

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

M. and others

v.

Interpol

136th Session

Judgment No. 4667

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. M. against the International Criminal Police Organization (Interpol) on 3 December 2020 and corrected on 12 January 2021, Interpol's reply of 12 April 2021, the complainant's rejoinder of 9 July 2021, Interpol's surrejoinder of 6 October 2021, the complainant's additional submissions of 22 October 2021, Interpol's comments thereon of 17 March 2022, the complainant's second additional submissions of 15 June 2022 and Interpol's final comments of 14 September 2022;

Considering the complaint filed by Mr A. I. against Interpol on 4 December 2020, Interpol's reply of 12 April 2021, the complainant's rejoinder of 7 July 2021, Interpol's surrejoinder of 6 October 2021, the complainant's additional submissions of 22 October 2021, Interpol's comments thereon of 17 March 2022, the complainant's second additional submissions of 15 June 2022 and Interpol's final comments of 14 September 2022;

Considering the complaint filed by Ms L. D. B. against Interpol on 7 December 2020, Interpol's reply of 12 April 2021, the complainant's rejoinder of 6 July 2021, Interpol's surrejoinder of 6 October 2021, the complainant's additional submissions of 22 October 2021, Interpol's comments thereon of 17 March 2022, the complainant's second additional submissions of 15 June 2022 and Interpol's final comments of 14 September 2022;

Considering the complaint filed by Ms M.-A. G. against Interpol on 8 December 2020 and corrected on 7 January 2021, Interpol's reply of 12 April 2021, the complainant's rejoinder of 8 July 2021, Interpol's surrejoinder of 6 October 2021, the complainant's additional submissions of 22 October 2021, Interpol's comments thereon of 17 March 2022, the complainant's second additional submissions of 15 June 2022 and Interpol's final comments of 14 September 2022;

Considering the complaint filed by Mr P. P. G. against Interpol on 4 December 2020, Interpol's reply of 12 April 2021, the complainant's rejoinder of 11 July 2021, Interpol's surrejoinder of 6 October 2021, the complainant's additional submissions of 22 October 2021, Interpol's comments thereon of 17 March 2022, the complainant's second additional submissions of 15 June 2022 and Interpol's final comments of 14 September 2022;

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 none of the parties has applied;

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

The complainants seek the restitution of amounts wrongly deducted from their salaries in respect of sickness insurance contributions.

Under Staff Regulation 7.1(1) of Interpol, officials are covered by the compulsory social security scheme in force in the State in which they are stationed. From January 1999 French law provided that persons affiliated to the social security scheme who were exempt in France from all or part of direct income tax had to pay an "enhanced sickness insurance contribution" (ESC). The Organization therefore deducted the contribution, set at the rate of 5.5 per cent, from the salaries of the officials concerned on behalf of the *Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales* (URSSAF) of the Rhône-Alpes region, which later became URSSAF of the Auvergne-Rhône-Alpes region, a non-market, private body with a public service remit that forms part of the "collection" arm of the general social security scheme.

The complainants are former Interpol officials who were employed at the Organization's headquarters in Lyon, France. Accordingly, they were affiliated to the French social security scheme.

The complainants were in the Organization's employ in the following periods:

- Ms M.: between 2 February 2009 and 31 July 2013;
- Mr I.: between 1 May 1991 and 30 April 2013;
- Ms D. B.: between 1 November 2008 and 31 May 2018; as she took unpaid leave from 22 January 2016 to 31 May 2018, she was affiliated to the French social security scheme as an official until 22 January 2016;
- Ms G.: between 21 May 1989 and 31 July 2014;
- Mr P. G.: between 1 May 2010 and 31 March 2014.

On 13 December 2012, in consideration 15 and Article 3 of Decision No. 2012-659 DC concerning the preventative constitutional review of the social security financing law for 2013, the French Constitutional Council declared that the second sentence of the second paragraph of Article L. 131-9 of the French Social Security Code was contrary to the Constitution. This was the provision providing for payment of the ESC by, *inter alia*, international civil servants who were resident in France but not liable to pay French income tax. The decision was published in the *Journal officiel de la République française* No. 0294 of 18 December 2012, and also on the Constitutional Council's website and on "Légifrance.gouv.fr", the official French government website where laws, regulations and court decisions are published.

