assured him that French law would apply and that assurance was a matter of decisive moment to him in accepting its offer of appointment. Under that law he has an acquired right to compensation in line with what collective agreements in publishing and similar industries provide for.

Interpol also acted in breach of the principle of equality. At least two others with contracts like his that said nothing of the applicable law got more in compensation than he did, the amounts being "reckoned according to French law". Arrangements of that sort dating back before the new rules came into force amount to a staff policy that Interpol ought to have kept to. Although, as the case law says, the method of reckoning may be altered, the changes may not snuff out the indemnity altogether.

Though there had never been a word of reproach about his work the amount he originally got was no greater than what someone dismissed for unsatisfactory service was granted. Yet Articles 50 of the Staff Regulations and 61(5) of the Staff Rules allow the Secretary General wide discretion to make the indemnity fair. Indeed in the internal proceedings the Secretary General acknowledged having exercised that authority to grant much bigger sums to several officials over the age of 55 and to two below 35.

The case of Mr. Vermot, one of those who benefited under 61(5), is astonishing in that though he had no acquired right to his duty station he still got the benefit of arrangements for early retirement that combined a generous indemnity with French unemployment benefit. That example shows that the indemnity and the benefits are quite separate, for all Interpol's attempts to blur the distinction.

When it comes to paying termination indemnities Interpol ranks among the most niggardly of international organisations.

The impugned decision is in breach of Interpol's duty under the case law to accept restraint in its dealings with staff and to avoid causing them undue hardship. In the complainant's view it committed breach of contract. Its intention in announcing reform of the Language Department was to sway his decision on its offer of transfer to Lyons. He stood to suffer loss of grade and the offer of an identical post in the decision of 12 October 1988 was just a snare.

The Joint Appeals Committee's recommendation was flawed. The chairman's withdrawal under Rule 146(3) came three months after the lodging of the appeal and when the Committee was just about to bring the pleadings to an end. The chairman's belated qualms of conscience prompted the complainant to ask for an explanation but the chairman's answer was unsatisfactory. All the Committee did was to uphold the Secretary General's position without checking whether it was sound.

Lastly, the complainant objects to the Organization's constant misuse of authority, in announcing its plans for reform and in every one of the often complicated decisions it took. Its behaviour was typical of the prejudiced way in which it treated translators, revisers and staff representatives.

He claims (1) termination indemnity in the amount of 846,203 French francs comprising (a) dismissal compensation equivalent to two months' gross salary for each year of service and (b) 500,000 francs towards damages for the moral and material injury Interpol's conduct caused him, particularly its plans for reform which led him to assert his right to his duty station; (2) interest on the amount due net of the sums already paid; and (3) 50,000 francs in costs.

C. In its reply Interpol submits that the complaint is devoid of merit.

It points out that the complainant fails to state the basis of his claim to compensation. Its grant of 57,045 francs was in strict accordance with Articles 61(1) and (2) and with Article 4 of Section 2 of Appendix VII of the Staff Rules.

The Secretary General did nothing wrong in failing to settle with him under Article 50 of the Staff Regulations. The Secretary General has no duty to do so if he thinks a simple solution possible by applying the Staff Rules. The

move to Lyons put on a par everyone with an acquired right to his duty station at Saint-Cloud who turned down the offer of transfer, and so there was no reason to bargain with any of them who wanted better terms of settlement. The Secretary General preferred a solution that would apply to everyone and so proposed to the Executive Committee that everyone should get an increase in the termination indemnity.

Only under 61(5) may the Secretary General increase the indemnity, but the complainant cites no "particular circumstances relating to [his] personal situation" to warrant applying that rule.

What he is really objecting to is the content of 61(1), but that is something the Secretary General can do nothing about: only the Executive Committee may amend the text.

Interpol was not in breach of equal treatment. The nine officials who got a supplementary indemnity under 61(5) were not in the same position as the complainant. Seven of them, including Mr. Vermot, were over the age of 55 but could not draw a retirement pension. Since they had little hope of finding other employment the Secretary General thought it fair to let them take early retirement in the form of an additional indemnity on termination. The reason why the other two got a supplement was that they deserved reward for extra work done in the last few months before termination.

