

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. 4669

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. C. against the International Criminal Police Organization (Interpol) on 7 December 2020, Interpol's reply of 12 April 2021, the complainant's rejoinder of 13 July 2021 and Interpol's surrejoinder of 6 October 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 seeks the restitution of amounts wrongly deducted from her salary 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 complainant is a former Interpol official who was employed at the Organization’s headquarters in Lyon, France, between 17 June 2013 and 31 December 2015. Accordingly, she was affiliated to the French social security scheme during that period.

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 complainant as she was 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 complainant submitted a request to the Secretary General on 20 May 2020 seeking repayment of the contributions wrongly deducted from her salary while she was employed by the Organization. However, in a letter of 8 July 2020 the Secretary General considered that no individual decision had yet been taken in the complainant's respect concerning the amounts of ESC collected "for periods prior to 2016". He added that a decision open to internal appeal would only be taken once discussions with the French authorities had been concluded. On 8 August 2020 the complainant lodged an internal appeal against the Secretary General's decision, in which she sought, in particular, reimbursement of the amounts wrongly deducted from her salary in respect of the ESC from her recruitment until the date of her separation from service. In a letter of 11 September 2020, which is the impugned

decision, the Secretary General dismissed the complainant's internal appeal as irreceivable on the grounds that it was premature.

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

The complainant asks the Tribunal to set aside the Secretary General's decisions of 8 July and 11 September 2020 which in turn dismissed her request and declared her internal appeal irreceivable and unfounded. In her rejoinder the complainant requests that the amounts already repaid bear interest at the rate of 10 per cent per annum from the date of the wrongful deduction until the date of repayment to compensate for the time that has passed. She also seeks an award of 7,000 euros in costs.

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

CONSIDERATIONS

1. In her complaint, the complainant:

- seeks reimbursement of the amounts wrongly deducted from her salary in respect of the enhanced sickness insurance contribution (ESC) between January 2013 and her departure from the Organization;
- also requests 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. The evidence in the file shows that, once URSSAF had made the corresponding reimbursements, the Organization refunded to the complainant the sums wrongly levied in respect of the ESC for the period after 1 January 2013. Thus, apart from the question of interest, the complaint is now moot.

3. The Organization submits that the complaint is irreceivable on the grounds that the reasoning provided in the impugned decision makes it clear that no individual decision has yet been taken regarding interest for late payment on the amounts of ESC refunded to the staff members concerned. In Interpol's view, the complaint is therefore premature in that respect, as was the complainant's internal appeal.

4. Contrary to what the Organization contends, the Secretary General did in fact take a decision on the complainant's claim for interest for late payment on the sums that were repaid to her. Although in his letter of 8 July 2020 the Secretary General insisted that no individual decision 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, and the corresponding interest, conditional on the successful conclusion of discussions with France and implied that interest for late payment could be considered only if URSSAF or the French authorities paid such interest. He therefore took a decision adversely affecting the complainant 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.

5. At this stage of its findings, the Tribunal should ordinarily remit the case to Interpol for the complainant's internal appeal 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.

6. With regard to the period from 17 June 2013 to 31 December 2015, concerning which it is not in dispute that Interpol reimbursed the amounts wrongly withheld from the complainant's salary by way of ESC in the course of the proceedings, the complainant claims interest for late payment on the amounts that have been repaid to her.

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.

7. 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.

8. Secondly, 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.

9. 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.

10. 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).

11. The complainant requests 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.

12. The Tribunal will therefore order the Organization to pay the complainant interest for late payment on the sums paid to her by way of a refund of ESC for the period from 17 June 2013 to 31 December 2015 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.

13. The complainant also seeks the sum of 7,000 euros "by way of contribution to the costs".

Given that the complainant is assisted by a counsel who filed several similar complaints to this one and that the submissions filed in those cases are largely identical, the Tribunal considers it fair to set costs at 3,000 euros.

DECISION

For the above reasons,

1. There is no need to rule on the complaint insofar as it seeks repayment of the sums wrongly deducted from the complainant's salary for the period from 17 June 2013 to 31 December 2015.

2. The decision of the Secretary General of Interpol of 11 September 2020 is set aside.
3. The Organization shall pay the complainant interest for late payment calculated as indicated in consideration 12, above.
4. It shall also pay the complainant 3,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 6 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