However, as it was unaware of this decision, the Organization continued to levy the ESC on salaries paid after 13 December 2012.

In a letter of 14 September 2018 the Organization, using the procedure set out in Article L. 243-6-3 of the French Social Security Code, asked URSSAF for clarification of the various personnel codes to be used when declaring the social contributions due on its officials' salaries according to their individual status. In a letter of 29 January 2019 responding to this request, URSSAF informed the Organization

that officials exempt from French tax were no longer liable to the ESC pursuant to the decision of the Constitutional Council of 13 December 2012. As a result, by a letter of 29 May 2019, the Organization asked URSSAF to repay the amounts wrongly levied on officials' salaries in respect of the ESC since 14 December 2012. In an email of 6 June 2019 the Organization informed officials affiliated to the French social security scheme that the ESC had been abolished and that these contributions would be retroactively reimbursed as from 1 January 2019. It explained that, during a review of the specific contributions owing to URSSAF and their corresponding rates, URSSAF had brought it to Interpol's attention that the ESC no longer needed to be levied. In the same email, Interpol also stated that it was in close contact with URSSAF to determine whether the latter would reimburse contributions for the years prior to 2019.

In a letter of 3 October 2019 URSSAF accepted the Organization's request for reimbursement for the period from 1 May 2016 to 31 December 2018 but took the view that the request for the period before 1 May 2016 was time-barred under Article L. 243-6 of the French Social Security Code.

Staff were informed of this situation in communications dated 18 and 28 November 2019.

In 2020 the Organization refunded the amounts of wrongly deducted contributions for the period from 1 May 2016 to 31 December 2018. However, this did not affect the complainants as they were no longer in the Organization's employment in that period.

In the above-mentioned communications, the Organization also stated that it was continuing its discussions with the French authorities, in particular with a view to obtaining a refund of the contributions wrongly paid for the period from January 2013 to April 2016.

The complainants each submitted individual requests to the Secretary General in May or June 2020 seeking repayment of the contributions wrongly deducted from their salaries while they were employed by the Organization. However, in letters of 8 July 2020 the Secretary General considered that no individual decisions had yet been taken in their respect concerning the amounts of ESC collected "for

periods prior to 2016”. He added that decisions open to internal appeal would only be taken once discussions with the French authorities had been concluded.

Between July and September 2020 the complainants lodged, again individually, internal appeals against the Secretary General’s decision, in which they sought, in particular, reimbursement of the amounts wrongly deducted from their salaries in respect of the ESC from 1 January 2009 to 30 April 2016 or until the date of their separation from service, whichever was earliest. They took the view that, under paragraph I of Article L. 243-6 of the French Social Security Code, the Organization could have obtained a refund of the amounts levied in respect of the ESC between 1 January 2009 and 13 December 2012 (hereinafter “the 2009-2012 period”) if it had made a request to that effect within three years of the Constitutional Council’s decision. In letters of 11 September 2020, which are the impugned decisions, the Secretary General dismissed all these internal appeals as irreceivable on the grounds that they were premature.

As the amounts of ESC relating to the period from January 2013 to April 2016 were reimbursed by URSSAF after the complaints were filed, the Organization in turn repaid these amounts to the complainants in April 2021.

The complainants ask the Tribunal to set aside the Secretary General’s decisions of 8 July and 11 September 2020 which in turn dismissed their requests and declared their internal appeals irreceivable and unfounded. In their rejoinders the complainants seek repayment of the amounts wrongly deducted from their salaries in respect of the ESC between 1 January 2009 and 31 December 2012. They claim interest at the rate of 10 per cent on all the amounts due, as well as the amounts already repaid, from the date of the wrongful deduction until the date of repayment, to compensate for the time that has passed. They also seek awards of 7,000 euros in costs.

Interpol asks the Tribunal to dismiss all the complaints as irreceivable and subsidiarily as unfounded.