Though it was a mistake to let Mr. Vermot have early retirement that lends no weight to the complainant's case.

Also dissimilar was the position of those who got termination indemnities before the Staff Regulations and Staff Rules came into force. Because the Organization's position in law at the time was unclear it preferred individual settlement on termination. Besides, the terms of settlement were not always as good as the complainant thinks; nor were the indemnities "reckoned according to French law". In any event the method of reckoning them was not consistent practice and Interpol was free to opt once and for all for the method it finally prescribed in Article 61 of the Staff Rules, provided that - as it did - it told its staff and that the change was not retroactive.

In answer to the complainant's plea that he should not get the same indemnity as someone dismissed for unsatisfactory performance Interpol points out that it had no choice but to abide by Article 38 of the Staff Regulations and in any event his allegations are factually wrong since the sum he got was increased.

Interpol met its obligations towards him and caused him no "undue hardship". There is nothing paltry about the amount he got, and the termination indemnities it pays stand comparison with what staff of other organisations get. They fulfil both the purposes such indemnities should serve: they make good the injury caused by separation and provide an income during the search for another job.

Interpol's staff have never been subject to the French Labour Code and it is not party to any French collective agreement. Besides, the case law makes plain that there is no acquired right either to the grant of a particular amount of indemnity on termination or to a particular method of reckoning it.

There were no flaws in the Joint Appeals Committee's procedure. The chairman withdrew to forestall doubts about his impartiality and the Committee did not meet before he withdrew.

The Secretary General in no way misused his authority in taking the decision under challenge. What purpose could the decision possibly have served but to grant the complainant an indemnity on termination?

The amount of compensation the complainant claims on account of the plans to reform the Language Department is exorbitant, even supposing the Tribunal sees merit in the claim. He might have stayed on as a reviser if successful in the competition or else as a translator if not.

D. In his rejoinder the complainant explains how he has worked out the amount he claims, enlarges on his earlier pleas and answers the defendant's. He expresses surprise at Interpol's saying that what he really takes issue with is Article 61(1) of the Staff Rules: all he wants is that it apply the material rules without injury to his acquired rights or to the principles of equity and equal treatment. All it need have done was to apply Article 50 of the Staff Regulations or Article 61(5) of the Staff Rules. Inconsistencies and misrepresentations in its reply betray its bad faith. Which is worse: the prospect of retirement or, at the age of 43, the ups-and-downs of the job market? He too was entitled to have the loss of career prospects "made good".

E. In its surrejoinder Interpol maintains in particular that French law does not apply, that the complainant has no

acquired right to benefit thereunder and that the precedents he cites are irrelevant.

CONSIDERATIONS:

1. In this case the complainant makes much the same claims as did Mr. Barahona, Miss Burnett, Miss Eggimann, Mrs. Michel, Mr. O'Sullivan, Miss Royo Gracia, Mr. Saunoi and Mr. Vicente-Sandoval in the complaints the Tribunal ruled on in Judgment 1080 of 29 January 1991. He too turned down Interpol's offer of employment in Lyons and seeks a ruling on the amount of the termination indemnity he is entitled to under Article 38 of the Staff Regulations and the implementing provisions.

This complaint arises out of a decision of 31 May 1989 to grant the complainant the termination indemnity because he had refused the transfer. Whereas the others, who each got a similar decision also dated 31 May 1989, sought and obtained leave to go straight to the Tribunal, the complainant went through the appeal procedure set out in the Staff Regulations and Staff Rules.

While his internal appeal was pending he, like the others, was granted a further sum equivalent to 50 per cent of the original indemnity, less 10 French francs in correction of a material error. The grant was made by virtue of a decision of 26 July 1989. So he has been paid a total of 57,045 francs on the strength of his eight years and three months' service.

Not being satisfied he pressed his request for review. Pleadings were filed, the Joint Appeals Committee made a lengthy report, and on its recommendation the Secretary General rejected his request by a decision of 17 April 1990.

2. The complainant filed within the prescribed time limit. He claims a total of 846,203 French francs in dismissal compensation under two heads:

(a) He claims termination indemnity for breach of contract in the amount of 346,203 francs instead of the 57,045 he has actually been paid.