CONSIDERATIONS

1. In their complaints, the complainants:

- seek reimbursement of the amounts wrongly deducted from their salaries in respect of the enhanced sickness insurance contribution (ESC) between January 2013 and their departure from the Organization, as well as for the 2009-2012 period;
- also request that these amounts bear interest at the rate of 10 per cent per annum from the date of the wrongful deduction until the date of repayment.

2. Given that the complaints seek essentially the same redress, are based mainly on the same facts and raise the same legal questions, the Tribunal considers it appropriate to order that they be joined to form the subject of a single judgment.

3. The evidence in the files shows that, once URSSAF had made the corresponding reimbursements, the Organization refunded the sums wrongly levied in respect of the ESC for the period after 1 January 2013 to all the complainants. Thus, apart from the question of interest, the scope of the complaints is now limited to the 2009-2012 period.

4. The Organization firstly submits that the complaints are irreceivable on the grounds that the reasoning provided in the impugned decisions makes it clear that no individual decisions have yet been taken regarding the amounts of ESC that were wrongly received by URSSAF for the period from 1 January 2009 to 31 December 2012. In Interpol's view, the complaints are therefore premature in that respect, as were the complainants' internal appeals. It argues that the irreceivability of the complainants' main claims renders irreceivable their subsidiary claims concerning, in particular, the payment of interest at the rate of 10 per cent per annum.

In its surrejoinder, the Organization also refers to the letter that its Legal Adviser sent to the French Minister for Europe and Foreign Affairs on 23 March 2021, after the impugned decisions were adopted, in which she recalled that a number of officials and former officials had requested “the repayment of the amounts of ESC collected and received by URS[S]AF since 2009” and in some cases that “interest, sometimes amounting to 10 per cent, be paid on all amounts owing”. In order to end the ongoing dispute, the Legal Adviser suggested that consideration be given to the solution of refunding the amounts of ESC collected since 2009, with interest on all amounts repaid.

5. Contrary to what the Organization contends, the Secretary General did in fact take a decision on the complainants’ claims for repayment of the wrongly deducted amounts of ESC and the corresponding interest. Although in his letters of 8 July 2020 the Secretary General insisted that no individual decisions had yet been taken regarding the reimbursement of the ESC wrongly received by URSSAF for periods prior to 2016, he essentially made any future reimbursement of these contributions conditional on the successful conclusion of discussions with France and clearly implied that a refund would only be possible if URSSAF repaid the sums in question. He therefore took a decision adversely affecting the complainants for the purposes of the Tribunal’s case law.

Moreover, that decision was the subject of an internal appeal that was wrongly dismissed as irreceivable in a new decision of the Secretary General, which constitutes a final decision within the meaning of Article VII of the Statute of the Tribunal.

Interpol’s challenge to receivability will therefore be dismissed.

6. At this stage of its findings, the Tribunal should ordinarily remit the cases to Interpol for the complainants’ internal appeals to be considered by the Joint Appeals Committee.

However, in view of the length of time that has passed and the fact that the parties have put their cases at length in their submissions, the Tribunal will not do so here and will directly rule on the merits of the dispute.

7. In order to establish the unlawfulness of the impugned decisions as regards the 2009-2012 period, the complainants, referring to the fact that the Organization, despite the aforementioned decision of the Constitutional Council of 13 December 2012, deducted the amounts of ESC from salaries paid during that period, argue that Interpol was negligent, firstly, in failing to keep itself informed, in particular by consulting URSSAF, of changes to the French social security scheme to which it had decided that its officials stationed in France would be compulsorily affiliated, and secondly, in only belatedly submitting to URSSAF a request for reimbursement relating, in particular, to the 2009-2012 period. The complainants take the view that the Organization, in compliance with paragraph I of Article L. 243-6 of the French Social Security Code, should have requested by 13 December 2015 that the contributions wrongly paid to URSSAF be refunded, which would have allowed the period in question to be covered. They infer that the injury caused by this negligence renders the Organization liable to refund the amounts wrongly deducted during this period, irrespective of any further efforts that it may make vis-à-vis the French authorities to receive full reimbursement from URSSAF.