(b) He claims 500,000 francs in damages for the moral and material injury he attributes to Interpol's stand, which led him to turn down the offer of transfer.

That breakdown shows he has two lines of attack. Claim (a) flows from his objection to the amount of the indemnity he is entitled to under his contract, whereas claim (b) is to damages for a decision he sees as unlawful.

In Judgment 1079, also of 29 January 1991, the Tribunal gave the complainant satisfaction as to claim (b). It held that Interpol had acted in breach of his rights as prescribed under Article 23 of the Staff Regulations: its individual decision of 12 October 1988 about notice of termination had not met the conditions laid down in the material rules. The Tribunal accordingly set aside the Secretary General's decision giving notice of termination and refusing him indemnity in lieu. The judgment was published after he had lodged this complaint, after Interpol had replied to it, and even after he had entered his rejoinder, and the Tribunal sent the case back to the Organization for determination of the amount due to him by reason of its unlawful decision.

There is no connection between the two heads of claim in this case and they will be taken up separately. But there is no rule against making two claims in the context of one and the same complaint if they are addressed to one and the same Organization, and the combining of the two disputes between the parties is no bar to receivability.

The origins of the complaint may be traced to two decisions the Secretary General took, the one of 31 May 1989 and the one of 26 July 1989, for the sole purpose of setting the amount of the complainant's termination indemnity. He made requests for review of the first decision in a letter of 7 July and of the second one in a letter of 10 August 1989.

The reform of the Department he belonged to was a topic that came up in the internal appeal proceedings, and the Joint Appeals Committee, too, took the point in its report, saying it found no causal link between a fact that had never formed the subject of an individual or general decision and the amount of the termination indemnity. But - though the reasoning may not be beyond reproach - the Committee's finding was correct: there is no evidence of any decision on the reform of the Department.

The only stated subject of the decision of 17 April 1990 that the complainant impugns is his termination indemnity. The complainant properly drew the distinction between the two heads of claim. Thus he first lodged the complaint on which the Tribunal ruled in Judgment 1079. Point 2 of the ruling in that judgment ordered review of the amount of the compensation he was entitled to and so his entitlements in that regard are already safeguarded.

His claim to damages in (b) above is therefore irreceivable.

3. Article 61(1) of the Staff Rules reckons the termination indemnity according to a scale that takes account of seniority and final salary and that was amended by the addition of a new article to Section 2 of Appendix VII to the Staff Rules, which prescribes an increase of 50 per cent in the indemnity due to someone who has refused transfer.

The complainant reproduces some of the arguments that the other staff members put forward in the complaints ruled on in Judgment 1080. He finds the amount of his indemnity paltry.

An international organisation like Interpol is answerable neither to any other body nor to any of its member States. It has texts of its own - the Staff Regulations and Staff Rules - on the status and duties of its staff and, as was said in Judgment 1080, under 5, the competent authority duly adopted them.

4. The complainant reasons along the following lines.

First, he alleges breach of his acquired rights, which he says safeguard both dismissal compensation and the termination indemnity.

What the impugned decision is about is the termination indemnity, which inevitably takes account of the staff member's position at the time when he leaves. The staff member's acquired right to his duty station, which the Organization has never denied, is irrelevant to a dispute over the amount of the termination indemnity.

As to that amount claim a) is, though receivable, unsound. Before the Staff Regulations came into force there were no rules on the subject. For 40 years Interpol managed with no rules at all, and whatever studies and discussions took place before 1988 on draft rules are irrelevant. That may be a pity, but at all events no acquired right may be inferred. French law would have applied only if, and insofar as, there had been an agreement with the French Government to that effect. There was none. Interpol's contributions to French social security and unemployment insurance yield only a few benefits for its staff and confer no general status on them. And the French collective agreement the complainant relies on cannot apply either because there is no text that says it should.

5. Secondly, the complainant speaks of the benefits Interpol granted to staff who left before the Staff Regulations came into force and infers therefrom a personnel policy that binds the Organization by virtue of general principles of law and Article 52(3) of the Staff Regulations.

His plea fails. For the reasons already stated in Judgment 1080, in the last paragraph of 7, the cases he cites may not be treated as a practice the Organization is bound to follow.