According to the complainants, this would be the case even if there were no provision in the Staff Regulations or Rules governing the repayment by Interpol of sums wrongly deducted from salaries, given that this is a general principle of international civil service law. Moreover, there can be no question of a reasonable time limit being exceeded in this matter, since the complainants were not aware of the situation until June 2019 at the earliest.

The complainants also submit that the Organization's obligation to provide full reimbursement is, in any event, independent of any decision by URSSAF or the French authorities to repay the sums in question. The mere fact that discussions are allegedly still ongoing on

this matter does not, therefore, in itself render the present complaints unfounded. Firstly, the relationship between Interpol and URSSAF is irrelevant to the contractual relationship between the Organization and its officials as regards the right to the correct payment of their salaries; secondly, any time limit provided for under French law concerning the repayment of the sums in dispute is inapplicable to requests submitted to the Organization by officials or former officials for payment of wrongly deducted elements of remuneration.

Lastly, they argue that it is contrary to the principle of estoppel for the Organization to point to the responsibility of its officials in this matter, particularly since they had previously been told that they did not have to take any action.

8. The Organization contends that the complaints should, in any event, be rejected in their entirety, as none of the complainants' arguments is founded in law.

In the first place, on the basis of its status as an international organisation and the Tribunal's case law on that point, the Organization argues that it is not responsible for the contribution rates applied under national legislation as it has no control over those rates and the rules applicable to social security contributions in French law do not fall within its competence. The Organization further points out that it is not affiliated to the French social security scheme and is not an employer subject to French law; hence there was no reason for it to challenge the ESC and the rate thereof in the absence of specific information on this matter from URSSAF or the relevant French authorities. As expressly provided for in Staff Rule 7.1.1(5), the Organization acted only as an intermediary in the collection by France of the amounts of ESC and it therefore never benefited on its own account from the amounts of ESC wrongly received by URSSAF.

In the second place, relying on the Staff Manual and the principles of international civil service law, the Organization contends that it was primarily its officials' responsibility, firstly, to take the initiative to inform themselves of the contributions paid by the Organization to URSSAF on their behalf and, secondly, to contest decisions adversely

affecting them with the local French authorities if they deemed it necessary, and to do so within the applicable time limits. Indeed, it is apparent from Staff Rule 7.1.1(3) that the Organization's sole obligation in this respect is a best endeavours obligation consisting of providing, as far as possible, assistance to officials affiliated to a social security scheme in compliance with the national law in force at the duty station, but only when they seek information concerning their rights vis-à-vis the relevant national bodies. Moreover, when seeking compensation for the injury caused to its officials, the Organization is not representing them but rather asserting its own right to ensure that States respect their international commitments to the Organization and its members.

In the third place, the Organization cannot be accused of negligence since it spontaneously notified its officials, their representatives and former officials as soon as it was informed of the situation and, by entering into discussions with URSSAF and the French authorities, it did not fail in its obligation to take reasonable steps to prevent any foreseeable risk of injury. The proof is that URSSAF has reimbursed most of the amounts of ESC that it wrongly collected, despite the time limit for recovery proceedings that the French authorities initially invoked. The Organization also emphasises that there is no provision in the Staff Manual that places it under a general duty to inform its officials in this area.

In the fourth place, the Organization notes that the aforementioned Constitutional Council decision of 13 December 2012 only entailed the immediate repeal of the second sentence of the second paragraph of Article L. 131-9 of the French Social Security Code, which is incompatible with a retroactive effect covering the 2009-2012 period.

In the fifth and last place, referring to the Tribunal's case law under which a request for recovery of undue payments must, unless otherwise expressly provided, be submitted within a reasonable time limit, the Organization contends that this is not the case for requests for reimbursement concerning amounts of ESC collected during the period from 1 January 2009 until 31 December 2012, which is over 11 years ago. On this issue, it relies not on the provisions of French law but on

the principles of international law and the law of international organisations, whose application is more favourable to the officials concerned. It also refers to Judgment 4166, consideration 5, where it was said that “the limitation period begins to run from the date on which the payments were made and not from the date on which their irregularity was discovered”.