6. Thirdly, the complainant pleads breach of the Staff Regulations. He says that, though not challenging the lawfulness of the Staff Regulations and Staff Rules, he wants Interpol to apply the rules in force to his case "without injury to his acquired rights or to the principles of equity and equal treatment".

He quotes Article 61(5) of the Staff Rules. It says that if the reasons for termination are not attributable to the official the Secretary General, "exercising his discretionary power", may decide in exceptional circumstances to grant the official a supplementary indemnity on termination, taking into account particular circumstances such as "family commitments or the fact that, although relatively advanced in years, he cannot yet claim his retirement entitlements".

The complainant observes that the Secretary General availed himself of 61(5) to grant a supplementary indemnity to others whose termination was due to the move to Lyons.

The answer is in Judgment 1080, which holds that 61(5) confers no right to a supplementary indemnity.

The complainant makes much of the case of a Mr. Vermot, which Judgment 1080 did not cite. Mr. Vermot was mistakenly granted early retirement even though he had undertaken in his contract of service to consent to transfer

because of the move to Lyons. But the mistake is immaterial to the complainant's case, for reasons that were explained in Judgment 1080 in the last paragraph but one of 8.

In fact his case is not on a par with any of the other cases. Although he does speak of his good record of service the nub of his argument is that the Organization acted unlawfully before terminating him. But rating of performance and unlawful treatment are obviously irrelevant to the construction to be put on 61(1). They are also irrelevant to 61(5), which has neither the purpose nor the effect of going back over the staff member's career: the determinant of the supplementary indemnity is "particular circumstances relating to the personal situation of the official concerned", in other words, not to his professional but to his private life. The examples quoted bear out that construction, and indeed, as is clear from 2 above, the complainant draws the same distinction in the original statement of his claims: after stating the lump-sum total he claims he splits it into the termination indemnity and damages for the injury he attributes to Interpol's stand.

7. Fourthly, he draws comparison with the rules of other organisations. The answer to that is in Judgment 1080, under 12.

8. Fifthly, he alleges flaws in the internal appeal proceedings.

His request for review of the decision on the amount of his termination indemnity was referred to a Joint Appeals Committee with five members. The Secretary General appointed as chairman the head of the division comprising the legal sub-division, who as such acted for the Organization in the cases which others had lodged directly with the Tribunal about termination indemnities. Believing it difficult to combine both duties, he resigned from the chairmanship and membership of the Committee.

There was of course nothing improper about that. Indeed the chairman's resignation removed a threat to the Committee's impartiality. It was, moreover, in line with Article 146 of the Staff Rules, which in clause 3 says that the chairman of a joint committee may resign if he considers that there are any reasons for questioning his impartiality. The chairman's resignation is unchallengeable as such.

The issue is, however, whether it came too late. He did not resign until 18 October 1989, three months after the Committee had been appointed, and the complainant says that by then the pleadings were nearly over and so his rights were infringed.

They were not. By October 1989 no hearings had taken place at which the new chairman had not been present, the parties filed several briefs afterwards, and the new chairman had the full pleadings at his disposal.

The conclusion is that the change of chairman was quite proper.

9. Lastly, the complainant contends that the Committee's report showed a substantive flaw in that it was not impartial. In fact the argument is part of his plea that there was abuse of authority, which he sees in the stand Interpol took when the proposals for reform of the Language Department went through, in the Committee's failure to comment on the inconsistencies and falsehoods in Interpol's submissions and in the Organization's disregard for equity, which he describes as so resolute as to constitute prejudice against him.

The plea fails.

The plans for reform of the Language Department have already been considered, and the ruling was that they were against the rules and Interpol was therefore at fault. But they cannot support a plea of abuse of authority as well.

The proceedings in the Joint Appeals Committee were not improper. Keeping within the bounds of its competence, the Committee considered the various issues and made an adequate report on the parties' submissions. Being just an advisory body, it need not comply with all the obligations a court of law has.

There is no substance to the charge that Interpol's manner of applying Article 61 of the Staff Rules showed personal prejudice. The move to Lyons was not an easy exercise and although management made mistakes they cannot be accused of exercising their authority for purposes other than the Organization's interests.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 3 July 1991.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.