9. As Interpol has decided to affiliate its officials stationed in France to the French social security scheme pursuant to Staff Regulation 7.1(1), it has made French national law applicable to the employment relationship between the Organization and the officials concerned as regards their social protection. Given this express reference to the rules of national law, the Tribunal should, in principle, refer to them when ruling on this dispute (see Judgments 4401, consideration 6, 3915, consideration 4, 1451, consideration 23, and 1369, consideration 15).

The Tribunal notes that, in aforementioned Decision No. 2012-659 of 13 December 2012, the French Constitutional Council ruled that the second sentence of the second paragraph of Article L. 131-9 of the French Social Security Code, the provision requiring the ESC to be collected, did not comply with the French Constitution.

The Tribunal also notes that paragraph I of Article L. 243-6 of the same Code, to which the complainants refer to establish that the Organization was negligent, provides as follows:

“I. - Claims for the reimbursement of wrongly paid social security and family allowance contributions are time-barred when three years has passed from the date on which the said contributions were paid.

Where the obligation to reimburse the said contributions arises from a court decision that establishes that the legal rule applied does not comply with a higher legal rule, a claim for reimbursement may only relate to the period after 1 January of the third year preceding the year in which the decision establishing non-compliance was adopted. [...]”

10. Having regard to these matters, the Tribunal finds that the question of the extent to which the amounts of ESC paid for the 2009-2012 period may be refunded to the persons who paid them raises a

question of interpretation of national law, the scope of which goes well beyond the case of Interpol officials and which can only be decided by the French authorities and courts. It is therefore not for the Tribunal to rule on this issue.

11. However, since reimbursement of the disputed contributions for the 2009-2012 period did not appear clearly impossible in the light of the aforementioned decision of the French Constitutional Council and the above-mentioned provisions of the French Social Security Code, the Tribunal considers that the Organization ought, at the very least, to have expressly requested URSSAF or the French public authorities to effect that reimbursement.

12. Interpol's decision to affiliate its officials to the French social security scheme did not in any way release it from its obligations towards them. While it is true that the Organization only deducted the ESC following what it believed, wrongly, to be the applicable French law on the matter, it cannot take refuge behind the fact that it acted only as an intermediary, nor behind its status as an international organisation with no responsibility of its own for the application of that law. In fact, it is pursuant to Staff Regulation 7.1 that the Organization's officials are usually covered by the compulsory social security schemes in force in the States in which they are stationed, unless the Organization decides otherwise. The officials concerned thus have no choice in this regard and it is therefore unreasonable to suggest that it was their own responsibility to pursue the matter with the French authorities and courts of their own accord, assuming this would be possible.

13. However, it is plain from the evidence in the files – including documents produced by Interpol for *in camera* review – that the Organization has never expressly requested URSSAF or the French authorities to return the sums deducted from its officials' salaries by way of the ESC for the 2009-2012 period. At most, the Organization stated to the French authorities, and then only in March 2021, that repayment of these sums would put an end to the dispute pending before

the Tribunal, which does not equate to an express request for such repayment.

14. Moreover, contrary to what Interpol maintains, in view of its obligations as an international organisation towards its officials, it is not entitled to make the refund of the contributions at issue conditional on reimbursement of the amount of those contributions by URSSAF or the host State.

15. Furthermore, the Tribunal cannot accept the Organization's argument that the claims are time-barred because the disputed salary deductions are so old that the complainants can no longer reasonably claim repayment. The Tribunal observes that Interpol officials were only officially informed of the irregularity of those deductions in an internal email dated 6 June 2019 and that its former officials, who were not recipients of that email, must be regarded as not having had official knowledge of that information until that date at the earliest. Consequently, the Organization's argument that the complainants did not submit their requests for repayment of the disputed amounts within a reasonable period is, in any event, unfounded.

16. It follows from the foregoing that Interpol was negligent in several respects: firstly, it did not take the necessary measures to ensure that it kept itself informed of changes to the French Social Security Code, such as that resulting in this case from the partial review of Article L. 131-9 of that Code by the Constitutional Council; secondly, it was unaware of the possibility of obtaining a retroactive refund of the unduly paid contributions provided for by Article L. 243-6 of the same Code; and, thirdly, even when it approached URSSAF and the host State's authorities in 2019 with a view to obtaining a refund of the amounts deducted from its officials' salaries in respect of the ESC, it failed to include in its requests the amounts corresponding to the sums deducted for the 2009-2012 period.

17. Having regard to the legal uncertainty referred to above, which only the French authorities and courts could resolve, the Tribunal considers that the complainants were denied a valuable opportunity to receive a refund of the amounts of ESC deducted from their salaries for the 2009-2012 period owing to Interpol's negligence. In the circumstances of the case, the injury resulting from this loss of opportunity will be fairly redressed by ordering the Organization to pay each of the complainants compensation in an amount equivalent to half of the sums deducted from their salaries for that period.

18. With regard to the period after 1 January 2013, concerning which it is not in dispute that Interpol reimbursed the amounts wrongly withheld from the complainants' salaries by way of ESC in the course of the proceedings, the complainants claim interest for late payment on the amounts that have been repaid to them.

The Organization puts forward three arguments against this claim: firstly, it does not consider itself guilty of negligence; secondly, URSSAF has not paid it any such interest; and lastly, there are no provisions in the Staff Regulations or Rules placing it under a general obligation to pay interest for late payment on principal amounts which it may owe its officials.

19. Firstly, it should be recalled that interest for late payment simply represents an objective form of compensation for the time that has elapsed since the date on which an amount was due, and the mere fact that there was a delay in the payment of that amount is sufficient to justify the payment of interest, whether or not the debtor was at fault (see Judgments 4093, consideration 8, and 1403, consideration 8). Interpol's argument that it was not negligent is therefore, in any event, irrelevant.

20. Secondly, for the same reasons as set out in consideration 14, above, the fact that the sums refunded by URSSAF to Interpol in respect of the period after 1 January 2013 did not include interest has no bearing on the Organization's obligation towards its officials to pay interest on

the amounts of ESC that it wrongly deducted from their salaries during that period.

21. Lastly, as regards the absence of any provision in Interpol's Staff Regulations or Rules providing for the payment of interest on sums due to the Organization's officials, the Tribunal recalls that the requirement to pay such interest arises even without such a provision pursuant to the general principles governing the liability of international organisations.

22. It is appropriate, in line with the Tribunal's case law, to apply the principle that interest is due *ipso jure* whenever a principal amount is payable, which is in particular the case where amounts have been wrongly deducted from remuneration that was due to be paid on a fixed date. In this scenario, the starting point for the interest to be paid is the due date for each payment from which an amount was wrongly deducted, that due date being equivalent by itself to service of notice (see, in particular, Judgments 3180, consideration 12, 2782, consideration 6, and 2076, consideration 10).

23. The complainants request that the rate of interest payable be set at 10 per cent per annum. However, the Tribunal sees no reason to depart from its usual practice of setting the rate of interest for late payment at 5 per cent.

24. The Tribunal will therefore order the Organization to pay the complainants interest for late payment on the sums paid to them by way of refunds of contributions for the period after 1 January 2013 at the rate of 5 per cent per annum from the monthly due date for each of the salary arrears in question until the date of their payment.

25. As regards the claim for interest in respect of the 2009-2012 period, the order that will be made against the Organization on account of the deductions made during that period takes the form of an order for damages for loss of opportunity, on which, given its very nature, no interest is payable.

26. Each of the complainants also seeks the sum of 7,000 euros “by way of contribution to the costs”.

Given that the complainants are assisted by the same counsel and that their submissions are identical in every respect, the Tribunal considers it fair to set costs at 3,000 euros for each of them.

DECISION

For the above reasons,

1. There is no need to rule on the complaints insofar as they seek repayment of the sums wrongly deducted from the complainants’ salaries for the period from 1 January 2013 to 30 April 2016.
2. The decisions of the Secretary General of Interpol of 11 September 2020 are set aside.
3. Interpol shall pay each of the complainants compensation calculated as indicated in consideration 17, above.
4. The Organization shall pay the complainants interest for late payment calculated as indicated in consideration 24, above.
5. It shall also pay each of the complainants 3,000 euros in costs.
6. All other claims are dismissed.

In witness of this judgment, adopted on 28 April 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